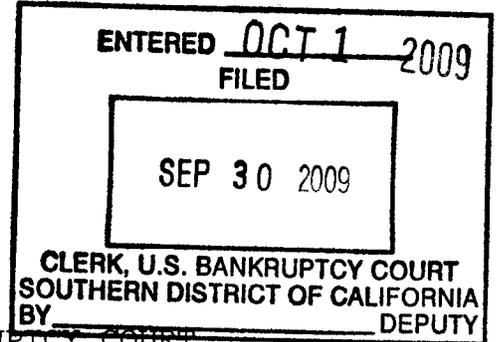


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NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re

Bankruptcy No. 08-01803-JM11

SIMPLON BALLPARK, LLC.,

ORDER TO THOMAS C. NELSON TO
SUBMIT A SUPPLEMENTAL
DECLARATION UNDER § 329 AND RULE
2017

Debtor.

The court reviewed the Declaration of Thomas C. Nelson Regarding Compensation Received From the Debtor, and the history of this case. After this review, the Court orders Mr. Nelson to file a supplemental declaration to provide the full disclosure required of counsel for a debtor in possession. This Order is issued pursuant to the Court's inherent authority under 11 U.S.C. § 105¹, as well as authority specifically granted under §§ 327, 328 and 329 and Rules 2014, 2016 and 2017.

This case was initiated with a "bare-bones" petition submitted

¹ Unless otherwise indicated, all references to "chapter" and section" are to the Bankruptcy Code, 11 U.S.C. §§ 101 - 1532, and all references to "rule" are to the Federal Rules of Bankruptcy Procedure (Fed.R.Bankr.P.) 1001 - 9037.

1 by Fresno attorney Hanno T. Powell on March 4, 2008. On March 13,
2 2008, a substitution of Attorney Thomas C. Nelson was filed. There
3 was no disclosure of fees included with the substitution, and no
4 application for appointment of counsel.

5 SDG-Left Field, a creditor secured by the sole asset² of the
6 estate, filed a motion for relief from the automatic stay on March 17,
7 2008 ("Left Field Motion"). The balance of schedules and the Rule
8 2016(b) disclosure of compensation to attorney were due on March 19,
9 2008. Mr. Nelson eventually submitted the balance of schedules on
10 April 1, 2008. The § 341(a) meeting of creditors was scheduled for
11 April 8, 2008.

12 The preliminary hearing on the Left Field Motion was held on
13 April 16, 2008. The Debtor's opposition rested on a claim of
14 significant equity in the property, and the understanding that
15 replacement financing was imminent. During the preliminary hearing,
16 the Court inquired about the status of Mr. Nelson's appointment as
17 counsel for the Debtor. The hearing on the Left Field Motion was
18 continued to May 1, 2008. At the May 1 hearing, Mr. Nelson
19 represented to the Court that the Debtor expected to file a motion to
20 approve the anticipated financing within ten days, and that Mr. Nelson
21 had not yet submitted an application for appointment as counsel due
22 to illness.

23 On May 23, 2008, Mr. Nelson submitted an application for
24 appointment as counsel for the Debtor ("Application"). The
25 declaration he submitted with the Application proclaimed that he "[is]

27 ² The sole asset was a block of real property in downtown San Diego valued at \$26,500,000 in
28 the Left Field Motion and at \$ 65,525,000 in Debtor's Schedule A. Left Field stated its claim was
\$18,600,000 as of the petition date.

1 well qualified to represent the Debtor generally in this matter . .
2 . [does] not hold any interests adverse to the above-entitled estate
3 and I am a disinterested person as that term is defined in 11 U.S.C.
4 § 101(14)." The declaration continued to disclose that Mr. Nelson
5 "received a pre-petition retainer of \$2,500 from the Debtor. That
6 amount was billed to the Debtor for pre-petition services and applied
7 to the bill." No information was provided to explain why Hanno T.
8 Powell had filed the petition as attorney for the Debtor. In
9 addition, the declaration lacks any disclosure of any connections Mr.
10 Nelson had to the debtor, creditors, any other party in interest, or
11 their respective professionals, as required by Bankruptcy Rule
12 2014(a).

13 On May 27, 2008, at the third hearing on the Left Field Motion,
14 Mr. Nelson presented a Motion to Incur Post-Petition Secured Debt and
15 for Conditional Dismissal of Chapter 11 Proceeding. According to the
16 proof of service and caption, Mr. Nelson had already obtained a
17 hearing date of July 3, 2008, and sent notice of that hearing to
18 interested parties. During the May 27 hearing, the hearing date on
19 the motion to incur financing was advanced to June 25, 2008, and the
20 Left Field Motion was continued to the same date and time. On June
21 25, the hearings were continued to 2:00 p.m. on July 16, 2008, to
22 provide more time for the details of the financing to be worked out.

23 On July 16, at 10:46 a.m., Mr. Nelson filed an Amended Motion to
24 Incur Post-Petition Secured Debt and for Dismissal. At the hearing
25 that afternoon, Mr. Nelson represented that the Debtor now had a loan
26 for \$35 million, and that the Debtor had been "in dialogue" with
27 junior lienholders to obtain subordination agreements. Mr. Nelson
28 claimed that with a final number for financing, he could at last

1 successfully negotiate with creditors or propose a confirmable plan
2 of reorganization. Mr. Nelson assured the Court that by July 24,
3 2008, the Debtor would either file a plan or begin making adequate
4 protection payments to Left Field. Based on these representations,
5 the Court continued the hearing to the next available date of August
6 4, 2008, with the condition that if the Debtor did not file a plan of
7 reorganization or begin making payments to Left Field by July 25, then
8 Left Field would be entitled to relief from the automatic stay.

9 During the hearing, Mr. Nelson was reminded that the Debtor had
10 not submitted a single monthly operating report required under
11 Bankruptcy Rule 2015 during the four months the case had been pending.
12 He filed the operating reports for March 2008, April 2008 and May 2008
13 on July 23, 2008. Late in the day on July 25, 2008, Mr. Nelson filed
14 a plan of reorganization, along with a notice setting the hearing on
15 confirmation for September 25, 2008. The plan was not accompanied by
16 a disclosure statement, and there was no notice of any hearing
17 scheduled for a disclosure statement. Section 1125(b) prohibits the
18 solicitation of an acceptance or rejection of a plan unless the
19 solicitation is accompanied by a disclosure statement that has been
20 approved by the court as containing adequate information, after notice
21 and a hearing.

22 On August 4, 2008, the Court conducted another hearing on the
23 relief from stay and financing. Mr. Nelson explained that the Debtor
24 expected the loan to fund by August 29, and then the case would be
25 dismissed. They would only proceed with a plan if they could not
26 reach an agreement with the junior lenders. The financing order was
27 informally approved to allow the funding process to begin. Mr. Nelson
28 was to prepare precise escrow instructions, determine amounts to be

1 paid to junior lienholders and submit a proposed order. The hearing
2 was continued to August 13, 2008. At the August 13 hearing, Mr.
3 Nelson reported that the parties were closer, but they still did not
4 have an agreement for subordination from the second priority
5 lienholder. He expected to have a stipulated order signed by August
6 18, 2008. If the loan did not fund by August 29, Left Field was to
7 have relief from the automatic stay unless the Debtor made a showing
8 of good cause for a further extension of the stay.

9 The loan did not fund by August 29. An emergency motion to
10 extend the automatic stay was heard on September 2, 2008. Mr. Nelson
11 explained it was taking longer than expected to close the loan, so the
12 hearing was continued to September 5. Left Field was granted
13 immediate relief from the stay, but if an adequate protection payment
14 was made by September 8, the foreclosure sale could not occur until
15 October 6. This provided the Debtor with an additional month to
16 secure funding. The financing never materialized, and Left Field
17 acquired the property through foreclosure.

18 After that, the case languished. The Debtor did not pursue
19 confirmation of the plan, did not file operating reports and did not
20 seek to dismiss or convert the case. Eventually, the United States
21 Trustee filed a motion to convert or dismiss the Chapter 11 for cause
22 as evidenced by the failure to file operating reports, pay quarterly
23 fees due under 28 U.S.C. § 1930(a)(6), or to pursue any form or
24 reorganization or exit strategy. Mr. Nelson filed a limited objection
25 on behalf of the Debtor, to state a preference for dismissal over
26 conversion to Chapter 7.

27 On June 10, 2009, the date of the hearing on the motion to
28 convert or dismiss, Mr. Nelson filed the operating reports for June

1 2008 through May 2009, to obtain dismissal rather than conversion to
2 Chapter 7. At the June 10 hearing, the case was dismissed with
3 conditions. Mr. Nelson was to submit a declaration concerning the
4 fees he received, and the Court retained jurisdiction over the case
5 for sixty days to hear and resolve any issues concerning the funds
6 received by Mr. Nelson in connection with the case.

7 On July 2, 2009, Mr. Nelson filed a document in which he
8 declared:

9 1. I am an attorney admitted to practice in the State
of California and before this Court.

10 2. As indicated in the Declaration I filed on May 23,
11 2008, support (sic) of the Debtor's Application to Employ
12 General Counsel, I received a pre-petition retainer of
13 \$2,500.00 from the Debtor. That amount was billed to the
Debtor for pre-petition service and applied to that bill.
A true and accurate copy of my Declaration, which is item
59 on the Court's Docket in this matter, is attached hereto
for the Court's convenience.

14 3. I have not submitted any invoices or bills to the
15 Debtor since I became Debtor's Counsel in this matter. The
16 Debtor sent a check in the amount of \$2,000.00 to me in
October 2008. I returned the check because no payment to
me had been given by the Court (sic), nor had I submitted
an application to the Court for approval of interim fees.

17 4. The \$2,500.00 I received prior to the filing,
18 which was disclosed to the Court in my Declaration, is the
only compensation I have received from the Debtor.

19 Although the Declaration technically complied with the language
20 of the order of dismissal, it did not contain the full disclosure
21 required by § 329 and Rules 2016 and 2017. An attorney is required
22 to disclose compensation received in connection with a case, directly
23 or indirectly, from any source, and to disclose the source. In re
24 Park-Helena Corp., 63 F.3d 877, 880-881 (9th Cir. 1995). The language
25 in the order of dismissal presented by the parties, and the
26 Declaration limiting the disclosure to fees received from the Debtor,
27 is not sufficient to allow the Court to consider issues regarding any
28 compensation received by Mr. Nelson in connection with the case.

1 Counsel for a debtor in possession must be disinterested and has
2 an ongoing duty to disclose any connections with the debtor, creditors
3 and any other party in interest. §§ 327(a), 328(c). In reviewing
4 this matter, the Court notes that on the captions of some pleadings,
5 Mr. Nelson used the address of 9089 Clairemont Mesa Blvd., Suite 100,
6 San Diego 92123. The Court also notes that this is remarkably close
7 to the address of World Wide Money Center, located at 9089 Clairemont
8 Mesa Blvd., Suite 200, San Diego 92123. This is significant in this
9 case, and requires further explanation by Mr. Nelson, because World
10 Wide Money Center is listed as the recipient of notice for the
11 majority of creditors in Case No. 08-01200-LT11, filed by a Debtor
12 called Ash & State, LLC. A notice of related case was filed in both
13 the Simplon case and the Ash & State case to indicate that the cases
14 were related. Each Debtor filed pleadings in support of positions
15 taken by the other Debtor. Given the overlapping interests in the two
16 cases and related addresses of Mr. Nelson and most of the secured
17 claims listed in the Ash & State petition, this Court requires a full
18 disclosure by Mr. Nelson of any connection he may have to World Wide
19 Money Market, as well as any other party who may have an interest in
20 this case.

21 IT IS ORDERED that:

22 On or before October 16, 2009, Thomas C. Nelson shall file with
23 this Court a supplemental declaration addressing the Court's concerns
24 recited herein. Specifically, the supplemental declaration should
25 include:

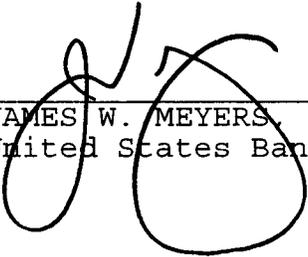
26 1) All information about any compensation received in connection
27 with a case, directly or indirectly, from any source, and to disclose
28 the source;

1 2) Any connections between Mr. Nelson and World Wide Money
2 Market; and

3 3) Any additional information to provide complete disclosure of
4 the information required by §§ 327, 328 and 329 and Rules 2014, 2016
5 and 2017.

6 A copy of the supplemental declaration shall be served on the
7 United States Trustee. The Court shall continue to retain
8 jurisdiction over this matter pending satisfactory disclosure by Mr.
9 Nelson and resolution of any issues related thereto.

10 Dated: **SEP 30 2009**

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13 JAMES W. MEYERS, Judge
14 United States Bankruptcy Court
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