UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

January 26, 2017, at 10:30 a.m.

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1. **12-91506-E-7** **SCB-3** | **ABDUL/MBOYO OKITUKUNDA** **Christian Younger** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHNEWEIS-COE & BAKKEN, LLP FOR LORIS L. BAKKEN, TRUSTEE'S ATTORNEY(S) 12-19-16 [68]**

Final Ruling: No appearance at the January 26, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on December 19, 2016. By the court's calculation, 38 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Schneweis-Coe & Bakken, LLP, the Attorney ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 15, 2016, through December 12, 2016. The order of the court approving employment of Applicant was entered on September 7, 2016. Dckt. 31. Applicant requests fees in the amount of $4,320.00 and costs in the amount of $106.02.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. 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 to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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 moving to reopen the bankruptcy case, recovering property of the estate, and settling disputes. The estate has $15,245.18 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 3.0 hours in this category. Applicant assisted Client with preparing Applicant's fee agreement and employment application, reviewing deadlines to object to exemptions, and preparing the instant application.

Motion to Reopen: Applicant spent 1.1 hours in this category. Applicant prepared and filed the motion to reopen the case.

Recovery of Property of the Estate: Applicant spent 2.4 hours in this category. Applicant reviewed claim documents and prepared and sent to a claims adjuster a demand to send claim proceeds to the Trustee for distribution to creditors.

Settlement and Motion to Compromise: Applicant spent 9.1 hours in this category. Applicant contacted Debtor's counsel and requested that Debtor withdraw an exemption in a ring, and the parties entered into negotiations to settle the dispute, ultimately compromising and settling the dispute.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Loris Bakken, attorney	14.2 hours	$300.00	$4,260.00
Audrey Dutra, paralegal	1.4 hours	$150.00	$210.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$4,470.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $106.02 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$57.42
Copying	$0.10	$48.60
		$0.00
		$0.00
Total Costs Requested in Application		$106.02

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $4,320.00 for its fees incurred for the Client. First and Final Fees and Costs in the amount of $4,320.00 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 & Expenses

First and Final Costs in the amount of $106.02 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$4,320.00
Costs and Expenses	$106.02

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 Schneweis-Coe & Bakken, LLP ("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 Schneweis-Coe & Bakken, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Schneweis-Coe & Bakken, LLP, Professional employed by the Trustee
>
> Fees in the amount of $4,320.00
> Expenses in the amount of $106.02,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Trustee.

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

2.	**16-90410-E-7** **JAD-1**	**SALVADOR/JACQUIE PEREZ** **Jessica Dorn**	**MOTION TO CONVERT CASE TO CHAPTER 13** **11-29-16 [92]**

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—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 5, 2016. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

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

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is xxxxxxxxxxxxxxxxxxxxxx.

Salvador Perez, Jr. and Jacquie Perez ("Debtor") seek to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007).

Debtor asserts that the case should be converted because since the last request to convert to Chapter 13, the spouses have reconciled and now have significant disposable income to support a Chapter 13 plan.

The evidence in support of this Motion is a joint declaration by the two Debtors. The court considers this declaration in light of Debtor Salvador Perez, Jr. contending that he did not file the bankruptcy petition and Debtor Jacquie Lyn Perez seeking to have Salvador Perez, Jr. dismissed from this case. At the hearing on the prior motion to convert the case, Debtor Jacquie Lyn Perez appeared at the hearing and

admitted to having signed the petition for Salvador Perez, Jr. without his permission. The court addressed this admission of forged documents under penalty of perjury, stating:

> "The Debtors' general reference to it now appearing that it is more advantageous to be in Chapter 13, apparently in light of the Trustee identifying assets that should be liquidated to provide for a distribution to creditors, causes one to **question whether this is merely a "strategic conversion" to try to divert assets away from the estate and creditors**.
>
> **Debtor Jacquie Perez appeared at the hearing**, arguing that the two Debtors were better off by converting the case. **She then stated (admitted) that she had signed the pleadings for her husband Salvador Perez, without his authorization**. Additionally, she and Salvador Perez were separated. Therefore, she ask the court to dismiss Salvador Perez from this case.
>
> The court cannot, on a unilateral statement by Jacquie Perez just dismiss a party. **Possibly the signature is forged, but it may not be.** Debtor purports to have previously misrepresented Salvador Perez signed the pleadings. Possible he actually did, and now she is misrepresenting (in league with Mr. Perez) to misrepresent to the court that he did not sign the pleadings. Mr. Perez did not appear that the hearing."

Civil Minutes, p. 3; Dckt. 63.

The Joint Declaration, Dckt. 94, has the "/s/ name" typed "signatures," not actual signatures. While such is permissible, it may be that Debtor Jacquie Perez is again forging signatures and misleading her attorney as to such.

The Docket Report from the continued First Meeting of Creditors states that (purported) Debtor Salvador Perez, Jr. failed to appear at the meeting. December 8, 2016 Docket Entry Report.

Here, the Debtor's case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties. Debtor has provided a proposed Chapter 13 plan and has filed Amended Schedules I and J. Dckts 90 & 96. Amended Schedule J shows monthly net income of $1,439.24. No opposition has been filed.

However, the court remains concerned that the fraud on the court is continuing by Salvador Perez, Jr. and Jacquie Lyn Perez. There are substantial assets in the bankruptcy estate, which clearly the two Debtors (presuming that Debtor Jacquie Lyn Perez's statements in open court that she forged the signature of Salvador Perez, Jr. were false statements) want to keep the Chapter 7 Trustee from properly administering.

At the hearing, xxxxxxxxxxxxxxxxxxxxxxxxxxx.

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 Convert filed by Salvador Perez, Jr. and Jacquie Perez 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 Convert is xxxxxxxxxx.

3. **16-90410-E-7** **SCB-7** | **SALVADOR/JACQUIE PEREZ** **Jessica Dorn** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHNEWEIS-COE & BAKKEN, LLP FOR LORIS L. BAKKEN, TRUSTEE'S ATTORNEY(S) 12-19-16 [104]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on December 19, 2016. By the court's calculation, 38 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Professional Fees is granted.

Schneweis-Coe & Bakken, LLP, the Attorney ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 19, 2016, through December 12, 2016. The order of the court approving employment of Applicant was entered on May 26, 2016. Dckt. 19. Applicant requests fees in the amount of $10,245.00 and costs in the amount of $500.32.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). 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' Comm. 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 to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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 moving to employ a realtor, moving to compel Debtor's attendance at the 341 meeting, moving to reject leases, moving to abandon, opposing Debtor's motion to convert, and opposing Debtor's motion to dismiss case. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 11.1 hours in this category. Applicant assisted Client with preparing Applicant's fee agreement and employment application, reviewing deadlines to object to exemptions and to file a complaint objecting to the Debtor's discharge, preparing a motion to extend the Trustee's deadline to file a complaint objecting to the Debtor's discharge, preparing a stipulation to extend the deadline to file a complaint objecting to the Debtor's discharge, preparing the Trustee's application for compensation, and preparing the instant application for compensation.

Employment of Realtor: Applicant spent 3.0 hours in this category. Applicant reviewed a residential listing agreement to list and market properties for sale and prepared and filed an application to employ a realtor.

Motion to Compel Attendance at Section 341 Meeting of Creditors: Applicant spent 7.6 hours in this category. Applicant prepared and filed a motion to compel Debtor to appear at the continued Section 341 Meeting of Creditors and to provide information regarding property of the estate, and then, Applicant appeared at the hearing on the motion.

Motion to Reject Leases: Applicant spent 6.7 hours in this category. Applicant prepared and filed a motion to reject leases according to the Trustee's business judgment, and then, Applicant appeared at the hearing on the motion.

Motion to Abandon: Applicant spent 3.7 hours in this category. Applicant prepared and filed a motion to abandon the personal property of Debtor because there was no equity in it, and then, Applicant appeared at the hearing on the motion.

Debtor's Motion to Convert: Applicant spent 5.7 hours in this category. Applicant reviewed the Debtor's motion, assisted the Trustee in deciding whether to oppose, prepared and filed opposition, and appeared at the hearing on the motion.

Debtor's Motion to Dismiss: Applicant spent 4.2 hours in this category. Applicant reviewed the Debtor's motion and prepared and filed an opposition.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Loris Bakken, attorney	40.2 hours	$300.00	$12,060.00
Audrey Dutra, paralegal	1.8 hours	$150.00	$270.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$12,330.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $500.32 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$230.02
Copying	$0.10	$270.30
		$0.00
		$0.00
Total Costs Requested in Application		$500.32

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $10,245.00 for its fees incurred for the Client. First and Final Fees in the amount of $10,245.00 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 & Expenses

First and Final Costs in the amount of $500.32 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$10,245.00
Costs and Expenses	$500.32

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Schneweis-Coe & Bakken, LLP ("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 Schneweis-Coe & Bakken, LLP is allowed the following fees and expenses as a professional of the Estate:

Schneweis-Coe & Bakken, LLP, Professional employed by the Trustee

Fees in the amount of $10,245.00
Expenses in the amount of $500.32,

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

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

4. **16-90410-E-7 SCB-8** | **SALVADOR/JACQUIE PEREZ** **Jessica Dorn** | **MOTION FOR COMPENSATION FOR GARY R. FARRAR, CHAPTER 7 TRUSTEE** **12-19-16 [110]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on December 19, 2016. By the court's calculation, 38 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Professional Fees is granted.

Gary Farrar, the Trustee ("Applicant") for Debtor Salvador Perez, Jr. and Jacquie Perez ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period May 11, 2016, through December 8, 2016.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee 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 trustee must exercise good billing judgment with regard to the services provided as the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "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 obtaining counsel to object to Debtor's exemptions, hiring a realtor to value properties, reviewing claims, and reviewing Debtor's motion to convert case to Chapter 13. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES REQUESTED

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

General Case Administration: Applicant spent 5.80 hours in this category. Applicant assisted Client with obtaining counsel to object to Debtor's exemptions, hiring a realtor to value properties, reviewing claims, and reviewing Debtor's motion to convert case to Chapter 13.

Asset Disposition: Applicant spent 1.30 hours in this category. Applicant employed a realtor to inspect and value two properties of the estate.

Trustee requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00

5% of the next $553,000.00	$27,650.00
Calculated Total Compensation	**$33,400.00**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$33,400.00
Less Previously Paid	$0.00
Total First Fees Requested	$33,400.00

The fees are computed on the total estimated sales generating $603,000.00 of net monies (exclusive of these requested fees and costs), with an estimated gross value of $0.00 remaining in claims currently being pursued. The Trustee has not actually pursued sales of property, though, because Debtor has a pending Motion to Convert set for hearing. The Trustee requests compensation of $2,130.00.

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,130.00 pursuant to 11 U.S.C. § 330 are 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.

This case required significant work by the Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

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

Fees $2,130.00

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 Gary Farrar ("Applicant"), the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gary Farrar is allowed the following fees and expenses as a professional of the Estate:
>
> Gary Farrar, Professional Employed as the Trustee

Fees in the amount of $2,130.00

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

5. **16-90410-E-7** **SALVADOR/JACQUIE PEREZ** **MOTION FOR COMPENSATION FOR**
SCB-9 **Jessica Dorn** **PMZ REAL ESTATE, REALTOR(S)**
12-19-16 [115]

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

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

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 19, 2016. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Certificate of Service filed on December 19, 2016, states that the documents were served. However, the form is incomplete with the date blank in the form for when served not completed (nor is the date blank in the signature block completed). However, the Certificate does attest that service had been made as of the time the Certificate was executed. The court uses the December 19, 2016 filing date as the date of service.

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

The Motion for Allowance of Professional Fees is granted.

Bob Brazeal, Realtor of PMZ Real Estate ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 17, 2016, through September 2, 2016. The order of the court approving employment of Applicant was entered on May 26, 2016. Dckt. 20. Applicant requests fees in the amount of $495.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. 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 to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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 researching public records, establishing possible equity in properties, inspecting properties, reviewing comparable sales, and updating projected values. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES REQUESTED

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

General Administration: Applicant spent 4.50 hours in this category. Applicant assisted Client with researching public records, establishing possible equity in properties, inspecting properties, reviewing comparable sales, and updating projected values.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Bob Brazeal, broker	4.5 hours	$110.00	$495.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$495.00

FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $495.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $495.00

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 Bob Brazeal ("Applicant"), Real Estate Broker 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 Bob Brazeal is allowed the following fees and expenses as a professional of the Estate:
>
> Bob Brazeal, Professional employed by the Trustee

Fees in the amount of $495.00

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

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

6.	**15-91013-E-7** **SCB-8**	**NOEMI BARBOZA** **Steven Altman**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHNEWEIS-COE & BAKKEN, LLP FOR LORIS L. BAKKEN, TRUSTEE'S ATTORNEY(S)** **12-19-16 [90]**

Final Ruling: No appearance at the January 26, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on December 19, 2016. By the court's calculation, 38 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Schneweis-Coe & Bakken, LLP, the Attorney ("Applicant") for Gary Farrar, the Chapter 7 ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 5, 2016, through December 12, 2016. The order of the court approving employment of Applicant was entered on February 11, 2016. Dckt. 31. Applicant requests reduced fees in the amount of $10,590.00 and costs in the amount of $143.20.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. 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 to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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 providing legal advice and legal services to the Trustee regarding case administration and strategies on how to handle property of the estate, objecting to Debtor's claimed exemptions, and negotiating a settlement of a dispute with Debtor regarding the Trustee's objection to exemptions. The estate has $28,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 11.0 hours in this category. Applicant assisted Client with preparing Applicant's fee agreement and employment application, reviewing deadlines to object to exemptions and to file a complaint to the Debtor's discharge, preparing a motion to extend the Trustee's deadline to file a complaint objecting to the Debtor's discharge, preparing stipulations to extend the deadline to file a complaint objecting to the Debtor's discharge, and preparing the instant application for compensation.

Objection to Exemptions: Applicant spent 22.5 hours in this category. Applicant discussed with Debtor's attorney that Debtor needed to provide proof of residing at a certain property on the petition date, communicated with Debtor's attorney regarding intent to object to exemptions and to sell Debtor's property, attempted to settle disputes with Debtor, prepared and filed an objection to Debtor's claim of homestead exemption, reviewed Debtor's opposition, and prepared and filed a reply.

Settlement and Motion to Compromise: Applicant spent 9.6 hours in this category. Applicant entered into negotiations regarding possible resolution of the property exemption and of the nonexempt equity in the property, reached a proposed compromise, and appeared at the hearing on the motion.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Loris Bakken, attorney	41.7 hours	$300.00	$12,510.00
Audrey Dutra, paralegal	1.4 hours	$150.00	$210.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$12,720.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $143.20 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$73.40
Copying	$0.10	$69.80

		$0.00
		$0.00
Total Costs Requested in Application		$143.20

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $10,590.00 for its fees incurred for the Client. First and Final Fees in the amount of $10,590.00 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 & Expenses

First and Final Costs in the amount of $143.20 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	$10,590.00
Costs and Expenses	$143.20

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 Schneweis-Coe & Bakken, LLP ("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 Schneweis-Coe & Bakken, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Schneweis-Coe & Bakken, LLP, Professional employed by the Trustee
>
> Fees in the amount of $10,590.00

Expenses in the amount of $143.20,

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

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.

7. 16-90817-E-7 DANIEL ANDERSEN
16-9017
ANDERSEN V. UNITED STATES OF AMERICA, INTERNAL REVENUE

MOTION FOR ENTRY OF DEFAULT JUDGMENT
12-22-16 [17]

Final Ruling: No appearance at the January 26, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendants, Chapter 7 Trustee, and Office of the United States Trustee on December 22, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Default Judgment is granted.

Daniel Andersen ("Plaintiff-Debtor") filed the instant Motion for Default Judgment on December 22, 2016. Dckt. 17. Plaintiff-Debtor seeks an entry of default judgment against United States of America, Internal Revenue Service, and Department of Treasury ("Defendant" or "IRS") in the instant Adversary Proceeding No. 16-09017.

The instant Adversary Proceeding was commenced on November 10, 2016. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on November 10, 2016. Dckt. 6. The complaint and summons were properly served on Defendants. Dckt. 7.

Defendants failed to file a timely any answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on December 16, 2016. Dckts. 14–16.

SUMMARY OF COMPLAINT

Plaintiff-Debtor filed a complaint against Defendants to determine the dischargeability of a debt for taxes and to set aside a tax lien. The Complaint alleges that Defendants assert a claim against Plaintiff-Debtor for $17,755.88 in lax liability for the tax years 2006, 2008, 2009, 2010, and 2011.

In the Complaint's first count, Plaintiff-Debtor asserts that the alleged tax liability is not excepted from discharge under 11 U.S.C. § 523. Plaintiff-Debtor states that the returns for 2008, 2009, and 2011 were filed on or before their due dates. As to the 2006 tax return, Plaintiff-Debtor asserts that the return was filed on August 26, 2009, after the Internal Revenue Service prepared a substitute tax return on February 9, 2009, but before any tax was assessed on September 14, 2009. For the 2010 tax return, Plaintiff-Debtor states that the return was filed on April 29, 2011 before the Internal Revenue Service would have prepared a substitute tax return. Plaintiff-Debtor alleges that the returns were filed more than five years before the petition filing date, and accordingly, they do not fall within 11 U.S.C. § 523(a)(1)(B)(ii).

In the second count of the Complaint, Plaintiff-Debtor asserts that Defendants filed a federal tax lien against Plaintiff-Debtor for the previously-discussed tax liability. Plaintiff-Debtor asserts that the tax liability is dischargeable, and therefore, the federal tax lien should be set aside.

APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.* at 770.

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, because the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors which the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,

(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471–72 (citing 6 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.)).; *In re Kubick*, 171 B.R. at 661–62.

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee,* 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff did not offer evidence in support of the allegations. *See id.* at 775.

DISCUSSION

Applying these factors, the court finds that the Plaintiff-Debtor has sufficiently pled grounds in the Complaint that the tax liabilities are dischargeable in his bankruptcy case. Plaintiff-Debtor filed his bankruptcy case on September 6, 2016. Case No. 16-90817, Dckt. 1. Plaintiff-Debtor has demonstrated that the tax liabilities do not fall under 11 U.S.C. §§ 507(a)(3) & (8) and 523(a). Defendants have not raised any issues concerning material facts (especially dates) related to this Adversary Proceeding.

The specific provisions of the Bankruptcy Code specifying the non-dischargeable tax debt at issue are:

> "§ 523. Exceptions to discharge
>
> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt–
> . . .
> (1) for a tax or a customs duty–
>
> (A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;
>
> (B) with respect to which a return, or equivalent report or notice, if required–
> (i) was not filed or given; or
> (ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or
>
> (C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax; . . . ."

11 U.S.C. § 523(a)(1).

This section cross references 11 U.S.C. § 507, which applicable provisions state:

"§ 507. Priorities

(a) The following expenses and claims have priority in the following order:
. . .
(3) Third, unsecured claims allowed under section 502(f) [involuntary petition gap tax claims, not applicable in Plaintiff-Debtor's voluntary bankruptcy case] of this title.
. . .
(8) Eighth, allowed unsecured claims of governmental units,
only to the extent that such claims are for–

(A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition–

(i) for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

(ii) assessed within 240 days before the date of the filing of the petition, exclusive of–

(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days; or

(iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case; . . . ."

11 U.S.C. § 507(a)(3), (8).

The court finds that the Complaint is sufficient and the request for relief requested therein is meritorious.

The evidence presented by Plaintiff-Debtor is:

A. The Federal 1040 Income Tax Returns for tax years 2006, 2008, 2009, 2010, and 2011, for taxes in the aggregate amount of $17,755.88 (Defendant IRS tax claim) were all filed before May 2012. Declaration, ¶¶ 4, 5, Dckt. 19.

B. No extensions for the filing of tax returns were requested by Debtor. *Id.*, ¶ 4.

C. The Defendant IRS has not reassessed any taxes for the 2006, 2008, 2009, 2010, or 2011 tax returns. *Id.*, ¶ 6.

D. No offers of compromise have even been pending for the 2006, 2008, 2009, 2010, or 2011 tax returns, and Debtor had no prior bankruptcy cases which stayed the enforcement of the tax obligations. *Id.*, ¶ 7.

E. The Defendant IRS has filed a pre-petition tax lien for the obligations, which lien was recorded on November 21, 2012. *Id.*, ¶ 3.

It has not been shown to the court there is or may be any dispute concerning the material facts. Defendants have not contested any facts in this Adversary Proceeding. The Defendant has not opposed this Motion. Although the Federal Rules of Civil Procedure favor decisions on the merits through the crucible of litigation, Defendants have been given several opportunities to respond, and there is no indication that Defendants have a meritorious defense or dispute Plaintiff-Debtor's right to judgment in this Adversary Proceeding.

The tax returns for tax years 2006, 2008, 2009, 2010, or 2011 were due, without extension by April 15 of the following year—the latest being April 15, 2012. (The court uses the April 15 date for simplicity of discussion, and does not compute whether the returns may have been due on April 16 or April 17 due to April 15 falling on a weekend or holiday for the years at issue.) There are no tax obligations based on assessments by Defendant IRS. There has been no showing that there is any agreement or law giving Defendant IRS the right to make assessments for these tax obligations in the future.

Plaintiff-Debtor has established that the federal income tax obligations for tax years 2006, 2008, 2009, 2010, or 2011 are dischargeable in this bankruptcy case. The court shall enter judgment that such obligations are discharged by the bankruptcy discharge in this Plaintiff-Debtor's bankruptcy case.

The Motion states that it seeks a default judgment on the Complaint filed. The Complaint also seeks to have the court determine that "[a]ny lien based upon such tax obligations should be set aside and deemed of no further effect." Complaint ¶ 12, Dckt. 1.

The Motion does not state any legal basis for the court determining that a valid, perfected lien for the tax obligations be set aside merely because the tax obligation has been discharged. No points and authorities has been provided in support of such a proposition.

The effect of a discharge is statutorily defined in 11 U.S.C. § 524, which provides in pertinent part:

"(a) A discharge in a case under this title –

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

(2) operates as an **injunction against the commencement or continuation of an action**, the employment of process, or an act, **to collect, recover or offset any such debt as a personal liability of the debtor**, whether or not discharge of such debt is waived; and

(3) operates as an **injunction against** the **commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, [community] property** of the debtor of the kind specified in section 541(a)(2) of this title **that is acquired after the commencement of the case**, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived."

11 U.S.C. § 524(a) [emphasis added].

While preventing enforcing a discharged debt against the debtor personally from exempt assets or future acquired assets, the discharge does not avoid pre-petition liens to the extent that they have attached to pre-petition assets of the debtor. In *Dewsnup v. Timm*, 502 U.S. 410, 418 (1992), the Supreme Court states:

" 2. This result [pre-petition lien passing through a bankruptcy discharge to the extent it attached to pre-petition assets of the debtor] appears to have been clearly established before the passage of the 1978 Act. Under the Bankruptcy Act of 1898, a lien on real property passed through bankruptcy unaffected. This Court recently acknowledged that this was so. See *Farrey v. Sanderfoot*, 500 U.S. 291, 297, (1991) ('Ordinarily, liens and other secured interests survive bankruptcy'); *Johnson v. Home State Bank*, 501 U.S. 78, 84, 115 L. Ed. 2d 66, 111 S. Ct. 2150 (1991) ('Rather, a bankruptcy discharge extinguishes only one mode of enforcing a claim -- namely, an action against the debtor in personam -- while leaving intact another -- namely, an action against the debtor in rem')."

This is discussed in COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 524.02[d] as follows:

"[d] Postdischarge Enforcement of Liens

Creditors are not prevented from postdischarge enforcement of a valid lien on property of the debtor that existed at the time of the entry of the order for relief, if the lien was not avoided under the Code. Section 522(c)(2) states that a lien may be enforced against exempt property if the lien was not avoided under specified sections of the Code or voided under section 506(d). The legislative history to section 522(c) states in part:

> The bankruptcy discharge will not prevent enforcement of valid liens. The rule of *Long v. Bullard*, 117 U.S. 617 (1886), is accepted with respect to the enforcement of valid liens on nonexempt property as well as exempt property.

Thus, a mortgagee's lien survives and is unaffected by the discharge, regardless of whether the mortgagee files a proof of claim or otherwise asserts its interest during the course of a bankruptcy case. Further, a secured creditor is permitted to proceed with postdischarge foreclosure proceedings without any prior application to the bankruptcy court. In this connection, courts have held that it is not *per se* improper for a secured creditor to contact a debtor to send payment coupons, determine whether payments will be made on the secured debt or inform the debtor of a possible foreclosure or repossession, as long as it is clear the creditor is not attempting to collect the debt as a personal liability. However, **a creditor whose debt is discharged is not permitted to obtain a lien, even by operation of law, if it did not hold a lien when the petition was filed.**

Section 522(f) enables the debtor to avoid certain liens, including judicial liens, to the extent they impair an exemption. The debtor or trustee may also avoid liens under other avoiding powers. Liens may also be paid or otherwise dealt with under a bankruptcy plan, or by the debtor's power to redeem property under section 722. 90. However, to the extent liens are not avoided, paid or otherwise eliminated as part of the bankruptcy case, congressional intent is clear that valid liens may be enforced."

The denial of the request to "set aside" the tax lien is without prejudice to Plaintiff-Debtor avoiding the lien as otherwise permitted by bankruptcy or non-bankruptcy law.

The court finds it necessary and proper for the entry of a default judgment against the Defendants.

The court grants the default judgment in favor of Plaintiff-Debtor and against Defendants United States of America, Internal Revenue Service, and Department of Treasury.

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

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

The Motion for Entry of Default Judgment filed by Plaintiff-Debtor Daniel Andersen 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 Entry of Default Judgment is granted. The court shall enter judgment determining that the tax liability of $17,755.88, including any interest and other charges, asserted by United States of America, Internal Revenue Service, and Department of Treasury ("Defendants") for the 2006, 2008, 2009, 2010, or 2011 tax years is dischargeable in Daniel Andersen's ("Plaintiff-Debtor") bankruptcy case (No. 16-90817).

IT IS FURTHER ORDERED that the additional relief requested in the Complaint to "set aside" the pre-petition tax lien is denied without prejudice.

The court shall issue a Counsel for the Plaintiff-Debtor shall issue a judgment consistent with this Order.

8. **12-93224-E-7** **ABELARDO/ALEXIS CASAS** **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH ABELARDO CASAS AND ALEXIS MARIE CASAS**
SSA-3 **Mark Nelson**
12-30-16 [38]

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 30, 2016. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. Fed. R. Bankr. P. 2002(a)(3) (twenty-one-day notice).

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

The Motion for Approval of Compromise is granted.

Irma Edmonds, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Abelardo Casas and Alexis Casas ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related to an exemption listed on Settlor's Schedules B and C about a personal injury/products liability lawsuit involving a medical device ("Claim").

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court:

A. Subject to bankruptcy court approval, the agreement would resolve the Claim for a gross sum of $185,000.00 as an initial settlement award for litigation. The settlement funds are held in a trust that has been approved as a qualified settlement fund within

the meaning of section 468B of the Internal Revenue Code and would be disbursed by the administrator of the trust.

B. The settlement administrator shall withhold from the gross settlement amount the fees, costs and expenses under the terms of the settlement and pay to the appropriate recipients, including, without limitation, the $9,250.00 MDL common benefit assessment to the fund established for receipt of such assessment, attorneys' fees of $70,300.00, case expenses of $2,692.54, a Settlement Alliance QSF Trust Administration Fee of $700.00, settlement administration expenses of $1,042.00, lien resolution fee of $260.00, which amounts are set forth in Exhibit 2 (Dckt. 42).

C. An application for legal fees and costs has or will be filed for special counsel Alan Lazar and his firm Marlin & Satlzman, LLP, to receive an attorney fee award of $70,300.00, representing forty percent of the gross recovery after deduction of MDL fees, plus primary firm legal costs of $2,692.54.

D. After payment and/or holdback of fees, costs and expenses by the settlement administrator, the settlement administrator shall be authorized to distribute the remaining proceeds, estimated to be in the amount of $95,269.47 to the Trustee.

E. The settlement entails a complete and general release and covenant not to sue Doe 1 defendant as well as other party Doe defendants in the litigation and is made pursuant to the provisions set forth in California Civil Code § 1542.

F. The Trustee (Movant) on behalf of herself and the bankruptcy estate, and the Debtor (Settlor), are authorized to enter into, execute, and deliver any and all release documentation required by the defendant and any other documents or instruments, if any, necessary or appropriate in order to effectuate the release of claims, and that upon the release becoming effective in accordance with its terms, all persons and entities, including, without limitation, the Trustee, the Bankruptcy Estate, the Debtor, and any person or entity claiming, or who could claim, by, through, or on behalf of the Trustee, the bankruptcy Estate and/or the Debtor, shall be and hereby are deemed to have released all claims and are permanently enjoined from asserting or prosecuting any claims related to arising from the Claim.

G. The parties to the settlement agreement will treat its terms and conditions as confidential, with an exception providing sufficient settlement information to the court for approval of compromise.

H. Each party shall bear its own fees and costs.

I. The underlying settled litigation and claims will ultimately result in the dismissal of the subject lawsuit currently pending.

SETTLOR'S RESPONSE

Settlor filed a Response on January 17, 2017. Dckt. 52. Settlor states that they filed an Amended Schedule C on January 17, 2017, to exempt personal injury proceeds of $36,188.95. Settlor has no objection to Movant disbursing Settlor's net proceeds of settlement awarded to her for her sustained injuries.

Settlor objects, however, to Movant receiving compensation and expense in the gross proceeds of settlement. Specifically, Settlor objects to the disbursements of MDL Fees and attorneys' fees for Alan Lazar for the settlement allocation and administrative costs incurred and owed from the lawsuit in the sum of $80,480.53.

Settlor does not objection to compensation and expenses incurred by the Trustee disbursing the net proceeds of settlement of $58,982.52 due to Settlor, after MDL Fees of $9,250.00, Alan Lazar's allocation and administrative costs in the sum of $80,480.53, and Settlor's exempt personal injury proceeds of $36,188.95 as stated on Amended Schedule C.

Settlor does not believe that providing the Trustee the gross proceeds of settlement is "economically advantageous to their family, the bankruptcy estate, creditors, or for attorney, Alan S. Lazar." Settlor asserts that allowing the Trustee a percentage of the funds for fees and costs from what Alan Lazar is receiving is unfair.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Probability of Success

While special counsel was fairly confident that a causal link could be established between the defective medical device and Settlor's injuries, the actual work-up of the case, the engagement of experts, protracted litigation costs, jury trial, and the like could consume countless hundreds of thousands of dollars, if not millions of dollars, depending on the posture of defendants.

Difficulties in Collection

Movant states that the settlement proceeds will pay both administrative fees and costs and all duly-filed and allowed claims in the bankruptcy case. The estate will be fully solvent for case administration and payment to creditors.

No difficulties arising from collection have been discussed by Movant.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, estimated at hundreds of thousands of dollars to millions of dollars, which are projected based on the unsettled nature of the claim, given the questions of law and fact that would be the subject of a trial. The litigation involves a multitude of plaintiffs, and there would be significant testimony by medical professions and biomechanical engineers, in addition to protracted litigation.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors because the compromise provides full payment to creditors.

Consideration of Additional Offers

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

Settlor Debtor's Objection to Computation of Trustee Fees

The Motion filed by the Trustee seeks to have the proposed settlement approved. From settlement of the claim, which is property of the bankruptcy estate, the Trustee is to pay from the $185,000 gross settlement proceeds the following:

A. 5% disbursement, $9,250.00 into the MDL 2325 Fund. Settlement Agreement, ¶ 2.01c.; Dckt. 42.

B. Holdback to pay lien claims. *Id.*, ¶ 2.01f.

C. $69,540.00 attorneys' fees. Settlement Ledger Summary, Dckt. 42 at 21.

D. $3,392.54 case expenses. *Id.*

E. $5,745.99 Medical Liens, holdback and fees. *Id.*

F. $760.00 Attorneys' Fees Administrative Cost. *Id.*

G. $1,042.00 Settlement Administrative Expenses. *Id.*

H. Net for bankruptcy estate of settlement of claim after payment of above, $95,269.47.

The disbursements stated in the Motion are consistent with the above, yielding a net recovery by the bankruptcy estate on the claim of $95,269.47. Motion, p. 3:17–19; Dckt. 38.

Debtor objects not to the settlement, but "objects" to how the Trustee's compensation will be computed, and allowed, by the court pursuant to some future motion filed at some future date. The present Motion does not request that the court approve the bankruptcy Trustee's fees in this case.

In the Response by Debtor, Debtor and her counsel make the confusing (and unsupported by any law in the pleading) argument that:

A. Debtor has no "objection" to the Trustee disbursing the net proceeds of the settlement "awarded to Debtor." Response ¶ 6, Dckt. 6.

With this statement, as pointed out by the Trustee, Debtor and Debtor's counsel affirmatively misstate the settlement and the rights and interests of the bankruptcy estate. The claim being settled is property of the bankruptcy estate, not the Debtor. It is the Trustee who has the right to prosecute, and settle, this claim that is property of the bankruptcy estate. There is no settlement being "awarded" to Debtor, but recovered by the bankruptcy estate. 11 U.S.C. § 541(a) (defining property of the bankruptcy estate).

Debtor and Debtor's counsel then venture out on an issue not before the court, apparently seeking to obtain an advisory opinion or state Debtor's "ruling" to be issued in this bankruptcy case. Debtor and Debtor's counsel state:

B. "Debtors do not object to compensation and expenses incurred by Trustee disbursing the net proceeds of settlement of $58,982.52 due to debtor, after MDL Fees of $9,250.00, Personal Injury Attorney's allocation and administrative costs owed to attorney, Alan S. Lazar, in the sum of $80,480.53, and debtors exempt personal injury proceeds as stated on their amended Scheduled C of $36,188.95." *Id.*, ¶ 8.

The court is not computing and allowing Trustee's fees in this case by this Motion. While Debtor and Debtor's counsel "advise" (or instruct) the court as to their druthers as to how they would write and interpret the Bankruptcy Code, such power does not exist with them. The argument asserted by Debtor for this "advice" is that Debtor believes it to be unfair if the Trustee's compensation was computed on the contingent fees paid to trustee's special counsel.

In making these unsupported "advisories" to the court and Trustee, Debtor and Debtor's counsel have forced the Trustee to respond. Dckt. 58. The Trustee is forced to direct Debtor and Debtor's counsel to 11 U.S.C. § 541(a). The Trustee is forced to advise Debtor and Debtor's counsel of the statutory duties of the Trustee. The Trustee is not merely the puppet of the Debtor and Debtor's counsel to do as told. Further, the claim, settlement, and proceeds are property of the bankruptcy estate and properly paid to the Trustee as the fiduciary of the bankruptcy estate.

The court notes that on January 17, 2017, Debtor filed an Amended Schedule C claiming an exemption of $36,188.95. Dckt. 55. This amended exemption asserts $22,075.00 exempt pursuant to California Code of Civil Procedure § 703.140(b)(11)(D), which provides an exemption for a specified dollar amount on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent. Debtor also claims an additional $14,113.95 exempt pursuant to California Code of Civil Procedure § 703.140(b)(5) [wildcard exemption]. The Debtor listed the bodily injury exemption on Original Schedule C when this case was filed in December 2012, and also used $8,288.95 of the then available wildcard exemption in December 2012.

Amended Schedule C having been filed on January 17, 2017, the time for filing objections has not expired. To the extent that any objections are filed, the court will address it at that time.

Though not presented to the court, Debtor and Trustee could file a joint *ex parte* motion for authorization for the court to authorize the Trustee to immediately abandon the portion of the property of the estate (the settlement proceeds) to Debtor. *See Schwab v. Reilly*, 560 U.S. 770, 792 (2010) (holding that a claim of a monetary exemption is made in property of the bankruptcy estate, and the claiming of an exemption does not remove that monetary amount from the bankruptcy estate).

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it fully funds the bankruptcy estate's administrative costs and claims. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Irma Edmonds, the Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Abelardo Casas and Alexis Casas ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the Civil Minutes and supported by the amounts listed in Exhibit 2 in support of the Motion (Dckt. 42).

9. **12-93224-E-7** **ABELARDO/ALEXIS CASAS** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF MARLIN AND SALTZMAN, LLP SPECIAL COUNSEL**
SSA-4 **Mark Nelson** **12-30-16 [44]**

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 30, 2016. By the court's calculation, 27 days' notice was provided. 21 days' notice is required (Fed. R. Bankr. P. 2002(a)(6), twenty-one-day notice requirement when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Irma Edmonds, the Chapter 7 Trustee, on behalf of Marlin & Saltzman, LLP, the Attorney ("Applicant") for Chapter 7 ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The order of the court approving employment of Applicant was entered on December 23, 2013. Dckt. 33. Applicant requests fees in the amount of $70,300.00 and costs in the amount of $2,692.54.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. 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 to

the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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 litigating a personal injury lawsuit that reached a settlement amount of $185,000.00. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in litigation relating to personal injury from a medical device to Debtor, for which Client agreed to a contingent fee of 40% of the gross after payment of expenses. In approving the employment of applicant, the court approved the contingent fee, subject to further review pursuant to 11 U.S.C. § 328(a). $185,000.00 of net monies (exclusive of these requested fees and costs) was recovered for Client.

The fees requested are computed by Applicant by allocating 40% of the adjusted gross settlement to attorneys' fees, of which 87% is assigned to Applicant for its services. Exhibit 1, Dckt. 48.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $2,692.54 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Courier		$300.00
Court Filing Fee		$350.00
Medical Records		$1,000.00
Specimen Storage		$978.58
Claimant Share of General Expenses		$63.96
Total Costs Requested in Application		$2,692.54

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $70,300.00 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Trustee is authorized to pay from the available settlement funds in a manner consistent with the order of distribution in a Chapter 7.

Costs & Expenses

First and Final Costs in the amount of $2,692.54 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available settlement funds 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	$70,300.00
Costs and Expenses	$2,692.54

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 Irma Edmonds, the Chapter 7 Trustee, on behalf of Marlin & Saltzman, LLP ("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 Marlin & Saltzman, LLP is allowed the following fees and expenses as a professional of the Estate:

Marlin & Saltzman, LLP, Professional employed by the Trustee

Fees in the amount of $70,300.00
Expenses in the amount of $2,692.54,

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

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

10. 16-90634-E-7 LESTER/ANA RODRIGUEZ — MOTION TO DISMISS ADVERSARY PROCEEDING
16-9018 MB-1
CHAIREZ V. RODRIGUEZ ET AL — 12-13-16 [10]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff and Plaintiff's Attorney on December 13, 2016. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice.

Lester Rodriguez and Ana Rodriguez ("Defendant") move for the court to dismiss Margarita Chairez's ("Plaintiff") Complaint (Dckt. 1) and therefore dismiss this adversary proceeding.

PLAINTIFF'S OPPOSITION

Plaintiff filed an Opposition on January 12, 2017. Dckt. 14. Plaintiff states the following as support for opposing the Motion:

A. Plaintiff was employed by Defendant as a cook from December 7, 2011, through March 17, 2013, by oral agreement for $10.00 per hour.

B. Plaintiff was not paid properly between April 11, 2012, and March 17, 2013.

C. Plaintiff entered into an agreement with Defendant by which she would be paid weekly payments to cover the balance due.

D. Defendant made five payments, totaling $1,390.75, but no more.

E. A labor commissioner found that Defendant intentionally failed to pay Plaintiff and awarded a judgment for Plaintiff in the amount of $5,105.05 in wages, $2,968.00 in liquidated damages, $1,800.00 in penalties, and $378.21 in interest.

Review of Motion Minimum Pleading Requirements

Federal Rule of Civil Procedure 7(b), which is incorporated in its entirety by Federal Rule of Bankruptcy Procedure 7007, states,

> "(b) Motions and Other Papers
>
> (1) In General. A request for a court order must be made by motion. The motion must:
>
> (A) be in writing unless made during a hearing or trial;
>
> (B) **state with particularity the grounds for seeking the order**; and
>
> (C) state the relief sought."

Fed. R. Civ. P. 7(b) (emphasis added). The same "state with particularity" requirement is included in Federal Rule of Bankruptcy Procedure 9013 for all motions in the bankruptcy case itself.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2)), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678–79. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plan statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts that will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought" (emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's Federal Practice, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977).

Not stating with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try to float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that

what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

Here, Defendant has not provided any grounds, merely unsupported conclusions of law. The insufficient statement made by Defendant in response to the Complaint is:

A. Plaintiff fails "to state a claim under Federal Rule of Civil Procedure §12(b)(6)."

That "ground" is merely a conclusion of law by Defendant. Presumably, Defendant believed that the court would make that conclusion, but the "grounds" cannot merely state the anticipated conclusion.

Defendant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." L.B.R. 1001-1(g) (emphasis added).

The Motion goes further to state that the grounds are found in a Memorandum of Points and Authorities and any oral and documentary evidence presented at the hearing.

The court generally declines the opportunity to do associate attorney work and assemble motions for the parties. It may be that Defendant believes that the Points and Authorities is "really" the motion and should be substituted by the court for the motion. That belief fails. One reason is that under Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents, the motion and points and authorities are separate documents. The court has not waived that Local Rule for 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 Adversary Proceeding filed by Defendant 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.

11. 16-90736-E-11 RONALD/SUSAN SUNDBURG
Edward Smith; Stephan Brown

STATUS CONFERENCE RE: STIPULATION FOR INTERIM USE OF CASH COLLATERAL
1-5-17 [45]

Debtors' Atty: Edward A. Smith; Stephan M. Brown
Bank of America Atty: Michele Sabo Assayag; Joshua K. Partington

Notes:
Appearance by all counsel shall be telephonic; no in-person appearance required. On or before 1/23/17 Debtors and Bank of America shall file any proposed budget for the use of cash collateral.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Emergency Hearing Notice Provided. The court set a Status Conference on this matter for hearing at 10:30 a.m. on January 26, 2017. Dckt. 56. The court ordered that on or before January 23, 2017, Debtor in Possession and BANA were to file any proposed budget for the use of cash collateral for which they may be requesting the issuance of an order based on an ex parte motion made at the Status Conference and the proposed schedule for filing a noticed motion for approval of the stipulation/agreement for the use of cash collateral.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion for Authority to Use Cash Collateral is xxxxx.

Ronald Sundburg and Susan Sundburg ("Debtor in Possession") filed the instant ex parte Motion for Interim Authority to Use Cash Collateral on January 5, 2017. Dckt. 45.

Debtor in Possession and Bank of America, N.A. ("BANA") entered into a number of agreements, including:

A. December 19, 2007: Loan of $324,817.44 to Susan Sundburg evidenced by a Finance Agreement;

B. December 21, 2007: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 5132 Yosemite Boulevard, Empire, California (recorded on January 14, 2008);

C. December 21, 2007: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 11 South Abbie, Empire, California (recorded on January 14, 2008);

D. December 31, 2007: Increase of Susan Sundburg's loan to $385,228.62 evidenced by a Final Disbursement, Change and Repayment Schedule;

E. June 20, 2012: Susan Sundburg executed a Finance Agreement, confirming terms of a restated loan and reduction of principal in a proposed amendment;

F. June 20, 2012: Ronald Sundburg executed a Guaranty whereby he unconditionally agreed to pay all of Susan Sundburg's obligations to BANA, including any and all interest, fees, and costs, and attorneys' fees and legal expenses incurred for the enforcement of the obligations of a restated loan, in the even Susan Sundburg failed to pay;

G. June 25, 2012: BANA and Susan Sundburg executed a Final Disbursement, Change and Repayment Schedule, finalizing and ratifying terms to a restated loan;

H. June 27, 2012: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 7634 Adams Avenue, Valley Springs, California (recorded on July 17, 2012);

I. June 28, 2012: BANA and Debtor in Possession executed an Amendment to Loan Agreement to consolidate, renew, replace, and refinance Susan Sundburg's loan and reduce the principal balance to $324,817.44;

J. Unspecified date: Susan Sundburg executed a Finance agreement that pledged certain personal property as collateral for the restated loan;

K. October 22, 2015: BANA and Debtor in Possession executed a Loan Modification Agreement that extended the maturity date of the restated loan from July 1, 2015, to March 1, 2016;

L. October 22, 2015: BANA and Debtor in Possession executed a Modification of Deed of Trust for the Yosemite Boulevard property (recorded on December 28, 2015); and

M. October 22, 2015: BANA and Debtor in Possession executed a Modification of Deed of Trust for the South Abbie property (recorded on December 28, 2015).

BANA asserts that the above properties securing its claims are generating monthly net profit of approximately $500.16 from rents and lease income. BANA asserts that the monthly net profit is its cash collateral pursuant to 11 U.S.C. §§ 552(b) and 363(a). Debtor in Possession seeks to use those funds to maintain the ongoing business of the rental properties at Yosemite Boulevard and South Abbie.

The parties report that the cash collateral will be used as follows:

A. Cash collateral will be used to pay reasonable, ordinary, and necessary expenses of operating and maintaining the Yosemite Boulevard and South Abbie properties;

B. Debtor in Possession shall make adequate protection payments to BANA by the tenth day of each month in the amount of $200.00;

C. The collected cash collateral shall be deposited into accounts designated with the Office of the U.S. Trustee;

D. Debtor in Possession may not use the cash collateral for any purpose other than as specified between the parties, and Debtor in Possession may not withdraw monies without BANA's express consent or Bankruptcy Court authorization;

E. Cash collateral may not be used to make any capital investment or improvement of business without BANA's prior written authorization;

F. The right to use cash collateral expires upon default or upon BANA providing fifteen day's written notice of termination;

G. Debtor in Possession may exceed the budgeted amount for any particular line item expense by not more than $50.00, provided that Debtor in Possession may not exceed the total budget on a monthly basis by more than 5%.

The parties' stipulation grants BANA a replacement lien in all post-petition collateral income securing Debtor's lien to BANA and a replacement lien on the Debtor in Possession's account opened for the use of cash collateral. To the extent that any replacement lien and security interest is insufficient to compensate BANA, BANA shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(2).

The parties submitted a Joint Status Report on January 23, 2017. Dckt. 59. The Status Report includes the following budget as Exhibit 1:

Commercial Property 5132 Yosemite Blvd/ 11 S. Abbie, Empire, California 95319			
	Real Property Rent	$2,750.00	
	First Mortgage (Jenison)		($1,188.67)
	Bank of America AP Payment		($200.00)
	Property Taxes		($623.88)
	Utilities (Water, Sewer, Garbage)		($113.14)
	Repair/Maintenance		($500.00)
	NET INCOME	$124.31	
Personal Property Collateral			
	Lease Income	$450.00	
	Stearns Leasing (Laser Lease)		($244.15)
	Repairs/Maintenance		($30.00)
	NET INCOME	$175.85	
	TOTAL NET INCOME	$300.16	

APPLICABLE LAW

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

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless–

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease--

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

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

(b)(2) Hearing

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

DISCUSSION

In the instant case, the Debtor in Possession is seeking authorization of the court to use cash collateral on an interim basis, pending a final hearing, to pay reasonable, ordinary, and necessary expenses to operate and maintain the Yosemite Boulevard and South Abbie properties.

While the Stipulation seeks authorization for the interim use of cash collateral, the Debtor in Possession does not provide specific expenses that are necessary to avoid immediate and irreparable harm to the estate.

The budget provides a list of income and expenses, but it does not specify which of these expenses are necessary to be paid using cash collateral. Additionally, the attached budget differs from

BANA's claim regarding how much money is available in total monthly net income. BANA states that $500.16 is available, but the budget shows that $300.16 is actually available.

Review of Schedules

The Debtor in Possession lists personal property assets having a value of $66,086.60 on Schedule B (of which $571.10 are stated to be accounts receivable). Dckt. 1. Stanislaus County Tax Collector is listed on Schedule D as a creditor having a secured claim. Dckt. 24.

The unsecured claims listed on Schedule F total $8,361.11. Dckt. 24. The Yosemite Boulevard, South Abbie, and Adams Road real properties are listed on Schedule A, and two leases are listed on Schedule G. Dckts. 1 & 24.

Specific Uses Necessary to Avoid Irreparable Harm Pending Noticed Hearing

At the hearing, the Debtor in Possession and counsel provided the following expenses that the Debtor in Possession alleges are necessary to avoid irreparable harm to the estate:

EXPENSE	**AMOUNT**
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	_____
Total Cash Collateral Authorized Pending Noticed Hearing	$0.00

The order authorizing the Debtor in Possession to use cash collateral shall direct the Debtor in Possession to serve the Notice of Hearing, Motion, Supporting Pleadings to all parties as required by Federal Rule of Bankruptcy Procedure 4001(b)(1)(C) on or before xxxxx, 2017.

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

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

The Motion for Authority to Use Cash Collateral filed by Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is xxxx, and the cash collateral may be used to pay the following expenses, granting the Debtor in Possession a variance of $50.00 in any individual line item expense as long as the total amount used does not exceed five percent of the monthly total budget:

EXPENSE	**AMOUNT**
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	$0.00
	_____
Total Cash Collateral Authorized Pending Noticed Hearing	$0.00

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

IT IS FURTHER ORDERED that the final noticed hearing on the Motion shall be conducted at xx:xx x.m. on xxxx, 2017. The Debtor in Possession shall serve the Notice of Hearing, Motion, Supporting Pleadings to all parties as required by Federal Rule of Bankruptcy Procedure 4001(b)(1)(C) on or before xxxxx, 2017.

12. 16-90945-E-7 JUSTUS MILES
Pro Se

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
12-27-16 [11]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and creditors on December 29, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied, and the bankruptcy case shall proceed in this court.

The Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Alternatively, if Debtor's case is not dismissed, the Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 1:00 p.m. on January 19, 2017. If Debtor fails to appear at the continued Meeting of Creditors, the Trustee requests that the case be dismissed without further hearing.

Continued Meetings of Creditors were held on December 22, 2016, and January 19, 2017, and the Trustee's Reports indicate that Debtor appeared at each meeting. The Trustee has filed nothing further, and the court therefore determines that the Debtor's appearances have resolved this Motion.

Cause does not exist to dismiss this case. The Motion is denied.

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied, and the bankruptcy case shall proceed in this court.

13. 15-90358-E-11 MHK-1 **LAWRENCE/JUDITH SOUZA** **Anthony Asebedo** **MOTION TO USE CASH COLLATERAL 12-23-16 [461]**

Due to a clerical error, this matter has been set for hearing twice on the court's 10:30 a.m. calendar for January 26, 2017. The court removes this duplicate and addresses the Motion at the Continued Motion to Use Cash Collateral.

14. **15-90358-E-11** **LAWRENCE/JUDITH SOUZA** **CONTINUED MOTION TO USE CASH COLLATERAL**
MHK-1 **Anthony Asebedo** **4-30-15 [32]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

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

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

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

The Motion to Use Cash Collateral is granted, with the hearing continued to 10:00 a.m. on May 18, 2017, for consideration of a further request for use of cash collateral.

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

The court has previously authorized the use of cash collateral, and the Supplemental Request for further use is before the court pursuant to this Motion.

SEPTEMBER 8, 2016 HEARING

At the hearing, the court authorized the use of cash collateral for the period of October 1, 2016, through January 31, 2017. Dckt. 408. Additionally, the court continued the hearing to January 26, 2017, at 10:30 a.m. for the court to continue authorizing the further use of cash collateral. On or before January 5, 2017, the Debtor in Possession was ordered to file Supplemental Pleadings, if any, in support of authorization for the further use of cash collateral. Opposition to such further use, if any, was ordered to be filed and served on or before January 12, 2017.

FIFTH SUPPLEMENTAL TO MOTION TO USE CASH COLLATERAL

The Debtor in Possession filed a Fifth Supplement to Motion to Use Cash Collateral on December 23, 2016. Dckt. 461. The Debtor in Possession holds fee title to the following properties:

PROPERTY LOCATION	TYPE OF RENTAL
121 W. Syracuse Ave.	Single Family Residential
223 W. Syracuse Ave.	Single Family Residential
97 W. Canal Drive	Single Family Residential

The following chart describes the encumbrances:

RENTAL	CREDITOR	RECORDATION DATE	ASSIGNMENT OF RENTS?
121 W. Syracuse	Maiman Trust/Deed of Trust	3/8/11	Yes
	Internal Revenue Service/Tax liens	4/26/11; 3/26/12	No
223 W. Syracuse	Seterus/Deed of Trust	4/25/05	No
	The Money Brokers, agent for assignees of Curtis Fam. Trust/Deed of Trust	8/25/10	Yes
	Internal Revenue Service/Tax liens	4/26/11; 3/26/12	No
97 W. Canal	Provident Credit Union/Deed of Trust	10/16/02	Yes
	The Money Brokers, agent for assignees of Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11;3/26/12	No

The Debtor in Possession states that the use of cash collateral to pay ongoing expenses of the properties will ensure that the properties remain occupied and that there will be continued collection of rent from February 1, 2017, through May 31, 2017. The Debtor in Possession proposes that the use of cash collateral be restricted to those expenses described below within a 20% variance for each category of expense and that the cash remaining after the payment of the same be retained by the Debtor in Possession in the rental bank account.

121 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				
Rent	$200.00	$200.00	$200.00	$200.00
Expenses				
Insurance Premium	$0.00	$100.00	$0.00	$0.00
Management fees	$16.00	$16.00	$16.00	$16.00
Reserve for misc. maintenance exp.	$75.00	$50.00	$50.00	$75.00
Property Taxes	$0.00	$0.00	$393.00	$0.00
Projected Surplus/Deficit	$109.00	$34.00	($209.00)	$109.00

223 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				
Rent	$400.00	$400.00	$400.00	$400.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Management fees	$16.00	$16.00	$16.00	$16.00
Reserve for misc. maintenance exp.	$100.00	$100.00	$100.00	$100.00
Property taxes	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$284.00	$284.00	$284.00	$284.00

97 W. Canal Drive

	February	**March**	**April**	**May**
Revenue				
Rent	$1,000.00	$1,000.00	$1,000.00	$1,000.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$418.00
Management fees	$80.00	$80.00	$80.00	$80.00
Reserve for misc. maintenance exp.	$200.00	$200.00	$100.00	$200.00
Property taxes	$0.00	$0.00	$625.00	$0.00
Projected Surplus	$720.00	$720.00	$195.00	$302.00

APPLICABLE LAW

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

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

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or Debtor in Possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

> (b)(2) Hearing
>
> The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

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

For purposes of this Motion, the use of cash collateral is authorized as to the three properties discussed.

Therefore, the court authorizes the use of cash collateral for the period of February 1, 2017, through May 31, 2017.

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

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

121 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				
Rent	$200.00	$200.00	$200.00	$200.00
Expenses				
Insurance Premium	$0.00	$100.00	$0.00	$0.00
Management fees	$16.00	$16.00	$16.00	$16.00
Reserve for misc. maintenance exp.	$75.00	$50.00	$50.00	$75.00
Property Taxes	$0.00	$0.00	$393.00	$0.00
Projected Surplus/Deficit	$109.00	$34.00	($209.00)	$109.00

223 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				
Rent	$400.00	$400.00	$400.00	$400.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Management fees	$16.00	$16.00	$16.00	$16.00
Reserve for misc. maintenance exp.	$100.00	$100.00	$100.00	$100.00
Property taxes	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$284.00	$284.00	$284.00	$284.00

97 W. Canal Drive

	February	**March**	**April**	**May**
Revenue				
Rent	$1,000.00	$1,000.00	$1,000.00	$1,000.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$418.00
Management fees	$80.00	$80.00	$80.00	$80.00
Reserve for misc. maintenance exp.	$200.00	$200.00	$100.00	$200.00
Property taxes	$0.00	$0.00	$625.00	$0.00
Projected Surplus	$720.00	$720.00	$195.00	$302.00

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

IT IS FURTHER ORDERED that the hearing is continued to May 18, 2017, at 10;00 a.m. for the court to continue authorizing the further use of cash collateral. On or before April 18, 2017, the Debtor in Possession shall file a Supplement to the Motion, if any, in support of authorization for the further used of cash collateral, along with a Notice of Continued Hearing. Opposition to such further use, if any, shall be filed and served on or before May 2, 2017.

15. 14-91565-E-7 RICHARD SINCLAIR
Pro Se

CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-8-16 [382]

Final Ruling: No appearance at the January 26, 2017 hearing is required.

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 February 8, 2016. The court computes that 38 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 ($30.00 due on January 25, 2016).

The court's decision is to continue the hearing on the Order to Show Cause to 10:00 a.m. on June 29, 2017, for a continued status conference.

JANUARY 26, 2017 STATUS CONFERENCE

The court's files reflect that this fee has not been paid by Debtor. However, there are sufficient monies in the estate, and possibly exempt assets, with which to pay the fees. Alternatively, the court may strike the document for which the fee has not been paid.

MARCH 17, 2016 HEARING

At the hearing, the court continued the matter to January 26, 2017, for a status conference.

DISCUSSION

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $30.00.

Gary Farrar, the Chapter 7 Trustee, filed a response to the instant Order to Show Cause on March 3, 2016. Dckt. 403. The Trustee states that, since the conversion to one under Chapter 7, the Trustee has worked diligently to evaluate the Debtor's business affairs, assets, and other property interests. The Trustee states that due to the complex state of the Debtor's affairs, the Trustee requests the case not be dismissed.

It appears that there are substantial assets that are to be administered by the Trustee, from which the fee can be paid from the Debtor's possible surplus estate, if one exists, or from the Debtor if he desires to obtain a discharge if there is not a surplus 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 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 hearing on the Order to Show Cause is continued to 10:00 a.m. on June29, 2017, for a continued status conference.

16. 14-91565-E-7 HSM-9 | **RICHARD SINCLAIR** **Pro Se** | **CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 11-10-16 [462]**

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 10, 2016. By the court's calculation, 10 days' notice was provided. 14 days' notice is required.

The Amended Bifurcated Objection to Claim of Exemption 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. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further.

The Objection to Debtor's Claim of Exemptions is sustained, and the claimed exemption is disallowed in its entirety.

Gary Farrar, the Chapter 7 Trustee, filed an Amended Bifurcated Objection to Claim of Exemption as required by the court from the August 25, 2016 hearing. *See* Dckt. 457. The Trustee objects to the "Personal Injury" exemption claimed as "malicious prosecution suit" under California Code of Civil Procedure § 704.140 filed by Richard Sinclair ("Debtor").

Trustee notes that Debtor maintains several claims against Andrew Katakis, California Equity Management Group, Inc., New Century Townhomes (formerly Fox Hollow of Turlock Owner's Association), and their counsel. Those claims include: malicious prosecution, intentional infliction of emotional distress, stalking, elder abuse, violations of Due Process under the Constitution, and violations of Consumers Legal Remedies Act; Debtor seeks injunctive relief for those claims. Trustee believes that the "malicious prosecution suit" referred to on Debtor's Schedule C is Stanislaus County Superior Court Case No. 668157.

The Trustee informs the court that an agreement has been reached with the cross-defendants in the malicious prosecution suit for settlement of the claims at issue, contingent upon final documentation and bankruptcy court approval.

DEBTOR'S STATUS CONFERENCE STATEMENT

Debtor filed a Status Conference Statement on November 16, 2016. Dckt. 468. FN.1. Debtor recounts the court's August 25, 2016 hearing and that Debtor did not oppose the ruling. Debtor states that he did not receive notice of the December 1, 2016, but he was informed by the clerk of the court. Since the last hearing, Debtor has prepared and intends to file an amended complaint in his state court case.

FN.1. Debtor failed to attach a Docket Control Number to the Statement per Local Bankruptcy Rule 9014-1(c)(1) & (4). Also, Debtor failed to certify his statement under penalty of perjury.

Debtor asserts that determining what amount to list as an exemption pursuant to § 704.140 is "too hard" right now. Debtor states that he has not received a copy of any proposed settlement, but he alleges that he seeks $40,000,000.00 in his amended state court claim.

TRUSTEE'S STATUS REPORT

The Trustee filed a Status Report on November 17, 2016. Dckt. 472. The Trustee states that the agreement referenced in his Objection has been documented and filed with the court, set for hearing at 2:00 p.m. on December 15, 2016. *See* Dckt. 477. Pursuant to the agreement, the settling parties (*i.e.*, the cross-defendants in the malicious prosecution suit) shall pay $20,000.00 to the Estate in settlement of the cross-claims within ten days after entry of an Order from the Stanislaus Superior Court dismissing the malicious prosecution action in its entirety. Creditors CEMG/Fox Hollow HOA shall irrevocably withdraw Proof of Claim No. 7-1 also.

The Trustee asserts that any discussion of the claimed exemption is premature until such time as the court rules on the proposed settlement agreement. Assuming that the Trustee's Motion to Compromise is granted on December 15, 2016, the Trustee proposes the following schedule be set regarding the Objection:

A. December 29, 2016: Deadline for Debtor to file opposition to the Objection, including all supporting evidence, addressing only his alleged entitlement to the claimed exemption, and no other issues;

B. January 12, 2017: Deadline for the Trustee to file a reply to the Debtor's Opposition, as well as any evidence, if any;

C. January 19, 2017: Deadline for Debtor to file a surreply, replying only to the issues raised in the Trustee's reply; and

D. January 26, 2017, 10:30 a.m.: Final hearing on the Objection.

DECEMBER 1, 2016 HEARING

At the hearing, the court continued the matter to 10:30 a.m. on January 26, 2017, and set the following schedule for deadlines:

A. December 29, 2016, for Debtor to file opposition to the Objection, including all supporting evidence, addressing only his alleged entitlement to the claimed exemption, and no other issues;

B. January 12, 2017, for the Trustee to file a reply to the Debtor's Opposition, as well as any evidence, if any; and

C. January 19, 2017, for Debtor to file a surreply, replying only to the issues raised in the Trustee's reply.

Dckt. 500. The court also set a status conference for 2:00 p.m. on December 15, 2016, in conjunction with a hearing on the Trustee's Motion to Approve Compromise of the claims that are the subject of this Objection. That status conference was concluded and removed from the calendar. Dckt. 522.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 11, 2017, in violation of the court's order that an opposition be filed by December 29, 2016. Dckt. 538.

Though untimely, the court considers the merits of Debtor's Opposition and the exemption claimed. As this court has previously addressed, Debtor is an attorney who was formerly licensed to practice law in the State of California. The court has accepted Debtor's assertions that he is a highly educated attorney, with extensive business experience. *See* Memorandum and Decision, p. 13–14 and Appendix A thereto, discussing the court's determination; Dckt. 535. To the extent that an opposition could be presented, the court is confident that Debtor will present it.

In Debtor's "Opposition," he asserts that the court's authority does extend "to alter or interfere with the Debtor's validly claimed exemptions." Debtor cites to Federal Rule of Bankruptcy Procedure 7052, which incorporates Federal Rule of Civil Procedure 52 in adversary proceedings.

Debtor also cites to Rule 35 of the Rules of Practice and Procedure of the United States Court of Appeals for Veterans Claims, a rule that governs Motions for Reconsideration before that court.

The core of Debtor's Opposition is that the bankruptcy court cannot determine the validity and propriety of exemptions claimed by a debtor, citing to the *Stern v. Marshall* line of cases. As addressed above, Debtor's contention is without merit.

TRUSTEE'S REPLY

The Trustee filed a Reply on January 12, 2017. Dckt. 540. The Trustee notes that after the briefing schedule was set, the court approved the Trustee's Motion for Approval of Compromise on December 15, 2016. *See* Dckts. 535 & 537. The Trustee asserts that adjudicating Debtor's Section 704.140 Malicious Prosecution Claims Exemption covering $20,000.00 of the settlement proceeds is now "front and center."

The Trustee asserts that Debtor bears the burden of proof for his claimed exemption, but notes that he has not made a single argument in support of the exemption. Instead, Debtor described all of his alleged damages as coming from business disputes and compensation for loss of property or property rights. The Trustee states that the court—due to Debtor's failure to meet the burden of proof—does need to reach or determine the issue of what portion of the $20,000.00 in settlement proceeds is necessary to support Debtor, his estranged spouse, and his dependents. Even if the court were to address that issue, Debtor still has not met his burden of proof.

The Trustee requests that the Objection be sustained.

APPLICABLE LAW

California has created its own set of exemptions for debtors in bankruptcy, which a debtor may elect in lieu of the standard exemptions otherwise available under California law. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 334 (B.A.P. 9th Cir. 2016). Debtors in California are not permitted to claim the Federal Bankruptcy Exemptions listed in 11 U.S.C. § 522(d). *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015).

> "§ 703.130. Exemptions in bankruptcy
>
> Pursuant to the authority of paragraph (2) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state.

Cal. C.C.P. § 703.130. The alternative exemptions that may be used under California law in a bankruptcy case are provided for (in pertinent part) as follows:

> § 703.140. Election of exemptions if bankruptcy petition is filed
>
> (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter [Cal. C.C.P. §§ 704.010 - 704.995], including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of

> whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the **exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter,** . . . .
>
> (3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), **but not both**.

Cal. C.C.P. 703.140(a) (emphasis added).

The general burden regarding California exemptions is that the claimant (debtor in a bankruptcy case or judgment debtor in a state court case) has the burden of proof when claiming an exemption. *See In re Diaz*, 547 B.R. 329 (citing Cal. Code Civ. P. § 703.580(b)); *In re Tallerico*, 532 B.R. 774, 780 (Bankr. E.D. Cal. 2015) (citing Cal. Code Civ. P. § 703.580(b)).

DISCUSSION

Debtor's Grounds in the "Opposition"

As an initial matter, the court addresses the actual opposition portion (found in the middle of the second page) of Debtor's Opposition. Debtor does not plead any grounds with particularity according to Federal Rule of Bankruptcy Procedure 9013. Instead, Debtor asserts a legal conclusion and then cites to two irrelevant procedural rules.

The legal conclusion Debtor asserts is "that this Court's authority does not allow this Court to alter or interfere with the Debtor's validly claimed exemptions because it is beyond this Court's authority." No supporting citation or evidence is offered to support that conclusion.

The two rules Debtor cites are Federal Rule of Bankruptcy Procedure 7052 and Rule 35 of the Rules of Practice and Procedure of the United States Court of Appeals for Veterans Claims. No explanation is offered for why either rule has been cited. Federal Rule of Bankruptcy Procedure 7052 provides that Federal Rule of Civil Procedure 52 applies in adversary proceedings and relates to the court's findings. Rule 7052 is incorporated into contested matters (such as this one) by Federal Rule of Bankruptcy Procedure 9014. Again, Debtor has not explained why this Rule was cited in his Opposition.

Rule 35 of the Rules of Practice and Procedure of the United States Court of Appeals for Veterans Claims describes Motions for Reconsideration before the United States Court of Appeals for Veterans Claims. Debtor is not arguing before that court, however. In bankruptcy court, the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules govern procedure, not the Rules of Practice and Procedure of the United States Court of Appeals for Veterans Claims. As before, Debtor offers no explanation for why that rule is cited in opposition to the Objection.

Exercise of Federal Jurisdiction Raised in Opposition
and Sur-Reply

Request for Amended or Additional Findings

In his Opposition to the Objection to Claim of Exemption based on California Code of Civil Procedure § 704.140, Debtor has attempted to include a "Motion to Correct Order and/or Reconsideration," seeking to have this court set aside or alter the prior order of the court approving the proposed settlement of the claims of the estate by the Chapter 7 Trustee and Katakis et al. Order, Dckt. 573.

To the extent the Opposition also includes a Motion, it was filed on January 11, 2017. That is consistent with the time period for filing such a motion for amended or additional findings as provided in Federal Rule of Bankruptcy Procedure 7052, as incorporated into the Contested Matter practice by Federal Rule of Bankruptcy Procedure 9014. However, it needs to be filed as a separate motion and not combined into a hybrid opposition-motion.

So as to afford Debtor the opportunity to properly and timely address any request for amended or additional findings, the court bifurcates the part of the Opposition which Debtor intends to be a motion and orders Debtor to file an "Amended Motion" seeking such relief. As an amended motion, the court deeds the original filing date for such motion to be January 11, 2017, within the fourteen day time period specified in Federal Rule of Bankruptcy Procedure 7052.

Debtor also cites the court to "Rule 35 Motions for Reconsider, or for Decision by Panel of by the Full Court." Opposition, p. 2; Dckt. 538. Federal Rule of Civil Procedure 35 does not contain such a rule, but deals with discovery and is titled "Physical and Mental Examinations." There is no Rule 35 in the Federal Rules of Bankruptcy Procedure.

In conducting research, the court has identified a Rule 35 containing the language cited by Debtor – it is Rule 35 for the United States Court of Appeals for Veterans Claims. The Rules for the Court of Appeals for Veterans Claims are not applicable in the United States Bankruptcy Court. In addition to not being provided for by the United States Supreme Court or Congress to be the rules of procedure in the bankruptcy court (see 28 U.S.C. § 2075 vesting in the Supreme Court the power to prescribe the rules of procedure for cases under Title 11), Rule 1 of the Rules of the Unites States Court of Appeals for Veterans Claims states the they "govern practice and procedure in the U.S. Court of Appeals for Veterans Claims. . . ." http://www.uscourts.cavc.gov/rule1.php.

Rule 35, cited by Debtor is not a rule governing the procedure of this court or for "reconsidering" prior rulings. There is a Federal Rule of Bankruptcy Procedure and Federal Rule of Civil Procedure which could be applicable.

In filing the Amended Motion, Debtor is reminded that Federal Rule of Bankruptcy Procedure 9013 requires that the Motion itself state with particularity the grounds upon which the relief is requested. The "motion" cannot merely make reference to or direct the court to read "all the other pleadings" to figure out what grounds Debtor is asserting subject to the certifications of Federal Rule of Bankruptcy Procedure 9011. Additionally, the motion must be a separate pleading from the points and authorities, which are separate pleadings from each declaration and the exhibits (with all of the exhibits permitted to be combined in one exhibit document). L.B.R. 9004-1 and the Revised Guidelines For Preparation of Documents.

Jurisdiction and Exercise of Federal Judicial Power

Though the court is not treating the opposition as a motion, Debtor asserts in the Opposition that:

A. "Law v. Siegel (Exhibit 3)decided by the United States Supreme Court on March 14, 2014, defines standards for interfering with Exemptions claimed by the Debtor which are valid. They simply require Debtors participation and consent or the Court cannot take away Debtor's rights to that exemption." Opposition, p. 3; Dckt. 538.

B. "Stem v. Marshall (exhibit 4) further confirms that this Court is without authority to make this decision." *Id.*, p. 4.

C. In quoting *Law v. Siegel*, Debtor directs the court to the following language:

1. "Whatever actions a bankruptcy court may impose on a dishonest debtor, it may not contravene express provisions of the bankruptcy code by ordering that the debtors exempt property be used to pay debts and expenses for which that property is not liable under the code." *Id.*

2. "We acknowledge that our ruling forces Siegel to shoulder a heavy financial burden resulting from Law's egregious conduct. And that it may produce inequitable results, for trustees and creditors in other cases. We have recognized however, that in crafting the provisions of section 522 'Congress balanced the difficult choices that exemption limits impose on debtors with the economic harm exemptions visit on creditors. The same can be said of the limits imposed on recovery of administrative expenses by trustees. For the reasons we have explained to alter the balance struck by the statute." *Id.*, p. 5.

D. In quoting Stern v. Marshall, Debtor directs the court to the following language:

1. "The bankruptcy court had the statutory authority to issue a final and binding decision on a claim based exclusively on a right assured by state law. However, the bankruptcy court nonetheless lacked the constitutional authority to do so."

E. Debtor cites to the Supreme Court decision in Schwab v. Reilly, quoting extensively from it. *Id.*, p. 7-8. The conclusion drawn by the Debtor from that quote is,

1. "Again, this merely asserts that debtors claimed exemption is secure and cannot be interfered with by the Trustee and the Trustee may only claim or deal with amounts over that which is protected unto the Debtor.

> The US Supreme Court limits all authority of the Court and the Trustee and creditors to only those amounts above what is claimed as an exemption by the Debtor. The debtor's claim of exemption is sacrosanct and cannot be interfered with without the debtors consent."

Id.; Debtor's conclusion to Opposition, p. 8-9.

In his Sur Reply (no leave for additional pleadings requested from Debtor), Debtor adds the following with respect to the ability of the bankruptcy court to adjudicate an objection to claim of exemption.

F. Debtor directs the court to the following language in *Stern v. Marshall*:

1. "The bankruptcy court had the statutory authority to issue a final and binding decision on a claim based exclusively on a right assured by state law. However, the bankruptcy court nonetheless lacked the constitutional authority to do so." Sur Reply, p. 2; Dckt. 542

Debtor's contention is that this court is without the power to constitutionally exercise federal judicial power to rule on an objection to claim of exemption. This sounds in the nature of a contention that federal court jurisdiction does not exist. Such an issue can be raised at any time, and may be raised *sua sponte* by the court. Inherent in every ruling of a federal judge is a determination that jurisdiction exists and that the judge may properly issue the order for the matter before the court.

Review of Federal Court Jurisdiction and the Exercise of Federal Judicial Power by Bankruptcy Judges

In citing to the Supreme Court decision in *Stern v. Marshall*, 564 U.S. 462 (2011), Debtor dips his toe into the water of the proper exercise of federal judicial power, but does not complete the story and the line of cases which subsequently address that principal. To begin with, the Stern decision does not stand for the proposition that federal jurisdiction did not exist, but which judge (bankruptcy or district court) was the proper judge to issue the decision in the adversary proceeding before the court.

In *Stern v. Marshall* the Supreme Court was presented with the issue of whether the bankruptcy judge could issue the final judgment in an adversary proceeding commended by the bankruptcy debtor against a non-debtor party who did not consent to the bankruptcy judge entering the final judgment. The Supreme Court considered the situation where the debtor was litigating an adversary proceeding against a non-party. The adversary proceeding was the debtor's objection to the creditor's claim and a counter-claim against the creditor. While the bankruptcy judge could enter final orders and judgment on the objection to claim, which was a core proceeding, the bankruptcy judge (an Article I judge) could not enter orders and final judgment on the counter-claim which did not arise under the Bankruptcy Code or in the bankruptcy case—though federal court jurisdiction existed for the counter-claim as a "related to" (non-core) proceeding. 28 U.S.C. § 1334(a).

As discussed in *Stern*, the Supreme Court has long recognized parties can consent to a bankruptcy judge issuing final orders and judgments for non-core proceedings (the "related to" proceedings not arising under the Bankruptcy Code or in the bankruptcy case). One manifestation of such consent is the filing of a proof of claim. *Katchen v. Landy*, 382 U.S. 323, 86 S. Ct. 467, 15 L. Ed. 2d 391 (1966) [avoidance of preference proceedings], and *Langenkamp v. Culp*, 498 U.S. 42, 111 S. Ct. 330, 112 L. Ed. 2d 343 (1990).

It is significant to note the conclusion stated by the Supreme Court in *Stern*:

> "*Article III of the Constitution* provides that the judicial power of the United States may be vested only in courts whose judges enjoy the protections set forth in that Article. We conclude today that Congress, in one isolated respect, exceeded that limitation in the Bankruptcy Act of 1984. The Bankruptcy Court below lacked the constitutional authority to enter a final judgment on a state law counterclaim that is not resolved in the process of ruling on a creditor's proof of claim."

Stern v. Marshall, 564 U.S. at 503. The Supreme Court recognizes that even for the non-core counter claim the bankruptcy judge may issue final orders and judgment if it was part of ruling on a creditor's proof of claim. Also, the Court recognized that it was a limitation only on entering final orders, not in conducting the proceedings. As provided in 28 U.S.C. § 157(c)(1), even for non-core matters in which the non-debtor party does not consent to the bankruptcy judge issuing final orders and judgment, the bankruptcy judge (in a similar manner as a magistrate judge) conducts the proceedings and then makes proposed findings and conclusions to the Article III district court judge. It is the district court judge, after *de novo* review of the proposed findings and conclusions, who issues the final order or judgment.

This exercise of federal judicial power has been refined in several subsequent opinions of the Supreme Court putting to rest a contention that Article I bankruptcy judges cannot adjudicate rights and interests of non-debtor parties. The Supreme Court in *Executive Benefits Insurance Agency v. Arkison*, ___ U.S. ___, 134 S. Ct 2165, 189 L. Ed. 2d 83 (2014), confirmed the 28 U.S.C. § 157(c) (1) process of the bankruptcy judge conducting the judicial proceedings and making the proposed recommendations and findings to the district court judge for a matter which is a related to proceeding (non-core). *Id.* at 2168, 2173–74.

This was followed by the most recent decision in *Wellness Int'l Network, Ltd. v. Sharif*, ___ U.S. ___, 135 S. Ct. 1932, 191 L. Ed. 2d 911 (2015). In *Wellness* the Supreme Court confirmed that the Article I bankruptcy judge could issue final orders and judgement even in the related to (non-core) proceedings so long as the non-debtor party so consented. In describing the allocation of federal judicial with respect to bankruptcy proceedings, the Supreme Court stated:

> "When a district court refers a case to a bankruptcy judge, that judge's statutory authority depends on whether Congress has classified the matter as a "[c]ore proceedin[g]" or a "[n]on-core proceedin[g]," §§157(b)(2), (4)—much as the authority of bankruptcy referees, before the 1978 Act, depended on whether the proceeding was "summary" or "plenary." Congress identified as "[c]ore" a nonexclusive list of 16 types of proceedings, §157(b)(2), in which it thought bankruptcy courts could constitutionally enter judgment. Congress gave bankruptcy

> courts the power to "hear and determine" core proceedings and to "enter appropriate orders and judgments," subject to appellate review by the district court. §157(b)(1); see §158. But it gave bankruptcy courts more limited authority in non-core proceedings: They may "hear and determine" such proceedings, and "enter appropriate orders and judgments," only "with the consent of all the parties to the proceeding." §157(c)(2). Absent consent, bankruptcy courts in non-core proceedings may only "submit proposed findings of fact and conclusions of law," which the district courts review de novo. §157(c)(1)."

Id. at1940.

For non-core proceedings, the Supreme Court affirmed the long standing law that non-debtors could consent to final orders and judgments being issued by the Article I bankruptcy judge. *Id.* at 1942. The Supreme Court described the "narrow holding" in *Stern* as follows:

> "An expansive reading of Stern, moreover, would be inconsistent with the opinion's own description of its holding. **The Court in Stern took pains to note that the question before it was "a 'narrow' one," and that its answer did "not change all that much" about the division of labor between district courts and bankruptcy courts.** *Id.*, at ___, 131 S. Ct. 2594, 180 L. Ed. 2d 475, 517; see also id., at ___, 131 S. Ct. 2594, 180 L. Ed. 2d 475, 507 (stating that Congress had exceeded the limitations of Article III "in one isolated respect"). That could not have been a fair characterization of the decision if it meant that bankruptcy judges could no longer exercise their longstanding authority to resolve claims submitted to them by consent. Interpreting Stern to bar consensual adjudications by bankruptcy courts would "meaningfully chang[e] the division of labor" in our judicial system, contra, id., at ___, 131 S. Ct. 2594, 180 L. Ed. 2d 475, 506."

Id. at 1947–48.

The "consent" to the bankruptcy judge issuing final orders and judgment on related to (non-core) proceedings need not be express, but may be implied from the conduct of the party. *Id.* at 1948.

Proceedings arising under the Bankruptcy Code, in the bankruptcy case, and related to the bankruptcy case begin with the bankruptcy judge. If core (arising under the Bankruptcy Code or in the bankruptcy case), the bankruptcy judge issues the final orders and judgments. If it is a related to, non-core, proceeding, with the consent of the parties the bankruptcy judge issues the final orders and judgments. If consent is not given for a related to, non-core, proceeding, then the bankruptcy judge issues proposed findings and conclusions which are transmitted to the district court for de novo review.

Debtor's contention that *Stern* stripped the federal courts of jurisdiction for non-core counter claims that are property of the bankruptcy estate is not correct. To the contrary, it recognizes the federal court jurisdiction and sets the foundation for which federal a judge exercises the federal judicial power for entering the final orders and judgment in bankruptcy cases and related to proceedings.

Claims of Exemption Are Core Proceedings

Congress created under the Bankruptcy Code a federal exemption scheme. 11 U.S.C. § 522(b). The exemptions allowed as a matter of federal law arising under the Bankruptcy Code are computed in one of two ways. One method is using the dollar amounts and exemptions provided in 11 U.S.C. § 522(b)(2), (d) and (n). The second computational method is using the state exemption law items and dollar amount. 11 U.S.C. § 522(b)(3).

Whether the federal exemptions or the applicable state law exemption items and amounts are used, this is a federal law grant of exemptions under the Bankruptcy Code as part of the uniform bankruptcy laws to which Congress is given the sole authority to promulgate under Article I, Section 8, Clause 4 of the United States Constitution. Determination of exemptions is a federal law matter arising under the Bankruptcy Code – a core proceeding for which the bankruptcy judge issues the final orders.

Congress has also expressly specified in 28 U.S.C. § 157(b)(2)(B) that "allowance or disallowance of claims against the estate or exemptions from property of the estate . . . ." are core proceedings. While we know from *Stern* that merely because Congress says something is core is not the final word (which rests with the Supreme Court), it is significant to note that this provision has been drafting tying claims and exemptions from property of the estate in the same paragraph.

Courts which have considered this issue have also concluded that determination of an objection to claim of exemption is a core proceeding arising under the Bankruptcy Code. *See In re Coyle*, 2016 Bankr. LEXIS 668 [*5], (Bankr. C.D. Ill. 2016) (citing to *Stern v. Marshall*, 564 U.S. at 499, "[t]he question [if it is a core proceeding] is whether the action at issue stems from the bankruptcy itself . . . ."); *In re Sharp*, 490 B.R. 592 (B.A.P. 10th Cir. 2013).

The decision of the Supreme Court in *Law v. Siegel*, ___ U.S. ___, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (2014), does not provide Debtor with his asserted - the "court can't touch my exemption." In Law v. Siegel the Supreme Court addressed an issue of whether the court could use the powers arising under 11 U.S.C. § 105(a) to surcharge ("punish") the debtor's exempt property for administrative expenses caused by the debtor's misconduct. In rejecting such practices, the Supreme Court stated that federal law, 11 U.S.C. § 522(k) prohibited surcharging exempt property except for specific circumstances arising under the Bankruptcy Code provided therein. The Supreme Court held:

> "It is hornbook law that §105(a) "does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code." . . . Section 105(a) confers authority to "carry out" the provisions of the Code, but it is quite impossible to do that by taking action that the Code prohibits. That is simply an application of the axiom that a statute's general permission to take actions of a certain type must yield to a specific prohibition found elsewhere. [citations omitted] . . . We have long held that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of" the Bankruptcy Code. [citations omitted]
>
> Thus, the Bankruptcy Court's "surcharge" was unauthorized if it contravened a specific provision of the Code. We conclude that it did. Section 522 (by reference to

> California law) entitled Law to exempt $75,000 of equity in his home from the bankruptcy estate. § 522(b)(3)(A). And it made that $75,000 "not liable for payment of any administrative expense." § 522(k). 2 The reasonable attorney's fees Siegel incurred defeating the "Lili Lin" lien were indubitably an administrative expense, as a short march through a few statutory cross-references makes plain: . . . ."

Id. at 1194–95. It is significant to note in the above quote that the Supreme Court references "Section 552" as being the one under which the exemption issue is determined (into which California law is referenced).

The other significant Supreme Court decision referenced by Debtor, *Schwab v. Reilly*, 560 U.S. 770 (2010), also works against the Debtor's arguments that his exemption claim is sacrosanct from review by the bankruptcy court. In *Schwab*, the Supreme Court makes clear that even though a debtor claims an exemption in property of the estate, that asset remains property of the bankruptcy estate. While a debtor has a right to any exemption to which he is entitled, even if the trustee does not object, the bankruptcy estate retains the property in which the exemption is claimed and all value in excess of the allowed exemption. *Id.* at 782.

Further, the debtor is entitled only to the exemption claimed and in the assets claimed.

> "For all of these reasons, we conclude that Schwab [the trustee] was entitled to evaluate the propriety of the claimed exemptions based on three, and only three, entries on Reilly's Schedule C: the description of the business equipment in which Reilly claimed the exempt interests; the Code provisions governing the claimed exemptions; and the amounts Reilly listed in the column titled "value of claimed exemption."

Id. at 785.

The court does have the power to, and does so properly exercise federal court jurisdiction (28 U.S.C. § 1334) for the determination of the exemption to claim of exemption filed by the Trustee (28 U.S.C. § 157(b)(2)(B)) as a core proceeding.

<u>"Personal Injury" Property Exemption</u>

Debtor claimed an exemption in this property of the bankruptcy estate pursuant to California Code of Civil Procedure § 704.140.

A. California Code of Civil Procedure § 704.140, which provides (emphasis added):

"California Code of Civil Procedure § 704.140:

> (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a **cause of action for personal injury is exempt** without making a claim.

> (b) Except as provided in subdivisions (c) and (d), an award of damages or a settlement arising out of personal injury is **exempt to the extent necessary for the support of the judgment debtor** and the spouse and dependents of the judgment debtor.
>
> (c) Subdivision (b) does not apply if the judgment creditor is a provider of health care whose claim is based on the providing of health care for the personal injury for which the award or settlement was made.
>
> (d) Where an award of damages or a settlement arising out of personal injury is payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law)."

On Schedule B, the only possible claim that could relate to this exemption is the one described as "Katakis case for malicious prosecution plus Truax case." There is nothing on Schedule B to indicate that it is a personal injury or wrongful death claim, though.

On Schedule C, Debtor has claimed an exemption only in a "malicious prosecution suit." Dckt. 42 at 5. The basis for the exemption is stated to be California Code of Civil Procedure §§ 704.140 and 704.150. By prior order the court disallowed the exemption in these claims asserted pursuant to California Code of Civil Procedure § 704.150. August 31, 2016 filed Order, Dckt. 457. As discussed in the Civil Minutes for the August Order, California Code of Civil Procedure § 704.150 is an exemption in a wrongful death claim, and there are no claims asserted arising from the death of someone. Civil Minutes, Dckt. 455.

As set forth in California Code of Civil Procedure § 704.140, the asset must be: (1) an award of damages or settlement arising out of personal injury and (2) exempt only to the extent necessary for the support of Debtor.

Other than starting with stating under penalty of perjury that the exemption is claimed in a "malicious prosecution suit," and having the claims morph over time with Debtor stating that there are now claims for malicious prosecution, intentional infliction of emotional distress, stalking, elder abuse, violations of Due Process under the Constitution, and violations of Consumers Legal Remedies Act. No explanation is provided by Debtor, who the court accepts as a highly educated, sophisticated attorney, why such claims were not listed on Schedule B and an exemption claimed in them on Schedule C, both of which are executed under penalty of perjury by Debtor. This "flexible" nature of what Debtor says exists for claims is similar to Debtor's ever-increasing valuation of such claims, from the malicious prosecution claim being part of the $6 Million value on Schedule B for the malicious prosecution and Truax claims, to more than $40 Million when the Chapter 7 Trustee filed a motion to approve a compromise and settlement of the claims. Memorandum Opinion and Decision for Approval of Settlement, p. 24–25, Dckt. 535.

In his Opposition, Debtor offers no arguments or evidence as to why the "malicious prosecution suit" is a litigation for a personal injury. Rather, he merely assigns that label to the exemption he desires

to claim—much in the way he sought to claim the wrongful death damages for the "malicious prosecution suit" when no death existed.

Burden of Proof in Claiming an Exemption

As the Trustee notes, Debtor has the burden of proof supporting his claimed exemption. As discussed in *Ziegler v. Casey (In re Ziegler)*, 2016 Bankr. LEXIS 2208, *11–12 (B.A.P. 9th Cir. 2016):

> "Thus, in cases where state exemption law specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation. See also *In re Jacobson*, 676 F.3d at 1199 (when exemptions are determined by state law, "it is the entire state law applicable on the filing date that is determinative of whether an exemption applies."). California has mandated the use of state exemptions and has placed the burden of proof on the party claiming the objection [sic]. *In re Diaz*, 547 B.R. at 337 (citing CCP §§ 703.580(b) ("the exemption claimant has the burden of proof") and 704.780(a)); *In re Tallerico*, 532 B.R. 774, 788 (Bankr. E.D. Cal. 2015) (burden of proof proscribed by California statute regarding contested claims of exemption is substantive and must be applied by bankruptcy courts). Thus, the burden was on Debtor to show that his amended wildcard exemption for the sale proceeds was proper."

California Code of Civil Procedure § 703.580 (emphasis added) states:

> "§ 703.580. Hearing and order
>
> (a) The claim of exemption and notice of opposition to the claim of exemption constitute the pleadings, subject to the power of the court to permit amendments in the interest of justice.
>
> (b) At a hearing under this section, **the exemption claimant has the burden of proof**.
>
> (c) **The claim of exemption is deemed controverted by the notice of opposition** to the claim of exemption and both shall be received in evidence. If no other evidence is offered, the court, if satisfied that sufficient facts are shown by the claim of exemption (including the financial statement if one is required) and the notice of opposition, may make its determination thereon. If not satisfied, the court shall order the hearing continued for the production of other evidence, oral or documentary. . . ."

Asset Listed and Exemption Claimed Under Penalty of Perjury

As stated by Debtor under penalty of perjury, he has claimed an exemption in an asset stated to be: "malicious prosecution suit." Schedule C, Dckt. 42 at 5. As stated in *Schwab v. Reilly*, the trustee and

creditors will rely on, and Debtor is limited to, the asset listed on Schedule C. Here, the only asset in which an exemption has been claimed is the "malicious prosecution action."

Debtor's pleadings and contention of possible claims that are property of the estate have grown in description (much as the value of the malicious prosecution action has grown over the several years of this bankruptcy case), but only the malicious prosecution action is listed on Schedules B and C. Dckt. 42 at 3 and 5.

At this juncture, as discussed by the court in the Memorandum Opinion and Decision concerning Debtor, it must be remembered that he has presented himself as, and the court has so concluded, as a highly educated attorney and sophisticated business person. Though his practices have resulted in Debtor losing his law license, that does not mean he is not highly educated and acting intentionally in how he has been prosecuting this bankruptcy case. See Memorandum Opinion and Decision Approving Compromise for discussion of the court's conclusions of Debtor's legal skills, as well as the conclusions of other courts that have led to the California Supreme Court order of disbarment, p. 13–14 and Appendix A thereto, p. 14 and Appendix B thereto; Dckt. 535. This court's conclusions in the Memorandum Opinion and Decision include the following:

> "The court accepts Debtor-Sinclair as a very intelligent person, who has sophisticated business knowledge and a very extensive knowledge of the law. To the extent that Debtor-Sinclair makes representations to the court, advances legal arguments, files evidence, and advocates positions, the court finds that he does so intentionally and with full knowledge of the law and the merit, or lack of merit, of what he is trying to do.
>
> This conduct, including the use and misuse of the law and judicial proceedings, has not served Debtor-Sinclair well, ultimately leading to losing his law license. Some of the proceedings and actions in which other courts and the State Bar addressed Debtor-Sinclair's conduct are discussed in this Decision below."

Id., p. 14:3–11. Then, in discussing the ever increasing values stated by Debtor for the malicious prosecution claim, the court concluded:

> "It appears that the valuations of these claims by Debtor-Sinclair are not based on rational analysis, but whatever number Debtor-Sinclair believes supports whatever he is attempting to do, or prevent from someone else doing, in this bankruptcy case. In his November 16, 2016 filed Status Report, Debtor-Sinclair states that he now computes the damages as his "losses" caused by Katakis et al. Status Report, p. 3:3-4. The court is not provided with any explanation as to what "losses" have occurred since November 2014 that have caused the value of this asset to increase to whatever portion of the $6 Million stated on Schedule B under penalty of perjury when this case was filed to now $40 Million. No explanation has been provided how "losses" could have occurred since November 2014, when Debtor-Sinclair commenced this bankruptcy case and the automatic stay has protected Debtor-Sinclair and the property of the bankruptcy estate. Additionally, no declaration or credible

> explanation is provided as to what "assets" the bankruptcy estate or Debtor-Sinclair could have for such "losses" to be incurred, Debtor-Sinclair having transferred all significant assets to his wife, the Sinclair Trust, and the limited liability companies prior to the commencement of this case."

Id., p. 25:11–24.

From these proceedings relating to the filing of the Schedules, the exemptions claimed, the Objection to Claim of Exemption, and the Opposition by Debtor, the court concludes that Debtor has intentionally listed only the "malicious prosecution" asset, intentionally claimed a "personal injury" exemption, and intentionally claimed the exemption in only the malicious prosecution asset. Now, it may well be more of the "flexible" statement of facts as part of a pre-designed scheme to abuse the exemption process or that Debtor has become desperate in his effort to maintain "spite litigation," but Debtor's actions are deliberate.

Debtor has not Carried His Burden of Proof

Initially, the court notes Debtor has not provided the court with evidence of or a legal basis for concluding that a malicious prosecution action arising out of litigation over his business dealings (which adverse rulings against Debtor have been affirmed on appeal) are "a cause for personal injury" or any portion of the settlement entered into by the Trustee with Katakis et al. (Order, Dckt. 537) are damages or settlement arising out of "a cause of action for personal injury."

Additionally, Debtor offers nothing to meet the second requirement for any exemption—the amount exempt being limited to only "[t]he extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor." Cal. C.C.P. § 704.140(b). In his Opposition, Debtor makes the statement that:

> "Debtor has no objection to the Trustee taking the $20,000.00 to pay his subordinate claim, which in his petition was for $40,000.00, not $20,000.00, but OBJECTS to Trustee without Debtor's consent, interfering with his primary exemption which this Court has already been made aware, is necessary for his retirement and future comfort in his waning years."

Opposition, p. 4; Dckt. 538. Debtor offers no evidence of what is "necessary" or why, but only his statement thereof. As discussed below, such contention is inconsistent with statements and testimony by Debtor previously in this case.

The Trustee notes this in his Reply, phrasing Debtor's arguments as "simply a rehash of the same long-running business and litigation disputes between the Debtor and [Katakis et al.]. Reply, p. 3:7–9. The Trustee also states that in substance Debtor's "necessary" argument is that because Debtor now states that the claim against Katakis et al. has grown from some part of $6 Million to over $40 Million, it is "necessary" because Debtor does not agree with the Trustee's settlement that was approved by the court.

The Trustee also brings back his argument to the malicious prosecution claim being one relating to the business and property dispute litigation (again, which ruling in favor of Katakis et al. the California District Court of Appeal has affirmed).

As to "necessary," the prior arguments and evidence presented by Debtor weigh against him. Debtor has repeatedly told the court that he has millions of dollars in assets and began transferring property into his trust (which he states has been made irrevocable) for which his sister is the trustee, and into two limited liability companies for which his sister is the managing member. He has also engaged in a separation with his wife (with the information provided to the court that there is no actual divorce), transferred assets to her, and was sufficient financially strong to agree to pay her support payments.

These various pre-bankruptcy transfers disclosed by Debtor to the court include the following:

A. DEBTOR TRANSFERRED [house] TO HIS [revocable] TRUST IN 2009 and he objected, but the [unidentified] court said RICHARD SINCLAIR HAD AMPLE ASSETS REMAINING. Debtor's Statement to Reply to Objection to Claim of Homestead Exemption, p. 1–2; Dckt. 100.

B. "The trust became irrevocable and elected an independent Trustee by 2012." *Id.*, p. 2.

Additionally, Debtor has presented the court with the following assets he has and business ventures by which he will pursue (when he was prosecuting this case as a Chapter 11 debtor in possession):

A. "Finally, Richard Sinclair is retaking possession of his Oakdale Home Office consisting of approximately 7800 sq ft; he is cleaning out the main floor and getting bids for the cost to convert it to an 8 bedroom, 8 person Senior Citizen's [sic] assisted living center. He has gone through pre-licensing with the State and they will view the house, probably in March." Opposition to Katakis et al motion to convert the then Chapter 11 case to one under Chapter 7; Dckt. 87 at 11.

B. "Debtor's revised plan provides for the rehabilitation of debtor's income earning abilities either as an attorney or in other areas. Debtor is a community college professor, was a builder and the President of a General contracting firm having built over 100 living units, a computer programmer, rancher and other professions." *Id.* at 15.

C. "Prior to that, I was aware of the federal estate tax starting at 48% after exemptions and have tried to keep my assets under the $1 to $3 million amount. In 1996 and 2001, I gave my interests in my inheritance at Sinclair Ranch because it was worth about $6000 an acre and would eventually be worth many times more than that. I gave a great deal of my interest to my children. That interest was put in an LLC with my sister as the manager. She also owns a portion of that LLC as does my older brother Robert. I also gave my wife 40 acres for her security by 2001 because I had filed bankruptcy in 1994 due to my construction and real estate ownership, so that she would always be protected. That was put in another LLC where I was the manager. Eventually, when we

separated, the LLC deeded her her interest." Debtor's Status Conference Statement, Dckt. 488 at 3.

D. On Schedule A Debtor states that he has retained a 20 year "leasehold" on his residence property which has been identified as being developed into a Senor Citizen living center. Dckt. 42 at 1. He states that his interest has a value of $175,000.00, which he asserts on Schedule A is "exempt."

E. On Schedule B Debtor lists having personal property assets consisting of household goods, furnishing, clothing, books, art, furs, and jewelry, all of which are exempt. *Id.* at 2.

F. Debtor also lists on Schedule B having an $8,000.00 "exempt" musical instruments.

G. Debtor appears to have no secured debt. Schedule D lists one secured claim for an unidentified property, but Debtor testifies as to having transferred away his valuable real property as gifts or for tax planning purposes.

H. On Schedule I, while not listing income from his business ventures he stated that he was pursuing, Debtor lists having monthly income of $1,532.00 a month. *Id.* at 24. At the bottom of Schedule I, Debtor states that he expects to generate income from his receivables (which may be actually valueless), "plus plan" (which the court interprets to be the Senior Citizen venture Debtor is pursuing.

I. Debtor's Statement of Financial Affairs is incomplete, with Debtor failing to disclose his income for 2014, when the case was filed, or for 2013 or 2012. *Id.* at 45. Again, given Debtor's high level of legal education (juris doctor and LLM) and business experience, the failure to disclose such information is highly suspect.

Debtor's unadorned conclusion that some portion of the malicious prosecution settlement (which Debtor has not shown is "personal injury cause of action") is "necessary" does not carry the day. For more than two years Debtor has been not only paying his living expenses, but during part of that time actively litigating in this case for himself and his sister (as trustee and managing member of the entities into which Debtor transferred substantial assets). He has also been actively pursuing at least one disclosed business venture, the Senior Citizen center conversion. The monies from settlement have not been "necessary" for Debtor.

Debtor appears to have created a situation in which he has intentionally placed assets in his trust and limited liability companies as gifts for family members, and was financially strong enough to do so without worry about paying his expenses. He reports converting his revocable trust and making it irrevocable only two years before filing bankruptcy. Giving Debtor credit, as a highly educated attorney and sophisticated business person, he would not have done so if he wanted money to pay for his necessary expenses.

Debtor's statement of his conclusion of "necessary" is not only unsupported, but inconsistent with the facts before the court and the actions of Debtor.

The Objection to Claim of Exemption in the "malicious prosecution suit," the asset specifically identified by Debtor on Schedule C is disallowed in its entirety. As discussed above, Debtor has not shown that the "malicious prosecution suit" that has been settled by the Trustee is a "cause of action for personal injury" as required by California Code of Civil Procedure § 704.140. Further, Debtor has not shown and has not provided any credible evidence to support the court finding that any portion of the settlement, if it related to a "cause of action for personal injury" is "necessary for the support of the support" of Debtor, or spouse and dependants of Debtor.

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 Amended Bifurcated Objection to Claim of Exemption filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and Richard Sinclair's ("Debtor") claimed exemption under California Code of Civil Procedure § 704.140 in the "malicious prosecution suit" identified on Schedule C (Dckt. 42 at 5) is disallowed in its entirety.

17. **16-90380-E-7** **RENEE MACALPINE** **MOTION FOR COMPENSATION FOR**
GRF-1 **Ashley Amerio** **GARY R. FARRAR, CHAPTER 7**
TRUSTEE
12-27-16 [46]

Final Ruling: No appearance at the January 26, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on December 27, 2016. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Gary Farrar, the Trustee ("Applicant") for Debtor Renee Macalpine ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period May 2, 2016, through December 27, 2016.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee 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 trustee must exercise good billing judgment with regard to the services provided as the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "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 seizing exempt funds and negotiating a potential settlement of the amount of pre-petition transfer monies to be repaid to the Estate. The Estate has $5,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES REQUESTED

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

General Case Administration: Applicant spent 9.70 hours in this category. Applicant assisted Client with identifying issues, obtaining counsel, negotiating a proposed settlement, reviewing claims, proposing a final report, and preparing to disburse funds to claimholders.

Trustee requests the following fees:

25% of the first $5,000.00	$1,250.00
Calculated Total Compensation	**$1,250.00**
Plus Costs Adjustment	$23.37
Total Maximum Allowable Compensation	$1,273.37
Less Previously Paid	$0.00
Total Fees Requested	$1,273.37

The fees are computed on the total sales generated $5,000.00 of net monies (exclusive of these requested fees and costs), with an estimated gross value of $0.00 remaining in claims currently being pursued.

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $1,273.37 pursuant to 11 U.S.C. § 330 are 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.

In this case, the Chapter 7 Trustee currently has $5,000.00 of unencumbered monies to be administered. The Chapter 7 Trustee identified case issues, obtained counsel, negotiated a proposed

settlement, reviewed claims, proposed a final report, and prepared to disburse funds. Applicant's efforts have resulted in a realized gross of $5,000.00 recovered for the estate.

This case required significant work by the Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

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

Fees	$1,250.00
Costs and Expenses	$23.37

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 Gary Farrar ("Applicant"), the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

> Gary Farrar, Professional Employed as the Trustee
>
> Fees in the amount of $1,250.00
> Expenses in the amount of $23.73,
>
> **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.

18. 16-90380-E-7 SCB-6 | **RENEE MACALPINE** / **Ashley Amerio** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHNEWEIS-COE & BAKKEN, LLP FOR LORIS L. BAKKEN, TRUSTEE'S ATTORNEY(S) 12-19-16 [35]**

Final Ruling: No appearance at the January 26, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on December 19, 2016. By the court's calculation, 38 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Schneweis-Coe & Bakken, LLP, the Attorney ("Applicant") for Gary Farrar, the Chapter 7 ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 21, 2016, through December 12, 2016. The order of the court approving employment of Applicant was entered on June 27, 2016. Dckt. 13. Applicant requests fees in the amount of $2,562.46 and costs in the amount of $115.48.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. 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 to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

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 recovering pre-petition transfers. The estate has $5,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 5.2 hours in this category. Applicant assisted Client with preparing Applicant's fee agreement and employment application, reviewing deadlines to object to exemptions and to file a complaint objecting to Debtor's discharge, preparing stipulations to extend the deadlines to object to exemptions and to file a complaint objecting to the Debtor's discharge, and preparing the instant application.

Efforts to Assess and Recover Property of the Estate: Applicant spent 12.4 hours in this category. Applicant reviewed pre-petition transfers that Debtor said she made, applicant communicated to Debtor's attorney that Debtor had to return the transferred monies to the Estate, the parties negotiated and compromised how much would be returned before the court denied the compromise.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Loris Bakken, attorney	16.9 hours	$300.00	$5,070.00

Audrey Dutra, paralegal	0.7 hours	$150.00	$105.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$5,175.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $115.48 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$47.88
Copying Cost	$0.10	$37.60
CourtCall		$30.00
		$0.00
Total Costs Requested in Application		$115.48

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $2,562.46 for its fees incurred for the Client. First and Final Fees in the amount of $2,562.46 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 & Expenses

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email,

and facsimile; and secretarial support. The costs requested by Applicant include fees for the use of CourtCall. No information has been provided to the court by Applicant that these cost items were extraordinary expenses than one would expect for Applicant providing professional services to Client to be charged in addition to the professional fees requested as compensation. The court disallows $30.00 of the requested costs.

First and Final Costs in the amount of $85.48 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	$2,562.46
Costs and Expenses	$85.48

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 Schneweis-Coe & Bakken ("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 Schneweis-Coe & Bakken is allowed the following fees and expenses as a professional of the Estate:
>
> Schneweis-Coe & Bakken, Professional employed by the Trustee
>
> Fees in the amount of $2,562.46
> Expenses in the amount of $85.48,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Trustee.
>
> **IT IS FURTHER ORDERED** that costs of $30.00 are not allowed by the court.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

19.	**16-90083-E-7 SSA-12**	**VALLEY DISTRIBUTORS, INC. Iain Macdonald**	**MOTION FOR ORDER PRESCRIBING AND LIMITING NOTICE FOR SERVICE 12-16-16 [267]**

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

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

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

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 16, 2016. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

The Motion for Order Prescribing and Limiting Notice for Service 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. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion for Order Prescribing and Limiting Notice for Service is granted.

Irma Edmonds, the Chapter 7 Trustee ("Movant") seeks an order limiting the entities that must be noticed when a motion is filed in this case. Given the size and complexity of this case, Movant proposes to limit notices to:

A. Persons or entities having a direct and material interest in the subject or issues addressed by a specific motion;

B. Persons or entities having requested notice by filing and serving a request in accordance with Bankruptcy Rule 2002(I); and

C. Persons or entities designated to receive notice in a representative capacity, such as the Office of the United States Trustee and counsel for any statutorily-appointed creditors' committees.

Special notice procedures may be appropriate in a bankruptcy case without raising due process concerns. *See In re Southland Supply, Inc.*, 657 F.2d 1076, 1081 (9th Cir. 1981) (holding that notice of a proposed sale, compromise, or settlement to an authorized creditors committee and to any creditors who file a request to receive all notices is adequate); *see also In re Siegler Bottling Co.*, 65 B.R. 117, 119 (Bankr. S.D. Ohio 1986) (recognizing that the bankruptcy rules contain provisions generally authorizing the court to limit the notices to be sent to certain claimants).

Movant argues that there are expected to be in excess of 220 or more persons listed on the mailing matrix in this bankruptcy case for future contested matters and applications, particularly special notice matters. Serving notice on all creditors and other parties in interest presents an expense in both money and time that exceeds the utility and benefit from the notice on all such parties in interest for the specified matters. Giving notice to entities or parties with no direct stake or financial interest does not accomplish due process goals. Limiting the notice will provide sufficient notice to sufficient parties in interest to present the court with comments, input, and potential opposition to provide for transparent, credible, and honest proceedings.

There being no sufficient objection not to limit the notice as provided in this ruling, and based on the totality of the circumstances, the court finds that the proposed notice procedures comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules and achieve due process objectives, while eliminating unnecessary administrative burdens and minimizing costs to the estate. The Motion is granted.

The court orders that the following notices may be limited to the parties in interest as follows:

A. Persons or entities having a direct and material interest in the subject or issues addressed by a specific motion;

B. Persons or entities having requested notice by filing and serving a request in accordance with Bankruptcy Rule 2002(I);

C. The Debtor;

D. Counsel to the Debtor;

E. The individual members of any committee appointed in this case;

F. If no official committee of creditors holding general unsecured claims has been appointed, the creditors holding the twenty largest general unsecured claims;

G. Those persons or entities filing a request for special notice or similar pleading, or demand to receive all notices given in this Case with the Clerk of the Court;

H. Internal Revenue Service, Franchise Tax Board, State Board of Equalization, and other taxing agency for any withholding, excise, or other tax to be collected or withheld by

Debtor (if such respective entity is a creditor or potential administrative expense claimant in this case);

I. Any insurance company providing coverage, additional insured, and other insurance companies known to have issued policies whose coverage will be affected by the proceeding; and

J. Persons or entities who are designated to receive notice in a representative capacity, such as the Office of the United States Trustee and counsel for any statutorily-appointed creditors' committees.

K. The modification of the notice requirements of Rule 2002, Federal Rules of Bankruptcy Procedure, does not modify or alter the service of process obligations of any party pursuant to Rule 9014 for any contested matter or as otherwise required under the Bankruptcy Rules of Procedure for noncontested matters.

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

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

The Motion for Order Prescribing and Limiting Notice filed by Irma Edmonds ("Movant"), the Chapter 7 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Order Prescribing and Limiting Notice is granted.

IT IS FURTHER ORDERED that Movant is hereby authorized to limit notice on the following specified matters (collectively, the "Special Notice Matters") in this Case:

A. Persons or entities having a direct and material interest in the subject or issues addressed by a specific motion;

B. Persons or entities having requested notice by filing and serving a request in accordance with Bankruptcy Rule 2002(I);

C. The Debtor;

D. Counsel to the Debtor;

E. The individual members of any committee appointed in this case;

F. If no official committee of creditors holding general unsecured claims has been appointed, the creditors holding the twenty largest general unsecured claims;

G. Those persons or entities filing a request for special notice or similar pleading, or demand to receive all notices given in this Case with the Clerk of the Court;

H. Internal Revenue Service, Franchise Tax Board, State Board of Equalization, and other taxing agency for any withholding, excise, or other tax to be collected or withheld by Debtor (if such respective entity is a creditor or potential administrative expense claimant in this case);

I. Any insurance company providing coverage, additional insured, and other insurance companies known to have issued policies whose coverage will be affected by the proceeding; and

J. Persons or entities designated to receive notice in a representative capacity, such as the Office of the United States Trustee and counsel for any statutorily-appointed creditors' committees.

K. The modification of the notice requirements of Rule 2002, Federal Rules of Bankruptcy Procedure, does not modify or alter the service of process obligations of any party pursuant to Rule 9014 for any contested matter or as otherwise required under the Bankruptcy Rules of Procedure for noncontested matters.

IT IS FURTHER ORDERED that any person providing notice pursuant to this Order shall also give notice to any person who has requested special notice in this case or in connection with the matter that is the subject of the notice, or as the court may otherwise direct.

20. 15-90792-E-7 JESSE SUMAL MOTION TO COMPEL
MLP-1 Martha Lynn Passalaqua ABANDONMENT
1-6-17 [37]

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

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

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

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 January 6, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Compel Abandonment is granted.

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

The Motion filed by Jesse Sumal ("Debtor") requests the court to order the Trustee to abandon the estate's interest in Debtor's potential proceeds from a wrongful termination lawsuit against a previous employer ("Property"). Debtor's Declaration states that he has learned that the value of the lawsuit will be less than what he claimed as exempt on Schedule C ($24,600.00). Dckt. 39; *see also* Dckt. 14.

The court finds that the Property has no equity for the Estate and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not a minute order) substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Jesse Sumal ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as the estate's interest in Debtor's potential proceeds from a wrongful termination lawsuit against a previous employer and listed on Schedule B by Debtor is abandoned by Michael McGranahan, the Chapter 7 Trustee to Jesse Sumal by this order, with no further act of the Trustee required.