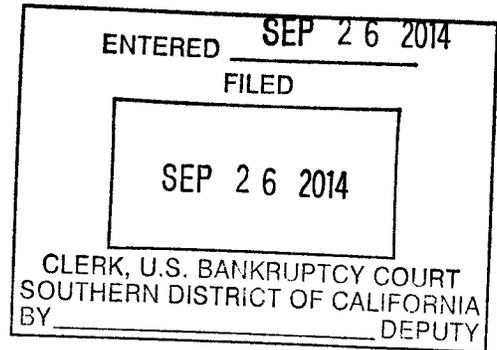


1 **WRITTEN DECISION - NOT FOR PUBLICATION**



9 UNITED STATES BANKRUPTCY COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 In re ) Case No. 12-00026-PB11

12 DAVID M. ANDERSON, )

13 Debtor. ) ORDER ON FIFTH INTERIM FEE

14 ) APPLICATION OF COUNSEL FOR

15 ) DEBTOR-IN-POSSESSION

16 Procopio, Cory, Hargreaves & Savitch, LLP (Applicant) filed

17 its fifth interim fee application for allowance of attorneys'

18 fees incurred and reimbursement of costs advanced as counsel for

19 debtor-in-possession David Anderson (Debtor) for the period

20 October 1, 2013 through April 30, 2014. Applicant seeks

21 allowance of fees of \$264,311.50 and costs of \$13,386.05 on an

22 interim basis.

23 The sole opposition to the Application was filed by James

24 Lessley and Victoria Place, LLC (collectively Lessley). Lessley

25 asserts a claim in this case of approximately \$12 million.

26 Debtor disputes that claim in its entirety. Debtor and Lessley

are litigating the claim in the state court. Depending upon the

1 results in the state court, Lessley may end up with no claim in  
2 this case.

3       The essence of Lessley's objection to the fee application is  
4 that all the money in this bankruptcy estate is money that was  
5 misappropriated by debtor from Lessley and Victoria Place.  
6 Moreover, Lessley and Victoria Place continue to argue that they  
7 had the case settled until debtor's counsel sabotaged the  
8 agreement. In support of their argument, they even invited the  
9 Court to contact the state court judge to get his assessment of  
10 what occurred. The Court declines to seek *ex parte* information  
11 not on the record, and notes in passing that if there were a  
12 settlement in the state court litigation Lessley and Victoria  
13 Place have a forum in which to seek enforcement of any such  
14 settlement.

15       The Court has considered the Application, Lessley's  
16 opposition and the reply thereto. The Court has decided to allow  
17 the fees and costs requested on an interim basis. The interim  
18 allowance is of course subject to application for final allowance  
19 and is subject to disgorgement, should the fees ultimately be  
20 denied. In the event Lessley prevails in state court and

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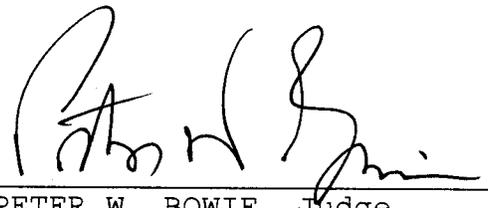
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1 establishes a claim in this case, he is of course welcome to  
2 renew his objections upon final application.

3 Applicant shall lodge and serve an order consistent herewith  
4 within thirty (30) days of the entry of this decision.

5 IT IS SO ORDERED.

6 DATED: SEP 26 2014

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9 PETER W. BOWIE, Judge  
10 United States Bankruptcy Court  
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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
325 West F Street, San Diego, California 92101-6991

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In re Bankruptcy Case Name: DAVID M. ANDERSON

Case No.: 12-00026-PB11

**CERTIFICATE OF MAILING**

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

**ORDER ON FIFTH INTERIM FEE APPLICATION OF COUNSEL FOR DEBTOR-IN-POSSESSION**

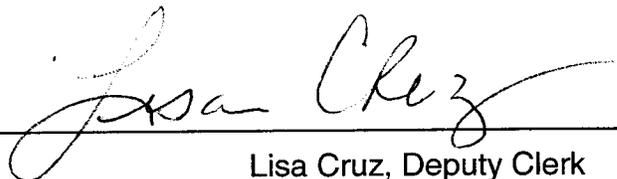
was enclosed in a sealed envelope bearing the lawful frank of the bankruptcy judges and mailed to each of the parties at their respective addresses listed below:

Philip J Giacinti, Jr.  
Procopio Cory Hargreaves & Savitch  
525 "B" Street, Suite 2200  
San Diego, CA 92101

Todd Neal  
Procopio Cory Hargreaves & Savitch  
525 "B" Street, Suite 2200  
San Diego, CA 92101

Nicholas A. Boylan  
Law Offices of Nicholas A. Boylan, APC  
444 West "C" Street, Suite 405  
San Diego, CA 92101

Said envelope(s) containing such document was deposited by me in a regular United States Mail Box in the City of San Diego, in said District on September 26, 2014.

  
\_\_\_\_\_  
Lisa Cruz, Deputy Clerk

## Notice Recipients

District/Off: 0974-3  
Case: 12-00026-PB11

User: tbobis  
Form ID: pdfO1

Date Created: 9/26/2014  
Total: 2

### Recipients of Notice of Electronic Filing:

aty Philip J Giacinti, Jr. pjpg@procopio.com

TOTAL: 1

### Recipients submitted to the BNC (Bankruptcy Noticing Center):

db David M. Anderson 12359 Sage View Road Poway, CA 92064

TOTAL: 1