

1 **WRITTEN DECISION - NOT FOR PUBLICATION**

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ENTERED <u>2/28/13</u> FILED FEB 27, 2013 CLERK, U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA BY <u>HK #152</u> DEPUTY
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8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 In re) Case No. 11-15859-PB7
12)
12 DAVID and ANNETTE PUCHTA,) ORDER ON MOTION TO REOPEN
13)
13 Debtors.)
14 _____)

15 Debtors' case was closed without a discharge because they
16 failed to submit certificates of instructional course for
17 personal financial management. Debtors have since obtained the
18 required instruction, and have moved to reopen in order to file
19 their certificates and obtain discharges.

20 Before the case was closed, the Court granted the motion of
21 secured creditor Hitachi Capital America Corp. (Hitachi), for
22 relief from stay and ordered that "Debtor is hereby ordered to
23 immediately turnover possession of [the forklift] to Hitachi
24 Capital America Corp." Hitachi opposes the motion to reopen on
25 the ground that Debtor failed to comply with the turnover order.

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1 Opposition to the motion to reopen was also filed by several
2 of Debtors' prior employees on the ground that Debtors failed to
3 give notice of the bankruptcy case, by failing to provide their
4 addresses.

5 The UST also filed a response, and at the hearing expressed
6 concern that objections to discharge not be precluded in the
7 event the case was reopened.

8 As the Court explained at the hearing, it was inclined to
9 reopen to provide a forum to explore and resolve these issues.
10 However, since the periods to file objections to discharge had
11 lapsed before the case was closed, the Court was concerned that
12 the objecting creditors and/or the UST have the opportunity to
13 object to discharge. At the hearing and in their post-hearing
14 brief, Debtors agreed to have any bar date extended.

15 A complaint seeking exception to discharge under § 523(c)
16 must be filed "no later than 60 days after the first date set for
17 the meeting of creditors under § 341(a)." See Rule 4007(c).
18 This period may be extended, but only if a motion to do so is
19 "filed before the time has expired." *Id.* In this case, the 60-
20 day period expired before the case was closed, and no motion to
21 extend was timely filed. Under these circumstances, the Court
22 lacks the authority to reopen or extend the time period. See In
23 re Eaton, 327 B.R. 79, 85 (Bankr.D.N.H. 2005) (analyzing the
24 interplay of FRBP 4007(c) and 9006(b)(3)).

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1 The Court does, however, have authority to grant an
2 extension of the time for filing complaints objecting to
3 discharge under § 727. Rule 4004(b)(1), like Rule 4007(c),
4 requires a motion to extend to be filed before the time expires.
5 However, Rule 4004(b)(1) is subject to (b)(2) which provides:

6 (2) A motion to extend the time to object to discharge
7 may be filed after the time for objection has expired
8 and before discharge is granted if (A) the objection is
9 based on facts that, if learned after the discharge,
10 would provide a basis for revocation under § 727(d) of
the Code, and (B) the movant did not have knowledge of
those facts in time to permit an objection. The motion
shall be filed promptly after the movant discovers the
facts on which the objection is based.

11 The UST has discovered that Debtor Annette has filed a request
12 for creditor committee membership in another bankruptcy case
13 (Bankruptcy Case No. 11-16778-MM11), asserting a claim of
14 \$32,945.36. The Debtors did not schedule this claim as an asset.
15 The Court finds this, in addition to the concerns raised by the
16 Employees and Hitachi, sufficient ground to extend the time to
17 file § 727 actions in this case.

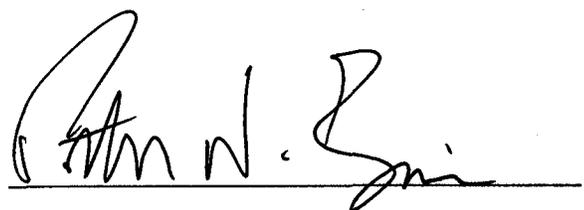
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1 Accordingly, the Court grants the Debtors' motion to reopen.
2 However, no discharge shall be granted until after April 30,
3 2013. Complaints, if any, objecting to discharge may be filed
4 through that date. Further, Debtors are required to amend their
5 schedules to include addresses for the prepetition employees and
6 must serve this Order on the employees within 20 days of its entry.

7 IT IS SO ORDERED.

8 DATED: FEB 27 2013

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11 PETER W. BOWIE, Judge
12 United States Bankruptcy Court

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