

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Modesto, California

March 26, 2015 at 10:30 a.m.

1. [11-94410-E-7](#) SAWTANTRA/ARUNA CHOPRA CONTINUED MOTION TO EXTEND TIME
HSM-31 Robert M. Yaspan 12-12-14 [[1161](#)]

Final Ruling: No appearance at the February 12, 2015 hearing is required.

Local Rule 9014-1(f)(1) 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 holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on January 14, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Extend Time to File Objections to Debtors' Claims of Exemptions 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.

<p>The Motion to Extend Time to File Objections to Debtors' Claims of Exemptions is continued to 10:30 a.m. on May 21, 2015.</p>

Gary Farrar, the Chapter 7 Trustee, filed the instant Motion for Order Extending Time to File Objections to the Debtors' Claims of Exemptions. Dckt. 1161.

The current deadline to file objections to the Debtors' claims of exemptions is presently set for December 15, 2014. Dckt. 1092, Notice of Conversion to Chapter 7, Meeting of Creditors, and Deadlines. The Trustee requests that the deadline for the Trustee to object to the Debtors' claims of exemptions be extended until February 16, 2015. The Motion to Extend the deadline was filed on December 12, 2014.

The Trustee argues that cause exists because, prior to the conversion

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of the case to Chapter 7, the Debtors filed a number of schedule amendments. The Debtors' most recent Schedule B, filed September 20, 2013, lists the following assets:

<p>Sawtantra Chopra MD, Inc., Profit Sharing Plan Assets in the Profit Sharing Plan including the following:</p> <p>Chase Acct# ending in 7539 - \$463,755</p> <p>Wells Fargo Investment Account - Approximate value of \$1 million</p> <p>Note & Deed of Trust in favor of Sawtantra Chopra MD, Inc., Profit Sharing Plan as Beneficiary, Onkar Inc., as Trustor secured by properties with the following APNs 033-044-099, 033-044-010, 033-044-012, 033-044-013, 033-044-014, and 033-044-019 - The face value of this note is \$350,000, but Debtor is not sure of the actual value of the note due because Debtor is not sure how much equity exists in these properties.</p> <p>Other Notes - See Attached.</p>	<p>H</p>	<p>\$1,813,755.00</p>
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In the Debtors most recent Schedule C, filed September 20, 2013, the Debtors claimed the retirement plans as exempt in their entirety pursuant to 11 U.S.C. § 522(b)(3)(C).

Prior and subsequent to the Meeting of Creditors, the Trustee and his counsel have requested current account statements for the retirement plans and original documentation related to the loans scheduled as assets of this estate, including those purportedly in the retirement plans, but non have been provided. By email dated November 6, 2014, Debtors' counsel informed the Trustee that the Debtors do not have the originals of the promissory notes although they are still looking for them. Dckt. 1165, Exhibit C.

At the Meeting of Creditors, held November 13, 2014, the Trustee requested on the record that the Debtors provide the Trustee with a current account statement for the Debtors' retirement assets. The Debtors have not provided him with the requested statements. The only documents the Trustee states the Debtors have provided in response to the Trustee's request are tax returns for their pension plan for the years 2001-2012.

Additionally at the Meeting of Creditors, the Trustee questioned the Debtors concerning the carious deeds of trust, for which the Debtors and/or the Sawtantra Chopra MD Profit Sharing Plan were scheduled as beneficiaries the Debtors' responses did not satisfy the Trustee's inquiry into the process and reasons by which one or more deeds of trust, of which Joint-Debtor Aruna Chopra, individually, was the original beneficiary, came to be included in the Debtors' retirement plans.

Trustee states that on November 18, 2014, Trustee's counsel reiterated to Debtors' counsel the Trustee's request for current account statement for the Debtors' retirement plans and discussed issues related to the notes/deeds of trust purportedly in the plans. Trustee's counsel followed up the call with an email to Debtors' counsel. By email on November 21, 2014, Trustee's counsel followed up with a more detailed email to Debtors' counsel, reiterating the

Trustee's request again. Trustee states that no current account statement has been provided to the Trustee or Trustee's counsel.

Obtaining a precise accounting of the retirement plans, their balance, and information concerning exactly what assets are currently contained in the plans, and how those assets came to be in the plans, is important to the Trustee's evaluation of the Debtors' claims of exemptions.

DEBTORS' OPPOSITION

The Debtors filed an opposition to the instant Motion on January 29, 2015. Dckt. 1187. The Debtors state that the Motion should be denied because it: (1) it fails to establish cause to grant relief; (2) the Trustee is guilty of laches; and (3) granting the Motion would significantly impair Debtors' Sixth Amendment right to representation. The Debtors make the following arguments:

1. The time frame for objection to Debtors' exemptions has expired under applicable Ninth Circuit law. Under *In re Smith*, 235 F.3d 472 (9th Cir. 2000), 11 U.S.C. § 348 "preserve[s] actions already taken in the case before conversion. . . section 348(a) establishes the general rule that, in a converted case, the dates of filing, the commencement of the case, and the order for relief remain unchanged." *Id.* at 477. In short, the Debtors argue that once the time frame for objecting to an exemption has expired, the exempt property reverts in the debtor and is no longer subject to objection. In this case, the Debtors state that the time to object to Debtors' claim of objection expired in April 2014.
2. The recent changes to Fed. R. Bankr. P. 1019 cannot change the substantive law on the issue. The Debtors argue that 28 U.S.C. § 2075 sets forth the rule making power of the court and the limitations thereon, making the Bankruptcy Court rules procedural and not creating substantive rights. The 2010 amendment to Fed. R. Bankr. P. 1019 that added section (2)(B) cannot affect this case since it attempts to change the substantive law of the Ninth Circuit. The provision purports to create a new time period for filing objections to exemptions after a conversion. However, since the *Smith* court established the law on this issue in the ninth Circuit and ruled that the exempt property vested in the debtor and that there was no provision in the Bankruptcy Code that could bring the exempt property back into an estate after conversion. The Bankruptcy Rules cannot create substantive rights that are not provided under the Bankruptcy Code. As such, the Trustee cannot rely on Fed. R. Bankr. P. 1019 to bring this Motion and the Motion should be denied.
3. The Motion fails to establish cause for the requested relief. Even if the motion were timely, the Trustee has failed to establish the requisite "cause" under Fed. R. Bankr. P. 4003. Although Rule 4003 does not provide any clarification regarding the meaning of cause, it should be presumed that cause means good cause not just any excuse. As the Bankruptcy Court are courts of equity, the issue of good cause should be determined by balancing the respective benefits and burdens of parties along with other equitable considerations including the principles of laches. The time period to object to the exemptions has

been extended at least five times for a total time period of almost three years. The Trustee has been a party to the last four of the extension. The Trustee entirely fails to adequately explain why it has taken almost two years to determine whether to object to the exemptions, why he has not been able to make the decision at this time, and why he should be entitled to more time to do so. The Debtors contend that the Motion fails to provide any specificity regarding the information the Trustee is looking for and what issues, if any, he has with the exemptions. The Debtors argue that an extension of time is extremely prejudicial to Debtors because they are under criminal prosecution and need access to exempt assets to fund their defense. Debtors have been unable to use the funds to pay their criminal attorneys and will soon be deprived of representation in their cases which implicates their Sixth Amendment rights.

4. The motion should be denied because it will significantly impair Debtors' Sixth Amendment Rights. The Trustee has sent letters that have effectively frozen the accounts. Debtors have been unable to use the funds to pay for their criminal attorneys. The trustee is interfering with Debtors' Sixth Amendment right to representation and any extension of time to file the objections will further impair Debtors' constitutional rights. In the present case, the Trustee has sent letters to the investment managers for Debtors' profit sharing plan, effectively freezing the accounts in violation of the Debtors' Sixth Amendment rights. See *United States v. Stein*, 541 F.3d 130, 154 (2d Cir. 2008).

APPLICABLE LAW

Fed. R. Bankr. P. 1019 states in relevant part:

When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:...

(2) New filing periods

....

(B) A new time period for filing an objection to a claim of exemptions shall commence under Rule 4003(b) after conversion of a case to chapter 7 unless:

(I) the case was converted to chapter 7 more than one year after the entry of the first order confirming a plan under chapter 11, 12, or 13; or

(ii) the case was previously pending in chapter 7 and the time to object to a claimed exemption had expired in the original chapter 7 case.

Fed. R. Bankr. P. 1019

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b)(1). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 4004(b)(1).

ORDER CONTINUING THE HEARING

On February 9, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1197.

On February 10, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on March 26, 2015.

ORDER CONTINUING THE HEARING

On March 19, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1208.

On March 23, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on May 21, 2015. Dckt. 1222.

Therefore, the court continues the hearing to 10:30 a.m. on May 21, 2015.

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

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

The Motion for to extend the Deadline to File a Objection To Claim of Exemptions of the Debtors filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

2. [11-94410-E-7](#) SAWTANTRA/ARUNA CHOPRA
HSM-32

CONTINUED MOTION TO EXTEND
DEADLINE TO FILE A COMPLAINT
OBJECTING TO DISCHARGE OF THE
DEBTOR
12-23-14 [[1167](#)]

Final Ruling: No appearance at the February 12, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on December 23, 2014. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor 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 Extend Deadline to File a Complaint Objecting to Discharge of the Debtor is continued to 10:30 a.m. on May 21, 2015.

Gary Farrar, the Chapter 7 Trustee, filed the instant Motion to Extend Deadline to File a Complain Objecting to Discharge of the Debtor on December 23, 2014. Dckt. 1167.

The Trustee states that the deadline to file a complaint objecting to the discharge of the Debtors is set for December 29, 2014. The Trustee requests that the deadline for the Trustee to file a complaint objecting to the discharge of the Debtors be extended until February 27, 2015.

The Trustee argues that cause exists because this is an extraordinarily complex case, involving many assets, and intense disputes between the Debtors and creditors regarding allegations of pre-petition criminal wrongdoing. This case was pending for some time in a Chapter 11 to provide the Debtors an opportunity to confirm a plan based around the Dale Road Project. The efforts to reorganized failed and all the estate's real property assets were abandoned except a single Dale Road Parcel and an office building in Modesto. The case was converted to a Chapter 7 and the Trustee is attempting to administer the

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estate's remaining assets.

The Trustee states that he has been diligent in his investigation of the Debtors' financial affairs. An undisclosed issue which arose in the Debtors' disclosure statement filed prior to the conversion of the case was a \$310,000.00 loan from the Debtors' adult son and daughter-in-law which was discovered at the Meeting of Creditors. The Trustee requires additional time to consider the responses of the Debtors concerning this loan and whether additional investigation is needed. Furthermore, the Debtors stated that they would file amended schedule of creditors who were not previously listed.

The Trustee is also awaiting records of the current account statement for the Debtors' retirement assets as well as information concerning various notes and deeds of trusts, which the Debtors have not yet provided. The Trustee states that he expects the Debtors will provide this information voluntarily or the Trustee will make additional motions for the production of such information.

APPLICABLE LAW

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

ORDER CONTINUING THE HEARING

On February 9, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1200.

On February 10, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on March 26, 2015.

ORDER CONTINUING THE HEARING

On March 19, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1211.

On March 22, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on May 21, 2015. Dckt. 1223.

Therefore, the court continues the hearing to 10:30 a.m. on March 26, 2015.

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

Findings of Fact and Conclusions of Law are stated in the

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This Motion to Dismiss the Chapter 7 bankruptcy case of Veronica Munoz ("Debtor") has been filed by Eric J. Nims, the Chapter 7 Trustee ("Movant"). Movant asserts that the case should be dismissed based on the Debtor's failure to appear at the § 341(a) meeting of creditors.

OPPOSITION STATED BY DEBTOR

The Debtor filed an opposition to the instant Motion on March 11, 2015. Dckt. 32. However, the Debtor, using a form objection, fails to state any grounds on which her opposition is based.

RULING

Questions of 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)).

In relevant part, 11 U.S.C. § 707 provides:

(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. . .

Movant states that Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 707(a)(1).

While the Debtor filed an objection to the Motion, the Debtor has not provided any grounds in which the Motion should not be granted.

Cause exists to dismiss this case pursuant to 11 U.S.C. § 707(a)(1). Therefore, the Motion is granted and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 7 case filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

4. [10-94026-E-7](#) PHILLIP CRUMP
CWS-2

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DEBTOR, STEPHEN
HOLMES AND AND HERUM, CRABTREE,
SUNTAG
2-19-15 [[40](#)]

Final Ruling: No appearance at the March 26, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on February 19, 2015. By the court's calculation, 35 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.

Gary Farrar, the Chapter 7 Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with the Movant, Phillip Crump ("Debtor"), Stephen Holmes, and the Law Office of Herum, Crabtree, and Suntag ("Suntag") (collectively "Settlor"). The claims and disputes to be resolved by the proposed settlement are the treatment of \$26,459.99 held in trust by Suntag.

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. 42):

- A. The trust funds shall be treated as property of the bankruptcy estate.

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- B. Suntag shall release the \$26,459.99 in Suntag trust account to the Trustee.
- C. Debtor shall be paid \$10,000.00 in full satisfaction of his claim of exemption from the trust funds.
- D. Mr. Holmes unsecured claim in the amount of \$28,156.84 shall be deemed allowed

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).

Movant argues that the Settlement is in the best interest of the estate, Debtor, and creditors because it allows for the trust funds to be deemed property of the estate, allows the Debtor to have an exemption in part of the trust funds, allows Mr. Homes his unsecured claim, and Suntag to release the funds in a manageable manner.

Probability of Success

Movant argues that the Settlement is the only successful strategy for the estate because the alternatives are less beneficial. If the Settlement is not approved, the two alternatives are: (1) the trust funds would belong to Mr. Holmes and the estate would receive nothing or (2) the trust funds would be considered property of the estate, Debtor would receive \$22,450.00 of the funds in satisfaction of the exemption claim, leaving approximately \$4,000.00 for the estate to distribute. Under the terms of the Settlement, the estate gets more than it would receive otherwise.

Difficulties in Collection

Movant states that this would not be an issue.

Expense, Inconvenience and Delay of Continued Litigation

Movant state that the expense of litigation would be significant. If an interpleader is filed to resolve the dispute, the Trustee believes the cost of that single matter would exceed the value of any potential outcome.

Paramount Interest of Creditors

Movant argues that the Settlement is in the collective interest of the parties because it provides all parties a resolution of the dispute. While Mr. Holmes is virtually the only unsecured creditor, there is one other creditor with a small claim. While Mr. Holmes could argue over these funds, the only way any other creditor would receive any distribution is through this settlement.

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.

Upon review of the Motion and the terms of the settlement, the court finds that it is in the best interest of the parties, the estate, and the Debtor to approve the Settlement. The terms of the Settlement provides for the Debtor to retain an exemption in the trust funds while providing for funds for the estate to distribute to creditors. The Settlement resolves the claims of Mr. Holmes and allows for the Trustee to continue liquidating the estate in a timely fashion.

Therefore, 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 Gary Farrar, 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, Phillip Crump, Stephen Holmes, and the Law Office of Herum, Crabtree, and Suntag ("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 42).

5. [14-91633-E-11](#) SOUZA PROPANE, INC.
FWP-3

MOTION TO EXTEND TIME AND/OR
MOTION TO APPROVE INTERIM
MODIFICATION OF LEASE AGREEMENT
2-25-15 [[111](#)]

Final Ruling: No appearance at the March 26, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on February 25, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Extend Time and Motion to Approve Interim Modification of Lease Agreement 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 Extend Time and Motion to Approve Interim Modification of Lease Agreement is granted.

David Flemmer, the Chapter 11 Trustee, filed the instant Motion to Extend the Time to Assume or Reject Nonresidential Real Property Leases and Approve Interim Modification of Lease Agreement on February 25, 2015. Dckt. 111. The Trustee is seeking for the court to: (1) extend the time for the Trustee to assume or reject nonresidential real property leases for 90 days from April 16, 2015, up to and including July 15, 2015; and (2) approve an agreement with one of the landlords for reduced post-petition rent with respect to two of the properties leased by the estate.

The Debtor currently leases three parcels of non-residential real property from which the Debtor conducts its business. The leases are:

1. 826 Souza Street, Turlock, California
 - a. The Debtor leases retail space, a shop, and a warehouse from Souza Properties, Inc., an entity owned by the Debtor's shareholders. The Souza Street Lease commenced

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on February 1, 2010 and provides for monthly rent of \$8,250.00 and for the tenant to pay most of the expenses relating to maintenance and operation of the leased property. The Souza Street Lease is for 10 years with an option to renew for another 10 years.

2. 199 W. Canal Drive, Turlock, California

- a. The Debtor leases office and retail space from Souza Properties, Inc. The Canal Drive Lease commenced on February 1, 2010 and provides for monthly rent of \$9,250.00 and for the tenant to pay for most of the expenses relating to maintenance and operation of the leased property. The Canal Drive Lease is for 10 years with an option to renew for another 10 years.

3. Airport Property

- a. The Debtor leases property located at the Turlock Airport from Turlock Air Park, Inc. The lease commenced January 10, 2015 and provides for monthly rent of \$100.00. The lease is for 30 years with an option to renew for an additional 30 years which the Debtor exercised pre-petition. The Debtor utilizes the property as its primary bulk storage facility large propane tanks.

The Trustee believes that the contract rent for both the Souza Street and Canal Drive leases are about market based on a review of comparable rental property. However, a potential purchaser may want these leases as part of a sale of the Debtor's assets. The Trustee states that he has negotiated with Souza Properties, Inc. to a short term reduction in the post-petition rent due under the Souza Street and Canal Drive leases. Specifically, the Trustee has negotiated for a reduction of the combined contract rent of \$17,500.00 for the two properties to \$13,000.00 for January 2015 and to \$11,000.00 per month for February, March, and April 2015. Souza Properties, Inc. has agreed it will not assert a claim for administrative rent for any amounts representing the difference between the contract rent and the reduced rent for the months covered by the interim reduction.

The Trustee is relying on the negotiated rent reduction and Souza Properties, Inc.'s agreement to not seek an administrative claim for the difference in requesting the extension of time to assume or reject the Souza Street and Canal Drive leases.

The Trustee is seeking to have the court to extend the time to assume and reject the leases for 90 days pursuant to 11 U.S.C. § 365(d)(4)(B) to April 16, 2015.

APPLICABLE LAW

11 U.S.C. § 365 deals with executory contracts and unexpired leases. For purposes of the instant Motion, § 365(d) states in relevant part:

- (2) In a case under chapter 9, 11, 12, or 13 of this title, the trustee may assume or reject an executory contract or

unexpired lease of residential real property or of personal property of the debtor at any time before the confirmation of a plan but the court, on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.

(3) The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

(4)(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of--

(I) the date that is 120 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming a plan.

(B) (I) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii) If the court grants an extension under clause (I), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

DISCUSSION

Here, the Trustee argues cause exists because the Trustee is in the marketing the Debtor's business for sale. However, until the Trustee has closed a sale of the Debtor's business, the Trustee will not know which, if any, of the Debtor's nonresidential real property leases will be assumed and which ones will be rejected. Forced rejection prior to the closure of any sale may cause the Debtor to reject nonresidential real property leases which the Debtor could otherwise assume and assign values.

Furthermore, the Trustee states that the landlords are not prejudiced by

the extension because the Debtor is current on its rental obligations post-petition in the contract amount for the Airport Lease and the agreed reduced amount for the Souza Street and Canal Drive leases.

The date set by 11 U.S.C. § 365 where the Trustee would have to either accept or deny the leases is April 16, 2015.

Upon review of the Trustee's request and the cause shown, the court finds that it is in the best interest of the Debtor, creditors and the estate to afford the Trustee additional time to accept or reject the leases in order to try and solidify the potential sale of the Debtor's business. Therefore, the Motion is granted and the time for assuming or rejecting all unexpired nonresidential real property leases is set for July 15, 2015, pursuant to 11 U.S.C. § 365(d)(4)(B)(I).

The Trustee also requests for approval of the agreement with Souza Properties, Inc. on the reduced interim post-petition rent with respect to the Souza and Canal Drive leases. Unfortunately, the Trustee does not provide a written agreement for the court to review the terms and to determine whether the agreement is in the best interest of the parties. While the Trustee does attest to the terms, without the actual agreement, the court cannot determine if the full terms of the agreement are proper. Therefore, the court denies the Trustee's request for approval of the agreement.

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 Extend Time and Motion to Approve Interim Modification of Lease Agreement filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the time to assume or reject the unexpired nonresidential real property leases is extended to July 15, 2015, pursuant to 11 U.S.C. § 365(d)(4)(B)(I).

No other or additional relief granted

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 20, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Contempt is set for final hearing at xxxx on xxxxxx.

Michael McGranahan, the Chapter 7 Trustee, filed the instant Motion to Hold Debtor in Contempt on February 20, 2015. Dckt. 77. The Trustee moves the court for an order to show cause why Martha Jimenez ("Debtor") should not be adjudged in civil contempt for failing to comply with a turnover order of the court.

The court issued an order granting the Trustee's Motion for Turnover Property on November 24, 2014. Dckt. 63. The order required the Debtor to turnover to the Trustee by December 1, 2014 the balance of Debtor's Bank of America Savings Account ending in 9559 on the petition date in the approximate amount of \$7,728.36. The order also extended to any person or persons to whom the Debtor transferred the funds. The Debtor was also ordered to deliver to the Trustee on or before noon on December 1, 2014 any and all bank statements for Debtor's Bank of America Savings Account ending in 9559 for August through October 2014 and any further statement connection with the account to the Trustee.

The Trustee states that on December 4, 2014, Anthony Johnston, counsel for the Trustee, and Oliver Greene, counsel for the Debtor, held a telephone

conference. Mr. Greene stated that the Debtor had loaned from the funds, after the petition date, Debtor's son \$1,500.00 and Debtor's nephew \$6,000.00. Mr. Greene stated that the son and nephew would repay the money by use of tax return refunds. The parties agreed that the Debtor would pay \$300.00 by the third day of each month, beginning in December 2014 to the Trustee until the required funds were paid. The parties further agreed that the son and nephew would sign assignments for tax return refunds in favor of the Trustee.

The Debtor has made the December 2014 payment but has failed to make the January or February payments.

The Trustee alleges that his counsel forwarded a repayment agreement to Mr. Greene on December 15, 2014 by email. The Trustee argues that since December 15, 2014, the Trustee has attempted to contact Mr. Greene but has not received any response.

The Trustee argues that the Debtor has failed to turn over the funds, except for the \$300.00 which was turned over in early December. The Trustee requests the court issue an order requiring Debtor to file and serve a response, to appear personally at the hearing, and show cause, if there is any, why Debtor should not be adjudged in civil contempt for failing to turnover.

The Trustee requests that after the proceeding, the court enter an order requiring Debtor to: (1) immediately turning over the balance of the funds due the Trustee; (2) paying all costs, expenses, and attorney's fees incurred by the Trustee to enforce the court's order; and (3) impose sanctions and punitive damages against Debtor in the amount of \$500.00 per day for each continuing day of contempt.

APPLICABLE LAW

"Civil contempt is the normal sanction for violation of the discharge injunction." *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002). This is a matter of federal law, and a core matter for the Bankruptcy Court. 11 U.S.C. § 105 does not itself create a private right of action, but it does provide a bankruptcy court with statutory contempt powers in addition to whatever inherent contempt powers the court may have. Because these powers inherently include the ability to sanction a party, a bankruptcy court is authorized to invoke § 105 to enforce the discharge injunction and order damages for the debtor if appropriate on the merits. *Id.* at 506-507.

A contempt proceeding by the United States trustee, debtor, or a party in interest in bankruptcy is a contested matter. *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189 (9th Cir. 2011). Contempt proceedings are not listed under Bankruptcy Rule 7001 and are therefore contested matters not qualifying as adversary proceedings. *Id.* Contempt proceedings for a violation of § 524 must be initiated by motion in the bankruptcy case under Rule 9014 and not by adversary proceeding. *Id.*

A creditor who attempts to collect a pre-petition discharged debt in violation of the discharge injunction is in contempt of the bankruptcy court that issued the order of discharge. *Eady v. Bankr. Receivables Mgmt. (In re Eady)*, 2008 Bankr. LEXIS 4696 (B.A.P. 9th Cir. 2008). In addition to the bankruptcy court's inherent power to impose an order for contempt only upon a showing of "bad faith," section 105 grants statutory contempt powers and a

creditor may be liable under section 105 if it willfully violated the permanent injunction of section 524. *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002); *Walls*, 276 F.3d at 509.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contempnor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see also 11 U.S.C. § 105(a).

The party seeking contempt sanctions has the burden of proving by clear and convincing evidence that the contempnors violated a specific and definite order of the court. *Bennett*, 298 F.3d at 1069. The burden then shifts to the contempnors to demonstrate why they were unable to comply. *Id.* The movant must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction. *Id.* For the second prong, the court employs an objective test and the focus of the inquiry is not on the subjective beliefs or intent of the alleged contempnor in complying with the order, but whether in fact their conduct complied with the order at issue. *Bassett v. Am. Gen. Fin. (In re Bassett)*, 255 B.R. 747, 758 (9th Cir. B.A.P. 2000)(rev'd on other grounds, 285 F.3d 882 (9th Cir. 2002)).

DISCUSSION

The Debtor's actions to date are concerning, appearing to be that the Debtor has failed direct court order to turnover the funds.

The Debtor, to date, has failed to respond to the instant Motion.

The Trustee requests for the court to issue an Order to Show Cause why the Debtor should not be held in civil contempt for failing to turnover. However, the Motion itself already provides all the information and grounds that would just be reiterated in an Order to Show Cause. Given the Trustee's request for monetary sanctions in the amount of \$500.00 per day for each day the Debtor fails to turnover the funds and punitive damages as well as the request for reimbursement for attorney's fees and costs in connection with the failure of the Debtor to turnover the funds, the court finds in necessary to afford the Debtor the opportunity to respond.

Instead of issuing a repetitive Order, the court shall set the instant Motion for a briefing schedule and a final hearing. The Trustee's instant Motion and declaration are incorporation herein by this reference.

The court shall issue an Order to Show Cause setting forth the following dates and deadlines:

- A. The hearing on the Order to Show Cause shall be conducted at 10:30 a.m. on ~~xxxxxx~~.
- B. The Trustee shall file and serve any supplemental pleadings setting forth the grounds for the issuance of sanctions on or before ~~xxxxxx~~

March 26, 2015 at 10:30 a.m.

- C. The Debtor shall file and serve any responses and show cause why sanctions should not be ordered on or before ~~xxxxxx~~.
- D. The Trustee shall file and serve a reply, if any, on or before ~~xxxxx~~.
- E. The possible sanctions ordered by the court include, without limitation, (1) \$500.00 monetary sanction until the property is turned over to the estate, (2) incarceration until the property is turned over to the estate, (3) dismissal of the bankruptcy case with prejudice (rendering all debts of Debtor which would be included in this case nondischargeable), and (4) reimbursement of the legal fees and expenses of the estate in prosecuting this motion and any proceedings against pre- and post-petition transferees who have received or are currently holding the property to be turned over (or obligated to pay the value of such property), severally and jointly.

7. [15-90038-E-7](#) JOSEPH VSETULA
SSA-1

MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY
2-26-15 [[13](#)]

Tentative Ruling: The Motion to Confirm Termination or Absence of 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 - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, Walter Gray, and Office of the United States Trustee on February 26, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Confirm Termination or Absence of 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). 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.

The Motion to Confirm Termination or Absence of Stay is granted.

Walter Gray ("Creditor") files the instant Motion to Confirm Termination of Stay on February 26, 2015. Dckt. 13. The Creditor brings the instant Motion pursuant to 11 U.S.C. §§ 362(c)(3)(A) and (j).

Creditor is the owner of the real property commonly known as 672 Root Rd., Modesto, California ("Property") of which the Creditor alleges Joseph Vestula ("Debtor") is occupying involuntarily following the foreclosures of the Debtor's prior property interest.

Creditor states that Debtor has had a pending chapter 13 bankruptcy case pending within the preceding one-year period that was dismissed that limits the automatic stay in the instant case to 30 days.

Debtor filed a Chapter 13 case on November 5, 2014. Case No. 14-91497. On November 25, 2014, the court issued an order dismissing the case for unreasonable delay that is prejudicial to creditors. Dckt. 23.

On January 15, 2015, the Debtor, in pro se, filed the instant Chapter 7 case. Case No. 15-90038.

The Creditor argues that more than 30 days have passed since the commencement of the instant bankruptcy case. The Debtor has not moved the court to request the continuance of the stay prior to the expiration of the 30 days.

APPLICABLE LAW

11 U.S.C. § 362(c) provides, in relevant part:

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case.

11 U.S.C. § 362(j) states that a party in interest can request the court to " issue an order under subsection (c) confirming that the automatic stay has been terminated."

DISCUSSION

Here, the Creditor has shown that the Debtor has had a pending Chapter 13 bankruptcy withing the preceding one-year period prior to the filing of the instant case but was dismissed. The prior case was filed November 5, 2014 and dismissed on November 26, 2014. Case No. 14-91497. This was two months prior to the Debtor filing the instant case on January 15, 2015.

Pursuant to 11 U.S.C. § 662(c)(3)(A), the automatic stay terminated as to "any action taken with respect to a debt or property securing such debt. . .with respect to the debtor" after 30 days of the filing of the instant case. Therefore, by operation of law, the automatic stay terminated as of February 14, 2015 as to the Debtor.

The Creditor also seeks an order confirming that the automatic stay no longer applies to the property. Unfortunately, the language of 11 U.S.C. § 362(c)(3)(A) only applies to the stay as to the Debtor, not to the property of the estate. The Creditor appears to have misread the automatic termination of the stay when there was a prior bankruptcy case pending within the past year

since the filing of a second case.

As to the request for relief from the automatic stay as to the Property, the Creditor has failed to plead any grounds under 11 U.S.C. § 362(d) that would justify relief from the automatic stay as to property of the estate. Therefore, the request for relief from the stay as to the Property is denied without prejudice.

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

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

The Motion for Relief From the Automatic Stay filed by Walter Gray ("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 court confirms that the automatic stay terminated on February 14, 2015 as to Joseph Vestula ("Debtors").

IT IS FURTHER ORDERED that the request for termination of the automatic stay as to the real property commonly known as 672 Root Rd., Modesto, California is denied without prejudice.

Tentative Ruling: The Motion for Final Decree 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, parties requesting special notice, and Office of the United States Trustee on March 12, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Final Decree 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 -----
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The Motion for Final Decree is granted.

Michael McGranahan, the Chapter 11 Trustee, filed the instant Motion for Final Decree on March 12, 2105. Dckt. 533.

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) additionally states that the court is required to close a case after an estate is "fully administered and the court has discharged the trustee." The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk*, 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been "fully administered," the court considers whether:

- the plan confirmation order is final;
- deposits required by the plan have been distributed;
- property to be transferred under the plan has been transferred;
- the debtor (or the debtor's successor under the plan) has taken control of the business or of the property dealt with by the plan;
- plan payments have commenced; and
- all motions, contested matters and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. See *id.*; *In re John G. Berg Assocs., Inc.*, 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

Here, the Chapter 11 Plan was confirmed on March 13, 2014. The Plan provided that Debtor is responsible for operating its business and making distributions in accordance with the terms of the plan. Debtors state that all distributions to be made under the plan are current and that all the post-confirmation operating reports have been filed.

As indicated by the Advisory Committee Notes accompanying Fed. R. Bankr. P. 3022, entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Rather, the above-listed factors should be considered in determining whether the estate has been fully administered. As stated by Debtors, there are no outstanding deposits that require distribution under the plan and that all disputed claims have been resolved.

The Trustee does note that the Internal Revenue Service issued tax refunds to the estate in May 2014 and November 2014. The Trustee believed that these refunds were issued in error and sent the refund checks back. Upon receipt of the refund checks, the Internal Revenue Service requested the Trustee send another copy of the estate's 2012 tax return. Trustee stated that he believed the Internal Revenue Service incorrectly applied payments, in the amount of \$18,821.00 paid for the 2012 tax year, to the tax due for the 2013 tax year. Trustee is awaiting a transcript of payments received from the estate, and how those payments were applied from the Internal Revenue Service but has yet to receive them.

The Trustee does not believe that the bankruptcy estate owes any further taxes to the Internal Revenue Service. The Trustee states that the estate is solvent and that if the Internal Revenue Service does determine that additional fund were owed, the burden is ultimately on the Debtor to satisfy such claim. Therefore, the Trustee does not believe this should impede issuing a final decree.

Upon confirmation of the Plan, the relevant property became fully vested in Debtors, who are currently managing the estate. Debtors appear to be current on all distribution under the plan and filed post-confirmation operating reports.

Thus, the court finds that Debtors have satisfactorily met the above-listed factors, determining whether the Chapter 11 bankruptcy estate has been fully administered within the meaning of 11 U.S.C. § 350(a). The court will enter a final decree closing Debtors' case.

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 Final Decree and Order Closing Case filed by the Debtors-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Debtors' Chapter 11 Bankruptcy Case is closed pursuant to 11 U.S.C. § 350(a) and Federal Rule of Bankruptcy Procedure 3022, without limitation or restriction of this court's post-confirmation jurisdiction in this case.

9. [12-93049](#)-E-11 MARK/ANGELA GARCIA
MJH-13

OBJECTION TO CLAIM OF UNITED
STATES FIRE INSURANCE COMPANY,
CLAIM NUMBER 19
2-9-15 [[509](#)]

Tentative Ruling: The Objection to Claim 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 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on February 9, 2015. By the court's calculation, 45 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 19 of United States Fire Insurance Company is set a discovery schedule and a Pre-Evidentiary Hearing Conference on xxxxxx

Mark Anthony Garcia and Angela Marie Garcia, the Debtor, ("Objector") requests that the court disallow the claim of United States Fire Insurance Company ("Creditor"), Proof of Claim No. 19 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$450,000.00 and unsecured in the amount of \$228,028.35. Objector asserts that the Claim should be disallowed because it fails to demonstrate any right to payment establishing a debt due by the Debtors pursuant to 11 U.S.C. § 502(b) and fails to meet the minimum requirements to establish a prima facie proof of claim pursuant to Fed. R. Bankr. P. 3001(c).

March 26, 2015 at 10:30 a.m.

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The Objector states that in Proof of Claim 19-3, filed on January 20, 201, Creditor lists \$290,805.77 in expenses. The Objector asserts that these expenses are not supported, there are no dates, and the expenses could have been incurred at any time from 2003 through 2015.

The Objector states that the Proof of Claim 19-3 increases the Creditor's bond losses by \$191,196.87, interest on the bond by \$63,911.84, legal fees and expenses by \$54,187.84, interest on the legal fees and expenses by \$24,588.26, for a total increase of \$333,884.81. The Objector asserts that the Creditor has not explained, justified, or supported these increases.

The Objector states that the third amendment of the Proof of Claim 19 is not an attempt to cure a defect or to describe with greater particularity the claim. The Objector states that they are not solvent and, therefore, interest is not chargeable to unsecured claims in this case.

CREDITOR'S OBJECTION

Creditor filed an objection to the instant Objection on March 12, 2015. Dckt. 525. The Creditor argues that the Objector failed to provide the court with admissible evidence sufficient to rebut the presumption of the Proof of Claim's validity. Creditor argues that the Objector fails to provide admissible evidence and that there is no factual basis for the assertion that the Proof of Claim was untimely.

Creditor argues that the amendments were to update the bail bond losses, interest, litigation expenses, and attorney's fees incurred by Creditor and categorized in Creditor's previous claims.

After a discussion concerning the history of litigation, the Creditor states that the amended claim includes the purported attorney's fees expended in these cases which have caused the Creditor to amend the proof of claim. The Creditor states that there has been three civil litigation cases in state court that were in connection with alleged forgery and alteration of documents from the Objector's bail agency. These cases, the Creditor argues, represents the majority of the legal expenses.

The Creditor admits that there was incorrect information displayed under the columns for bond number and check number attached to the Proof of Claim 19-3. The Creditor has attached an updated legal expense report that displays the corrected information as to the bail bonds number and check date. Creditor also has submitted the billing invoices of Gregory Day, Esq. and Gregory Salvato, Esq. in support of the legal fees and expenses incurred by Creditor.

The Creditor alleges that the revised bond loss schedule shows that the total losses actually suffered by Creditor, which totals \$387,222.58. The Creditor asserts that under the Producer Underwriting Agreement, the Objector was responsible for the payment of all the forfeiture judgments and court costs. The Objector has just failed to pay it.

Lastly, the Creditor argues that it is unknown at the present time how much of the Creditor's claim is secured and how much is unsecured because it is dependent on the value of the HSBC Bank's lien. The Creditor states that they have provided substantial evidence in support of the Proof of Claim, which the Creditor alleges the Objector has not rebutted. The Creditor believes that

the Proof of Claim should stand in the amount of \$678,028.35.

OBJECTOR'S REPLY

The Objector filed a reply on March 19, 2015. Dckt. 546. The Objector replies as follows:

1. There are \$63,911.84 in unexplained post-petition interest.
2. There are no itemized statement of attorney's fees. Instead, Creditor provides redacted billing statements.
3. Creditor has increased its claim by at least \$6,000.00 for attorney's fees in the adversary complaint and it is improper to increase it claim for that purpose.
4. There are fees charged in connection with the Dosanjh case that the Objector argues they do not owe any bond amounts in and do not owe Creditor's attorney's fees for that case.
5. The actual bond loss in the Miguel Arceo case is the sum of \$117,753.00 and appellate fees were approximately \$20,000.00. The Objector argues there is an unexplained charge of \$53,443.87 in the new Proof of Claim in connection with this case.
6. No itemized attorney billing statements were produced and therefore it is difficult to go through the exhibits as the billings reflect other matters than the Adversary Complaint or the Dosanjh case.

The Objector once again requests that the court order that the Proof of Claim No. 19-3 be expunged and that Creditor's claim be determined to be \$450,000.00 secured and \$14,896.98 unsecured, provided that Creditor can provide supporting documents for its claim for attorney's fees.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

It is apparent based on the instant objection as well as the substantial history of the parties that this is a litigious matter. The parties have both presented substantial pleadings and exhibits that raise serious questions over the accuracy of Proof of Claim No.19-3. This is a contested matter pursuant to Fed. R. Bankr. P. 9014.

This "small business" Chapter 11 case was filed on November 30, 2012. Now, twenty-nine months later neither debtor, Chapter 11 Trustee, or creditors have been able to obtain approval of a disclosure statement or confirm a plan. Rather than converting the case to one under Chapter 7 or dismissing it in 2013 as requested by the U.S. Trustee (Motion, Dckt. 198), the court ordered the appointment of a Chapter 11 trustee.

Determining that relief was proper, the court made extensive findings concerning the conduct of the then Debtors in Possession. Civil Minutes, Dckt. 254. These include:

(1). "The financial reporting and handling of estate assets by the Debtors in Possession demonstrate a continuing loss to the estate, gross mismanagement of the estate, and failure to fill clear and accurate monthly operating reports."

(2). "Several creditors expressed a desire that further effort be made to confirm a plan. It appears that the Debtor's business and assets are capable of generating a significant cash flow, which may be able to fund a plan."

(3). "It is clear that the Debtors are not capable of proceeding in this case without someone else in control of the assets of the estate."

(4). "Possib[ly], with the structure created by a Chapter 11 Trustee, the Debtors may be able to structure a plan, hire the necessary accounting and record keeping staff, and put in plan the business structure to successfully complete a plan."

Id.

The Chapter 11 Trustee was appointed on November 14, 2013. In the seventeenth months since his appointment he has not proposed a plan. The only plans proposed has been those of either the Debtors or YP Western Directory, LLC (as a creditor) in conjunction with the Debtors. (While Debtors' counsel's name is not on the YP Western Directory, LLC pleadings, it is clear that he and the Debtors are working closely with and directing much of what is being done by this creditor.) Neither the Debtors nor YP Directory, LLC/Debtors have been able to get a disclosure statement approved.

If the Trustee has determined that he is not able to prosecute a Chapter 11 plan in this case, then creditors and the court need to be notified as such. It may well be that if this case is converted to one under Chapter 7 there may not be a surplus bankruptcy estate. If there is not a surplus estate, then Debtors would appear not to have standing to object to Creditor's claim. FN.1.

FN.1.

As addressed in Collier on Bankruptcy, Sixteenth Edition, ¶ 502.02[c],

"[c] Objection by Debtor

The debtor may be a party in interest with standing to object to a proof of claim. [FN.17 - discussing that objecting debtor must have a pecuniary interest in outcome, such as when there is a surplus estate] Particularly in chapter 12 and

chapter 13 cases, the success of the debtor's plan may depend upon the debtor's being able to argue successfully that the debt asserted as a priority claim or a secured claim, which must often be paid in full, is excessive or invalid. Typically, the trustee in such cases does not view it as his or her role to object to particular claims except, perhaps, if they have been tardily filed.

In a chapter 7 case, or a chapter 11 case in which the debtor is not in possession, the debtor usually has no pecuniary interest that would justify objecting to a claim unless there could be a surplus after all claims are paid. An individual debtor, however, in such a case may sometimes have an interest in objecting to particular claims. For example, the debtor may wish to object to an excessive dischargeable claim whose holder would receive distributions that otherwise would be made to the holder of a nondischargeable claim. To the extent that a nondischargeable claim is satisfied in some measure by a distribution, it is in the debtor's interest to maximize the distribution, thereby relieving the debtor from some or all of the claim of that creditor which would survive the bankruptcy case. The debtor also has an interest if there is any chance that a disallowance will yield a solvent estate that would provide a return to the debtor. The same reasoning applies to equity holders of the debtor. Thus, a debtor may be afforded standing, in certain instances, to object to claims."

Under the most recent YP Western Directory, LLC/Debtors plan, the dividend to creditors holding general unsecured claims was 32%. Proposed Plan, Dckt. 490. The Proposed Disclosure Statement includes a liquidation analysis which states that in a Chapter 7 liquidation creditors would received only a 5% dividend on general unsecured claims. This indicates that there would not be a surplus estate in a Chapter 7 case.

Creditor having responded with billing statements for their attorney's, without providing an itemized, task-billing analysis and for the Objector merely arguing generic concerns over the Proof of Claim rather than citing specific instances of miscalculations, the court finds that discovery in this contested matter is necessary to allow the parties the opportunity to focus their objections, responses, and arguments.

Before sending the parties and the court to an evidentiary hearing, and possibly dropping on the court less than clear statements identifying the grounds for the claim, the court affords the parties reasonable discovery. Additionally, the court will sent a Pre-Evidentiary Hearing Conference, for which the parties shall provide statements of undisputed facts, witnesses, and exhibits for the Evidentiary Hearing.

Additionally, before proceeding to an evidentiary hearing, the court will want to have the Trustee and parties in interest confirm that there is some good faith reason for determining the claim - such as there is a Chapter 11 plan which the Trustee (in light of the failure of other parties in interest) is moving toward confirmation or that if this becomes a Chapter 7 case, the

Debtors would have standing to litigate the claim objection.

Based on the disputed material factual issues, the matter will be set for an Evidentiary Hearing Conference setting the following dates and deadlines:

- a. Initial Disclosures shall be made on or before ----, 2015.
- b. Expert Witnesses shall be disclosed on or before -----, 2015, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2015.
- c. Discovery closes, including the hearing of all discovery motions, on -----, 2015.
- d. Dispositive Motions shall be heard before -----, 2015.
- e. The Pre-Evidentiary Conference shall be conducted at ----- p.m. on -----, 2015.

10. [11-92055-E-7](#) RACHEL EVERETT
TOG-9

MOTION TO AVOID LIEN OF WELLS
FARGO BANK, N.A.
2-19-15 [[51](#)]

Tentative Ruling: The Motion to Avoid Judicial Lien 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 Chapter 7 Trustee, Wells Fargo Bank, N.A., and Office of the United States Trustee on February 28, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

This Motion requests an order avoiding the judicial lien of Wells Fargo Bank, N.A. ("Creditor") against property of Rachel Everett ("Debtor") commonly known as 1105 Pipit Drive, Patterson, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,954.04. An abstract of judgment was recorded with Stanislaus County on April 19, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$140,000.00 as of the date of the petition. The unavoidable consensual liens total \$160,643.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption

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pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$24,485.00 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 Wells Fargo Bank, N.A., California Superior Court for Stanislaus County Case No. 649164, recorded on April 19, 2011, Document No. 2011-0033621-00 with the Stanislaus County Recorder, against the real property commonly known as 1105 Pipit Drive, Patterson, 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.

11. [12-90356-E-7](#) DOUGLAS/PAULA COX
PEQ-1

MOTION FOR COMPENSATION FOR
RYAN, CHRISTIE, QUINN AND HORN,
ACCOUNTANT
2-23-15 [[92](#)]

Final Ruling: No appearance at the March 26, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on February 23, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Paul Quinn, CPA, the Accountant ("Applicant") for Eric J. Nims the Chapter 7 Trustee ("Client"), makes a First Interim and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period June 24, 2013 through December 10, 2014. The order of the court approving employment of Applicant was entered on July 6, 2013. Dckt. 75. Applicant requests fees in the amount of \$4,290.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

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(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including tax preparation for both federal and state of 2011, 2013, and 2014, which consisted of a total of six federal tax returns and six state tax returns. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 2.4 hours in this category. Applicant assisted Client with reviewing the creditor list to avoid conflict and to prepare the instant fee application.

Tax Preparation and Tax Related Matters: Applicant spent 15.8 hours in this category. Applicant reviewed the Debtors' 2011 federal and state tax returns and prepared the 2011, 2013, and 2014 federal and state estate tax returns.

Correspondences: Applicant spent 2.8 hours in this category. Applicant sent letters to the Trustee with filing instructions for each year for each estate, and sent letters to each tax authority requesting prompt audit determination of each estate for each year.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Paul E. Quinn, CPA	8.2	\$250.00	\$2,050.00
Deborah Monis, CPA	12.8	\$175.00	\$2,240.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00

12. [14-90558-E-7](#) KENNETH/TRACYE ASSENG
HCS-4

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH KENNETH JOSEPH
ASSENG AND TRACYE KAY ASSENG
2-18-15 [[25](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on February 18, 2015. By the court's calculation, 36 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(3), 21 day notice.)

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

The Motion For Approval of Compromise is granted.

Eric J. Nims, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Kenneth Joseph Asseng and Tracye Kay Asseng ("Settlor"). The claims and disputes to be

resolved by the proposed settlement are the Debtor's claimed exemptions in the "Beneficial Interest in Tracye Asseng's mother's life insurance," \$20,000, with a claimed exemption of \$24,000, and "Interest in wife's deceased mother's retirement plan," \$9,000, with a claimed exemption of \$9,000. The Movant has objected to the Settlor's use of California Code of Civil Procedure § 704.100(b) as to the insurance policy and use of California Code of Civil Procedure § 704.115(b) as to the retirement policy.

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. 30):

- A. Settlor will pay \$6,000.00 to the Movant, on behalf of the bankruptcy estate.
- B. Movant will release the Settlers from any claim relating to the dispute over the claimed exemptions as to the two interests in the insurance and retirement policies.
- C. On or before February 2, 2015, the Settlers will file an amended Schedule C to amend the exemption in the retirement policy to California Code of Civil Procedure § 704.115(c).
- D. The Settlers shall sign and deliver to the Movant a stipulation to extend the Movant's deadline to object to the Settlers' exemptions only in the assets at dispute through and including the date that is 20 days after both of the following: (1) an entry of an order of the court of the Movant's motion to approve the agreement; and (2) the Settlers' delivery to the Movant of the payment. If the court approves the agreement, the Movant shall not object to the exemptions in the insurance or retirement policies.

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 \$6,000.00 in satisfaction of the estate's objection to Settlor's exemptions. This proposed settlement allows Movant to recover for the estate \$6,000.00 without further cost or expense in litigating the exemptions claimed by the Settlor's.

Probability of Success

The Movant states that the probability of success is uncertain because the case law concerning the exemptions under California Code of Civil Procedure § 704.100(c) as to claiming it to a insurance policy is uncertain. Because the determination will be fact based, the Movant is uncertain of the result.

As to the exemption claimed on the retirement policy under California Code of Civil Procedure § 7014.115(b), the Movant believes that he is confident that the exemption does not apply, the ultimate determination is uncertain given the fact based determination necessary.

Difficulties in Collection

The Movant states it is unknown whether Settlor's have sufficient assets to satisfy a significant money judgement. The Movant does state however that he does not anticipate any issues with collection of the settlement amount as the Settlor's have already signed a settlement agreement obligating them to pay the settlement amount.

Expense, Inconvenience and Delay of Continued Litigation

Due to the uncertainty of the success, the Movant states that it would be expensive to institute and prosecute litigation on the dispute over the exemptions and it would take time to resolve the dispute in litigation. There are likely many factual and legal issues that would need to be resolved as well as potential depositions and discovery. The administrative expenses of such litigation could be large, and because of the amount at issue those expenses could consume a significant portion, or all, of any recovery. The settlement helps avoid the expenses, inconveniences, and delay.

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 settlement allows the estate to recover \$6,000.00 in settlement of the potential objections to the Settlor's use of California Code of Civil Procedure §§ 704.100(c) and 705.115(b). The settlement avoids the need of costly litigation and potentially adverse effects to the bankruptcy estate in the form of administrative expenses. 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 Eric J. Jims, 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 Kenneth Joseph Asseng and Tracye Kay Asseng ("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 30).

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 Not Provided. The Debtor failed to attach a Proof of Service.

The Motion to Dismiss 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 -----.

<p>The Motion to Dismiss the Chapter 11 Bankruptcy Case is denied without prejudice.</p>

This Motion to Dismiss the Chapter 11 bankruptcy case of Richard Carroll Sinclair ("Debtor-in-Possession") has been filed by Debtor on March 3, 2015. Dckt. 116. Debtor-in-Possession asserts that the case should be dismissed based on the following grounds:

1. Dismissal is proper to allow the Debtor and Creditor Katakis to resolve potential Fed. R. Civ. P. 60 (b) and (d) motions concerning the underlying state court actions
2. Creditors Durbin and Katakis are more "litigators" in this matter than "creditors" which justifies dismissal.
3. There are no assets in the estate.

FN.1.

FN.1. The court notes that the majority of the Debtor-in-Possession's Motion is a verbatim copy of the court's prior order denying the creditors motion to convert and large excerpts from various cases.

OPPOSITION

Creditors Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association ("Creditors") filed the instant objection on March 11, 2015. Dckt. 120. The Creditors argues that dismissal is improper on the following grounds:

1. The instant Motion is an attempt of the Debtor-in-Possession to avoid the six 2004 examinations, including Debtor-in-Possession's.
2. The statute of limitations on the alleged fraudulent conveyance actions will be determined from the date of the filing of this case, November 24, 2014, leaving the Creditors and the potential Chapter 7 Trustee two years from that date to sort out and unwind Debtor-in-Possession's actions. The Creditors expect the 2004 examinations to provide bases for arguing for conversion to a Chapter 7.
3. There are pending adversary proceedings to determine the nondischargeability of lower final judgment debts.
4. The case has no prospect of confirming a plan of reorganization. The Creditor argues that the case will be likely converted to a Chapter 7 where the Chapter 7 Trustee will have the opportunity to unwind the Debtor's alleged fraudulent conveyances.

DEBTOR'S REPLY

The Debtor-in-Possession filed a reply on March 20, 2015. Dckt. 125. The Debtor-in-Possession states that he needs to determine what he owes to Creditors, if any, meaning that the bankruptcy may not be needed. The Debtor-in-Possession states that there will be Motions for New Trial against creditors. Debtor also asserts that Debtor-in-Possession filed a suit against Creditor Katakis and states that he will be filing a new suit for fraud on the court pursuant to Fed. R. Civ. P. 60(d) and "CC 3294" in both state and federal court and will seek an injunction against Creditor Katakis. The Debtor-in-Possession states that because the Creditor admits that a plan is not confirmable, that dismissal is proper.

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).

Here, the Debtor-in-Possession has not shown that there is cause to dismiss the case nor that dismissal would be in the best interest of the creditors. The relationship between the Debtor and the Creditors is obviously very litigious given the extensive history between the parties.

As admitted by the Debtor and the Creditor, there are potential transfers within the past ten years that may or may not be able to be avoided for the benefit of the estate. Now, the Debtor-in-Possession is attempting to have the case dismissed. The Debtor-in-Possession has failed to state a reason why the court should allow the Debtor to dismiss the case, potentially allowing the statutory period for a trustee to avoid past fraudulent transactions run. The court will not dismiss the case when there is the potential of substantial assets being brought back into the estate for the benefit of the creditors and estate.

While the Creditors admit that the likelihood of a plan (at least one proposed by the Debtor) being confirmed is extremely low and they all expect the case to be converted to a Chapter 7, this admission is not cause for the court to dismiss the case. There are considerations, outside of whether a plan is likely to be confirmed, before the court would grant the dismissal of a case.

The court believes that this case is one in which the United States Trustee can evaluate the situation for a potential trustee (whether Chapter 11 or 7) and determine what the best course for this case. The United States Trustee may assert that conversion is proper or an appointment of a Chapter 11 Trustee is in the best interest of the estate, creditors, and Debtor.

Before appointing a trustee, by conversion or in the Chapter 11, the court will have to be convinced that such trustee will have the ability and resources to effectively represent the estate.

However, for purposes of the instant Motion, the Debtor-in-Possession has not provided sufficient grounds to show cause to dismiss the case.

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 Dismiss the Chapter 11 case filed by 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 to Dismiss is denied without prejudice.

14. [14-91677-E-7](#) FRANCISCO/VIRGINIA CERDA MOTION TO AVOID LIEN OF
JAD-1 PORTFOLIO RECOVERY ASSOCIATES,
LLC
2-17-15 [[13](#)]

Final Ruling: No appearance at the March 26, 2015 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, Creditors, parties requesting special notice, and Office of the United States Trustee on February 17, 2015. By the court's calculation, 37 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 Portfolio Recovery Associates, LLC ("Creditor") against property of Francisco Julia Cerda and Virginia Cerda ("Debtor") commonly known as 1104 West G Street, Oakdale, California (the "Property").

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A judgment was entered against Debtor in favor of Creditor in the amount of \$4,656.33. An abstract of judgment was recorded with Stanislaus County on July 24, 2014, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$150,000.00 as of the date of the petition. The unavoidable consensual liens total \$149,913.00 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 \$87.00 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 Portfolio Recovery Associates, LLC, California Superior Court for Stanislaus County Case No. 2005376, recorded on July 24, 2014, Document No. 2014-0047774-00 with the Stanislaus County Recorder, against the real property commonly known as 1104 West G Street, Oakdale, 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.

15. [14-91589-E-7](#) MICHAEL SHERMAN AND
GRF-3

MOTION TO EMPLOY FIRST CAPITAL
HEATHER MUGFORD-SHERMAN AUCTION,
INC. AS AUCTIONEER(S)
2-13-15 [[25](#)]

Final Ruling: No appearance at the March 24, 2015 hearing is required.

Ex Parte Motion.

No Notice of Hearing Provided.

The Motion to Employ is granted.

Chapter 7 Trustee, Gary Farrar, seeks to employ First Capital Auction, Inc. ("Auctioneer"), pursuant to Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Auctioneer to assist the Trustee in selling the following assets at public auction:

- A. 1994 Polaris ST750 jet ski
 - 1. Valued at \$1,500.00
 - 2. No exemption claimed
 - 3. First Capitol Auction values asset at \$2,000.00
- B. 1994 Polaris ST750 jet ski (second unit)
 - 1. Valued at \$300.00
 - 2. No exemption claimed
 - 3. First Capitol Auction values asset at \$500.00
- C. 1994 Shore trailer
 - 1. Valued at \$500.00
 - 2. No exemption claimed
 - 3. First Capitol Auction values asset at \$500.00
- D. EZ Golf Cart
 - 1. Valued at \$500.00
 - 2. No exemption claimed
 - 3. First Capitol Auction values asset at \$1,500.00
- E. 2004 Calabria Genuine Ski Boat Cal-Air Pro V
 - 1. Valued at \$26,845.00
 - 2. Key Bank has a lien of \$17,136.88
 - 3. No exemption claimed
 - 4. A loan statement has been provided to the Trustee confirming the debt amount. A demand for pay off has been issued to the lender.

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5. First Capitol Auction values asset at \$27,000.00

The Trustee argues that Auctioneer's appointment and retention is necessary to see the above-mentioned assets for the benefit of the creditors and estate.

Eric Smith, an associate of First Capitol Auction, Inc., testifies that he is representing that the agreement allows the Auctioneer to auction the assets. Dckt. 26. The compensation agreement was that Auctioneer will be a commission of 5% of the sales price of the property sold at auction plus reimbursement of reasonable expenses up to \$500.00 incurred in preparing the items for sale, including out of pocket expenses for transportation and storage of the property. Smith testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis.

Because the auction is to be conducted by a licensed auctioneer, failure to provide a copy of the contract with the auctioneer is not fatally defective to the Motion - for this specific motion.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ First Capital Auction, Inc. as Auctioneer for the Chapter 7 estate on the terms and conditions that auctioneer will be paid a 5% commission computed from the gross sales price of the items sold and not more than \$500.00 in the aggregate for all items sold pursuant to this order for reasonable and necessary costs in preparing the items for sale.

The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted and the Chapter 7 Trustee is authorized to employ First Capitol Auction, Inc. as auctioneer for the Chapter 7 Trustee for the following items,

- A. 1994 Polaris ST750 jet ski
 - 1. Valued at \$1,500.00
 - 2. No exemption claimed
 - 3. First Capitol Auction values asset at \$2,000.00

- B. 1994 Polaris ST750 jet ski (second unit)
 - 1. Valued at \$300.00
 - 2. No exemption claimed
 - 3. First Capitol Auction values asset at \$500.00

- C. 1994 Shore trailer
 - 1. Valued at \$500.00
 - 2. No exemption claimed
 - 3. First Capitol Auction values asset at \$500.00

- D. EZ Golf Cart
 - 1. Valued at \$500.00
 - 2. No exemption claimed
 - 3. First Capitol Auction values asset at \$1,500.00

- E. 2004 Calabria Genuine Ski Boat Cal-Air Pro V
 - 1. Valued at \$26,845.00
 - 2. Key Bank has a lien of \$17,136.88
 - 3. No exemption claimed.

Compensation for the services provided are authorized on the following terms and conditions: (1) a 5% commission computed on the gross sales price of the items sold, and (2) not more than \$500.00 in the aggregate for all items sold pursuant to this order for reasonable and necessary costs in preparing the items for sale.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328. Said request may be made and payment authorize in the court's order approving the sale by auction of the items.

2. No exemption claimed
 3. First Capitol Auction values asset at \$2,000.00
- B. 1994 Polaris ST750 jet ski (second unit)
1. Valued at \$300.00
 2. No exemption claimed
 3. First Capitol Auction values asset at \$500.00
- C. 1994 Shore trailer
1. Valued at \$500.00
 2. No exemption claimed
 3. First Capitol Auction values asset at \$500.00
- D. EZ Golf Cart
1. Valued at \$500.00
 2. No exemption claimed
 3. First Capitol Auction values asset at \$1,500.00
- E. 2004 Calabria Genuine Ski Boat Cal-Air Pro V
1. Valued at \$26,845.00
 2. Key Bank has a lien of \$17,136.88
 3. No exemption claimed
 4. A loan statement has been provided to the Trustee confirming the debt amount. A demand for pay off has been issued to the lender.
 5. First Capitol Auction values asset at \$27,000.00

The Movant requests authorization to sell the Property at an online/live action to be conducted at First Capitol Auction, Inc. The Movant had First Capitol Auction inspect the Property and provide sales values for each item, as indicated supra.

The Movant argues that there is equity to be realized and a sale of the Property at public auction is the best method of liquidating them for the benefit of the estate. The Movant has concurrently filed an application to employ First Capitol Auction, Inc., as auctioneer to sell the identified property at public auction. Dckt. 25.

The Movant believes that by using an auction process, the Property will be exposed to a large number of prospective purchasers and, for that reason,

e. 2004 Calabria Genuine Ski Boat Cal-Air Pro V

("Property"), on the following terms:

1. The Property shall be sold in a public auction by First Capitol Auction, Inc on April 17 and 18, 2015 starting each day at 9:00 a.m to 4:00 p.m.
2. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

IT IS FURTHER ORDERED that the Trustee is authorized to pay First Capitol Auction, Inc. the commission and expenses authorized in this court's order authorizing its employment.

17. [14-91596-E-7](#) TIMOTHY BROWN
CCA-1

CONTINUED MOTION TO DISMISS
CASE AND/OR MOTION TO BAR FROM
FILING ANOTHER CHAPTER 13
1-23-15 [[46](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Creditors, and Office of the United States Trustee on January 23, 2015. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss and Motion to Bar from Filing Another Chapter 13 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss and Motion to Bar from Filing Another Chapter 13 is denied without prejudice.

Michael McGranahan ("Creditor") filed the instant Motion to Dismiss Chapter 13 Case and Bar from Filing Another Chapter 13 Bankruptcy on January 23, 2015. Dckt. 46.

The Creditor argues that the Chapter 13 case was not filed in good faith as the sole purpose of the case was to "thwart payment and compliance with the underlying turnover orders, contempt judgments, and monetary judgments" in *In re Tina M. Brown*, Case No. 10-94467-E-7, where the instant court ordered the turnover of the 1997 Harley Davidson Red Fat Boy Motorcycle and the 2007 Chevrolet Corvette. The Creditor argues that the Debtor has failed to turnover or to pay the damages, daily contempt, and cumulative contempt damages. Lastly,

the Creditor argues that the instant case was to unwind these orders and judgments.

The Creditor also moves for an order barring the Debtor from filing another chapter 13 case pursuant to 11 U.S.C. § 349(a).

On March 3, 2015, the instant case was transferred from the Honorable Judge Bardwil to the Honorable Judge Sargis. Dckt. 64.

Also on March 3, 2015, the Debtor voluntarily converted the Chapter 13 case to a Chapter 7 case. Dckt. 63. The date for objection to discharge has been set for June 29, 2015. Dckt. 63.

At the March 10, 2015 hearing, Judge Bardwil continued the hearing to 10:30 a.m. on March 26, 2015 to be heard by Judge Sargis due to the Debtor's voluntary conversion to a Chapter 7.

The Debtor having converted this case to one under Chapter 7, there is now an independent fiduciary responsible for the assets of this bankruptcy estate and addressing claims of creditors. Before dismissing, the court will allow the Chapter 7 Trustee to evaluate the property of the estate, what may be recovered for creditors, and the conduct of the Debtor.

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 Dismiss and Motion to Bar from Filing Another Chapter 13 filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

18. [13-91299-E-7](#) JUANA CHAVEZ MOTION FOR COMPENSATION FOR
CWC-3 CARL W. COLLINS, TRUSTEES
ATTORNEY
2-23-15 [[29](#)]

Final Ruling: No appearance at the March 26, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on February 23, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Carl W. Collins, the Attorney ("Applicant") for Irma C. Edmonds the Chapter 7 Trustee ("Client"), makes a First Interim and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period August 20, 2013 through February 4, 2015. The order of the court approving employment of Applicant was entered on October 1, 2013, Dckt. 16. Applicant requests fees in the amount of \$10,090.00 and costs in the amount of \$154.61.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the

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extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including representation of the Chapter 7 Trustee and assisting the Trustee in the administration of the bankruptcy estate in the form of settlement negotiations. The estate has \$25,177.41 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Disposition: Applicant spent 36.30 hours in this category. Applicant assisted Client with sales, leases under 11 U.S.C. § 365, abandonment, and related transaction work.

Fee/Employment Applications: Applicant spent 5.20 hours in this category. Applicant prepared motions of employment and fee application for self and motions to establish interim procedures.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Carl W. Collins, Esq., practicing for 32 years	31	\$295.00	\$9,145.00
Claudia Alarcon, Paralegal	10.5	\$90.00	\$945.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00

	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	<u>\$0.00</u>
Total Fees For Period of Application			\$10,090.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$154.61 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Mail/Postage		\$41.71
Copying	\$0.10 per page	\$29.90
Recording Filing Fee		\$43.00
Certification and Retrieval		\$40.00
Total Costs Requested in Application		\$154.61

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$10,090.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs and Expenses

The First and Final Costs in the amount of \$154.61 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

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

Fees	\$10,090.00
Costs and Expenses	\$154.61

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

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

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

The Motion for Allowance of Fees and Expenses filed by Carl W. Collins ("Applicant"), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Carl W. Collins is allowed the following fees and expenses as a professional of the Estate:

Carl W. Collins, Professional Employed by Trustee

Fees in the amount of \$10,090.00
Expenses in the amount of \$154.61,

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

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