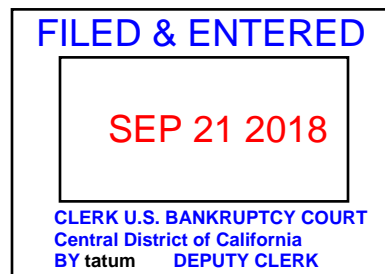


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NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:
MINON MILLER,
Debtor.

Case No. 2:13-bk-35116-RK
Chapter 7

**MEMORANDUM DECISION ON
CONTESTED MATTER OF CREDITOR
EDWARD GILLIAM'S MOTION FOR
SANCTIONS PURSUANT TO 11 U.S.C.
§ 105 AND F.R.B.P. 9011**

Date: May 30, 2018
Time: 10:00 a.m.
Place: Courtroom 1675

This bankruptcy case came on for hearing before the undersigned United States Bankruptcy Judge on May 30, 2018 on the contested matter of the motion of Creditor Edward Gilliam ("Creditor") asserting claims for sanctions, including attorneys' fees against Debtor Minon Miller ("Debtor"), pursuant to 11 U.S.C. § 105 and Rule 9011 of the Federal Rules of Bankruptcy Procedure ("Motion"), Electronic Case Filing Number ("ECF") 162. Vic Rodriguez, of Law Offices of Vic Rodriguez, appeared for Creditor, who also appeared for himself. Debtor Minon Miller appeared for herself. On June 13, 2018, Creditor filed a supplemental declaration in support of his motion. ECF 210. The matter was then taken under submission.

Having considered the moving and opposing papers, the oral arguments and the record before the court, the court hereby rules as set forth in this memorandum decision.

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FACTS

On October 29, 2015, Creditor filed the Motion for sanctions against Debtor relating to the filing of her bankruptcy petition commencing this bankruptcy case, which motion primarily related to the litigation of Creditor’s motion to dismiss Debtor’s bankruptcy case. On November 16, 2015, Debtor filed an opposition to the Motion. ECF 165. On May 30, 2018, the court conducted a final hearing on the Motion after the hearing had been continued from time to time pending resolution of Debtor’s appeal of the order dismissing the bankruptcy case before the Bankruptcy Appellate Panel of the Ninth Circuit and the United States Court of Appeals for the Ninth Circuit.

DISCUSSION

1. Debtor’s Statement of Financial Affairs Falls Within the Scope of Rule 9011

In granting Creditor’s motion to dismiss Debtor’s bankruptcy case, this court previously found that Debtor misstated her income on her Statement of Financial Affairs (“SOFA”). *Memorandum Decision on Motion to Dismiss*, ECF 127 at 11. To the extent that this motion is based on those misstatements, the court first addresses the legal issue of whether a SOFA is subject to sanctions under Federal Rule of Bankruptcy Procedure 9011.

Previously, it was unclear whether a SOFA falls within the scope of Rule 9011 sanctions because Rule 9011(a) had expressly excluded schedules and statements, such as a SOFA. 6 Levin and Sommer, *Collier on Bankruptcy* ¶ 707.05[2] at 707-55 (16th ed. 2018). However, the uncertainty was resolved by the enactment of Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). *Id.* BAPCPA contained a “Sense of Congress” provision that Rule 9011 should be amended to apply to all documents submitted by debtors or their attorneys to the court, including the schedules. *Id.*; see also, *Kayne v. Hoffman (In re Kayne)*, 453 B.R. 372, 381 (9th Cir. BAP 2011). Subsequently, the Bankruptcy Appellate Panel of the Ninth Circuit has expressly held in *In re Kayne* that a SOFA falls within the scope of Rule 9011. *Id.* at 382. Therefore, Debtor’s misstatements on her SOFA are properly subject to Rule 9011 sanctions.

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1 **2. Rule 9011 Sanctions Should Be Imposed Against Debtor for Filing the**
2 **Bankruptcy Petition for an Improper Purpose and Deliberately Misstating**
3 **Factual Information in Her Statement of Financial Affairs**

4 Federal Rule of Bankruptcy Procedure 9011(b) provides in pertinent part that by
5 presenting a petition, pleading, written motion or other paper to the court, a party is
6 certifying that “to the best of the person’s knowledge, information, and belief, formed after
7 an inquiry reasonable under the circumstances, (1) it is not being presented for any
8 improper purpose, such as to harass or to cause unnecessary delay or needless increase
9 in the cost of litigation; (2) the claims, defenses, and other legal contentions therein are
10 warranted by existing law or by a nonfrivolous argument for the extension, modification,
11 or reversal of existing law or the establishment of new law; and (3) the allegations and
12 other factual contentions have evidentiary support. . . .” Fed. R. Bankr. P. 9011(b). The
13 court may impose sanctions for violating Rule 9011(b), which may include “payment to
14 the movant of some or all of the reasonable attorneys’ fees and other expenses incurred
15 as a direct result of the violation.” Fed. R. Bankr. P. 9011(c).

16 In determining whether sanctions are appropriate under Rule 9011, a court “must
17 consider both frivolousness *and* improper purpose on a sliding scale, where the more
18 compelling the showing as to one element, the less decisive need be the showing as to
19 the other.” *In re Marsch*, 36 F.3d 825, 830 (9th Cir. 1994) (emphasis in original).

20 **a. Debtor Filed the Bankruptcy Petition for an Improper Purpose**

21 It is an improper purpose for a bankruptcy debtor to file a bankruptcy petition in
22 order to manipulate non-bankruptcy proceedings. *In re Silberkraus*, 336 F.3d 864, 871
23 (9th Cir. 2003) (finding it was an improper purpose for a debtor to file a bankruptcy
24 petition to stay pending litigation in state court); *In re Marsch*, 36 F.3d at 830-831 (finding
25 it was an improper purpose for debtor to file petition to delay the collection of a state court
26 judgment and avoid posting an appeal bond where debtor had the financial ability to pay).

27 **i. Debtor’s History of Filings**

28 Debtor’s history of bankruptcy case filings and dismissals, her actions in related
state court litigation and her ability to pay Creditor’s claims show that her bankruptcy
petition was filed in this case solely for the improper purpose of frustrating Creditor’s
efforts to collect on his judgments. Debtor’s bankruptcy petition in this case was her sixth
overall and third bankruptcy petition since 2011. *Findings of Fact re: Motion to Dismiss*

1 (“*Findings of Fact*”), ECF 128 at ¶¶ 102-109. On March 30, 2011, Debtor filed her first
2 Chapter 13 bankruptcy petition (Case Number 2:11-bk-23561-SK), which was dismissed
3 for failure to file information. *Creditor’s Exhibit C-4, Order and Notice of Dismissal for*
4 *Failure to File Information in In re Minon Trenell Miller, Case No. 2:11-bk-23561-SK*. On
5 May 24, 2011, Debtor filed a second Chapter 13 bankruptcy petition (Case Number 2:11-
6 bk-32470-ER), which was dismissed for bad faith on Creditor’s motion. *Findings of Fact*,
7 ECF 128, ¶¶ 69 and 109. In the tentative ruling on Creditor’s motion to dismiss the May
8 2011 petition, the court by Judge Robles stated that “the timing of Debtor’s two
9 bankruptcy cases appears to have been to avoid the production of documents and fee
10 award. This conduct evidences an unfair manipulation of the Bankruptcy Code, a history
11 of filings and dismissals, [and] the Debtor’s intent to defeat state court litigation.”
12 *Findings of Fact*, ECF 128, ¶ 71. In the hearing on that motion to dismiss, Debtor
13 admitted that Creditor was her only creditor, strongly supporting the finding that Debtor
14 filed the petition solely to defeat Creditor’s efforts to collect judgments against her. See
15 *Findings of Fact*, ECF 128, ¶ 74.

16 Creditor and Debtor have been involved in continuous litigation in state court since
17 2007. *Miller v. Gilliam (In re Miller)*, 2016 WL 5957270 (9th Cir. BAP 2016). On
18 December 17, 2012, the Superior Court of California for the County of Orange entered
19 judgments in the amount of \$53,555.42 against Debtor and Nonim, LLC, a business
20 entity owned and operated by Debtor. See *Findings of Fact*, ECF 128, ¶ 121. Debtor is
21 the sole owner of Nonim, LLC, a limited liability company entity through which she did
22 business as an income tax preparer. *Findings of Fact*, ECF 128, ¶¶ 17 and 30. The
23 state court judgments included an injunction ordering Debtor and Nonim, LLC, not to
24 transfer any assets without court permission. *Findings of Fact*, ECF 128, ¶ 76. Debtor
25 repeatedly violated this injunction by making substantial withdrawals from Nonim’s bank
26 accounts without the state court’s authorization. See *Findings of Fact*, ECF 128, ¶¶ 41-
27 54.

28 Further, Debtor repeatedly refused to comply with requests for information from
the state court receiver, Stephen J. Donell (“Receiver”), who was appointed by the state
court on August 6, 2013. See *Findings of Fact*, ECF 128, ¶ 81. The Receiver obtained
access to Nonim’s business premises but was unable to liquidate any assets therein. *Id.*
at ¶ 84. Due to the lack of assets at Debtor’s business premises, the state court

1 authorized the Receiver to abandon the receivership estate on September 25, 2013. *Id.*
2 at ¶ 85.

3 Debtor then filed her bankruptcy petition in this case, which is the subject of the
4 Motion for sanctions, on October 15, 2013, the first date she was able to file a bankruptcy
5 petition and be eligible for a Chapter 7 bankruptcy discharge. *Petition*, ECF 1.

6 **ii. Debtor Was Able to Pay Creditor's Judgments**

7 Before filing her bankruptcy petition in this case, Debtor had the ability to pay
8 Creditor's judgments. Creditor was Debtor's largest creditor with total claims in the
9 amount of \$106,021.96. *Findings of Fact*, ECF 128, ¶¶ 133 and 134. In 2012 and 2013,
10 Nonim's gross income attributable to Debtor as a pass-through entity was a combined
11 \$525,426.82, which was more than sufficient to pay Creditor's claims. See *Findings of*
12 *Fact*, ECF 128, ¶¶ 32, 36. In fact, Debtor's gross income during 2012 and 2013 was
13 \$213,546.82 more than her total scheduled debts of \$311,880. *Findings of Fact*, ECF
14 218, ¶ 134. Instead of paying her debts, Debtor spent substantial funds on personal
15 expenses, including thousands of dollars at luxury retailers and beauty services.
16 *Findings of Fact*, ECF 128, ¶¶ 41-47; *Memorandum Decision re: Motion to Dismiss*, ECF
17 127 at pages 23:4-26:21.

18 **iii. Debtor's Bankruptcy Petition Was Not Filed Due to Medical Expenses**

19 Debtor denied filing her bankruptcy petition solely to defeat Creditor's state court
20 litigation, contending instead that she "was forced to file bankruptcy after illness, failed
21 business, and unsteady work as a casual worker whose job depends on the work load."
22 *Debtor Minon Miller's Opening Brief re: Income of LLC and Mitchell Factors and*
23 *Opposition to Gilliam Opening Brief*, ECF 74, filed on July 31, 2014 at 14:22-24.
24 However, at the trial on Creditor's motion to dismiss, Debtor provided no evidence in
25 support of her contentions. See *Memorandum Decision re: Motion to Dismiss*, ECF 127,
26 *pg. 39:23-28*. Debtor had listed medical claims on her bankruptcy schedules. *Findings*
27 *of Fact*, ECF 128, ¶ 134. However, at trial on Creditor's motion to dismiss, Debtor failed
28 to provide evidence showing what her illness was, whether it was ongoing and whether it
affected her ability to work. *Testimony of Minon Miller, June 12, 2014 Trial Transcript*,
ECF 72 at 346:8-350:10. The total medical debt in Debtor's schedules was only
\$25,616.48, and there is no corroborating evidence that such debts contributed to her
decision to file her bankruptcy petition. *Findings of Fact*, ECF 128, ¶¶ 134 and 135.

1 At trial on Creditor's motion to dismiss, there was no evidence that Debtor is
2 unable to continue working. *Testimony of Minon Miller, June 12, 2014 Trial Transcript*,
3 ECF 72 at 346:8-350:10. Debtor stated on her bankruptcy petition that she was willing
4 and able to continue working as an income tax preparer. *Findings of Fact*, ECF 128,
5 ¶ 136. The medical claims on Debtor's bankruptcy schedules indicate that the alleged
6 medical condition was in 2012. *Debtor's Schedule F*, ECF 10. However, in 2013, Debtor
7 earned \$102,810.67 in gross income from tax preparation fees paid through her
8 business, Nonim, LLC. *Findings of Fact*, ECF 128, ¶ 36.

8 At trial on Creditor's motion to dismiss, there was no evidence suggesting Debtor
9 filed the petition for any reason other than to avoid paying the judgments to Creditor,
10 which she had the ability to pay. This finding is supported by her history of filings and
11 dismissals and her actions in violating the state court injunction and not complying with
12 the Receiver, and thus, the court determined that Debtor filed her bankruptcy petition to
13 avoid paying Creditor's state court judgments, which was an improper purpose and an
14 abuse of the bankruptcy process. *Memorandum Decision re: Motion to Dismiss*, ECF 127
15 at pages 41:7-44:22.

15 **b. Debtor Deliberately Misrepresented Her Income on Her SOFA**

16 For purposes of Federal Rule of Bankruptcy Procedure 9011, the standard for
17 frivolousness is an objective one and requires finding that a filing is both baseless and
18 made without a reasonable and competent inquiry. *See Townsend v. Holman Consulting*
19 *Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1991) (applying Federal Rule of Civil Procedure 11).
20 "[T]he debtor has a duty to prepare schedules carefully, completely, and accurately."
21 *Cusano v. Klein*, 264 F.3d 936, 946 (9th Cir. 2001), quoting, *In re Mohring*, 142 B.R. 389,
22 394 (Bankr. E.D. Cal. 1992) (additional citations omitted).

21 **i. Debtor Understated Her Gross Income on Her SOFA**

22 The amounts of Debtor's gross income in 2012 and 2013 from Nonim, LLC were
23 \$422,616.15 and \$102,810.67 respectively. *Findings of Fact*, ECF 128, ¶¶ 32 and 36.
24 Instead of accurately disclosing these figures on her SOFA, Debtor reported gross
25 income of "approx. \$98,500" in 2012 and "approx. \$45,877" in 2013 from Nonim. *Id.*,
26 ¶¶ 90-91. This reporting resulted in understatements by Debtor on her SOFA of her
27 gross income by \$324,116.15 in 2012 and \$56,933.67 in 2013—\$381,049.82 in total.
28 Therefore, Debtor filed a SOFA that was not well-grounded in fact because it lacked

1 evidentiary support. Fed. R. Bankr. P. 90111(b)(3). However, the court must also
2 determine whether the income reported on her SOFA, while factually incorrect, was
3 based on a reasonably diligent inquiry.

4 **ii. Debtor's Misstatements Had No Reasonable Basis in Fact or Law**

5 Debtor attempts to explain and justify her understatement of income by contending
6 that she could put net income on her SOFA instead of gross income. *Findings of Fact*,
7 ECF 128, ¶¶ 93-94. This argument is meritless for two reasons. First, the instructions on
8 the official form Statement of Financial Affairs clearly require the reporting of gross
9 income from Debtor's business, not net income. *Debtor's Statement of Financial Affairs*,
10 ECF 10, at section 1. Debtor admittedly disregarded the official instructions by disclosing
11 Nonim's net income rather than gross income, and offered no legitimate argument as to
12 why net income was appropriate. *Testimony of Minon Miller, June 12, 2014 Trial*
13 *Transcript*, ECF 72, 294:1 – 295:12. As an income tax preparer, Debtor should have
14 known the difference between gross income and net income.

15 Second, even the net income Debtor disclosed on her SOFA was unjustifiably
16 misstated. Debtor admitted at trial on Creditor's motion to dismiss that the figures
17 reported as Nonim's net income on her SOFA were "guesstimations." *Id.* at 295:7-17,
18 *Findings of Fact*, ECF 128, ¶ 95. Debtor had no justification for "guesstimating" Nonim's
19 income for 2012 and 2013 because she had full access to her business records once the
20 Receiver turned over possession and control of Nonim's office to her on September 25,
21 2013, before the petition date. *Findings of Fact*, ECF 129, ¶ 85. Debtor should have
22 consulted such records to ensure the financial disclosures on her SOFA were accurate.
23 Moreover, Debtor could have obtained Nonim's bank account records directly from the
24 bank while her office was under the control of the Receiver to ensure her disclosures
25 were accurate and not mere "guesstimations."

26 Finally, Debtor's "guesstimating" net income for Nonim was wildly inaccurate. As
27 the court previously found, Nonim's purported "business expenses" were actually
28 Debtor's personal expenses. *Memorandum Decision re: Motion to Dismiss*, ECF 127,
pages 23:4-26:21; *Findings of Fact*, ECF 128, ¶¶ 41-47. As a result, Debtor's actual net
income through Nonim was significantly higher than Debtor's "guesstimations."

Therefore, the court determines that Debtor's disclosures of gross income on her
SOFA were made without evidentiary support after an inquiry reasonable under the

1 circumstances in violation of Federal Rule of Bankruptcy Procedure 9011(b)(3). In light
2 of the large amounts of gross income that Debtor received through her solely owned and
3 operated limited liability company, Nonim, LLC, and the other circumstances in this case
4 indicating that Debtor was attempting to thwart collection of her debts owed to Creditor,
5 the court determines that Debtor's failure to accurately disclose Nonim's gross income on
her SOFA was deliberate and intended to obscure her actual ability to pay debt.

6 **c. Rule 9011 Sanctions Should Be Imposed Against Debtor**

7 Therefore, because Debtor filed the bankruptcy petition for an improper purpose
8 and because Debtor deliberately understated Nonim's gross income on her SOFA, Rule
9 9011 sanctions are appropriate as a compelling showing is made as to both frivolousness
and improper purpose. Fed. R. Bankr. P. 9011(b) and (c).

10 **3. The Attorneys' Fees Requested by Creditor Should Be Reduced Because**
11 **Counsel Billed for Clerical Tasks, Block Billed and Spent an Excessive**
12 **Amount of Time on Some Tasks**

13 **a. Attorneys' Fees Requested**

14 Creditor, by Attorney Vic Rodriguez ("Counsel"), requests a total of \$77,200 for the
15 attorneys' fees incurred in prosecuting Creditor's Motion to Dismiss, based on 308.8
16 hours of work at \$250 per hour. *Motion for Sanctions*, ECF 162. Additionally, Creditor,
17 by Counsel, requests \$4,075 for the attorneys' fees incurred in making this motion, based
18 on 16.3 hours of work at Counsel's billing rate of \$250 per hour. *Id.* at 19. In support of
19 these requests, Creditor, by Counsel, attached Counsel's billing entries to the Motion
detailing the work performed by Counsel on these matters. *Id.*, Exhibits 1 and 2.

20 It should be noted that there are a few inconsistencies between the amount of
21 attorney time stated in the Motion and the attached billing entries. First, while the Motion
22 requests compensation for 308.8 hours of work, Exhibit 1 attached to the Motion, which
23 sets out the billing entries, shows a total of 310.6 hours of work. *Id.* page 14:4-5. The
24 court will thus disregard the additional 1.8 hours in the billing entries as compensation for
25 fees since they are not requested in the Motion. Second, there is a billing entry for 2
26 hours of work performed by a paralegal. *Id.* at Exhibit 1 at Page 7. The court will
27 disregard this billing entry because compensation for this entry was not requested in the
28 motion. Third, the billing entries include expenses and costs incurred by Counsel. *Id.*

1 The court will disregard these entries as reimbursement of expenses and costs because
2 these items were not requested in the Motion.

3 **b. Standard for Determining the Reasonableness of Attorneys' Fees**

4 Only reasonable attorneys' fees can be awarded for a violation of Rule 9011. Fed.
5 R. Bankr. P. 9011(c)(2). The court has broad discretion in determining the
6 reasonableness of requested attorneys' fees. *In re Macke International Trade, Inc.*, 370
7 B.R. 236, 254 (9th Cir. BAP 2007); *see also, Hensley v. Eckerhart*, 461 U.S. 424, 437
8 (1983). The normal method for assessing the reasonableness of attorneys' fees is the
9 lodestar method, where the number of hours reasonably expended is multiplied by a
10 reasonable hourly rate. *In re Eliapo*, 468 F.3d 592, 598 (9th Cir. 2006) (citations
11 omitted). "Ultimately, a reasonable number of hours equals the number of hours which
12 could reasonably have been billed to a private client." *Gonzalez v. City of Maywood*, 729
13 F.3d 1196, 1202 (9th Cir. 2013) (citations and internal quotation marks omitted). The
14 court should disallow unreasonable attorneys' fees using one of two methods. *Id.* at
15 1203. "First, the court may conduct an hour-by-hour analysis of the fee request and
16 exclude those hours for which it would be unreasonable to compensate the prevailing
17 party." *Id.* (Internal quotations omitted). Second, the court has the authority to make
18 across-the-board percentage cuts in the number of hours requested. *Id.* As explained in
19 further detail below, the court applies the first method here.

20 **c. Issues with Attorneys' Fees Requested**

21 The attorney requesting fees bears the burden of submitting sufficient evidence
22 supporting hours worked. *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121 (9th Cir. 2000).
23 The court can reduce the fee award where the documentation is inadequate. *Id.*

24 The requested attorneys' fees suffer from three main deficiencies. First, Counsel
25 routinely requests fees for clerical or administrative tasks. An attorney may not seek
26 reimbursement for clerical tasks at an attorney rate. *Missouri v. Jenkins*, 491 U.S. 274,
27 288 n.10 (1989). It may be that Counsel does not have adequate secretarial support, but
28 even so, he cannot bill for performing clerical tasks at an attorney rate. Therefore, as
explained in detail below, the court will exclude all attorneys' fees requested for purely
clerical tasks which are probably attributable to attorney overhead. Second, there are a
substantial number of block billed entries by Counsel. Block billing lumps together
multiple tasks, making it impossible to evaluate their reasonableness. *Role Models*

1 *America, Inc. v. Brownlee*, 353 F.3d 962, 971 (D.C. Cir. 2004). The court has authority to
2 reduce hours that are billed in block format. *Welch v. Metropolitan Life Insurance Co.*,
3 480 F.3d 942, 948 (9th Cir. 2007). Here, a number of block billed entries involve legal
4 tasks lumped together with clerical tasks. These entries are especially troublesome
5 because it is difficult, if not impossible, to determine the amount of time spent on legal
6 tasks versus the amount of time spent on clerical tasks, the latter of which is not
7 compensable. Therefore, as explained in detail below, the court disallows in full all block
8 billed entries that lump together legal and clerical tasks. However, the court exercises its
9 discretion and will generally allow block billed entries that consist entirely of legal tasks.
10 Finally, an excessive amount of time was spent on certain tasks. “In determining the
11 appropriate number of hours to be included in a lodestar calculation, the district court
12 should exclude hours that are excessive, redundant, or otherwise unnecessary.”
13 *McCown v. City of Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009) (citations and internal
14 quotation marks omitted). Therefore, as explained in detail below, the court will reduce
15 excessive fees to a reasonable amount.

14 **d. Task by Task Analysis of Fees Requested**

15 **i. Initial Review of Client’s File**

16 In February 2014, Counsel spent 7.1 hours in the initial review of his client’s file.
17 1.3 hours were spent on clerical tasks and are disallowed. These clerical tasks are
18 restated verbatim as follows. On February 22, 2014, Counsel spent 1.2 hours on the task
19 “Organize file for litigation; organize documents given by client; and download documents
20 from PACER re: schedules and Motions to Dismiss.” Organizing files and downloading
21 documents are clerical tasks and should not be billed at an attorney rate. On February
22 27, 2014, Counsel spent 0.1 hours on the task “Tackle dates with respect to Motion to
23 Dismiss and Pre-Trial.” Scheduling matters are clerical tasks and should not be billed at
24 an attorney rate.

25 The remaining 5.8 hours will be allowed, as the court determines that they are
26 reasonable, considering Creditor’s client’s file involved seven years of state court
27 litigation with Debtor as well as Debtor’s three previous bankruptcy cases. *Motion for*
28 *Sanctions, ECF 162*, at page 22, ¶ 7.

1 **ii. Attending Status Conference**

2 On February 25, 2014, Counsel spent 1.5 hours attending a status conference.
3 The court determines that this amount of time was reasonable and the fees for this time
4 will be allowed in full.

5 **iii. Trial Preparation**

6 Between March and June 2014, Counsel spent a total of 85.1 hours preparing for
7 trial, including 20 hours in March, 10.3 hours in April, 30.4 hours in May, and 24.4 hours
8 in June. These fees will be reduced as follows.

9 Of the 85.1 hours billed for trial preparation, 11.5 hours were spent on clerical
10 tasks and will be disallowed. The disallowed clerical tasks are restated verbatim as
11 follows. On April 3, 2014, Counsel spent 2.5 hours on the task "Organize Exhibits in
12 order for Exhibit Book; mark all pages of Exhibits with exhibit and page notation; paginate
13 Exhibits; number all Exhibits; and prepare Exhibits for photocopying." On April 8, 2014,
14 Counsel spent 1.5 hours on the task "Retrieve Exhibits from Kinko's; obtain mailing box
15 from Post Office; tabinate (sic) Exhibit Book for Debtor; and prepare Debtor's Exhibit
16 Book for mailing." On April 8, 2014, Counsel spent 0.5 hours on the task "Go to Post
17 Office and send out Exhibit Book to Debtor." On May 13, 2014, Counsel spent 1.2 hours
18 on the task "Organize Judge's and my Exhibit Books for Trial; and organize files for
19 litigation." On June 3, 2014, Counsel spent 1.1 hours on the task "Prepare Proofs of
20 Service for documents to be filed on June 5th; prepare FEDEX package mailer for Judge;
21 and finalize documents for filing other than Trial Brief." On June 4, 2014, Counsel spent
22 1.7 hours on the task "Organize file for litigation." On June 5, 2014, Counsel spent 0.7
23 hours on the task "E-file Objections to Exhibits; Request for Judicial Notice and Trial
24 Brief." On June 8, 2014, Counsel spent 1.3 hours on the task "Prepare list of Exhibits for
25 Judge's Exhibit Book." The court determines that this is a clerical task because Counsel
26 apparently finished drafting the List of Exhibits on March 11, 2014. On June 9, 2014,
27 Counsel spent 1 hour on the task "Add Exhibit Tabs to Judge's Exhibit Book; and prepare
28 counsel's Exhibit Book for Trial."

 Of the remaining 73.6 hours billed for preparation for trial, 16.3 hours are block
billed, lumping together legal tasks with clerical tasks. Therefore, these hours are
disallowed as it is impossible to determine how much reasonably necessary legal work
was actually performed. The disallowed block billed tasks are restated verbatim as

1 follows. On March 6, 2014, Counsel spent 3.5 hours on the task “Review pleadings and
2 prior bankruptcies to draft List of Exhibits; download documents from PACER; and review
3 cases sent by client.” While reviewing pleadings is a legal task, downloading documents
4 is a clerical task. Further, Counsel’s review of pleadings here is duplicative of work done
5 less than two weeks prior on February 21, 24, and 25. It should also be noted that
6 Creditor apparently did a substantial amount of legal research for Counsel, as evidenced
7 by multiple billing entries stating, “review cases sent by client.” This is objectionable but
8 does not provide independent grounds for disallowing the fee. On March 11, 2014,
9 Counsel spent 3.9 hours on the task “Finalize List of Exhibits and List of Witnesses; draft
10 Lodgement (sic) of Pre-Trial Order and Pre-Trial Order; review Court Manual and Local
11 Bankruptcy Rules re: filing of Lists and Order; telephone call with ECF Desk re: filing of
12 Lists; coordinate with Legal Assistant re: filing of Lodgement (sic) and Order; and
13 telephone call with client re: status.” On April 29, 2014, Counsel spent 0.5 hours on the
14 task “Organize Exhibit Book for meeting with client; and prepare for meeting with client.”
15 On May 5, 2014, Counsel spent 1.5 hours on the task “Review Superior Court dockets re:
16 past cases referred to in Malicious Prosecution Judgment; review PACER re: bankruptcy
17 by client and adversary by Minon; and download documents.” On May 17, 2014,
18 Counsel spent 2.5 hours on the task “Revise Direct Examination of client after meeting;
19 and download 200 pages of new documents from client.” On May 23, 2014, Counsel
20 spent 0.5 hours on the task “Organize file for litigation; and emails to Receiver’s counsel
21 re: meeting with Receiver.” On June 4, 2014, Counsel spent 1.9 hours on the task
22 “Continue to draft Trial Brief; review Court docket to determine relevant pleadings and
23 filing dates of pleadings; and download Debtor’s Schedules.” On June 11, 2014, Counsel
24 spent 2.0 hours on the task “Prepare Trial Book for contested hearing; and draft email to
25 client with relevant filed pleadings and Retainer Agreement.”

26 After excluding clerical and block billed tasks, Counsel spent a total of 57.3 hours
27 preparing for trial. This includes 8.3 hours spent preparing and drafting the List of
28 Exhibits. The court determines that this is reasonable and the fees for this time will be
allowed in full. Counsel spent 12.0 hours preparing and drafting a direct examination of
his client, Creditor. The court determines that this is reasonable given the lengthy history
of litigation between the parties relevant to showing Debtor’s improper purpose in filing
this bankruptcy case. Counsel spent 11.3 hours preparing and drafting the examination

1 of the Receiver. The court determines that this is excessive given the limited nature of
2 the Receiver's testimony which regarded his attempts to collect on the judgment from
3 Debtor and her business, Nonim. The court will allow only 6 hours of attorney time to
4 prepare and draft the direct examination of the Receiver, which includes time spent
5 communicating with the Receiver's counsel to obtain the Receiver's cooperation in
6 testifying. Counsel spent 11.3 hours preparing and drafting cross-examination questions
7 of Debtor on behalf of Creditor. The court determines that this is reasonable given the
8 detail needed to examine Debtor regarding her income from her tax preparation
9 business, Nonim, and her expenditures as well as the lengthy history of litigation with his
10 client. Counsel spent 5.6 hours drafting the trial brief. The court determines that this is a
11 reasonable amount of time and will allow it in full. Counsel spent 8.8 hours on other
12 miscellaneous tasks in preparation for trial, which the court determines to be reasonable
and will allow in full, which include drafting objections to Debtor's trial exhibits and
preparing requests for judicial notice.

13 Overall, the court allows 52 hours in total for trial preparation.

14 **iv. Drafting Motion for Leave to Amend**

15 In March 2014, Counsel spent 30.4 hours drafting a Motion for Leave to Amend.
16 6.9 hours were spent on clerical tasks and will be excluded. The disallowed clerical tasks
17 are restated verbatim as follows. On March 22, 2014, Counsel spent 0.8 hours on the
18 task "Review Judge Kwan's rules re: self-calendaring and any other applicable rules; and
19 take Request for Judicial Notice to Kinko' (sic) for copying." On March 23, 2014, Counsel
20 spent 0.9 hours on the task "Finalize ancillary documents and pleadings for Motion for
21 Leave; and prepare Proofs of Service for each document; and prepare Exhibit Tabs for
22 Judge's Copies of all documents." On March 24, 2014, Counsel spent 2.3 hours on the
23 task "Finalize Motion for Leave to Amend; format Motion for Leave to Amend for filing;
24 finalize Table of Contents; and format Table of Contents for filing." On March 24, 2014,
25 Counsel spent 2.9 hours on the task "Finalize all pleadings for filing; place Exhibit Tabs
26 into Request for Judicial Notice; telephone call with client re: status of filing; visit
27 Kinko's/FedEx re: prepare Judge's copy of Request for Judicial Notice, place Exhibit 1 of
28 Request for Judicial Notice on flash drive, and prepare photocopies of all pleadings for
service and filing." To the extent that any of these entries contain actual legal work, they
should be disallowed in full due to block billing and containing primarily clerical tasks.

1 Of the remaining 23.5 hours spent drafting the Motion for Leave to Amend, an
2 additional 3.8 hours are disallowed for block billing because they lump together legal and
3 clerical tasks. Specifically, on March 19, 2014, Counsel spent 3.8 hours on the task
4 “Draft Complaint to Determine Nondischargeability; draft Declaration of Edward Gilliam in
5 support of Motion for Leave; draft Declaration of Vic Rodriguez in support of Motion for
6 Leave; continue to draft Motion for Leave; download cases found by client re: Motion for
7 Leave factors; review downloaded cases; and download Objection by Debtor to Motion to
8 Dismiss.” While this task does appear to contain some actual legal tasks, it also contains
9 clerical tasks such as downloading documents. This task is disallowed in full as it is
10 impossible to determine the amount of time spent on actual legal work and the amount of
11 time spent on clerical tasks, which are not compensable.

12 After excluding the clerical and block billed tasks, Counsel spent 19.7 hours
13 drafting the Motion for Leave to Amend. The court determines that this amount of time is
14 not reasonable given the nature of the motion, which sought to assert a debt
15 dischargeability claim on grounds that the amended motion related back to a prior motion
16 to dismiss. The motion was not granted due to the tardiness of Creditor in seeking relief
17 under 11 U.S.C. § 523(a) since Creditor’s amended motion to dismiss did not “relate
18 back” to his original motion to dismiss, which was filed by Creditor when he was self-
19 represented. Although not Counsel’s fault, Creditor did not timely assert a debt
20 dischargeability claim in his original motion to dismiss as required by Federal Rule of
21 Bankruptcy Procedure 4007, and the time to bring such claim lapsed before Counsel
22 substituted in for Creditor who was then representing himself. It is not reasonable to
23 include in the sanctions against Debtor work on a motion that did not relate to the motion
24 to dismiss, but related to a time-lapsed claim of debt dischargeability.

25 Therefore, the court will not allow any time for drafting the Motion for Leave to
26 Amend.

27 **v. Pre-Trial Conference**

28 In March 2014, Counsel spent 2.8 hours attending the Pre-Trial Conference and
drafting the Pre-Trial Order. The court determines that this is reasonable and will allow
the fees based on the time spent in full.

1 **vi. Motion for Leave to Amend Hearing**

2 Between April 18, 2014, and April 25, 2014, Counsel spent 5 hours preparing for
3 and attending the hearing on the Motion for Leave to Amend. The court determines that
4 this time spent should be disallowed for the same reasons as the time billed for
5 preparation of the motion for leave to amend and will disallow the fees for such time in
6 full.

7 **vii. Attending Trial on Contested Matter of Creditor's Motion to Dismiss**

8 On June 12, 2014, Counsel spent 8 hours attending the first trial on Creditor's
9 Motion to Dismiss. The court determines that this time spent is reasonable and will allow
10 the fees for such time in full.

11 **viii. Closing Brief**

12 In June and July 2014, Counsel spent a total of 24.8 hours drafting the closing
13 brief, including 16.1 hours in June and 8.7 hours in July. 1.8 hours were spent on clerical
14 tasks and will be excluded. The disallowed tasks are restated verbatim as follows. On
15 June 14, 2014, Counsel spent 0.6 hours on the task "Draft email to Receiver's counsel re:
16 hearing; and tickle relevant dates." On June 25, 2014, Counsel spent 0.7 hours on the
17 task "Finalize Briefing Schedule; file Briefing Schedule with Court; and prepare Briefing
18 Schedule for Service." On July 6, 2014, Counsel spent 0.5 hours on the task "Download
19 Transcript of Trial." To the extent that these entries contain legal work, they are block
20 billed and lumped together with clerical tasks and will be disallowed in full.

21 The remaining 23 hours spent drafting the closing brief is reasonable to address
22 the voluminous record at trial and the numerous arguments raised by both parties.

23 **ix. Reply Brief**

24 During August 2014, Counsel spent 21.1 hours preparing and drafting a reply
25 brief. 0.9 hours were spent on clerical tasks and will be excluded. The disallowed task
26 occurred on August 15, 2014, when Counsel spent 0.9 hours on "Prepare Reply Brief for
27 filing; file Reply Brief via ECF; and prepare Reply Brief for service."

28 The remaining 20.2 hours are reasonable because Debtor raised a myriad of
arguments, most of which are not well-founded, if not difficult to comprehend, and which
required substantial time to address, especially addressing her argument that she did not
need to report Nonim's gross income based on a tax entity classification election
allegedly filed with the Internal Revenue Service.

1 **x. Closing Arguments**

2 On September 8 and 10, 2014, Counsel spent 5.3 hours preparing for and
3 attending closing arguments. The court determines that this time spent is reasonable
4 and will allow the fees for such time in full.

5 **xi. Trial Brief**

6 In September and October 2014, Counsel spent 18 hours drafting Creditor's trial
7 brief, including 17.3 hours in September and 0.7 hours in October. 2.4 hours were spent
8 on clerical tasks and will be disallowed. The disallowed tasks are restated verbatim as
9 follows. On September 16, 2014, Counsel spent 0.3 hours on the task "Download search
10 results from California Secretary of State for Debtor's businesses noted in Statement of
11 Financial Affairs." On September 27, 2014, Counsel spent 0.5 hours on the task "Visit
12 L.A. Law Library to pick-up Judge Russell's book on evidence." On September 28, 2014,
13 Counsel spent 0.9 hours on the task "Download 100 pages from client re: documents for
14 cross-examination of Debtor; past Judgement Debtor Exam Questionnaires prepared by
15 Debtor; and case re: Receiver." On October 1, 2014, Counsel spent 0.7 hours on the
16 task "Prepare Trial Brief, Evidentiary Objections and Request for Judicial Notice for filing;
17 and review ECF site for parties on notice."

18 The court determines that the fees for the remaining 15.6 hours of attorney time
19 are reasonable because Creditor had to address the multiple arguments raised by Debtor
20 in this contested matter.

21 **xii. Preparing for Cross-Examination of Debtor**

22 In November 2014, Counsel spent 11.6 hours preparing for the cross-examination
23 of Debtor. 0.5 hours were spent on purely clerical tasks and will be disallowed. This
24 disallowed clerical task occurred on November 4, 2014, when Counsel spent 0.5 hours
25 on the task "Download Opposition to Objections, Motion for Contempt and Request for
26 Judicial Notice filed by Debtor."

27 Counsel spent an additional 1.7 hours on tasks that are block billed and lump
28 together legal work with clerical tasks. These hours will be disallowed in full, and are
restated verbatim as follows. On November 10, 2014, Counsel spent 0.5 hours on the
task "Finalize Second Request for Judicial Notice; and download 2010 Form 8832 with its
Instructions from IRS web site." On November 10, 2014, Counsel spent 1.2 hours on the

1 task "Prepare Second Request for Judicial Notice for filing; telephone call with Attorney
2 Service to file Second Request; and prepare Second Request for service."

3 After excluding clerical and block billed tasks, Counsel spent 9.4 hours preparing
4 for cross-examination of Debtor. The court determines that this amount of time is
5 excessive because the further hearing, at which cross-examination of Debtor was taken,
6 related to the limited issue of Debtor's purported mailing of IRS Form 8832 to the Internal
7 Revenue Service. Only 2 hours of attorney time will be allowed as reasonable to prepare
8 cross-examination of Debtor on this limited issue.

9 **xiii. Cross Examination of Debtor at Further Evidentiary Hearing**

10 On November 12, 2014, Counsel spent 3.5 hours attending Debtor's cross-
11 examination hearing. The court determines that this amount of time spent was
12 reasonable and will allow the fees for this time in full.

13 **xiv. Findings of Fact and Conclusions of Law**

14 In November and December 2014, Counsel spent a total of 60.4 hours preparing
15 and drafting proposed findings of fact and conclusions of law, including 6.8 hours in
16 November and 53.6 hours in December. These hours will be reduced as follows.

17 1.5 hours were spent on clerical tasks and will be excluded. The disallowed tasks
18 are restated verbatim as follows. On November 13, 2014, Counsel spent 0.5 hours on
19 the task "Organize file after hearing; and tickle dates for future proceedings." On
20 November 18, 2014, Counsel spent 0.5 hours on the task "Travel to Kinko's to photocopy
21 Transcript." On November 19, 2018, Counsel spent 0.5 hours on the task "Prepare
22 transcript for mailing."

23 The court will also exclude the billing entry for 5.3 hours on December 23, 2014,
24 as it is block billed and includes both legal and clerical tasks. The entire billing entry is
25 restated verbatim as follows. "Review final email from client; incorporate final changes
26 into Findings of Fact and Conclusions of Law; finalize Findings of Fact and Conclusions
27 of Law by numbering Facts and Conclusions; format Findings of Fact and Conclusions of
28 Law; telephone call with ECF desk re: filing of Findings of Fact and Conclusions of Law;
review Local Bankruptcy Rules and Court Manual re: filing Findings of Fact and
Conclusions of Law; email with assistant re: filing of Findings of Fact and Conclusions of
Law; prepare Findings of Fact and Conclusions of Law for filing and photocopying; and
draft Notice of Lodgment of Findings of Fact and Conclusions of Law."

1 After excluding clerical and block billed time, Counsel spent 53.6 hours in
2 preparing and drafting the proposed Findings of Fact and Conclusions of Law. The court
3 finds that this amount of time is excessive. The court acknowledges that Creditor's
4 showing that Debtor understated her income required detailed factual analysis of
5 Debtor's financial records, including bank statements and credit card statements, and
6 computation of Debtor's income and expenses based on such analysis. Although this
7 work was quite detailed, it was straightforward based on the computations in light of the
8 instructions for the Statement of Financial Affairs, which Debtor disregarded. The court
9 also recognizes that Creditor had to address Debtor's incorrect tax law arguments that
10 she properly treated her business income from Nonim, LLC, as not attributable to her.
11 Still, the work should not have taken 53.6 hours, and the court determines that the work
12 should have only taken 36 hours of attorney time.

13 Therefore, the court will allow 36 hours for the task of preparing and drafting the
14 proposed Findings of Fact and Conclusions of Law.

15 **xv. Opposition to Debtor's Proposed Findings of Fact and Conclusions of**
16 **Law**

17 In February 2015, Counsel spent 23 hours preparing and drafting an opposition to
18 Debtor's proposed Findings of Fact and Conclusions of Law. These hours will be
19 reduced as follows.

20 4.8 hours were spent on clerical tasks and will be excluded. The disallowed tasks
21 are restated verbatim as follows. On February 7, 2015, Counsel spent 0.9 hours on the
22 task "Download Statement of Facts and Conclusions of Law from PACER; and prepare
23 file for Objections to Debtor's Statement of Facts and Conclusions of Law." On February
24 12, 2015, Counsel spent 0.4 hours on the task "Download and review Amended
25 Objections and Request for Judicial Notice filed by Debtor." On February 17, 2015,
26 Counsel spent 2.5 hours on the task "Finalize Objections to Debtor's Statement of Facts
27 and Memorandum of Points and Authorities in Support of Objections for filing and
28 service." On February 18, 2015, Counsel spent 1 hour on the task "Visit Kinko's and e-
file Objections, Memorandum and Motion to Strike."

The court will also exclude the billing entry for 0.9 hours on February 16, 2015 as it
is block billed and includes both clerical and legal tasks. The entry is for the task "Format

1 Objections to Debtor's Statement of Facts for filing; and continue to review and revise
2 Memorandum of Points and Authorities in Support of Objections."

3 After excluding clerical and block billed entries, Counsel spent 17.3 hours in
4 preparing and drafting an opposition to Debtor's proposed Findings of Fact and
5 Conclusions of Law. The court determines that this is reasonable given the need for
6 Counsel to address the numerous proposed findings of fact submitted by Debtor and
7 support any objections by detailed review and citation to the voluminous evidentiary
8 record of hearings and exhibits.

9 Therefore, the court will allow 17.3 hours for the task of preparing and drafting an
10 opposition to Debtor's Proposed Findings of Fact and Conclusions of Law.

11 **xvi. Reviewing Court's Memorandum Decision**

12 In September 2015, Counsel spent 1.2 hours reviewing the court's memorandum
13 decision and related findings of fact. The court determines that this time spent is
14 reasonable and will allow the fees for this time in full.

15 **e. Fees for Preparing and Drafting the Rule 9011 Motion**

16 The party prevailing on a Rule 9011 motion may also be awarded the reasonable
17 expenses and attorney's fees incurred in presenting or opposing the motion. Fed. R.
18 Bankr. P. 9011(c)(1)(A). Counsel requests reimbursement for \$4,075 in fees based on
19 14.3 hours of work in preparing and drafting Creditor's Rule 9011 motion.

20 Of the 14.3 hours requested, 3.5 hours were spent on clerical tasks and will be
21 excluded. The disallowed billing entries are restated verbatim as follows. On October 7,
22 2015, Counsel spent 1.2 hours on the task "Review all time sheets to determine total time
23 and fees; and review time sheets to categorize time spent on different aspects of case for
24 Motion for Sanctions." On October 9, 2015, Counsel spent 2.3 hours on the task "Break
25 down fees into categories for Motion for Sanctions." The court determines that these are
26 clerical tasks and could have been avoided if Counsel maintained better billing records.
27 There is no reason Counsel should spend 3.5 hours simply reviewing and organizing time
28 sheets and billing entries.

The billing entry on October 8, 2015 for 1.5 hours will also be excluded as being
duplicative. The disallowed entry is for "Read Court's Memorandum Decision in
preparation for Motion for Sanctions." This task is duplicative because Counsel read the
same Memorandum Decision less than one month earlier on September 10, 2015.

1 The remaining 9.3 hours are reasonable because the record relating to the motion
2 is voluminous, including the need to assemble and tabulate the billing records for the time
3 spent on this lengthy litigation of Creditor's motion to dismiss, which justified the amount
4 of time allowed.

4 **4. Distribution of the Awarded Attorneys' Fees**

5 Normally, attorneys' fees awarded under Rule 9011 are paid to the moving party.
6 Fed. R. Bankr. P. 9011(c)(2). Here, the moving party is Creditor. There is a problem with
7 awarding attorneys' fees directly to Creditor as he filed for bankruptcy and received a
8 discharge after the attorneys' fees were incurred (Case No. 6:17-bk-12259-SC).
9 Therefore, if Creditor were awarded the attorneys' fees directly, he would have no
10 obligation to transfer these fees to Counsel, as this obligation was discharged in
11 Creditor's own bankruptcy case as Creditor and Counsel have acknowledged. Creditor is
12 entitled to reimbursement of any attorneys' fees already paid, but is not entitled to a
13 windfall for fees he is no longer obligated to pay due to his discharge. However, Counsel
14 performed substantial legal work in good faith, and is entitled to compensation. To deny
15 an award of attorneys' fees due to Creditor's bankruptcy would be unfair to Counsel
16 because he performed the work and was expecting payment, and this would also be a
17 windfall to Debtor who precipitated this litigation for an improper purpose, and making an
18 award to Creditor and Counsel on behalf of Creditor serves the remedial purpose of Rule
19 9011 and serve as a deterrent to Debtor and others to prevent future misconduct. The
20 total hours of compensable attorney time by Counsel which the court deems reasonable
21 as discussed above are 203.5 hours. The total amount of attorneys' fees incurred by
22 Creditor for Counsel's services is \$50,875 (203.5 hours multiplied by Counsel's hourly
23 rate of \$250). Therefore, the court will grant Creditor's Motion for sanctions in part and
24 denies it in part and awards the amount of \$50,875 of attorneys' fees payable by Debtor
25 on behalf of Creditor as follows: (1) \$25,678 to Creditor himself which represents the
26 amount of attorneys' fees that Creditor has already paid for Counsel's services in this
27 case as set forth in Creditor's declaration, *Declaration of Edward Gilliam*, ECF 210; and
28 (2) \$25,197 to Counsel directly on behalf of Creditor.

CONCLUSION

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For the foregoing reasons, the court will grant in part and deny in part Creditor’s Motion for sanctions to be imposed against Debtor for filing her petition for an improper purpose and deliberately misstating her gross income on her Statement of Financial Affairs. In granting Creditor’s Motion, the court will order Debtor to pay the reasonable attorneys’ fees incurred as a result of this misconduct and will direct Debtor to pay these fees to Creditor and Counsel on behalf of Creditor by separate final order being filed and entered concurrently herewith.

IT IS SO ORDERED.

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Date: September 21, 2018



Robert Kwan
United States Bankruptcy Judge