**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

**Honorable Ronald H. Sargis**
Chief Bankruptcy Judge
Modesto, California

**February 4, 2016 at 10:30 a.m.**

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**1. 14-91403-E-7 CONCEPCION MAGANA** — **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
**SSA-3 Thomas O. Gillis** — **1-13-16 [46]**

**DISCHARGED: 2/10/2015**

**Tentative Ruling:** The Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 4003(b). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Not Provided. The Trustee failed to provide a Proof of Service. 14 days' notice is required.

The Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 4003(b). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

**The court's decision is to set a briefing schedule for the Trustee to serve the Motion and supporting pleadings (if not previously served), opposition and supporting pleadings by Debtor, and replies, if any.**

Irma Edmonds, the Chapter 7 Trustee, filed the instant Objection to Debtor's Original and Amended Claim of Exemptions on January 13, 2016. Dckt. 46. The Trustee objects to the Debtor's use of the California exemptions pursuant to California Code of Civil Procedure § 703.140(b)(5) because the Debtor is attempting to exempt assets in excess of the allowable amount.

The Trustee states that the Debtor's initial Schedule C filed on October 16, 2014 reflects the total sum of California Code of Civil Procedure § 703.140(b)(5) exemptions of $3,85.00. Dckt. 1.

Subsequently, the Debtor filed an Amended Schedule C on December 14, 2015. The amended exemptions claim various other assets exempt under § 703.140(b)(5)for the total amount of $26,925.00. In total, between the original and amended schedules, the total claimed pursuant to § 703.140(b)(5) is $30,775.00, which is $5,435.00 in excess of what is permissible under the section.

**REVIEW OF OBJECTION, CLAIM OF EXEMPTIONS, TRUSTEE DISCOVERED ASSET, AND AMENDED CLAIM OF EXEMPTIONS**

The Trustee states that the Debtor's initial Schedule C filed on October 16, 2014 reflects the total sum of California Code of Civil Procedure § 703.140(b)(5) exemptions of $3,85.00. Dckt. 1.

Subsequently, the Debtor filed an Amended Schedule C on December 14, 2015. The amended exemptions claim various other assets exempt under § 703.140(b)(5)for the total amount of $26,925.00. In total, between the original and amended schedules, the total claimed pursuant to § 703.140(b)(5) is $30,775.00, which is $5,435.00 in excess of what is permissible under the section.

> (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, 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, as follows:
>
> > (1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but

not both.

(2) If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(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.

(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed twenty-four thousand sixty dollars ($24,060) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence. . . .

(5) The debtor's aggregate interest, not to exceed in value one thousand two hundred eighty dollars ($1,280) plus any unused amount of the exemption provided under paragraph (1), in any property.

The Debtor’s original Schedule B and Schedule C filed on October 16, 2014 lists the following assets and exemptions:

| Asset | Value | Exemption Claimed | Exemption Amount |
|---|---|---|---|
| ***Cash on hand*** | ***$250.00*** | ***California Code of Civil Procedure § 703.140(b)(5)*** | ***$250.00*** |
| ***B of A Checking Account*** | ***$100.00*** | ***California Code of Civil Procedure § 703.140(b)(5)*** | ***$100.00*** |

| | | | |
|---|---|---|---|
| Household item: furniture and appliances | $1,800.00 | California Code of Civil Procedure § 703.140(b)(3) | $1,800.00 |
| Personal Clothes | $1,000.00 | California Code of Civil Procedure § 703.140(b)(3) | $1,000.00 |
| ***2004 Chevy Tahoe*** | ***$3,500.00*** | ***California Code of Civil Procedure § 703.140(b)(5)*** | ***$3,500.00*** |

In the Debtor's original Schedule C, the Debtor claimed a total of $3,850.00 exempt under California Code of Civil Procedure § 7013.140(b)(5).

On February 10, 2015, the Debtor's discharge was entered. Dckt. 15. The case was closed on February 13, 2015. Dckt. 17.

On May 6, 2015, the United States Trustee filed a Motion to Reopen the Case because the Debtor advised that there was funds being held by Stanislaus Treasurer/Tax Collectors Office from the sale of real property as the result of defaulted property taxes. The court granted the Motion and reopened the case on May 6, 2015. Dckt. 22.

On December 14, 2015, the Debtor filed Amended Schedule B and C. Dckt. 44. The Amended Schedules listed the following property:

| Asset | Value On Amended Schedule B | Increase/ (Decrease) From Original Schedule B | Exemption Claimed | Exemption Amount | Increase/ (Decrease) From Original Schedule B |
|---|---|---|---|---|---|
| ***Check Account, Bank of America*** | ***$10.00*** | ***($240.00)*** | ***California Code of Civil Procedure § 703.140(b)(5)*** | ***$10.00*** | ***($240.00)*** |
| Household Goods | $2,000.00 | $200.00 | California Code of Civil Procedure § 703.140(b)(3) | $2,000.00 | $200.00 |
| Clothing | $500.00 | $500.00 | California Code of Civil Procedure § 703.140(b)(3) | $500.00 | $500.00 |

| | | | | | |
|---|---|---|---|---|---|
| ***1991 Accura Integra 4dr (255k miles/fair)*** | ***$2,280.00*** | ***Not Listed*** | ***California Code of Civil Procedure § 703.140(b)(5)*** | ***$2,280.00*** | ***$2,280.00*** |
| 2002 Volkswagen Jetta (116k miles/poor) | $2,640.00 | Not Listed | California Code of Civil Procedure § 703.140(b)(2) | $2,640.00 | $2,640.00 |
| ***1991 Ford Explorer (no engine)*** | ***$800.00*** | ***Not Listed*** | ***California Code of Civil Procedure § 703.140(b)(5)*** | ***$800.00*** | ***$800.00*** |
| ***1995 Accura Integra LS 2dr (225K miles/poor)*** | ***$1,200.00*** | ***Not Listed*** | ***California Code of Civil Procedure § 703.140(b)(5)*** | ***$1,200.00*** | ***$1,200.00*** |
| ***2004 Chevy Tahoe*** | ***$3,500.00*** | ***Note Listed*** | ***California Code of Civil Procedure § 703.140(b)(5) $3,500.00*** | ***$3,500.00*** | ***Not listed*** |
| ***Funds owed to Debtor by Stanislaus County*** | ***$34,737.00*** | ***Not Listed*** | ***California Code of Civil Procedure § 703.140(b)(5)*** | ***$22,635.00*** | ***$22,635.00*** |

The Debtor's Amended Schedule B and C are dramatically different than the originally filed Schedule B and C. The Amended Schedules contain additional assets (the four vehicles and the funds) as well as changing the value of the bank account, the household goods, and clothing. Notably as well, the Debtor no longer reports having cash on hand.

Debtor offered no explanation with the Amended Schedules B and C to try and preemptively address the post-discharge sudden appearance of assets and post-discharge sudden claim of exemption in the heretofore undisclosed assets. In light of such tangible, substantial assets as vehicles appearing, and disappearing, from and on Original and Amended Schedule B, such explanation is essential. Both purport to state the assets of Debtor as of the commencement of this bankruptcy case.

**Trustee's Objection**

The Trustee's basis for objecting to the Debtor's claim of exemption is that based on the Original and Amended Schedules, the Debtor has over claimed the exemptions allowable under California Code of Civil Procedure § 703.140(b)(5).

The Trustee computes that the Debtor claims an exemption amount of

$3,850.00 on the Original Schedule C, pursuant to § 703.140(b)(5). Then, the Trustee computes that the Debtor claims an exemption amount of $26,925.00 on the Amended Schedule C pursuant to § 703.140(b)(5). Combined, the Trustee computes that a total of $30,775.00 was claimed exempt by the Debtor under California Code of Civil Procedure § 703.140(b)(5), which is $5,435.00 in excess of the permitted amount.

The Debtor does not provide any supplemental declaration to explain why the Amended Schedules provide different values and different property. The Amended Schedules only indicate that the "Funds owed to Debtor by Stanislaus County" are amended by indicating it through the annotation of "A." Nothing else on the Amended Schedules are noted as being amended. However, as seen supra, there are many different amendments to both Schedule B and C. If the Debtor did mean to file Amended Schedules, this indicates that the Debtor is correcting the assets and exemptions claimed at the time of the filing. However, if the Debtor is meaning to supplemental the schedules, this means that she is adding assets since the time of filing that have been left out. The Debtor indicates that this is an Amended Schedule, indicating to the court that these are the assets that the Debtor had at the time of filing. As such, the Amended Schedule B and Schedule C become the controlling Schedules, not to be read in conjunction with the originally filed schedules.

As such, computing the claimed exemptions on the Amended Schedule C under California Code of Civil Procedure § 703.140(b)(5), the Debtor attempts to claim a total of $26,925.00, which still exceeds the allowable amount. This is $1,585.00 in excess of the allowable amount under California Code of Civil Procedure § 703.140(b)(5).

What is even more concerning, though, is why the Debtor, after nearly a year since discharge, has filed amended schedules that are notably different, in both assets and value, than that on the originally filed schedules. The Debtor does not provide a declaration explaining why the assets and value of the assets have changed.

The Objection requests that the court disallow all of the § 703.140(b)(5) objections and then order Debtor to file yet another amended Schedule C to reclaim exemptions. The court does not believe such round of reclaiming exemptions is required. Taking Debtor at her word under penalty of perjury on her assets and exemptions she wants to take, the Trustee may honor those requests, liquidate assets as appropriate, and allow Debtor to either retain the assets themselves or pay Debtor the dollar value of the remaining amount of the claimed exemption in assets liquidated or cash assets.

Based on the Objection, evidence presented, Debtor's statements under penalty of perjury and the value of assets as of the commencement of this case, the exemptions claimed based on the value of assets as of the commencement of the case, the additional assets and exemptions claimed, the court computes the exemptions which survive the Trustee's objection to be:

| Asset | Value as of Commencement of Case on Schedule B | Exemption Claimed | | Exemption Amount |
|---|---|---|---|---|

| | | | | |
|---|---|---|---|---|
| Check Account, Bank of America | $250.00 | California Code of Civil Procedure § 703.140(b)(5) | | $250.00 |
| 2004 Chevy Tahoe | $3,500.00 | California Code of Civil Procedure § 703.140(b)(5) | | $3,500.00 |
| | Value as of Commencement of Case Amended Schedule B | Exemption Claimed on Amended Schedule C | | |
| 1991 Accura Integra 4dr (255k miles/fair) | $2,280.00 | California Code of Civil Procedure § 703.140(b)(5) | | $2,280.00 |
| 1991 Ford Explorer (no engine) | $800.00 | California Code of Civil Procedure § 703.140(b)(5) | | $800.00 |
| 1995 Accura Integra LS 2dr (225K miles/poor) | $1,200.00 | California Code of Civil Procedure § 703.140(b)(5) | | $1,200.00 |
| Subtotal of California Code of Civil Procedure § 703.140(b)(5) Exemption in Assets Other Than Discovered Post-Petition by Trustee | | | | $8,030.00 |
| | Maximum California Code of Civil Procedure § 703.140(b)(5) Exemption As of October 16, 2014 Commencement of Case | | | $25,340.00 |
| | Balance of California Code of Civil Procedure § 703.140(b)(5) Exemption for Post-Petition Discovered Asset | | | $17,340.00 |
| Post-Petition Trustee Discovered Proceeds of Sale of Property | $34,737.00 | Debtor Claim of Exemption Pursuant to California Code of Civil Procedure § 703.140(b)(5) in Proceeds Not Disallowed Pursuant to Trustee's Exemption | | $17,340.00 |
| | | | | |
| Value of Assets (based on Debtor's values) for Estate in excess of allowable California Code of Civil Procedure § 703.140(b)(5) Exemption | | | | $17,397.00 |

From the Notice of Hearing, the Trustee states that this Objection has been filed pursuant to Local Bankruptcy Rule 9014-1(f)(2), for which opposition may be presented at the hearing. Setting a service (if service has not been actually made) and briefing schedule is consistent with the procedure utilized by the Trustee.

Further, the court believes that the present Objection should be prosecuted. The filing of Schedules, declarations, and other documents under penalty of perjury are not opportunities to make conflicting (unexplained) statements under penalty of perjury, with the only consequence being an opportunity to a third, fourth, or fifth time make other statements under penalty of perjury. Debtor has made statements under penalty of perjury. A case or controversy has now arisen for the court to determine. FN.1.

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FN.1. It may be that Debtor is pleased that the Trustee is merely asserting a simple computation of the amount of the exemption, and not asserting non-bankruptcy law federal and state law grounds challenging Debtor's ability to claim the additional exemptions set forth on Amended Schedule C and the additional assets disclosed on Amended Schedule B.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Claim of Exemption is set for final hearing at 10:30 a.m. on March 17, 2016.
>
> **IT IS FURTHER ORDERED** that on or before February 16, 2016, Debtor shall file Opposition, if any, to the Objection, and on or before February 23, 2016, the Trustee file a Reply, if any.

**2. 15-90811-E-7 ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS**
**15-9061 INDIAN VILLAGE ESTATES, LLC V. GOLD STRIKE HEIGHTS**
**CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL 11-18-15 [1]**

Plaintiff's Atty: James L. Brunello
Defendant's Atty: Amanda Griffins; Peter G. Macaluso
Trustee's Atty: Clifford W. Stevens

Adv. Filed: 11/18/15
Answer: none

Nature of Action:
Determination of removed claim or cause

Notes:
Continued from 1/14/16

**3. 15-90811-E-7 ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS**
**15-9062 LEE V. GOLD STRIKE HEIGHTS ASSOCIATION ET AL**
**CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL 11-18-15 [1]**

Plaintiff's Atty: Pro Se
Defendant's Atty: Peter G. Macaluso; Karen Pine
Trustee's Atty: Clifford W. Stevens

Adv. Filed: 11/18/15
Answer: 1/14/16

Nature of Action:
Determination of removed claim or cause

Notes:
Continued from 1/14/16

**4.** **15-90811-E-7 ASSN., GOLD STRIKE**
**15-9063 HEIGHTS HOMEOWNERS**
**INDIAN VILLAGE ESTATES, LLC ET AL V. GOLD STRIKE HEIGHTS**

**CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL 11-18-15 [1]**

Plaintiff's Atty: Adam Weiner
Defendant's Atty: Peter G. Macaluso
Trustee's Atty: Clifford W. Stevens

Adv. Filed: 11/18/15
Answer: none

Nature of Action:
Determination of removed claim or cause

Notes:
Continued from 1/14/16

| | | | |
|---|---|---|---|
| **5.** | **15-90811-E-7** | **ASSN., GOLD STRIKE** | **CONTINUED MOTION TO DISMISS** |
| | **DHL-1** | **HEIGHTS HOMEOWNERS** | **CASE** |
| | | **Peter G. Macaluso** | **12-3-15 [61]** |

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

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

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

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

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 3, 2015. By the court's calculation, 14 days' notice was provided. 21 days' notice is required. Fed. R. Bank. P. 2002(a)(4) 21-day notice for Chapter 7, 11, and 12 cases.

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

**The Motion to Dismiss the Chapter 7 Bankruptcy Case is denied.**

This Motion to Dismiss the Chapter 7 bankruptcy case of Assn., Gold Strike Heights Homeowners ("Debtor") has been filed by Don Lee ("Creditor") on December 3, 2015. 61.

The Creditor states the following in the Motion as grounds for the dismissal:

> DON LEE, in his capacity as a creditor in this bankruptcy proceeding, both secured and unsecured, hereby moves this Court for an order of this Court dismissing the Bankruptcy Petition filed by Debtor GOLD STRIKE HEIGHTS HOMEOWNERS

> ASSOCIATION on August 20, 2015, for cause under Bankruptcy Code Section 707(a) on the grounds that there is substantial evidence that the filing of the Debtor's Petition was improper in the first instance because it provided no benefit to the Debtor and the surrounding circumstances of the filing demonstrates that there was misconduct sufficient to constitute "cause" under Section 707(a) to warrant dismissal to this time.

Dckt. 61.

**DEBTOR'S OPPOSITION**

The Debtor filed an opposition on December 8, 2015. Dckt. 71. The Debtor states that the Creditor has failed to establish cause for dismissal under 11 U.S.C. § 707(a). The Debtor argues that the Creditor has failed to show unreasonable delay, nonpayment of fees or charges, or Debtor failed to provide all necessary documents.

Additionally, the Debtor argues that the Motion actually states grounds for why the case should not be dismissed. The Debtor's case provides relief from further litigation concerning alleged unlawful foreclosure on 31 properties. Additionally, the Debtor states that the Debtor has amended the schedules to include the "common area" asset. This may provide an asset which could be sold for the benefit of creditors after determining the liquidation value of such asset.

The Debtor concludes by stating that if, after the conclusion of all the litigation commencing in 2010, the Debtor has funds to pay all claims, then the Chapter 7 case will be successful.

**APPLICABLE LAW**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

For purposes of the instant Motion, 11 U.S.C. § 707(a) states:

> (a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including--
>
> (1) unreasonable delay by the debtor that is prejudicial to creditors;
>
> (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
>
> (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the

> information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

The Ninth Circuit test for determining whether "cause" exists to dismiss pursuant to § 707(a) is well established:

> If the asserted "cause" is contemplated by a specific Code provision, then it does not constitute "cause" under § 707(a).... If, however, the asserted "cause" is not contemplated by a specific Code provision, then we must further consider whether the circumstances asserted otherwise meet the criteria for "cause" for [dismissal] under § 707(a).

*In re Sherman*, 491 F.3d at 970 (citing *Neary v. Padilla* (*In re Padilla*), 222 F.3d 1184, 1193–94 (9th Cir.2000)).

Courts have found that the grounds that § 707(a) lists as providing "cause: for dismissal are illustrative and not meant to be exhaustive. *In re Padilla*, 222 F.3d 1184, 1191 (9th Cir. 2000); see 11 U.S.C. § 102(3) (defining "including," for purposes of Title 11, to be "not limiting"); *Huckfeldt v. Huckfeldt* (*In re Huckfeldt*), 39 F.3d 829, 831 (8th Cir.1994) (holding that the enumerated grounds for a "for cause" dismissal are nonexclusive); *Industrial Ins. Servs., Inc. v. Zick* (*In re Zick*), 931 F.2d 1124, 1126 (6th Cir.1991) (finding that the word "including" "is not meant to be a limiting word").

Outside of 11 U.S.C. § 707, a court may find dismissal is proper pursuant to 11 U.S.C. § 305, which allows the federal court to abstain, suspend or dismiss a bankruptcy case. In relevant part, § 305 states:

> The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—
>
> (1) the interests of creditors and the debtor would be better served by such dismissal or suspension;

Typically, 11 U.S.C. § 305(a)(1) dismissals arise in a situation where the court finds that both "creditors and the debtor" would be "better served" by a dismissal. *In re Eastman*, 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995); see, e.g., *In re RAI Marketing Services, Inc.*, 20 B.R. 943, 945–46 (Bankr. D. Kansas 1982); *In re Martin–Trigona*, 35 B.R. 596, 598–99 (Bankr. S.D. N.Y.1983); *In re Pine Lake Village Apartment Co.*, 16 B.R. 750, 753 (Bankr. S.D. N.Y.1982).

In evaluating the best interests of the creditors and the debtor, efficiency and economy of administration are primary considerations. *In re Michael S. Starbuck, Inc.*, 14 B.R. 134, 135 (Bankr. S.D. N.Y. 1981); see, *In re R. V. Seating, Inc.*, 8 B.R. 663, 665 (Bankr. S.D. Fla. 1981) (citing *In re Sun World Broadcasters, Inc.*, 5 B.R. 719 (Bankr. M.D. Fla. 1980)).

**TRUSTEE'S OPPOSITION**

The Trustee filed an opposition on January 14, 2016. Dckt. 84.

First, the Trustee states that the Creditor's assertion that Debtor intentionally acquired debt before filing the bankruptcy is not true. The

Trustee asserts that the Creditor's argument is subject of an action he filed in Calaveras County Superior Court that has now been removed to the bankruptcy court. Adversary Proceeding No. 15-09061.

Second, the Trustee asserts that the affairs of the corporation are not wound up and that there are assets that can be liquidated for the benefit of unsecured creditors. The Trustee argues that there are two adversary proceedings that have potential value. As to Adversary Proceeding No. 15-09061, the foreclosed landowner Indian Village Estates claims that it was damaged due to the actions of the Debtor and the foreclosure trustee. If that can be proven, the Trustee states that he will cross-complain and contend that any damages that can be recovered against the foreclosure trustee should be paid to the estate – not the foreclosed party. To the extend the foreclosed party proves damages against the estate, the foreclosed party has an unsecured claim in the bankruptcy case.

The Trustee states that the schedules have not misled anyone and that the Creditor should not be able to get the bankrupt cy case dismissed to allow him to take advantage of the judgment creditor in ways that are not allowed when claims are paid through he bankruptcy distribution process.

Lastly, the Trustee argues that the Trustee will attempt to collect assessments from Indian Village Estates in an amount in excess of $70,000.00 due to Indian Village Estates failure to pay assessments for almost three years. Additionally, the Trustee states that he has also filed an adversary proceeding asserting certain strong-arm powers against lienholders associated with seven lots worth approximately $140,000.00.

The Trustee concludes by asserting that the lack of assets is not a factor applicable in the instant factual scenario.

**CREDITOR'S REPLY**

The Creditor filed a reply on January 25, 2016. Dckt. 87. The Creditor reiterates that there are no assets to be collected and distributed to any unsecured creditors. The Creditor asserts that the propositions of the Trustee are "highly speculative and otherwise without merit" and that the likelihood of success is minimal.

The Creditor asserts that the Trustee has failed to address issues such as the Debtor's alleged misconduct in filing the bankruptcy, the fact that there may be substantially less debt than that reported by the Debtor, and the allegation that the Debtor improperly wound up the corporation.

The Creditor than states that the Trustee's plan of either collecting the unpaid assessments and attempting to avoid several deeds of trust are too speculative and recovery is unlikely. The Creditor asserts that the Trustee's plan is "little more than an improper attempt to force secured creditors to avoid months if not years of litigation with offers to settle...."

As to the claim that the Trustee can avoid the deeds of trust, the Creditor claims this is without merit. The Creditor asserts that even if the deeds can be avoided and the property sold, the Trustee would only be able to satisfy a portion of the priority liens and leaves nothing for unsecured creditors. Additionally, the Creditor argues that the defects on the deeds of

trust are not of the kind that would deem the document void.

As to the claim that the Trustee can collect on delinquent assessments is also without merit according the to Creditor. The Creditor asserts that the any wrongful foreclosure would also result in damages, that would have to be offset. The Creditor also argues that even if the foreclosures were undone, the Trustee would have to show that the HOA had the authority to impose such an assessment. Lastly, the Creditor argues that if there was recovery, it would be subject to the general personal property judgment liens of creditors.

The Creditor also argues that the Trustee's two plans are mutually exclusive. The Creditor asserts that the Trustee would be able to only go after the avoidance of the deeds of trust or the delinquent assessments – not both – because the two plans are based on foundational premises that are in conflict with each other.

Lastly, the Creditor asserts that the Debtor's bad faith and dishonesty are grounds for dismissal. The Creditor asserts that the Debtor failed to disclose post-petition insurance payments, failed to disclose assets of the estate, and failed to disclose the existence of litigation.

**DECLARATION OF CAROL MANLY**

Carol Manly, the surviving Trustee of the Manly Living Trust, filed a declaration in support of the Motion to Dismiss on January 28, 2016. Dckt. 90. Mrs. Manly asserts that the properties that were foreclosed on are actually secured through a promissory note she holds for $1,450,000.00. Mrs. Manly declares that she wishes to foreclose but the bankruptcy has impeded her ability to do so. Mrs. Manly asserts that Mark Weiner is not in the position to enhance the value of the 21 lots securing the Manly deed of trust and that she wishes to foreclose on the lots. Mrs. Manly, of note, does state:

> It is not my intention to negotiate with the bankruptcy trustee or the HOA as to these 21 properties.

Dckt. 90.

**DISCUSSION**

This Chapter 7 bankruptcy liquidation case was filed on August 20, 2015. As all of the parties are aware, the Chapter 7 Trustee's duties to the estate are to assemble the property of the estate, liquidate the property of the estate, distribute the proceeds from the liquidation to creditors of Debtor, and then disburse any surplus proceeds to Debtor. The Debtor's role in the administration of the Chapter 7 estate assets and distribution to creditors is very limited.

The most recent Amended Schedule A filed by Debtor lists a number of lots in which Debtor asserted that it had, and now the bankruptcy estate has an interest. For what should be a relatively simple and straightforward process to list real property assets, the Amended Schedule A filed by Debtor appears to be unnecessarily confusing. Additionally, it continues to misstate the Debtor's, and now bankruptcy estate's, interests as being "Tenancy by the Entirety." Dckt. 33.

To begin this discussion, the court reviews the Debtor's most recent Schedule A and lists the property as well as the alleged liens on each property:

| Property | Debtor's Value | Trustee's Value | Creditor's Value | Liens |
|---|---|---|---|---|
| Club House, Lot 43 | $25,000.00 | | | ($158,000.00) |
| | | | | |
| Lot #10: 93 Gold Strike Way | $20,000.00 | | | ($225,500.00) |
| | | | | Manly Living Trust |
| Lot #14: 123 Gold Strike Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #15: 109 Gold Strike Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #16: 91 Gold Strike Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #17: 79 Gold Strike Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #18: 59 Gold Strike Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #2: 145 Jasper Way | $150,000.00 | | | ($1,469,216.87) |
| Lot #20: 41 Gold Strike Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #21: 98 Jasper Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #22: 90 Jasper Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #23: 12 Trout Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #31: 37 Jasper Way | $20,000.00 | | | ($1,469,216.87) |

| | | | | |
|---|---|---|---|---|
| Lot #34: 3 Jasper Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #36: 8 Jasper Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #44: 124 Jasper Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #45: 132 Jasper Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #46: 6 Gold Strike Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #47: 12 Gold Strike Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #6: 64 Gold Strike Way | $20,000.00 | | | ($1,469,216.87) |
| Lot #7: 72 Gold Strike Way | $20,000.00 | | | ($1,469,216.87) |
| | | | | |
| Lot #25: 49 Trout Way | $20,000.00 | | | ($1,549,216.87) |
| Lot #28: 19 Trout Drive | $20,000.00 | | | ($1,549,216.87) |
| Lot #41: 54 Jasper Way | $20,000.00 | | | ($1,549,216.87) |
| | | | | Robinson Enterprises, Inc. |
| Lot #3: 133 Jasper Way | $20,000.00 | | | ($117,416.98) |
| Lot 37: 14 Jasper Way | $20,000.00 | | | ($117,416.98) |
| Lot #38: 22 Jasper Way | $20,000.00 | | | ($117,416.98) |
| Lot #39: 32 Jasper Way | $20,000.00 | | | ($117,416.98) |
| Lot # 40: 42 Jasper Way | $20,000.00 | | | ($117,416.98) |

| | | | | |
|---|---|---|---|---|
| Lot #42: 64 Jasper Way | $20,000.00 | | | ($117,416.98) |
| | | | | |
| Lot #9: 88 Gold Strike Way | $20,000.00 | | | ($167,500.00) |
| | | | | |
| Lot #4: 123 Jasper Way | $20,000.00 | | | ($84,916.98) |
| | | | | Financial Pacific Insurance |
| Roads, Street and Buffer | $10,000.00 | | | ($158,000.00) |

From a review of the above information provided by Debtor, it appears that all of the real property assets are significantly over encumbered.

**Asserted "Tenancy by the Entirety" Interest in Real Property**

The court also notes that on three occasions in this case, Debtor has stated under penalty of perjury that its interests in the above real property is that of "Tenancy by the Entirety: (1) Amended Schedule A filed October 29, 2015, Dckt. 33; (2) First Amended Schedule A filed October 12, 2015, Dckt. 21; and (3) Original Schedule A filed August 20, 2015, Dckt. 1.

Holding title as "Tenancy by the Entirety" was described by the U.S. Supreme Court as follows:

> "Tenancy by the entirety is a unique sort of concurrent **ownership that can only exist between married persons**. . .Because of the common-law fiction that the husband and wife were one person at law. . .Blackstone did not characterize the tenancy by the entirety as a form of concurrent ownership at all. Instead, he thought that entireties property was a form of single ownership by the marital unity. Orth, Tenancy by the Entirety: The Strange Career of the Common-Law Marital Estate, 1997 B.Y.U.L. Rev. 35, 38–39. Neither spouse was considered to own any individual interest in the estate; rather, it belonged to the couple."

*United States v. Craft*, 535 U.S. 274, 280©81, 122 S. Ct. 1414, 1421, 152 L. Ed. 2d 437 (2002) [emphasis added]. Clearly this debtor cannot be either a husband or a wife.

Further, in California, this form of title no longer exists. Instead, the California Civil Code § 683 enumerates the following types of ownership by several persons: joint interests, partnership interests, interests in common, and community interest between husband and wife. *Zanelli v. McGrath*, 166 Cal. App. 4th 615, 628, 82 Cal. Rptr. 3d 835, 845 (2008). Therefore, in California,

community property “eclipses” the common law tenancy by the entirety.

This raises concerns over how, the Debtor, which is a corporation, can hold a tenancy by the entirety on property in California when: (1) California no longer recognizes such joint tenancy title and (2) the Debtor is not a “husband” or “wife” for purposes of the common law definition. The court is baffled at how a corporate Debtor can list ownership interests as tenants by the entirety when such title no longer exists in California. The court previously brought this up to Debtor’s counsel, yet, the Debtor has failed to amend its Schedules to correct the facially false claim of its ownership interest. Such blatant and obvious failure to properly list the ownership interest on real property create significant concern over whether the schedules, as presented, are accurate and truthful.

**Personal Property of Debtor**

On Amended Schedule B, Dckt. 33, Debtor lists the following for personal property assets:

| | |
|---|---|
| Cash on Hand | $6,800.00 |
| Monthly Due Ongoing and $500 Back Due | $501.00 |
| Account Receivable Owed by Don Lee | $10,000.00 |
| Westwind Judgment - Debtor to get 70% recovery from whatever Westwind recovers | $1.00 |

Counsel for the Trustee argues in his Opposition (for which no evidence has been provided with the Opposition) states that the Trustee intends to try and collect assessments from Indian Village Estates in excess of $70,000.00. No such asset has been listed by Debtor.

Counsel further argues that the Trustee has filed an adversary proceeding asserting certain “strong-arm powers” against lienholders associate with seven lots worth approximately $140,000.00. The $140,000.00 amount is consistent with the $20,000.00 per lot value used by Debtor on all of the Schedules A. (7 lots x $20,000.00 per lot = $140,000.00.) However, in the Opposition the Trustee does not provide the court with information about what “strong-arm powers” are being exercised, the lots, and whether recovery of the liens for the estate results in the estate recovering money or being swamped by senior liens on the property. From reviewing the proofs of claim filed, it appears that if the Trustee were to prevail, the value of the property would inure to the estate.

**Trustee’s Adversary Proceeding**

On January 13, 2016, the Trustee filed Adversary Proceeding No. 16-09002. The complaint lists Johnny Marco Massella and Mary Louise Massella, as Trustees U/D/T dated September 26, 2989, FBO The Massella Family and Robinson Enterprises Inc. Employment Profit Sharing Plan as defendants in the action.

The Complain alleges that real property of the estate is subject to recorded security interest that are avoidable. The properties identified in the Complaint are:

| | |
|---|---|
| | Defendant Massella |
| Lot 23 | |
| | Defendant Robinson |
| Lot 3 | |
| Lot 37 | |
| Lot 42 | |
| Lot 40 | |
| Lot 39 | |
| Lot 38 | |

As to both Defendants, the Trustee asserts his hypothetical bona fide purchaser for value of real property status, asserting that for the deeds of trust by which the Defendants assert their respective interests, the name of the trustor and grantor of the deeds of trust is misidentified. The Trustee alleges that the deeds of trust state that the interests are granted to the Defendants by "Indian Village, LLC." The Trustee further alleges at the time of the purported transfer and thereafter, the owner of the properties was "Indian Village Estate, LLC." Complaint; Adv. Proc. 16-09002, Dckt. 1. The Trustee asserts that such purported deed of trust is not a "valid lien or security interest, and that it is void.

**Creditors in the Case**

The Debtor's proof of claim registry provides the following information:

| **Claim No.** | **Creditor** | **Amount Claimed** | **Claim Type** |
|---|---|---|---|
| 1 | Don H. Lee | $10,000.00 | Unsecured |
| 2 | Don H. Lee | $100,000.00 | Unsecured |
| 3 | Indian Village Estates | $1,800,000.00 | Unsecured |
| 4 | Don H. Lee | $132,500.00 | Secured |
| 5 | Afco Insurance Premium Finance | $3,809.49 | Secured |
| 6 | Sproul Trost Llp | $25,539.61 | |
| 7 | Carol L. Manly, Surviving Trustee, Manly Living Trust | $1,451,779.89 | Secured |

| | | | |
|---|---|---|---|
| 8 | Robinson Enterprises Inc. Employee Profit Sharing Plan | $300,000.00 | Secured |
| 9 | Johnny Massella and Mary Massella, Trustees, U/D/T dated September 26, 1989 | $35,000.00 | Secured |

It appears that the battles will exist in this case between the Trustee and Don Lee, Robinson Enterprises, Inc., and Mary Massella, Trustee, over property of the estate and offsets. Further, the Trustee may have a battle with Indian Village Estate over its asserted claim.

In many respects, the Motion to Dismiss proves too much – indicating that Movant seeks to have the case dismissed to prevent the Trustee from seeking to recover assets or effectively assert rights of the estate against Movant. While contending that Debtor engaged in improper conduct, Movant argues that he would rather have the case dismissed and continue to battle with the "dastardly Debtor," rather than the rational, bottom line driven Trustee. Movant has not made a convincing argument for that proposition - as a matter of bankruptcy law.

Movant's further arguments that he believes the Debtor could, or should, continue to function outside of bankruptcy, and therefore should be denied the opportunity to avail itself of the bankruptcy laws enacted by Congress do not carry the day. For right or wrong (in the light of creditors or other attorneys) reasons, a person may file bankruptcy. The fact that they will not get a discharge at the end of the case does not warrant dismissal.

As the court has previously commented, when a corporation or other non-individual entity elects to file a Chapter 7 case (as opposed to an involuntary filing by creditors to cut off a debtor's ability to engage in financial mischief), it effectively opens its, and for its officers, managers, and shareholders, information veins for creditors to obtain through the expansive discovery allowed in bankruptcy proceedings. It allows a trustee to exercise the extraordinary powers pursuant to 11 U.S.C. §§ 544, 547, and 548 to avoid transactions and recover assets as permitted under both federal and state law.

While the court concludes that, at this time, grounds has not been shown for dismissal, that does not mean that creditors who have bona fide liens relating to property for which the estate does not have an equity are left sitting idly by.

There has been one motion for relief from the automatic stay filed so far in this case. Motion, Dckt. 53. The purported moving party was Carol Manly, Trustee. In denying without prejudice that motion, the court noted some very worrisome events. Civil Minutes, Dckt. 69. Declarations were not provided by Ms. Manly, but by a representative of Indian Village Estates, LLC. That representative failed to show any basis for which he could have personal knowledge as to what he was testifying to under penalty of perjury. Fed. R. Evid. 601, 602. Further, the declarant is the managing member of the debtor who Ms. Manly asserts owes the money which is secured by her deeds of trust.

The ethical issues go even deeper. At the hearing on the motion fore relief from the stay, Don Lee (Movant in this Contested Matter) volunteered that the reason a representative of Indian Village Estates, LLC was acting for Ms. Manly was because Ms. Manly was traveling in China. It was represented to the court that because she was in China, Ms. Manly did not have internet or telephone access to address her multi-million dollar claim in this case. The court did not find such argument persuasive.

Further, the attorney purporting to represent Ms. Manly in seeking relief from the stay is the attorney for Indian Village Estates, LLC – apparently electing to represent both the debtor on an obligation and the creditor. See attachment to Proof of Claim No. 3, copy of state court complaint against Debtor; and Motion for Relief, Dckt. 44. While it is possible that Ms. Manly, with the advice of independent counsel, could elect to be represented by the attorney who is representing the entity which owes her money, evidence of such conflict waiver has not been presented to the court.

The soup gets even thicker for Movant as the court looks deeper into the file. In addition to bringing the Motion in his own name, he is also in this case acting as the Manager for Indian Village Estate, LLC. Proof of Claim No. 3; and Declaration, Dckt. 64. Where Mr. Lee stops advocating as a bona fide creditor and begins advocating as part of a strategic defense for Indian Village Estate, LLC is not clear. As the court noted in denying the motion for relief:

> "This bankruptcy case, as does the present Motion, presents the court with very serious legal and ethical issues. In many respects, the actions of the parties are akin to those of spouse going through an acrimonious divorce. This is borne out further by the Motion to Dismiss and supporting declarations filed on December 3, 2015. Dckts. 61-66. The Motion, declarations, twenty page points and authorities, and request to for judicial notice purport to be the work of pro se litigant Don Lee. These documents raise concerns, and reflect the long standing dispute between various factions for control of the Debtor."

Civil Minutes, Dckt. 69.

While denying the Motion to Dismiss, the Trustee is not given a "free pass." The duties of a Chapter 7 trustee which "shall" be performed by the trustee include:

> (1) collect and reduce to money the property of the estate...and close such estate as expeditiously as is compatible with the best interests of parties in interest;...
>
> (4) investigate the financial affairs of the debtor [which includes its dealings with creditors];..."

Creditors who believe that, as to them, the trustee is not able to liquidate their collateral or they have third party assets to pursue, may seek relief from the automatic stay. It may well be that even if the Trustee is able to prevail on the issue of wrongful foreclosure, there is little to gain financially for many of the properties. It may be for Indian Village Estate,

LLC, while it may want to assert a large damage claim against the Debtor, after the Trustee gets done liquidating the assets and other substantial lien creditors foreclose, there is little to financially justify such an expensive fight.

The court is confident that all of the parties, represented by knowledgeable, independent counsel, can clearly assert their claims and rights, focused on the issues before the court. Movant may continue to represent himself, learning as he goes. Alternatively, given that he is asserting around $250,000 in claims, may want to engage his own knowledgeable, independent counsel who can advise him what claims he has, how he can advance in good faith, and how to do so in a financially reasonable manner.

The Motion to Dismiss 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 7 case filed by the Creditor Don Lee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion is denied.

**6. 13-91315-E-7 APPLEGATE JOHNSTON, INC.**
**WFH-19 George C. Hollister**

**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PROTECH SECURITY & ELECTRONICS, INC.**
**1-7-16 [528]**

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

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

**Below is the court's tentative ruling.**

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion for Approval of Compromise is granted.**

Michael D. McGranahan, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Protech Security & Electronics, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising in Adversary Proceeding No. 15-9040 against the Settlor for recovery of funds in the amount of $56,908.50 pursuant to pre-petition transfers under 11 U.S.C. §§ 547 and 550.

Movant and Settlor has resolved these claims and disputes, subject to

approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 531):

A. Movant and Settlor agree to resolve the litigation and all disputes between them, except for the excluded items set forth in the agreement, for the sum of $10,000.00

B. Within ten calendar days of the execution of the agreement, Settlor will cause to be delivered to the Movant a check in the amount of $10,000.00.

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

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

**DISCUSSION**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Under the Settlement Movant shall recover $10,000.00 in satisfaction of the estate's claim for recovery of the property, with an asserted value of $56,908.80, from Settlor. Movant asserts that the property can be recovered for the estate as a preference. This proposed settlement allows Movant to recover for the estate $10,000.00 without further cost or expense and is 18% of the maximum amount of the claim identified by Movant.

**Probability of Success**

The Movant asserts that the Settlor has the defense under § 547(c)(1) that it held a mechanic lien and that the exchange for the challenged preference payment constituted a contemporaneous exchange for new value. The Movant does recognize that the burden is on the Settlor to show the validity

of the defense. The Trustee also provides his review of the asserted defenses. The Movant asserts that the inherent risk in the litigation makes the probability of success unknown which weighs in the favor of the compromise.

**Difficulties in Collection**

The Movant does not believe that there is any impediments to collection of any judgment obtained against Settlor.

**Expense, Inconvenience and Delay of Continued Litigation**

Movant argues that litigation would result in significant costs, estimated at $20,000, which are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

**Paramount Interest of Creditors**

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

**Consideration of Additional Offers**

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The compromise provides the estate 18% of its claim, without the need of the substantial cost of litigation and discovery. As noted by the Movant, the cost of litigation would be a minimum of $20,000.00 and that the Adversary Proceeding would not be heard until 2017. Given the fact that the Settlor has potential defenses and the compromise results in $10,000.00 for the estate. The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael D. McGranahan, the Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Compromise between Movant and Protech Security & Electronics, Inc.

("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Docket Number 531).

**7. 13-91315-E-7 WFH-20 — APPLEGATE JOHNSTON, INC. — George C. Hollister — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH SIMPLEXGRINNELL LP — 1-7-16 [533]**

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

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

**Below is the court's tentative ruling.**

---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion for Approval of Compromise is granted.**

Michael D. McGranahan, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with SimplexGrinnell LP ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising in Adversary Proceeding No. 15-9050 against the Settlor for recovery of funds in the amount of $45,805.45 pursuant to pre-petition transfers under 11 U.S.C. §§ 547 and 550.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 536):

A. Movant and Settlor agree to resolve the litigation and all disputes between them, except for the excluded items set forth in the agreement, for the sum of $7,222.79

B. Within ten calendar days of the execution of the agreement, Settlor will cause to be wired to the Movant the amount of $7,222.79.

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

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

**DISCUSSION**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Under the Settlement Movant shall recover $7,222.79 in satisfaction of the estate's claim for recovery of the property, with an asserted value of $45,805.45, from Settlor. Movant asserts that the property can be recovered

for the estate as a preference. This proposed settlement allows Movant to recover for the estate $7,222.79 without further cost or expense and is 16% of the maximum amount of the claim identified by Movant.

**Probability of Success**

The Movant asserts that the Settlor has asserted the defense of unavoidability under 11 U.S.C. § 547(c)(4) as having been made for new consideration for all but $7,222.79. The Movant asserts that he believes that the Settlor would be successful in its defense.

**Difficulties in Collection**

The Movant does not believe that there is any impediments to collection of any judgment obtained against Settlor.

**Expense, Inconvenience and Delay of Continued Litigation**

Movant argues that litigation would result in significant costs, estimated at $10,000, which are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

**Paramount Interest of Creditors**

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

**Consideration of Additional Offers**

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The compromise provides the estate 18% of its claim, without the need of the substantial cost of litigation and discovery. As noted by the Movant, the cost of litigation would be a minimum of $10,000.00 and that the Adversary Proceeding would not be heard until 2017. Given the fact that the Settlor has potentially successful defenses and the compromise results in $7,222.79 for the estate, the compromise is in the best interest for all parties. The motion is granted.

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

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

The Motion to Approve Compromise filed by Michael D. McGranahan, the Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Approve Compromise between Movant and SimplexGrinnell LP (“Settlor”) is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion(Docket Number 536).

**8. 13-91315-E-7 APPLEGATE JOHNSTON, INC.**
**WFH-21 George C. Hollister**

**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH E.R.I.C. CONSULTING**
**1-7-16 [538]**

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

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

**Below is the court's tentative ruling.**
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion for Approval of Compromise is denied without prejudice.**

Michael D. McGranahan, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with E.R.I.C. Consulting ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising in Adversary Proceeding No. 15-9045 against the

Settlor for recovery of funds in the amount of $10,283.40 pursuant to pre-petition transfers under 11 U.S.C. §§ 547 and 550.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 541):

A. Movant and Settlor agree to resolve the litigation and all disputes between them, except for the excluded items set forth in the agreement, for the sum of $3,000.00

B. Within ten calendar days of the execution of the agreement, Settlor will cause to be delivered to the Movant the amount of $3,000.00.

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

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

**DISCUSSION**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Under the Settlement Movant shall recover $3,000.00 in satisfaction of the estate's claim for recovery of the property, with an asserted value of $10,283.40, from Settlor. Movant asserts that the property can be recovered for the estate as a preference. This proposed settlement allows Movant to recover for the estate $3,000.00 without further cost or expense and is 29% of the maximum amount of the claim identified by Movant.

**Probability of Success**

The Movant asserts that the Settlor has asserted the defense of unavoidability, but has failed to articulate any specific defense and grounds therefore. The Movant asserts that he does not believe that the Settlor would be successful in its defense since the Settlor has not provided an articulated defense. However, the settlement allows for a 19% recovery without the need for litigation.

**Difficulties in Collection**

The Movant and Settlor assert that there would be difficulties in collecting because the Settlor is not an institution and collection may be "problematic." Trustee's Motion does not allege why or how such recovery may be questionable merely because the Defendant is not an "institution."

The Trustee's Declaration does not provide any testimony as to why collection would be questionable. Dckt. 540.

**Expense, Inconvenience and Delay of Continued Litigation**

Movant argues that litigation would result in significant costs, estimated at $10,000, which are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

**Paramount Interest of Creditors**

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

**Consideration of Additional Offers**

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court cannot determine that the compromise is in the best interest of the creditors and the Estate. The compromise provides the estate 29% of its claim, without the need of the substantial cost of litigation and discovery. But the Trustee represents that he has not been presented with any defense to the avoidance of the transfer. While the Trustee states that collectability may be an issue, he only alleges that this is because the Defendant is not an "institution." No evidence is provided as to why the Trustee would reach that conclusion.

Finally, the Trustee projects that the litigation expenses would exceed $10,000.00. From what is alleged, it could well appear that the Trustee may have an adversary proceeding which could be the subject of a simple summary judgment motion. Further, if Defendant seeks to mount an aggressive defense, Defendant will incur substantial legal fees. (There is no showing that

Defendant’s counsel is providing legal service pro bono.)

From the face of the Motion, it could appear that the Trustee is giving this one Defendant a 70% discount on its obligation to the bankruptcy estate. No basis has been shown for giving away such a discount.

There may well be valid reasons for settling the rights of the estate on the proposed terms. However, they have not been shown to the court in this Motion. Therefore, the court denies without prejudice the Motion.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael D. McGranahan, the Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Compromise between Movant and E.R.I.C. Consulting (“Settlor”) is denied without prejudice.

**9. 14-91633-E-11 SOUZA PROPANE, INC. MOTION TO CONVERT CASE TO**
**FWP-18 David C. Johnston CHAPTER 7**
**1-12-16 [379]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on January 12, 2016. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. Fed. R. Bank. P. 2002(a)(4) 21-day notice for Chapter 7, 11, and 12 cases for presenting opposition to Motion.

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

**The Motion to Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is granted.**

This Motion to Convert the Chapter 11 bankruptcy case of Souza Propane, Inc., "Debtor" has been filed by David D. Flemmer, "Movant," the Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds.

A. The estate does not have a viable business to reorganize.

B. The estate will suffer continuing diminution of the estate in chapter 11 with no likelihood of rehabilitation.

C. If converted, the case would no longer incur United States Trustee fees and no longer incur the time and expense associated with monthly operating reports and status conferences.

D. In a Chapter 7, the Trustee will be able to liquidate the remaining assets and complete administration of the estate without the administrative expenses attendant to obtaining approval and confirmation of a chapter 11 plan and Disclosure Statement.

E. The final collection of funds, filing of tax returns, and ultimate distribution to creditors is essentially the primary remaining function of the Trustee, which can be done in a Chapter 7 case.

**RULING**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

In this case, the various parties in interest – Debtor, creditors with secured claims, creditors with general unsecured claims, and the Chapter 11 Trustee – worked together to preserve and enhance the value of the assets of the estate. This necessitated liquidating the assets by which the estate operated its business. Failure to have so acted may well have resulted in a substantial loss of value for the bankruptcy estate, and ultimately the creditors.

As set forth by the Trustee, at this juncture there remains for a liquidation and recovery of any remaining assets, determining the correct claims to be paid, and then distributing the monies. It is in the best interests of the estate, creditor, and even the Debtor to convert this case to one under Chapter 7 and utilize that distribution process rather than the

estate incurring the substantial expense of proposing and confirming a plan which duplicates the liquidation and distribution process enacted by Congress in Chapter 7.

The Motion is granted and the case converted to one under Chapter 7.

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 the Chapter 11 case filed by the Chapter 11 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is granted and the case is converted to one under Chapter 7 of the Bankruptcy Code.

**10. 15-90555-E-11 SUSAN ALLEN** **ORDER TO SHOW CAUSE - FAILURE**
**Brian S. Haddix** **TO PAY FEES**
**1-13-16 [95]**

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

---

The Order to Show Cause was served by the Clerk of the Court on Susan Allen ("Debtor"), Debtor's Attorney, Creditors, and other parties in interest on January 13, 2016. The court computes that 22 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 ($932.00 due on December 15, 2015).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $932.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

**11. 12-92360-E-7 KAREN LOWERY WAID — MOTION TO AVOID LIEN OF TARGET NATIONAL BANK**
**MSN-1 Mark S. Nelson — 12-22-15 [22]**

**Final Ruling:** No appearance at the February 4, 2016 hearing is required.
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on December 22, 205. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Target National Bank ("Creditor") against property of Karen Waid ("Debtor") commonly known as 2909 Tully Road, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $9,119.87 An abstract of judgment was recorded with Stanislaus County on December 2, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $143,643.00 as of the date of the petition. The unavoidable consensual liens total $249,636.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

**ISSUANCE OF A COURT DRAFTED ORDER**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Target National Bank, California Superior Court for Stanislaus County Case No. 666419, recorded on December 2, 2011, Document No. 2011-0099168-00 with the Stanislaus County Recorder, against the real property commonly known as 2909 Tully Road, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**12. 15-91178-E-7 MICHAEL TOBIN MOTION TO COMPEL ABANDONMENT**
**SSA-1 David C. Johnston 1-12-16 [26]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 12, 2016. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

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

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

The Motion filed by Bergman Landscape, Inc. and Leif Bergman ("Creditors") requests the court to order the Trustee to abandon property commonly known as

1717 Hawkeye Avenue, Turlock, California (the "Property"). This Property is encumbered by the liens of Bergman Landscape, Inc., Franchise Tax Board, Geoffrey C. Hutcheson, Internal Revenue Service, National Mortgage, LLC, and Robert Vanella, securing claims totaling $741.818.00 The Declaration of Michael Dini has been filed in support of the motion and values the Property to be $700,000.00.

Michael McGranahan, the Chapter 7 Trustee, filed a non-opposition to the instant Motion on January 26, 2015.

The court finds that the debt secured by the Property exceeds the value of the Property, and that there are negative financial consequences to the Estate 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.

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 Abandon Property filed by Bergman Landscape, Inc. and Leif Bergman ("Creditors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted and that the Property identified as:
>
> 1. 1717 Hawkeye Avenue, Turlock, California
>
> and listed on Schedule A by Debtor is abandoned to Michael Patrick Tobin by this order, with no further act of the Trustee required.

**13. 15-90879-E-7 AGNES BURD**
**Pro Se**

**ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
**1-4-16 [50]**

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

---

The Order to Show Cause was served by the Clerk of the Court on Agnes Burd ("Debtor"), Trustee, and other parties in interest on January 4, 2016. The court computes that 31 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case ($335.00 due on September 9, 2015).

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

**14. 12-91080-E-7 ANN SKINNER-COLTRIN MOTION FOR VIOLATION OF AUTOMATIC STAY**
**LDD-2 Linda D. Deos 12-7-15 [28]**

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

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

**Below is the court's tentative ruling.**
---

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Respondent's Attorney, and Office of the United States Trustee on December 7, 2015. By the court's calculation, 59 days' notice was provided. 28 days' notice is required.

The Motion for Damages for Violation of the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Motion for Damages for Violation of the Automatic Stay is denied without prejudice.**

The present Motion for Damages for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Ann Michelle Skinner-Coltrin ("Debtor") ("Movant"). The Claims are asserted against William Andre Coltrin ("Respondent").

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

A. Debtor, Ann Michelle Skinner-Coltrin, by and through her counsel of record, hereby moves the court for an Order stating that the Judgment entered on May 3, 2012, Case No. FL353319, in San Joaquin County Superior Court against Debtor was void pursuant to 11 U.S.C. § 362(b)(2)(iv), and an award of damages against defendant, William Andrew Coltrin pursuant to 11 U.S.C. § 362(k)1)

B. This Motion is based on the notice of Motion, Memorandum of Points and Authorities, the Declaration of Linda Deos and Exhibits A and B filed concurrently herewith, the petition and schedules filed previously with the Court, and upon such oral and documentary evidence as may be presented by the parties at the hearing.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that a judgment was void and for damages for violating the stay, stating that the court should go mine for the grounds for relief in the points and authorities. This is not sufficient.

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 678-679. 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 plain 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 (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), 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 649-650; *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 which 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, 819-820 (7th Cir. 1977).

Not pleading 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 Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of

Bankruptcy Rule 9011 to try and 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."

Therefore, due to the failure of the Debtor to state with particularity the grounds for relief as required by Fed. R. Bankr. P. 9013, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Damages for Violation of the Automatic Stay by Ann Michelle Skinner-Coltrin, "Movant," the Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is Motion is denied without prejudice.

**15. 14-91197-E-7 MLG-2** | **NICOLAS PEREZ AND MARIA MOSQUEDA DEPEREZ**
**Thomas O. Gillis** | **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MARIA MOSQUEDA DEPEREZ**
**1-20-16 [213]**

**DISCHARGED: 3/27/2015**

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

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

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

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Joint Debtor's Attorney, Chapter 7 Trustee, Creditors, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 15 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(3), 21 day notice.)

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

**The Motion For Approval of Compromise is denied without prejudice.**

Modesto Irrigation District, the Creditor, ("Creditor") requests that the court approve a compromise and settle competing claims and defenses with Maria Mosqueda De Perez ("Debtor"). The claims and disputes to be resolved by the proposed settlement are those arising from the Objections to Creditor's

Claims 1-1 and 5-1 , which are set for an evidentiary hearing on April 29, 2016.

Creditor and Debtor has resolved these "claims" and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 216):

A. Claim No. 1-1 shall be allowed in the amount of $32,923.69, the aggregate amount already paid by the Trustee to Creditor. Claim No. 101 shall be deemed fully satisfied and discharged by such aggregate payments by the Trustee, and shall not be subject to disgorgement or return.

B. Claim No. 5-1 shall be allowed in the amount of $22,000.00.

C. The Objection to the Claims shall be deemed withdrawn with prejudice.

D. In the event that funds available for distribution from the estate are insufficient to satisfy all allowed claims in full without a sale and liquidation of the Algen Property, Creditor will agree to defer full payment of the Claim No. 5-1 on the following basis, so that the Algen Property may be returned to the Debtors from the estate:

1. Payment of Claim No. 5-1 shall be subordinated to full satisfaction of all other allowed secured claims. All funds remaining after full payment of other allowed claims shall be paid over to Creditor on account of Claim No. 5-1.

2. The Algen Property shall not be sold by the Trustee (unless necessary in order to satisfy allowed claims other than Claim No. 5-1) and shall instead be returned to the Debtors upon the closing of the administration of the Debtors' estate.

3. Within seven days following the Trustee's distribution of estate funds to holders of allowed claims, Debtor shall satisfy the remaining amount owed to Creditor on account of the Claim No. 5-1 (the remaining claim amount calculated as $22,000.00 less the amount of the Creditor's distributions) in one of the following manners, at Debtor's election:

a. By payment of the remaining claim amount to Creditor in cash; or

b. By execution and delivery to Creditor of the secured promissory note and deed of trust. The note will be in the initial principal amount of the remaining claim amount, shall accrue interest that the rate of 4.0% per annum, and shall be fully due and payable in

two years. The note will be secured by a first lien encumbering the Algen Property.

**DISCUSSION**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Here, the main fight is between Debtor and Creditor. The proposed settlement does not include the Chapter 7 Trustee as a party. However, counsel for the Chapter 7 Trustee has "signed off" on the Motion, approving it as to form and content. Motion, pg. 8, Dckt. 213. This indicates to the court that the Trustee, on behalf of the bankruptcy estate, concurs in the terms of the Settlement. The proofs of claims at issue were filed in November and December 2014. Neither the Trustee nor other party in interest objected to the Claims.

Debtor objects to the two Proofs of Claims, asserting that Debtor did not have personal liability for the electricity used by Debtor's tenant. Debtor asserts that Debtor is not liable for the obligation owed for the electricity used under the provisions of California Civil Code §§ 1882 et seq. Objection to Claims, Dckt. 155.

Under the terms of the Settlement, it is agreed that the objection to Proof of Claim No. 1-1 is resolved by Creditor having an allowed claim in the amount of $32,923.69, which amount has already been distributed to Creditor by the Chapter 7 Trustee in this case. The secured claim of Creditor for the obligation upon which Proof of Claim No. 1-1 is based is deemed paid in full. This settlement is consistent with the conduct of the Chapter 7 Trustee, having manifested his concurrence that Claim No. 1-1 is properly paid in the amount of $32,923.69. The Declaration of Michelle Thompson, counsel for Creditor, states that the Trustee paid this amount to Creditor in November 2016. Declaration ¶ 14, Dckt. 215.

The court notes that Proof of Claim 1-1 is not filed as a secured claim, but as an unsecured claim for $22,076.33. However, Creditor has subsequently asserted in pleadings that it actually asserts a statutory lien to secure this claim. The additional claim for $66,228.99, Proof of Claim No.

5-1, is an unsecured claim for treble the amount of the $22,076.33 claim for electricity used (the maximum amount of additional damages the court may, not shall, award a utility in the event of power theft). Creditor asserted the lien for the secured claim against the 4904 Ebbett Way, Modesto, California Property. Creditor Response to Objection to Claim, Dckt. 181. The Trustee sold the Ebbett Way Property pursuant to order of the court, with Creditor's lien attaching to the proceeds. Order, Dckt. 188.

Under the Stipulation Creditor's claim for the punitive damages is: (1) reduced to $22,000.00 (which would be 1-times the amount of the actual damages for the diverted power); (2) the payment of the $22,000.00 would be subordinated to the payment of all other allowed unsecured claims; (3) the 136 Algen Way, Modesto, California Property will not be sold by the Trustee unnecessary to pay all other unsecured claims (excluding the unsecured claim of Creditor) in full; and (4) if all other unsecured claims are paid in full and Creditor's subordinated unsecured claim is paid only a partial dividend, the remaining balance of the $22,000.00 secured claim, less the dividend paid by the Trustee, shall be paid by Debtor. The terms of the Settlement Agreement provide for a note to pay the remaining balance no later than the second anniversary date of the Trustee paying the unsecured claims dividend.

On the merits, the Settlement is fair and in the best interests of the bankruptcy estate and other creditors. It resolves very complex issues and avoids all parties incurring what would otherwise be substantial further legal fees. For the estate, it allows for the orderly administration of all claims, with the punitive damages portion to be paid by Debtor (effectively from what would otherwise be from the surplus portion of the estate or post-discharge assets.

Though not expressly stated in the Settlement Agreement, it provides for this post-petition settlement to be enforceable against Maria Mosqueda De Perez, one of the Debtors, and not subject to the discharge injunction in this bankruptcy case.

Unfortunately, the Creditor has failed to provide sufficient notice. Here, the Creditor only provided 15 days notice for the instant Motion. However, pursuant to Fed. R. Bankr. P. 2002(a)(3), 21 day notice is required.

No request has been made for an order shortening time.

Therefore, because the Creditor failed to give sufficient notice, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Modesto Irrigation District, Creditor, ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Approve Compromise between Creditor and Maria Mosqueda De Perez (“Debtor”) is denied without prejudice.