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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re AUTOSPORT INTERNATIONAL, INC, Debtor. WENETA M.A. KOSMALA, Chapter 7 Trustee, Plaintiff, v. AUTOSPORT INTERNATIONAL, INC., et al. Defendants.	Case No. 2:12-bk-15800-RK Chapter 7 Adv. No. 2:12-ap-01228-RK MEMORANDUM DECISION ON ADVERSARY PROCEEDING AS TO DEFENDANT RUSTY FRENCH
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This matter was tried before the undersigned United States Bankruptcy Judge on January 19 and 23, 2012 on the adversary complaint of plaintiff Weneta M.A. Kosmala (the "Trustee"), Chapter 7 Trustee for the bankruptcy estate of Autosport International, Inc., for declaratory and injunctive relief regarding ownership and turnover of certain estate assets. Jeffrey I. Golden and Reem J. Bello, of Weiland, Golden, Smiley, Wang Ekvall & Strok ("Weiland"), appeared for the Trustee/plaintiff. Jaak Olesk, of Law Offices of Jaak Olesk, appeared for defendant Rusty French. Other appearances were made as noted on the record.

1 On January 19, 2012, the Trustee and certain defendants, James A. Mazzotta and
2 Deborah Lynn (Debbi) Mazzotta, orally announced that they had reached a settlement
3 between themselves regarding the adversary proceeding. By order entered April 4,
4 2012, the court granted the motion for approval of this settlement, which also included
5 WestJam, an entity controlled by James A. Mazzotta, and the landlord of Debtor's
6 business premises, and not a party to the adversary proceeding. Through the settlement
7 and the turnover of assets pursuant to the TRO, Amended TRO and the Preliminary
8 Injunction, the Trustee has recovered ownership and possession of the Porsche 962 and
9 the Mercedes CLK and has agreed that the Porsche GT3 is not property of the estate.
10 Because the Mazzotta parties reached a settlement at trial, the trial proceeded as
11 between the Trustee and defendant French.

12 Having considered the testimony of the witnesses, the exhibits admitted into
13 evidence, and the written and oral arguments of the parties on the matters before the
14 court, the court had set forth its oral findings of fact and conclusions of law and its ruling
15 at the hearing. Because it appears that that main thrust of the Trustee's adversary
16 complaint was to establish the estate's title to the subject assets and for turnover of the
17 assets, the parties' briefing on the Trustee's civil contempt claim against French was
18 somewhat lacking, particularly French's trial briefing which was woefully deficient
19 because it was conclusory and completely lacking in citation of applicable legal authority.
20 Accordingly, the court finds that it is necessary and appropriate to elaborate on its oral
21 rulings and to set forth its further findings of fact and conclusions of law in writing through
22 this memorandum decision on the adversary complaint as to French in order for the court
23 to meet its obligations under Rule 7052 of the Federal Rules of Bankruptcy Procedure.

24 Many of the relevant facts were stipulated to by the parties to the adversary
25 proceeding and set forth in the joint pretrial order filed and entered by the court on
26 January 23, 2012.

27 The Trustee is duly appointed, qualified and acting Chapter 7 Trustee for the
28 Debtor's bankruptcy estate. Defendant Autosport International, Inc. is a California

1 corporation that is authorized to do business in California. Defendant James Mazzotta is
2 an individual and is the 100% shareholder of Debtor.

3 Debtor did not disclose the Porsche 962 on its petition and schedules filed on June
4 17, 2011 or on any amended schedules. Post-petition, James Mazzotta sold the Porsche
5 962 to French. James Mazzotta signed the bill of sale of the Porsche 962 on July 20,
6 2011 and French signed it on July 21, 2011. Under the terms of the contract, French and
7 James Mazzotta executed a bill of sale for a purchase price of \$650,000.00. The
8 purchase price was to be paid in two equal installments.

9 This court issued a temporary restraining order ("TRO") against Defendants on
10 August 10, 2011 and issued an amended TRO on August 11, 2011 ("Amended TRO").
11 Included in the Amended TRO was an order to show cause why the TRO should not be
12 extended to August 24, 2011 with a hearing set for that date. French received the TRO,
13 Amended TRO and notice of hearing on the order to show cause on August 11, 2011.
14 On August 12, 2011, Reem J. Bello, attorney for the Trustee, spoke with French over the
15 telephone and advised him that he would have to maintain insurance on the Porsche
16 962, he would be responsible for any damage to the Porsche 962, he could not race the
17 Porsche 962 or move it from its current location in Burbank, California.

18 French's attorney, Olesk, received the TRO, Amended TRO and notice of hearing
19 on the order to show cause on August 16, 2011. However, French failed to turnover the
20 Porsche 962 pursuant to the terms of the Amended TRO. French moved the Porsche
21 962 to Northern California in violation of the Amended TRO. The Trustee was forced to
22 seize the Porsche 962 in Northern California on August 19, 2011. At the time that the
23 Porsche 962 was seized, French failed to turnover the following parts that belong to the
24 Porsche 962: (a) one Bosch 1.7 962 DME; (b) one set of black 3-piece rims with tires for
25 the Porsche 962; (c) one set of spare wheels for the Porsche 962; (d) four spare wheel
26 nuts; and (e) one upper rear heat exchanger. When the Porsche 962 was seized from
27 French by the Trustee, the vehicle was not in the same condition as it was when French
28 took possession of the Porsche 962.

1 Based on the settlement between the Trustee and certain defendants, it is no
2 longer disputed that the subject assets, the Porsche 962 and the Mercedes CLK, but not
3 the Porsche GT3, are property of the Debtor's bankruptcy estate. The remaining issues
4 to be resolved at trial pertain to French's failure to turnover the Porsche 962. The issues
5 identified in the joint pretrial order include: (1) did French violate the Amended TRO?; (2)
6 should French be held in contempt for his violation of the Amended TRO?; (3) what is the
7 total amount of damage caused to the Estate as a result of French's violation of the
8 Amended TRO?; (4) what is the total amount of damage caused to the Estate as a result
9 of French's failure to turnover all of the parts and equipment for the Porsche 962?; (5)
10 what is the total amount of actual damages recoverable by the Estate from French as a
11 result of French's violation of the Amended TRO?; (6) what is the total amount of actual
12 damages recoverable by the Estate from French for French's failure to turnover all of the
13 parts and equipment for the Porsche 962?; and (7) what is the reasonable amount that
14 should be deducted from Mr. French's remaining balance of \$162,500.00 for legal fees,
15 other fees and expenses prior to returning the remainder to Mr. French?

16 As set forth in her trial brief, the Trustee seeks a determination that French
17 violated the Amended TRO in civil contempt of court and further seeks an award of
18 damages and sanctions against French with respect to any and all violations of the
19 Amended TRO, which include damages of \$25,000 to \$50,000 for repairs of the Porsche
20 962 as a result of French's handling of the vehicle and \$76,766.50 in attorneys' fees and
21 expenses incurred by the Trustee with respect to the Amended TRO violations and
22 sanctions of \$50,000 for "willful and intentional violations of the Amended TRO."
23 *Plaintiff's Trial Brief* at 8-10. In support of the requested damages, the Trustee submitted
24 the declarations of the Trustee, her attorneys, and other professionals setting forth the
25 billing statements for the attorneys' and other professionals' fees and expenses and
26 estimates for repair of damages. In support of the Trustee's claim for professional fees
27 and costs against French, the Trustee submitted the Declaration of Jeffrey I. Golden with
28 billing statements from the Weiland law firm asserting fees and costs totaling \$53,198.00

1 representing 109.1 hours of attorney time and 3.2 hours of paralegal time, and her
2 declaration with billing statements from her law firm asserting fees and costs of
3 \$17,493.00 representing 36.5 hours of her time and 0.8 hour of paralegal time.

4 As set forth in his trial brief, French asserts that he, “a Citizen and Resident of
5 Australia, unintentionally and by an unusual confluence of events was ensnared by this
6 litigation.” *Trial Brief of Rusty French*. French stated that he seeks a court determination:
7 “[w]hat is the reasonable amount that should be deducted from Mr. French’s remaining
8 balance of \$162,500.00 for legal fees, other fees and expenses prior to returning the
9 remainder to Mr. French?” *Id.*

10 Bankruptcy courts have civil contempt power under 11 U.S.C. § 105. *Barrientos v.*
11 *Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1188 (9th Cir. 2011). “The standard for finding a
12 party in civil contempt is well settled: The moving party has the burden of showing by
13 clear and convincing evidence that the contemnors violated a specific and definite order
14 of the court.” *In re Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002)(citation omitted). “The
15 burden then shifts to the contemnors to demonstrate why they were unable to comply.”
16 *Id.* A court has the power to adjudge in civil contempt any person who willfully disobeys
17 a specific and definite order requiring him to do or to refrain from doing an act or if a
18 person fails to act as ordered by the court when he fails to take “all the reasonable steps
19 within [his] power to insure compliance with the [court’s] order[.]” *Sekaquaptewa v.*
20 *MacDonald*, 544 F.2d 396, 406 (9th Cir. 1976).

21 In this case, the Trustee as the moving party has shown by clear and convincing
22 evidence that French violated a specific and definite order of the court, namely, the
23 Amended TRO, which provided that French was “prohibited from selling, encumbering,
24 pledging, hypothecating, transferring, assigning, conveying, leasing, disposing of,
25 abandoning or otherwise alienating the Porsche 962C” and “ordered to immediately
26 turnover the Porsche . . . to the Trustee.” *Trial Exhibit 18*. The stipulated facts in the
27 joint pretrial order demonstrate by clear and convincing evidence that French violated the
28 Amended TRO by moving the Porsche 962 to Northern California and failing to turn it

1 over to the Trustee pursuant to the Amended TRO (i.e., immediately). *Joint Pretrial*
2 *Order* at 4-5, ¶¶43-53. Specifically, French received the Amended TRO on August 11,
3 2011 and spoke on the telephone on August 12, 2011 with Ms. Bello, Trustee's counsel,
4 who told him that he would have to maintain insurance on the Porsche 962, that he would
5 be responsible for any damage to the vehicle, that he could not race it or move it from its
6 current location in Burbank, California. *Id.* Bello told Olesk, French's counsel, the same
7 things in their telephone conversation on August 16, 2011, and Olesk received the
8 Amended TRO on August 16, 2011. *Id.* Bello's testimony at trial, which the court finds
9 credible, reinforces the accuracy of these stipulated facts. *Trial Testimony of Reem J.*
10 *Bello*, January 23, 2011; *Trial Declaration of Reem J. Bello*.

11 Because the Trustee has shown by clear and convincing evidence that French
12 violated a specific and definite order of the court in the Amended TRO, the burden shifts
13 to him to show that he was unable to comply, i.e., that he took all reasonable steps in his
14 power to comply with the order. French did not show at trial that he was unable to
15 comply or that he took all reasonable steps in his power to comply with the order. The
16 stipulated facts show that French was aware of the Amended TRO on August 11 and 12,
17 2011 because he received a copy of the order on August 11, 2011 and discussed with
18 Trustee's counsel on August 12, 2011 and that moreover, his attorney, Olesk, was aware
19 of the order when he received it on August 16, 2011 and discussed it with Trustee's
20 counsel on that same date. Yet the Trustee was forced to seize the Porsche 962 from
21 French in Northern California afterwards during the weekend of August 19, 2011. *Joint*
22 *Pretrial Order* at 5, ¶¶ 49-50; *Trial Testimony of Jonathan Michaels*; *Trial Declaration of*
23 *Jonathan Michaels*; *Trial Testimony of Bruce Canepa*. French in his testimony at trial
24 apparently contends that he was not aware when the Porsche 962 was moved from
25 Burbank to Northern California, which may or may not have been the time he became
26 aware of the Amended TRO, but he was aware of the Amended TRO when he had the
27 vehicle in his possession in Northern California when it was seized from him during the
28 weekend of August 19, 2011. *Testimony of Rusty French, October 19, 2011.*

1 French also apparently contends that his failure to return the computer and other
2 parts missing from the Porsche 962 when it was seized was a mere oversight and not
3 contempt.

4 **Question:** The computer was part of the car. So, if it's your understanding that the
5 computer is part of the car, why didn't you turn over the computer to the Trustee's
6 agent or to the authorities at the time the car was seized?

7 **Answer:** Well, when they came up and said they were going to seize the car, I
8 guess I was busy making calls to my solicitor to find out what are we able to do
9 here seeing that we paid our money for this car and now the car is being taken
10 away from us. When the car was rolled away, I wasn't there. I was over speaking
11 to another gentleman in relation to getting some legal advice if you like where I
12 stood. So, I had more important things on my mind to see what my rights were
13 here then realize the car had been wheeled away without the computer in it.

14 *Testimony of Rusty French, October 19, 2011 at 4:26-4:27 p.m.*

15 The evidence indicates that although French may not have been aware that the
16 missing parts were not turned over to the Trustee when the Porsche was seized, he soon
17 became aware because he had the parts transported from Northern to Southern
18 California to be kept with a third party rather than the Trustee. *Testimony of Rusty*
19 *French, October 19, 2011.* French also testified that: "I rang Mr. Mazzotta, and bear in
20 mind that Mr. Mazzotta was meant to be my supplier of the vehicle, I advised him also
21 that the computer wasn't in the car, the same that the wheels and other items which had
22 his name on them, had been retained because I didn't know who the owner was."

23 *Transcript of Rusty French, October 19, 2001 at 4:30-4:31 p.m.* When French testified at
24 the October 19, 2011 hearing on the Trustee's motion for preliminary injunction, he
25 testified that it was an oversight in failing to turn over the computer and spare parts, but
26 had not yet turned them over to the Trustee as of that date. Only later did French turn
27 over the missing parts to the Trustee. These facts show that French was aware of the
28 Amended TRO requiring him to turn over the Porsche, which included any parts, that he

1 had possession of some parts which he did not immediately turnover to the Trustee and
2 that he did not act immediately to turn over the parts.

3 The above-recited facts show that French cannot show that he was unable to
4 comply with the court's order or that he took all reasonable steps in his power to comply
5 with the court. Thus, the court finds that French is in civil contempt of court for violating
6 the Amended TRO.

7 The purpose of civil contempt is to compel or coerce obedience with a court order
8 and/or to compensate another party for the losses caused by the violation of a court
9 order. 1 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶ 1:1037.1 at
10 1-102.1 (2011), *citing inter alia*, *International Union, UMWA v. Bagwell*, 512 U.S. 821,
11 827-828 (1994). Civil contempt sanctions are remedial, not punitive. 1 March, Ahart and
12 Shapiro, *California Practice Guide: Bankruptcy*, ¶ 1:1037.1 at 1-102.1 (2011), *citing inter*
13 *alia*, *In re Dyer*, 322 F.3d at 1192.

14 In this case, the parties acknowledge that all of the parts of the Porsche 962 have
15 been returned to the Trustee. Accordingly, the court finds that the Trustee's request for
16 sanctions for a coercive or compelling purpose is now moot.

17 Civil contempt sanctions for contempt based on a compensatory purpose are to
18 compensate another party for actual losses sustained as a result of the violation of the
19 court order. *United States v. United Mine Workers of America*, 330 U.S. 258, 304 (1947);
20 *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1148 (9th Cir. 1983) ("To the extent that the fine
21 was intended to be compensatory, the fine must be based on [the aggrieved party's]
22 actual losses sustained as a result of the contumacy.") (citations omitted).

23 The Trustee claims as compensatory damages the expenses incurred to transport
24 the Porsche 962 recovered in Northern California from French back to the Trustee's
25 custody and control in Southern California in the amount of \$5,031.00 for moving and
26 related services performed by Credit Managers Association of California. *Trial*
27 *Declaration of Charles G. Klaus*; *see also*, *Trial Declaration of Jonathan Michaels*; *Trial*
28 *Testimony of Jonathan Michaels, January 19, 2012*. The court has reviewed Mr. Klaus's

1 trial declaration and billing statement and finds that the services performed by Credit
2 Managers Association of California were reasonable and necessary for the Trustee to
3 have the Porsche 962 safely and quickly transported to Southern California after it was
4 recovered in Northern California from French. The services of Credit Managers
5 Association of California were reasonable and necessary under the circumstances as
6 described in Mr. Klaus's declaration because the arrangements for transportation had to
7 be made on short notice over a weekend, the arrangements had to be specially made
8 because the subject vehicle is an expensive, amateur race car, and carefully supervised
9 by a professional collection organization, such as Credit Managers Association. Based
10 on the evidence offered by the Trustee at trial, the court determines that these expenses
11 were reasonably incurred to transport the Porsche 962 from Northern to Southern
12 California after recovery from French and are properly included in compensatory
13 damages to be assessed against French and awarded in favor of the Trustee.

14 The Trustee claims as compensatory damages the expenses incurred to inspect
15 the Porsche 962 for damage once the Trustee recovered the vehicle from French in the
16 amount of \$1,200.00 for professional inspection services by Wayne Colony, who has 25
17 years of experience in preparing amateur race cars for track use, including Porsche race
18 cars. *Trial Declaration of Wayne Colony*. The court has reviewed Mr. Colony's trial
19 declaration and billing statement and finds that the services performed were reasonable
20 and necessary for the Trustee to evaluate the damage that may have been caused
21 during French's use of the vehicle. Mr. Colony's inspection resulted in the discovery that
22 parts from the Porsche 962 were missing and unaccounted for and led to their recovery
23 from French. Based on the evidence offered by the Trustee at trial, the court determines
24 that these expenses were reasonably incurred to inspect the Porsche 962 for damage
25 after the Trustee recovered the vehicle from French and are properly included in
26 compensatory damages to be assessed against French and awarded in favor of the
27 Trustee.

28 The Trustee claims as compensatory damages the amounts needed to repair the

1 Porsche 962 as a result of French's handling of the vehicle estimated to be \$25,000 to
2 \$50,000. Based on the evidence offered by the Trustee at trial, particularly the testimony
3 of Bruce Canepa, the court determines that the reasonable amount needed to repair the
4 Porsche is \$15,000 and that this amount is properly included in compensatory damages
5 to be assessed against French and awarded in favor of the Trustee. *Trial Testimony of*
6 *Bruce Canepa; Trial Declaration of Bruce Canepa*. The court bases its determination of
7 damages based on the testimony of Bruce Canepa at trial and his declaration that repair
8 work is needed to restore the computer, the Bosch ECM Motronic control unit, including
9 service by the manufacturer, Bosch, and the wiring and other items, such as the auxiliary
10 boost gauges and controller. *Id.* The court does not award damages with respect to
11 restoring the period racing graphics because the evidence indicates that French had
12 removed the graphics before he became aware of the TRO and Amended TRO and at
13 that time had believed that he was rightful purchaser of the vehicle from James Mazzotta.
14 *Testimony of Rusty French*, October 19, 2011.

15 The Trustee claims as compensatory damages the attorneys' fees and costs
16 incurred as a result of French's violation of the Amended TRO in failing to immediately
17 turn over the Porsche 962. Specifically, the Trustee seeks an award of \$76,766.50 in
18 fees and expenses for services of her professionals. *Plaintiff's Trial Brief* at 9. Included
19 in this amount is a claim for fees and expenses for services rendered by the Trustee's
20 outside counsel, Weiland, Golden, Smiley, Wang Ekvall and Strok, in the amount of
21 \$53,198.00 representing 109.1 hours of attorney time and 3.2 hours of paralegal time.
22 *Trial Declaration of Jeffrey I. Golden* at 4 and *Exhibit 6* attached thereto. Also, the
23 Trustee claims fees and expenses for her services in the amount of \$17,337.50
24 representing 36.5 hours of her time and 0.8 hours of paralegal time. *Trial Declaration of*
25 *Weneta M.A. Kosmala* at 2 and *Exhibit 1* attached thereto. Although Plaintiff's Trial Brief
26 does not state a breakdown of the total amount of \$76,766.50 claimed in fees and
27 expenses, the remaining amounts apparently consist of the claim of \$5,031.00 for fees
28 and expenses of Credit Managers Association of California for transportation-related

1 services and \$1,200.00 for fees and expenses of Wayne Colony for professional
2 inspection services, which claims have been previously addressed.

3 The court may award reasonable professional fees and costs as compensatory
4 damages for the violation of a court order, here, the Amended TRO. *See In re Dyer*, 322
5 F.3d at 1195.

6 The court finds as instructive 11 U.S.C. §330(a)(1), which authorizes the court to
7 award to an attorney employed under 11 U.S.C. §327(a) “reasonable compensation for
8 actual, necessary services” rendered by the attorney and “reimbursement for actual,
9 necessary expenses.” 11 U.S.C. §330(a)(1)(A) and (B). This authority includes the
10 discretion, upon motion or *sua sponte*, to “award compensation that is less than the
11 amount” requested. *Id.* §330(a)(2) (emphasis added); see *Law Offices of David A. Boone*
12 *v. Derham-Burk (In re Eliapo)*, 468 F. 3d 592, 597 (9th Cir. 2006). Section 330(a)(3)
13 directs the court to assess “the nature, the extent, and the value” of the legal services
14 provided when determining the amount of reasonable compensation to award, taking into
15 consideration “all relevant factors,” including:

16 (A) the time spent on such services;

17 (B) the rates charged for such services;

18 (C) whether the services were necessary to the administration of, or beneficial at
19 the time at which the service was rendered toward the completion of, a case under
20 this title;

21 (D) whether the services were performed within a reasonable amount of time
22 commensurate with the complexity, importance, and nature of the problem, issue,
23 or task addressed; and

24 (E) whether the compensation is reasonable based on the customary
25 compensation charged by comparably skilled practitioners in cases other than
26 cases under [title 11].

27 11 U.S.C. §330(a)(3).

28 In the Ninth Circuit, the customary method used to determine a reasonable fee in

1 bankruptcy cases is to calculate the lodestar. *In re Eliapo*, 468 F.3d at 598; *Yermakov v.*
2 *Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983); *In re Parreira*, 464
3 B.R. 410, 416 (Bankr. E.D. Cal. 2012). A court computes the lodestar by multiplying the
4 number of hours reasonably expended by a reasonable hourly rate. *In re Yermakov*, 718
5 F.2d at 1471; see *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (reasoning that the
6 lodestar “calculation provides an objective basis on which to make an initial estimate of
7 the value of a lawyer’s services”).

8 Section 330(a)(4)(A) prohibits the bankruptcy court from allowing compensation for
9 unnecessary duplication of services, and services that were not either reasonably likely to
10 benefit the debtor’s estate nor necessary to its proper administration. 11 U.S.C.
11 §330(a)(4)(A). Likewise, hours not reasonably expended because they are “excessive,
12 redundant, or otherwise unnecessary” must be excluded from the lodestar amount.
13 *Hensley v. Eckerhart*, 461 U.S. at 434.

14 Once the lodestar is established, there is a strong presumption that the lodestar
15 figure represents a reasonable fee. *In re Parreira*, 464 B.R. at 416, citing *In re Manoa*
16 *Fin. Corp.*, 853 F.3d 687, 691 (9th Cir. 1988). However, a court is permitted to adjust the
17 lodestar up or down using a “multiplier” based on the criteria listed in §330 and its
18 considerations of the *Kerr*¹ factors not subsumed within the initial calculation of the
19 lodestar. See, e.g., *Blum v. Stenson*, 465 U.S. 886, 898-901 (1984)(reversing an upward

20 ¹ The original twelve *Kerr* factors were:
21

- 22 (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill
23 requisite to perform the legal service properly, (4) the preclusion of other employment by the
24 attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or
25 contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount
26 involved and the results obtained, (9) the experience, reputation, and ability of the attorneys,
27 (10) the “undesirability” of the case, (11) the nature and length of the professional relationship
28 with the client, and (12) awards in similar cases.

Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975).

multiplier based on factors subsumed in the lodestar determination); *Dang v. Cross*, 422 F.3d 800, 812 (9th Cir. 2005) (observing that a court, in its discretion, may “adjust the lodestar amount after considering other factors that bear on the reasonableness of the fee”); *In re Parriera*, 464 B.R. at 417.

The court should first determine whether the hourly rate claimed by the Weiland firm, the Trustee’s outside attorneys, is reasonable. The blended hourly rate for the Trustee’s attorneys is \$473.71. This is calculated by dividing the total fee request of \$53,198.00 by the number of stated hours worked – 112.30. *Exhibit 6 to Trial Declaration of Jeffrey I. Golden*. The range of hourly rates is from \$230 to \$640. *Id.* The hourly rates and the blended hourly rate appear to be reasonable in light of the work involved.

Next, the court must address whether the number of hours expended is reasonable. After a careful review of the billing records submitted by the attorneys for the Trustee, the court finds that the number of hours billed in this instance to be excessive, redundant or unnecessary under the circumstances. Generally, a bankruptcy court has broad discretion to determine the number of hours reasonably expended. “[E]ven where evidence supports [that] a particular number of hours [were] worked, the court may give credit for fewer hours if the time claimed is ‘excessive, redundant, or otherwise unnecessary.’” *Dawson v. Wash. Mut. Bank, F.A. (In re Dawson)*, 390 F.3d 1139, 1152 (9th Cir. 2004).

After considering the evidence at trial, the court finds that the Trustee’s task of obtaining the turnover of the Porsche 962 was relatively straightforward and uncomplicated. The Trustee’s task was to locate and retrieve the vehicle, and in this instance, the Trustee found out that the vehicle was located in Northern California and needed to seize the vehicle and return it to Southern California to be under the custody and control of the Trustee. The evidence at trial indicates that the matter was simple and straightforward. The Trustee and her counsel were aware of the sale of the Porsche 962 negotiated between James Mazzotta and French and therefore, did not need to expend any hours finding out who the purchaser was. At the 11 U.S.C. §341 meeting of

1 creditors, held on August 8, 2012, James Mazzotta testified that the Porsche 962 was
2 sold to French and currently in his custody. As described in the trial testimony, the
3 Trustee was able to quickly locate French and the Porsche 962 at the Laguna Seca race
4 track in Monterey, California, and the Trustee through her agents was able to recover the
5 vehicle from French without resistance. However, the Trustee's agents inadvertently
6 missed the computer or spare parts not in or on the vehicle when it was seized, and it
7 took some effort to locate and recover those items.

8 From its review of the billing statements of the Trustee's outside counsel, Weiland
9 Golden, and the Trustee's own law firm, the court finds that the hours claimed are
10 excessive and should be disallowed in part. The reason for the disallowance is that it
11 appears that there are hours claimed for services not attributable to French's
12 contumacious conduct, i.e., conduct in contempt of the court's Amended TRO. For
13 example, fees are claimed for services on August 11 and 12, 2011, which was before or
14 at the time that French was being notified of the Amended TRO. It is not appropriate to
15 claim fees for services rendered before French had been notified of the subject court
16 order and had an opportunity to comply. *Exhibit 6 to Trial Declaration of Jeffrey I. Golden*
17 at 27. Fees for numerous hours are claimed for preparation of the motion for preliminary
18 injunction, which is not directly related to French's contempt of the Amended TRO. *Id.* at
19 27-39. The Trustee filed her application for TRO on August 10, 2011 to obtain the court
20 order for which she requests the court's determination of contempt, and part and parcel
21 of seeking a TRO is to follow up with a motion for preliminary injunction. As reflected in
22 the TRO and preliminary injunction papers, the Trustee's seeking of preliminary injunctive
23 relief did not only involve French, but other parties, notably, James and Deborah
24 Mazzotta, other assets, not just the Porsche 962, but other vehicles, and other issues,
25 such as confirming title to the assets in the bankruptcy estate. A large part of the
26 preliminary injunction litigation focused on establishing title to the assets, not just the
27 Porsche 962, as indicated in the trial papers, for example. However, the trial was
28 truncated in light of the settlement between the Trustee and the Mazzotta parties, leaving

1 the singular dispute between the Trustee and French to be resolved at trial. Because this
2 is the way the litigation in this case evolved, it is not fair or appropriate to attribute all of
3 the preliminary injunction litigation to French and shift the attendant cost to him.
4 Moreover, the Trustee in her papers does not explain how the preliminary injunction
5 litigation was caused by French's contempt of court or segregate out the fees for services
6 attribute to the contempt. The only explanation in evidence of the Trustee's claim for
7 services of the Weiland firm is the conclusory statement of Golden in paragraph 25 of his
8 trial declaration: "25. Due to his actions with respect to the Porsche 962, the [Weiland]
9 Firm, on behalf of the Trustee, commenced proceedings against Rusty French to recover
10 the asset for the benefit of the Estate. The Firm's fees and costs incurred in connection
11 with these services total \$53,198.00. Copies of the relevant invoices are attached as
12 Exhibit '6'." *Trial Declaration of Jeffrey I. Golden* at 4. The Trustee's papers do not draw
13 the distinctions which the court finds should have been drawn as discussed in this
14 memorandum or otherwise show that all of the claimed fees were necessary to litigate
15 the issue of French's violation of the Amended TRO as civil contempt.

16 The court has reviewed each and every entry on the Weiland Firm billing
17 statement attached to the Golden Declaration, and to the extent it could, has identified
18 the billing entries for fees for services rendered directly related to French's violation of the
19 Amended TRO in contempt of court. These entries are marked on a copy of the billing
20 statement as relating to French's violation of the Amended TRO, and the fees described
21 by these entries will be allowed. The total allowed fees based on these identified entries
22 are \$13,360.00 (\$8,673.00 (17.7 hours at \$490.00 per hour) for Reem J. Bello, \$4,480.00
23 (7.4 hours at \$640.00 per hour) for Jeffrey I. Golden and \$207.00 (0.9 hour at \$230.00)
24 for Claudia M. Yoshinis). Because the issues relating to French's contempt had to be
25 tried, the court further allows additional fees for conducting the trial, 16 hours at \$490.00
26 for Ms. Bello, the Trustee's trial counsel, and for trial preparation, 18 hours at \$490.00 for
27 Ms. Bello, for a total of 34 hours at \$490.00 per hour, or \$16,660.00. Although the
28 Weiland Firm did not supplement the trial papers with a further declaration regarding the

1 fees incurred for preparing and conducting the trial on the issues relating to French's
2 contempt, such fees are properly awardable as compensatory damages, and the court
3 makes a reasonable estimate of the fees incurred by the Trustee for the services of the
4 Weiland firm for the trial based on its observations of the conduct of the trial and the other
5 proceedings in this case. Accordingly, the court confirms its earlier oral ruling that the
6 appropriate fees for the Trustee's legal professionals should be \$30,000.00, which is
7 confirmed by the court's computation of the lodestar amount of \$30,020.00 as discussed
8 above.

9 It appears to the court that the Trustee is claiming fees for time she spent really as
10 acting in her capacity of the Trustee, which should not be separately compensable by
11 attorneys' fees since the Trustee is compensated for her services as a Chapter 7
12 bankruptcy trustee. 11 U.S.C. § 326. To the extent that the Trustee's claim against
13 French is for services as an attorney, it should be disallowed not only because it appears
14 she was acting in her capacity as the Trustee, but because her efforts as an attorney are
15 duplicative of her counsel, whose employment was actually authorized by the court
16 pursuant to Section 327 of the Bankruptcy Code. *See In re Butler Industries, Inc.*, 101
17 B.R. 194, 197 (Bankr. C.D. Cal. 1989) ("Where the trustee or the trustee's law firm is
18 appointed as the trustee's own attorney, there is a substantial temptation for the trustee
19 to charge administrative duties as legal services, and thereby to attempt to obtain double
20 compensation.")(citation and footnote omitted), *aff'd*, 114 B.R. 695 (C.D. Cal. 1990). The
21 billing entries submitted by the Trustee indicate that her work was reviewing documents
22 prepared by her outside counsel, conferring with her outside counsel and otherwise
23 handling her administrative duties as the bankruptcy trustee. *Trial Declaration of Weneta*
24 *M.A. Kosmala; Trial Testimony of Weneta M.A. Kosmala*. Presumably, if the Trustee's
25 claim for her fees is for acting as an attorney, then such fees would have been an
26 expense incurred on behalf of the estate subject to Sections 327, 328 and/or 330 of the
27 Bankruptcy Code. The court notes that the Trustee's employment of herself as an
28 attorney for the estate has not been authorized, and she should not be compensated as

1 an estate professional in the capacity of an attorney because such employment has
2 never been authorized. 11 U.S.C. § 327(a) and (d); *In re Butler Industries, Inc.*, 101 B.R.
3 at 196 (“While the trustee generally has wide latitude in choosing his or her own attorney,
4 subject to appointment by the court, the trustee must meet a higher standard when the
5 trustee seeks to appoint himself or his own law firm as attorney.”).

6 While it is not clearly explained in Plaintiff’s Trial Brief, the Trustee may be
7 asserting a claim for administrative fees and expenses as Trustee incurred with respect
8 to the recovery of the Porsche 962 from French pursuant to the Amended TRO. The
9 court is not inclined to award such fees because the Trustee has not satisfactorily
10 explained the basis for seeking an award of fees, whether in the capacity of being the
11 Trustee or an attorney for the estate. The Trustee has made no showing how the
12 statutory fee that may be awarded to her in this bankruptcy case under 11 U.S.C. § 326
13 should be apportioned under the circumstances of the bankruptcy case, e.g., how should
14 the administrative fees as trustee should be apportioned with respect to all the services
15 performed in this bankruptcy case as opposed to her involvement as bankruptcy trustee
16 with respect to the matter of the turnover of the Porsche 962. Thus, the court is not
17 inclined to award the Trustee fees as to French, though the court makes no determination
18 as to the propriety of the fees with respect to the allowance of fees under 11 U.S.C. §
19 326.

20 Based on the evidence offered by the Trustee at trial, the court determines that
21 attorneys’ fees and expenses in the amount of \$30,000 were reasonably incurred as a
22 result of French’s violation of the Amended TRO and are properly included in
23 compensatory damages to be assessed against French and awarded in favor of the
24 Trustee.

25 Citing *In re Cecconi*, 366 B.R. 83, 108 (Bankr. N.D. Cal. 2007), the Trustee
26 contends that sanctions in the amount of \$50,000.00 should be imposed against French
27 for his willful and intentional violation of the Amended TRO “in addition to the Trustee’s
28 administrative fees and expenses incurred and in addition to the expenses needed to

1 restore the Porsche 962 to its original condition.” Plaintiff’s Trial Brief at 10. The Trustee
2 cites the court’s inherent authority to impose sanctions *See also, In re Lehtinen*, 564
3 F.3d 1052, 1058-1061 (9th Cir. 2009)(discussing the bankruptcy court’s authority to
4 impose punitive sanctions under 11 U.S.C. § 105(a) and/or its inherent authority). The
5 court has considered the totality of the circumstances based on the evidence admitted at
6 trial and does not make findings that French’s conduct constituted “bad faith” or “willful
7 misconduct.” *Testimony of Rusty French, October 19, 2011*. French was the unknowing
8 purchaser of the Porsche 962, which is property of the estate, and he believed that
9 James Mazzotta was the true owner because Mazzotta sold him the vehicle and gave
10 French a bill of sale in July 2011, one month before the adversary proceeding as initiated
11 and French received notice of the Trustee’s claim that it was property of the bankruptcy
12 estate. French bought the Porsche 962 for a price of \$650,000 and made an initial
13 payment of \$325,000 for the purchase. The evidence indicates that while French was
14 notified of the Amended TRO and the Trustee’s claim to title on behalf of the estate, the
15 evidence is unclear whether French was aware of the Amended TRO when the Porsche
16 962 was transported to Northern California.

17 French was aware of the Amended TRO when he was testing the Porsche 962 on
18 the Laguna Seca race track during the weekend of August 19, 2011 and should have
19 complied with the Amended TRO requiring him to immediately turn over the vehicle to the
20 Trustee. When the Trustee’s agent seized the vehicle from French on August 19, 2011,
21 French did not resist the seizure. The evidence indicates that French inadvertently failed
22 to turn over the car computer and other spare parts, which had been removed by his
23 technicians, at the time the car was seized. French later discovered that he had
24 possession of the car computer and the remaining parts, but did not immediately turn
25 over the parts, keeping them in safe storage with a third party. French had testified that
26 even after the seizure, he was aware that the Mazzotta parties who sold him the car were
27 contesting the Trustee’s claim of ownership of the car. However, French’s conduct
28 indicates that he did not take all reasonable steps to comply with the court’s order, the

1 Amended TRO, which justifies the finding of civil contempt, but the court finds that his
2 conduct under the circumstances is not tantamount to "bad faith" or "willful misconduct."
3 Accordingly, the court denies the Trustee's request for \$50,000.00 in sanctions on
4 grounds that it does not make findings that French's noncompliance with the Amended
5 TRO constituted "bad faith" or "willful misconduct".

6 For the foregoing reasons, the court determines that the Trustee should be
7 awarded damages and sanctions in the amount of \$51,231.00 as compensatory
8 damages for civil contempt based on French's violations of the Amended TRO. This
9 amount consists of \$5,031.00 for the services of Credit Managers Association of
10 California, \$1,200.00 for the services of Wayne Colony, \$15,000.00 in damages relating
11 to the need to repair the Porsche 962 and \$30,000.00 for the services of the Weiland
12 firm, the Trustee's outside counsel.

13 This memorandum decision shall constitute the court's further findings of fact and
14 conclusions of law in addition to those orally stated at trial. To the extent that the oral
15 findings and conclusions of law are inconsistent with this memorandum decision, the
16 memorandum decision supersedes the oral findings and conclusions. Consistent with
17 this memorandum decision, the court is entering concurrently herewith a separate final
18 order on the adversary complaint as to defendant French which grants in part and denies
19 in part the relief sought by the Trustee.

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24 DATED: April 13, 2012

25 United States Bankruptcy Judge
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NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) **MEMORANDUM DECISION** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") –

Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **April 13, 2012**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below:

- Alessandro G Assanti agassanti@gmail.com
- Reem J Bello rbello@wglp.com
- Jeffrey I Golden jgolden@wglp.com
- Weneta M Kosmala (TR) Weneta.Kosmala@7Trustee.net, ca15@ecfcbis.com;wkosmala@kosmalalaw.com;dfitzger@kosmalalaw.com;kgeorge@kosmalalaw.com
- Hutchison B Meltzer hmeltzer@wglp.com
- United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by U.S. Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Jaak Olesk
468 North Camden Drive 2nd Fl
Beverly Hills, CA 90210

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s) and/or email address(es) indicated below: