UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

January 11, 2018, at 10:30 a.m.

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1. **16-90500-E-11** **ELENA DELGADILLO** **CONTINUED MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO PAY**
HSM-18 **Len ReidReynoso** **11-14-17 [260]**

No Tentative Ruling: 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2017. By the court's calculation, 30 days' notice was provided. The court required service by November 15, 2017. Dckt. 267.

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is xxxxx.

The Bankruptcy Code permits Irma Edmonds, the Chapter 11 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 9115 International Boulevard, Oakland, California ("Property").

The proposed purchaser of the Property is Mohsen Mohamed, and the terms of the sale are:

A. Purchase price of $275,000.00;

B. Deposit of $9,000.00, which shall be nonrefundable if Buyer fails to close;

C. Escrow to close within fifteen days of court approval;

D. Seller to pay prorated share of real property taxes;

E. Buyer to purchase the Property with tenants in place;

F. Buyer shall assume EBMUD sewer lateral compliance fees;

G. Property sold as is, where is, with all faults;

H. Broker's commission of 6.00% to Coldwell Banker Residential Brokerage; and

I. From the sale proceeds, Movant intends to pay the claim of Creditor Sacramento Lopez.

The Motion seeks to sell the Property free and clear of the lien of Sacramento Lopez ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> "(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established that Creditor consents to the sale free and clear of its lien. Dckt. 260 at 6–7. Additionally, Creditor filed a Statement of Consent on November 17, 2017. Dckt. 270.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 30, 2017. Dckt. 276. Debtor argues that she has acquired sufficient funds to satisfy the remaining balance of claims. Debtor states that her daughter received a loan against the daughter's property and then gave $240,000.00 to Debtor. *Id.* at 3. Now, Debtor wants to use those funds to pay the claims in this case and retain the remaining real property assets.

MOVANT'S REPLY

Movant filed a Reply on December 7, 2017. Dckt. 283. Movant argues that Debtor has claimed before to have sufficient funds to fully resolve this case, but Movant does not believe Debtor. First, Debtor's contentions are not supported by any admissible evidence. Second, Movant states that Debtor is incorrect that approximately one million dollars has been distributed to Creditor; the actual sum is $684,988.04. Creditor is owed $423,454.50 still. Movant asserts that there are not sufficient funds on hand to pay Creditor.

DECEMBER 14, 2017 HEARING

At the hearing, the court continued the matter to 1:30 p.m. on December 19, 2017, specially set to be heard in Courtroom 33 of the Sacramento Division of the court. Dckt. 290.

DECEMBER 19, 2017 HEARING

At the hearing, Movant requested that the hearing be continued pending completion of another pending sale and Debtor funding the balance to pay all claims and expenses in full. Dckt. 292. The court continued the matter to 10:30 a.m. on January 11, 2018. Dckt. 293.

DISCUSSION

Debtor opposes the present Motion, having her attorney argue that Debtor tells him that she has obtained $240,000.00 from her daughter that she will pay to Movant to fund the final distribution to all creditors in this case. Opposition ¶ 15, Dckt. 276. These arguments are unsupported by any evidence—either in the form of a declaration or proof of such funds being available. Further, nothing is presented to the court to show that Debtor, acting through her counsel, has tendered the $240,000.00 to Movant.

In response to the Opposition, Movant has provided her declaration. Dckt. 281. Movant's testimony addresses the status of the prior approved sales of property of the estate, advising the court, Debtor, and parties in interest that two sales have closed. However, the sale of the Bancroft Property (as referenced by Debtor) did not close and that property continues to be property of the bankruptcy estate.

In her declaration, Movant also points out several concerns she has with respect to the unauthenticated loan documents by which the purported loan was obtained by Debtor's daughter.

Appointment of Movant

Debtor's eleventh and one-half hour opposition argued by her counsel is considered in light of Debtor's performance of her fiduciary duties as the debtor in possession and her prosecution of this case prior to the appointment of Movant. The court addressed this in its ruling on the Motion to Appoint a Trustee or Convert the Case. Civil Minutes, Dckt. 76.

The findings and conclusions of the court stated in the Civil Minutes for the hearing on the Motion to Appoint a Trustee or Convert the Case include the following:

> Here, both a party in interest (Creditor) and the U.S. Trustee have requested the appointment of a trustee, and they have established both cause for appointment of a trustee and that such appointment is in the best interest of creditors. **Debtor in Possession was to administer the Estate according to a stipulation, but has failed to do so. Debtor in Possession transferred eleven properties**, then expressed intention to sell them, **but has since not reconveyed all of the properties** and has not filed a motion to employ a realtor. Debtor in Possession also has not filed a disclosure statement, a plan, or the required monthly operating reports. **Debtor in Possession's conduct is evidence of gross mismanagement**, and there is cause for the court to appoint a trustee in this case.
>
> . . .
>
> A Status Conference was conducted on November 22, 2016, with counsel for the Debtor in Possession appearing. As stated in the U.S. Trustee's pleading, the **Debtor in Possession has not been filing monthly operating reports (being in default for the months of July 2016 and each month thereafter through November 2016)** and has **not taken steps to engage a real estate** broker to market the property or advance a Chapter 11 Plan. Counsel for the Debtor in Possession reports that the Debtor in Possession has limited English language skills and everything is translated through her son. However, **no explanation is provided for why an accountant or other professional has not been hired to assist in the preparation of the necessary reports**, why the son or other family member is not working with the Debtor in Possession to prosecute this case, or why or how the Debtor can fulfill the duties of a debtor in possession given her conduct to date.
>
> Cause has been shown for the appointment of a Chapter 11 trustee in this case. **Debtor has not fulfilled her basic duties as a debtor in possession and has not advanced a plan in this case**. Though some properties have been recovered from the family members to which they were transferred, nothing further is developing.

Civil Minutes, Dckt. 76 (emphasis added).

Reported Status of Properties, Sales, and Claims

Movant testifies that Debtor's arguments about the sales proceeds is inaccurate as one of the sales has fallen through. Movant also provides her testimony of the monies on hand, payment of secured claims to date, projected monies necessary to pay administrative expenses, and the amount necessary to pay the claims in this case.

Movant argues that Debtor has claimed before to have sufficient funds to fully resolve this case, but Movant does concur in Debtor's projection. First, Debtor's contentions are not supported by any admissible evidence. Second, Movant states that Debtor is incorrect that approximately one million dollars has been distributed to Creditor; the actual sum is $684,988.04. Creditor is owed $423,454.50 still. Movant asserts that there are not sufficient funds on hand to pay Creditor.

Movant argues that Debtor has assumed incorrectly that all of the property sales in this case have closed. The sales of real property at Orchard Road, Vernalis, California, and at 1920 82nd Avenue, Oakland, California, have closed, but a proposed sale for real property at 5319 Bancroft Avenue, Oakland, California, did not close. Dckt. 281. From the two completed sales, Movant has distributed $684,988.04 to Creditor, leaving $423,454.50 to be paid.

Movant has retained $347,748.00 in this case to cover all administrative expenses for the case, including Movant's commission, compensation for professionals, and post-petition taxes due by the Estate. Movant does not know if that amount will be sufficient to pay all administrative expenses, which total approximately $374,900.00 at this time. Movant estimates the administrative expenses as follows:

A. Movant's commission—not less than $65,000.00;

B. Movant's attorneys' fees and costs—$28,000.00;

C. Movant's CPA's fees and costs—$47,000.00;

D. Federal and state taxes—$217,400.00; and

E. Quarterly U.S. Trustee fees—$17,500.00.

Movant estimates that at least $815,669.62 will be required to pay all claims in this case. With the Estate retaining $353,785.20, there is a shortage of $461,884.42. Even with $240,000.00 purportedly being given to Debtor, Movant argues that there would still not be enough funds to pay all claims in this case.

Reported Status of Chapter 11 Plan or Conversion to Chapter 7 If Claims to be Paid Through Liquidation of Properties Outside of a Chapter 11 Plan

At the hearing, Movant reported that prosecuting a Chapter 11 Plan in this case is not warranted in light of the costs of a plan, this having been coordinated with Debtor. Debtor agrees, and as stated at the

hearing, Debtor has obtained $240,000.00 in funds from her daughter to fund the Estate and provide for payment in full, when added to the proceeds of this sale and prior sales.

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

The court has approved prior sales of property in this case, but now Debtor requests that the court not allow more sales because Debtor has acquired funds that are sufficient to pay the claims in this case. Based on the evidence before the court, the Motion is xxxxxxxxx.

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 Sell Property filed by Irma Edmonds, the Chapter 11 Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Movant ~~is authorized to sell pursuant to 11 U.S.C. § 363(f) to Mohsen Mohamed or nominee ("Buyer"), the Property commonly known as 9115 International Blvd., Oakland, California ("Property"), on the following terms:~~
>
> ~~A. The Property shall be sold to Buyer for $275,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 264, and as further provided in this Order.~~
>
> ~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.~~
>
> ~~C. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~
>
> ~~D. Movant is authorized to pay a real estate broker's commission in an amount equal not to exceed six percent of the actual purchase price upon consummation of the sale. The commission shall be paid to Movant's broker, Coldwell Banker Residential Brokerage, agent Stephanie Davis, and Buyer's broker as provided in the Purchase Agreement.~~

E. The sale of the property is made pursuant to 11 U.S.C. § 363(f)(2) (consent of Sacramento Lopez having been given (Dckt. 270)) and § 363(f)(3) [sales proceeds exceeding the amount of the secured claim] free and clear of the lien of Sacramento Lopez, which lien shall attach to all remaining proceeds from the sale of the Property to the extent of his secured claim in this case. Movant shall direct the disbursement directly from escrow to Sacramento Lopez in an amount not to exceed Mr. Lopez's secured claim in this case and such disbursement shall be applied to Mr. Lopez's secured claim in this bankruptcy case. Sacramento Lopez shall provide his concurrence to the amount of the disbursement directly from escrow for the final amount owing on his secured claim. In the event of a disagreement as to the total amount, Movant and Sacramento Lopez shall provide their consent to the undisputed portion of such disbursement, with any disputes as to the amount of Mr. Lopez's secured claim to be subsequently determined by this court.

IT IS FURTHER ORDERED that xxxxxxxxxxx (or nominee), the proposed purchaser in the Motion, is approved as the backup buyer in the amount of $xxxxxxxxx and on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 255, as amended by this Order, and as further provided in this Order in the event that Mohsen Mohamed did not close escrow and complete the purchase within xxx days after the entry of the order approving the sale of the property. In the event that Mohsen Mohamed does not timely close the purchase and the xxx-day contingency occurs, xxxxxx (or nominee) shall complete the purchase with the period not more than xxx days after the entry of this order.

2. **08-91106-E-7** **CLIFF/GLENNA ROGERS** **CONTINUED MOTION TO AVOID LIEN**
SDM-2 **Scott Mitchell** **OF PACIFIC BELL DIRECTORY**
7-14-17 [32]

Final Ruling: No appearance at the January 11, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required, Opposition Withdrawn.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 14, 2017. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has not been set properly for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Pacific Bell Directory ("Creditor") against property of Clifford Rogers, Jr., and Glenna Rogers ("Debtor") commonly known as 7550 Gilbert Road, Oakdale, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $41,161.26. An abstract of judgment was recorded with Stanislaus County on February 17, 2005, that encumbers the Property, which was renewed with the Stanislaus County Recorder on January 23, 2015.

In the Motion, Debtor asserts that the Property has a value of $500,000.00, with Debtor claiming a $75,000.00 homestead exemption in the Property. Motion, ¶¶ 4, 5; Dckt. 32. Debtor further asserts in the Motion that the Property is subject to a lien securing a debt in the amount of $371,519.00 owed to American General and $42,500.00 owed to Infinity Funding and Reality, Inc. *Id.* ¶ 6.

The Motion does not allege (state with particularity) the perfection dates for the above two liens and the judicial lien at issue. In Debtor's Declaration, testimony is provided that Creditor's judicial lien at issue was "registered" February 17, 2005. Declaration ¶ 2, Dckt. 34.

As evidence of the secured obligations, Debtor provides copies of Schedule D filed in this case. Exhibit 3, Dckt. 35. A copy of Creditor's abstract of judgment is filed as Exhibit 5. *Id.* The Renewal of Abstract of Judgment is authenticated by Debtor in his declaration and appears to bear a January 12, 2015

certification stamp. The Renewal of Abstract of Judgment states that the original Abstract was recorded February 17, 2005.

On Schedule D, no date for the debt or lien for American General is provided. However, for Infinity Funding and Realty, Inc. the date November 29, 2006, is provided for when that obligation was incurred (and presumably the lien date is at or about the same time).

INSUFFICIENT NOTICE PROVIDED—WAIVER OF DEFECT IN NOTICE

The Proof of Service indicates that Debtor served Creditor's attorney, not Creditor itself. That is insufficient. Creditor must be served directly with notice of this Motion.

Nevertheless, Creditor has responded to the Motion. The court will therefore address the merits of the Motion.

CREDITOR'S OPPOSITION

Creditor (YP Advertising & Publishing LLC, fka Pacific Bell Directory) filed an Objection on August 10, 2017. Dckt. 42. Creditor argues that $10,981.00 of its lien does not impair Debtor's claimed exemption based upon a property valuation of $500,000.00.

Creditor requests time for a property appraisal to be conducted.

AUGUST 24, 2017 HEARING

At the hearing, Creditor requested that the court provide further time in this Contested Matter so that Creditor may conduct discovery as to the value of the Property at issue. Dckt. 54. The rules for discovery are applicable in Contested Matters. FED. R. BANKR. P. 9014(c) (applying FED. R. BANKR. P. 7028–37 to Contested Matters).

In conducting discovery, the court noted that both Debtor and Creditor would need to engage in a forensic appraisal exercise given that the filing of this bankruptcy case dates back to June 4, 2008. The court continued the hearing to 10:30 a.m. on January 11, 2018, and ordered that a supplemental motion and opposition be filed and served on or before November 21, 2017, with any replies filed and served on or before December 6, 2017. Dckt. 56.

MUTUAL CONSENT TO WITHDRAWAL OF OPPOSITION

On January 4, 2018, Creditor filed a withdrawal of its Opposition, to which Debtor also filed a consent to the withdrawal. Dckt. 57.

DISCUSSION

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $500,000.00 as of the date of the petition. The unavoidable consensual liens senior to that of Creditor are

$371,519.00. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $75,000.00 on Schedule C.

Congress provides in 11 U.S.C. § 522(f) that a debtor may protect exempt value in property from a judicial lien, stating:

> "(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is–
>
> (A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5); . . . .

After addressing some disagreement between courts in various Circuits, Congress amended 11 U.S.C. § 522 to provide a mathematical formula to compute when a judicial lien impairs and exemption.

> (2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of--
>
> (i) the lien;
>
> (ii) all other liens on the property; and
>
> (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;
>
> exceeds the value that the debtor's interest in the property would have in the absence of any liens.

11 U.S.C. § 522(f)(2).

Applying the value of the Property as alleged, the asserted claims secured by the Property, and the homestead exemption to the above formula, the computation is made as follows:

FMV.....$500,000.00
Deed of Trust 1.....($371,519.00)
Abstract of Judgment.....($ 41,161.26)
Deed of Trust 2.....($ 42,500.00)
Homestead Exemption.....($ 75,000.00)

(Impairment)/Non-Impairment of Homestead Exemption.....($30,180.26).

Based on Debtor's stated grounds, reducing Creditor's judgment lien amount to provide for the ($30,180.26) impairment results in a determination that only for amounts in excess of $10,981.00 does

Creditor's judgment lien impair the homestead exemption. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided in excess of $10,981.00 subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Clifford Rogers, Jr., and Glenna Rogers ("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 judgment lien of YP Advertising & Publishing LLC, fka Pacific Bell Directory, California Superior Court for Stanislaus County Case No. 350662, renewed on January 23, 2015, Document No. 2015-0004539-00, with the Stanislaus County Recorder, against the real property commonly known as 7550 Gilbert Road, Oakdale, California, is avoided in its entirety for all amounts in excess of $10,981.00 pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

3. **17-90906-E-7** **JUANITA DOWNS**
Pro Se

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
12-6-17 [14]

Tentative Ruling: 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), the Chapter 7 Trustee, creditors, and parties requesting special notice on December 8, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is granted, and the case is dismissed.

Michael McGranahan ("the Chapter 7 Trustee") alleges that Juanita Downs ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case.

Alternatively, if Debtor's case is not dismissed, the Chapter 7 Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 10:30 a.m. on January 23, 2018. If Debtor fails to appear at the continued Meeting of Creditors, the Chapter 7 Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on December 28, 2017. Dckt. 17. The Opposition is blank, however, and Debtor has not expressed any grounds why this case should not be dismissed.

RULING

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 13 case filed by Michael McGranahan ("the Chapter 7 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 Dismiss is granted, and the case is dismissed.

4. 09-90311-E-7 SSA-3 — BRIAN/PATTY CARROLL — Michael Williams — MOTION TO EMPLOY NOBLE MCINTYRE AS SPECIAL COUNSEL 12-18-17 [68]

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2017. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion to Employ is granted.

Michael McGranahan ("the Chapter 7 Trustee") seeks to employ Noble McIntyre of McIntyre Law P.C. ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections

328(a) and 330. The Chapter 7 Trustee seeks the employment of Counsel to continue litigating an undisclosed lawsuit.

The Chapter 7 Trustee argues that Counsel's appointment and retention is necessary to prosecute, settle, and secure funds due to the Estate from a product liability/personal injury lawsuit. Under the terms of the contingency fee agreement between Counsel and Brian Carroll and Patty Carroll ("Debtor"), Counsel will receive no fees or expenses from the Chapter 7 Trustee if there is no settlement in the litigation. Otherwise, Counsel will receive 40.00% of the gross sum recovered from litigation.

Noble McIntrye, an attorney and owner of McIntyre Law P.C., testifies that he was retained by Debtor on March 1, 2015. He testifies he and the firm do not have any connection with Debtor, creditors, the U.S. Trustee, the Estate, 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 Noble McIntyre as Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Contingency Fee Agreement filed as Exhibit 1, Dckt. 71. 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 Michael McGranahan ("the Chapter 7 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 7 Trustee is authorized to employ Noble McIntyre of McIntyre Law P.C. as Counsel

for the Chapter 7 Trustee on the terms and conditions as set forth in the Contingency Fee Agreement filed as Exhibit 1, Dckt. 71.

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. **16-91014-E-7** **KENNETH/WENDY MILLER** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES MACKO FOR ANTHONY D. JOHNSTON, TRUSTEE'S ATTORNEY**
ADJ-4 **Matthew Olson** **11-16-17 [127]**

Final Ruling: No appearance at the January 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2017. By the court's calculation, 56 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Allowance of Professional Fees is granted.

Anthony Johnston and Fores Macko, a Professional Law Corporation, the Attorney ("Applicant") for Michael McGranahan, the Chapter 7 Trustee ("Client"), make a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 16, 2017, through November 16, 2017. The order of the court approving employment of Applicant was entered on February 28, 2017. Dckt. 50. Applicant requests fees in the amount of $7,260.00 and costs in the amount of $255.32.

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). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). 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.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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 demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913

n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to 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?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include recovering property from Kenneth Miller and Wendy Miller ("Debtor") to settle Client's claim against non-exempt equity in real property. The Estate has $22,916.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were 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.

Asset Disposition: Applicant spent 7.40 hours in this category. Applicant negotiated a compromise with Debtor's attorneys about real property leading to Client recovering $20,000.00 for the Estate, and Applicant prepared a compromise motion that was submitted to and heard by the court.

Asset Analysis and Recovery: Applicant spent 13.00 hours in this category. Applicant reviewed a preliminary title report, reviewed Debtor's schedules, worked with a real estate broker, opposed a motion to compel abandonment of non-exempt property, and filed a motion to compel Debtor to turn over property.

Litigation: Applicant spent 0.70 hours in this category. Applicant advised Client about a potential discharge action against Debtor and reviewed Debtor's opposition to Client's motion to extend time to object to discharge.

Case Administration: Applicant spent 1.10 hours in this category. Applicant reviewed Debtor's opposition to the employment of a real estate broker, reviewed Debtor's motion to avoid a judicial lien, advised Client about the judicial lien, and advised Client about Debtor's amended tax returns.

Fee/Employment Applications: Applicant spent 4.20 hours in this category. Applicant prepared an employment application for himself, and prepared the instant compensation motion.

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**
Anthony Johnston, attorney	26.40 hours	$275.00	$7,260.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees for Period of Application			$7,260.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $255.32 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.10/page	$119.40
Postage		$135.92
		$0.00
		$0.00
Total Costs Requested in Application		$255.32

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $7,260.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $255.32 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$7,260.00
Costs and Expenses	$255.32

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 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 Anthony Johnston and Fores Macko, a Professional Law Corporation ("Applicant"), Attorney for Michael McGranahan, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Anthony Johnston and Fores Macko, a Professional Law Corporation, is allowed the following fees and expenses as a professional of the Estate:
>
> Anthony Johnston and Fores Macko, a Professional Law Corporation, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $7,260.00
> Expenses in the amount of $255.32,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

6. **14-91520-E-7** **JOANN TEEM** **MOTION TO APPROVE REDEMPTION**
WFH-6 **Gilbert Vega** **OF CORPORATE SHARES**
12-5-17 [97]

No Tentative Ruling: 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on December 5, 2017. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is xxxxx.

The Bankruptcy Code permits Michael McGranahan, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the Estate's interest in Varni Corporation stock ("Property").

The proposed purchaser of the Property is Varni Corporation, and the terms of the sale are:

A. $20,000.00 purchase price for redemption of 169.55 shares of Varni Corporation common stock;

B. Pursuant to a separate settlement with Joann Teem ("Debtor"), she will not assert an exemption in the proceeds of stock or in $3,125.00 of distributions currently due from Varni Trust;

C. Debtor shall instruct Varni Trust to pay $3,125.00 to the Chapter 7 Trustee;

D. Debtor executed an addendum to the stock redemption agreement declaring that the original stock certificate had been lost and agreed to indemnify Varni Corporation from any damages that might arise from discovering the original stock certificate;

E. The Chapter 7 Trustee agrees that Debtor may amend Schedule C to claim an exemption in the remainder of Varni Trust;

F. Debtor agrees that she will not file any further amendments to Schedule C; and

G. Varni Trust will be abandoned to Debtor upon closing this case, with Debtor being able to seek abandonment earlier.

DISCUSSION

The Chapter 7 Trustee notes that Debtor amended Schedule C on November 14, 2017, to claim an exemption in the $3,125.00 distribution being withheld by Varni Trust, instead of claiming an exemption in all payments under the Varni Trust *except for* the $3,135.00 distribution. *See* Dckt. 91. The Chapter 7 Trustee expects Debtor to correct that error prior to the hearing.

A review of the docket shows that Debtor has not amended Schedule C further, however. At the hearing, Debtor explained that she has not amended Schedule C to match with the proposed sale because xxxxxxxxxx.

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxx.

At prior hearings, the court expressed concern about closing the case and abandoning liquid assets back to Debtor, and the current proposed sale and settlement reflect a good faith attempt by the parties to resolve any remaining issues in this case. Based on the evidence before the court, the court determines that the proposed sale is xxxxxxxxxxxxx.

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 Sell Property filed by Michael McGranahan ("the Chapter 7 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 Michael McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Varni Corporation or nominee ("Buyer"), the Property commonly known as 169.55 shares of common stock of Varni Corporation ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $20,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 100, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred in order to effectuate the sale.

C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

7. **14-91520-E-7** **JOANN TEEM** **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH JOANN MARY TEEM**
WFH-7 **Gilbert Vega** **12-5-17 [92]**

No Tentative Ruling: 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on December 5, 2017. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Approval of Compromise is xxxxx.

Michael McGranahan, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Joann Teem, the Chapter 7 Debtor ("Settlor"). The claims and disputes to be resolved by the proposed settlement are about Settlor's interest in Varni Corporation stock and interest in payments from Varni Trust.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit B in support of the Motion, Dckt. 95):

A. Settlor consents to the sale of common stock back to Varni Corporation and to Movant retaining the funds from the sale for the benefit of the Estate;

B. Settlor will not assert an exemption in the proceeds of stock or in $3,125.00 of distributions currently due from Varni Trust;

C. Settlor shall instruct Varni Trust to pay $3,125.00 to Movant;

D. Settlor executed an addendum to the stock redemption agreement declaring that the original stock certificate had been lost and agreed to indemnify Varni Corporation from any damages that might arise from discovering the original stock certificate;

E. Movant agrees that Settlor may amend Schedule C to claim an exemption in the remainder of Varni Trust;

F. Settlor agrees that she will not file any further amendments to Schedule C; and

G. Varni Trust will be abandoned to Settlor upon closing this case, with Settlor being able to seek abandonment earlier.

DISCUSSION

The Chapter 7 Trustee notes that Debtor amended Schedule C on November 14, 2017, to claim an exemption in the $3,125.00 distribution being withheld by Varni Trust, instead of claiming an exemption in all payments under the Varni Trust *except for* the $3,135.00 distribution. *See* Dckt. 91. The Chapter 7 Trustee expects Debtor to correct that error prior to the hearing.

A review of the docket shows that Debtor has not amended Schedule C further, however. At the hearing, Debtor explained that she has not amended Schedule C to match with the proposed sale because xxxxxxxxxx.

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the Estate faces significant litigation risk if Settlor attempts to amend Schedule C to exempt all of the sale proceeds, but this settlement prevents such litigation. Movant believes he would incur substantial fees opposing Settlor.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is xxxxxxxxxxxx.

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 Approve Compromise filed by Michael McGranahan, the Chapter 7 Trustee, ("Movant") 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 for Approval of Compromise between Movant and Joann Teem, the Chapter 7 Debtor, ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit B in support of the Motion (Dckt. 95).~~

8. **17-90723-E-7** **JOHN LOPES** **MOTION TO COMPEL ABANDONMENT**
WLG-1 **Nicholas Wajda** **11-17-17 [10]**

Tentative Ruling: 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 17, 2017. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Compel Abandonment is denied without prejudice.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by John Lopes ("Debtor") requests the court to order Irma Edmonds ("the Chapter 7 Trustee") to abandon property commonly known as Jon Lopes Electric. Jon Lopes Electric is Debtor's business, a sole proprietorship, through which he works as a self-employed electrician. Dckt. 13. Debtor argues that Jon Lopes Electric is a fictitious business name only, not a legal entity, and is not able to own anything. *Id.* He argues that he owns any business assets directly. *Id.*

Debtor pleads that the Chapter 7 Trustee stated on November 2, 2017, that she wanted Debtor to move the court for an order compelling the Chapter 7 Trustee to abandon the Property. *Id.* He further argues that the Chapter 7 Trustee has stated that she has no opposition to this Motion. *Id.*

Assets Identified in Motion to be Abandoned

The Motion states with particularity (Federal Rule of Bankruptcy Procedure 9013) that Debtor seeks to have the following assets abandoned:

> "5. Any assets used by debtor for self-employment are owned by Debtor directly. All such assets are listed in Schedule B and fully exempted in Schedule C."

Motion ¶ 5, Dckt. 10. The Motion does not identify the assets, but leaves it for the court to divine what are the business assets to abandoned.

In his Declaration, Debtor does not identify the assets that he requests to be abandoned. Declaration, Dckt. 13. However, Debtor does provide his legal opinion as to operating a sole proprietorship and what constitutes a "legal entity." *Id.*

A review of the most recent filed Schedule A/B shows that Debtor lists four vehicles, a motorcycle, a trailer ("Weekend Warrior"), a motor home, a boat, household furnishing, checking account, business checking account, miscellaneous electronics, and hand tools. In describing the sole proprietorship business on Schedule A/B, Debtor states under penalty of perjury:

> "Debtor operates a sole proprietorship DBA Jon Lopes Electric. The business has two employees, minimal assets (listed under debtor's personal assets), no inventory, and no accounts receivables. The business has no market value beyond debtor's best efforts."

Schedule A/B, Question 19; Dckt. 16. Taken at face value, there are "minimal assets" that would cause the court to conclude there is nothing to abandon.

More likely, there are some things to be abandoned, but Debtor has chosen not to identify them, even by generic terms such as "hand tools in the aggregate value not to exceed $1,000.00, Ford XXXX truck, books and records, business checking account not to exceed $XXXX, and business name 'Jon Lopes Electric.'" The court declines the opportunity to draft such a motion for Debtor.

The Chapter 7 Trustee has reported that there are assets to be administered in this case. December 7, 2017 Docket Entry Report. The Notice to File Claims was sent to creditors on December 10, 2017. Dckts. 19, 20.

The court cannot enter an order that merely states that "Whatever assets Debtor says are part of Jon Lopes Electric are abandoned."

The Motion is denied 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 Motion to Compel Abandonment filed by John Lopes ("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 to Compel Abandonment is denied without prejudice.

9. 17-90326-E-7 SSA-2 | **GARY/CAROL BARZEE** **Patrick Greenwell** | **MOTION FOR ADMINISTRATIVE EXPENSES** **12-21-17 [23]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on December 21, 2017. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Allowance of Administrative Expenses was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion for Allowance of Administrative Expenses is granted.

Irma Edmonds, the Chapter 7 Trustee, ("Movant") requests payment of administrative expenses in the amount of $745.37 for a replacement and service fee to Wells Fargo Shareowner Services for missing original stock certificates.

Movant argues that the Estate is insolvent, but there are 241 shares of Allstate Corporation stock, which as of December 6, 2017, have a value of approximately $24,757.93. Movant wishes to liquidate that asset, but she cannot do so without the original stock certificates. Movant has communicated with Wells Fargo Shareowner Services and has been advised that in addition to filing an Affidavit of Loss and Indemnity Agreement, Movant will have to pay $670.37 as a Surety Premium and $75.00 as a service fee.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant has demonstrated that there are assets that have significant value for the insolvent Estate, but to liquidate those assets, Movant must incur administrative expenses to replace stock certificates.

Movant having demonstrated that the expenses are necessary, the court finds that Movant paying $745.37 to Wells Fargo Shareowner Services provides benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of $745.37.

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 Allowance of Administrative Expense filed by Irma Edmonds, the Chapter 7 Trustee, ("Movant") 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 Chapter 7 Trustee is authorized to pay Wells Fargo Shareowner Services $745.37 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

10.	**17-90734-E-7** **ICE-1**	**RODOLFO MARTINEZ AYALA AND AURORA DELGADO CEJA** **Pro Se**	**MOTION TO EMPLOY HUISMAN AUCTIONS, INC. AS AUCTIONEER** **12-6-17 [26]**

Tentative Ruling: 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on December 7, 2017. By the court's calculation, 35 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Employ is denied.

Irma Edmonds ("the Chapter 7 Trustee") seeks to employ Huisman Auctions, Inc. ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. The Chapter 7 Trustee seeks the employment of Auctioneer to liquidate and auction a 2008 BMW Z4.

The Chapter 7 Trustee argues that Auctioneer's appointment and retention is necessary to liquidate the vehicle and provide funds for the Estate. Auctioneer will advertise the vehicle and assist in storing it until it is sold. When sold, Auctioneer's commission will be 15.00%, as well as a 10.00% buyer's premium. Auctioneer may seek reasonable expenses up to $2,500.00 incurred in selling the vehicle, too.

David Huisman, an auctioneer of Huisman Auctions, Inc., testifies that he is a licensed public auctioneer who is competent and willing to be employed by the Estate. He testifies that he and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, 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 Auctioneer, considering the declaration demonstrating that Auctioneer 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 does not grant the motion to employ Huisman Auctions, Inc., as Auctioneer for the Chapter 7 Estate on the terms and conditions.

Here, Auctioneer is effectively being paid a 25% commission for selling this vehicle. Merely disguising part of it as a "buyer's premium" does not make it any less of a commission being paid to Auctioneer. The court has extensively addressed this over the years, in the past the court "correcting" this "oversight" by allowing the auctioneer to be paid a portion of the buyer's premium and the rest being retained by the estate, unless the court by subsequent order allows more of the "buyer's premium" portion of the sales proceeds to be paid to the auctioneer.

In the Motion, the Chapter 7 Trustee offers no explanation as to why a 25% commission, plus an additional $2,500 in expenses, is proper compensation for selling this vehicle at auction. The Chapter 7 Trustee and Auctioneer present the employment as one in which the Auctioneer will be paid only a 15% commission. See Auctioneer's Declaration stating that he will be paid only a 15% commission, not even disclosing that he will also be taking 10% from the buyer, which will have the effect of reducing the sales price by 10%

On Schedule A/B, Debtor values the vehicle at $12,000. This is consistent with the NADA valuation on the NADA website for a 2008 BMW Z4. However, the Motion to Sell does not disclose the condition of the vehicle, the body style, or the features.

Assuming a value of $12,000, the Auctioneer then would take 25% for selling the vehicle, $3,000.00. Then, the Auctioneer could have "expenses" totaling $2,500.00 for "$2,500.00 incurred in preparing the Property for sale, including inspecting, moving, storing, repairing, or detailing." While there is some value to some of the services, many of the "preparing" expenses may well be included in the commission.

Thus, from a $12,000 sales price, the Auctioneer would take $5,500, or 46% of the gross sales proceeds.

There could well be situations where such costs of sale (commission and expenses) are reasonable and necessary for the Chapter 7 Trustee to recover value from an asset. However, the Chapter 7 Trustee and Auctioneer make no effort to provide such explanation to the court. Rather, it appears that the Chapter 7 Trustee and Auctioneer believe that it is their deal, they have told the terms to the court, and the court is to rubber stamp the deal. The court declines the opportunity to facilitate this transaction.

The court denies the Motion. The denial is with prejudice, largely to ensure that the Chapter 7 Trustee and Auctioneer do not ignore these details in presenting future motions to the court. Given that this court has consistently required such for the past eight years, the presentation of this Motion does not appear to be mere error.

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 Irma Edmonds ("the Chapter 7 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 denied. The denial is with prejudice.

11. 17-90734-E-7 ICE-2 | **RODOLFO MARTINEZ AYALA AND AURORA DELGADO CEJA Pro Se** | **MOTION TO SELL 12-6-17 [25]**

Tentative Ruling: 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on December 7, 2017. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is denied without prejudice.

The Bankruptcy Code permits Irma Edmonds, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as a 2008 BMW Z4, VIN ending in 5018 ("Vehicle").

Movant proposes auctioning the Vehicle, and the terms are:

A. Vehicle sold as is at a public auction held on or after January 11, 2018;

B. Movant intends to accept the highest reasonable bids;

C. If no reasonable bids are received, then Movant may hold the Vehicle for subsequent auction or private sale; and

D. The auctioneer will be paid a 15.00% commission, a 10.00% buyer's premium, and up to $2,500.00 in reimbursable expenses.

DISCUSSION

The sale proposed by Movant by itself does not cause the court any alarm. Sales by auction have been approved in the past. The court is somewhat concerned that Movant has not presented any information about pricing for the auction. Movant has not presented the court with the anticipated opening asking price for bids.

However, this concern cannot be addressed because the court has denied Movant's Motion to hire the auctioneer for an effective 25% commission and an additional $2,500 for expenses, including "storage" and "moving."

The Motion is denied 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 Motion to Sell Property filed by Irma Edmonds ("the Chapter 7 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 is denied without prejudice.

12. **17-90646-E-7** **JUAN SALINAS** **CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 10-16-17 [15]**
MDM-1 **Pro Se**

No Tentative Ruling: 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and creditors on October 18, 2017. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is xxxxxxx.

Michael McGranahan ("the Chapter 7 Trustee") filed a Motion to Dismiss this bankruptcy case due to Juan Salinas's ("Debtor") failure to attend the First Meeting of Creditors pursuant to 11 U.S.C. § 341. Dckt. 15. Attendance at this meeting is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 19, 2017. Dckt. 18. Debtor explains that he was stranded in Colorado with a broken-down vehicle and no phone. He states that he intends to attend the Meeting.

OCTOBER 19, 2017 RELATED HEARING

Debtor appeared at the hearing on Debtor's Motion for Waiver of the Chapter 7 filing fee and explained to the court the circumstances relating to the failure to appear and his intention to attend the continued Meeting of Creditors. Dckt. 19.

ORDER CONTINUING HEARING

On October 23, 2017, the court entered an order continuing this Motion to 10:30 a.m. on December 14, 2017. Dckt. 24.

CHAPTER 7 TRUSTEE'S REPORT

The Chapter 7 Trustee filed a Report on December 6, 2017, which indicated that Debtor did not appear at the continued Meeting of Creditors.

DEBTOR'S *EX PARTE* MOTION TO CONTINUE

Debtor filed an *ex parte* Motion to continue the hearing on this Motion on December 8, 2017. Dckt. 30. Debtor states that due to a recent hospitalization, he has to remain in Palo Alto to receive treatment for a life-threatening condition (that is unspecified).

ORDER CONTINUING HEARING

On December 11, 2017, the court entered an order continuing the hearing to 10:30 a.m. on January 11, 2018. Dckt. 32.

DECEMBER 14, 2017 HEARING

Noting its prior order, the court continued the hearing to January 11, 2018, due to the reported illness of Debtor. Dckt. 37.

RULING

The Chapter 7 Trustee reports that Debtor did / did not appear at the January 9, 2018 Meeting of Creditors.

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 Dismiss the Chapter 7 case filed by Michael McGranahan ("the Chapter 7 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 Dismiss is xxxxx.

13. **02-94454-E-7** **LUANN SELECKY** **CONTINUED MOTION FOR INSPECTION, TURNOVER OF PROPERTY OF THE ESTATE, AND REIMBURSEMENT OF FEES AND COSTS**
SSA-2 **Greg Smith** **10-3-17 [20]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on October 3, 2017. By the court's calculation, 37 days' notice was provided. 14 days' notice is required.

The Motion for Turnover was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Continued Status Conference on the Motion for Turnover is xxxxxx.

Michael McGranahan, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 1037 Westmont Terrace, Modesto, California ("Property") and for turnover of a demand note in favor of Luann Selecky ("Debtor") executed by her former husband Stephen Goudreau in the principal amount of $500,000.00 ("Note").

The grounds for relief as stated with particularity in the Motion (Federal Rule of Bankruptcy Procedure 9013) include the following:

A. Based upon information provided to Movant and working with the Office of the United States Trustee, Movant has requested this bankruptcy case be reopened so that he may pursue the recovery of assets of the estate that are alleged not to have been previously disclosed by Debtor.

B. Based upon the information provided by Debtor in the Schedules, the First Meeting of Creditors, and in the bankruptcy case, there appeared to be no assets to be administered by Movant, and the case was noticed as a "No Asset" case. Motion, FN. 1; Dckt. 20.

C. It is alleged that the Debtor owned real property commonly known as 1037 Westmont Terrace, Modesto, California, when this bankruptcy case was commenced, but such "Real Property" was not disclosed in Debtor's bankruptcy case. *Id.*, ¶ 3, Dckt. 20.

D. It is alleged that Debtor held a demand note, with Debtor as payee, in the principal amount of $500,000.00 that was executed by her former husband. *Id.*, ¶ 4.

E. Debtor has not turned over the Property and the Note to Movant.

In his Declaration, Movant provides a discussion of the investigation undertaken and what he and his agents have discovered. Movant testifies that he is asserting an interest of the bankruptcy estate in the Property pursuant to an Interfamily Transfer and Dissolution on or about September 6, 2001. Declaration ¶ 4, Dckt. 22. (It is not clear whether that is referencing a court order, contract, marital settlement agreement, or other type of document transferring legal, equitable, or other rights in the Property to Debtor. However, this appears to be language used in connection with a deed issued by one spouse to the other in connection with the dissolution of a marriage.) Movant reports that the deed for the Property was not recorded until July 6, 2015. *Id.*

Copies of the deed or other documents are not provided. Movant has filed a copy of a LexisNexis Property Deed/Mortgage Report as Exhibit 1 in support of the Motion. Dckt. 24. That third-party information does not constitute personal knowledge testimony by Movant, nor does it appear to be a certified county real property record. While the information in Exhibit 1 may be several steps removed from personal knowledge testimony or an authenticated document (Federal Rule of Evidence 601, 602, 901 et seq.), it does provide some general information, which if true, can be easily and properly documented for the court.

The LexisNexis Property Deed/Mortgage Report includes the following information relating to the Property and to Debtor:

A. Debtor acquired the Property by a "Contract" dated September 6, 2001. Exhibit 1, p. 2 of 4; Dckt. 24.

B. The "Contract" was recorded on July 6, 2015. *Id.*

C. The "Seller" of the Real Property was Stephen Goudreau, whom Movant identifies as Debtor's ex-husband. *Id.*

D. There is a non-purchase money mortgage for a $45,000.00 obligation of Debtor as "Borrower" based on a "Contract" dated February 21, 2016, and recorded on April 5, 2017, naming "Stephen Goudreau," for which Debtor is listed as the owner of the Property. *Id.*, p. 1 of 4.

Movant notes in his Declaration that in the Original Chapter 7 Schedules filed, Debtor lists her residence as the Property, but on Schedule A she states under penalty of perjury that she has no interests in any real property. Declaration ¶ 6, Dckt. 22.

The court's review of the Petition discloses that Debtor stated her address to be the Property. Dckt. 1 at 1. On Schedule A, Debtor stated under penalty of perjury in response to the required disclosure of any interests in real property that she had "None." *Id.* at 5.

On Schedule I, Debtor stated that she is single and has income of $750.00 per month. *Id.* at 14. On Schedule J, Debtor stated that she had no rent or mortgage expense, no utilities expense, and no home maintenance expense. *Id.* at 15. Debtor did state that for her income of $750.00 per month, she had an expense of $150.00 per month identified as "Set aside for taxes." *Id.*

On the Statement of Financial Affairs, Debtor affirmatively stated that she has not been a party of any suits or proceedings in the one year prior to the November 26, 2002 commencement of her bankruptcy case. *Id.* at 17. In response to Question 15 on the Statement of Financial Affairs, Debtor stated that she has not lived at any address other than the Property during the two years prior to the commencement of the bankruptcy case. *Id.* at 19.

On Schedule B, Debtor did not list any interest in any promissory notes ($500,000.00 or other amount) or any right to payment of monies ($500,000.00 or other amount) from any other person. *Id.* at 6–7.

NOVEMBER 9, 2017 HEARING

At the hearing, the court stated that it did not believe that Movant would knowingly present inaccurate information but would have to present clear evidence if the court is to issue an order from which contempt sanctions could be issued. Dckt. 35.

The court issued a scheduling order (Dckt. 43) setting deadlines for additional pleadings and for a further hearing.

SUPPLEMENTAL PLEADINGS

Movant filed supplemental pleadings on November 9, 2017. Dckts. 36–39. In the Supplemental Declaration of Michael McGranahan, he states that he contacted Pam Shaw, an escrow officer for Chicago Title, in October 2017 and requested a preliminary title report for the Property. Dckt. 36. He received the title report and also procured certified records from the Stanislaus County Recorders Office showing that an Interspousal Transfer Deed was executed from Stephen Goudreau to Debtor for the Property on September 6, 2001, but it was not recorded until July 6, 2015. *See* Exhibits 2 & 5, Dckt. 39.

Movant has also described and attached a Case Index for a divorce proceeding between Debtor and Stephen Goudreau that appears final as of July 13, 2001. Exhibit 4, Dckt. 39. Movant has provided the Declaration of Pam Shaw, who confirms that she prepared and delivered a title report for the Property. Dckt. 37.

The Declaration of Steven Altman reaffirms the above statements relating to how the evidence was gathered. Dckt. 38.

NOVEMBER 30, 2017 HEARING

At the hearing, the court granted the Motion; ordered Debtor to turn over the Property and Note by 12:00 p.m. on December 15, 2017; and continued the hearing on this Motion to 10:30 a.m. on January 11, 2018, for a status report on Debtor's compliance and whether any corrective sanctions should be ordered.

DISCUSSION

At the hearing, Movant reported that Debtor has / has not complied with the court's turnover 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 for Turnover of Property filed by Michael McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that xxxxxxxxxx.

14. **02-94454-E-7** **LUANN SELECKY** **MOTION FOR ORDER PROHIBITING DEBTOR'S MODIFICATION OF EXEMPTIONS TO CLAIM HOMESTEAD**
SSA-4 **Greg Smith** **12-15-17 [58]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on December 15, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion for Order Prohibiting Modification of Exemption was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, **----------**.

The Motion for Order Prohibiting Modification of Exemption is granted.

Michael McGranahan ("the Chapter 7 Trustee") moves pursuant to 11 U.S.C. § 522(g)(1)(B) for the court to enter an order prohibiting Luann Selecky ("Debtor") from modifying any claimed homestead exemption to include 1037 Westmont Terrace, Modesto, California.

The Chapter 7 Trustee relies upon *Elliott v. Weil (In re Elliott)*, 544 B.R. 421 (B.A.P. 9th Cir. 2016), as supporting a prohibitive court order when a debtor has been ordered to turn over property that was undisclosed previously. 11 U.S.C. § 522(g)(1) permits a debtor to claim an exemption in property recovered by the Chapter 7 Trustee pursuant to 11 U.S.C. § 542 (turnover of property of the estate) as if the property had not been transferred (and was owned by Debtor as of the commencement of this case) only if: (1) the transfer was not voluntary and (2) the debtor did not conceal the property.

In *Elliott*, debtor Elliott transferred property pre-petition to his son and then concealed the property and the transfer to the son. When caught by the trustee in that case, debtor Elliott's son transferred title back to the debtor Elliott—post-petition. The trustee in *Elliott* then sought to recover the property pursuant to 11 U.S.C. § 542. The Bankruptcy Appellate Panel concluded, which was affirmed by the Ninth Circuit Court of Appeal in an unreported decision, that the elements of 11 U.S.C. § 522(g)(1) had been shown. The debtor Elliott could not assert merely because the turnover ordered pursuant to 11 U.S.C. § 542 was from the debtor, and not another person, the provisions of 11 U.S.C. § 522(g)(1) did not apply.

Here, this court has entered an order pursuant to 11 U.S.C. § 542 ordering Debtor to turn over real property that she failed to disclose. Dckt. 51. Though Debtor held the deed to the Westmont Terrace Property as of the commencement of this case, she did not list the asset on Schedule A, nor claim any exemption in such asset. Debtor continued to hold the deed, and not record it, until July 6, 2015. Civil Minutes, Dckt. 50 at 2. A copy of the deed, dated September 6, 2001, and recorded on July 6, 2015, is filed as Exhibit 3, Dckt. 30.

11 U.S.C. § 522(g)(1) states when a debtor may exempt property that a trustee has recovered under 11 U.S.C. § 542. Here, the court has ordered the turnover of the Westmont Terrace Property to the Chapter 7 Trustee. If Debtor desires to assert an exemption in the Property, she must show that she can meet the requirements of 11 U.S.C. § 522(g)(1). The Chapter 7 Trustee has anticipated such a possible claim, now requesting that the court determine his "objection" to any such possible future claim of exemption.

Congress has provided for a debtor to claim an exemption in property that a bankruptcy trustee is forced to forcibly recover using his/her strong arm powers, but only under limited circumstances. A debtor must show that the property was involuntarily transferred from the debtor and that the debtor did not conceal the property.

Here, the Property was not involuntarily transferred from Debtor, but she hid her ownership of the Property by not recording her deed for fourteen years. Debtor did not disclose the Property on the bankruptcy schedules filed in this case, and concealed the Property from the Chapter 7 Trustee. Debtor then forced the Chapter 7 Trustee to obtain an order for turnover of the property pursuant to 11 U.S.C. § 542 (as did the trustee in *Elliott*)

At the hearing, Debtor asserted **xxxxxxxxxxxxxxxx**.

The Chapter 7 Trustee having obtained an order pursuant to 11 U.S.C. § 542, and Debtor failing to show grounds for having the right to assert an exemption in the Property as permitted by 11 U.S.C. § 522(g)(1) or (2) [when a debtor may exercise avoiding powers of a trustee], Debtor is not entitled to claim an exemption in the Property. The Motion is granted, and the court shall enter an 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 for Order Prohibiting Modification of Exemption filed by Michael McGranahan ("the Chapter 7 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 is granted, and Luann Selecky ("Debtor") is prohibited from claiming an exemption in the previously concealed real property commonly known as 1037 Westmont Terrace, Modesto, California, Debtor not satisfying the requirements of 11 U.S.C. § 522(g)(1) or (2).

15. **13-92058-E-7 SHERI HIEMSTRA**
17-9016
NELSON V. HIEMSTRA
MRG-1

MOTION FOR DETERMINATION OF CORE PROCEEDING STATUS, MOTION TO DISMISS ADVERSARY PROCEEDING AND/OR MOTION FOR DISCRETIONARY ABSTENTION
12-8-17 [7]

Tentative Ruling: 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.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff, Defendant-Debtor, Chapter 7 Trustee, creditors, and Office of the United States Trustee on December 8, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss Adversary Proceeding is denied as to the Second Cause of Action and denied without prejudice as to the First Cause of Action. The Motion for Abstention is denied. The court determines that the Second Cause of Action is a core proceeding matter arising under the Bankruptcy Code, and the First Cause of Action is a claim for which supplemental federal court jurisdiction may be exercised (the determination of which will be determined after adjudication of the Second Cause of Action).

Sheri Hiemstra ("Defendant-Debtor") moves for the court to dismiss all claims against her in Thomas Nelson's ("Plaintiff") Complaint according to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. Alternatively, Defendant-Debtor moves for discretionary abstention under 28 U.S.C. § 1334(c)(1).

Defendant-Debtor argues that the events stated in the Complaint happened after Defendant-Debtor received a discharge, after the Estate had been fully administered, and more than three years after the Defendant-Debtor's bankruptcy case had been closed. Defendant-Debtor stresses that the outcome of

this Adversary Proceeding could not have any impact on the administration of the Estate in Defendant-Debtor's closed case.

SUMMARY OF COMPLAINT

The court summarizes the allegations in the Complaint as follows:

1. In 2005, the Plaintiff purchased the modular home for Defendant-Debtor, his stepdaughter, to live in. Plaintiff borrowed money to purchase the modular home, using his own residence as collateral for the loan.

2. Defendant-Debtor promised to make monthly payments to Plaintiff, which Plaintiff would use to pay the loan obtained to purchase the modular home. Plaintiff deeded the modular home to Defendant-Debtor in exchange for a promissory note in the amount of $181,432, which note was secured by the modular home.

3. Plaintiff made a second loan to Defendant-Debtor in the amount of $35,000 in May 2009, which second note was secured by a second deed of trust on the modular home.

4. Defendant-Debtor filed her Chapter 7 bankruptcy case on November 10, 2013, and was granted a discharge on February 24, 2014. Bankr. E.D. Cal. No. 13-92058.

5. Fifteen months after obtaining her discharge (approximately April 2015), Defendant-Debtor communicated with Plaintiff about the delinquencies on the secured debts. In addition to requesting debt forgiveness, Defendant-Debtor represented that the parties needed to substitute Plaintiff in as the new trustee under the deeds of trust in the place of the then-existing title companies.

6. On May 5, 2015, at the request of Defendant-Debtor, Plaintiff went to Defendant-Debtor's paralegal firm and signed substitutions of trustees and full reconveyances of the two deeds of trust. Defendant-Debtor then executed a new note, replacing the prior two notes, which new note was in the reduced amount of $172,516, which new note was secured by a deed of trust against the modular home.

7. While making payments on the new note, Defendant-Debtor has failed to provide fire insurance for the modular home.

In the First Cause of Action, Plaintiff asserts that the reconveyances of the two deeds of trust were falsely obtained from him. It is asserted that the representation was made that the new note would be secured by the modular home and be fully enforceable. It is asserted that this did not occur. Therefore, Plaintiff seeks to have a determination that the reconveyances of the two prior deeds of trust are rescinded and that the obligations on the original two notes are enforceable.

In the Second Cause of Action, Plaintiff asserts that Defendant-Debtor now contends that since the new note and deed of trust were issued after the Debtor obtained her discharge, they are void as

unapproved reaffirmations. Plaintiff seeks a determination that the new note and deed of trust are enforceable and not void as a matter of federal law—11 U.S.C. § 524(c).

REVIEW OF MOTION

The Motion responds to the Complaint by stating that all of the events happened after Defendant-Debtor received a discharge, after the Estate had been fully administered, and more than three years after the Defendant-Debtor's bankruptcy case had been closed. Defendant-Debtor stresses that the outcome of this Adversary Proceeding could not have any impact on the administration of the Estate in Defendant-Debtor's closed case.

The Motion argues that the first claim for rescission based upon alleged fraud occurred after discharge and can be resolved completely by California state law. Dckt. 7 at 2. The Motion argues that the declaratory relief claim is also one that could be brought in state court. *Id.* Defendant-Debtor argues that only Paragraph 16 of the Complaint relates to the bankruptcy case, but she stresses that it is extraneous. *Id.*

The argument for abstention is based upon showing comity with state court. The Motion states that (1) abstention will have no effect on the efficient administration of the Estate; (2) state law matters dominate over bankruptcy law matters; (3) there is no difficult or unsettled law; (4) Plaintiff's claims can be resolved easily in state court; (5) there is no basis for federal jurisdiction other than 28 U.S.C. § 1334; (6) there is no relation between this Adversary Proceeding and the underlying bankruptcy case; (7) there is no feasibility of severing bankruptcy matters from state law matters because they are all state law matters; (8) the burden of this Adversary Proceeding on the court's docket outweighs any benefit to Defendant-Debtor, the Estate, or creditors; and (9) there is a virtual certainty that Plaintiff is forum shopping.

PLAINTIFF'S RESPONSE

Plaintiff filed a Response on January 2, 2018. Dckt. 13. Plaintiff argues that the Complaint was filed only after Defendant-Debtor asserted that the post-discharge deed of trust failed to comply with 11 U.S.C. § 524(c) and was unenforceable. Plaintiff argues that a debtor asserting a bankruptcy right without agreeing that a bankruptcy court can determine it is "inconceivable." *Id.* at 2.

Plaintiff emphasizes that what he seeks is a determination whether the new deed of trust is enforceable or invalid under 11 U.S.C. § 524(c). If invalid, then Plaintiff seeks rescission for the express benefit of Defendant-Debtor. Plaintiff argues that such a statutory basis brings this matter within the bankruptcy court's purview, and he notes that the court has jurisdiction as established in 11 U.S.C. § 1334(a).

Plaintiff contradicts Defendant-Debtor's assertion that he is forum shopping by noting that this court can resolve the matters more quickly than can state court and that this court has the expertise and experience to make a determination under 11 U.S.C. § 524.

DEFENDANT-DEBTOR'S REPLY

Defendant-Debtor filed a Reply on January 4, 2018. Dckt. 15. Defendant-Debtor argues again the ground stated in the Motion and expands slightly. For one, Defendant-Debtor responds that one of Plaintiff's claims would be entitled to trial preference in state court, which would allow this Adversary Proceeding to be resolved at least as fast in state court as here. Defendant-Debtor also attacks the Response on the grounds that it was filed late, instead of fourteen days before the hearing as required by the court's local rules.

Defendant-Debtor seizes upon the Response's contention that if Defendant-Debtor "waives her contention that the post-discharge deed of trust is unenforceable," then this would not be a core proceeding. *Id.* at 3. Defendant-Debtor argues that the court loses jurisdiction if such a waiver is submitted.

Defendant-Debtor claims that she does not consent to bankruptcy court jurisdiction because there is no bankruptcy basis for this lawsuit. *Id.* at 5. To the extent any bankruptcy matters do arise, Defendant-Debtor argues that "State Court is presumed competent to resolve them." *Id.* at 6.

Defendant-Debtor argues that not even the district court has jurisdiction to hear this case. *Id.* at 9.

APPLICABLE LAW

Federal Court Jurisdiction and Exercise of Federal Judicial Power

Subject matter jurisdiction defines a court's power to hear cases. *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 89 (1998). Before a federal court exercises its jurisdiction over parties, it must determine that there is a sufficient "case" or "controversy as required by the United States Constitution, Article III, Section 2, Clause 1, which states,

> Sec. 2, Cl 1. Subjects of jurisdiction.
>
> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;–to all Cases affecting Ambassadors, other public Ministers and Consuls;–to all Cases of admiralty and maritime Jurisdiction;–to Controversies to which the United States shall be a Party;–to Controversies between two or more States;–between a State and Citizens of another State;–between Citizens of different States,–between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

As stated by the Ninth Circuit Court of Appeals in *Southern Pacific Company v. McAdoo*,

> Unless this proceeding was within the original jurisdiction of the District Court, it could not be brought within that jurisdiction by removal. *In re Winn*, 213 U.S. 458,

> 464, 29 S. Ct. 515, 53 L. Ed. 873. Unless it presents a "case" or "controversy," within the meaning of section 2, art. 3 of the Constitution, it is not within the jurisdiction of any federal court. *Nashville, C. & St. L. Ry. Co. v. Wallace*, 288 U.S. 249, 259, 53 S. Ct. 345, 77 L. Ed. 730, 87 A.L.R. 1191; *Willing v. Chicago Auditorium Ass'n*, 277 U.S. 274, 289, 48 S. Ct. 507, 72 L. Ed. 880; *Liberty Warehouse Co. v. Grannis*, 273 U.S. 70, 74, 47 S. Ct. 282, 71 L. Ed. 541.

82 F.2d 121, 121–22 (9th Cir. 1936).

Bankruptcy courts are courts created by Congress under Article I of the United States Constitution to administer the federal Bankruptcy Code, found in Title 11 of the United States Code. A bankruptcy court is designated as "a unit of the district court," and, each district court is given the ability to refer all bankruptcy matters to a bankruptcy court. 28 U.S.C. § 151(a) (positioning bankruptcy court within district court); 28 U.S.C. § 157(a) (providing for referral to bankruptcy court). Bankruptcy judges are judicial officers of the district court. 28 U.S.C. § 157(a).

The grant of federal jurisdiction by Congress established in 28 U.S.C. § 1334 is very broad and expansive, including not only matters arising under the Bankruptcy Code and arising in the bankruptcy case, but all other matters "related to" the bankruptcy case, whether federal jurisdiction would otherwise exist for that state law matter to be adjudicated in federal court.

> § 1334. Bankruptcy cases and proceedings
>
> (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.
>
> (b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.
> . . .
> (e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction–(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and
> (2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.

Congress provides that the District Court may then assign the bankruptcy cases and all proceedings relating thereto—core and non-core—to the bankruptcy judges in that District.

§ 157. Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

28 U.S.C. § 157(a). The statutory provisions for the Article I bankruptcy judge adjudicating non-core matters is provided for in 28 U.S.C. § 157(c), in which Congress states:

(c) (1) A bankruptcy judge may hear a proceeding that is **not a core proceeding** but that is otherwise related to a case under title 11. In such proceeding, **the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court**, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, **with the consent of all the parties** to the proceeding, may refer a proceeding related to a case under title 11 to a **bankruptcy judge** to **hear and determine and** to **enter appropriate orders and judgments**, subject to review under section 158 of this title [28 USCS § 158, appeals from bankruptcy judge issued orders and judgment].

28 U.S.C. § 157(c) (emphasis added).

The Supreme Court has addressed Congress's creation of federal subject matter jurisdiction for matters arising under the Bankruptcy Code, in bankruptcy cases, and related to bankruptcy cases over the decades, beginning with *Northern Pipeline* in 1984 through the three recent decisions in *Stern v. Marshall*, 564 U.S. 462, 473–75 (2011), *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165, 2171–72, 189 L. Ed. 2d 83, 92–93, (2014), and *Wellness International Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015). These three recent Supreme Court decisions nail down the proper exercise of the federal judicial power between bankruptcy judges and district court judges within the federal jurisdiction provided for in 28 U.S.C. § 1334.

In *Stern v. Marshall*, the Supreme Court addressed the basic grant of federal jurisdiction under 28 U.S.C. § 1334, stating:

With certain exceptions . . . , the district courts of the United States have "original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334(a). Congress has divided bankruptcy proceedings into three categories: those that "aris[e] under title 11"; those that "aris[e] in" a Title 11 case; and those that are "related to a case under title 11." § 157(a). District courts may refer any or all such proceedings to the bankruptcy judges of their district . . . . District courts also may withdraw a case or proceeding referred to the bankruptcy court "for cause shown." § 157(d). Since

> Congress enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984 . . . , bankruptcy judges for each district have been appointed to 14-year terms by the courts of appeals for the circuits in which their district is located. § 152(a)(1).
>
> The manner in which a bankruptcy judge may act on a referred matter depends on the type of proceeding involved. Bankruptcy judges may hear and enter final judgments in "all core proceedings arising under title 11, or arising in a case under title 11." § 157(b)(1). "Core proceedings include, but are not limited to," 16 different types of matters, including "counterclaims by [a debtor's] estate against persons filing claims against the estate." § 157(b)(2)(C). Parties may appeal final judgments of a bankruptcy court in core proceedings to the district court, which reviews them under traditional appellate standards. *See* § 158(a); FED. R. BANKR. P. 8013.
>
> When a bankruptcy judge determines that a referred "proceeding . . . is not a core proceeding but . . . is otherwise related to a case under title 11," the judge may only "submit proposed findings of fact and conclusions of law to the district court." § 157(c)(1). It is the district court that enters final judgment in such cases after reviewing *de novo* any matter to which a party objects.

Stern, 564 U.S. at 473–75.

The Supreme Court followed *Stern* with its 2014 decision in *Executive Benefits Insurance Agency v. Arkison*. In developing the exercise of federal judicial power by a bankruptcy judge for non-core matters, the Supreme Court states:

> The 1984 Act largely restored the bifurcated jurisdictional scheme that existed prior to the 1978 Act. The 1984 Act implements that bifurcated scheme by dividing all matters that may be referred to the bankruptcy court into two categories: "core" and "non-core" proceedings. See generally § 157. **It is the bankruptcy court's responsibility to determine whether each claim before it is core or non-core.** § 157(b)(3); cf. Fed. Rule Bkrtcy. Proc. 7012. **For core proceedings**, the statute contains a nonexhaustive list of examples, including—as relevant here—"proceedings to determine, avoid, or recover fraudulent conveyances." § 157(b)(2)(H). **The statute authorizes bankruptcy judges to "hear and determine" such claims and "enter appropriate orders and judgments" on them.** § 157(b)(1). A final judgment entered in a core proceeding is appealable to the district court, § 158(a)(1), which reviews the judgment under traditional appellate standards, Rule 8013.
>
> **As for "non-core" proceedings—i.e.**, proceedings that are "not . . . core" but are "otherwise related to a case under title 11"**—the statute authorizes a bankruptcy court to "hear [the] proceeding," and then "submit proposed findings of fact and conclusions of law to the district court**." § 157(c)(1). The district court must then review those proposed findings and conclusions de novo and enter any final orders or judgments. *Ibid.* **There is one statutory exception to this**

> **rule: If all parties "consent,"** the **statute permits the bankruptcy judge "to hear and determine and to enter appropriate orders and judgments"** as if the proceeding were core. § 157(c)(2).
>
> Put simply: If a matter is core, the statute empowers the bankruptcy judge to enter final judgment on the claim, subject to appellate review by the district court. **If a matter is non-core, and the parties have not consented to final adjudication by the bankruptcy court, the bankruptcy judge must propose findings of fact and conclusions of law.** Then, the district court must review the proceeding de novo and enter final judgment.

Exec. Benefits. Ins. Agency v. Arkison, 134 S. Ct. at 2171–72 (emphasis added). The Supreme Court clearly addresses that the core/non-core issue relates to which federal judge issues the final order and judgment, not whether "federal jurisdiction exists."

The Supreme Court rounds out the trilogy of recent cases addressing the proper exercise of federal court judicial power in *Wellness International Network, Ltd. v. Sharif*. In *Wellness International*, the Supreme Court expressly confirms that the Article I bankruptcy judge may properly issue final orders and the judgment on non-core matters with the consent, whether express or implied, of the parties.

As discussed below, in part Defendant-Debtor's contentions as to whether this is a core proceeding, or even a proceeding in which federal jurisdiction exists have merit. It appears that a portion of the dispute is for alleged misrepresentations or mistakes that occurred post-bankruptcy, post-discharge between the parties.

However, the other part of Defendant-Debtor's contentions that there is no basis for any federal court jurisdiction is without merit. As alleged in the Complaint, Defendant-Debtor asserts that the discharge injunction was violated by the new note (for a reduced amount) and the new deed of trust. As discussed below, asserted violations of the discharge injunction and the effect of 11 U.S.C. § 524(c) as to required reaffirmations are not only federal question matters, but uniquely federal bankruptcy law questions for which federal jurisdiction exists for the Article I bankruptcy judge.

STANDARD FOR A MOTION TO DISMISS

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that a complaint have a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. FED. R. CIV. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.* (citing 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235–36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action")).

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to the relief. *Calhoun v. United States*, 475 F. Supp. 1 (S.D. Cal. 1977), *aff'd*, 604 F.2d 647 (9th Cir. 1979). Any doubt with respect to whether to grant

a motion to dismiss should be resolved in favor of the pleader. *Pond v. Gen. Elec. Co.*, 256 F.2d 824, 826–27 (9th Cir. 1958).

Challenges to Subject Matter Jurisdiction

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction "must include an inquiry by the court into its own jurisdiction." *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980), *cert. denied*, 449 U.S. 953 (1980). The court takes all facts alleged in the complaint as true and draws all reasonable inferences in favor of the plaintiff. *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *see also Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Federal Rule of Bankruptcy Procedure 7012 also incorporates Federal Rule of Civil Procedure 12(h)(3), which states that "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court *must* dismiss the action." FED. R. CIV. P. 12(h)(3) (emphasis added). That consideration may be made at any time by the court, whether by a party's motion or by the court *sua sponte*, even if after final judgment or appeal. *See Kontrick v. Ryan*, 540 U.S. 433, 455 (2004).

A motion to dismiss cannot be granted for lack of subject matter jurisdiction if the complaint purports to set out a federal claim, and that claim must not be insubstantial and frivolous. *Buchler v. United States*, 384 F. Supp. 709 (E.D. Cal. 1974). Relatedly, if the complaint avers jurisdiction generally while allegations in other portions of the complaint negate jurisdiction, then the court should dismiss the action. *Smith v. Gross*, 604 F.2d 639, 641 n.2 (9th Cir. 1979) (citation omitted).

DISCUSSION

Defendant-Debtor alleges that adjudication of this dispute could have nothing to do with the administration of the bankruptcy case, leading to this case either being dismissed or to the court abstaining to hear it. Defendant-Debtor further affirmatively states "The present adversary proceeding features NO causes of action created by a statutory provision of title 11 and NO causes of action 'determined' by a statutory provision of title 11." Motion, Dckt. 7 at 2:12–14.

The Second Cause of Action in this Adversary Proceeding turns on the application of federal law. First, whether the post-discharge note is a "reaffirmation" of a pre-petition debt for which court approval was required pursuant to 11 U.S.C. § 524(c). Further, there is a dispute between the parties whether the new note and deed of trust have been rendered void pursuant to 11 U.S.C. § 524(a). Both are federal law questions, and uniquely federal bankruptcy law questions. While the members of the State Court could well learn the applicable federal law, which is not something they deal with on any regular (or likely even irregular) basis, it is second nature law to the Article I bankruptcy judges Congress has created to adjudicate these issues arising under the Bankruptcy Code.

Further, violations of the discharge injunction are addressed as "contempt of court" issues, to be raised in the court to which the "contemputuous conduct" relates, not a basis for spawning multiple lawsuits in other court. *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002).

Federal court jurisdiction exists to determine the discharge issues, effect of the discharge, and whether the discharge renders the 2015 note and deed of trust void. Such issues arise under the Bankruptcy Code itself and are core matters. Determination of whether there is a violation of the discharge injunction is a core matter.

Discretionary and Mandatory Abstention

The grant of federal court jurisdiction pursuant to 28 U.S.C. § 1334 is very broad, bringing into federal court many non-federal law matters into federal court to allow parties to assert and have their rights and interests timely adjudicated in and through the bankruptcy laws enacted by Congress as provided in Article I of the U.S. Constitution. Because the grant of jurisdiction is so broad, Congress has also provided the statutory structure for bankruptcy judges and district court judges determining to abstain from determining issues, electing or being required to allow such matters to be adjudicated pursuant to non-bankruptcy jurisdiction. The abstention provisions created by Congress are:

> § 1334. Bankruptcy cases and proceedings
>
> (c) (1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.
>
> (2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

28 U.S.C. § 1334(c).

The decision to abstain is discretionary, except when the issues in the proceeding are only "related to" the bankruptcy case (not arising under the Bankruptcy Code or in the bankruptcy case), no federal jurisdiction would otherwise exist but for 28 U.S.C. § 1334, and if there is an action that has been commenced and could be timely adjudicated in a state court forum.

When evaluating whether to abstain, the Ninth Circuit Court of Appeals has established that the court considers twelve factors, with this court's consideration of each factor shown by the insert immediately following thereafter:

> (1) the effect or lack thereof on the efficient administration of the estate if a court recommends abstention,

– There is no bankruptcy estate left to administer; this factor does not weigh toward the court abstaining.

(2) the extent to which state law issues predominate over bankruptcy issues,

– With respect to the discharge, effect of discharge, and violation of discharge injunction, they are all federal law issues and are uniquely federal bankruptcy law issues arising under the Bankruptcy Code. As to the first cause of action, they are not federal law issues, which could be heard only as an ancillary matter to the second cause of action. As pleaded in the Second Cause of Action, if the court were to determine that the 2015 note and 2015 deed of trust were not void, the First Cause of Action appears to be irrelevant.

(3) the difficulty or unsettled nature of the applicable law,

– The issues are not unduly difficult or unsettled, but they are unique federal law issues. Though any judge could "learn" the federal law principles relating to discharge, reaffirmation, and violation of discharge, those are everyday issues for the Article I bankruptcy judges created by Congress. Additionally, the violation of the discharge injunction is in the nature of contempt in this federal bankruptcy case, not the basis for an independent lawsuit in another court.

(4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,

– No existing proceedings is identified. Defendant-Debtor makes the general statement that because Plaintiff may be entitled to litigation priority status, this court should abstain. No effort was made to quantify the priority status—whether Plaintiff could get to trial in one year, eighteen months, or longer. Because Congress created the bankruptcy court, as a unit of the district court, and bankruptcy judges to address these issues, the parties could be sent for trial within a week to a month of when they are ready to go. The court is not persuaded that, even if it were appropriate to have a state court determine these federal law, contempt of court issues, that the parties could be to trial in any time near to what can be provided in this court.

(5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,

– The issues arise under the Bankruptcy Code itself, for which 28 U.S.C. § 1334 creates federal court jurisdiction.

(6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,

– For the Second Cause of Action, the issues relate directly to the core of the main bankruptcy case - dischargeability of debts and violation of the federal law discharge arising under the Bankruptcy Code.

(7) the substance rather than form of an asserted "core" proceeding,

– For the Second Cause of Action, the substantive law all arises under the Bankruptcy Code itself, which are core proceedings matters. The issue of contempt of court in the bankruptcy case is substantively a federal law core proceeding.

(8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,

– If the parties desire, it appears that the claims in the First Cause of Action could be severed to be litigated as fraud in the inducement and state law recession claims.

(9) the burden on the bankruptcy court's docket,

– There is no burden on the bankruptcy court's docket to determine the federal law issues relating to the Second Cause of Action. If the parties desired, there would not be a burden to adjudicating the First Cause of Action, if it was necessary after the court determined the second cause of action.

(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,

– In light of the Second Cause of Action being a core proceeding, arising under the Bankruptcy Code and relating to contempt of court in this federal court, there does not appear to be "forum shopping" in that cause of action. While the First Cause of Action may be in the nature of a supplemental jurisdiction proceeding, there is a logical basis for including it as the alternative relief if Plaintiff does not prevail on the Second Cause of Action. In asserting that the core proceeding matters in the Second Cause of Action, arising under the Bankruptcy Code and raising contempt of federal court issues, it appears that Defendant-Debtor is "shopping" to move the matter from the court most knowledgeable on these federal law issues that can most quickly determine them to a court with less familiarly on the legal issues and one less able to quickly determine the issues.

(11) the existence of a right to a jury trial, and

– For the Second Cause of Action, there is no right to a jury trial.

(12) the presence in the proceeding of nondebtor parties.

– The creditor Plaintiff and Defendant-Debtor are the only parties involved in this dispute, and the only parties which could be involved in Defendant-Debtor's contention that the 2015 note and deed of trust violates the discharge injunction.

In re Tucson Estates, 912 F.2d 1162, 1167 (9th Cir. 1990).

Based on this analysis, there is no good basis for this court abstaining (some might say abdicating its duty to determine core proceeding matters) in the Second Cause of Action. The court does not concur with Defendant-Debtor's assertion that "EVERY Ninth Circuit criteria for discretion applies to the present adversary proceeding. . . ." Motion, Dckt. 7 at 3:7–8. Further, there ARE (given Debtor's use of capitalized words in the Motion) bankruptcy law issues that predominate (and exclusively determine) the Second Cause of Action. There ARE legitimate bankruptcy law issues in the Second Cause of Action. There ARE difficult (to non-bankruptcy practitioners, as well as some bankruptcy practitioners) bankruptcy law issues concerning the effect of a discharge (some erroneously believing it is an exoneration of debt), when reaffirmation (an

EXCLUSIVELY federal bankruptcy law principal) is required, and when the creditor holding a secured debt and a debtor may renegotiate and the debtor enter into a new contract (as determined under FEDERAL bankruptcy law) to save the collateral rather than the creditor sell it at a foreclosure or lien sale to a third-party. The Second Cause of Action is not a "related to" matter, but one arising under federal statute, the Bankruptcy Code. There IS A RELATIONSHIP between the Second Cause concerning the discharge, effect of the discharge, and asserted violation of the discharge injunction and the bankruptcy case in which the discharge was entered, and it is asserted that the debt was not reaffirmed.

Though Defendant-Debtor asserts that "the burden of this adversary proceeding on the bankruptcy court's docket vastly outweighs any benefit to the debtor, the estate or other creditors," Defendant-Debtor ignores: (1) it is NO BURDEN on the bankruptcy court docket, and (2) there are EXCLUSIVELY FEDERAL bankruptcy law issues in the Second Cause of Action. Further, the court determines that it is NOT A VIRTUAL CERTAINTY that Plaintiff is forum shopping in seeking to have the bankruptcy court determine the exclusively federal bankruptcy law issues in the Second Cause of Action. As discussed above, to a skeptical person, it could well appear that the Defendant-Debtor is engaging in forum shopping to obtain a forum which is not well versed in federal bankruptcy law. FN.1.

FN.1. Given the experience and reputation of Defendant-Debtor's counsel, such could not be the case, but a less-informed judge looking just at the matter as presented may well draw such a negative conclusion.

POSSIBLE BIFURCATION OF PROCEEDINGS

At this juncture, one possible alternative would be for this court to bifurcate the proceedings, addressing first the claims arising under the Second Cause of Action. When those are determined, then the Parties and the court can determine what issues remain to be adjudicated in the First Cause of Action, whether such matters should be adjudicated in the state court or district court if either of the parties desire a jury trial, and whether it is proper for the federal court to exercise supplemental jurisdiction to determine the remaining issues in the First Cause of Action.

DENIAL OF MOTIONS TO DISMISS AND ABSTAIN

The Motion to Dismiss is denied as to the Second Cause of Action. The Motion to Dismiss is denied without prejudice as to the First Cause of Action.

The Motion for the Court to Abstain is denied.

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 Dismiss Adversary Proceeding filed by Sheri Hiemstra ("Defendant-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 to Dismiss is denied as to the Second Cause of Action.

IT IS FURTHER ORDERED that the Motion to Dismiss is denied without prejudice as to the First Cause of Action.

IT IS FURTHER ORDERED that the request for discretionary abstention is denied.

IT IS FURTHER ORDERED that a Scheduling Conference shall be conducted by the court at 2:00 p.m. on February 15, 2018, at which the court will determine:

1. Whether the trial of the Second Cause of Action should be bifurcated and conducted in advance of any trial on the First Cause of Action;

2. The schedule for the filing of an Answer to the Second Cause of Action and responsive pleadings, if any, for the First Cause of Action.

3. Such other items and issues as identified by the Parties in Scheduling Hearing Briefs, which shall be filed and served on or before January 26, 2018, for which Replies, if any, shall be filed and served on or before February 2, 2018.

16. **13-92058-E-7** **SHERI HIEMSTRA**
17-9016
NELSON V. HIEMSTRA

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-9-17 [1]

Plaintiff's Atty: David C. Johnston
Defendant's Atty: Michael R. Germain

Adv. Filed: 10/9/17
Answer: none
Nature of Action:
Validity, Priority or Extent of Lien, Injunctive Relief, Declaratory Judgment

The Status Conference is continued to 2:00 p.m. on February 15, 2018.

Notes:
Continued from 11/14/17 to be heard in conjunction with Defendant's Motion for Determination of Core Proceeding Status, Motion to Dismiss Adversary Proceeding and/or Motion for Discretionary Abstention.

17. 09-90877-E-7 SCB-2 **VINCENT/VICKI MARTINEZ** **MOTION TO EMPLOY ANDREW MENDLIN, HARRIS JUNELL, MERRITT E. CUNNINGHAM AND/OR MARK COTTON AS SPECIAL COUNSEL 12-8-17 [33]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, and Office of the United States Trustee on December 8, 2017. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion to Employ is granted.

Gary Farrar ("the Chapter 7 Trustee") seeks to employ Smith Stag, L.L.C.; LawCo USA, PLLC; The Curtis Legal Group; and Aylstock, Bailey, Burnett, Junell, Potts & Witkin, PLLC ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. The Chapter 7 Trustee seeks the employment of Counsel to continue litigating a multi-district product liability lawsuit.

The Chapter 7 Trustee argues that the lawsuit is property of the Estate and that Counsel's appointment and retention is necessary because Vincent Martinez and Vicki Martinez ("Debtor") did not list the lawsuit on their schedules. Counsel has advised the Chapter 7 Trustee that litigation is ongoing, but a proposed settlement has been reached. The Chapter 7 Trustee seeks to employ Counsel on the same terms as Debtor employed Counsel. Those terms include:

A. Counsel's legal fees are 45.00% of all amounts collected from the lawsuit and reimbursement of costs, but only if there is a recovery;

B. Smith Stag, L.L.C. (42.50%); LawCo USA, PLLC (21.25%); and The Curtis Legal Group (21.25%) together will receive 85.00% of the legal fees collected;

C. Aylstock, Bailey, Burnett, Junell, Potts & Witkin, PLLC will receive 15.00% of the legal fees collected; and

D. Counsel will advance costs for which they would be reimbursed from the gross amount of a judgment or settlement.

Merritt Cunningham, an attorney of Smith Stag L.L.C.; Mark Cotton, an attorney of LawCo USA, PLLC; Andrew Mendlin, an attorney of The Curtis Legal Group; and Harris Junell, an attorney of Aylstock, Bailey, Burnett, Junell, Potts & Witkin, PLLC, testify that they have agreed to represent the Estate in this matter. Dckts. 36–39. They testify that they and their firms do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, 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 Smith Stag, L.L.C.; LawCo USA, PLLC; The Curtis Legal Group; and Aylstock, Bailey, Burnett, Junell, Potts & Witkin, PLLC as Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Contract for Legal Services filed as Exhibit B, Dckt. 40. 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 Gary Farrar ("the Chapter 7 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 7 Trustee is authorized to employ Smith Stag, L.L.C.; LawCo USA, PLLC; The Curtis Legal Group; and Aylstock, Bailey, Burnett, Junell, Potts & Witkin, PLLC as Counsel for the Chapter 7 Trustee on the terms and conditions as set forth in the Contract for Legal Services filed as Exhibit B, Dckt. 40.

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.

18. 17-90887-E-7 ANDREA FUENTES MOTION TO COMPEL ABANDONMENT
BSH-1 Brian Haddix 12-19-17 [13]

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and creditors on December 19, 2017. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion to Compel Abandonment is denied without prejudice.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Andrea Fuentes ("Debtor") requests the court to order Gary Farrar ("the Chapter 7 Trustee") to abandon property listed on Schedule B commonly known as:

A. 2013 Chevrolet Silverado;

B. 2006 Honda Civic;

C. 1999 Honda CRV;

D. Household goods;

E. Antique hutch, buffet & pottery;

F. Everyday clothes;

G. Wedding rings & costume jewelry;

H. One dog;

I. Cash on hand;

J. Savings account at Golden1 (8195-0);

K. Checking account at Golden1 (8195-9);

L. Checking account at Bank of America (5996);

M. eBanking account at Bank of America (8847);

N. Savings account at Golden1 (8020-0);

O. Checking account at Golden1 (8020-9);

P. Roth IRA (through Ameritrade);

Q. Rollover IRA (through Ameritrade);

R. Business inventory; and

S. Business inventory.

("Property"). Debtor claims that the Property is fully exempted on Schedule C and that the Chapter 7 Trustee has had sufficient time to determine the value of Debtor's assets. The Declaration of Andrea Fuentes has been filed in support of the Motion asserts that any non-exempt portion of the Property is of inconsequential benefit to the Estate.

INSUFFICIENT SERVICE OF MOTION

Neither the original proof of service nor the amended proof of service indicates that the Office of the United States Trustee and a party requesting special notice (Synchrony Bank at PRA Receivables Management, LLC) were served with notice of this Motion. The U.S. Trustee Guidelines for Region 17 state that the Office of the U.S. Trustee requests service of all pleadings in Chapter 7 cases, except for proofs of claim, motion for relief from the automatic stay, motions to avoid judicial liens, reaffirmation and redemption papers, and discovery papers. This Motion does not fall into one of the excepted categories. Therefore, Debtor is required to serve the U.S. Trustee for this Motion. Additionally, Synchrony Bank

requested that it be provided with notice in this case on November 7, 2017, and Debtor has not provided service to that creditor for this Motion.

The Motion is denied 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 Motion to Compel Abandonment filed by Andrea Fuentes ("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 to Compel Abandonment is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT SERVES ALL NECESSARY PARTIES

CHAPTER 7 TRUSTEE'S REPORT OF NO DISTRIBUTION

On December 28, 2017, the Chapter 7 Trustee entered a Report of No Distribution. In the Report, he states that $21,060.30 in assets was abandoned, and $87,196.13 was claimed as exempt. Even though Debtor scheduled $70,0176.88 in claims, no claims were filed, and the full scheduled amount of claims is set to be discharged.

Given the Chapter 7 Trustee's Report of No Distribution, the court finds that the debts secured by the Property are of inconsequential value and benefit to the Estate, and the court orders the Chapter 7 Trustee to abandon the Property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not 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 Compel Abandonment filed by Andrea Fuentes ("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 to Compel Abandonment is granted, and the Property identified as:
>
> A. 2013 Chevrolet Silverado;

B. 2006 Honda Civic;

C. 1999 Honda CRV;

D. Household goods;

E. Antique hutch, buffet & pottery;

F. Everyday clothes;

G. Wedding rings & costume jewelry;

H. One dog;

I. Cash on hand;

J. Savings account at Golden1 (8195-0);

K. Checking account at Golden1 (8195-9);

L. Checking account at Bank of America (5996);

M. eBanking account at Bank of America (8847);

N. Savings account at Golden1 (8020-0);

O. Checking account at Golden1 (8020-9);

P. Roth IRA (through Ameritrade);

Q. Rollover IRA (through Ameritrade);

R. Business inventory; and

S. Business inventory;

and listed on Schedule B by Debtor is abandoned by Gary Farrar ("the Chapter 7 Trustee") to Andrea Fuentes by this order, with no further act of the Chapter 7 Trustee required.

19. 13-90893-E-7 LYNN MORGAN MOTION TO COMPEL ABANDONMENT
MLP-2 Martha Lynn Passalaqua 12-28-17 [92]

No Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 28, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion to Compel Abandonment is xxxxxxx.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Lynn Morgan ("Debtor") requests the court to order Michael McGranahan ("the Chapter 7 Trustee") to abandon property known as the Estate's interest in a pre-discharge worker's compensation case ("Property"). Debtor argues that at the time of filing this case, Florida exemption statutes applied and that she exempted any potential proceeds from the worker's compensation case. In 2014, the responding party in that case filed a separate lawsuit against Debtor, and that suit has now reached a tentative settlement by which Debtor will receive $25,000.00.

The Declaration of Lynn Morgan has been filed in support of the Motion, and it asserts that there is no non-exempt portion of the worker's compensation suit. Dckt. 94. Additionally, she states that the Chapter 7 Trustee told her to file this Motion and that he would not oppose it. *Id.* at 2:11–12.

No opposition to the Motion has been filed, and given Debtor's Declaration, the Chapter 7 Trustee may very well not be in opposition. The Declaration is not sworn under penalty of perjury, however. Debtor claiming that she was told that the Chapter 7 Trustee would not oppose is not evidence. At the hearing, the Chapter 7 Trustee stated that he does / does not oppose the Motion.

A review of Debtor's latest-filed Schedule C—from April 14, 2016—shows that she claimed $1.00 as exempt pursuant to Fla. Stat. Ann. § 440.22 for a "Pending Worker's Compensation Claim." Dckt. 21 at 8.

The court finds that the Property is exempted and is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not 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 Compel Abandonment filed by Lynn Morgan ("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 to Compel Abandonment is granted, and the Property identified as the Estate's interest in a pre-discharge worker's compensation case and listed on Schedule B by Debtor is abandoned by Michael McGranahan ("the Chapter 7 Trustee") to Lynn Morgan by this order, with no further act of the Chapter 7 Trustee required.

20. **17-90494-E-7** **DALJEET MANN** **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH NINDER MANN AND JASLEEN MANN**
SSA-2 **Dominique Sopko** **12-18-17 [54]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2017. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion for Approval of Compromise is granted.

Irma Edmonds, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Daljeet Mann (the Debtor), Ninder Mann, and Jasleen Mann ("Settlor"). The claims and disputes to be resolved by the proposed settlement are a one-third interest (worth $20,000.00) in RJ Lodging LLC that Daljeet Mann ("Debtor") transferred improperly to his ex-wife, Ninder Mann, and daughter, Jasleen Mann, in March 2016.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 58):

A. The Estate shall receive $20,000.00 within thirty days of a court order approving the settlement;

B. Debtor shall not be entitled to a wildcard exemption for any of the proceeds received;

C. Each party releases and discharges the other from further claims or liability; and

D. Each party is responsible for its own attorney's fees and costs.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Under the settlement, Movant shall recover $20,000.00 in satisfaction of the Estate's claim for recovery of the property, with an asserted value of $20,000.00, from Settlor. Movant asserts that the property can be recovered for the Estate as a fraudulent conveyance or preferential transfer. This proposed settlement allows Movant to recover for the Estate $20,000.00 without further cost or expense and is 100.00% of the maximum amount of the claim identified by Movant.

Probability of Success

Movant argues that litigation would be successful, but it would be expensive to an Estate that is insolvent. This settlement avoids those costs while recovering everything Movant would have sought.

Difficulties in Collection

Movant does not address any difficulties in receiving the payment from Settlor, but she notes that a difficulty in litigation would be hiring a valuation expert to discuss the transfer.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that any recovery would be hindered significantly because the Estate is currently insolvent. Mainly, Movant argues that the litigation would not be very complex, but it would be inconvenient given that the settlement is for the full amount demanded by Movant.

Paramount Interest of Creditors

Movant argues that the settlement has been achieved without inordinate fees and expenses, and Debtor has waived claiming any wildcard exemption in the settlement funds.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it provides the full amount ($20,000.00) that Movant would have demanded through litigation anyway. Additionally, these funds will be beneficial to funding the insolvent Estate. The Motion is granted.

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 Approve Compromise filed by Irma Edmonds, the Chapter 7 Trustee, ("Movant") 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 for Approval of Compromise between Movant and Daljeet Mann, Ninder Mann, and Jasleen Mann ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit 1 in support of the Motion (Dckt. 58).