UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

January 14, 2016 at 10:30 a.m.

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1. 11-93401-E-7 SUKHDEV SINGH — MOTION TO AVOID LIEN OF ASSETCARE INC.
PR-2 Patrick Riazi — 11-30-15 [22]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Assetcare Inc., and Office of the United States Trustee on November 30, 2015. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied.

This Motion requests an order avoiding the judicial lien of Assetcare Inc. ("Creditor") against property of Sukhdev Singh ("Debtor") commonly known as 2904 Canyon Drive, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $6,070.54. An abstract of judgment was recorded with **Stanislaus** County on January 14, 2008, which encumbers the Property.

The Debtor requests that the court enter an order avoiding the judicial

lien pursuant to 11 U.S.C. § 522(f). The crux of the Debtor's argument is that the instant lien was attached to the Property after the discharge was entered. At the time of the bankruptcy filing, the Debtor did not own any real property. The Debtor asserts that, because of the lien being recorded prior to the bankruptcy and the Debtor not owning any real property at the time of filing, the judgment is voidable.

Unfortunately, the instant Motion is requesting relief not permissible pursuant to 11 U.S.C. § 522(f).

To determined whether a lien is avoidable, a court applies the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A) to determine if there is any equity to support the judicial lien. This requires reviewing the consensual liens and exemptions claimed on the property. In relevant part, 11 U.S.C. § 522 provides:

> (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);

Here, the Debtor is instead arguing that the discharge renders the underlying obligation unenforceable, void and of no effect. 11 U.S.C. § 523(a)(1) provides the following:

> (a) A discharge in a case under this title--
>
> > (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

The Debtor does not assert that the instant lien impairs an exemption of the Debtor. In fact, the Debtor does not assert that the Debtor is attempting to enforce the rights of the lien. The Debtor's Motion is based on the fact that the Debtor did not own the Property at the time of filing of the instant case. As such, there is in fact no exemptions that the lien could impair when there was no real property for the lien to attach. On its face, 11 U.S.C. § 522(f) does not apply.

Instead, it appears that the Debtor is merely seeking a "comfort" order that the discharge injunction issued is actually effective. By operation of law a pre-petition judgment lien for a discharged debt cannot attach to post-petition property acquired by a debtor. The pre-petition judgment is "void" as to a post-petition determination of personal liability of Debtor - not void ab initio. As discussed Collier on Bankruptcy, Sixteenth Edition, ¶ 542.02:

> "Section 524(a)(1) provides that any judgment on a debt that is discharged is void as a determination of the debtor's personal liability. Section 524(a)(1) clearly pertains to judgments obtained both before and after the discharge order, in that it refers to "any judgment at any time obtained.
>
> By referring to the debtor's personal liability, it also makes clear that an in rem judgment, based upon a pre-petition lien and running solely against the debtor's property, would not be affected by the discharge. As the Supreme Court explained in Johnson v. Home State Bank, the right to foreclose on a lien survives or passes through bankruptcy unaffected by the discharge. Thus, a creditor may enforce a pre-petition judgment lien after the discharge, if the automatic stay is no longer in effect and the lien has not been avoided, paid, or modified so as to preclude enforcement.
> ...
> [A] pre-petition judgment that has been made void by this section cannot be the basis for a creditor obtaining a lien on property that was not subject to a lien before bankruptcy. 9 Nor may a creditor proceed in rem against a property interest of the debtor if the creditor had no lien before the bankruptcy case and the debtor's personal liability has been discharged."

There is no argument that the Creditor has violated the discharge injunction or that the Debtor needs confirmation that the lien is void in order to sell the Property for title purposes. There is no evidence that Creditor has asserted that a judgment lien for a discharged debt has attached to post-petition property obtained by Debtor.

The Motion is denied.

An 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 the Debtor(s) 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.

2. 11-93401-E-7 SUKHDEV SINGH
PR-3 Patrick Riazi

MOTION TO AVOID LIEN OF DIVISION OF LABOR STANDARDS ENFORCEMENT
11-30-15 [27]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, James E. Berry, and Office of the United States Trustee on November 30, 2015. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied.

This Motion requests an order avoiding the judicial lien of Division of Labor Standards Enforcement ("Creditor") against property of Sukhdev Singh ("Debtor") commonly known as 2904 Canyon Drive, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,101.27. An abstract of judgment was recorded with **Stanislaus** County on April 12, 2010, which encumbers the Property.

The Debtor requests that the court enter an order avoiding the judicial lien pursuant to 11 U.S.C. § 522(f). The crux of the Debtor's argument is that the instant lien was attached to the Property after the discharge was entered. At the time of the bankruptcy filing, the Debtor did not own any real property. The Debtor asserts that, because of the lien being recorded prior to the bankruptcy and the Debtor not owning any real property at the time of filing, the judgment is voidable.

Unfortunately, the instant Motion is requesting relief not permissible pursuant to 11 U.S.C. § 522(f).

To determined whether a lien is avoidable, a court applies the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A) to determine if there is any equity to support the judicial lien. This requires reviewing the consensual liens and exemptions claimed on the property. In relevant part, 11 U.S.C. § 522 provides:

> (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);

Here, the Debtor is instead arguing that the discharge renders the underlying obligation unenforceable, void and of no effect. 11 U.S.C. § 523(a)(1) provides the following:

> (a) A discharge in a case under this title--
>
> > (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

The Debtor does not assert that the instant lien impairs an exemption of the Debtor. In fact, the Debtor does not assert that the Debtor is attempting to enforce the rights of the lien. The Debtor's Motion is based on the fact that the Debtor did not own the Property at the time of filing of the instant case. As such, there is in fact no exemptions that the lien could impair when there was no real property for the lien to attach. On its face, 11 U.S.C. § 522(f) does not apply.

Instead, it appears that the Debtor is merely seeking a "comfort" order that the discharge injunction issued is actually effective.

The Debtor does not assert that the instant lien impairs an exemption of the Debtor. In fact, the Debtor does not assert that the Debtor is attempting to enforce the rights of the lien. The Debtor's Motion is based on the fact that the Debtor did not own the Property at the time of filing of the instant case. As such, there is in fact no exemptions that the lien could impair when there was no real property for the lien to attach. On its face, 11 U.S.C. § 522(f) does not apply.

Instead, it appears that the Debtor is merely seeking a "comfort" order that the discharge injunction issued is actually effective. By operation of law a pre-petition judgment lien for a discharged debt cannot attach to post-

petition property acquired by a debtor. The pre-petition judgment is "void" as to a post-petition determination of personal liability of Debtor - not void ab initio. As discussed Collier on Bankruptcy, Sixteenth Edition, ¶ 542.02:

> "Section 524(a)(1) provides that any judgment on a debt that is discharged is void as a determination of the debtor's personal liability. Section 524(a)(1) clearly pertains to judgments obtained both before and after the discharge order, in that it refers to "any judgment at any time obtained.
>
> By referring to the debtor's personal liability, it also makes clear that an in rem judgment, based upon a pre-petition lien and running solely against the debtor's property, would not be affected by the discharge. As the Supreme Court explained in Johnson v. Home State Bank, the right to foreclose on a lien survives or passes through bankruptcy unaffected by the discharge. Thus, a creditor may enforce a pre-petition judgment lien after the discharge, if the automatic stay is no longer in effect and the lien has not been avoided, paid, or modified so as to preclude enforcement.
> ...
> [A] pre-petition judgment that has been made void by this section cannot be the basis for a creditor obtaining a lien on property that was not subject to a lien before bankruptcy. 9 Nor may a creditor proceed in rem against a property interest of the debtor if the creditor had no lien before the bankruptcy case and the debtor's personal liability has been discharged."

There is no argument that the Creditor has violated the discharge injunction or that the Debtor needs confirmation that the lien is void in order to sell the Property for title purposes. There is no evidence that Creditor has asserted that a judgment lien for a discharged debt has attached to post-petition property obtained by Debtor.

An 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 the Debtor(s) 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.

3. 11-93401-E-7 SUKHDEV SINGH
PR-4 Patrick Riazi

MOTION TO AVOID LIEN OF DIVISION OF LABOR STANDARDS ENFORCEMENT
11-30-15 [32]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, James E. Berry, and Office of the United States Trustee on November 30, 2015. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied.

This Motion requests an order avoiding the judicial lien of Division of Labor Standards Enforcement ("Creditor") against property of Sukhdev Singh ("Debtor") commonly known as 2904 Canyon Drive, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $41,837.16. An abstract of judgment was recorded with **Stanislaus** County on April 12, 2010, which encumbers the Property.

The Debtor requests that the court enter an order avoiding the judicial lien pursuant to 11 U.S.C. § 522(f). The crux of the Debtor's argument is that the instant lien was attached to the Property after the discharge was entered. At the time of the bankruptcy filing, the Debtor did not own any real property. The Debtor asserts that, because of the lien being recorded prior to the bankruptcy and the Debtor not owning any real property at the time of filing, the judgment is voidable.

Unfortunately, the instant Motion is requesting relief not permissible pursuant to 11 U.S.C. § 522(f).

To determined whether a lien is avoidable, a court applies the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A) to determine if there is any equity to support the judicial lien. This requires reviewing the consensual liens and exemptions claimed on the property. In relevant part, 11 U.S.C. § 522 provides:

> (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);

Here, the Debtor is instead arguing that the discharge renders the underlying obligation unenforceable, void and of no effect. 11 U.S.C. § 523(a)(1) provides the following:

> (a) A discharge in a case under this title--
>
> > (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

The Debtor does not assert that the instant lien impairs an exemption of the Debtor. In fact, the Debtor does not assert that the Debtor is attempting to enforce the rights of the lien. The Debtor's Motion is based on the fact that the Debtor did not own the Property at the time of filing of the instant case. As such, there is in fact no exemptions that the lien could impair when there was no real property for the lien to attach. On its face, 11 U.S.C. § 522(f) does not apply.

Instead, it appears that the Debtor is merely seeking a "comfort" order that the discharge injunction issued is actually effective.

The Debtor does not assert that the instant lien impairs an exemption of the Debtor. In fact, the Debtor does not assert that the Debtor is attempting to enforce the rights of the lien. The Debtor's Motion is based on the fact that the Debtor did not own the Property at the time of filing of the instant case. As such, there is in fact no exemptions that the lien could impair when there was no real property for the lien to attach. On its face, 11 U.S.C. § 522(f) does not apply.

Instead, it appears that the Debtor is merely seeking a "comfort" order that the discharge injunction issued is actually effective. By operation of law a pre-petition judgment lien for a discharged debt cannot attach to post-

petition property acquired by a debtor. The pre-petition judgment is "void" as to a post-petition determination of personal liability of Debtor - not void ab initio. As discussed Collier on Bankruptcy, Sixteenth Edition, ¶ 542.02:

> "Section 524(a)(1) provides that any judgment on a debt that is discharged is void as a determination of the debtor's personal liability. Section 524(a)(1) clearly pertains to judgments obtained both before and after the discharge order, in that it refers to "any judgment at any time obtained.
>
> By referring to the debtor's personal liability, it also makes clear that an in rem judgment, based upon a pre-petition lien and running solely against the debtor's property, would not be affected by the discharge. As the Supreme Court explained in Johnson v. Home State Bank, the right to foreclose on a lien survives or passes through bankruptcy unaffected by the discharge. Thus, a creditor may enforce a pre-petition judgment lien after the discharge, if the automatic stay is no longer in effect and the lien has not been avoided, paid, or modified so as to preclude enforcement.
> ...
> [A] pre-petition judgment that has been made void by this section cannot be the basis for a creditor obtaining a lien on property that was not subject to a lien before bankruptcy. 9 Nor may a creditor proceed in rem against a property interest of the debtor if the creditor had no lien before the bankruptcy case and the debtor's personal liability has been discharged."

There is no argument that the Creditor has violated the discharge injunction or that the Debtor needs confirmation that the lien is void in order to sell the Property for title purposes. There is no evidence that Creditor has asserted that a judgment lien for a discharged debt has attached to post-petition property obtained by Debtor.

An 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 the Debtor(s) 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.

4. 13-91315-E-7 APPLEGATE JOHNSTON, INC.
WFH-18 George C. Hollister

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH FLOYD JOHNSON CONSTRUCTION CO., INC.
12-11-15 [523]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on December 11, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion For Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent 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 Approval of Compromise is granted.

Michael D. McGranahan, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Floyd Johnson Construction Co., Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising from Adversary Proceeding No. 15-9036 which seeks to avoid and recover pre-petition transfers of the Debtor to Defendant in the amount of $9,711.70 pursuant to 11 U.S.C. §§ 547 amd 550.

Movant and Settlor has 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 is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 526):

A. Trustee and Settlor agree to resolve the litigation and all disputes between them, except the excluded items, for the sum of $4,000.00.

B. Within ten days of the execution of this agreement, Settlor will cause to be delivered to the Trustee a check in the amount of $4,000.00 in full and complete settlement of the claim in the litigation.

C. The Settlor shall have the right to file an amended proof of claim asserting an additional claim pursuant to § 502(h) in the amount of the settlement amount.

D. Upon receipt of the settlement check, the Trustee will promptly file a motion with the court for approval of the compromise.

E. The parties jointly and severally release from any and all claims, demands, express or implied contract rights, actions, causes of action, charges, debts, demands, damages, costs, attorneys' fees and/or expenses of any kind, nature and character, at law or in equity, accrued or inchoate, arising under any federal, state, or any other law, whether known and/or unknown, filed or otherwise, sounding in tort, contract, or otherwise, including, but not limited to foreseen or unforeseen, disclosed or undisclosed, anticipated or unanticipated, and expected or unexpected claims, damages, losses, costs, expenses and liabilities and the consequences thereof which either party now has or may hereafter acquire for any reason whatsoever, arising out, connected with or incidental to, or in any way related to the litigation up to and including the effective date of this agreement. The matter excluded from the release are:

1. Any rights of the parties set forth in this agreement.

2. Any liability of Settlor to Debtor for amount owed for services provided, materials provided, refunds, rebates, indemnity or contribution arising from the business operation of Debtor.

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 Construction)***, 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 Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson***, 390 U.S. 414, 424-425 (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); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Under the Settlement Movant shall recover $4,000.00 in satisfaction of the estate's claim for recovery of the property, with an asserted value of $9,711.70, from Settlor. Movant asserts that the property can be recovered for the estate as a preference. This proposed settlement allows Movant to recover for the estate $4,000.00 without further cost or expense and is 42% of the maximum amount of the claim identified by Movant.

Probability of Success

The Trustee asserts the Settlor is asserting the ordinary course of business defense of 11 U.S.C. § 547. The Trustee argues that while the Settlor has the burden of proof, the Trustee notes that there is a risk inherent in any litigation. In analyzing the risk, the Trustee argues that the recovery of 42% of the amount demanded without the need for further litigation makes the factor weigh in favor of the settlement.

Difficulties in Collection

The Trustee does not believe there are any impediments to collection of any judgment obtained against the Settlor.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. Formal discovery would be required, with depositions of the Settlor and document production requests will be required. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation.

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 the Movant to purchase or prosecute the property, claims, or interests of the estate to 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. The proposed settlement allows for the Trustee and the estate to recover $4,000.00, 42%, of the claim asserts without the need of litigation. In light of the possible defense of the Settlor, the nature of the claim, and the terms of the settlement, the settlement and recovery of the estate is in the best interest of all parties. 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 Michael D. McGranahan, the 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 to Approve Compromise between Movant and Floyd Johnson Construction Co., Inc. ("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 A in support of the Motion(Docket Number 526).

5. 08-91933-E-7 BULMARO/MARIA PALAFOX — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MI HOGAR, LLC
SSA-3 Pro Se — 12-18-15 [90]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2015. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(3), 21 day notice.)

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

The Motion For Approval of Compromise is granted.

Michael D. McGranahan, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Mi Hogar, LLC ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising from Adversary Proceeding No. 15-09017 concerning funds on hands with the California State Controller's Office in the principal amount of $73,174.00. The Trustee asserts that the Settlor has no right to the funds and that the funds should be turned over in full.

Movant and Settlor has 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 is set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 94):

A. The funds with the California State Controller's Office ($73,174.00) will be divided such that the Trustee, for the estate, will receive 35% of the funds in the amount of $25,610.67.

B. Settlor will receive 65% of these funds, in the amount of $47,563.67.

C. The parties will cooperate with each other and work with the State of California Controller's Office, which is not a party to this agreement, to effectuate the terms of the settlement such that the Trustee will receive all the funds initially, but ultimately be allowed to distribute same.

D. Trustee will administer the funds that come into the Estate and will respond to all claims filed in this matter

E. Settlor will not be allowed nor will it file a proof of claim for any further funds in this matter.

F. The Adversary Proceeding will be dismissed, with prejudice, with each party paying their own costs and attorney fees.

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 Construction)***, 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 Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson***, 390 U.S. 414, 424-425 (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); ***In re Woodson***, 839 F.2d 610, 620 (9th Cir. 1988).

Under the Settlement Movant shall recover $25,610.67 in satisfaction of the estate's claim for recovery of the property, with an asserted maximum gross value of $73,174.00, from Settlor. Movant asserts that the property can be recovered for the estate for the claim it has against Settlor. This proposed settlement allows Movant to recover for the estate $25,610.67 without

further cost or expense and is 35% of the maximum amount of the claim identified by Movant.

Probability of Success

The Trustee asserts that the Adversary Proceeding centers around the proper ownership and disposition of funds held by the State of California Controller's Office. The Trustee and Settlor claim an interest in these funds which derived from a loan advanced by the Debtor for the purchase of a home. The title company held back the sum of $73,174.00 in escrow at closing from the purchase price. However, the title company filed its own bankruptcy proceeding in 2009. The Trustee argues that the outcome of the litigation would be uncertain. The Trustee argues that the factor weighs in favor of settlement because it allows for the recovery of $25,610.67 for the estate, which is currently insolvent, and avoids litigation fees.

Difficulties in Collection

The Trustee contends that this favor weighs in favor of the settlement because the case was originally closed as a no asset case but the settlement would allow for the recovery of monies without the cost of litigation.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, estimated at $30,000.00, which are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. Formal discovery would be required, with depositions of the Settlor, and document production requests of third parties will be required. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation.

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 the Movant to purchase or prosecute the property, claims, or interests of the estate to 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. While the settlement is only for 35% of the total recovery sought, the cost of litigation, as the Trustee argues, would cost an estimated $30,000.00 which would absorb most of the award amount if went to trial. The terms allows for the dismissal of the Adversary Proceeding and brings an insolvent estate to one that is solvent. 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 Michael D. McGranahan, the 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 to Approve Compromise between Movant and Mi Hogar, LLC ("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(Docket Number 94).

6. 08-91933-E-7 SSA-4 — BULMARO/MARIA PALAFOX, Pro Se — MOTION FOR COMPENSATION FOR EZRA N. GOLDMAN, SPECIAL COUNSEL, 12-18-15 [96]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2015. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

The Motion for Allowance of Professional Fees is granted.

Ezra N. Goldman, the Special Counsel ("Applicant") for Michael D. McGranahan the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The order of the court approving employment of Applicant as special counsel was entered on December 22, 2014, Dckt. 74. Applicant requests fees in the amount of $6,402.67, based on the contingency fee agreement..

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not--

> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including representation in the Adversary Proceeding No. 15-09017 to determine ownership of the funds held by California Controller’s office. The Applicant helped solidify a compromise and settlement which resulted in the estate receiving 35% of the funds held, totaling $25,601.67. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in litigation to determine ownership of the funds held by California Controller’s office for which Client agreed to a contingent fee of 25% of the gross award. In approving the employment of applicant, the court approved the contingent fee,

subject to further review pursuant to 11 U.S.C. § 328(a). $25,601.67 of net monies (exclusive of these requested fees and costs) was recovered for Client.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the fees computed on a percentage basis recovery for Client to be reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $6,402.67 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Trustee from the available funds of the Estate in a manner consistent with the order of distribution in the Chapter 7 case.

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

Fees $6,402.67

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 Ezra N. Goldman ("Applicant"), Special Counsel for the 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 Ezra N. Goldman is allowed the following fees and expenses as a professional of the Estate:
>
> Ezra N. Goldman, Professional Employed by Trustee
>
> Fees in the amount of $6,402.67
>
> The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the 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.

7. 14-91136-E-7 MARTHA JIMENEZ
MDM-1 C. Anthony Hughes

MOTION FOR COMPENSATION FOR MICHAEL MCGRANAHAN, CHAPTER 7 TRUSTEE
11-20-15 [102]

DISCHARGED: 4/13/15

Final Ruling: No appearance at the January 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, and Office of the United States Trustee on November 20, 2015. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Michael D. McGranahan, the Chapter 7 Trustee ("Applicant") for the bankruptcy estate of Martha Elena Jimenez ("Debtor"), makes a First Interim and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period August 11, 2014 through November 20, 2015. Applicant requests fees and costs in the amount of $1,212.69.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits. The Applicant, as the Trustee, reviewed the Debtor's schedules and forms, reviewed relevant financial information. The Applicant discovered an undisclosed savings account that the Debtor failed to list in the schedules. The Applicant objected to the Debtor attempting to exempt the amount in the account. The Applicant prepared a Motion to Turnover after the Debtor withdrew the funds prior to the Applicant being able to access the funds. The Applicant states that the estate realized gross proceeds of $6,300.37,where the unsecured creditors will receive dividends of 8.5%. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

The Bankruptcy Code limits the maximum amount of fees which a Chapter a Chapter 7 or Chapter 11 trustee may be paid in a bankruptcy case. Pursuant to 11 U.S.C. § 326(a),

> In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25% on the first $5,00 or less, 10% on any amount in excess of $5,000 but not in excess of $50,000, 5% on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3% of such monies in excess of $1,000,000, upon all moneys disbursed or turned over in the case by th trustee to parties in interest, excluding the debtor, but including holders of secured claims.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Expenses

Applicant seeks to be paid a single sum of $1,212.69 for its fees and expenses.

FEES AND COSTS & EXPENSES ALLOWED

Using the 11 U.S.C. § 326 trustee fee cap formula,

25% of first $5,000.00	$1,250.00
10% of next $1,300.40	$130.04
Calculated Maximum Total Compensation Permitted for Trustee	$1,380.04

This represents the Maximum Trustee Fees in a case that works its way through conclusion. Here, the Applicant is only seeking $1,212.69. This is only 87.9% of the maximum allowable fees.

As discussed supra, the Applicant has performed for the benefit of the estate, namely retaining undisclosed assets for the estate for the benefit of the creditors.

In light of the instant request being less than the maximum allowed under 11 U.S.C. § 326 and the Applicant having provided real and actual services to the benefit of the estate, the Motion is granted.

First and Final Fees in the amount of $1,212.69 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the 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 following amounts as compensation to this professional in this case:

Fees and Expenses $1,212.69

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 Michael D. McGranahan ("Applicant"), 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 D. McGranahan is allowed the following fees and expenses as a professional of the Estate:
>
> Michael D. McGranahan, Professional Employed by the bankruptcy estate of Martha Elena Jimenez ("Debtor")
>
> Fees and Expenses in the amount of $ 1,212.69,
>
> The Fees and Costs are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the 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.

8. 15-90358-E-11 LAWRENCE/JUDITH SOUZA
MHK-1 David M. Meegan

CONTINUED MOTION TO USE CASH COLLATERAL
4-30-15 [32]

CONTINUED: 9/3/15

Tentative Ruling: L.B.R. 9014-1(f)(2) Final Hearing. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Local Rule 9014-1(f)(2) Motion – Final Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 30, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Defaults of the non-responding parties are entered by the court.

The Motion to Use Cash Collateral is granted.

Lawrence and Judith Souza, the Debtor-in-Possession, filed the instant Motion to Use Cash Collateral on April 30, 2015. Dckt. 32.

The Debtors-in-Possession holds fee title to the following properties:

PROPERTY LOCATION	TYPE OF RENTAL
121 W. Syracuse Ave.	Single Family Residential
200 W. Syracuse Ave./842 N. Golden State Blvd.	Single Family Residential
201 W. Syracuse Ave.	Single Family Residential
223 W. Syracuse Ave.	Single Family Residential
235 W. Syracuse Ave.	Single Family Residential
87 W. Canal Drive	Single Family Residential
97 W. Canal Drive	Single Family Residential

830 N. Golden State Blvd.	Commercial

The Debtors-in-Possession states that each of the properties are encumbered. The Curtis Family Trust Dated May 27, 1994 ("Creditor") holds three different deeds of trust that secure three separate obligations, and two of those deeds encumber more than one of the properties. The Internal Revenue Service has also recorded two Notices of Tax Lien on all the properties. The following chart describes the encumbrances:

RENTAL	**CREDITOR**	**RECORDATION DATE**	**ASSIGNMENT OF RENTS?**
121 Syracuse	Maiman Revocable Trust A/Deed of Trust	3/8/11	yes
	Internal Revenue Service	4/26/11; 3/26/12	No
200 Syracuse	Stanislaus County/unpaid property taxes	n/a	No
	Curtis Family Trust/ Deed of Trust	9/21/05	Yes
	Internal Revenue Service	4/26/11; 3/26/12	No
235 Syracuse	Seterus/Deed of Trust	4/25/05	No
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11; 3/26/12	No
830 Golden State	Stanislaus County/ Unpaid Property Taxes	n/a	No
	Curtis Fam. Trust/Deed of Trust	9/30/05	Yes
	Internal Revenue Service/Tax lien	4/26/11;3/26/12	No

87 Canal	Provident Credit Union/Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11;3/26/12	No
97 Canal	Provident Credit Union/ Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax Liens	4/26/11;3/26/12	No

The Debtors-in-Possession have opened a segregated bank account of the purpose of holding all rents and for paying necessary expenses. Only rents from the properties are deposited into this account.

The Debtors-in-Possession expect to obtain property insurance proceeds for 121 Syracuse and request the authority to use the proceeds to rehabilitation expenses for that property so that it can be rented to new tenants. The insurance proceeds will be $10,850.00 for damages.

The Debtors-in-Possession state that the use of cash collateral to pay ongoing expenses of the properties will ensure that the properties remain occupied and that there will be continued collection of rent. The Debtors-in-Possession propose that the use of cash collateral be restricted to those expenses described below within a 20% variance for each category of expense and that case remaining after the payment of the same be retained by the Debtors-in-Possession in the rental bank account.

121 W. Syracuse Ave.

	April	**May**	**June**	**July**	**August**	**September**
Revenue						
Rent	0	0	900	900	900	900
Insurance Proceeds	$10,850.00	0	0	0	0	0

Expenses						
Insurance Premium	$81.00	$81.00	$81.00	$81.00	$81.00	$81.00
Utilities	$100.00	$100.00	$100.00	$100.00	$100.00	$100.00

200 W. Syracuse Ave./842 N. Golden State Blvd.

	April	**May**	**June**	**July**	**August**	**September**
Revenue						
Rent	$800.00	$800.00	$800.00	$800.00	$800.00	$800.00
Expenses						
Late property tax installment			$601.00			
Insurance Premium	$235.00	$235.00	$235.00	$235.00	$235.00	$235.00
Utilities	$30.00	$30.00	$30.00	$30.00	$30.00	$30.00
Management fees	$64.00	$64.00	$64.00	$64.00	$64.00	$64.00
Reserve for misc. maintenance exp.	$50.00	$50.00	$50.00	$50.00	$50.00	$50.00

235 W. Syracuse Ave.

	April	**May**	**June**	**July**	**August**	**September**
Revenue						
Rent	$1,195.00	$1,195.00	$1,195.00	$1,195.00	$1,195.00	$1,195.00
Expenses						
Insurance Premium	$85.00	$85.00	$85.00	$85.00	$85.00	$85.00
Utilities	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00

Management fees	$96.00	$96.00	$96.00	$96.00	$96.00	$96.00
Reserve for misc. maintenance exp.	$25.00	$25.00	$25.00	$25.00	$25.00	$25.00

87 W. Canal Street

	April	**May**	**June**	**July**	**August**	**September**
Revenue						
Rent	$875.00	$875.00	$875.00	$875.00	$875.00	$875.00
Expenses						
Insurance Premium	$77.00	$77.00	$77.00	$77.00	$77.00	$77.00
Utilities	$65.00	$65.00	$65.00	$65.00	$65.00	$65.00
Management fees	$70.00	$70.00	$70.00	$70.00	$70.00	$70.00
Reserve for misc. maintenance exp.	$100.00	$100.00	$100.00	$100.00	$100.00	$100.00

97 W. Canal Street

	April	May	June	July	August	September
Revenue						
Rent	$900.00	$900.00	$900.00	$900.00	$900.00	$900.00
Expenses						
Insurance Premium	$61.00	$61.00	$61.00	$61.00	$61.00	$61.00
Utilities	$65.00	$65.00	$65.00	$65.00	$65.00	$65.00
Management fees	$72.00	$72.00	$72.00	$72.00	$72.00	$72.00
Reserve for misc. maintenance exp.	$50.00	$50.00	$50.00	$50.00	$50.00	$50.00

830 N. Golden State Blvd.

	April	May	June	July	August	September
Revenue						
Rent	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00
Expenses						
Late property tax installment				$2,135.00		
Insurance Premium	$76.00	$76.00	$76.00	$76.00	$76.00	$76.00
Utilities	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Management fees	$80.00	$80.00	$80.00	$80.00	$80.00	$80.00
Reserve for misc. maintenance exp.	$25.00	$25.00	$25.00	$25.00	$25.00	$25.00

MAY 21, 2015 HEARING

At the hearing, the court entered an order on May 27, 2015 authorized the use of cash collateral for the period of April 10, 2015 through September 30, 2015. Dckt. 63. The court additionally continued the hearing to September 3, 2015 at 10:30 a.m. for the court to continue authorizing the further use of cash collateral. On or before August 13, 2015, the Debtors in Possession were ordered to file Supplemental Pleadings, if any, in support of authorization for the further used of cash collateral. Opposition to such further use, if any, were ordered to be filed and served on or before August 27, 2015.

SUPPLEMENTAL PAPER

The Debtor-in-Possession filed a supplemental paper on August 11, 2015. Dckt. 114. The Debtor-in-Possession states they own the following properties, some having become vacant and there being no tenants for the foreseeable future:

PROPERTY LOCATION	**TYPE OF RENTAL**
235 W. Syracuse Ave.	Single Family Residential
87 W. Canal Drive	Single Family Residential
830 N. Golden State Blvd.	Commercial

The following chart describes the encumbrances:

RENTAL	**CREDITOR**	**RECORDATION DATE**	**ASSIGNMENT OF RENTS?**
121 Syracuse	Maiman Revocable Trust A/Deed of Trust	3/8/11	yes
	Internal Revenue Service	4/26/11; 3/26/12	No
200 Syracuse	Stanislaus County/unpaid property taxes	n/a	No
	Curtis Family Trust/ Deed of Trust	9/21/05	Yes
	Internal Revenue Service	4/26/11; 3/26/12	No
235 Syracuse	Seterus/Deed of Trust	4/25/05	No

	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11; 3/26/12	No
830 Golden State	Stanislaus County/ Unpaid Property Taxes	n/a	No
	Curtis Fam. Trust/Deed of Trust	9/30/05	Yes
	Internal Revenue Service/Tax lien	4/26/11;3/26/12	No
87 Canal	Provident Credit Union/Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11;3/26/12	No
97 Canal	Provident Credit Union/ Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax Liens	4/26/11;3/26/12	No
223 W. Syracuse	Seterus, Inc. - FNMA/ Deed of Trust	4/25/05	Yes

	Curtis Family Trust/ Deed of Trust dtd. 7/15/10	8/25/10	Yes
	Internal Rev. Service/ Tax Liens	4/26/11; 3/26/12	No

The Debtors-in-Possession state that the use of cash collateral to pay ongoing expenses of the properties will ensure that the properties remain occupied and that there will be continued collection of rent from February 1, 2016 to May 31, 2016. The Debtors-in-Possession propose that the use of cash collateral be restricted to those expenses described below within a 20% variance for each category of expense and that case remaining after the payment of the same be retained by the Debtors-in-Possession in the rental bank account.

235 W. Syracuse Ave.

	October	**November**	**December**	**January**
Revenue				
Rent	$1,195.00	$1,195.00	$1,195.00	$1,195.00
Expenses				
Insurance Premium	$85.00	$85.00	$85.00	$85.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$96.00	$96.00	$96.00	$96.00
Reserve for misc. maintenance exp.	$25.00	$25.00	$25.00	$25.00
Projected Surplus	$989.00	$989.00	$989.00	$989.00

87 W. Canal Street

	October	**November**	**December**	**January**
Revenue				
Rent	$875.00	$875.00	$875.00	$875.00
Expenses				
Insurance Premium	$77.00	$77.00	$77.00	$77.00

Utilities	$65.00	$65.00	$65.00	$65.00
Management fees	$70.00	$70.00	$70.00	$70.00
Real Property Tax Reserve	Balance of Net Rent	Balance of Net Rent	Balance of Net Rent	Balance of Net Rent
Reserve for misc. maintenance exp.	$100.00	$100.00	$100.00	$100.00
Projected Surplus	$563.00	$563.00	$563.00	$563.00

830 N. Golden State Blvd.

	October	**November**	**December**	**January**
Revenue				
Rent	$1,000.00	$1,000.00	$1,000.00	$1,000.00
Expenses				
Insurance Premium	$76.00	$76.00	$76.00	$76.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$80.00	$80.00	$80.00	$80.00
Reserve for misc. maintenance exp.	$25.00	$25.00	$25.00	$25.00
Projected Surplus	$819.00	$819.00	$819.00	$819.00

PROVIDENT CREDIT UNION'S OPPOSITION

Provident Credit Union ("Creditor) filed an opposition on August 27, 2015. Dckt. 138. The Creditor objects on the ground that there is a surplus as to the 87 W. Canal property and that such surplus should be used to make the monthly payments owing to Creditor.

SEPTEMBER 3, 2015 HEARING

At the hearing, the court entered an order on May 27, 2015 authorized the use of cash collateral for the period of August 11, 2015 through January 31, 2016. Dckt. 154. The court additionally continued to January 14, 2016 at 10:30 a.m. for the court to continue authorizing the further use of cash collateral. On or before December 17, 2015, the Debtors in Possession shall file Supplemental Pleadings, if any, in support of authorization for the further used of cash collateral. Opposition to such further use, if any, shall be filed and served on or before December 24, 2015.

SUPPLEMENTAL PAPER

The Debtor-in-Possession filed a supplemental paper on December 10, 2015. Dckt. 207. The Debtors-in-Possession holds fee title to the following properties:

PROPERTY LOCATION	TYPE OF RENTAL
121 W. Syracuse Ave.	Single Family Residential
200 W. Syracuse Ave./842 N. Golden State Blvd.	Single Family Residential
223 W. Syracuse Ave.	Single Family Residential
235 W. Syracuse Ave.	Single Family Residential
87 W. Canal Drive	Single Family Residential
97 W. Canal Drive	Single Family Residential
830 N. Golden State Blvd.	Commercial

The following chart describes the encumbrances:

RENTAL	CREDITOR	RECORDATION DATE	ASSIGNMENT OF RENTS?
235 Syracuse	Seterus/Deed of Trust	4/25/05	No
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11; 3/26/12	No
830 Golden State	Stanislaus County/ Unpaid Property Taxes	n/a	No
	Curtis Fam. Trust/Deed of Trust	9/30/05	Yes
	Internal Revenue Service/Tax lien	4/26/11;3/26/12	No
87 Canal	Provident Credit Union/Deed of Trust	10/16/02	Yes

	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11;3/26/12	No

The Debtors-in-Possession state that the use of cash collateral to pay ongoing expenses of the properties will ensure that the properties remain occupied and that there will be continued collection of rent from October 1, 2015 through January 31, 2015. The Debtors-in-Possession propose that the use of cash collateral be restricted to those expenses described below within a 20% variance for each category of expense and that case remaining after the payment of the same be retained by the Debtors-in-Possession in the rental bank account.

235 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				
Rent	$1.00	$1.00	$160.00	$1.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$0.00	$0.00	$0.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$159.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

87 W. Canal Street

	February	**March**	**April**	**May**
Revenue				
Rent	$875.00	$875.00	$875.00	$875.00
Expenses				
Insurance Premium	$77.00	$77.00	$77.00	$77.00
Utilities	$0.00	$0.00	$0.00	$0.00

Management fees	$70.00	$70.00	$70.00	$70.00
Projected Surplus	$678.00	$678.00	$678.00	$678.00

97 W. Canal Street

	February	**March**	**April**	**May**
Revenue				
Rent	$1.00	$1.00	$621.00	$1.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$620.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

121 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				
Rent	$1.00	$1.00	$390.00	$1.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$389.00	$0.00
Management Fees	$0.00	$0.00	$0.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

200 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				
Rent	$1.00	$236.00	$977.00	$236.00
Expenses				
Insurance Premium	$0.00	$235.00	$0.00	$235.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$3976.00	$0.00
Management Fees	$0.00	$0.00	$0.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

223 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				
Rent	$1.00	$1.00	$588.00	$1.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$587.00	$0.00
Management Fees	$0.00	$0.00	$0.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

830 N. Golden State Blvd.

	February	March	April	May
Revenue				
Rent	$1,000.00	$1,000.00	$1,000.00	$1,000.00

Expenses				
Insurance Premium	$249.00	$249.00	$249.00	$249.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$80.00	$80.00	$80.00	$80.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$543.00	$0.00
Projected Surplus	$671.00	$671.00	$128.00	$671.00

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a Debtor-in-Possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a Debtor-in-Possession, the Debtor-in-Possession can use, sell, or sell property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless--
>
> > (A) such sale or such lease is consistent with such policy; or
> >
> > (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease--
> >
> > > (I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
> > >
> > > (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Fed. R. Bankr. P. 4001(b) provides the procedures in which a trustee or Debtor-in-Possession may move the court for authorization to use cash collateral. In relevant part, Fed. R. Bankr. P. 4001(b) states:

> (b)(2) Hearing

> The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

Debtors-in-Possession have shown that the use of cash collateral as proposed is in the best interest of estate and is in the ordinary course of business. The proposed budgets provide for the continued upkeep of the Debtors-in-Possession's rental properties to ensure that the properties can continue to attract and retain tenants for the continued income to the estate. The Debtors-in-Possession have created a separate rental income account in which the Debtors-in-Possession are depositing the rental income from the properties and the expenses are deducted from that account.

The Debtors-in-Possession do not request any use of cash collateral for the properties that are currently unoccupied which raises questions of whether there are normal expenses that the Debtors-in-Possession must cover in order to keep the properties habitable if a tenant does arise. However, for purposes of this Motion, the use of cash collateral is authorized as to the three properties discussed supra.

Therefore, the court authorizes the use of cash collateral for the period of February 1, 2016 through May 31, 2016.

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 Authority to Use Cash Collateral filed by Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the cash collateral may be used to pay the following expenses, granting the Debtor-in-Possession a variance of 20% in any individual line item expense, plus the amount in maintenance reserve, as long as the total amount used does not exceed the total amount allowed:

235 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				

Rent	$1.00	$1.00	$160.00	$1.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$0.00	$0.00	$0.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$159.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

87 W. Canal Street

	February	**March**	**April**	**May**
Revenue				
Rent	$875.00	$875.00	$875.00	$875.00
Expenses				
Insurance Premium	$77.00	$77.00	$77.00	$77.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$70.00	$70.00	$70.00	$70.00
Projected Surplus	$678.00	$678.00	$678.00	$678.00

97 W. Canal Street

	February	**March**	**April**	**May**
Revenue				
Rent	$1.00	$1.00	$621.00	$1.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$620.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00

Projected Surplus	$1.00	$1.00	$1.00	$1.00

121 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				
Rent	$1.00	$1.00	$390.00	$1.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$389.00	$0.00
Management Fees	$0.00	$0.00	$0.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

200 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				
Rent	$1.00	$236.00	$977.00	$236.00
Expenses				
Insurance Premium	$0.00	$235.00	$0.00	$235.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$3976.00	$0.00
Management Fees	$0.00	$0.00	$0.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

223 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				
Rent	$1.00	$1.00	$588.00	$1.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$587.00	$0.00
Management Fees	$0.00	$0.00	$0.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

830 N. Golden State Blvd.

	February	March	April	May
Revenue				
Rent	$1,000.00	$1,000.00	$1,000.00	$1,000.00
Expenses				
Insurance Premium	$249.00	$249.00	$249.00	$249.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$80.00	$80.00	$80.00	$80.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$543.00	$0.00
Projected Surplus	$671.00	$671.00	$128.00	$671.00

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

IT IS FURTHER ORDERED that the Debtor in Possession shall make the following Adequate Protection Payments to

Provident Credit Union on or before January 22, 2016, from the respective cash collateral proceeds for the identified properties (which payment shall be delivered to counsel for Provident Credit Union):

A. $3,500.00 from the rent monies for the 97 Canal Rd Property.

B. $3,500.00 from the rent monies for the 87 Canal Rd Property.

IT IS FURTHER ORDERED that the hearing is continued to May 12, 2016 at 10:30 a.m. for the court to continue authorizing the further use of cash collateral. On or before April 14, 2016, the Debtors in Possession shall file Supplemental Pleadings, if any, in support of authorization for the further used of cash collateral. Opposition to such further use, if any, shall be filed and served on or before April 28, 2016.

9. 14-91565-E-7 HAR-6 RICHARD SINCLAIR Pro Se

CONTINUED AMENDED MOTION FOR CONTEMPT
9-8-15 [245]

CONTINUED: 12/17/15

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Creditors, and Office of the United States Trustee on September 8, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Amended Motion for Contempt is xxxxx

California Equity Management Group, Inc. and Fox Hollow of Turlock Owner's Association ("Creditor") filed this Motion for Contempt on September 8, 2015. Dckt. 245. Creditor alleges that Richard Sinclair ("Debtor"), the trustee of the Richard Sinclair Trust ("Sinclair Trust"), KCM, LLC, Sun one, LC, Dustykay, LLC, Golden Hills Camp, LLC (collectively the "LLC Witnesses"), and Kathryn Machado, PhD (Machado) have violated certain requirements, described below. Machado is alleged to be the Trustee for the Sinclair Trust and the agent for service of process for the LC Witnesses. Dckt. 245 ¶ 3.

Creditor provide a thorough review of the case history as the basis for their motion for contempt. In summation, Creditor alleges that Debtor, Machado as Trustee and agent for service, the Sinclair Trust, and the LLC Witnesses violated several discovery requirements, including disregarding various requests in the Federal Rules of Bankruptcy Procedure 2004 examination subpoenas and disobeying this court's orders to produce testimony or documentation. Dckt. 173, 177, 200, 202 (orders relating to Richard Sinclair); Dckt. 175, 179, 192, 200, 202 (orders relating to Sinclair Trust and LLC Witnesses).

Based on the background provided, Creditor requests that the court issue an order that compels the Sinclair Trust and the LLC Witnesses to conduct a reasonable and diligent search for, and to produce, all responsive documents within their possession, custody, or control, that respond to certain listed subpoena requests. Creditor also requests this court to issue an order for Debtor to produce the one-half inch of unsigned documents and billing statements identified in a status report on May 30, 2015, and to conduct a reasonable and diligent search for, and produce, all responsive documents in his possession, custody, or control in response to listed subpoena request. Creditor requests these various documents be provided to counsel for Creditor by October 15, 2015, with a statement under oath by each that a reasonable and diligent search was conducted. In the event contemnors fail to fully and timely comply, Creditor requests the court to sanction each at $200 daily until complete compliance in made. Dckt. 245 ¶ 22.

In addition to the above, Creditor seeks to have Debtor and Machado, as Trustee of the Sinclair Trust and as a designated representative of the LLC Witnesses, to appear and resume their individual 2004 examinations.

DEBTOR AND MACHADO'S NONOPPOSITION

On September 16, 2015, Mr. Sinclair filed a document identifying himself as an "attorney at law." Dckt. 250. This document is signed by Mr. Sinclair, stating that Mr. Sinclair does not oppose the Contempt Motion. While signed by Mr. Sinclair, the document makes statements attributed to not just to Mr. Sinclair, but a third-party, "Richard Sinclair and I have another tub to deliver when we appear on the 1st of October." It also makes reference to "we" in several locations.

The non-opposition filed by Mr. Sinclair is in the same form, style, and formatting as other pleadings that Mr. Sinclair has filed for himself and while serving as the attorney for Dr. Machado prior to Mr. Sinclair being placed on involuntary inactive status.

An almost identical document, for which Richard Sinclair is listed in the upper left hand corner as the person preparing the document, was also filed on September 16, 2015. Dckt 249. This document is signed by Kathryn Machado and states a non-opposition to the Contempt Motion, and contains the following identical language to Mr. Sinclair's non-opposition:

> Richard Sinclair and I have another tub to deliver when we Appear on the 1st of October. The court reporter delivered to Greg Durbin, my original documents attached to the deposition, which I would like returned.

Non-Opposition, p. 2: unnumbered lines 3-5. The balance of the non-opposition of Dr. Machado is almost identical with the following exceptions:

1. A statement that Dr. Machado will be filing a substitution of attorney "shortly" for Iain MacDonald to substitute in as her attorney. (As of the court's September 24, 2015 review of the docket in this case, no substitution has been filed.)

2. Dr. Machado "was never sent the deposition to proof by the Court Reporter." (Richard Sinclair does not state he did not receive a copy of his 2004 Examination or a copy of the 2004 Examination of Dr. Machado in his non-opposition.)

CREDITOR'S REPLY

On September 24, 2015, the Creditor filed a reply. Dckt. 254. Appearing to restate points in the original Motion, the Creditor restates that it has shown that the parties are in contempt of the court order for production and that Debtor's "disability" does not excuse their contempt.

Furthermore, the Creditor seeks that each of the contemnors should be required to state under oath at the hearing that he or she:

1. Has made a reasonable and diligent search for all of the documents requested int eh subpoena;

2. Has completed such search; and

3. Is producing all of the responsive documents.

Lastly, the Creditor requests that the court order new dates for the resumption and conclusion of the 2004 examinations.

APPLICABLE LAW

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. ***Cooter & Gell v. Hartmarx Corp.***, 496 U.S. 384,395 (1990); ***Miller v. Cardinale (In re DeVille)***, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. ***Price v. Lehtinen (in re Lehtinen)***, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposes under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or ***sua sponte*** by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. ***Peugeot v. U.S. Trustee (In re Crayton)***, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. ***Chambers v. NASCO, Inc.***, 501 U.S. 32, 43 (1991); see ***Price v. Lehitine***, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. ***Knupfer v. Lindblade (In re Dyer)***, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. ***Id.*** The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. ***Price v. Lehitine***, 564 F.3d at 1058.

OCTOBER 1, 2015 HEARING

At the hearing, Richard Sinclair and explained that he believes he had a stroke, which caused his car to go into a ditch. He further believes that by the end of October he could be able to participate in the bankruptcy case and adversary proceedings. However, the only medical information provided by a doctor is the "Mr. Sinclair should be able to return to work/school August 31, 2015. The court addressed with Mr. Sinclair the need for the court to be satisfied that he is legally competent, or to appoint a personal representative. The court requested that Mr. Sinclair's doctor provide a professional opinion declaration concerning Mr. Sinclair's condition and legal competency (as a represented party or as pro se party).

The court also addressed with Dr. Machado the failure to substitute in as counsel for Dr. Machado and the entities for which she is the managing member, trustee, or representative. At the hearing Dr. Machado represented, several times, that she had retained as counsel for herself and the entities Ian Macdonald. Additionally, that she did not know why he was not at the hearing, since he had been so employed. The court requested that the court's staff call Mr. Macdonald's office during the hearing to determine if he was on his way to court or was unaware of the hearing. The staff reported that he was not at the office.

The court then stated that it would issue an order for Mr. Macdonald to appear the next week in the Sacramento courtroom to address Dr. Machado's representations that Mr. Macdonald was the attorney for the doctor and the entities. Dr. Machado stated that she was available to appear. Then the court noted that if it was an inaccurate statement that Mr. Macdonald had been engaged as counsel and the court wasted Mr. Macdonald's time by bringing him to Sacramento based on Dr. Machado's representations, then the court would sanction Dr. Machado and the entities for the loss of Mr. Macdonald's time.

Estimating Mr. Macdonald to have at least a $400 an hour billing rate and the hearing exhausting at least six hours of time, the sanctions could be between $2,500 and $3,000.

At that point Dr. Machado stated that while she had signed the engagement letter, she had not sent Mr. Macdonald the $10,000 retainer which was required as a condition of employment. Rather, Dr. Machado stated that she proposed that Mr. Macdonald commence the representation and that a retainer would be funded out of some future escrow. She then conceded that Mr. Macdonald had not yet been employed as counsel.

Dr. Machado then represented to the court that she would engage counsel, even if it was less expensive counsel. The court noted to Dr. Machado that Mr. Sinclair has a very distinctive writing and advocacy style. If the court were to see a newer attorney signing pleadings, but they were written in the same style and legal content as Mr. Sinclair's pleadings, then the court would be concerned that the new attorney was merely lending his or her bar license to Mr. Sinclair to engage in the unlicensed practice of law. The court expressed concern that it could appear from the file that Dr. Machado was already promoting the unlicensed practice of law by having Mr. Sinclair draft pleadings for and provide legal advise to Dr. Machado and the entities, which Dr. Machado would then sign purportedly in *pro se*.

The court continued the hearing to 10:30 a.m. on October 22, 2015. Dckt. 261.

REPORT OF CREDITORS CALIFORNIA EQUITY MANAGEMENT GROUP, INC., FOX HOLLOW OF TURLOCK OWNERS' ASSOCIATION AND ANDREW KATAKIS

On October 15, 2015, Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association ("Creditors") filed a Report. Dckt. 278. The Report states that following the October 1, 2015 status conference, Creditors' counsel telephoned the records department for the Stanislaus County Sheriff's Department to obtain the report of Mr. Sinclair's alleged accident on July 11, 2015. According to counsel, the Sheriff's Department informed Creditors' counsel that they had no record of the incident.

The Creditors provide a copy of a follow up letter Creditors' counsel sent to the Sheriff's Department to confirm that no such record of the incident exists. Dckt. 278, Exhibit A. The Creditors provide the response received by the Sheriff's Department which states:

> A NAME SEARCH AS OF 10/15/15 FAILS TO REVEAL ANY RECORD
> SHERIFF'S OFFICE, MODESTO, CA

Dckt. 278, Exhibit B. There is a signature underneath the stamped language. The cover letter from the Sheriff's Department states that it was sent From the "Stanislaus County Sheriff's Dept. Records," and the Sender was "Trish S." Id.

OCTOBER 22, 2015 HEARING

At the hearing, it was represented that Richard Sinclair had turned over documents purported in response to the subpoenas for himself, Dr. Machado individually, and for Dr. Machado as the trustee, managing member, or officer of the Richard Sinclair Trust, and the managing members or representative of

KCM, LLC; Sun One, LLC; Dustykay, LLC; and Golden Hills Camp, LLC. Since being disbarred as an attorney in August 2015, Richard Sinclair has not been the attorney for Dr. Machado individually and as the trustee, managing member, or officer for the Richard Sinclair Trust, and the managing members or representative of KCM, LLC; Sun One, LLC; Dustykay, LLC; and Golden Hills Camp, LLC.

Issues of who has been in possession of the documents and the efforts of Dr. Machado, individually and as the trustee, managing member, or officer to comply with the subpoena may be addressed at the 2004 examinations. The court did not allow the parties to engage in ad hoc discussions of this issue in open court.

The court continued the instant Motion as it relates to Debtor-in-Possession to 10:30 a.m. on December 17, 2015. Dckt. 298. The court also dismissed the Motion without prejudice as to Dr. Machado individually, and for Dr. Machado as the trustee, managing member, or officer of the Richard Sinclair Trust, and the managing members or representative of KCM, LLC; Sun One, LLC; Dustykay, LLC; and Golden Hills Camp, LLC.

DEBTOR-IN-POSSESSION'S NOTICE OF CONTINUED DISABILITY

On December 2, 2015, the Debtor-in-Possession filed a "Notice of Continued Disability Until January 31, 2016 from July 11, 2015 Traumatic Brain Injury and Declaration of Richard C. Sinclair and Doctor's Notice." Dckt. 312.

First, the court notes that the Notice does not comply with Local Bankr. R. 9014-1. The Notice does not separate the Notice from the declarations which is required under the Local Bankruptcy Rules which were explicitly ordered to be filed by the court in the instant case.

Looking at the Notice itself, the Notice once again reiterates the facts of the alleged car accident. The Debtor-in-Possession attaches another "letter" from Dr. Basi which is substantially the same as the previous "letter" and states that the Debtor-in-Possession "will be off work till January 31st." Dckt. 312.

The Notice states that:

> Due to my disability, I will not be attending any hearings or filing any responses or motions.

Id.

DEBTOR-IN-POSSESSION'S STATUS REPORT

The Debtor-in-Possession filed a status report on December 2, 2015. Dckt. 311.

First, the court notes that the report does not comply with Local Bankr. R. 9014-1. The report does not separate the report from the declarations from the evidence which is required under the Local Bankruptcy Rules which were explicitly ordered to be filed by the court in the instant case.

The Debtor-in-Possession discusses two letters that were "uncovered" when the Debtor-in-Possession was preparing documents for the Rule 2004 examination. The two letters are allegedly gift letters to Debtor-in-Possession's children and ex-wife, giving the Debtor-in-Possession's interest in Sinclair Ranch to his ex-wife and children. These letters are allegedly dated January 31, 1996 and December 24, 2001.

The Debtor-in-Possession argues that these "letters" evidence that he does not have any interest in the Ranch and that they are not part of the estate.

DEBTOR-IN-POSSESSION RESPONSE TO INTERROGATORIES

On December 7, 2015, the Debtor-in-Possession filed his response to the interrogatories sent by the Creditor regarding the alleged accident. The response states the following:

> I am in receipt of your INTERROGATORIES AND PRODUCTION OF DOCUMENTS RE DISABILITY. I repeat what I have previously told you. I will put it in capital letters so you can see it better. I AM DISABLED.
>
> The Doctor has repeated that I am still disabled. Therefore, I will not be responding to these interrogatories and production of documents about my disability, until after the disability time period ends. My thought processes are interrupted and I am not going to respond until they have turned. Judge Sargis acknowledged the disability. Please stop sending me things to do while I am disabled. . . .

CREDITOR'S STATUS REPORT

The Creditor filed a report on December 10, 2015. Dckt. 321. The report begins with a restatement of the Debtor-in-Possession's representations since the alleged accident. The Creditor states that they have served interrogatories and document requests on the Debtor-in-Possession as to the alleged incident. The Creditor states that the Debtor-in-Possession refused to respond. The Creditor states that they served subpoenas duces tecum to Waterford Tow Service and the California Highway Patrol and the return date of January 6, 2016.

As to the Federal RICO action, the Creditor states that the remaining defendants have had their defaults entered. The Debtor-in-Possession is one of the defaulted defendants. The federal court issued an order setting a status conference for January 11, 2016, with the purpose of the hearing being to determine how to proceed and to schedule a damages prove up trial.

DECEMBER 17, 2015 HEARING

On December 17, 2015, the court concluded that Richard Sinclair has the requisite legal capacity to participate as a party in this bankruptcy case and related proceedings, and to do so in pro se if he so chooses.

DEBTOR'S REPLY

The Debtor filed an opposition to the instant Motion on January 8, 2016. Dckt. 359. This opposition is untimely pursuant to the court's order at the December 17, 2015 hearing, which required that the Debtor file an opposition on or before January 4, 2016. However, the court will review the opposition.

First, the court notes that the opposition does not comply with Local Bankr. R. 9014-1. The opposition does not separate the report from the declarations and from the evidence which is required under the Local Bankruptcy Rules which were explicitly ordered to be filed by the court in the instant case.

The Debtor first states that his previously filed non-opposition was filed during the time of his alleged disability and at the suggestion of an unaffiliated third party in which the Debtor provides no grounds for the assertion.

The Debtor continues to state that some of the discovery requests by the Creditors are disorganized due to the Debtor having to give his ex-wife the furniture holding the files. As such, the Debtor states that the "files were dumped in piles on the floors." Dckt. 359.

The Debtor then argues that due to his alleged accident, the Debtor was unable to comply with the discovery order. The Debtor argues that since the period to produce discovery was until July 31, 2015 and that the Debtor's alleged incapacity began July 11, 2015, the Debtor has essentially "tolled" the discovery. The Debtor argues that since the court found that the Debtor's incapacitation ended as of December 17, 2015, the Debtor should be allowed until January 7, 2016 to provide discovery without being in contempt.

The Debtor states that he is unsure if there are anymore documents to provide for the alleged five questions remaining. The Debtor also states that the California State Bar has required that the Debtor return any client files that he has to be returned.

The Debtor additionally asserts that the original documents that were provided have yet to be returned. FN.1.

FN.1. The court notes here that the court has attempted numerous times to contact the Debtor concerning the documents. The documents are currently being held at the Sacramento courthouse. The courtroom deputy has made numerous attempts to contact the Debtor to collect his documents in vain.

The remainder of the Debtor's "opposition" is improperly attached Points and Authorities and Declaration. Much like all of the other Debtor's filings, the Debtor appears to merely copy and paste various sources with different formatting, with random argumentation throughout. Additionally, the Debtor improperly argues what appears to be grounds for reconsideration concerning the determination of competency. The Debtor includes excerpts concerning due process and competency. The Debtor also attempts to argue that the court erred in converting the case. These are not pertinent to the instant Motion and are unresponsive to the scope of the instant Motion. Given the fact that the opposition was filed untimely and that the Debtor, even after numerous warnings

and orders from the court, does not comply with Local Bankr. R. 9014-1 as to the filing of papers, the court will not consider the unrelated arguments.

CREDITOR'S REPLY

The Creditor filed a reply on January 8, 2016. Dckt. 361.

The Creditor begins by first asserting that the Creditor has submitted clear and convincing evidence that Debtor has violated court orders (Dckt. 177 and 202). The Creditor asserts that Debtor has admitted that he has not complied with the court's order to produce discovery. The Creditor asserts that the Debtor conceded to the fact that he did not produce an approximately one-half inch thick stack of unsigned documents. Furthermore, the Creditor argues that the Debtor has not even begun to search for the requested documents that the court ordered Debtor to produce.

The Creditor next argues that Debtor has failed to show that reasonable efforts were made to comply with the court order or to show why compliance was impossible. The Creditor argues that the Debtor does not provide any evidence why the Debtor failed to comply with the discovery orders from the time of May 22, 2015 up to the alleged accident on July 11, 2015. The Creditor states that the Debtor failed to file weekly status updates on the status of the discovery and failed to attend the July 2, 2015 status conference which directly related to the production of documents.

The Creditor continues by arguing that the Debtor remains in contempt to the present. The Creditor asserts that the Debtor failed to produce an additional tub at the October 1, 2015 hearing. The Debtor then allegedly asserted that his disability made production impossible. To date, the Creditor asserts that they have not received any further discovery.

Next, the Creditor asserts that Debtor has repeatedly misled the court in an effort to avoid his obligations. The Creditor argues that Debtor has lied to the court concerning the alleged accident. The Debtor on multiple occasions has stated that the accident was not due to alcohol. However, the Creditor states that they have obtained the police report from the California Highway Patrol. The Creditor provides the following examples of false and deceptive statements made by the Debtor to the court and parties:

1. Debtor falsely stated on at least two occasions that the incident was a result of him suffering a stroke when the accident report indicates that the accident was due to Debtor being under the influence of alcohol.

2. Debtor falsely asserted on at least two occasions that alcohol was not involved in the incident and concealed until December 17, 2015 that his license was suspended as a result of the incident due to "0.08% or more BAC Chemical Test Results."

3. Debtor falsely asserted throughout that he suffered unconsciousness for about two hours and thus could not explain anything that happened from 7:00 p.m. - 9:00 p.m. the night of the incident. The Creditor points to various papers where the Debtor indicates that he was unconscious when the hospital report indicates that Debtor did not lose consciousness.

Furthermore, the Accident Report indicates that the scene of the accident was fresh and not two hours old.

4. Debtor falsely stated on at least two occasions that the law enforcement officer with whom he spoke on July 11, 2015 was the Stanislaus County Sheriff's Department.

5. Debtor falsely described on at least two occasions his conversation at the scene with the law enforcement officer.

The Creditor continues and argues that the Debtor's request for a continuance and to dismiss the case, as well as challenges to the disability determinations are improper.

The Creditor requests the following:

1. Richard Sinclair state under oath that he has produced the one-half inch of unsigned documents identified in this status report of May 30, 2015, and has conducted a reasonable and diligent search for and has produce all documents in his possession, custody, or control that are responsive to paragraph numbers 7, 23, 31, 39, 42, 47, 53, 54, 61, 68, 69, 83, 84, 86, 87, 89, 90, 91, 92, 93, 94, 95, 96, and 97 of his subpoena, other than the 5 remaining paragraphs as identified pursuant to the next subparagraph, or explain in detail what part of the statement is not true.

2. Richard Sinclair be ordered to:

   a. Identify the 5 remaining questions by paragraph numbers in his subpoena that he admits in his opposition are the questions where he has not completed his production of documents;

   b. To produce all of additional documents he states in his opposition he has located and not produced; and

   c. To complete the search for and produce all documents in his possession, custody, or control that are responsible to any of the remaining 5 questions he identifies under part (a) above.

3. Richard Sinclair be ordered to pay $200.00 per day to Creditor from and after January 7, 2016 and until he is full compliance with the following order.

CREDITOR'S DECLARATION

On January 12, 2016, D. Greg Durbin, attorney for Creditor, filed a corrected declaration in support of the response. Dckt. 366. The court has not had ample time to review the declaration.

DISCUSSION

The Debtor has and continues to violate specific court orders as to discovery, pleading, and hearings. As highlighted by the Creditor only in part, there have been numerous incidents where the Debtor has failed to comply (i.e. to produce documents), failed to accurately state the facts around the incident on July 11, 2015 (i.e. that the Debtor's license has been suspended and that the officer determined that the Debtor was intoxicated at the time of the accident), failed to provide explanation as to why the Debtor did not produce documents since May 2015, failed to provide explanation as to why the Debtor has failed to produce documents since the court made the determination that the Debtor is competent on December 17, 2015, etc.

The Debtor has erected numerous blockades in this case to not only hinder the progression of the Chapter 11 case, and now Chapter 7 case, but also to prevent the Creditor from receiving discovery ordered to be turned over by this court. This was only further exasperated by the Debtor's alleged incapacitation and the need for the court to determine the Debtor's competency. On December 17, 2015, the court found that the Debtor is, in fact, competent and able to represent himself.

However, the fact that the case had to enter "limbo" during the pendency of the competency determination has forced the discovery to be suspended. The court cannot penalize the Debtor for not producing while the court was determining his competency. Now that the Debtor's competency has been determined, the court can resume the discovery.

As noted by the Creditor, the Debtor has still not completely complied with discovery. Due to the history of the parties and the need for court supervision, the court will order that the Debtor produce documents, as before, at the Sacramento courthouse.

As the court has repeatedly noted, monetary sanctions would not be sufficient for the Debtor to comply compliance, if the Debtor does not comply with the reset discovery. However, the court is not bound by just monetary sanctions. It is well-settled that besides being able to find a party in civil contempt and compelling obedience through sanctions, a bankruptcy court may also apply sanctions for not obeying a discovery order pursuant to Fed. R. Bankr. P. 7037. Fed. R. Bankr. P. 7037 incorporated Fed. R. Civ. P. 37. Some of the sanctions a court can impose for failing to obey an order to provide discovery include sanctions such as:

> (I) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
>
> (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
>
> (iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party

Fed. R. Civ. P. 37(b)(2).

The Debtor's continued noncompliance and the fact that the Debtor has made it clear, through the years of litigation the parties have been enthralled in, that monetary sanctions will not sufficiently compel the Debtor to comply.

Given the Debtor's alleged incompetency and the time it took the court to make a determination on it, the court offers the Debtor one last chance to comply with the numerous orders of the court and to produce the subpoenaed documents. According to the Debtor in his opposition, the Debtor had until January 7, 2016 to comply with the discovery order based on a "tolling." However, January 7th has come and gone and the Debtor has still not complied with the discovery order.

To afford Mr. Sinclair the opportunity to fully comply with the discovery orders of this court, and the imposition of sanctions only after a hard deadline, with no outstanding contentions of incapacity before the court, the court sets the final deadline to comply with the discovery orders of this court.

The court orders that the Richard Sinclair, the Debtor, shall produce the remaining documents on February 24, 2016 at 9:00 a.m. in the Judicial Conference Room for courtroom 2003, at Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, California. The Debtor shall produce all remaining documents requested in the Subpoena for Rule 2004 Examination to the Rule 2004 examination. Any objections to the requested documentation shall be filed and served on or before February 19, 2016. The court will address any objections at the time of the production.

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 Contempt filed by the Creditors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS FURTHER ORDERED** that the Richard Sinclair, the Debtor, produce the remaining documents on February 24, 2016 at 9:00 a.m. in the Judicial Conference Room at the Modesto courthouse located at 1200 I Street, Suite 4, Modesto, California. The Debtor-in-Possession shall produce at the hearing all remaining documentation requested in the Subpoena for Rule 2004 Examination, as stated in Exhibit C, Dckt. 151.

IT IS FURTHER ORDERED that any objections to the requested documentation shall be filed and served on or before February 19, 2016. The court will address any objections at the time of the production.

IT IS FURTHER ORDERED that any person asserting any objections or privileges shall attend the hearing, in addition to their attorney appearing at the hearing. Such appearances must be in person, no telephonic appearances permitted for any party or person seeking such relief. Telephonic appearances are permitted for counsel.

10. 15-91169-E-7 EVA SANDOVAL **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Pro Se **12-14-15 [17]**

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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Eva Filomena Sandoval ("Debtor"), Trustee, and other parties in interest on December 16, 2015. The court computes that 29 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case ($335.00 due on December 2, 2015).

The court's decision is to sustain the Order to Show Cause and order the case dismissed.

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $335.00.

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 Order to Show Cause 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 Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

11. 15-90470-E-7 SUSAN FISCOE — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
HCS-5 David C. Johnston — 12-14-15 [39]

Tentative Ruling: The Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct 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 14, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The objection to debtor's claimed exemptions is sustained and the exemptions under Florida law are disallowed in their entirety.

Gary Farrar, the Chapter 7 Trustee, objects to the Debtor's use of the Florida exemptions because the Debtor is not entitled to use Florida exemptions. The Trustee asserts that the Debtor was not domiciled in Florida for the 730 days immediately preceding the date of filing the petition, and the Debtor was not domiciled in Florida in the 180 days immediately preceding the 730 days before the filing of the petition.

The Trustee argues that the Debtor filed the instant petition on may 14, 2015. Therefore, the 730-days preceding the filing dates back to May 14, 2013. The Trustee asserts that during this period, the Debtor changed her domicile from California to Florida. Additionally, the Debtor's domicile was

not Florida in the 180 days immediately preceding the 730 days before the date of filing the petition. The Trustee asserts that based on these two factors, the Debtor is not entitled to Florida exemptions.

The Trustee first argues that the Debtor was not domiciled in Florida for the 730 day period immediately preceding the date of filing. First, the Trustee asserts that at the Meeting of Creditors the Debtor stated that she did not move out of California until October 20, 2013. The Trustee states that the fact the Trustee sold her house in Modesto, California ten days after moving out of California indicates that it was down within the 730 days preceding the filing. Additionally, the Trustee highlights the fact that the Debtor lists Stanislaus County, California as her principal place of residence. Dckt. 1. The Debtor lived there and ran a golf course for the City of Modesto.

Third, the Trustee argues that the fact the Debtor's business is incorporated in California, the office of the business is Debtor's residence, and that Debtor is listed as a shareholder indicates that the Debtor was domiciled in California.

Fourth, the Trustee points to the fact that on September 18, 2013, within the 730 days before she filed the case, the Debtor bought her annuity contract at the Modesto house.

Lastly, the Debtor asserts that there is no evidence that the Debtor had a Florida domicile during this 180 day period from November 15, 2012 to May 14, 2013 to qualify for Florida exemption.

DEBTOR'S DECLARATION

The Debtor filed a declaration on December 31, 2015. Dckt. 49. The Debtor states that she currently resides at 421 S.W. Fairway Landing, Port Sain Lucie, Florida. The Debtor states that she purchased her home on July 7, 2009, at which time she also had a home in Modesto California.

The Debtor states that she owned a business called FM Golf. The Debtor states that it was her intention to give the management business to her employees when she retired. The Debtor states that the City of Modesto would not accept that contract and terminated the management contract.

In March 2013, the Debtor asserts that she moved her sole vehicle, living room set, bedroom set, housewares, and most of her clothes to Florida. The Debtor asserts that at this time she had no intention of remaining in California.

The Debtor then asserts that she is not intending to obtain favorable exemptions.

Lastly, the Debtor asserts that the instant objection is untimely based on the court's previous order. Namely, the Debtor argues that the court only granted an extension for the Trustee to object to the Debtor's specific annuity exemption, not the exemptions in total.

TRUSTEE'S REPLY

The Trustee filed a reply on January 7, 2016. Dckt. 52. The Trustee begins by first stating that the Debtor failed to show she was domiciled in Florida during the 730 day period before she filed the case. The Trustee further highlights that the Debtor does not claim that she was domiciled in Florida during the 180 day period that preceded the 730 day period.

The Trustee's main argument is that there was not sufficient showing that the Debtor resided in Florida to qualify for Florida exemptions. The Debtor admits that there was an intention but the Trustee asserts that mere intention to move without the actual and continuous physical presence, fails to establish domicile.

As to the 180 days prior to the 730 day period, the Trustee restates that there is no evidence that the Debtor resided in Florida during that time, since the Debtor admits she did not move to Florida until October 2013.

As to the timeliness argument, the Trustee asserts that the court's order did not limit the Trustee to the annuity exemption.

APPLICABLE LAW

11 U.S.C. § 522 states, in relevant part:

> (b)(1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (2) and the other debtor elect to exempt property listed in paragraph (3) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (2), where such election is permitted under the law of the jurisdiction where the case is filed.
>
> (2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.
>
> (3) Property listed in this paragraph is--
>
> (A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's ***domicile*** has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's

> ***domicile*** has not been located in a single State for such 730-day period, the place in which the debtor's ***domicile*** was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place. . .

11 U.S.C. § 522 (emphasis added).

DISCUSSION

The crux of the Trustee's objection is whether the Debtor was "domiciled" in Florida for a sufficient time during the applicable time period as required by 11 U.S.C. § 522(b)(3)(A) for the Debtor to avail herself to the Florida exemptions.

As discussed in COLLIER ON BANKRUPTCY,

> "Domicile" as used in section 522 means more than mere residence. Although domicile and residence are often loosely used as synonymous terms, the specified reference to each in the Code indicates an intention to maintain a legal distinction between them. The residence of a debtor may be nothing more than a place of sojourn. While ordinarily used in a sense of fixed and permanent abode, as distinguished from a place of temporary occupation, the term "residence" does not include the intention required for domicile. Domicile means actual residence coupled with a present intention to remain there. It is the place where one intends to return when one is absent and where one's political rights are exercised. Mere physical removal to another jurisdiction without the requisite intent is insufficient to effect a change in domicile.

Collier on Bankruptcy, Sixteenth Edition, ¶ 522.06, Domicile of Debtor.

As addressed by the Ninth Circuit Appellate Panel,

> "Everyone has a domicile and nobody has more than one domicile at a time. RESTATEMENT § 11. Once established, domicile continues until superseded by another domicile. ***Id.***, § 19. One may reside in one place and be domiciled in another. ***Holyfield***, 490 U.S. at 48.
>
> For adults, a domicile of choice is established by simultaneous physical presence in a place and an intention to remain there. ***Id.*** at 48; ***Kanter***, 265 F.3d at 857; RESTATEMENT § 15."

Donald v. Curry (In re Donald), 328 B.R. 192, 202 (B.A.P. 9th Cir. 2005).

To determine "domicile," "the difficult question is usually whether the individual had the requites subjective intent..." ***Id.***, 203. A person's declaration regarding his or her intent is pertinent, but ordinarily will be substantially discounted by the court when inconsistent with the objective facts. ***Id.***

Here, the Debtor lists that her address is "421 S.W. Fairway Landing, Port Saint Lucie, FL" yet states that her County of Residence or the Principal Place of Business is Stanislaus. Dckt. 1, pg. 1.

On Schedule E, the Debtor lists tax departments, namely California state tax boards and the Internal Revenue Service. However, notably absent from the list is Florida tax boards.

Debtor's Schedule I indicates that she has been employed in Florida for 1 year as a flooring sales associate at Home Depot.

While it appears based on the information provided by the Debtor, the Debtor does now currently reside and domicile in Florida. However, there is not sufficient evidence that during the applicable 730-day period or the 180-day period contemplated by 11 U.S.C. § 522(b) have been satisfied. In fact, the Debtor admits in her declaration that she did not move to Florida until October 2013. This was within the 730-day period prior to the filing.

As the Trustee noted, the Debtor does not try to argue that she resided their the majority of the 180 days prior to the 730-day period. The crux of the Debtor's argument is that she has had the intention to reside in Florida beginning in 2009. Unfortunately, as case law has made clear, intention alone is not sufficient, there must also be physical presence.

730 days prior to the May 14, 2015 filing of this case is May 18, 2013. Debtor testifies that in March 2013 she actually moved her sole vehicle, furniture, housewares, and most of her clothing to Florida. Declaration, ¶ 4; Dckt. 49. She testifies that she had owned the Florida house for four years and never rented it out. ***Id.*** Further, that she was waiting to retire and then live in her Florida home full-time. ***Id.***

Her testimony continues, "[w]hen I moved almost all of my belonging and my vehicle to Florida [March 2013], I had no intention whatsoever of remaining in California." Declaration, ¶ 5, ***Id.***

The Debtor states that when she purchased the Florida Property in 2009, she had the "express intention of retiring and living the rest of my life in this PGA development." Declaration, ¶ 2, ***Id.*** From this testimony, Debtor states that she intended, at a future date, when she retired, to move her domicile to Florida.

In her Statement of Financial Affairs Debtor states that her business, FM Golf operated from 1990 to October 2013 managing golf courses for the City of Modesto. Statement of Financial Affairs Question 18, Dckt. 13 at 30. The Trustee has provided evidence that Debtor continued to reside in the Modesto area house until Debtor sold it October 30, 2013. The Trustee asserts that at the First Meeting of Creditors Debtor stated under penalty of perjury that she moved to Florida October 20, 2013. See Declaration of Laura Cummings and Exhibit A, Dckt. 45 and 46. Debtor does not dispute that such was her testimony at the First Meeting of Creditors.

Debtor fails to provide clear, express testimony as to where, how much time, and what connections she had with the Modesto properties and the Florida properties during the 730 day period. The objective evidence and testimony is that Debtor operated her business in Modesto until October 2013. Debtor

believes that filing in the Eastern District of California is proper in 2013, even though she now asserts to having been domiciled in Florida since mid-2013 and asserts that she ceased her business operations in Modesto by October 2013.

The objective evidence demonstrates that during the 730 period prior to the commencement of this bankruptcy case Debtor did not have a domicile solely in Florida. During the 180 period prior to the 730 day period, the evidence shows that Debtor was domiciled in Modesto, California, though having an intention to change her domicile, at some later date, to Florida, after she retired.

Timeliness of Objection

The Debtor also opposes the objection to exemptions to any assets other than the annuity. Debtor asserts that this court's order extending the time to object to the exemptions claimed in Amended Schedule C applies only to the annuity. Order, Dckt. 36.

Federal Rule of Bankruptcy Procedure 4003 governs the procedure for exemptions and objections thereto. The plain language of Federal Rule of Bankruptcy Procedure 4003(b) provides [the court reformatting the paragraph structure for this discussion],

> "(b) Objecting to a claim of exemptions.
>
> (1) Except as provided in paragraphs (2) and (3) [not applicable here], a party in interest may file an objection to the list of property claimed as exempt
>
> *within 30 days after the meeting of creditors held under § 341(a) is concluded or
>
> *within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later.
>
> The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension."

The court "extending the time" exists within the existing time to object.

The Rule provides that a party in interest "may file an objection to the list of property claimed as exempt" within two different time periods. The first is within 30 days of the completion of the 341 meeting. The Trustee did so timely object, but only to the claim of the annuity.

The party in interest may also "file an exemption to the list of property claimed as exempt" within 30 days after the filing of an amended to the list or supplemental schedules filed.

The court reads the Rule to state that the objection may be stated to the property on the "list" in the amendment, not merely what changes a party may seek to make on an amended "list." Rule 4003(b) does not state, "or as to

any amended or additional exemptions, within 30 days of the amended claim of exemption being filed." Exemptions are often interrelated. Additionally, as the court noted, the filing of Schedules is not a "game" in which repeated shots are taken at getting something by the parties in interest, and amendments filed instead of the debtor defending his or her exemption as stated on Schedule C.

The court issue the order extending the time to expressly address Debtor's strategy of amend and moot, rather than address the objection. The Trustee had the right to object to the list of assets on the Amended Schedule C as exempt and the court extended such time to object.

Therefore, based on the discussion supra, the Trustee's objection is sustained and the claimed exemption under Florida law are disallowed.

That the parties have wrestled through two rounds of objections and they have not found a way to reasonably resolve this dispute surprises the court. Whether under California or Florida law, Debtor will have the right to some exemption. While it may not be as easy as Debtor sought to make it, the bankruptcy process does not throw a debtor out naked in the wilderness.

The Debtor shall have until February 16, 2016, to file an amended Schedule C to properly claim exemptions in this case. See Fed. R. Bankr. P. 1009(a).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Exemptions filed by the 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 Objection is sustained and the claimed exemptions on Amended Schedule C filed on October 29, 2015, Dckt. 33, are disallowed in their entirety. The exemptions are disallowed as having been filed under Florida law, and the disallowance is without prejudice to Debtors filing a further amended Schedule C asserting objections on other state or federal law.
>
> **IT IS FURTHER ORDERED** that Debtor shall file an amended Schedule C on or before February 15, 2016, to claim exempt any assets in this bankruptcy case.

12. 15-90976-E-7 NIGH/MELVA LAWHON **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Gary Ray Fraley **12-8-15 [27]**

Final Ruling: No appearance at the January 14, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Nigh Edward Lawhon and Melva Lee Lawhon ("Debtor"), Steven S. Altman ("Movant"), Trustee, and other such other parties in interest as stated on the Certificate of Service on December 8, 2015. The court computes that 37 days' notice has been provided.

The court issued an Order to Show Cause based on Movant's failure to pay the required fees in this case ($176.00 due on November 24, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the case shall proceed in this court.

13. 15-90976-E-7 NIGH/MELVA LAWHON — CONTINUED MOTION TO COMPEL ABANDONMENT
SSA-1 Gary Ray Fraley — 11-24-15 [12]

CONTINUED: 12/17/15

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 24, 2015. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Property is denied without prejudice.

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or 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 E.J. Vallortigara, Betty Vallortigara, Kenji Yoshimura, Jeanette Yoshimura, Kenette Yoshimura, Jay Vallortigara, Jon D. Gaier, and Fay Gaier ("Creditors") requests the court to authorize Trustee to

abandon property commonly known as 3139 Beaver Court, Copperopolis, California (the "Property").

The Property is encumbered by the lien of Creditor, securing claim of $177,835.02. Additionally there are judgment liens and fees totaling $30,928.36. The Declaration of Gene Vallortigara has been filed in support of the motion and testifies that the value of the Property is $350,000.00.

The Creditor argues that they attempted to work out a promissory note workout agreement with the Debtor but such efforts have been unsuccessful.

DECEMBER 17, 2015 HEARING

The court continued the hearing to 10:30 a.m. on January 14, 2016. Dckt. 47.

AMENDED SCHEDULE C

On January 1, 2016, the Debtor filed amended Schedule C. Dckt. 48. For purposes of the instant Motion, the Debtor amended the exemption claimed on the Property as follows:

	California Code of Civil Procedure § 704.730	California Code of Civil Procedure § 703.140(b)(1)
Schedule C - October 13, 2015, Dckt. 1.	$175,000.00	
Amended Schedule C - January 6, 2016, Dckt. 48.		$25,575.00

DISCUSSION

It appears that the Debtor has now claimed a lower exemption in the Property, which means that there appears to be equity in the Property. While the Debtor does not provide any declaration in support of this amendment, the reduced exemption amount leaves a potential substantial equity in the Property. The Property no longer secures claims which exceed the value of the Property, and are negative financial consequences for the Estate if it retains the Property.

Therefore, because there appears to be equity in the Property and does not appear to be of inconsequential value, the Motion is denied without prejudice

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 to Abandon Property filed by the Creditors 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.

14. 15-90976-E-7 SSA-3 | **NIGH/MELVA LAWHON Gary Ray Fraley** | **MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, CREDITOR'S ATTORNEY 12-9-15 [28]**

Final Ruling: No appearance at the January 14, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, creditors and Office of the United States Trustee on December 9, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Prevailing Party Attorney Fees is granted.

Steven S. Altman, the Attorney ("Applicant") for E.J. Vallortigara, Betty Vallortigara, Kenji Yoshimura, Jeanette Yoshimura, Kenette Yoshimura, Jay Vallortigara, Jon D. Gaier, and Fay Gaier the Creditors("Creditors"), makes an application for the award of Prevailing Party Fees and Expenses in connection with this bankruptcy case.

The period for which the fees are requested is for the period October 27, 2015 through December 7, 2015. Applicant requests fees in the amount of $4,188.00 and costs in the amount of $49.32

CREDITORS FEES AND EXPENSES AS PART OF SECURED CLAIM

11 U.S.C. § 506(b) provides:

> (b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

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 5.8 hours in this category.

Case Administration: Applicant spent 4.1 hours in this category.

Fee/Employment Application: Applicant spent 2.4 hours in this category.

Relief from Stay Proceedings: Applicant spent 3.2 hours in this category.

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
Steve Altman, Esq.	13.3	$300.00	$3,990.00
Dawn Darwin	2.2	$90.00	$198.00
	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	$4,188.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $49.32 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	$0.20	$34.60
Postage		$14.72
Total Costs Requested in Application		$49.32

FEES AND COSTS & EXPENSES ALLOWED

The Applicant is seeking to have the attorneys fees and costs included as part of Creditors' secured claim pursuant to 11 U.S.C. § 506(b). The Applicant argues that due to the fact that the Creditors have an oversecured claim and have taken steps to enforce their rights as a creditor, in addition to the fact that the underlying note and Deed of Trust are fully matured, that Creditors are entitled to reimbursement of attorneys fees and costs. The Applicant provides the Deed of Trust and Promissory Note, both of which provide for reasonable fee and costs. Dckt 32, Exhibits 6 and 7.

Courts have stated that attorney's fees of an oversecured creditor are included as part of an allowed secured claim only to the extent the fees are reasonable. *See Welzel v. Advocate Realty Invs., LLC* (*In re Welzel*), 275 F.3d 1308 (11th Cir. 2001).

Here, the court finds that the Applicant has performed necessary and reasonable services to entitle the Creditors to an award of attorneys' fees pursuant to the terms of the Deed of Trust and Note. The Applicant filed a Motion for Relief from the Automatic Stay as well as an accompanying abandonment motion due to the fact that the Debtor allowed fees and taxes accrue on the property. The Applicant, in an effort to secure the Creditors' interest in the property, prepared multiple motions and filings in order to ensure that the collateral of the Creditor's claim were not diminished any further due to the inaction of the Debtor. The Applicant and the Creditor took necessary steps in order to secure the interest. The reasonableness of the fees are further supported in light of the Creditor's note maturing.

Further, the actions of Applicant and his clients have resulted in the Debtor changing the exemptions claimed and the Trustee now having what appears to be a significant equity to recover for the Estate.

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Prevailing Party Attorneys' Fees in the amount of $4,188.00 are awarded E.J. Vallortigara, Betty Vallortigara, Kenji Yoshimura, Jeanette Yoshimura, Kenette Yoshimura, Jay Vallortigara, Jon D. Gaier, and Fay Gaier, and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 as part of said creditors' secured claim.

Costs and Expenses

In the Eastern District, courts routinely allow a maximum of $0.10 per page for photocopies. Here, the Applicant charged $0.20 per page. This is double than what the court typically allows. Applicant has not provided the court with evidence to show that this is the actual, reasonable cost for such expenses As such, the court disallows $17.30 of the requested costs.

The Prevailing Party Costs in the amount of $32.02 are awarded and authorized to be paid by the Trustee from the available funds of the Estate as part of the secured claim of E.J. Vallortigara, Betty Vallortigara, Kenji Yoshimura, Jeanette Yoshimura, Kenette Yoshimura, Jay Vallortigara, Jon D. Gaier, and Fay Gaier, in a manner consistent with the order of distribution in a Chapter 7.

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 E.J. Vallortigara, Betty Vallortigara, Kenji Yoshimura, Jeanette Yoshimura, Kenette Yoshimura, Jay Vallortigara, Jon D. Gaier, and Fay Gaier ("Creditors"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that E.J. Vallortigara, Betty Vallortigara, Kenji Yoshimura, Jeanette Yoshimura, Kenette Yoshimura, Jay Vallortigara, Jon D. Gaier, and Fay Gaier, jointly and severally, are awarded the following attorneys fees and expenses as part of their secured claim in this case:
>
> Fees in the amount of $4,188.00
> Expenses in the amount of $32.02,
>
> which are included in their secured claim in this case (3139 Beaver Ct, Copperopolis, California property being the collateral).
>
> **IT IS FURTHER ORDERED** that the costs of $32.02 are not allowed by the court.

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. §§ 330 and 506(b).

IT IS FURTHER ORDERED that the Trustee is authorized to pay the awarded fees and costs as part of the secured claim of E.J. Vallortigara, Betty Vallortigara, Kenji Yoshimura, Jeanette Yoshimura, Kenette Yoshimura, Jay Vallortigara, Jon D. Gaier, and Fay Gaier from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

15. 13-91189-E-11 MICHAEL/JUDY HOUSE
RMY-21 Robert M. Yaspan

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LAW OFFICES OF ROBERT M. YASPAN FOR ROBERT M. YASPAN, DEBTORS' ATTORNEY(S)
12-17-15 [379]

THE HEARING ON THIS MOTION IS CONTINUED TO 2:00 P.M. ON JANUARY 14, 2016, TO BE HEARD IN CONJUNCTION WITH THE CONFIRMATION HEARING FOR THE DEBTORS IN POSSESSION CHAPTER 11 PLAN

No Tentative Ruling: The Motion For Compensation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

16. 13-91189-E-11 MICHAEL/JUDY HOUSE
14-9025 RMY-20
HOUSE ET AL V. AMARAL

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH EMANUEL O. AMARAL
12-4-15 [75]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, creditors holding the 20 largest unsecured claims, parties requesting special notice, creditors, and Office of the United States Trustee on December 4, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion For Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the

respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent 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 Approval of Compromise is granted.

Michael House and Judy House, the Plaintiff-Debtor in Possession, (" Plaintiff-ΔIP") requests that the court approve a compromise and settle competing claims and defenses with Emanuel O. Amaral ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising from a boundary dispute between the parties involving a road and a certain amount of roadside access in Adversary Proceeding No. 14-9025.

Plaintiff-ΔIP Movant and Settlor has 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 is set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 79:

A. Conditional upon the payment below and approval of the lot line adjustment, Settlor will transfer to Plaintiff-ΔIP Movant by grant deed the disputed portion of the Amaral Ranch (Dckt. 79, Exhibit 1, Exhibit A).

B. In consideration of the transferred property, the Plaintiff-ΔIP Movant will pay to Settlor the sum of $15,000.00 to be paid as follows:

   1. $3,000.00 fifteen days after the court approves the settlement.

   2. $2,000.00 on the first day of each third month thereafter until the entire amount has been paid.

C. At or before the final payment, Plaintiff-ΔIP Movant will take all steps necessary to obtain a lot line adjustment from the County of Stanislaus, at Movant's expense, to adjust the parties' property lines to reflect the conveyance of the transferred property by the grant deed.

D. Concurrently with the Plaintiff-ΔIP's delivery of the payment, Plaintiff-ΔIP shall deliver the grant deed to Berliner Cohen, LLP and Settlor will promptly execute the grant deed.

E. Upon approval of the court, the Adversary will be dismissed with prejudice.

F. The settlement provides for mutual releases pursuant to its terms.

G. The Plan of Reorganization provides for treatment of the Settlor consistent with the settlement.

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 Construction)***, 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 Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson***, 390 U.S. 414, 424-425 (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); ***In re Woodson***, 839 F.2d 610, 620 (9th Cir. 1988).

Under the terms the Settlement all claims of the Estate, including any pre-petition claims of the Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

The Plaintiff-ΔIP asserts that the probability of litigation is uncertain since it involves a fence-line between the two properties that has been in existence for at least 50 years. However, the Plaintiff-ΔIP notes that the survey indicates that the fence could be off by about 14 feet. The location of the poultry building makes the dispute important. The Plaintiff-ΔIP states that the factual nature of the case and the need for expert testimony makes the probability of success unknown.

Difficulties in Collection

The Plaintiff-ΔIP asserts that there is not any collection difficulties since it is a boundary dispute rather than a monetary dispute.

Expense, Inconvenience and Delay of Continued Litigation

Plaintiff-ΔIP argues that litigation would result in significant costs which are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. Formal discovery would be required, with depositions of the Settlor and document

production requests of third parties will be required. The Plaintiff-ΔIP estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Plaintiff-ΔIP projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

Plaintiff-ΔIP argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation.

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 the Plaintiff-ΔIP to purchase or prosecute the property, claims, or interests of the estate to 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. The settlement resolves the disputed land boundary case, allowing the Plaintiff-ΔIP to continue operation of the ranches, which are the Estate's main income. The Plaintiff-ΔIP has established that the estate will benefit from the settlement by allowing the parties to compromise on the disputed land and allow the Plaintiff-ΔIP's to continue operation. 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 Michael House and Judy House, the Plaintiffs-Debtors in Possession, ("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 to Approve Compromise between Movant and Emanuel O. Amaral ("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(Docket Number 79).