

U. S. COURTS

MAY 11 1998

REC'D _____ FILED _____
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13 Barbara J. Wussler, William
14 Wussler, a/k/a Doc Wussler

15 UNITED STATES BANKRUPTCY COURT
16 DISTRICT OF IDAHO

17	In re	)	CASE NO. 93-02385-JDP
18		)	Chapter 7
19	DAVE SILVA, d/b/a NOS OTNOS,	)	MEMORANDUM OF LAW IN SUPPORT
20	INC., and SHARON SELMASSKA,	)	OF MOTION TO ALTER OR AMEND
21	a/k/a SHAREN SILVA, d/b/a	)	ORDER ENTERED ON APRIL 30,
22	NOS OTNOS, INC., d/b/a	)	1998
23	S & S CLEANING,)	
24)	
25	Debtors.	)	[F.R.C.P., Rule 59(e);
26		)	F.R.B.P., Rule 9023]
27)	
28		)	Date: No hearing set
		)	Place: Boise, Idaho
)	
)	

23 Barbara J. Wussler ("Mrs. Wussler"), William Wussler, a/k/a Doc
24 Wussler ("Mr. Wussler") and The Court Room, Inc. ("TCR Inc."),
25 (hereinafter collectively referred to as the "Wusslers"), hereby submit
26 the following memorandum of law in support of their motion to alter
27 or amend the order entered on April 30, 1998.

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ARGUMENT1
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On April 30, 1998 this court heard the trustee's motion to approve the agreement to compromise and settle all claims between the trustee and creditor, Mrs. Wussler. This court denied the trustee's motion. Based on the statements from the court at the hearing on the motion to approve the compromise, it appears that the primary basis for the denial of the motion was that the settlement doesn't resolve the entire litigation matter because the litigation matter in California and in the adversary proceeding will remain pending between the Wusslers and the debtor.

Rule 59(e) of the F.R.C.P., applicable to this proceeding by Rule 9023 of the Federal Rules of Bankruptcy Procedure, provides that "[a]ny motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." "Judgment" as used in these rules includes "any order from which an appeal lies". Rule 54(a), F.R.C.P., applicable to this proceeding by Rule 7054 of the F.R.B.P. To successfully prevail on a motion to reconsider, or in this case, a motion to alter or amend the order, a party must show that there is a need to correct a "clear error of law" or "prevent manifest injustice." In re Worlds of Wonder Securities Litigation, 814 F.Supp. 850 (N.D. Cal. 1993).

The Wusslers respectfully request this court to reconsider its denial of the motion for approval of the settlement and compromise agreement between the trustee and the Wusslers in order to prevent manifest injustice. Manifest injustice will result from the denial of the motion to settle with the trustee in light of the fact that the Wusslers have attempted to resolve all the disputes and litigation with the debtor. However, the debtor has refused to settle with the

1 Wusslers even after the Wusslers accepted a settlement offer from
2 the debtor which included, among other things, the creation of a fund
3 for the children of the debtor and Mrs. Wussler.

4 The Wusslers have been involved in settlement conferences in
5 state court lawsuit pending in the San Diego Superior Court which
6 have taken most of two days. The extensive discussions between the
7 Wusslers and the debtor are described in more in detail in
8 declaration(s) filed in support of this motion. During the first
9 day of these discussions, all parties, including the debtor, the trustee
10 and the Wusslers, eventually agreed to the debtor's proposal that
11 \$125,000 will be paid by the debtor, Silva, into a trust established
12 for the benefit of the children of the debtor and his former wife,
13 Mrs. Wussler. On November 4, 1997, the debtor returned to the continued
14 settlement conference before the San Diego Superior Court (Judge Philip
15 Sharp) refusing to abide by the settlement offer that he had advanced
16 to the Trustee and these moving parties just fifteen (15) days earlier.

17 The debtor refused to settle this matter ... not the Wusslers
18 nor the Trustee! Accordingly, it is manifestly unjust for the Court
19 to deny the motion for approval of the settlement between the trustee
20 and the Wusslers based on the fact that the debtor is not a party
21 to the settlement agreement. Debtor would benefit unfairly by his
22 arbitrariness and unreasonable recalcitrance.

23 CONCLUSION

24 Based upon the foregoing, the Wusslers respectfully request this
25 Court reconsider and alter and/or amend its April 30, 1998, order
26 denying the motion for approval of the settlement between the Trustee
27 and the Wusslers and TCR, Inc., by properly granting the Trustee's
28 earlier motion for approval of the settlement agreement. Justice

1 and the law compel such a result. Debtor, Silva, should not be allowed
 2 to hold these moving parties and the Trustee "hostage" to Debtor's
 3 whim and fancy when prompt settlement will benefit the creditors and
 4 preserve scarce Estate assets by fully and finally resolving complex
 5 litigation and appellate issues.

6 LAW OFFICES OF RICHARD C. NORTON

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Dated: May 11, 1998

By: 
 Richard C. Norton, attorney for
 Barbara J. Wussler, William
 Wussler, a/k/a Doc Wussler
 and The Court Room, Inc.