

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Modesto, California

January 15, 2015 at 10:30 a.m.

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1. [13-90901](#)-E-12 ANDREW NAPIER MOTION FOR COMPENSATION FOR  
SAC-12 Scott A. CoBen JOHN BELL, OTHER  
PROFESSIONAL/RECEIVER  
12-10-14 [[312](#)]

**Tentative Ruling:** 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).

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.**

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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, Chapter 12 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on December 10, 2014. By the court's calculation, 36 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). The defaults of the non-responding parties are entered.

**The Motion for Allowance of Professional Fees is granted.**

John Bell, the Receiver ("Applicant") appointed by the court under the confirmed Chapter 12 Trustee ("Client"), makes a Request for the Allowance of Fees and Expenses in this case.

January 15, 2015 at 10:30 a.m.

The period for which the fees are requested is for the period December 1, 2014 through May 1, 2015. The order of the court approving employment of Applicant was entered on December 12, 2014 through the order confirming the modified plan, Dckt. 311.

Applicant requests an order authorizing the Chapter 12 Trustee to compensate Applicant pursuant to 11 U.S.C. § 330 on a monthly basis at an amount not to exceed \$2,600.00 per month based on a \$200.00 hourly rate for the period of December 1, 2014 to May 1, 2015.

Specifically, the Applicant states that the current hourly rate of Applicant is \$200.00 per hour. Applicant estimates that he will spend approximately 13 hours per month performing the duties required by the confirmed plan. Applicant will incur considerable out of pocket travel expenses driving throughout the Central Valley to monitor Debtor's business operations. Applicant is therefore requesting the court to authorize the Chapter 12 Trustee to pay Applicant a monthly payment not to exceed \$2,600.00 per month for the period of December 1, 2014 to May 1, 2015.

If Applicant spends less than 13 hours a month on this case, Applicant will instruct the Chapter 12 Trustee to pay less than the \$2,600.00 per month. If Applicant spends more than 13 hours per month on this case, Applicant will retain the right to file a fee application requesting additional compensation. After this six month time period, Applicant will re-evaluate Applicant's compensation and seek order of the court.

#### **LEYSA NAPIER OPPOSITION**

Leysa Napier filed an opposition to the instant motion on January 8, 2015. Dckt. 324. Ms. Napier opposes the employment of Applicant. Ms. Napier requests that she be appointed as bookkeeper/receiver. Attached to the opposition are various exhibits, including the Notice for the instant Motion and state court order on Modification of Spousal Support.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

The Receiver is appointed as a professional in this court pursuant to the confirmed Chapter 12 Plan. In federal actions, the appointment of a receiver is governed by Fed. R. Civ. P. 66, federal case law, and local rules.

California state law and local rules provide guidance on the procedures for the compensation of receivers. As to interim fees, Cal. Rules of Court 3.1183 states:

(a) Interim fees are subject to final review and approval by the court. The court retains jurisdiction to award a greater or lesser amount as the full, fair, and final value of the services rendered.

As to final compensation, Cal. Rules of Court 3.1184(d) states:

If any allowance of compensation for the receiver or for an attorney employed by the receiver is claimed in an account, it

must state in detail what services have been performed by the receiver or the attorney and whether previous allowances have been made to the receiver or attorney and the amounts.

It is well established that the compensation to be allowed receivers and their attorneys is primarily within the sound discretion of the court. *People v. Riverside University*, 35 Cal. App. 3d 572, 587 (1973), *Venza v. Venza*, 101 Cal. App. 2d 678, 680, 226 P.2d 60, 62 (1951). This is necessary due to the court being "in a better position to know the necessity for the services performed by the receiver and his attorney and to assess their reasonable value." *Id.* (internal citation omitted).

In its sound discretion, the court here utilizes the procedures and guidelines of 11 U.S.C. § 330, as it does with hired professionals in bankruptcy cases, in determining the proper amount of compensation. As noted in California state law, the court has the discretion to determine the procedures to calculate appropriate compensation for a receiver. Pursuant to the grant of authority, the court applies 11 U.S.C. § 330 to analyze the instant request.

As guideposts for the determination of reasonable Plan Receiver Fees, the statutory factors and considerations stated in 11 U.S.C. § 330(a)(3) are,

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 From Services Rendered**

Even if the court finds that the services billed by professional are "actual," meaning that 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.

These factors are familiar to the Plan Receiver, who also serves as a bankruptcy trustee in other cases, as well as to most of the other parties in this case.

### **DISCUSSION**

Here, the Applicant is seeking both payment for services rendered from the date of his appointment and going forward. Applicant will be required to actively oversee the business operated by the Debtor under the confirmed Chapter 12 Plan and be responsible for the finances thereof. As demonstrated by the defaults by the Debtor under the original confirmed Plan, substantial time and work of the Receiver will be required. The fee methodology is based on an estimate of the amount of time each month, 13 hours, and a reasonable hourly billing rate, \$200.00.

Leysa Napier has filed her opposition in pro se, arguing that she be appointed as the bookkeeper/receiver for the business under the Confirmed Chapter 12 Plan. She asserts that she owns 50% of the business and is owed back spousal support payments by the Debtor.

Ms. Napier continues, stating that she has been "patient" with the Debtor's bankruptcy filings. Additionally, that the state court judge will not take any action with respect to Ms. Napier's contentions that she owns 50% of the business, with the state court judge stating, "it is in the bankruptcy judge's hands."

The Opposition is similar to other pleadings filed by Ms. Napier and is consistent with the ongoing battle between these two ex spouses - long on vitriol and short on legal basis. Repeatedly the court has commented to Ms. Napier that if she does assert a 50% interest in what appears to be a very valuable business, she needs to properly assert such rights and protect her interests. Other than popping up to object to the case being prosecuted, Ms. Napier fails to take any action. If Ms. Napier has a good faith, bona fide interest in the business, there are many business attorneys who do bankruptcy work who could advance her interests.

Additionally, Ms. Napier is not an independent person who can serve as a receiver. She, at a minimum, asserts to be a creditor, who has her own financial interests which she would seek to advance at the expense of other creditors. Worse, she has demonstrated a hostility to the Debtor and appears to be driven to fight him at every turn without advancing whatever interests she may, or may not, actually have in the business. This is not to say that the "hostility" may be unwarranted. The Debtor has demonstrated in his multiple bankruptcy cases and his most recent defaults under the Plan confirmed in this case an inability and unwillingness to properly operate his business under the confirmed Chapter 12 Plan in his multiple cases. Further, he has demonstrated an inability or unwillingness to fulfill his fiduciary duties as a Chapter 12 Debtor and plan administrator, pay creditor claims as provided under the confirmed Chapter 12 Plans, and reorganize his business. The Debtor's multiple breaches of his fiduciary duties have necessitated the amending of the Chapter 12 Plan to provide for the appointment of a receiver.

Again, the court implores Leysa Napier to engage appropriate legal services to represent her to properly advance her bona fide, good faith, interests and rights which may exist. She has demonstrated that the federal judicial process is not one in which she is familiar or one in which she has been able to actively, positively assert her rights and interests.

The court approves the Compensation Methodology for the Receiver and authorizes the payment as interim compensation pending further order of the court on the following terms:

- A. The Chapter 12 Trustee is authorized to pay John Bell, the Plan Receiver, interim compensation for fees and expenses of \$2,800.00 a month. Of this the fees are authorized to not more than \$2,600.00 a month and expenses of not more than \$200.00 a month.
- B. The Receiver shall bill his time at a rate of not more than \$200.00 an hour.
- C. The expenses for which the Plan Receiver may be reimbursed shall be determined in the same manner as which a receiver appointed by a California State Court.

- D. The payment of interim fees and expenses are subject to final review and authorization at the time of, and a condition to, the court discharging the Plan Receiver.
- E. The Plan Receiver shall file a Quarterly Report of Fees and Costs, which shall be filed on or before the 14<sup>th</sup> day after the end of each calendar quarter (with the first Report due on or before April 14, 2015 for the period from the date of appointment through March 2015), providing copies the billing statements provided the Chapter 12 Trustee and a summary of the fees, costs, and payments made to the Plan Receiver. The Plan Receiver shall serve, at the time of filing, copies of the Quarterly Reports of Fees and Costs to any party in interest filing with the court and serving on the Plan Receiver a Request for Copies of Quarterly Report of Fees and Costs.
- F. The court shall conduct a continued hearing on this Motion at 10:30 a.m. on May 21, 2015. On or before April 15, 2015 the Plan Receiver shall file any Supplemental Pleadings concerning any modifications to the order authorizing the interim payment of fees and costs. On or before April 29, 2015, any party in interest shall file Oppositions to the Supplemental Pleadings, and on or before May 6, 2015, the Replies, if any, to Oppositions shall be filed and served.

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 for Allowance of Fees and Expenses filed by John Bell ("Applicant"), the Plan Receiver under the Confirmed Chapter 12 Plan in this case, having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion is continued to 10:30 a.m. on May 21, 2015.

**IT IS FURTHER ORDERED** that the Motion is granted and the court authorizes the payment of Interim Fees and Costs to John Bell, the Chapter 12 Plan Receiver, on the following terms and conditions,

- A. The Chapter 12 Trustee is authorized to pay John Bell, the Plan Receiver, interim compensation for fees and expenses of \$2,800.00 a month. Of this the fees are authorized to not more than \$2,600.00 a month and expenses of not more than \$200.00 a month.

- B. The Plan Receiver shall bill his time at a rate of not more than \$200.00 an hour.
- C. The expenses for which the Plan Receiver may be reimbursed shall be determined in the same manner as which a receiver appointed by a California State Court.
- D. The payment of interim fees and expenses are subject to final review and authorization at the time of, and a condition to, the court discharging the Plan Receiver.
- E. The Plan Receiver shall file a Quarterly Report of Fees and Costs, which shall be filed on or before the 14<sup>th</sup> day after the end of each calendar quarter (with the first Report due on or before April 14, 2015 for the period from the date of appointment through March 2015), providing copies the billing statements provided the Chapter 12 Trustee and a summary of the fees, costs, and payments made to the Plan Receiver. The Plan Receiver shall serve, at the time of filing, copies of the Quarterly Reports of Fees and Costs to any party in interest filing with the court and serving on the Plan Receiver a Request for Copies of Quarterly Report of Fees and Costs.
- F. The court shall conduct a continued hearing on this Motion at 10:30 a.m. on May 21, 2015. On or before April 15, 2015 the Plan Receiver shall file any Supplemental Pleadings concerning any modifications to the order authorizing the interim payment of fees and costs. On or before April 29, 2015, any party in interest shall file Oppositions to the Supplemental Pleadings, and on or before May 6, 2015, the Replies, if any, to Oppositions shall be filed and served.

2. [14-91002-E-7](#) SCOTT/PAMELA MITCHELL MOTION TO SELL  
CWS-2 Scott D. Mitchell 12-17-14 [[31](#)]

**Tentative Ruling:** The Motion to Sell Property 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.**

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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, and Office of the United States Trustee on December 17, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Sell Property 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 are entered.

**The Motion to Sell Property is granted.**

The Bankruptcy Code permits the Gary Farrar, Trustee ("Trustee") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here Trustee proposes to sell the "Property" described as follows:

- A. The bankruptcy estate's interest in accounts receivables generated by Scott Mitchell Law Offices, a sole proprietorship prior to January 2014
- B. The bankruptcy estate's interest shares in Scott Mitchell Law Corporation.

The proposed purchaser of the Property is Debtor Scott Mitchell ("Buyer") and the terms of the sale are:

- 1. The purchase price will be \$18,000.00, payable by an initial

January 15, 2015 at 10:30 a.m.



3. [11-93923-E-7](#)      **CHERIE KHAN**      **MOTION TO SELL**  
HCS-2      **Christian J. Younger**      **12-17-14 [26]**

**Tentative Ruling:** The Motion to Sell Property 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.**

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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, Partnership Liquidity Investors, LLC, and Office of the United States Trustee on December 17, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Sell Property 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 are entered.

**The Motion to Sell Property is granted.**

The Bankruptcy Code permits the Gary Farrar, Trustee ("Trustee") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here Trustee proposes to sell the "Property" described as follows:

- A. The bankruptcy estate's interest in a promissory note, deed of trust, and title insurance policy on the deed of trust for the real property commonly known as 640 Carlos Julio Avenue, Las Vegas, Nevada.

The proposed purchaser of the Property is Partnership Liquidity Investors, LLC ("Buyer") and the terms of the sale are:

- 1. The purchase price is \$45,000.00.



4. [09-92630-E-12](#) DANIEL/JANEY BAXTER  
CWC-8 Carl W. Collins

CONTINUED MOTION TO MAINTAIN  
CHAPTER 12 CASE OPEN PENDING  
RESOLUTION OF POST-DISCHARGE  
MATTERS  
5-1-14 [[100](#)]

**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.

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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, Chapter 12 Trustee, parties requesting special notice, and Office of the United States Trustee on May 1, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Maintain Chapter 12 Case Open Pending Resolution of Post-Discharge Matters 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 Maintain Chapter 12 Case Open Pending Resolution of Post-Discharge Matters is denied without prejudice.**

Debtors-in-Possession Daniel and Janey Baxter ("Movant") request that their Chapter 12 case remain open pending the resolution of certain post-discharge matters. Movant states that the Chapter 12 plan was confirmed on December 8, 2009 and that they have made all payments and moved for a discharge. Movant states that until they receive their discharge in this case, they will be unable to request that the California State Board of Equalization to release its tax lien on the real property located at 11802 Sawyer Avenue, Oakdale, California, which was valued at zero by the court.

Movant also alleges that "Bank of America" has erroneously impounded property taxes and property insurance under its Note secured by a Deed of Trust which was modified by the Chapter 12 plan in violation of the Order Confirming Plan. Movant seeks to leave the case open pending either Movant's successful resolution of these issues, or for sufficient time to file contested matters or adversary proceedings.

The court continued the hearing on the Motion, in part to prevent the closing of the case, and because continuing the matter would allow the Debtors to engage in the post-plan completion documentation and determine whether the case should remain open, an adversary proceeding is required (and the case can be closed), or that everything has been resolved and they can dismiss this

motion pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041.

**SUPPLEMENTAL DECLARATION IN SUPPORT OF THE MOTION**

Debtors' Attorney, Carl W. Collins, files a supplemental declaration in continued support of the Motion to Maintain Chapter 12 Case Open. Dckt. No. 112.

The declaration acknowledges that the court continued the hearing in the matter to monitor the Debtors' progress in resolving certain post-discharge matters, namely the release the tax lien of the State of California, Board of Equalization, encumbering the Debtors' residence located at 11802 Sawyer Avenue, Oakdale, California, and the allegedly erroneous impounding of property taxes and property insurance by the Bank of America under its Modified Note secured by a deed of trust, in violation of the Order Confirming Plan, and the Real Estate Settlement Procedures Act (RESPA).

At the request of the Debtors, on or about July 14, 2014, the State of California, Board of Equalization, voluntarily issued a release of lien to be recorded with the Stanislaus County Recorder resolving the dispute over the tax lien.

Debtors and Bank of America, however, had not reached a consensus in resolving the dispute over the Bank's impounding of taxes and insurance. While significant progress has been made in reducing the outstanding bank charges and the payment of the Debtors' attorney's fees and expenses in this matter, additional charges remain assessed against the Debtors on their monthly loan statements, which need to be removed. Debtors' Attorney believes that this issue with Bank of America will be resolved in the next 60 days.

Accordingly, the Debtors request that the hearing on this matter be further continued for approximately 60 days, or a future date selected by the court, to allow the parties to consummate a resolution of this post-discharge dispute.

**SEPTEMBER 4, 2014 HEARING**

The Debtors and Bank of America needing additional time to resolve the controversy over the impounding of property taxes and insurance under Debtors' modified promissory note, secured by a Deed of Trust valued by the court at \$0.00, in alleged violation of the RESPA and the order confirming the Debtors' Chapter 12 Plan, the court continued the Motion to November 20, 2014.

No supplemental documents have been filed since the case was continued.

**NOVEMBER 20, 2014 HEARING**

At the hearing, counsel for the Debtors stated that the lien issue has been resolved with the State of California. However, Bank of America, N.A. has not yet confirmed in writing that the accounting issue has been concluded.

**JANUARY 6, 2015 ORDER**

On January 6, 2015, the court issued an Order RE Stipulation Resolving

**January 15, 2015 at 10:30 a.m.**

Dispute RE: Debtors' Post-Discharge Arrears. Dckt. 122. The court approved the stipulation which had the following terms:

1. The parties have agreed to resolve the dispute regarding RESPA compliance regarding /12usc 2605(e) and (3)(4) and the dispute regarding completion of Debtors' Chapter 12 Plan terms and discharge
2. Bank of America, N.A., servicing agent on behalf of Secured Creditor, has agreed to waive the late charges of \$309.37 that were reflected in statements received by the Debtor as they were incurred in error.
3. Bank of America, N.A. servicing agent on behalf of Secured Creditor, has agreed to pay Debtors' attorneys' fees incurred in this matter in the amount of \$2,500.00.
4. The Stipulation resolves all remaining issues between the parties regarding the completion of the Debtors' Chapter 12 Plan, discharge and RESPA request as the Debtors have received an accounting and updated statements reflecting the waiver of the late charges.

#### **SUPPLEMENTAL NOTICE**

On January 7, 2015, Debtors' counsel filed a Supplemental Notice RE Order on Motion to Maintain Chapter 12 Case Open Pending Resolution of Post-Discharge Matters. Dckt. 123. The Notice states that on July 14, 2014, State of California, Board of Equalization, voluntarily released its lien encumbering the Debtors' residence and the dispute with Bank of America regarding the erroneous impounding of property taxes and property insurance has been resolved. A Final Decree may now be entered closing this Chapter 12 case.

#### **DISCUSSION**

With the post-discharge matters all settled pursuant to the court's order approving the settlement on January 6, 2015 (Dckt. 122) and no objections, the Motion is denied without prejudice.

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

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

The Motion to Maintain Chapter 12 Case Open Pending Resolution of Post-Discharge Matters filed by Debtors-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 to Maintain Chapter 12 Case Open Pending Resolution of Post-Discharge Matters is denied without prejudice.

January 15, 2015 at 10:30 a.m.

5. 14-90748-E-7 PAULA SHAW  
MLP-1 Martha Passalacqua

MOTION TO REOPEN CHAPTER 7  
BANKRUPTCY CASE  
12-2-14 [[16](#)]

**Final Ruling: No appearance at the January 15, 2015 hearing is required.**  
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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, Chapter 7 Trustee, Creditors, and Office of the United States Trustee on December 2, 2014. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

**The Motion to Reopen this Bankruptcy Case is granted.**

Paula Kay Shaw, the Debtor ("Movant") filed this petition for relief on May 27, 2014, and the Meeting of Creditors was concluded on July 22, 2014. The case was closed by the court on October 3, 2014. Movant asserts the following grounds as the basis for reopening this bankruptcy case:

- A. Following the case being closed, the Debtor was contacted by a broker in Oklahoma that informed her that Oil and Gas Rights she owned in Oklahoma had been leased by a third party for three years
- B. Until that contact, she had completely forgotten about these rights and did not include them in her bankruptcy.
- C. Debtor actually owns a 3/16th interest in the rights.
- D. Debtor's failure to list this asset was not intentional but was an oversight on her party. She nor any of the other owners had received any income for many years.
- E. Debtor will be receiving income post-petition from this lease in a one-time lump sum payment of \$11,464.00. No other income is expected from this lease for several years.

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- F. At the time this case was originally filed this asset had no value and would have been listed at zero.
- G. Debtor has prepared Amended Schedules B and C to be filed along with this Motion.

The court finds that the grounds for reopening are sound. The Debtor shall amend her Schedules as appropriate, and a Chapter 7 Trustee shall be reappointed to considered the rights and interests of the bankruptcy estate.

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 Reopen the Bankruptcy Case filed by Paula Kay Shaw, the Debtor ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the bankruptcy case is reopened, and the reappointment of a Chapter 7 Trustee is required.

6. [14-91052-E-7](#) DEREK SAWYER  
HSM-2 Steven S. Altman

MOTION TO SELL  
12-18-14 [[41](#)]

**Tentative Ruling:** The Motion to Sell Property 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.**

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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, parties requesting special notice, and Office of the United States Trustee on December 18, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Sell Property 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 are entered.

**The Motion to Sell Property is granted.**

The Bankruptcy Code permits the Gary Farrar, Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here Movant proposes to sell the "Property" described as follows:

- A. 1986 Chevy Pickup Truck (non exempt equity scheduled at \$3,500.00)
- B. Trailer: Flat Trailer (non exempt equity scheduled at \$500.00);
- C. 1997 Ford F250 utility truck (non exempt equity scheduled at \$800.00);
- D. 2001 Chevy express van (non exempt equity scheduled at \$400.00);

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- E. 1998 Chevy utility work truck (non exempt equity scheduled at \$950.00);
- F. 1996 Chevrolet 1500 work truck (non exempt equity scheduled at \$500.00);
- G. 2001 Dodge utility work truck (non exempt equity scheduled at \$3,500.00);
- H. 1996 GMC work truck (non exempt equity scheduled at \$1,595.00);
- I. 2006 Ford E250 van (non exempt equity scheduled at \$4,000.00); and
- J. 14 year old quarter horse (non exempt equity scheduled at \$1,000.00).

The proposed purchaser of the Property is Debtor Derek Sawyer and the terms of the sale are:

1. The purchase price is a total of \$15,000.00;
2. The purchase price shall be paid to the trustee as follows: ½ of the purchase price by December 23, 2014 and ½ of the purchase price by January 17, 2015;
3. The purchase price, as increased by overbidding if applicable, shall accrue entirely to the benefit of the Estate and its creditors, and the Debtor expressly waives the ability to exempt any portion thereof;
4. The Property is sold "as is" "where is" "with all faults" and without any warranty or representation by the Trustee or the Estate. Debtor acknowledges that he has had the opportunity to had has inspected the Property and has satisfied himself as to the condition thereof.
5. The sale of the Property shall be subject to any and all liens and encumbrances thereon, and/or competing interests therein, known or unknown, associated with the Property, including any cost to defend any and all claims regarding any challenge to or alleged deficiency in the Estate's alleged ownership of any of the Property;
6. Debtor shall indemnify the Trustee/Estate from any claim or liability against the Trustee/Estate associated with the Debtor's ownership, use, or control of the Property;
7. Debtor shall be responsible for any and all sales, transfer, use or other taxes, and all license, registration, or other fees due or incurred in connection with the sale of the Property. Debtor is also responsible for the payment of any income, property, or other tax, fine, assessment, or fee associated with the Property, other than any income tax

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J. 14 year old quarter horse (non exempt equity scheduled at \$1,000.00).

("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$15,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 45, and as further provided in this Order.
2. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

7. [13-91459](#)-E-11 LIMA BROTHERS DAIRY  
KDG-4 Jacob L. Eaton

CONTINUED MOTION TO USE CASH  
COLLATERAL AND/OR MOTION FOR  
ADEQUATE PROTECTION  
1-17-14 [[119](#)]

Local Rule 9014-1(f)(3) Motion - Continued 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 January 17, 2014. By the court's calculation, 13 days' notice was provided.

**Tentative Ruling:** The Motion to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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.

**The court's decision is to deny without prejudice the Motion to Use Cash Collateral**

Lima Brothers Dairy, the Debtor-in-Possession, seeks an order authorizing the use of cash collateral, in the form of cash on hand, money on deposit, milk and cull proceeds, and the feed, derived from its business operations to fund its ongoing operations on an emergency basis. Debtor-in-Possession believes the use of these funds is necessary to preserve its operations as a going concern and to insure the 2,200 animals, including milk cows, dry cows, heifers, calves and bulls, are fed.

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The court continued the hearing for there to be a date certain for further consideration of the use of cash collateral if the Chapter 11 Plan in this case had not been confirmed. On November 12, 2014, the court filed the Order Confirming the Chapter 11 Plan. Order, Dckt. 373. The court has issued orders for the allowance of pre-confirmation fees and expenses of professionals for the bankruptcy estate.

The Chapter 11 Plan having been confirmed and no Supplemental Pleadings having been filed, the court denies the Motion without prejudice as having been rendered moot.

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 Authorize Use of Cash Collateral filed by the Debtor-in-Possession having been presented to the court, the Chapter 11 Plan having been confirmed in this case, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Use Cash Collateral for the Payment of the Expenses is denied without prejudice.

8. [14-91565-E-11](#) RICHARD SINCLAIR  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
12-29-14 [[48](#)]

**Final Ruling: No appearance at the January 15, 2015 hearing is required.**  
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The Order to Show Cause was served by the Clerk of the Court on Richard Carroll Sinclair ("Debtor"), Trustee, and other parties in interest on December 29, 2014. The court computes that 17 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 (\$10.00 due on December 24, 2014).

**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. January 12, 2015 Docket Entry, payment of \$10.00 in fees.

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 are issued pursuant thereto.

9. [10-94874-E-7](#) STEVEN/JOANNE JETT  
SSA-5 Bryan L. Ngo

MOTION FOR COMPENSATION FOR  
STEVEN S. ALTMAN, TRUSTEE'S  
ATTORNEY  
12-15-14 [[61](#)]

**Final Ruling: No appearance at the January 15, 2015 hearing is required.**  
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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, parties requesting special notice, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 31 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.**

Steven S. Altman, the Attorney ("Applicant") for Michael D. McGranahan the Chapter 7 Trustee ("Client"), 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 July 8, 2013 through January 15, 2015. The order of the court approving employment of Applicant was entered on July 23, 2013, Dckt. 29. Applicant requests fees in the amount of \$7,625.00 and costs in the amount of \$152.89.

#### **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-

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(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 asset analysis and recovery, case administration, claims administration and objection, and litigation. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

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

Asset Analysis and Recovery: Applicant spent 1.4 hours in this category. Applicant assisted Client with identifying and reviewing potential assets including causes of action and non-litigation recoveries.

Case Administration: Applicant spent 6.1 hours in this category. Applicant coordinated compliance activities, including preparation of statement of financial affairs; schedules; lists of contract; UST interim statements and operating reports; contacts wit the UST; general creditor inquiries.

Claims Administration and Objection: Applicant spent 8.3 hours in this category. Applicant dealt with specific claim inquiries, bar dat of motions, analysis of claims, and objections and allowance of claim.

Fee/Employment Applications: Applicant spent 8.1 hours in this category. Applicant prepared employment and fee applications for self or others and prepared motions to establish interim procedures.

Litigation: Applicant spent 4 hours in this category. Applicant assisted both the Trustee and special counsel in securing ultimate approval of the compromise and payment of special counsel's fees and costs, after the bankruptcy court concluded on the first application attempted, additional information was necessary.

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:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
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Steven S. Altman, years admitted - 39	14.9	\$250.00	\$3,725.00
Steven S. Altman, years admitted - 39	13	\$300.00	\$3,900.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	<u>\$0.00</u>
<b>Total Fees For Period of Application</b>			\$7,625.00

**Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$152.89 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$0.10	\$82.30
Postage		\$70.59
Total Costs Requested in Application		\$152.89

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$7,625.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

**Costs and Expenses**

The First and Final Costs in the amount of \$152.89 pursuant to 11

U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

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

Fees	\$7,625.00
Costs and Expenses	\$152.89

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 Steven S. Altman ("Applicant"), Attorney 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 Steven S. Altman is allowed the following fees and expenses as a professional of the Estate:

Steven S. Altman, Professional Employed by Trustee

Fees in the amount of \$7,625.00  
Expenses in the amount of \$152.89,

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.

10. [13-90090-E-7](#) JORGE PEREZ  
CWC-5 Maria C. Jaime

MOTION FOR COMPENSATION FOR  
CARL W. COLLINS, TRUSTEE'S  
ATTORNEY  
12-16-14 [[75](#)]

**Final Ruling: No appearance at the January 15, 2015 hearing is required.**  
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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 December 16, 2014. By the court's calculation, 30 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.**

Carl W. Collins, the Attorney ("Applicant") for Irma C. Edmonds the Chapter 7 Trustee ("Client"), makes a First 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 May 15, 2013 through December 11, 2014. The order of the court approving employment of Applicant was entered on May 20, 2013, Dckt. 25. Applicant requests fees in the amount of \$9,782.50 and costs in the amount of \$71.34.

#### **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;

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(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 asset valuation and distribution and fee application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable. The Trustee has generated \$21,791.68 for distribution to pay administrative expenses and counsel.

**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 Analysis and Recovery: Applicant spent 1 hours in this category. Applicant assisted Client with identifying and reviewing potential assets including causes of action and non-litigation recoveries.

Asset Disposition: Applicant spent 29.5 hours in this category. Applicant aided in sales, leases (§ 365 matters), abandonment and related transaction work.

Fee/Employment Applications: Applicant spent 6.9 hours in this category. Applicant prepared employment and fee applications for self or others and motions to establish interim procedures.

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:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Carl Collins, licensed attorney for 31 years	31.30	\$295.00	\$9,233.50
Claudia Alarcon, paralegal	6.10	\$90.00	\$549.00
		\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00

	0	\$0.00	<u>\$0.00</u>
<b>Total Fees For Period of Application</b>			\$9,782.50

**Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$71.34 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$0.10	\$23.10
Postage		\$35.74
Certified Copies		\$12.50
Total Costs Requested in Application		\$71.34

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$9,782.50 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved pursuant to 11 U.S.C. § 330] and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**Costs and Expenses**

The First and Final Costs in the amount of \$71.34 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

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

Fees	\$9,782.50
Costs and Expenses	\$71.34

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 Carl W. Collins ("Applicant"), Attorney 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 Carl W. Collins is allowed the following fees and expenses as a professional of the Estate:

Carl W. Collins, Professional Employed by Trustee

Fees in the amount of \$9,782.50  
Expenses in the amount of \$71.34,

The Fees and Costs pursuant to this 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.

11. [13-91349-E-7](#) JASON RIVERS  
[13-9034](#) MLG-1  
MODESTO IRRIGATION DISTRICT V.  
RIVERS

MOTION FOR PREVAILING PARTY FEES  
AND EXPENSES FOR MODESTO  
IRRIGATION DISTRICT,  
11-21-14 [[62](#)]

**Tentative Ruling:** 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).

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 Defendant (*pro se*) on November 21, 2014. 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). The defaults of the non-responding parties are entered.

**The Motion for Allowance of Professional Fees is continued to xxxxxx.**

Modesto Irrigation District, the Plaintiff ("Plaintiff"), makes a Request for the Allowance of Fees and Expenses in this case.

The Plaintiff is seeking reimbursement of reasonable attorneys' fees and costs incurred by Plaintiff in the legal representation by its counsel in Adversary Proceeding No. 13-9034 pursuant to California Civil Code § 1882.2.

The Plaintiff is seeking total fees and expenses in the amount of \$45,834.34, which is asserted to be \$10,000.00 less than the total fees and costs incurred by Plaintiff.

**BACKGROUND**

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On October 2, 2013, Plaintiff filed its complaint initiating the Adversary Proceeding pursuant to 11 U.S.C. § 523(a)(2), (4), and (6), as well as Cal. Civ. Code § § 1882-1882.6 to object to the dischargeability of the underlying debt owed to Plaintiff by Jason Rivers ("Defendant-Debtor").

On October 22, 2014, the court issued a judgment in favor of Plaintiff in the amount of \$65,273.52, plus fees and costs as awarded.

#### **APPLICABLE LAW**

##### Cal. Civil Code § 1882

Under California Civil Code § 1882.1:

A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts any of the following acts:

- a. Diverts, or causes to be diverted, utility services by any means whatsoever.
- b. Makes, or causes to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility.
- c. Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function by tampering or by any other means.
- d. Tampers with any property owned or used by the utility to provide utility services.
- e. Uses or receives the direct benefit of all, or a portion, of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use, or that the use or receipt, was without the authorization or consent of the utility.

If a utility is successful in any civil action brought pursuant to § 1882.1, "the utility may recover as damages three times the amount of actual damages, if any, plus the cost of the suit and reasonable attorney's fees." Cal. Civ. Code § 1882.2.

##### Prevailing Party Attorneys' Fees

Unless authorized by statute or contractual provision, attorney fees ordinarily are not recoverable as costs. Cal. Code Civ. Proc. § 1021; *International Industries, Inc. v. Olen*, 21 Cal. 3d 218, 221 (Cal. 1978). The prevailing party must establish that a contractual provision exists for attorneys' fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). In the Ninth Circuit, the customary method for determining the reasonableness of a

professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), amended, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the loadstar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

## DISCUSSION

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

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

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

sort the entries and automatically produce a billing report which separates the activities into the different tasks.

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Without the court separating the various tasks into various tasks the court cannot tell if there has been \$30,000.00 of the fees is for staff meetings and only \$5,000.00 is for research, \$3,000.00 for drafting pleadings, and \$3,000.00 is for the day of trial. If may be that just drafting the complaint is being billed for \$10,000.00. The court does not know and it is not fair to ask the court to wade through a detailed billing statement, organize the fees into task areas, and then allocate the fees into those task areas, with the court imposing its characterization of the charges in the place of Plaintiff.

The court continues the hearing, rather than denying the Application without prejudice, to afford P the opportunity to provide the court, U.S. Trustee, and other parties in interest requesting the information with the necessary task billing analysis.

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

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

The Motion for Allowance of Fees and Expenses filed by Modesto Irrigation District, the prevailing Plaintiff in this Adversary Proceeding, ("Plaintiff") having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Application for Fees and Expenses is continued to xxxx, 2015, at 10:30 a.m. Plaintiff shall file a supplemental declaration and supporting documents as necessary, to provide the court, U.S. Trustee, and other parties in interest requesting copies of such supplemental pleadings, with an explanation of the fees requested and a task billing analysis which specifically groups the time and charges by the various task areas for such services.

12. [13-91194-E-7](#) ARACELI RICO  
[13-9033](#) MLG-1  
MODESTO IRRIGATION DISTRICT V.

MOTION FOR PREVAILING PARTY  
FEES AND EXPENSES FOR  
MODESTO IRRIGATION DISTRICT  
11-21-14 [[48](#)]

**Tentative Ruling:** 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).

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's Attorney on November 21, 2014. 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). The defaults of the non-responding parties are entered.

**The Motion for Allowance of Professional Fees is continued to xxxxxx.**

Modesto Irrigation District ("Plaintiff") makes a Request for the Allowance of Fees and Expenses in this case.

The Plaintiff is seeking reimbursement of reasonable attorneys' fees and costs incurred in the legal representation by its counsel in Adversary Proceeding No. 13-9033 pursuant to California Civil Code § 1882.2.

The Plaintiff is seeking total fees and expenses in the amount of \$55,113.86.

#### **BACKGROUND**

On October 2, 2013, Client filed its complaint initiating the Adversary Proceeding pursuant to 11 U.S.C. § 523(a)(2), (4), and (6), as well as Cal.

January 15, 2015 at 10:30 a.m.

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Civ. Code § § 1882-1882.6 to object to the dischargeability of the underlying debt owed to Client by Araceli Rico, Defendant-Debtor.

On October 29, 2014, the court issued a judgment in favor of client in the amount of \$45,631.44, plus fees and costs as awarded.

#### **OPPOSITION**

The court notes that both the Defendant-Debtor and Plaintiff filed rather lengthy opposition and reply. Defendant-Debtor argues that this was a \$15,210.48 case, which when trebled as provided under California law, the damages award \$45,631.43. Defendant-Debtor also objects to the \$620.00 and \$420.00 hourly rates for which Modesto Irrigation District seeks to have the attorneys' fees computed.

There is also an objection that Defendant-Debtor believes that there is either double billing or fees from another case involving the same issue but different defendant as part of the current fee request. Defendant-Debtor further contends that he is being asked to pay for work which had to be repeated due to errors by Plaintiff's counsel.

#### **APPLICABLE LAW**

##### Cal. Civil Code § 1882

Under California Civil Code § 1882.1:

A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts any of the following acts:

- a. Diverts, or causes to be diverted, utility services by any means whatsoever.
- b. Makes, or causes to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility.
- c. Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function by tampering or by any other means.
- d. Tampers with any property owned or used by the utility to provide utility services.
- e. Uses or receives the direct benefit of all, or a portion, of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use, or that the use or receipt, was without the authorization or consent of the utility.

If a utility is successful in any civil action brought pursuant to

§ 1882.1, "the utility may recover as damages three times the amount of actual damages, if any, plus the cost of the suit and reasonable attorney's fees." Cal. Civ. Code § 1882.2.

#### Prevailing Party Attorneys' Fees

Unless authorized by statute or contractual provision, attorney fees ordinarily are not recoverable as costs. Cal. Code Civ. Proc. § 1021; *International Industries, Inc. v. Olen*, 21 Cal. 3d 218, 221 (Cal. 1978). The prevailing party must establish that a contractual provision exists for attorneys' fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the loadstar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

#### **DISCUSSION**

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

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

to correctly assemble the information. FN.1.

-----  
FN.1. The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than 20 years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report which separates the activities into the different tasks.  
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Without the court separating the various tasks into various tasks the court cannot tell if there has been \$30,000.00 of the fees is for staff meetings and only \$5,000.00 is for research, \$3,000.00 for drafting pleadings, and \$3,000.00 is for the day of trial. If may be that just drafting the complaint is being billed for \$10,000.00. The court does not know and it is not fair to ask the court to wade through a detailed billing statement, organize the fees into task areas, and then allocate the fees into those task areas, with the court imposing its characterization of the charges in the place of Plaintiff.

Reviewing the supplemental pleadings, it is apparent that task-billing is necessary to consider the arguments since they boil down to whether the hourly rate of the Plaintiff's counsel is appropriate as well as whether certain services should be included in the request. Without the task billing, the court cannot determine the reasonableness of the request.

The court continues the hearing, rather than denying the Application without prejudice, to afford Plaintiff the opportunity to provide the court, U.S. Trustee, and other parties in interest requesting the information with the necessary task billing analysis.

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

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

The Motion for Allowance of Fees and Expenses filed by Modesto Irrigation District, the prevailing Plaintiff in the Adversary Proceeding, ("Plaintiff") having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Application for Fees and Expenses is continued to xxxx, 20xx, at xxxx.m. Plaintiff shall file a supplemental declaration and supporting documents as necessary, to provide the court, U.S. Trustee,



The bar date for objecting to discharge is currently set for December 22, 2014. The Trustee requests that the deadline is extended to and through March 23, 2015, to allow the Trustee time to investigate Debtors' financial affairs, to consult with counsel, and to determine if a complaint objecting to the discharge is warranted.

Federal Rule of Bankruptcy Procedure 1017(e)(1) provides that the court may extend for cause the time for filing a motion pursuant to 11 U.S.C. § 707(b). The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 9006(b)(1).

Seeing as no objections and for cause, the court grants the Motion and extends the deadline to file a complaint objecting to discharge of the Debtors to March 23, 2015.

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 to extend the Deadline to File a Complaint Objecting to the Discharge of the Debtors filed by the Trustee having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the deadline to file a complain objecting to discharge of the Debtors is set for March 23, 2015.

**Final Ruling:** No appearance at the January 15, 2015 hearing is required.  
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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, parties requesting special notice, and Office of the United States Trustee on December 17, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

**The Motion for Turnover is granted.**

Gary Farrar, Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the property commonly known as:

1. 1997 ford F350 Truck
2. 2000 Honda Civic EX; and
3. 2001 Infinity I30

#### DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Trustee has initiated this proceeding to compel Debtors deliver property to the Trustee. Federal Rule of Bankruptcy Procedure permits the trustee to obtain turnover from the Debtor without filing an adversary proceeding. This Motion for the injunctive relief, in the form of a court order requiring that Debtors turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *In re Hernandez*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *See also* 11 U.S.C.A. §§ 541(a), 542(a). Section 542(a) requires one in possession of property of the estate to deliver such property to the Trustee. Pursuant to 11 U.S.C. § 542, a Trustee is entitled to turnover of all property of estate from Debtors. Most notably, pursuant to 11 U.S.C. § 521(a)(4), the Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

#### **DISCUSSION**

No opposition has been filed to this motion by the Debtors or other parties in interest.

The Debtors have failed and refused to turn over to the Trustee all property of the estate as required by 11 U.S.C. §§ 521 and 542. The Trustee has requested that the Debtor turn over the Property to no avail.

Therefore, because the Property is property of the estate and must be turned over to the estate, the court grants the Motion.

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

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

The Motion for Turnover of Property filed by 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 the Motion for Turnover of Property is granted.

**IT IS FURTHER ORDERED** that Lyle Gene Robbins, the Debtor, and his agents and representative in possession thereof, and each of them (collectively referred to as "Debtor") shall deliver on or before noon on **January \_\_,**

**January 15, 2015 at 10:30 a.m.**

2015, possession of the property commonly known as

1. 1997 Ford F350 Truck
2. 2000 Honda Civic EX; and
3. 2001 Infinity I30

(the "Property"), to Garry R. Farrar, the Chapter 7 Trustee, at xxxxxxxxxxxxxxxxxxxxxx, California, and if requested by the Trustee, provide access to any property(ies) on which the above vehicles are located to the representative(s) of the Trustee to obtain possession of and remove from that property(ies) the vehicles.

15. [14-91633](#)-E-11 SOUZA PROPANE, INC.  
NEU-2 David C. Johnston

MOTION TO APPOINT TRUSTEE,  
MOTION TO CONVERT CASE TO  
CHAPTER 7 OR MOTION TO DISMISS  
CASE  
12-31-14 [[21](#)]

**Tentative Ruling:** The Motion to Convert the Bankruptcy Case 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).**  
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Local Rule 9014-1(f)(2) Motion.

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Creditors, parties requesting special notice, and Office of the United States Trustee on December 31, 2014. By the court's calculation, 15 days' notice was provided. 35 days' notice is required. Fed. R. Bank. P. 2002(a)(4) 21-day notice for Chapter 7, 11, and 12 cases and L.B.R. 9014(a)(f)(1) 14-day written opposition filing requirement. If proceeding under L.B.R. 9014-(f)(1), at least 21 days notice of the Hearing, at which an opposition could be presented (no written opposition required).

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

**The Motion to Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is denied without prejudice.**

This Motion to Dismiss the Chapter 11 bankruptcy case of Souza Propane, Inc., "Debtor" has been filed by Kiva Energy, Inc., ("Movant")

However, the Movant has failed to provide the 21 days notice required

January 15, 2015 at 10:30 a.m.

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by Fed. R. Bankr. P. 2002(a)(4), when relying on Local Bankr. R. 9014(a)(f)(2). Because the Movant only provided 15 days notice, the Motion is denied without prejudice.

The court also notes that the crux of Movant's contentions are the subject of a motion for relief from the automatic stay to allow Movant to exercise its contractual lien rights. Conversion of the case may well confuse the issues with respect to the rights and interests of the Bankruptcy Estate and Movant.

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

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

The Motion to Dismiss the Chapter 11 case filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.