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3 **UNITED STATES BANKRUPTCY COURT**
4 **EASTERN DISTRICT OF CALIFORNIA**
5

6 In re:) Case No. 16-22134-D-7
7 Stanley Mayfield,)
8 Debtor.) Date: July 13, 2016
9) Time: 10:00 a.m.
10) Dept: D
11)

11 **MEMORANDUM DECISION**

12 This is the motion of the United States Trustee (the "UST") for
13 imposition of sanctions against attorney Pauldeep Bains ("Counsel") for
14 violating LBR 9004-1(c).¹ The matter has been fully briefed and the
15 court has heard oral argument. For the following reasons, the motion
16 will be granted.

17 Counsel, as counsel for the debtor in this case, filed the
18 petition, schedules, statement of financial affairs, statement of
19 current monthly income, statement of intention, verification of master
20 address list, and statement of social security number, all with
21 signatures that had been created by the debtor using an electronic
22 service called DocuSign. In other words, the debtor never put pen to
23 paper to sign these documents. The UST contends this procedure
24 violated Rule 9004-1(c)(1)(C) and (D) because the DocuSign affixation
25 is a software-generated signature and **Counsel, as the registered user**
26 **filing the documents, did not accurately represent that originally**

27 _____
28 1. Unless otherwise indicated, all rule references are to
this court's local rules.

1 signed copies of the documents existed and were in his possession at
2 the time of filing, as required by Rule 9004-1(c)(1)(C), and could not
3 have produced and did not produce the originally signed documents for
4 review when requested by the UST, as required by Rule 9004-1(c)(1)(D),
5 because originally signed documents never existed. Thus, the issue
6 presented here is whether the DocuSign affixation is a software-
7 generated electronic signature for the purpose of Rule 9004-1(c).

8 Counsel engages in some rather strenuous mental gymnastics to
9 support his position that the affixation created by DocuSign is an
10 original signature and not a software-generated electronic signature
11 for purposes of the local rule.² He begins with the evidence rule
12 definition of an "original" writing - "the writing . . . itself or any
13 counterpart intended to have the same effect by the person who executed
14 or issued it." Fed. R. Evid. 1001(d). He also cites 1 U.S.C. § 1,
15 which states that "[i]n determining the meaning of any Act of Congress,
16 unless the context indicates otherwise- . . . 'signature' or
17 'subscription' includes a mark when the person making the same intended
18 it as such" Finally, he cites two dictionary definitions of
19 "signature" as a "mark or sign" made by an individual to represent his
20 name or to signify knowledge, approval, acceptance, or obligation.
21 These rule, statute, and dictionary definitions all focus on the intent
22 of the person making the mark or sign.

23 Therefore, Counsel has had the debtor sign a declaration in which
24 the debtor testifies he intended and expected the affixation he caused
25 DocuSign to place on the documents by clicking the "Sign Here" button

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27 2. At best, Counsel's interpretation is aggressive if not
28 strained. It would have been prudent for Counsel to seek a
determination from the court as to what the local rule requires
rather than taking it on himself to make the determination.

1 to be adopted and treated as his actual signature. The debtor adds he
2 finds the DocuSign process to be secure and convenient. The
3 declaration bears the debtor's signature in cursive handwriting; it is
4 dated a week after the UST requested Counsel produce copies of the
5 debtor's original wet signatures.

6 Most of Counsel's arguments deriving from the rule, statutory,
7 and dictionary definitions depend on the declaration: "the Debtor's
8 intentions are clear and concisely laid out in the declaration"; "it is
9 clear that after reading [the declaration], we can be certain that the
10 Debtor intended each mark that was created after he clicked the 'Sign
11 Here' button to be his signature"; "the Debtor has made it clear that
12 the signatures on [the petition and other documents] through his signed
13 [declaration] is his name or a mark representing his name, marked by
14 himself." Counsel's Memo., DN 20, at 2:25-26, 3:8-10, 3:18-20.

15 The declaration belies the arguments. If Counsel were correct
16 that the DocuSign affixation complied with the local rule, the
17 declaration would have been unnecessary and Counsel would not need to
18 depend on it to support his position. The local rule is designed to
19 enable the court and parties-in-interest to rely on the signatures on
20 the petition, schedules, and other documents as the debtor's original
21 signatures without need of a subsequent declaration with a handwritten
22 signature confirming the debtor's intent. **When the debtor's signatures**
23 **on the documents are in his own handwriting, the need for a subsequent**
24 **declaration concerning his intent is eliminated absent a genuine**
25 **suspicion that the handwritten signatures were forged.**

26 This brings the court to another important problem with Counsel's
27 arguments: they do not address **the ease with which a DocuSign**
28 **affixation can be manipulated or forged.** **The UST asks what happens**

1 when a debtor denies signing a document and claims his spouse, child,
2 or roommate had access to his computer and could have clicked on the
3 "Sign Here" button. Counsel's response is telling: "[The declaration]
4 alleviates any possibility that the Debtor did not actually sign the
5 document himself. He has signed under penalty of perjury a Declaration
6 stating that it was in fact him that signed the documents." Memo. at
7 5, n.3. Again, had the debtor simply signed the documents in his own
8 handwriting, the declaration would have been unnecessary. The
9 essential point is that an individual's handwritten signature is less
10 easily forged than any form of software-generated electronic signature,
11 and the presence of forgery is more easily detected and proven.

12 The flaw appears clearly when Counsel's position is considered in
13 connection with a typewritten name on a signature line: the name may
14 well have been typed by the debtor and intended by him to represent his
15 signature, and if so, under Counsel's analysis, it would satisfy the
16 local rule. Yet it may also have been typed by someone else and not
17 intended by the debtor to be his signature, and the person reviewing
18 the document, critically, cannot tell the difference.

19 Counsel relies on the court's use of the term "manual" in Rule
20 9004-1(d) as demonstrating the court's intent that "the image of an
21 original manual signature" on a fax copy or PDF document includes not
22 just the image of a signature made with a pen but also the image of a
23 DocuSign affixation. Citing three dictionary definitions, Counsel
24 concludes "manual" means "done with the use of your own hands [and not]
25 automatically" (Memo. at 6:20-21); he adds that the debtor used his own
26 hand to click on the "Sign Here" button, as the debtor testified in his
27 declaration. Counsel finds it important that DocuSign requires a
28 separate "Sign Here" click for each signature rather than allowing one

1 click to populate the signature lines on all the documents, which he
2 claims would be an "automated process." This distinction is strained
3 at best, and here again, the argument would apply equally to a name
4 typed on a signature line by the debtor using his own hands, one key at
5 a time, which Counsel does not suggest would comply with the local
6 rule.

7 Counsel's analysis fails for another important reason: the rule
8 makes a distinction between an "originally signed document" and a
9 "software-generated electronic signature." Under Rule 9004-1(c)(1)(C),
10 if a registered user files a document with a software-generated
11 electronic signature of someone else, the filer certifies an originally
12 signed document exists and is in the filer's possession. Under the
13 rule, the "software-generated signature" must be something different
14 from the document bearing the "original signature." Otherwise, it
15 would not be separately identified in the local rule, and there would
16 be no reason for the requirement that the filer retain possession of
17 the "original signature" if that same document had already been scanned
18 and electronically filed. If Counsel's position were correct, the rule
19 would make no sense.³

20 In an effort to overcome this conclusion, Counsel contrives his
21 own personal definition of "software-generated electronic signature,"
22 as used in the local rule, and purports to distinguish it from
23 "electronic signature," as defined in the ESIGN Act, 15 U.S.C. §§

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25 3. Counsel makes much of the fact that the local rule of
26 the bankruptcy court for the Northern District of California uses
27 the term "original ink signature," whereas this court's rule does
28 not. Counsel incorrectly concludes that the absence of the word
"ink" in this court's rule authorizes the use of a DocuSign
affixation as an "original signature." The argument has
virtually no relevance to the analysis of this court's local
rule.

1 7001-7031. A DocuSign affixation, he claims, is the latter not the
2 former; thus, it complies with the local rule. In Counsel's view, the
3 "plain meaning" of "software-generated electronic signature" in the
4 local rule is "a signature placeholder, one that can be put by anyone,
5 including someone other than the signer" (Counsel's Supp. Reply, DN 25,
6 at 3:20-21), as distinguished from an "electronic signature," as
7 defined in the ESIGN Act.⁴ Counsel's distinction does not work for the
8 reasons already discussed and because the ESIGN Act does not apply to
9 documents filed in bankruptcy cases and its definitions have no bearing
10 on the interpretation of the court's local rules.

11 The ESIGN Act provides that "with respect to any transaction in
12 or affecting interstate or foreign commerce-(1) a signature, contract,
13 or other record relating to such transaction may not be denied legal
14 effect, validity, or enforceability solely because it is in electronic
15 form." 15 U.S.C. § 7001(a)(1). However, that provision does not apply
16 to "court orders or notices, or official court documents (including
17 briefs, pleadings, and other writings) required to be executed in
18 connection with court proceedings." 15 U.S.C. § 7003(b)(1). Further,
19 DocuSign's website itself states that the Act "grants legal recognition
20 to electronic signatures and records, if all parties to a contract
21 choose to use electronic documents and to sign them electronically."
22 U.S. electronic signature laws and history. docusign.com/esign-act-and-
23 ueta. Web 17 June 2016. A bankruptcy case is not a contract where all
24 parties have agreed to use electronic signatures.

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26 4. The Act defines an "electronic signature" as "an
27 electronic sound, symbol, or process, attached to or logically
28 associated with a contract or other record and executed or
adopted by a person with the intent to sign the record." 15
U.S.C. § 7006(5).

1 The court finds that a DocuSign affixation is a software-
2 generated electronic signature, as distinguished in the local rule from
3 an originally signed document. Although DocuSign affixations and other
4 software-generated electronic signatures may have a place in certain
5 commercial and other transactions, they do not have a place as
6 substitutes for wet signatures on a bankruptcy petition, schedules,
7 statements, and other documents filed with the court, and they do not
8 comply with this court's local rule. The court agrees with the UST
9 that requiring attorneys to maintain their clients' handwritten
10 signatures "helps ensure the authenticity of documents filed with the
11 Court." UST's Reply, DN 23, at 5:4-5. Treating software-generated
12 electronic signatures as original signatures would, as the UST
13 contends, "increase the possibility of confusion and mischief in the
14 signature process (especially where less scrupulous e-filers are
15 involved)" (*id.* at 5:15-16), whereas distinguishing them helps to
16 protect the integrity of the bankruptcy system.⁵ The convenience of
17 the debtor and the debtor's attorney pales when put up against the need
18 to protect the integrity of the documents filed in bankruptcy cases.
19 Put simply, documents with the significant legal effects of a
20 bankruptcy petition and related documents, especially documents signed
21 under the penalty of perjury, must, absent contrary rules adopted by a
22 higher rule-making authority, be signed in ink, and the attorney or
23 party presenting them for filing must retain and produce the pages

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25 5. Counsel notes that the debtor in this case "has never
26 denied signing the documents." Supp. Reply at 3:25. Therefore,
27 in Counsel's view, he and the debtor "should not be penalized
28 because the UST feels that a Debtor 'could' deny signing the
documents." *Id.* at 3:25-26. This argument assumes the rules
governing signatures on bankruptcy documents may appropriately
differ on a case-by-case basis, an option the court obviously
rejects.

1 bearing the original signatures in accordance with the local rule.

2 For the reasons stated, the motion will be granted and the court
3 will impose the penalty the UST suggests - Counsel will be ordered to
4 complete the online e-filing training on the court's website and to
5 file a declaration verifying that he has done so. The court will issue
6 an order.

7 **Dated:** July 15, 2016

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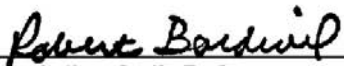
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Robert S. Bardwil, Judge
United States Bankruptcy Court