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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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LARRY J. LICHTENEGGER,  
  
Appellant,  
  
v.  
  
BANK OF MONTREAL, as  
Administrative Agent, successor  
by Assignment to Debtors SK  
Foods, L.P. and RHM Industrial  
Specialty Foods, Inc., a  
California corporation, d/b/a  
Colusa County Canning Co.,  
  
Appellee.

CIV. NO. 2:18-390 WBS  
  
Bankruptcy Case No.  
09-29162 - D - 11  
  
Adversary Proceeding No.  
09-02543 - D  
  
ORDER RE: BANKRUPTCY APPEAL

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Appellant Larry J. Lichtenegger, an attorney, brought this appeal of a judgment issued by the United States Bankruptcy Court for the Eastern District of California finding appellant in contempt for violation of a temporary restraining order.

(Appellant's Opening Brief, Docket No. 8.)

The court reviews the decision to impose contempt for an abuse of discretion. FTC v. Affordable Media, LLC, 179 F.3d

1 1228, 1239 (9th Cir. 1999). An evaluation of abuse of discretion  
2 follows a two-prong test. First, the court determines de novo  
3 whether the bankruptcy court identified the correct legal rule  
4 for application. United States v. Hinkson, 585 F.3d 1247, 1261-  
5 62 (9th Cir. 2009) (en banc). If the Bankruptcy Court did  
6 identify the correct rule, the court reviews whether the  
7 application of the legal rule was clearly erroneous, and will  
8 affirm unless its findings were illogical, implausible, or  
9 without support in the record. Id. at 1262.

10 For the reasons set forth in the Bankruptcy Judge's  
11 written memorandum decision filed February 6, 2018 (In re SK  
12 Foods, L.P., No. 09-29162-D-11, 2018 WL 784451 (Bankr. E.D. Cal.  
13 Feb. 6, 2018)), appellant was properly found in contempt for  
14 violation of a temporary restraining order. First, the  
15 Bankruptcy Court correctly identified the pertinent legal  
16 standard: "[t]he moving party has the burden of showing by clear  
17 and convincing evidence that the contemnors violated a specific  
18 and definite order of the court. The burden then shifts to the  
19 contemnors to demonstrate why they were unable to comply." Id.  
20 at \*1 (quoting Affordable Media, 179 F.3d at 1239) (internal  
21 quotation marks omitted).

22 Second, the Bankruptcy Court's factual findings were  
23 not illogical or implausible and had support in the record. See  
24 Hinkson, 585 F.3d at 1261. Further, the Bankruptcy Court's  
25 application of those findings of facts to the correct legal  
26 standard was not clearly erroneous.

27 IT IS THEREFORE ORDERED that the order of the  
28 Bankruptcy Court finding appellant Larry J. Lichtenegger in

1 contempt be, and the same hereby is, AFFIRMED.

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3 Dated: September 11, 2018



4 WILLIAM B. SHUBB  
5 UNITED STATES DISTRICT JUDGE

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