UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

January 8, 2015 at 10:30 a.m.

1.	**14-29231-E-11**	**MIZU JAPANESE SEAFOOD**	**MOTION FOR COMPENSATION FOR**
	RLC-7	**BUFFET, INC.**	**STEPHEN M. REYNOLDS, DEBTOR'S**
		Stephen M. Reynolds	**ATTORNEY**
			12-12-14 [90]

Tentative Ruling: The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors' committee or creditors holding the 20 largest unsecured claims], parties requesting special notice, and Office of the United States Trustee on December 12, 2014. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing **----------**.

The Motion for Allowance of Professional Fees is granted.

Stephen Reynolds, the Attorney ("Applicant") for Mizu Japanese Seafood Buffet, Inc. the Debtor in Possession ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period September 16, 2014 through December 4, 2014. The order of the court approving employment of Applicant was entered on October 14, 2014, Dckt. 42. Applicant requests fees in the amount of $20,220.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not--
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including case administration, plan statements, creditor meetings, litigation, claim analysis, and asset disposition. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 32.75 hours in this category. Applicant assisted Client with: (1) communications with the client regarding case development; (2) preparing IDI documents for review by U.S. Trustee; (3) attending IDI meeting; (4) filing and reviewing Monthly Operating Reports; and (5) drafting and filing motions to sell assets.

Plan Statement: Applicant spent 4.8 hours in this category.

Creditor Meeting: Applicant spent 3.0 hours in this category.

Litigation: Applicant spent 14.25 hours in this category. Applicant drafted motions for protective order and prepared for and attended 2004 examination of Jason Cheng.

Claims: Applicant spent .2 hours in this category.

Asset Disposition: Applicant spent 12.4 hours in this category. Applicant drafted a motion for sale and responded to oppositions as well as attending the hearing.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Stephen Reynolds	67.4	$300.00	$20,220.00
Total Fees For Period of Application			$20,220.00

FEES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $20,220.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved pursuant to 11 U.S.C. § 330] and authorized to be paid by the Debtor-in-Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11.

On an interim basis, the court allows all of the fees requested. It may well be that this case is quickly moving to a liquidation of assets and sale of property of the estate. The “jury is still out” on the benefit to the estate of the services provided and whether they work toward a possible confirmable plan (for which no confirmation is guaranteed by counsel or required for final allowance of fees).

Applicant is allowed, and the Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $20,220.00
Costs and Expenses $ 0.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Stephen Reynolds ("Applicant"), Attorney for the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Stephen Reynolds is allowed the following fees and expenses as a professional of the Estate:

Stephen Reynolds, Professional Employed by Debtor in Possession

Fees in the amount of $ 20,220.00
Expenses in the amount of $ 0.00,

The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that Debtor in Possession is authorized to pay 75% the interim fees allowed by this Order from the available unencumbered monies of the Estate in a manner consistent with the order of distribution in a Chapter 11.

2. 13-20051-E-7 TYRONE BARBER
CAB-8 Cory A. Birnberg

OBJECTION TO CLAIM OF ROSE MAGNO, CLAIM NUMBER 11
11-13-14 [315]

Tentative Ruling: The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor on November 12, 2014. By the court's calculation, 57 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 11-1 of Rose Magno is overruled.

Tyrone Barber, the Debtor ("Objector") requests that the court disallow the claim of Rose Magno ("Creditor"), Proof of Claim No. 11-1 ("Claim"), Official Registry of Claims in this case.

The Objection states the following grounds upon which the request for relief is based:

A. The Debtor is not justly and truly indebted to said claimant.

B. Said claim was never owing by the Debtor.

C. The claim is based upon the allegation that Debtor owes child support. Contrary to this allegation, Rose Magno owes child support and attorneys fees to the Debtor. See schedule B of

Debtor.

The Objection to the Claim merely states that the child support is owed to Debtor and not Creditor without providing any evidence outside of pointing to the Debtor's schedules. This is not sufficient.

The Objector has filed his declaration to support the Objection to the Claim. Though not stated in the Objection, he testifies:

A. Attached to the Declaration is a copy of the Department of Child Support services "certified" report" showing that the Objector is actually owed $94,160.50 in child support. FN.1.

FN.1. Though the Local Bankruptcy Rules and Revised Guidelines for the Preparation of Documents requires that a party file the exhibits as a separate document (all exhibits may be filed as one document) from the objection, each declaration, and points and authorities, the court waives the rule with respect to the attachments to the Declaration for this Objection only. Neither counsel nor the Objector should assume that the court will waive the failure to file other basic rules for the filing of pleadings in this court.

The Exhibit, Dckt. 318, pgs. 4-9, discloses the following information. The Correspondence is from the San Joaquin County Department of Child Support Services. It is dated December 15, 2014. It states that a Certified audit is enclosed with the letter pursuant to the request of Objector's attorney. The Correspondence concludes that the audit was based on a Alameda County Superior Court Order filed on September 26, 2012 which states that Creditor Rose Magno owed $49,737.57 to the Objector, Tyrone Barber.

The Certified Audit, Exhibit pgs. 5-9, proceeds with a calculation beginning with the $49,737.57 arrearage, additional charges, interest, and credit for $20,000.00 in payments – which yields a current obligation of $94,160.50.

REVIEW OF PROOF OF CLAIM NO. 11

A Proof of Claim may be prima facie evidence of the obligation, subject to that being rebutted by evidence presented by the objecting party. It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the *prima facie* validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

> "Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to

> produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Here, Proof of Claim No. 11 asserts the following:

A. Creditor is owed $93,500.00 by Objector (Debtor).

B. The obligation is based on a 2007 Stipulation in lieu of child support.

C. A summary is attached to the Proof of Claim in which Creditor alleges,

1. On April 11, 2011, Creditor filed a complaint against attorney Eugene Hannon and the Objector (Debtor) seeking a recovery of $55,000.00, plus interest and attorneys' fees. Civil Case RG11-570236.

2. On April 11, 2007, Creditor and Objector entered into a global settlement agreement resolving all support obligation disputes arising out of the 2004-2007 family law case between Creditor and Objector.

3. It is alleged that in lieu of the payment of child support, the Objector was to put $55,000.00 into trust for the Creditor's three minor children. The Objector was then to make monthly payments into the trust account commencing in March 2007 and continuing thereafter until fully funded. Eugene Hannon, the Objector's family law attorney was to act as trustee for the monies.

4. In February 2011 the Objector and his attorney sought to nullify and void the stipulation on the grounds that the statute of limitations to enforce the settlement had expired.

5. The Objector asserted that he was entitled to the $55,000.00 provided for in the Stipulation.

6. In March 2011, Creditor hired an attorney to enforce the asserted rights under the Stipulation.

7. In 2012 Eugene Hannon was disbarred by the California State Bar. FN.2.

FN.2. This allegation is consistent with the information reported by the California State Bar on its website concerning the only attorney with the name Eugene Hannon listed by the State Bar, with the exception that it is report that in August 2012 Mr. Hannon was "Not Eligible to Practice Law" and his disbarment date is show to be February 14, 2013. http://members.calbar.ca.gov/fal/Member/Detail/85632.

Also attached to the Proof of Claim is a Stipulation with an Alameda County Superior Court filed date of April 15, 2009. The Stipulation has signatures for Creditor, Creditor's attorney, the Objector, and Objector's state court attorney at the time. On its face, the Stipulation provides,

A. Pending establishment of a different trust account for the benefit of three minor children, the beneficiaries of a Revised Settlement Agreement reached between the Creditor and Objector on December 13, 2006, Objector shall deposit $9,166.66 into an interest bearing trust account in the name of the Objector and Creditor, with Eugene M. Hannon the Trustee. The payments shall commence March 2008 and continue until the full $55,000 has been funded or the guardian trust account has been established.

B. Eugene M. Hannon shall be the trustee of the trust account, which will be opened at Union Bank of California.

No copy of the asserted December 13, 2006 Settlement Agreement is attached to Proof of Claim No. 11.

RULING

The minimalistic allegations in the Objection to Claim do not sufficiently rebut Proof of Claim No. 11. The parties are talking "apples and oranges," with the Objector not addressing the April 16, 2007 Stipulation. All Objector contends is that "I don't truly and justly owe the money." That is not sufficient to rebut the *prima facie* evidentiary value of Proof of Claim No. 11.

The court will not try to construct for Objector possible grounds by which he might have to object to Proof of Claim No. 11. That is the job of the Objector and his counsel.

Because the Objection is so insufficient, and in light of there being no opposition, the court denies it without prejudice. FN.3.

FN.3. One of the documents filed by Objector is the ruling by the State Court in one of the matters between these parties. The State Court judge noted that while each party seeks to blame the other for the costs of the divorce litigation,

"However, the Court suggests that each party take a good, hard

> look in the mirror to view one of the primary causes for the high amount of fees and costs that were amassed in this matter. This was a hotly contested, contentious post-judgment case that was extremely litigious and each party must share the blame in the ultimate cost of the case."

Dckt. 316, Pg. 2. The incomplete pleading of the Objection only further adds to unnecessary cost and expense for not only the parties, but the court.

The Objection is overruled without prejudice.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Rose Magno, Creditor filed in this case by Tyrone Barber, Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 11-1 of Rose Magno is overruled, without prejudice.

3. 13-20051-E-7 TYRONE BARBER
CAB-8 Cory A. Birnberg

OBJECTION TO CLAIM OF ROSE MAGNO, CLAIM NUMBER 12
11-21-14 [317]

Tentative Ruling: The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor on November 21, 2014. By the court's calculation, 48 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 12 of Rose Magno is overruled.

Tyrone Barber, the Debtor ("Objector") requests that the court disallow the claim of Rose Magno ("Creditor"), Proof of Claim No. 12 ("Claim"), Official Registry of Claims in this case.

The Objection states the following grounds upon which the request for relief is based:

A. The Debtor is not justly and truly indebted to said claimant.

B. Said claim was never owing by the Debtor.

C. The claim is based upon the allegation that Debtor owes reimbursable expenses. Contrary to this allegation, Rose Magno owes child support, attorneys fees to the Debtor, and payments to the special master Hawkins.

D. The excerpts of the Daniel Hawkins amended findings are incomplete and Rose Magno misrepresents the complete findings.

The motion merely states that the child support is owed to Debtor and not Creditor without providing any evidence outside of pointing to the Debtor's schedules. This is not sufficient.

This Objection is supported by the Objector's (Debtor's) declaration. Dckt. 318. This is a copy of the declaration (as is the Objection)_ used in Objecting to Proof of Claim No. 11 filed by this creditor. The court overruled the Objection to Proof of Claim No. 11 without prejudice.

REVIEW OF PROOF OF CLAIM NO. 12

In Proof of Claim No. 12 Creditor asserts a claim of $22,885.23 for "unpaid arrears." The Attachment to Proof of Claim No. 12 states that on February 5, 2013, the Special Master in the State Court action recommended that the Objector pay creditor $16,233.24. No reference is made to any such recommendation being adopted by the court and the payment ordered. The Attachment does state that the Special Master has suspended his work due to non-payment of fees and that Creditor intends to seek a re-review of the findings and recommendation.

RULING

With respect to Proof of Claim No. 12, both the Objection and the Proof of Claim are short on stating grounds for either. As the court reads Proof of Claim No. 12, there were Recommendations made by a Special Master, but no court order actually ordering such amounts to be paid has been filed. However, in his declaration the Objector (Debtor) fails to affirmatively state under penalty of perjury that no such obligation exists. He merely states that he is owed child support from Creditor. The declaration is pregnant with the implication that such an order exists and there is an obligation owing. The Objection merely alleges that the Objector (Debtor) "is not justly and truly indebted to said claimant." While alleging that the documentation provided by Creditor is incomplete, Objector fails to allege the true, sufficient facts and grounds upon which an objection could be sustained.

The minimalistic allegations in the Objection to Claim do not sufficiently rebut Proof of Claim No. 12. All Objector contends is that "I don't truly and justly owe the money." That is not sufficient to rebut the *prima facie* evidentiary value of Proof of Claim No. 12.

The court will not try to construct for Objector possible grounds by which he might have to object to Proof of Claim No. 11. That is the job of the Objector and his counsel.

Because the Objection is so insufficient, and in light of there being no opposition and the minimalistic support in Proof of Claim No. 12, the court denies it without prejudice. FN.1.

FN.1. One of the documents filed by Objector in connection with the Objection to Proof of Claim No. 11 filed by this Creditor is the ruling by the State Court in one of the matters between these parties. The State Court judge noted

that while each party seeks to blame the other for the costs of the divorce litigation,

> "However, the Court suggests that each party take a good, hard look in the mirror to view one of the primary causes for the high amount of fees and costs that were amassed in this matter. This was a hotly contested, contentious post-judgment case that was extremely litigious and each party must share the blame in the ultimate cost of the case."

Dckt. 316, Pg. 2. The incomplete pleading of the Objection only further adds to unnecessary cost and expense for not only the parties, but the court.

The Objection is overruled without prejudice.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Rose Magno, Creditor filed in this case by Tyrone Barber, Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 12 of Rose Magno is overruled.

4. 14-23471-E-11 ERROL/SUZANNE BURR
DNL-5 Iain A. MacDonald

MOTION TO EMPLOY PATRICK J. WALTZ AS SPECIAL COUNSEL
12-3-14 [202]

Final Ruling: No appearance at the January 8, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on December 3, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Employ has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Employ is granted.

Chapter 11 Trustee, Susan Smith, seeks to employ Waltz Law Firm, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel to assist the Trustee in prosecuting the Chapter 11 estate's interest in legal malpractice claims asserted in *Errol D. Burr and Suzanne L. Burr, individually and as Trustees of the Burr Family Trust v. Raymond shine, et al.*, Sierra County Superior Court No. 7196, and the claims in Adversary Proceeding No. 14-021840E pursuant to a contingency fee agreement.

The Trustee argues that Counsel's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present legal malpractice claims arising from the alleged malpractice of Raymond Shine in his former representation of the Debtors in an underlying property dispute case.

Patrick Waltz, a member of Waltz Law Firm, testifies that he is seeking to represent the Debtors as special counsel for the malpractice claims. Mr. Waltz testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Waltz Law Firm as special counsel for the Chapter 11 estate on the terms and conditions set forth in the Contingency Fee Agreement filed as Exhibit A, Dckt. 206. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by the Chapter 11 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted and the Chapter 11 Trustee is authorized to employ Waltz Law Firm counsel for the Chapter 11 Trustee on the terms and conditions as set forth in the Contingency Fee Employment Agreement filed as Exhibit A, Dckt. 206.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.
>
> **IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with

this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

5. 14-23471-E-11 ERROL/SUZANNE BURR
DNL-7 Iain A. MacDonald

MOTION FOR COMPENSATION FOR PATRICK J. WALTZ, SPECIAL COUNSEL
12-11-14 [210]

Final Ruling: No appearance at the January 8, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on December 11, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted for Interim Fees pursuant to 11 U.S.C. § 331.

Susan Smith, the Chapter 11 Trustee, filed the instant Application to Approve Chapter 13 Compensation of Special Counsel for Waltz Law Firm.

The period for which the fees are requested is for the period April 10,

2014 through July 7, 2014. The order of the court approving employment of Applicant was entered on May 24, 2014, Dckt. 49. Applicant requests fees in the amount of $7,710.00 and costs in the amount of $157.80.

However, the Trustee and the Waltz Law Firm have failed to provide task billing for the services provided for by the Waltz Law Firm.

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The more simple the services provided, the easier is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, U.S. Trustee with fair and proper disclosure of the services provided and fees being requested by this Professional.

Included in the motion is Applicant's raw time and billing records, which has not been organized into categories. Rather than organizing the activities which are best known to Applicant, it is left for the court, U.S. trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information. FN.1.

FN.1. The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than 20 years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report which separates the activities into the different tasks.

REVIEW OF RAW BILLING DATA

The Trustee does provide with her motion Exhibit B, which is a billing statement covering four months of work. Dckt. 213. This provides the raw data of the services provided, time expenses, and dollar charges. The Trustee "directs" (or expects) the court to organize this information and provide for the Trustee and counsel the task billing analysis.

It appears that there are several significant task areas spread over the seven pages of billing data. These include (1) relief from stay proceeding, (2) analysis of bankruptcy issues, (3) preparation for meetings, (4) reviewing detailed legal memos from opposing counsel, (5) review of expert opinion letters, (6) review of pleadings relating to motion to convert or

dismiss, (7) removal of state court action, and (8) pleadings and issues relating to conversion to Chapter 11.

This is not a simple situation (which rarely could exist) where the task billing related to only one legal activity and the task billing analysis merely duplicated the raw billing statement. The Trustee does provide the court with the declaration of one of the attorneys in Counsel's office assuring the court that all of the billings are reasonable – apparently in lieu of providing the court with a task billing analysis.

In the Motion the Trustee provides the court with a list of fifteen different task areas of work for Counsel – but fails to provide the court with a summary of the hours worked and fees billed for each task.

RULING

The prosecution of the action for which Counsel was employed by the Chapter 13 Debtors and is now employed by the Chapter 11 Trustee has been fraught with problems. Counsel had only three months to work on the matter post-bankruptcy before the case was converted to one under Chapter 11. After getting her feet on the ground, the Chapter 11 Trustee sought to employ another attorney as special counsel to prosecute the action. Motion to Employ, Dckt. 159. Due to the conflicts and connection of that proposed counsel, the court ordered a briefing schedule and hearing on that motion to employ. Civil Minutes, Dckt. 170. One of the most significant conflicts was that the proposed special counsel had previously represented the opposing party – which conflict drew the objection of the Debtors. Ultimately the Trustee dismissed that motion, choosing not to employ that counsel. Notice of Withdrawal, Dckt. 173.

Prior to the commencement of this case the Debtors provided Counsel with a $5,000.00 retainer. See Declaration of Patrick Waltz, Dckt. 24. It is from this retainer only $275.88 of the requested fees are to be paid, which will them be credited to the contingent fee to be paid Counsel for his services in connection with the Action

Rather than prolonging the situation, the court waives (for this Motion only) the filing of a task billing analysis which accurately states the time and charges for each of the tasks.

Therefore, the court approves the following First Interim fees and expenses pursuant to 11 U.S.C. § 331, to the Waltz Law Firm, Patrick Waltz counsel of record,

Fees in the amount of $7,710.00, and
Costs of $157.80,

for the period of April 10, 2014 through and including July 7, 2014. The allowed interim fees and costs shall first be paid only from the $275.88 of the remaining pre-petition retainer held by Counsel in its Client Trust Account and then by the Chapter 11 Trustee from unencumbered monies as proper under the Bankruptcy Code.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Waltz Law Firm, Patrick Waltz counsel of record, ("Applicant"), former counsel for the Chapter 13 Debtors and current counsel for the Chapter 11 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Waltz Law Firm, Patrick Waltz counsel of record, is allowed the following fees and expenses as a professional of the Estate:

Fees in the amount of $ 7,710.00
Expenses in the amount of $ 157.80,

The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Chapter 11 Trustee is authorized to pay the interim fees allowed by this Order from the available unencumbered monies of the Estate in a manner consistent with the order of distribution in a Chapter 11, after counsel applies $275.88 of the original $5,000.00 retainer in its trust account.

IT IS FURTHER ORDERED that any allowed fees which are paid shall be applied as a credit for the benefit of the estate against the contingent fee which Applicant may be entitled pursuant to his employment by the Chapter 11 Trustee as authorized by the court.

6. 10-23577-E-11 GLORIA FREEMAN **MOTION FOR ENTRY OF DISCHARGE**
MF-1 Reno F.R. Fernandez **12-11-14 [1525]**

Final Ruling: No appearance at the January 8, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion For Entry of Discharge is granted.

The Motion for Entry of Discharge has been filed by Gloria Freeman ("Debtor").

In the Motion, the Debtor states that pursuant to the Settlement Agreement as modified by the first Modification to Settlement Agreement between David Flemmer, in his capacity as Plan Administrator under the Liquidating Trust, the Debtor, and Laurence Freeman, and approved by the court on September 10, 2014 (Dckt. 1489), the Debtor is entitled to an entry to discharge.

Specifically, the Debtor states that she has filed stipulations for the dismissal of all appeals pending in Debtor's bankruptcy case (BAP No. 13-1593; 13-1594; 14-1408). On September 22, 2014, the Bankruptcy Appellate Panel entered that certain Order Dismissing Appeals (BAP Nos. 13-1593 and 13-1594). Thereafter, on September 26, 2014, the Bankruptcy Appellate Panel also entered that certain Order of Dismissal (BAP No. 14-1408).

On October 15, 2015, the Plan Administrator filed the Stipulation of Dismissal of Adversary Proceeding, No. 13-02027, Dckt. 93. The Adversary Proceeding was closed on November 3, 2014.

Pursuant to the Settlement Agreement, all appeals filed by the Debtor

were dismissed on September 26, 2014. Debtor asserts that the Debtor is entitled to a discharge within thirty days following dismissal of all her appeals, which ran on October 26, 2014.

There being no objection and the Debtor fulfilling all conditions precedent pursuant to the Settlement Agreement, the Debtor is entitled to a discharge.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Entry of Discharge filed by the Gloria Freeman (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the court shall enter the discharge for Gloria Freeman in this case.

7. 14-32085-E-13 PATRICIA MELMS — MOTION TO EXTEND AUTOMATIC STAY
MRL-1 Mikalah R. Liviakis — 12-17-14 [7]

Tentative Ruling: The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 18, 2014. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Extend the Automatic Stay is granted on an interim basis.

Patricia Melms ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 14-21205) was dismissed on October 14, 2014, after Debtor failed to file an amended plan and motion to confirm. *See* Order, Bankr. E.D. Cal. No. 14-21205, Dckt. 104, October 14, 2014. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the

court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors – including those used to determine good faith under §§ 1307(c) and 1325(a) – but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as her previous law firm did not communicate with her in a timely manner concerning the need to file a new Plan by September 29, 2014. Specifically, the Debtor states that her previous firm requested the information from Debtor late and used an e-mail address that the Debtor told the firm she does not check.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

CHAMBERS PREPARED ORDER

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, through an including February 6, 2015, unless terminated by operation of law or further order of this court.

IT IS FURTHER ORDERED that the court shall conduct a final hearing on the Motion on February 3, 2015. Written Opposition, if any, to the Motion shall be filed and served on or before January 21, 2015, and Replies, if any, filed and served on or before January 28, 2015.

IT IS FURTHER ORDERED that the Debtor shall serve a copy of this Order on all parties in interest on or before January 13, 2015.