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OPINION NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re:

MINON MILLER,

Debtor.

Case No. 2:13-bk-35116-RK

Chapter 7

**FINDINGS OF FACT RE: MOTIONS OF
CREDITOR EDWARD GILLIAM FOR
DISMISSAL FOR BAD FAITH WITH
PREJUDICE**

Having tried the contested matters of the motions of Edward Gilliam for dismissal of Debtor's bankruptcy case for bad faith with prejudice, the court hereby makes the following findings of fact pursuant to Rules 7052 and 9104 of the Federal Rules of Bankruptcy Procedure and Rule 52 of the Federal Rules of Civil Procedure. In its memorandum decision filed concurrently herewith, the court also sets forth additional findings of fact and states its conclusions of law separately in issuing its final order disposing of these contested matters pursuant to Rule 7058 of the Federal Rules of Bankruptcy Procedure and Rule 58 of the Federal Rules of Civil Procedure.

1
2 1. On October 15, 2013, Minon Miller (hereinafter “Debtor” or “Miller”)
3 commenced this bankruptcy case by filing a voluntary petition for relief under Chapter 7
4 of the Bankruptcy Code, 11 U.S.C., with case number 2:13-bk-35116-RK. (Petition, ECF
5 1.)

6 2. As part of the Debtor’s bankruptcy petition, she filed a Chapter 7 Statement
7 of Current Monthly Income and Means-Test Calculation (hereinafter “Means-Test”),
8 wherein she declared that her “annualized current monthly income” of \$66,132.00 was
9 below the California median family income of \$75,656.00. (Creditor’s Exhibit C-24,
10 Debtor’s Means-Test, pg. 3, secs. 13 & 14 of the Means-Test.)

11 3. Given the Debtor’s bankruptcy petition filing in the month of October of
12 2013, the Means-Test results were based on monthly averages in the six month period
13 from April through September of 2013. (See 11 U.S.C. §101(10A)(A)).

14 4. As part of the Debtor’s bankruptcy petition, based upon the Means-Test
15 results, she declared on her Means-Test form that the presumption of abuse did not
16 arise. (Creditor’s Exhibit C-24, Debtor’s Means-Test, pg. 1, top right corner; *see also*, 11
17 U.S.C. §707(b)(2)(A).)

18 5. As part of the Debtor’s bankruptcy petition, she filed Schedule I – Current
19 Income of Individual Debtor(s) (hereinafter “Schedule I”), wherein she declared she had
20 gross monthly income of \$2397.44 from Pacific Maritime Association as a casual
21 longshoreperson. (Creditor’s Exhibit C-23, Debtor’s Schedule I, pg. 1.)

22 6. As part of the Debtor’s bankruptcy petition, she filed Schedule I wherein she
23 declared in response to Item No. 7 on Schedule I, which states: “Regular income from
24 operation of business or profession or farm (Attached detailed statement) \$_____”
25 that she was a self-employed tax preparer (“Self Employed-Tax Prep”) for fourteen (14)
26 years and that she had regular income of \$3000 per month from the operation of her
27 business or profession. (Creditor’s Exhibit C-23, Debtor’s Schedule I, pg. 2.) (*Id.*).
28 Debtor did not attach any detailed statement for her business as instructed by this item.

1 (*Id.*)

2 7. As part of the Debtor's bankruptcy petition, she filed a Statement of
3 Financial Affairs (hereinafter "Statement of Financial Affairs") wherein she declared in
4 response to Item No. 18, "Nature, location and name of business" that she was a
5 member of Nonim LLC and that it was "DBA: MTDMiller Income Tax Service (Tax Prep)"
6 from 2010 to the present. (Creditor's Exhibit C-26, Debtor's Statement of Financial
7 Affairs, pgs. 7-8, sec. 18, and pg. 13, sec. 18 of the Statement of Financial Affairs.)

8 8. As part of the Debtor's bankruptcy petition, she filed a Statement of
9 Financial Affairs wherein she declared in response to Item No. 1, "Income from
10 employment or operation of business" that requested her to state her gross amount of
11 income from her businesses that her 2012 income from Nonim was "approx 98,500.00."
12 (Creditor's Exhibit C-26, Debtor's Statement of Financial Affairs, pg. 1, sec. 1, and pg. 12,
13 sec. 1b of the Statement of Financial Affairs.) Item No. 1 on the Statement of Financial
14 Affairs, "Income from employment or operation of business," specifically directs in
15 pertinent part: "State the gross amount of income the debtor has received from
16 employment, trade, or profession, or operation of the debtor's business, including part-
17 time activities either as an employee or in independent trade or business, from the
18 beginning of this calendar year to the date this case was commenced. State also the
19 gross amounts received during the **two years** immediately preceding this calendar year."
20 (*Id.* (emphasis in original).)

21 9. As part of the Debtor's bankruptcy petition, she filed a Statement of
22 Financial Affairs wherein she declared in response to Item No. 1, "Income from
23 employment or operation of business" that requested her to state her gross amount of
24 income from her businesses that her 2013 income from Nonim was "approx 45,877.00".
25 (Creditor's Exhibit C-26, Debtor's Statement of Financial Affairs, pg. 1, sec. 1, and pg. 12,
26 sec. 1c of the Statement of Financial Affairs.)

27 10. As part of the Debtor's bankruptcy petition, she indicated that most of her
28 debts were consumer debts and on her Schedule F, she listed \$245,936 in unsecured

1 nonpriority debt. (Petition, ECF 1; Debtor's Exhibit D-49, Debtor's Schedules F, I, and
2 Certification of Employment Income.)

3 11. On November 12, 2013, Movant filed a Motion to Dismiss Chapter 7 Case
4 with Prejudice Pursuant to 11 U.S.C. Sec. 707(b)(3)(A). (ECF 15.)

5 12. On November 19, 2013, Debtor filed her "Objection to Motion to Dismiss
6 Chapter 7 Case with Prejudice Pursuant to 11 U.S.C. Sec. 707(b)(3)(A)". (ECF 19.)

7 13. On December 2, 2013, Movant filed a "Supplemental Motion to Dismiss
8 Chapter 7 Case with Prejudice Pursuant to 11 U.S.C. Sec. 707(b)(3)(A); Request for
9 Sanctions Pursuant to 11 U.S.C. 349(a) and 707(b)(1); Motion to Strike Opposition as
10 Untimely Pursuant to LBR 9013-1 and FRBP 9006". (ECF 23.)

11 14. As stated in her bankruptcy petition, the Debtor had been a tax return
12 preparer for fourteen (14) years when she filed her bankruptcy case herein. (Creditor's
13 Exhibit C-23, Debtor's Schedule I, pg. 2.)

14 15. The Debtor created Nonim LLC in approximately 2010. (Creditor's Exhibit
15 C-26, Debtor's Statement of Financial Affairs, pgs. 7-8, sec. 18, and pg. 13, sec. 18.)

16 16. Nonim was a limited liability company and was doing business as
17 MTDMiller Income Tax Service. (Creditor's Exhibit C-26, Debtor's Statement of Financial
18 Affairs, pgs. 7-8, sec. 18, and pg. 13, sec. 18.)

19 17. The Debtor was the only member of Nonim LLC. (Testimony of Minon
20 Miller, Transcript of Trial re: Motion to Dismiss Chapter 7 Case with Prejudice Pursuant to
21 11 U.S.C. Section 707(b)(3)(A), June 12, 2014 ("June 12, 2014 Trial Transcript"), ECF 72
22 at pg. 249:4-23.)¹

23 18. Nonim owned MTDMiller Income Tax Service. (Testimony of Minon Miller,
24 June 12, 2014 Trial Transcript, ECF 72 at pgs. 258:13-259:17.)

25 19. The Debtor prepared tax returns as MTDMiller Income Tax Service, but the
26

27 ¹ (page:line) References to transcript page and line numbers refer to the transcript page number, and not the ECF file
28 stamp page number.

1 fees earned by the Debtor in preparing these tax returns were deposited into a Nonim
2 bank account. (Testimony of Minon Miller, June 12, 2014 Trial Transcript, ECF 72 at pgs.
3 258:11 – 261:25; Creditor's Exhibit C-15, Accounting of Fees Paid to Debtor in 2012 by
4 Santa Barbara Tax Program Group; Creditor's Exhibit C-16, Accounting of Fees Paid to
5 Debtor in 2013 by Santa Barbara Tax Program Group; and Creditor's Exhibit C-18,
6 Nonim, LLC's Bank Account Statements with Wells Fargo Bank from January 1, 2013 to
7 August 31, 2013.) In preparing these tax returns as "MTDMiller Income Tax Service",
8 the Debtor's clients were never aware of the existence of Nonim. (Testimony of Minon
9 Miller, June 12, 2014 Trial Transcript, ECF 72 at pgs. 258:11 – 259:23.)

10 20. MTDMiller Income Tax Service was and is the Debtor's sole proprietorship.
11 (Testimony of Minon Miller, Transcript of Continued Hearing re: Oral Argument on Trial
12 for Motion to Dismiss Chapter 7 Case with Prejudice Pursuant to 11 U.S.C.
13 §707(b)(3)(A), November 12, 2014 ("November 12, 2014 Trial Transcript"), ECF 100 at
14 pg. 27:1-23.)

15 21. The business of preparing tax returns is a seasonal business primarily from
16 January through April of each year. (Testimony of Minon Miller, June 12, 2014 Trial
17 Transcript, ECF 72 at pgs. 275:2 – 276:12.)

18 22. The Debtor stated on her Schedule I to her bankruptcy petition: "Tax
19 preparer licence [sic] is current will work as independent contract[or]." (Creditor's Exhibit
20 C-23, Debtor's Schedule I, pg. 2.). This statement of admission by the Debtor indicates
21 her intent and ability to continue working as a self-employed income tax return preparer.
22 *Id.*

23 23. Nonim's gross income was based upon Debtor's personal services as a tax
24 return preparer through Debtor's sole proprietorship, MTDMiller Income Tax Service.
25 (Testimony of Minon Miller, June 12, 2014 Trial Transcript, ECF 72 at pgs. 256:1 –
26 261:25; Creditor's Exhibit C-15, Accounting of Fees Paid to Debtor in 2012 by Santa
27 Barbara Tax Program Group; Creditor's Exhibit C-16, Accounting of Fees Paid to Debtor
28 in 2013 by Santa Barbara Tax Program Group; Creditor's Exhibit C-17, Nonim, LLC's

1 Bank Account Statements with Wells Fargo Bank from January 1, 2012 to April 30, 2012;
2 and Creditor's Exhibit C-18, Nonim, LLC's Bank Account Statements with Wells Fargo
3 Bank from January 1, 2013 to August 31, 2013.)

4 24. Santa Barbara Tax Program Group (hereinafter "TPG") was the third party
5 electronic tax return processing firm that handled the electronic filing of income tax
6 returns for Debtor as a tax return preparer, TPG paid the tax return preparation fees to
7 Debtor from the income tax refunds due to her clients for the tax returns she prepared
8 and electronically filed for her clients through TPG, and TPG paid the tax return
9 preparation fees for Debtor through electronic deposits into Nonim's bank checking
10 account. (Testimony of Minon Miller, June 12, 2014 Trial Transcript, ECF 72 at pgs.
11 256:1-261:6; Creditor's Exhibit C-15, Accounting of Fees Paid to Debtor in 2012 by Santa
12 Barbara Tax Program Group; Creditor's Exhibit C-16, Accounting of Fees Paid to Debtor
13 in 2013 by Santa Barbara Tax Program Group; Creditor's Exhibit C-17, Nonim, LLC's
14 Bank Account Statements with Wells Fargo Bank from January 1, 2012 to April 30, 2012;
15 and Creditor's Exhibit C-18, Nonim, LLC's Bank Account Statements with Wells Fargo
16 Bank from January 1, 2013 to August 31, 2013.)

17 25. If a client of the Debtor, or MTD Miller Income Tax Service, was entitled to a
18 tax refund based upon his or her income tax return, TPG would pay the tax refund to said
19 client once the Internal Revenue Service processed the tax return and made the refund
20 to TPG. (Testimony of Minon Miller, June 12, 2014 Trial Transcript, ECF 72 at pgs.
21 255:14 – 261:25; Creditor's Exhibit C-15, Accounting of Fees Paid to Debtor in 2012 by
22 Santa Barbara Tax Program Group; and Creditor's Exhibit C-16, Accounting of Fees Paid
23 to Debtor in 2013 by Santa Barbara Tax Program Group; Creditor's Exhibit C-17, Nonim,
24 LLC's Bank Account Statements with Wells Fargo Bank from January 1, 2012 to April 30,
25 2012; Creditor's Exhibit C-18, Nonim, LLC's Bank Account Statements with Wells Fargo
26 Bank from January 1, 2013 to August 31, 2013.)

27 26. At the same time, TPG would deduct the Debtor's preparation and filing
28 fees from said tax refund and then deposit said fees into Nonim's bank checking account.

1 (Testimony of Minon Miller, June 12, 2014 Trial Transcript, ECF 72 at pgs. 255:14 –
2 261:25; Creditor’s Exhibit C-15, Accounting of Fees Paid to Debtor in 2012 by Santa
3 Barbara Tax Program Group; Creditor’s Exhibit C-17, Nonim, LLC’s Bank Account
4 Statements with Wells Fargo Bank from January 1, 2012 to April 30, 2012; Creditor’s
5 Exhibit C-18, Nonim, LLC’s Bank Account Statements with Wells Fargo Bank from
6 January 1, 2013 to August 31, 2013.)

7 27. TPG prepared annual accounting statements of the fees deposited into
8 Nonim’s bank account in 2012 and 2013. (Creditor’s Exhibit C-15, Accounting of Fees
9 Paid to Debtor in 2012 by Santa Barbara Tax Program Group; and Creditor’s Exhibit C-
10 16, Accounting of Fees Paid to Debtor in 2013 by Santa Barbara Tax Program Group.)
11 TPG’s accounting statements were obtained by Creditor’s State Court Receiver.
12 (Testimony of Stephan Donell, June 12, 2014 Trial Transcript, ECF 72 at pg. 58:8 – 20;
13 pg. 75:8 – 18, and pg. 97:14 – 25.)

14 28. TPG’s 2012 accounting statement for Nonim refers to “MTDMiller Income
15 Tax Service (300830-00001)”. (Creditor’s Exhibit C-15, Accounting of Fees Paid to
16 Debtor in 2012 by Santa Barbara Tax Program Group, pg. 2, right-hand side of page.).
17 The court infers that 300830-00001 is TPG’s account number for its customer,
18 “MTDMiller Income Tax Service.” The inference is corroborated by the same account
19 number bank deposit entries from “Sbtpg LLC” into Nonim’s bank checking account as
20 reflected on the bank statements for 2012 and 2013 as described below.

21 29. TPG’s 2013 accounting statement for Nonim refers to “Stephen J. Donnell
22 (300830-0001)”, the State Court Receiver for Debtor and Nonim, dba MTDMiller Income
23 Tax Service. (Creditor’s Exhibit C-16, Accounting of Fees Paid to Debtor in 2013 by
24 Santa Barbara Tax Program Group, pg. 2, right-hand side of page.). TPG’s accounting
25 statement for 2013 reflects that TPG deposited \$102,810.67 into Nonim’s bank account.
26 (Creditor’s Exhibit C-16, Accounting of Fees Paid to Debtor in 2013 by Santa Barbara
27 Tax Program Group, pg. 11.) TPG’s accounting statement for 2013 reflects that it
28 deposited fees into Nonim’s bank account primarily over four (4) months in 2013, or from

1 February through May of 2012. (Creditor's Exhibit C-16, Accounting of Fees Paid to
2 Debtor in 2013 by Santa Barbara Tax Program Group, pgs. 2 – 11.) The court infers that
3 300830-00001 is TPG's account number for its customer, "MTDMiller Income Tax
4 Service," which referred to the State Court Receiver in retrieving Nonim's fee income
5 information for 2013. The inference is corroborated by the same account number bank
6 deposit entries from "Sbtpg LLC" into Nonim's bank checking account as reflected on the
7 bank statements for 2012 and 2013 as described below.

8 30. Nonim's bank accounts, checking and savings, were with Wells Fargo
9 Bank. (Creditor's Exhibit C-17, Nonim, LLC's Bank Account Statements with Wells Fargo
10 Bank from January 1, 2012 to April 30, 2012; and Creditor's Exhibit C-18, Nonim, LLC's
11 Bank Account Statements with Wells Fargo Bank from January 1, 2013 to August 31,
12 2013; Testimony of Minon Miller, June 12, 2014 Trial Transcript, ECF 72 at pg. 262:2–
13 25). The Debtor was the sole signatory on Nonim's bank accounts. (Testimony of Minon
14 Miller, June 12, 2014 Trial Transcript, ECF 72 at pgs. 262:21–25 and 263:1-14). The
15 court therefore infers that Debtor was the only person who withdrew funds from Nonim's
16 bank accounts. The State Court Receiver obtained Nonim's bank statements with Wells
17 Fargo Bank for 2012 and 2013. (Testimony of Stephen Donell, June 12, 2014 Trial
18 Transcript, ECF 72 at pgs. 68:21 – 71:20.)

19 31. When TPG deposited monies into Nonim's bank checking account, the
20 respective entry for the deposit within Wells Fargo's bank statement would make specific
21 reference to "Tax Products PR1 Sbtpg LLC 120123 3008300001 Mtdmiller Income Tax
22 S" . (See, e.g. Creditor's Exhibit C-17, Nonim, LLC's Bank Account Statements with Wells
23 Fargo Bank from January 1, 2012 to April 30, 2012, pg. 3, entry for January 25th reflecting
24 deposit of \$9,140 for "Tax Products PR1 Sbtpg LLC" (the court infers that "Sbtpg" refers
25 to Santa Barbara Tax Program Group); see also, Creditor's Exhibit C-17, Nonim, LLC's
26 Bank Account Statements with Wells Fargo Bank from January 1, 2012 to April 30, 2012;
27 Creditor's Exhibit C-18, Nonim, LLC's Bank Account Statements with Wells Fargo Bank
28 from January 1, 2013 to August 31, 2013; Testimony of Minon Miller, June 12, 2014 Trial

1 Transcript, ECF 72 at pgs. 258:3 - 262:25). These deposit entries are replete on Nonim's
2 bank checking account statements. (*Id.*) The court infers that 300830-00001 is TPG's
3 account number for its customer, "MTDMiller Income Tax Service." The inference is
4 corroborated by the same account number bank deposit entries from "Sbtpg LLC" into
5 Nonim's bank checking account as reflected on its bank statements for 2012 and 2013 as
6 described herein.

7 32. In 2012, Nonim had gross income of \$422,616.15 in tax return preparation
8 fees paid by TPG. (Creditor's Exhibit C-15, Accounting of Fees Paid to Debtor in 2012 by
9 Santa Barbara Tax Program Group, pg. 28; Testimony of Minon Miller, June 12, 2014
10 Trial Transcript, ECF 72 at pgs. 266:2 – 267:23.)

11 33. Nonim's gross income of \$422,616.15 from tax return preparation fees paid
12 by TPG was generated primarily over four (4) months in 2012, January through May.
13 (Creditor's Exhibit C-15, Accounting of Fees Paid to Debtor in 2012 by Santa Barbara
14 Tax Program Group, pgs. 2–28.). TPG's accounting statement for 2012 reflects that it
15 deposited fees into Nonim's bank account primarily over four (4) months in 2012, or from
16 January through May of 2012. (Creditor's Exhibit C-15, Accounting of Fees Paid to
17 Debtor in 2012 by Santa Barbara Tax Program Group, pgs. 2 – 28.)

18 34. In 2012, Nonim's bank checking account statements from January through
19 April of 2012 reflect respective deposits from TPG totaling \$404,036.15. (January -
20 \$21,465.00 (Creditor's Exhibit C-17, Nonim, LLC's Bank Account Statements with Wells
21 Fargo Bank from January 1, 2012 to April 30, 2012, pg. 3.); February - \$160,536.97 (*Id.*,
22 pgs. 8-11.); March - \$128,178.13 (*Id.*, pgs. 15-18.); and April - \$93,856.05 (*Id.*, pgs. 22-
23 25)).

24 35. Nonim's 2012 gross income from tax return preparation fees paid by TPG in
25 the amount of \$422,616.15 is mostly corroborated by \$404,036.15 in deposits from TPG
26 into its bank checking account as shown by the bank statements for the four (4) months
27 of January through April of 2012. (Findings of Fact 33 and 34 above). The differences in
28 these amounts is apparently explained in that Creditor did not offer into evidence bank

1 statements for Nonim's checking account for months of May through October 2012 to
2 corroborate the fee income disbursements shown on TPG's accounting of fees paid to
3 Nonim during 2012 for these months. (Id.)

4 36. In 2013, Nonim had gross income of \$102,810.67 in tax return preparation
5 fees paid by TPG. (Creditor's Exhibit C-16, Accounting of Fees Paid to Debtor in 2013 by
6 Santa Barbara Tax Program Group, pg. 11; Testimony of Minon Miller, June 12, 2014
7 Trial Transcript, ECF 72 at pgs. 266:2 – 267:23.)

8 37. Nonim's gross income of \$102,810.67 from tax return preparation fees paid
9 by TPG was generated primarily over four (4) months in 2013, February through May.
10 (Creditor's Exhibit C-16, Accounting of Fees Paid to Debtor in 2013 by Santa Barbara
11 Tax Program Group, pgs. 2–11.)

12 38. In 2013, Nonim's bank checking account statements from February through
13 May of 2013 reflect respective deposits from TPG totaling \$102,810.67. (February -
14 \$42,930.00 (Creditor's Exhibit C-18, Nonim, LLC's Bank Account Statements with Wells
15 Fargo Bank from January 1, 2013 to August 31, 2013, pgs. 7-8.); March - \$36,772.67 (Id.,
16 pgs. 13-15.); April - \$18,858 (Id., pgs. 23-26); and May - \$4,250.00 (Id., pgs. 34-36).)

17 39. Nonim's 2013 gross income from tax return preparation fees paid by TPG in
18 the amount of \$102,810.67 is corroborated by \$102,810.67 in deposits from TPG into its
19 bank checking account as shown by the bank statements for the four (4) months of
20 February through May of 2013. (Findings of Fact 37 and 38 above).

21 40. In 2012 and 2013, Nonim grossed income of \$525,426.82 from fees
22 through Debtor's personal services as a tax return preparer. This is the result of
23 \$422,616.15 in fees paid in 2012 and \$102,810.67 in fees paid by TPG, which are mostly
24 substantiated by the deposits into Nonim's bank checking account in 2012 and 2013.
25 (Findings of Fact 34-39 above.).

26 Breakdown of Nonim's 2013 Bank Statements With Wells Fargo

27 41. **January of 2013:** Nonim had a beginning balance of \$69.00 on January 1,
28 2013, in its Wells Fargo checking account, it received deposits of \$671.98 in said month,

1 it had withdrawals of \$132.48 in said month, and it consequently had an ending balance
2 of \$608.50 in its checking account on January 31, 2013. (Creditor's Exhibit C-18, Nonim,
3 LLC's Bank Account Statements with Wells Fargo Bank from January 1, 2013 to August
4 31, 2013, pg. 2, Activity summary.)

5 42. Nonim had a negative balance of \$5.61 on January 1, 2013, in its Wells
6 Fargo Business Market Rate Savings account, it received deposits of \$10.00 in said
7 account, it had withdrawals of \$6.00 in said account, and it consequently had an ending
8 balance of negative \$1.61 in said account on January 31, 2013. (Creditor's Exhibit C-18,
9 Nonim, LLC's Bank Account Statements with Wells Fargo Bank from January 1, 2013 to
10 August 31, 2013, pg. 3, Activity summary.)

11 43. **February of 2013:** Nonim had a beginning balance of \$608.50 on February
12 1, 2013, in its Wells Fargo checking account, it received deposits of \$44,645.00 in said
13 month, it had withdrawals of \$43,643.36 in said month, and it consequently had an
14 ending balance of \$1,610.14 in its checking account on February 28, 2013. (Creditor's
15 Exhibit C-18, Nonim, LLC's Bank Account Statements with Wells Fargo Bank from
16 January 1, 2013 to August 31, 2013, pg. 7, Activity summary.)

17 TPG Deposits into Nonim's Checking Account in February of 2013

18 a. In February of 2013, TPG made \$42,930 of the above-referenced
19 deposits into Nonim's checking account. (Id. pgs. 7 – 8.)

20 Debtor's Check Card Purchase Withdrawals From Nonim's Bank Checking
21 Account in February of 2013

22 b. On February 7, 2013, Debtor withdrew \$54.27 for gas at Exxonmobil.
23 (Id. pg. 7, line entry for 2/7.)

24 c. On February 8, 2013, Debtor withdrew \$177.20 at Target. (Id. pg. 7,
25 line entry for 2/8.)

26 d. On February 19, 2013, Debtor withdrew \$39.99 at Bellagio Auto
27 Center. (Id. pg. 8, line entry for 2/19.)

28 e. On February 19, 2013, Debtor withdrew \$45.78 at Fashion Beauty

1 Supply. (Id. pg. 8, line entry for 2/19.)

2 f. On February 19, 2013, Debtor withdrew \$80.00 at Beauty Lounge.

3 (Id. pg. 8, line entry for 2/19.)

4 g. On February 22, 2013, Debtor withdrew \$94.86 for gas at

5 Exxonmobil. (Id. pg. 7, line entry for 2/7.)

6 Debtor's Cash Withdrawals From Nonim's Checking Account in February of

7 2013

8 h. On February 7, 2013, Debtor withdrew \$3,200 from Nonim's bank

9 account. (Id. pg. 7, line entry for 2/7.)

10 i. On February 15, 2013, Debtor withdrew \$4,500 from Nonim's bank

11 account. (Id. pg. 8, line entry for 2/15.)

12 j. On February 25, 2013, Debtor withdrew \$10,000 from Nonim's bank

13 account. (Id. pg. 8, line entry for 2/25.)

14 k. On February 28, 2013, Debtor withdrew \$19,890.00 from Nonim's

15 bank account. (Id. pg. 7, line entry for 2/7.)

16 l. In total, Debtor withdrew \$37,590 in cash from Nonim's bank

17 checking account in February of 2013.

18 44. **March of 2013:** Nonim had a beginning balance of \$1,610.14 on March 1,

19 2013, in its Wells Fargo checking account, it received deposits of \$44,121.07 in said

20 month, it had withdrawals of \$42,868.91 in said month, and it consequently had an

21 ending balance of \$2,862.30 in its checking account on March 31, 2013. (Creditor's

22 Exhibit C-18, Nonim, LLC's Bank Account Statements with Wells Fargo Bank from

23 January 1, 2013 to August 31, 2013, pg. 13, Activity summary.)

24 TPG Deposits into Nonim's Checking Account in March of 2013

25 a. TPG made \$36,772.67 of the above-referenced deposits into

26 Nonim's checking account. (Id. pgs. 13 – 15.)

27 Debtor's Check Card Purchase Withdrawals From Nonim's Bank Checking

28 Account in March of 2013

- 1 b. On March 4, 2013, Debtor withdrew \$79 at Burke Williams. (Id. pg.
2 13, line entry for 3/4.)
- 3 c. On March 4, 2013, Debtor withdrew \$87.85 for gas at Chevron. (Id.
4 pg. 13, line entry for 3/4.)
- 5 d. On March 11, 2013, Debtor withdrew \$178.48 at Victoria Secret. (Id.
6 pg. 13, line entry for 3/11.)
- 7 e. On March 11, 2013, Debtor withdrew \$267.53 at Bebe Store Inc. (Id.
8 pg. 14, line entry for 3/11.)
- 9 f. On March 11, 2013, Debtor withdrew \$123.32 at Bebe Store Inc. (Id.
10 pg. 14, line entry for 3/11.)
- 11 g. On March 11, 2013, Debtor withdrew \$354.25 at Nordstrom's. (Id.
12 pg. 14, line entry for 3/11.)
- 13 h. On March 15, 2013, Debtor withdrew \$70.28 at The Olive Garden.
14 (Id. pg. 14, line entry for 3/15.)
- 15 i. On March 15, 2013, Debtor withdrew \$45 at Beauty Lounge. (Id. pg.
16 14, line entry for 3/15.)
- 17 j. On March 18, 2013, Debtor withdrew \$54.96 at Ralphs. (Id. pg. 14,
18 line entry for 3/18.)
- 19 k. On March 20, 2013, Debtor withdrew \$222.81 at Target. (Id. pg. 14,
20 line entry for 3/20.)
- 21 l. On March 22, 2013, Debtor withdrew \$35.50 at Nats Cleaners. (Id.
22 pg. 14, line entry for 3/22.)
- 23 m. On March 25, 2013, Debtor withdrew \$60.00 at Burke Williams. (Id.
24 pg. 15, line entry for 3/25.)
- 25 n. On March 25, 2013, Debtor withdrew \$14.57 at Sweet Mark. (Id. pg.
26 13, line entry for 3/25.)
- 27 Debtor's Cash Withdrawals From Nonim's Checking Account in March of
28 2013

- 1 o. On March 1, 2013, Debtor withdrew \$2,000 from Nonim's bank
2 account. (Id. pg. 13, line entry for 3/1.)
- 3 p. On March 6, 2013, Debtor withdrew \$9,300 from Nonim's bank
4 account. (Id. pg. 13, line entry for 3/6.)
- 5 q. On March 8, 2013, Debtor withdrew \$2,100 from Nonim's bank
6 account. (Id. pg. 13, line entry for 3/8.)
- 7 r. On March 12, 2013, Debtor withdrew \$1,500 from Nonim's bank
8 account. (Id. pg. 14, line entry for 3/8.)
- 9 s. On March 14, 2013, Debtor withdrew \$1,850 from Nonim's bank
10 account. (Id. pg. 14, line entry for 3/14.)
- 11 t. On March 21, 2013, Debtor withdrew \$200 from Nonim's bank
12 account. (Id. pg. 14, line entry for 3/21.)
- 13 u. On March 21, 2013, Debtor withdrew \$6,700 from Nonim's bank
14 account. (Id. pg. 14, line entry for 3/21.)
- 15 v. On March 26, 2013, Debtor withdrew \$5,500 from Nonim's bank
16 account. (Id. pg. 14, line entry for 3/26.)
- 17 w. On March 28, 2013, Debtor withdrew \$4,000 from Nonim's bank
18 account. (Id. pg. 14, line entry for 3/28.)
- 19 x. On March 29, 2013, Debtor withdrew \$200 from Nonim's bank
20 account. (Id. pg. 14, line entry for 3/29.)
- 21 z. In total, Debtor withdrew \$33,350 from Nonim's bank checking
22 account in March of 2013.

23 45. **April of 2013:** Nonim had a beginning balance of \$2,862.30 on April 1,
24 2013, in its Wells Fargo checking account, it received deposits of \$22,267 in said month,
25 it had withdrawals of \$24,967.16 in said month, and it consequently had an ending
26 balance of \$162.14 in its checking account on April 30, 2013. (Creditor's Exhibit C-18,
27 Nonim, LLC's Bank Account Statements with Wells Fargo Bank from January 1, 2013 to
28 August 31, 2013, pg. 23, Activity summary.)

TPG Deposits into Nonim's Checking Account in April of 2013

a. TPG made \$17,974 of the above-referenced deposits into Nonim's checking account. (Creditor's Exhibit C-18, Nonim, LLC's Bank Account Statements with Wells Fargo Bank from January 1, 2013 to August 31, 2013, pgs. 23 – 27.)

Debtor's Check Card Purchase Withdrawals From Nonim's Bank Checking Account in April of 2013

b. On April 1, 2013, Debtor withdrew \$884 at "Ahava O" located in New York. (Id. pg. 24, line entry for 4/1.)

c. On April 1, 2013, Debtor withdrew \$42 at "1000 West Olymp Los Angeles CA". (Id. pg. 24, line entry for 4/1.)

d. On April 1, 2013, Debtor withdrew \$5 at LA Live Parking. (Id. pg. 24, line entry for 4/1.)

e. On April 2, 2013, Debtor withdrew \$158.36 at the Reef in Long Beach. (Id. pg. 24, line entry for 4/2.)

f. On April 3, 2013, Debtor withdrew \$919.96 at "Beauty and the []". (Id. pg. 24, line entry for 4/3.)

g. On April 15, 2013, Debtor withdrew a total of \$158.84 at Target. (Id. pg. 25, line entry for 4/15.)

h. On April 16, 2013, Debtor withdrew \$82.70 for gas at Exxonmobil. (Id. pg. 25, line entry for 4/16.)

i. On April 18, 2013, Debtor withdrew \$366.24 at Nordstrom. (Id. pg. 25, line entry for 4/18.)

j. On April 19, 2013, Debtor withdrew \$289.40 at Nordstrom. (Id. pg. 25, line entry for 4/19.)

k. On April 19, 2013, Debtor withdrew \$196.20 at Nordstrom. (Id. pg. 25, line entry for 4/19.)

l. On April 19, 2013, Debtor withdrew \$63 for gas at Shell Service Station. (Id. pg. 25, line entry for 4/19.)

- 1 m. On April 22, 2013, Debtor withdrew \$26.68 at Vons. (Id. pg. 25, line
2 entry for 4/22.)
- 3 n. On April 23, 2013, Debtor withdrew \$155.38 at Target. (Id. pg. 25,
4 line entry for 4/23.)
- 5 o. On April 23, 2013, Debtor withdrew \$73.80 at Eat Wise. (Id. pg. 25,
6 line entry for 4/23.)
- 7 p. On April 26, 2013, Debtor withdrew \$80.76 for gas at Shell Service
8 Station. (Id. pg. 26, line entry for 4/18.)
- 9 q. On April 29, 2013, Debtor withdrew \$171.00 at Burke Williams. (Id.
10 pg. 26, line entry for 4/29.)

11 Debtor's Cash Withdrawals From Nonim's Bank Checking Account in
12 April of 2013

- 13 r. On April 2, 2013, Debtor withdrew a total of \$1,500 from Nonim's
14 bank account. (Id. pg. 24, line entry for 4/2.)
- 15 s. On April 3, 2013, Debtor withdrew \$5,200 from Nonim's bank
16 account. (Id. pg. 24, line entry for 4/3.)
- 17 t. On April 11, 2013, Debtor withdrew \$1,000 from Nonim's bank
18 account. (Id. pg. 25, line entry for 4/11.)
- 19 w. On April 15, 2013, Debtor withdrew \$2,500 from Nonim's bank
20 account. (Id. pg. 25, line entry for 4/15.)
- 21 x. On April 17, 2013, Debtor withdrew \$4,200 from Nonim's bank
22 account. (Id. pg. 25, line entry for 4/17.)
- 23 y. On April 24, 2013, Debtor withdrew \$2,500 from Nonim's bank
24 account. (Id. pg. 25, line entry for 4/24.)
- 25 z. In total, Debtor withdrew \$16,900 in cash from Nonim's bank
26 checking account in April of 2013.

27 46. **April of 2013:** In April of 2013, in a separate account entitled "Gold
28 Business Services Package" with Wells Fargo, Nonim had a beginning balance of \$0.00

1 on April 1st, it received deposits of \$13,556, it had withdrawals of \$12,156.99, and it had
2 an ending balance of \$1,399.01 on April 30, 2013. (Creditor's Exhibit C-18, Nonim, LLC's
3 Bank Account Statements with Wells Fargo Bank from January 1, 2013 to August 31,
4 2013, pg. 27, Activity summary.)

5 Debtor's Cash Withdrawals From This Account in April of 2013

6 a. Debtor withdrew \$11,500 from this account in April of 2013. (Id. pgs.
7 27 – 28.)

8 b. In total, Debtor withdrew \$28,400 from Nonim's two accounts with
9 Wells Fargo in April of 2013.

10 47. **May of 2013:** Nonim had a beginning balance of \$162.14 on May 1, 2013,
11 in its Wells Fargo checking account, it received deposits of \$4,589.01 in said month, it
12 had withdrawals of \$4,334.81 in said month, and it consequently had an ending balance
13 of \$416.34 in its checking account on May 31, 2013. (Creditor's Exhibit C-18, Nonim,
14 LLC's Bank Account Statements with Wells Fargo Bank from January 1, 2013 to August
15 31, 2013, pg. 34, Activity summary.)

16 TPG Deposits into Nonim's Checking Account in May of 2013

17 a. TPG made \$4,250 of the above-referenced deposits into Nonim's
18 bank account. (Id. pgs. 34 – 36.)

19 Debtor's Check Card Purchase Withdrawals From Nonim's Bank
20 Checking Account in May of 2013

21 b. On May 1, 2013, Debtor withdrew \$50.64 at The Olive Garden. (Id.
22 pg. 34, line entry for 5/1.)

23 c. On May 2, 2013, Debtor withdrew \$295.64 at 24 Hour Fitness. (Id.
24 pg. 34, line entry for 5/2.)

25 d. On May 6, 2013, Debtor withdrew \$111.69 at The Home Depot. (Id.
26 pg. 34, line entry for 5/6.)

27 e. On May 6, 2013, Debtor withdrew \$36.90 at The Home Depot. (Id.
28 pg. 34, line entry for 5/6.)

- 1 f. On May 6, 2013, Debtor withdrew \$413.96 at City Foods Wholesale.
2 (Id. pg. 34, line entry for 5/6.)
- 3 g. On May 6, 2013, Debtor withdrew \$107.49 at Costco. (Id. pg. 34, line
4 entry for 5/6.)
- 5 h. On May 6, 2013, Debtor withdrew \$122.81 at Vons. (Id. pg. 34, line
6 entry for 5/6.)
- 7 i. On May 6, 2013, Debtor withdrew \$128.70 at Target. (Id. pg. 34, line
8 entry for 5/6.)
- 9 j. On May 7, 2013, Debtor withdrew \$82.28 for gas at Exxonmobil. (Id.
10 pg. 34, line entry for 5/7.)
- 11 k. On May 13, 2013, Debtor withdrew \$12.38 at Panera Bread. (Id. pg.
12 35, line entry for 5/6.)
- 13 l. On May 13, 2013, Debtor withdrew \$160 at "Sweet Fruit Arrang []".
14 (Id. pg. 35, line entry for 5/13.)
- 15 m. On May 13, 2013, Debtor withdrew \$230.55 at Philthy Ragz. (Id. pg.
16 35, line entry for 5/13.)
- 17 n. On May 13, 2013, Debtor withdrew \$133.38 at Albertsons. (Id. pg.
18 35, line entry for 5/13.)
- 19 o. On May 13, 2013, Debtor withdrew \$60.00 for gas at Chevron. (Id.
20 pg. 35, line entry for 5/13.)
- 21 p. On May 16, 2013, Debtor withdrew \$63.09 at Red Lobster. (Id. pg.
22 35, line entry for 5/16.)
- 23 q. On May 16, 2013, Debtor withdrew \$83.95 for gas at Exxonmobil.
24 (Id. pg. 35, line entry for 5/16.)
- 25 r. On May 20, 2013, Debtor withdrew \$348.70 at Angl. (Id. pg. 35, line
26 entry for 5/20.)
- 27 s. On May 22, 2013, Debtor withdrew \$85.17 for gas at Chevron. (Id.
28 pg. 35, line entry for 5/22.)

1 t. On May 28, 2013, Debtor withdrew \$149.98 at Nordstrom's. (Id. pg.
2 35, line entry for 5/28.)

3 u. On May 28, 2013, Debtor withdrew \$79.98 at 24 Hour Fitness. (Id.
4 pg. 35, line entry for 5/28.)

5 v. On May 28, 2013, Debtor withdrew \$43.58 at Brandi Robinson. (Id.
6 pg. 35, line entry for 5/28.)

7 w. On May 28, 2013, Debtor withdrew \$43.58 at Anna S Linens. (Id. pg.
8 35, line entry for 5/28.)

9 x. On May 28, 2013, Debtor withdrew \$88.37 at Benihana. (Id. pg. 36,
10 line entry for 5/28.)

11 y. On May 28, 2013, Debtor withdrew \$62 for gas at Exxonmobil. (Id.
12 pg. 36, line entry for 5/28.)

13 z. On May 28, 2013, Debtor withdrew \$53.52 at Vesta Boost Prep. (Id.
14 pg. 36, line entry for 5/28.)

15 48. **May of 2013:** In May of 2013, in a separate account entitled "Gold Business
16 Services Package" with Wells Fargo, Nonim had a beginning balance of \$1,399.01 on
17 May 1st, it received deposits of \$721.56, it had withdrawals of \$2,134.82, and it had an
18 ending negative balance of \$14.25 on May 31, 2013. (Creditor's Exhibit C-18, Nonim,
19 LLC's Bank Account Statements with Wells Fargo Bank from January 1, 2013 to August
20 31, 2013, pg. 37, Activity summary.)

21 Debtor's Cash Withdrawals From This Account in May of 2013

22 a. Debtor withdrew \$1,700.00 from this account in May of 2013. (Id. pg.
23 37.)

24 49. **June of 2013:** Nonim had a beginning balance of \$416.34 on June 1, 2013,
25 in its checking account, it received deposits of \$1000 in said month, it had withdrawals of
26 \$1,271.24 in said month, and it consequently had an ending balance of \$145.10 in its
27 checking account on June 30, 2013. (Creditor's Exhibit C-18, Nonim, LLC's Bank
28 Account Statements with Wells Fargo Bank from January 1, 2013 to August 31, 2013, pg.

43, Activity summary.)

TPG Deposits into Nonim's Checking Account in June of 2013

a. TPG made no deposits into this account in June of 2013. (Id. pgs. 43 – 44.)

Debtor's Check Card Purchase Withdrawals From Nonim's Bank

Checking Account in June of 2013

b. On June 3, 2013, Debtor withdrew \$142.49 at T Mobility in Hattiesburg, Mississippi. (Id. pg. 43, line entry for 6/3.)

c. On June 3, 2013, Debtor withdrew \$216.30 at Holiday Inns in Douglasville, Georgia. (Id. pg. 43, line entry for 6/3.)

d. On June 10, 2013, Debtor withdrew \$70.63 at "Lil Butcher Sh[]" in Hattiesburg, Mississippi. (Id. pg. 43, line entry for 6/10.)

e. On June 12, 2013, Debtor withdrew \$32.83 at Ocharleys in Hattiesburg, Mississippi. (Id. pg. 43, line entry for 6/3.)

f. On June 24, 2013, Debtor withdrew \$12.00 at Actgypsyllc in New Jersey. (Id. pg. 43, line entry for 6/24.)

g. On June 25, 2013, Debtor withdrew \$139.61 at Hampton Inns in Natchez, Mississippi. (Id. pg. 43, line entry for 6/25.)

h. On June 26, 2013, Debtor withdrew \$79.98 at 24 Hour Fitness in California. (Id. pg. 43, line entry for 6/26.)

i. On June 26, 2013, Debtor withdrew \$113.17 at Target. In Hattiesburg, Mississippi (Id. pg. 43, line entry for 6/26.)

j. On June 26, 2013, Debtor withdrew \$53.50 at T Mobility in Hattiesburg, Mississippi. (Id. pg. 44, line entry for 6/26.)

k. On June 27, 2013, Debtor withdrew \$76.71 at Walmart in Hattiesburg, Mississippi. (Id. pg. 44, line entry for 6/27.)

50. **July of 2013:** Nonim had a beginning balance of \$145.10 on July 1, 2013, in its checking account, it received deposits of \$270.24 in said month, it had withdrawals

1 of \$414.36 in said month, and it consequently had an ending balance of \$.98 in its
2 checking account on July 31, 2013. (Creditor's Exhibit C-18, Nonim, LLC's Bank Account
3 Statements with Wells Fargo Bank from January 1, 2013 to August 31, 2013, pg. 50,
4 Activity summary.)

5 TPG Deposits into Nonim's Checking Account in July of 2013

6 a. TPG made no deposits into this account in July of 2013. (Id. pg. 50.)

7 Debtor's Check Card Purchase Withdrawals From Nonim's Bank

8 Checking Account in July of 2013

9 b. On July 12, 2013, Debtor withdrew \$16.05 at the Dollar Tree in
10 Hattlemburg, Missouri. (Id. pg. 50, line entry for 7/12.)

11 c. On July 15, 2013, Debtor withdrew \$28.90 for Onstar. (Id. pg. 50, line
12 entry for 7/15.)

13 d. On July 16, 2013, Debtor withdrew \$154.78 for the Residence Inns in
14 Hattlemburg, Missouri. (Id. pg. 50, line entry for 7/12.)

15 51. **August of 2013:** Nonim had a beginning balance of \$0.98 on August 1,
16 2013, in its checking account, it received deposits of \$0.00 in said month, it had
17 withdrawals of \$0.00 in said month, and it consequently had an ending balance of \$.98 in
18 its checking account on August 31, 2013. (Creditor's Exhibit C-18, Nonim, LLC's Bank
19 Account Statements with Wells Fargo Bank from January 1, 2013 to August 31, 2013, pg.
20 57, Activity summary.)

21 Totals Based Upon the Above Breakdown

22 52. In 2013, Debtor withdrew \$101,040 in cash from Nonim's bank accounts.
23 Debtor offered no documentary evidence to substantiate the business purposes of these
24 cash withdrawals from Nonim's bank accounts. (Findings of Fact 41-51 above.) The
25 court finds that these cash withdrawals were for Debtor's personal purposes.

26 53. In 2013, Debtor made check card purchases of \$9,944.26 through Nonim's
27 bank accounts. Debtor offered no documentary evidence to substantiate the business
28 purposes of these expenditures paid from Nonim's bank accounts. (Findings of Fact 41-

51 above.) The court finds that these expenses were for Debtor's personal purposes.

54. To the extent that Debtor intended to state on her Statement of Financial Affairs that her "net" income was "approx 45,877.00", this statement was also untrue because the proven cash withdrawals of \$101,040 and personal expenditures of \$9,944.26 by her from Nonim's bank accounts are her personal income, totaling \$120,984.26, even if one accepts her legal argument that Nonim is to be considered a separate tax reporting entity (Findings of Fact 52 and 53; Creditor's Exhibit C-26, Debtor's Statement of Financial Affairs, pg. 1, sec. 1, and pg. 12, sec. 1c of the Statement of Financial Affairs.)

Creditor's Argument Incorporating of the Above Withdrawals From Nonim's Bank Accounts into a Hypothetical 12-Month Means Test

55. As part of the Debtor's bankruptcy petition, she declared within the Means-Test calculation form that her monthly income was \$5,511.00. (Creditor's Exhibit C-24, Debtor's Means-Test Calculation Form, pg. 3, sec. 12.)

56. As part of the Debtor's bankruptcy petition, she declared within the Means-Test calculation form that her annual income was \$66,132.00. (Creditor's Exhibit C-24, Debtor's Means-Test Calculation Form, pg. 2, sec. 13.)

57. As part of the Debtor's bankruptcy petition, she declared that her annual income of \$66,132.00 was below the California median family income of \$75,656.00 for a household size of 4. (Creditor's Exhibit C-24, Debtor's Means-Test Calculation Form, pg. 3, secs. 13 & 14 of the Means-Test).

58. Creditor argues that based on the above findings of fact, the Means-Test can be more recomputed more accurately based on the following facts:

a. In April and May of 2013, Debtor withdrew \$30,100 in cash from Nonim's bank accounts. (Findings of Fact 45-48 above.)

b. In April and May of 2013, Debtor paid \$6,721.66 of her personal expenses from Nonim's bank accounts. (Findings of Fact 45-48 above.)

c. In April and May of 2013, Debtor withdrew a total of \$36,821.66 from

1 Nonim's bank accounts. (Findings of Fact 58 and 59 above.) According to Creditor, this
2 amount should have been included in Debtor's income for purposes of the Means-Test
3 calculation.

4 d. One-sixth of \$36,821.66 is \$6,136.94 (averaged out over a period of six
5 months for purposes of the Means Test); and \$6,136.94 times 12 is \$73,643.32
6 (multiplied over the course of the year to calculate yearly income for purposes of the
7 Means Test).

8 e. As part of the Debtor's bankruptcy petition, she declared within the Means-
9 Test Calculation Form that her average monthly gross wages were \$526.83. (Creditor's
10 Exhibit C-24, Debtor's Means-Test Calculation Form, pg. 2, sec. 3.)

11 f. As part of the Debtor's bankruptcy petition, she declared within the Means-
12 Test Calculation Form that she had average monthly contributions of \$1,350 from another
13 person or entity for household expenses for her and her dependents. (Creditor's Exhibit
14 C-24, Debtor's Means-Test Calculation Form, pg. 2, sec. 8.)

15 g. \$526.83 plus \$1350 is \$1876.83; and \$1876.83 times 12 is \$22,521.96.

16 h. \$22,521.96 and \$73,643.32 is \$96,165.28.

17 i. According to Creditor, \$96,165.28 would be greater than the 2013 state
18 median of \$75,656.00 if the Means-Test Calculation were to be on a hypothetical 12-
19 month annualized basis.

20 j. On Debtor's Schedule I, she declared that her average monthly gross
21 income from wages was \$2,397.44, instead of the \$526.83 referred to in her Means Test.
22 (Creditor's Exhibit C-23, Debtor's Schedule I, pg. 1, sec. 3; Creditor's Exhibit C-24,
23 Debtor's Means-Test Calculation Form, pg. 2, sec. 3.)

24 k. According to Creditor, using \$2,397.44 as her average monthly income from
25 wages in the Means-Test, and the \$6,136.94 and \$1,350 amounts above, Debtor had
26 gross monthly income of \$9,884.38, or an annual income of \$118,612.56, which is
27 greater than \$75,656.00 under a hypothetical Means-Test Calculation on a 12-month
28 annualized basis.

1 59. While Creditor in his proposed findings of fact and conclusions of law
2 argues that this analysis shows that she incorrectly stated her Means-Test results, it does
3 not appear to the court that this analysis shows that the Means-Test results were
4 computed incorrectly. Moreover, the court determines that Creditor's analysis here is
5 flawed because it extrapolates for the hypothetical 12-month Means-Test data from two
6 selected months, April and May 2013, rather than looking at data from the entire
7 hypothetical 12-month period from October 2012 to September 2013.

8 60. In the court's view, Creditor's analysis is useful only to show the seasonal
9 nature of Debtor's income, which is not indicated on her Means-Test based on a six-
10 month computation period, and is illustrative for the limited purpose of showing that the
11 Means-Test is not the only metric to determine whether she has the ability to pay debt
12 greater than shown on the Means-Test. However, the court determines that Creditor's
13 hypothetical 12-month Means-Test analysis is otherwise too flawed to give much weight
14 to.

15 61. In the court's view, a truer picture of Debtor's regular annual income comes
16 from analysis of her actual income based on her financial records considered on a yearly
17 basis rather than on a truncated basis from the "current monthly income" of the means
18 test relying on only a six-month lookback from April to September 2013. This picture
19 reveals a much greater ability of Debtor to repay creditors than as reflected in her
20 bankruptcy schedules. In reaching this conclusion, the court has reviewed Debtor's
21 gross receipts from Nonim for the twelve months between October 1, 2012 through
22 September 30, 2013.

23 62. The evidence includes the TPG's records of disbursement of tax return
24 preparation fee income paid to Debtor dba MTDMiller Income Tax Service (Account
25 Number 3008300001) for the time period between September through December 2012,
26 which records were obtained by the Receiver. *Creditor's Exhibit C-15, Accounting of*
27 *Fees Paid to Debtor in 2012* at 27. TPG's records show that it paid Debtor dba
28 MTDMiller Income Tax Service as tax return preparation fees a total of \$310.00

1 disbursed on October 19, 2012. *Id.*

2 63. The evidence includes the TPG's records of disbursement of tax return
3 preparation fee income paid to Debtor dba MTDMiller Income Tax Service
4 (30083000001) for the time period between February through May 2013, which records
5 were obtained by the Receiver. *Creditor's Exhibit C-16, Accounting of Fees Paid to*
6 *Debtor in 2012* at 1-11. TPG's records show that it paid Debtor dba MTDMiller Income
7 Tax Service as tax return preparation fees during the time period of February through
8 May 2013 in the total amount of \$102,810.67. *Id.* This amount is corroborated by
9 Nonim's bank checking account statements for the time period between February through
10 May 2013 showing bank deposits from TPG during this time period totaling \$102,810.67.
11 *Id.*

12 64. Therefore, Debtor's total gross income for the fiscal year of October 1, 2012
13 through September 30, 2013 based on fee income paid by TPG to MTDMiller Income
14 Tax Service as shown by TPG's accounting records and Nonim's bank checking account
15 statements was \$103,120.67, which yields a monthly income average of \$8,593.38.

16 65. Based upon Creditor's evidence of Debtor's tax return preparation income
17 from TPG in the fiscal year between October 1, 2012 and September 30, 2013, the
18 average monthly gross receipts of \$8,593.38 for this twelve-month time period exceeds
19 the \$5,956.00 in average monthly gross receipts reported on Debtor's Means-Test, a
20 difference of \$2,637.38, which added to Debtor's declared total current monthly income of
21 \$5,511.00 would have yielded an adjusted total current monthly income of \$8,148.38,
22 which multiplied by 12 months, would yield in turn an adjusted annualized current
23 monthly income of \$97,780.56. This would have exceeded Debtor's declared applicable
24 median family income of \$75,656.00 for a family of four in California, or the applicable
25 median family income of \$67,401 for a family of three in California, which the court
26 determines that Debtor should have declared.

27 66. Debtor would have then had to have listed her living expense deductions in
28 order to determine whether or not a presumption of abuse should have arisen under 11

1 U.S.C. § 707(b)(2), which she did not have to do because she declared an annualized
2 current monthly income of less than the applicable median family income in the state,
3 thus evading further scrutiny for abuse under 11 U.S.C. § 707(b)(2).

4 67. This shows the distorted nature of the means-test results in analyzing
5 Debtor's ability to pay creditors based on the six month lookback period starting with
6 October 15 because it misses Debtor's true income from her tax return preparation
7 business bunched up in the early months of the calendar year during tax season.

8 68. The court finds that this evidence shows that Debtor deliberately chose
9 October 15 as her filing date in an attempt to manipulate the means test calculation
10 period on Schedule I to hide her true income earning ability. The court determines that
11 this is an indicator of bad faith.

12 Creditor's Collection Actions and Debtor's Bankruptcy Filings

13 69. On or about May 24, 2011, Debtor filed her third bankruptcy case, a
14 Chapter 13 bankruptcy case with case number 2:11-bk-32470. (Creditor's Exhibit C-5,
15 Debtor's Disposable Income Test in Case Number 2:11-bk-32470-WB; Creditor's Exhibit
16 C-6, Debtor's Schedule I in Case Number 2:11-bk-32470-WB; Creditor's Exhibit C-7,
17 Debtor's Statement of Financial Affairs in Case Number 2:11-bk-32470-WB; *see also*,
18 Creditor's Exhibit C-8, Order Granting Motion to Dismiss Chapter 13 Plan for Bad Faith;
19 and Creditor's Exhibit C-9, Judge Robles's Tentative Ruling in Support of Order Granting
20 Motion to Dismiss.)

21 70. On or about October 13, 2011, in the Debtor's third bankruptcy case, a
22 hearing was conducted by the Honorable Ernest Robles, United States Bankruptcy
23 Judge, Central District of California, with respect to Movant's "Motion to Dismiss Chapter
24 13 Plan or in the Alternative Motion to Reject Chapter 13 Plan due to Fraudulent Filing of
25 Income Statement, Incorrect and False Information re: Income and Schedules"
26 (hereinafter "Motion to Dismiss"). (Creditor's Exhibit C-9, Judge Robles's Tentative Ruling
27 in Support of Order Granting Motion to Dismiss; Debtor's Exhibit D-26, Transcript of
28 Proceedings, Hearing [18] Motion to Dismiss Chapter 13 Plan or in the Alternative Motion

1 to Reject Chapter 13 Plan due to Fraudulent Filing of Income Statement, Incorrect and
2 False Information re: Income and Schedules; filed by Interested Party Edward Gilliam,
3 October 13, 2011, In re: Minon Trenell Miller, Case No. LA11-32470 ER, ECF 50 (partial
4 transcript).)

5 71 In the tentative ruling on Creditor's Motion to Dismiss, the court by Judge
6 Robles stated as follows: "[T]he timing of Debtor's two bankruptcy cases appears to have
7 been to avoid the production of documents and fee award. This conduct evidences an
8 unfair manipulation of the Bankruptcy Code, a history of filings and dismissals, the
9 Debtor's intent to defeat state court litigation." (Creditor's Exhibit C-9, Judge Robles's
10 Tentative Ruling in Support of Order Granting Motion to Dismiss, pg. 3, first full
11 paragraph.)

12 72. Debtor filed this third bankruptcy case, which was her second Chapter 13
13 bankruptcy case, after Creditor had previously filed ten (10) applications for Judgment
14 Debtor Exams with the Orange County Superior Court, with case number 30-2008-
15 00271829. (Testimony of Edward Gilliam, June 12, 2014 Trial Transcript, ECF 72 at pgs.
16 127:9 – 131:22.)

17 73. Creditor filed ten (10) applications for Judgment Debtor Exams with the
18 Orange County Superior Court, with case number 30-2008-00271829, since the Debtor
19 refused to produce any documents in response to the Judgment Debtor Exams.
20 (Testimony of Edward Gilliam, June 12, 2014 Trial Transcript, ECF 72 at pg. 128:2–22.)

21 74. In the hearing on Creditor's motion to dismiss before the court by Judge
22 Robles in October of 2011, the Debtor declared that Creditor Gilliam was her only
23 creditor, other than the lender secured by her car. (Transcript of Proceedings of Hearing
24 on Creditor's Motion to Dismiss before Judge Robles, October 13, 2011, In re Minon
25 Trenell Miller, Case No. 2:11-bk-32470-ER, ECF 50, pg. 3, lines 14-20 ².)

26
27 ² The court takes judicial notice of the docket in Debtor's previous bankruptcy cases, as well as the complete
28 transcript of the hearing before Judge Robles filed on the docket of Debtor's bankruptcy case before him. Rule 201 of
the Federal Rules of Evidence. The document that Debtor offered into evidence as her Exhibit D-36 was only a partial

1 75. Over a year later, or on or about December 17, 2012, the Superior Court of
2 California for the County of Orange by Honorable Kirk Nakamura, Judge of the Superior
3 Court, entered a Judgment in favor of Movant against Debtor and Nonim for Fraudulent
4 Conveyance, Malicious Prosecution and Injunctive Relief. (Creditor's Exhibit C-13,
5 Malicious Prosecution Judgment in Favor of Movant in State Court Case No. 30-2012-
6 00565634.)

7 76. Pursuant to said Judgment, the Superior Court by Judge Nakamura ordered
8 "Defendant" which was defined in the Judgment to include Debtor and Nonim LLC not to
9 transfer any of their assets without the court's permission. (Creditor's Exhibit C-3,
10 Malicious Prosecution Judgment in Favor of Movant in State Court Case No. 30-2012-
11 00565634, pg. 2:21 – 22.)

12 77. Pursuant to said Judgment, the Superior Court by Judge Nakamura later
13 granted Movant's request for the prospective appointment of a Receiver. (Creditor's
14 Exhibit C-13, Malicious Prosecution Judgment in Favor of Movant in State Court Case
15 No. 30-2012-00565634, pg. 2:23 – 24.)

16 78. On or about December 17, 2012, the Superior Court by Judge Nakamura
17 entered Findings of Fact in support of this Judgment. (Creditor's Exhibit C-12, Order and
18 Findings of Fact in Favor of Movant in State Court - 30-2012-00565634.)

19 79. On or about December 17, 2012, the Superior Court by Judge Nakamura
20 ruled that Debtor had fraudulently conveyed her business from Minon Miller Income Tax
21 Service or Minon Miller MTD Tax Service to Nonim LLC on April 8, 2010, to avoid paying
22 judgments issued on or about the time of the transfer. (Creditor's Exhibit C-12, Order and
23 Findings of Fact in Favor of Movant in State Court - 30-2012-00565634, pg. 2:1 – 3.)

24 80. On or about December 17, 2012, the Superior Court by Judge Nakamura
25

26 transcript of the hearing before Judge Robles, and thus, for completeness of the record, the court takes judicial notice
27 of the entire transcript. See Federal Rule of Evidence 106, Debtor's Exhibit D-36, Partial Transcript of October 13,
28 2011 Hearing Before Judge Robles; *see also, In re E.R. Fegert, Inc.*, 887 F.2d 955, 957-958 (9th Cir. 1989)(citations
omitted).

1 ruled that Debtor's fraudulent conveyance of her business from Minon Miller Income Tax
2 Service or Minon Miller MTD Tax Service to Nonim on April 8, 2010, was done with the
3 intent to defeat, hinder, delay, defraud creditors or others of their just and lawful actions,
4 suits, debts, accounts, damages, penalties or forfeitures; and was void against such
5 persons and their assigns. (Creditor's Exhibit C-12, Order and Findings of Fact in Favor
6 of Movant in State Court - 30-2012-00565634, pg. 2:3 - 6.)

7 81. On or about August 6, 2013, the Superior Court by Judge Nakamura
8 appointed Stephen J. Donell as Receiver for Movant in furtherance of his Judgment.
9 (Creditor's Exhibit C-14, Amended Order Appointing Receiver in Aid of Execution.)

10 82. On or about August 8, 2013, the Receiver demanded certain documentation
11 from the Debtor and her State Court counsel via written correspondence. (Creditor's
12 Exhibit C-19, Demand Letter from Stephen J. Donell to Debtor Dated August 8, 2013.)

13 83. After Debtor failed to give the Receiver the documents he requested, in
14 August 2013, Receiver's counsel then sent another demand letter to Debtor for the same
15 items. (Creditor's Exhibit C-20, Demand Letter from Byron Z. Moldo to Debtor dated
16 August 16, 2013; Testimony of Stephen J. Donell, June 12, 2014 Trial Transcript, ECF
17 72 at 84:19-85:18). In this second letter dated August 16, 2013, the Receiver's counsel;
18 Byron Z. Moldo, Esq., of Ervin, Cohen & Jessup, LLP; demanded certain documentation
19 from the Debtor and her State Court counsel, since the Debtor and her State Court
20 counsel had not responded to the Receiver's prior letter. (Creditor's Exhibit C-20, Letter
21 Dated August 16, 2013, from Byron Z. Moldo, Esq. of Ervin, Cohen, & Jessup, LLP, to
22 the Debtor.)

23 84. Neither the Debtor nor her State Court counsel delivered any of the
24 documentation requested by the Receiver or his counsel. (Testimony of Stephen Donell,
25 June 12, 2014 Trial Transcript, ECF 72 at pgs. 85:9 – 86:4). When Debtor failed to
26 comply with the demands again, this forced the Receiver to approach the landlord to gain
27 access to Nonim LLC's premises to search the premises. (Testimony of Stephen J.
28 Donell, June 12, 2014 Trial Transcript, ECF 72 at pgs. 84:8-86:12; Debtor's Exhibit 28,

1 Receiver's Ex Parte Application for an Order to Abandon Leased Premises from the
2 Receivership Estate at 4.) After the Receiver searched the premises, he explained that
3 he could not "carry on the business affairs" of Nonim LLC because "there were no assets
4 of substantial value located at the Premises which could have been liquidated to satisfy
5 the judgment." *Id.*

6 85. By its order filed on September 25, 2013, the Superior Court by Judge
7 Nakamura authorized the Receiver to "immediately abandon the Receivership Estate."
8 (Debtor's Exhibit D-29, Email Message from the State Court Receiver to Minon Miller
9 dated September 25, 2013 with copy of Order Authorizing State Court Receiver to
10 Abandon Leased Premises.) By email notice of September 25, 2013 by the Receiver's
11 office, Debtor was notified of the state court's order authorizing the Receiver's
12 abandonment of the Receivership Estate and of the Receiver's turnover of possession
13 and control of Debtor's office to her (i.e., telling her to schedule an appointment to pick up
14 her keys). *Id.*

15 86. On October 15, 2013 when the Debtor filed her Chapter 7 bankruptcy
16 petition, commencing this bankruptcy case, it was the first day possible for her to file a
17 Chapter 7 bankruptcy petition to qualify for another Chapter 7 discharge of debt based on
18 the filing of her last Chapter 7 bankruptcy case on October 14, 2005. (Petition, ECF 1;
19 Creditor's Exhibit C-1, Debtor's First Chapter 7 Petition with Case Number 2:05-bk-
20 47679-RN; 11 U.S.C. § 727(a)(8).)

21 87. As part of the Debtor's bankruptcy petition in this case, she filed a
22 Statement of Financial Affairs wherein she declared she was a member of Nonim LLC
23 and that it was "DBA: MTDMiller Income Tax Service (Tax Prep)" from 2010 to the
24 present. (Creditor's Exhibit C-26, Debtor's Statement of Financial Affairs, pgs. 7-8, sec.
25 18, and pg. 13, sec. 18 of the Statement of Financial Affairs.)

26 88. The Debtor was and is the only member of Nonim LLC. (Testimony of
27 Minon Miller, June 12, 2014 Trial Transcript, ECF 72 at pg. 249:4-23.)

28 89. Since October of 2011, or when the Debtor declared that Movant was her

1 only creditor besides her car lender, up until the time Debtor filed her fourth bankruptcy
2 case, Nonim grossed income of at least \$525,426.82 from fees through Debtor's personal
3 services as a tax return preparer. (Finding of Fact 40 above.)

4 90. As part of the Debtor's bankruptcy petition, she filed a Statement of
5 Financial Affairs wherein she declared that her 2012 income from Nonim was "approx
6 98,500.00". (Creditor's Exhibit C-26, Debtor's Statement of Financial Affairs, pg. 1, sec. 1
7 and pg. 12, sec. 1b of the Statement of Financial Affairs.) This declaration was untrue
8 because Debtor was required to state the gross amount of income from the operation of
9 her business, Nonim, and in 2012, Nonim had gross income of \$422,616.15 in tax return
10 preparation fees paid by TPG. (Creditor's Exhibit C-26, Debtor's Statement of Financial
11 Affairs, pg. 1, sec. 1 and pg. 12, sec. 1b of the Statement of Financial Affairs;
12 Findings of Fact 14 through 40 above.) At trial, Debtor offered no credible evidence to
13 show her 2012 income from Nome was "approx. 98,500.00" or to rebut Creditor's
14 evidence at trial showing Nonim's gross income for 2012 was at least \$422,616.15.

15 91. As part of the Debtor's bankruptcy case, she filed a Statement of Financial
16 Affairs wherein she declared that her 2013 income from Nonim was "approx 45,877.00".
17 (Creditor's Exhibit C-26, Debtor's Statement of Financial Affairs, pg.1, sec. 1, and pg. 12,
18 sec. 1c of the Statement of Financial Affairs.) This declaration was untrue because
19 Debtor was required to state the gross amount of income from the operation of her
20 business, Nonim, and in 2013, Nonim had gross income of \$422,616.15 in tax return
21 preparation fees paid by TPG. (Creditor's Exhibit C-26, Debtor's Statement of Financial
22 Affairs, pg. 1, sec. 1, and pg. 12, sec. 1b of the Statement of Financial Affairs;
23 Findings of Fact 14 through 40 above.) At trial, Debtor offered no credible evidence to
24 show her 2013 income from Nome was "approx. 45,877.00" or to rebut Creditor's
25 evidence at trial showing Nonim's gross income for 2013 was at least \$102,810.67.

26 92. As stated in Debtor's trial testimony, in her Statement of Financial Affairs,
27 Debtor's income figures with respect to Nonim are based upon her intent to treat Nonim
28 as a corporation for tax purposes. (Testimony of Minon Miller, June 12, 2014 Trial

1 Transcript, ECF 72 at pgs. 253:17 – 254:1; pg. 269:1 – 15.)

2 93. As stated in Debtor's trial testimony, in her Statement of Financial Affairs,
3 Debtor's income figures with respect to Nonim are based upon her services as an
4 "employee" of Nonim. (Testimony of Minon Miller, June 12, 2014 Trial Transcript, ECF 72
5 at pgs. 299:8 – 302:4.)

6 94. As stated in Debtor's trial testimony, in her Statement of Financial Affairs,
7 Debtor's income figures from Nonim are "net" figures after purportedly deducting Nonim's
8 business expenses from its gross income. (Testimony of Minon Miller, June 12, 2014
9 Trial Transcript, ECF 72 at pgs. 294:1 – 295:12.)

10 95. As stated in Debtor's trial testimony, Nonim's business expenses in her
11 bankruptcy schedules are based upon "guesstimations". (Testimony of Minon Miller, June
12 12, 2014 Trial Transcript, ECF 72 at pg. 295:7-17.)

13 96. As stated in Debtor's trial testimony, in her Statement of Financial Affairs,
14 Debtor refers to her income from Nonim as "approx.." or approximations, since Nonim's
15 business expenses are based upon "guesstimations". (Testimony of Minon Miller, June
16 12, 2014 Trial Transcript, ECF 72 at pgs. 293:21 – 295:17.)

17 97. As stated in Debtor's trial testimony, she needs someone to help her go
18 through "mountains and mountains of receipts" in order to determine Nonim's business
19 expenses. (Testimony of Minon Miller, June 12, 2014 Trial Transcript, ECF 72 at pg.
20 277:17-24.)

21 98. As stated in Debtor's trial testimony, she has not filed a tax return for Nonim
22 stating that she is still gathering her receipts for Nonim's business expenses. (Testimony
23 of Minon Miller, June 12, 2014 Trial Transcript, ECF 72 at pg. 295:18-23.)

24 99. As stated in Debtor's trial testimony, she has not filed a tax return for Nonim
25 stating that she does not know how to file a tax return for a limited liability company which
26 seeks to be treated as a corporation. (Testimony of Minon Miller, June 12, 2014 Trial
27 Transcript, ECF 72 at pgs. 296:3 – 297:8.)

28 100. As stated in Debtor's trial testimony, she intends to go to a third party to

1 have Nonim's tax returns prepared. (Testimony of Minon Miller, June 12, 2014 Trial
2 Transcript, ECF 72 at pg. 296:11 - pg. 297:7.)

3 101. Debtor has not filed her personal tax returns since 2012. (Testimony of
4 Minon Miller, June 12, 2014 Trial Transcript, ECF 72 at pg. 361:2-22.)

5 102. On October 14, 2005, the Debtor filed a voluntary petition for relief under
6 Chapter 7 of the Bankruptcy Code, 11 U.S.C., with case number 2:05-bk-47679.
7 (Creditor's Exhibit C-1, Debtor's First Chapter 7 Petition with Case Number 2:05-bk-
8 47679-RN.)

9 103. On or about July 12, 2006, Debtor received a Chapter 7 Discharge pursuant
10 to her bankruptcy case filed on October 14, 2005. (Creditor's Exhibit C-2, Debtor's
11 Discharge in First Chapter 7 Bankruptcy with case number 2:05-bk-47679-RN.)

12 104. On March 30, 2011, Debtor filed her second bankruptcy case, a Chapter 13
13 Bankruptcy with case number 2:11-bk-23561. (Creditor's Exhibit C-3, Debtor's Chapter
14 13 Petition With Case Number 2:11-bk-23561-SK.)

15 105. On or about April 27, 2011, the Bankruptcy Court dismissed the Debtor's
16 second bankruptcy case based upon her failure to file her Schedules, Statements and
17 Chapter 13 Plan. (Creditor's Exhibit C-4, Order and Notice of Dismissal for Failure to File
18 Information in Case No. 2:11-bk-23561-SK.)

19 106. On or about May 24, 2011, Debtor filed her third bankruptcy case, or her
20 second Chapter 13 Bankruptcy with case number 2:11-bk-32470. (Creditor's Exhibit C-5,
21 Debtor's Disposable Income Test in Case Number 2:11-bk-32470-WB; Creditor's Exhibit
22 C-6, Debtor's Schedule I in Case Number 2:11-bk-32470-WB; Creditor's Exhibit C-7,
23 Debtor's Statement of Financial Affairs in Case Number 2:11-bk-32470-WB; Creditor's
24 Exhibit C-8, Order Granting Motion to Dismiss Chapter 13 Plan for Bad Faith; and
25 Creditor's Exhibit C-9, Judge Robles's Tentative Ruling in Support of Order Granting
26 Motion to Dismiss.)

27 107. In Debtor's third bankruptcy case, Debtor submitted a "Chapter 13
28 Statement of Current Monthly Income and Calculation of Commitment Period and

1 Disposable Income” and a “Statement of Financial Affairs” which were neither signed nor
2 prepared by her. (Testimony of Minon Miller, June 12, 2014 Trial Transcript, ECF 72 at
3 pgs. 243:24 - 244, In. 15 [Creditor’s Exhibit C-5, Debtor’s Disposable Income Test in
4 Case Number 2:11-bk-32470-WB signature]; pg. 232:16 to pg. 233, In. 23 [Statement of
5 Financial Affairs signature]; pgs. 239:2 - 246:16.)

6 108. The Debtor testified that no one helped her in preparing her third
7 bankruptcy case, or her second Chapter 13 Bankruptcy case with case number 2:11-bk-
8 32470. (Testimony of Minon Miller, June 12, 2014 Trial Transcript, ECF 72 at pg. 233:17
9 20.)

10 109. On October 31, 2011, Debtor’s third bankruptcy case was dismissed by the
11 court by Judge Robles on the basis that her Chapter 13 Bankruptcy case had been filed
12 in “bad faith”. (Creditor’s Exhibit C-8, Order Granting Motion to Dismiss Chapter 13 Plan
13 for Bad Faith.)

14 110. After the Superior Court by Judge Nakamura issued the aforementioned
15 Findings of Fact in support of its Judgment of December 17, 2012, the Los Angeles
16 County Sheriff was unable to execute on Creditor’s Writ of Execution against the Debtor,
17 since the Debtor had changed her business name from Minon Miller MTD Tax Service to
18 Nonim LLC at her place of business. (Testimony of Edward Gilliam, June 12, 2014 Trial
19 Transcript, ECF 72 at pg. 107:9 – 24.)

20 111. As stated in Debtor’s trial testimony, on or about July of 2010, Debtor filed
21 IRS Form 8832, “Entity Classification Election,” with the IRS for Nonim LLC as a
22 domestic eligible entity to be classified as an association taxable as a corporation.
23 (Testimony of Minon Miller, November 12, 2014 Trial Transcript, ECF 100 at pgs. 17:11-
24 18:18; Debtor’s Exhibit D-53, IRS Form 8832 Entity Classification Form for Nonim LLC.)

25 112. Debtor indicated on her IRS Form 8832 that she sought to have her election
26 to treat Nonim taxable as a corporation effective as of April 8, 2010. (Debtor’s Exhibit D-
27 53, IRS Form 8832 Entity Classification Form for Nonim LLC, pg. 2.)

28 113. “April 8, 2010” is the date that the Superior Court of California for the

1 County of Orange by Judge Nakamura had ruled that the Debtor fraudulently conveyed
2 her business from “Minon Miller Income Tax Service or Minon Miller MTD Tax Service” to
3 Nonim. (Creditor’s Exhibit C-12, Order and Findings of Fact in Favor of Movant in State
4 Court - 30-2012-00565634, pg. 2:1 – 3.)

5 114. Nonim’s address stated on the IRS Form 8832 is listed as “454 East Carson
6 Plaza Drive, Suite 103, Carson, California 90746”. (Debtor’s Exhibit D-53, IRS Form 8832
7 Entity Classification Form for Nonim LLC, pg. 1.)

8 115. The address stated on Debtor’s Statement of Financial Affairs for “Nonim
9 LLC DBA MTDMiller Income Tax Service” is also “454 East Carson Plaza Drive, Suite
10 103, Carson, California 90746”. (Creditor’s Exhibit C-26, Debtor’s Statement of Financial
11 Affairs, pg. 13.)

12 116. The Debtor has never received written notification from the IRS that it
13 approved her election to treat Nonim as a corporation. (Testimony of Minon Miller,
14 November 12, 2014 Trial Transcript, ECF 100 at pgs. 9:22 – 11:6; pgs. 12:24 - 13:12).

15 117. As part of the Debtor’s bankruptcy petition, Debtor filed Schedule I wherein
16 she declared that Nonim is now “insolvent”. (Creditor’s Exhibit C-23, Debtor’s Schedule I,
17 pg. 2.)

18 118. On or about December 17, 2012, the Superior Court by Judge Nakamura
19 ruled that Debtor’s commencement of several civil proceedings against Creditor in
20 Superior Court and Bankruptcy Court were actionable because it harmed Creditor against
21 whom the claims were made and also because it threatened the efficient administration
22 of justice. (Creditor’s Exhibit C-12, Order and Findings of Fact in Favor of Movant in State
23 Court - 30-2012-00565634, pg. 2:7-10.)

24 119. On or about December 17, 2012, the Superior Court by Judge Nakamura
25 ruled that Creditor was harmed because he was compelled to defend against fabricated
26 claims which not only subjected him to an array of psychological pressures, but also the
27 additional stress of attempting to resist suits commenced out or revenge, spite or ill will,
28 often “accommodated” by slanderous allegations in the pleadings. (Creditor’s Exhibit C-

1 12, Order and Findings of Fact in Favor of Movant in State Court - 30-2012-00565634,
2 pg. 2:10-13.)

3 120. Based upon his findings of liability of Debtor to Creditor, the Superior Court
4 by Judge Nakamura ruled that settled California law permits Creditor to recover the cost
5 of defending his prior actions against the Debtor including attorney's fees, compensation
6 for the injury to his reputation or impairment of his social and business standing in the
7 community, for mental or emotional distress, and for pain and suffering. (Creditor's
8 Exhibit C-12, Order and Findings of Fact in Favor of Movant in State Court - 30-2012-
9 00565634, pg. 2:14-18.)

10 121. Based upon the prior actions initiated by the Debtor against Creditor, the
11 Superior Court by Judge Nakamura ruled that said actions were without cause and were
12 initiated with malice, sufficient to issue a Judgment for malicious prosecution against the
13 Debtor. (Creditor's Exhibit C-12, Order and Findings of Fact in Favor of Movant in State
14 Court - 30-2012-00565634, pg. 2:19-23; Creditor's Exhibit C-13, Malicious Prosecution
15 Judgment in Favor of Movant in State Court Case No. 30-2012-00565634, pg. 2:12-13.)

16 122. On January 25, 2012, the court by the Honorable Catherine Bauer, United
17 States Bankruptcy Judge, Central District of California, presiding, ordered Debtor to
18 dismiss certain state court actions against Creditor filed in violation of Movant's Chapter 7
19 Discharge. (Creditor's Exhibit C-11, Transcript of Hearing on OSC re: Contempt in
20 Movant's Chapter 7 - 8:12-bk-13356-CB, pg. 9:10-14.)

21 123. On or about January 25, 2012, the court by Judge Bauer found Debtor in
22 contempt of Court in filing certain state court actions against Movant in violation of
23 Movant's Chapter 7 Discharge. (Creditor's Exhibit C-11, Transcript of Hearing on OSC re:
24 Contempt in Movant's Chapter 7 - 8:12-bk-13356-CB, pg. 12:20-24.)

25 124. On or about April 19, 2012, the court by Judge Bauer issued a second
26 "Order of Contempt (Contemnor: Minon Miller)" since Debtor had failed to dismiss the
27 state court actions addressed at the hearing on January 25, 2012. (Creditor's Exhibit C-
28 10, Order of Contempt Issued in Movant's Chapter 7 Bankruptcy - 8:12-bk-13356-CB, pg.

1 2:18-19.)

2 125. On or about April 19, 2012, Judge Bauer in her second Order of Contempt
3 ruled as follows: "MINON MILLER is directed and ordered to file no lawsuits, cases and
4 actions that name the Debtor, Edward Gilliam as a defendant or a party in any capacity,
5 which order excludes only the appeals referenced in paragraph 7 above and any appeal
6 filed with respect to this order." (Creditor's Exhibit C-10, Order of Contempt Issued in
7 Movant's Chapter 7 Bankruptcy - 8:12-bk-13356-CB, pg. 3, para. 8:19-23.)

8 126. The court by Judge Bauer awarded Creditor approximately \$27,800 in
9 attorney's fees in defeating an 11 U.S.C. §§ 523 and 727 adversary proceeding brought
10 by the Debtor against Movant in his bankruptcy case. (Testimony of Edward Gilliam, June
11 12, 2014 Trial Transcript, ECF 72 at pgs. 115:11 – 117:9.)

12 127. On October 31, 2011, the court by Judge Robles dismissed Debtor's third
13 bankruptcy case, or her second Chapter 13 bankruptcy case with case number 2:11-bk-
14 32470, on the basis that it had been filed in "bad faith". (Creditor's Exhibit C-8, Order
15 Granting Motion to Dismiss Chapter 13 Plan for Bad Faith.)

16 128. Creditor obtained a Restraining Order against the Debtor from the Orange
17 County Superior Court with case number 30-2008-00271829. (Testimony of Edward
18 Gilliam, June 12, 2014 Trial Transcript, ECF 72 at pgs. 109:14 – 112:8.)

19 129. Creditor's Restraining Order issued from the Orange County Superior Court
20 with case number 30-2008-00271829 has been renewed and continues in effect this
21 date. (Testimony of Edward Gilliam, June 12, 2014 Trial Transcript, ECF 72 at pgs.
22 117:22 – 118:5.)

23 130. In Debtor's third bankruptcy case, or her second Chapter 13 bankruptcy
24 case with case number 2:11-bk-32470, Debtor submitted a "Chapter 13 Statement of
25 Current Monthly Income and Calculation of Commitment Period and Disposable Income"
26 and a "Statement of Financial Affairs" which were neither signed nor prepared by her.
27 (Testimony of Minon Miller, June 12, 2014 Trial Transcript, ECF 72 at pgs. 243:24 - 245:2
28 [Creditor's Exhibit C-5, Debtor's Disposable Income Test in Case Number 2:11-bk-32470-

1 WB signature]; pgs. 232:16 - 233:23 [Statement of Financial Affairs signature]; pgs. 239:2
2 to 246:16.)

3 131. The Debtor testified that no one helped her in preparing her third
4 bankruptcy, or her second Chapter 13 Bankruptcy with case number 2:11-bk-32470.
5 (Testimony of Minon Miller, June 12, 2014 Trial Transcript, ECF 72 at pg. 233:17-20.)

6 132. On October 15, 2013 when the Debtor filed her Chapter 7 bankruptcy
7 petition, commencing this bankruptcy case, this was her fourth bankruptcy case in the
8 last ten years, starting with her first bankruptcy case filed on October 14, 2005. (Petition,
9 ECF 1; Creditor's Exhibit C-1, Debtor's First Chapter 7 Petition with Case Number 2:05-
10 bk-47679-RN; Findings of Fact 102-109.)

11 133. In her Schedule F to her bankruptcy petition, Debtor listed \$245,936 of
12 unsecured nonpriority debt, of which \$106,021.96 is attributed to Creditor's claims
13 against the Debtor. (Debtor's Exhibit D-49, Debtor's Schedules F, I, and Certification of
14 Employment Income.) The debts listed for Creditor on Schedule F include \$9,815.00 for
15 "2008-ULD Judgment (Attorney fee and damage) Gilliam debtor 08-bk-26743 concealed
16 fm Trustee"; \$7,640.50 for "2009 Judgment: for Attorney Fees"; \$27,788.24 for "2011-
17 Judgment for Attorney Fees"; \$53,795.00 for "12/2012 Judgment attorney fees, medical,
18 and damages"; and \$6,983.22" for "10/2012 judgment for Gilliam payable to Attorney
19 Gilliam prepared false order payable to him" which was listed as payable to Pamela Jan
20 Zylstra, Creditor's attorney. (*Id.*)

21 134. As shown by her Summary of Schedules to her bankruptcy petition listing
22 total debts of \$311,880, Creditor was her largest creditor. (Summary of Schedules, ECF
23 10, pg. 1; Debtor's Exhibit D-49, Debtor's Schedules F, I, and Certification of Employment
24 Income.) The debts listed for medical expenses on Schedule F include \$1,938.48 to
25 Collection Consultant for "2012-Collection Medical for: Little Co Mary"; \$124.00 to Fidelity
26 Credit for "2012 Collection for medical"; \$430.00 to Ernst, Artmann & Assoc. for
27 "09/12/2013 medical collection for Ocean Pacific Medical"; unknown to Medcredit for
28 "12/2012 medical"; \$15,744.00 to Mission Hospital for "07/29/2012 medical (emergency

1 medical treatment and hospital stay)”; \$7,380.00 to Providence Little Co Mary for
2 “02/2012 medical treatment”; and unknown to Progressive Mgmt. System for “10/2011
3 medical”.

4 135. The Debtor’s Schedule F is the only documentary evidence the Debtor
5 presented at trial to support her claim that she filed this bankruptcy case because of a
6 medical condition. (Testimony of Minon Miller, June 12, 2014 Trial Transcript, ECF 72 at
7 pg. 347:12-23.)

8 136. As admitted by the Debtor, she has the current intent and ability to work as a
9 tax return preparer. (Creditor’s Exhibit C-23, Debtor’s Schedule I, pg. 2.)

10 IT IS SO ORDERED.

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23 Date: September 9, 2015



24 Robert Kwan
25 United States Bankruptcy Judge
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