

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 24, 2014 at 10:30 a.m.

ALL ITEMS TO BE HEARD AT 1:30 PM IN DEPARTMENT E

1. [11-36613](#)-E-7 KARL/MARIA HOCKMAN MOTION TO SELL AND/OR MOTION
HCS-1 Harry D. Roth FOR COMPENSATION FOR SAN DIEGO
REO SPECIALISTS, REALTOR(S)
4-3-14 [[125](#)]

DISCHARGED 5-7-13

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on April 3, 2014. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

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

April 24, 2014 at 10:30 a.m.

The court's decision is to grant the Motion to Sell Property.

The Bankruptcy Code permits the Chapter 7 Trustee, Geoffrey Richards ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here, Movant proposes to sell the "Property" described as 116 Bruton Lane, Woodland, California.

TERMS OF SALE

The proposed purchaser of the Property is Gann Properties, LP ("Gann") and the terms of the sale are that Gann will purchase the property for \$262,000.00 "as is" without any warranties, Gann will also pay a buyer's premium to the estate of \$16,350.00, and will pay \$1,000 towards the City of Woodland's utility lien against the property. JP Morgan Chase, holder of the first deed of trust on the property, has agreed to accept \$232,319.64 through escrow in full satisfaction of its \$406,800.00 lien. Wells Fargo Bank, N.A., holder of a second deed of trust on the property, has agreed to accept \$8,420.13 through escrow in full satisfaction of its \$101,700.00 lien. The property tax lien of \$4,881.06, and utility tax lien of approximately \$1,000 will be paid through escrow. A 6% realtor commission, to be split between the buyer and seller's realtors (\$9,170.00 to San Diego REO, seller's realtor, and \$6,550.00 to The Real Estate Group, buyer's realtor), and \$1,149.08 in estimated closing costs will be paid through escrow. This leaves approximately \$15,860.09 in sales proceeds to be paid to the estate.

The Motion purports to seek to sell Property free and clear of all liens. However, the motion makes no reference to 11 U.S.C. § 363(f), or any of the grounds discussed therein. It appears, based on the evidence presented to the court, that the Trustee does not seek to sell the property "free and clear" of all liens, as that term is used in the Bankruptcy Code, but rather, that all lien holders will be either paid in full, or have agreed to accept a partial payment in full satisfaction of their claims. As such, the property will not have any debt attached to it at the close of escrow, and this is simply a sale pursuant to 11 U.S.C. § 363(b). The court approves the sale pursuant to 11 U.S.C. § 363(b).

WAIVER OF 14-DAY STAY

The Motion requests the court to waive the 14 day stay imposed by Fed. R. Bankr. P. 6004(h). The Motion states with particularity that Wells Fargo's (holder of the second deed of trust) approval to accept \$8,420.13 in full satisfaction of its lien expires on May 12, 2014, and that after that date Wells Fargo's pay off amount would increase substantially. The Motion states sufficient grounds for the court to waive the 14 day stay for cause pursuant to Fed. R. Bankr. P. 6004(h).

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 Sell Property filed by Geoffrey Richards 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 Geoffrey Richards, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Gann Properties, LP or nominee ("Buyer"), the Property commonly known as 116 Bruton Lane, Woodland, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$262,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 129, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
4. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
5. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be split between the Trustee's agent, San Diego REO, and the buyer's agent, The Real Estate Group. The amount of \$9,170.00 is authorized to be paid to San Diego REO, and \$6,550.00 is authorized to be paid to The Real Estate Group.
7. The fourteen (14) day stay of enforcement imposed by Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

2. [11-39242-E-7](#) IVAN RAVLOV
SKS-1 Scott A. CoBen

MOTION TO EMPLOY GONZALES AND
SISTO, LLP AS ACCOUNTANT(S)
3-3-14 [[419](#)]

DISCHARGED 11-20-12

Tentative Ruling: The Motion to Employ 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.

The court's decision is to grant the Motion to Employ Gonzales and Sisto, LLP as Accountants.

Chapter 7 Trustee, Susan K. Smith, seeks to employ Gonzales and Sisto, LLP ("G&S") as accountants. The Trustee states that G&S will perform tax-related accounting, as well as income tax preparation in compliance with federal and state authorities. The Trustee further states that G&S has extensive experience in performing these types of services. The Trustee proposes to employ G&S for a flat fee of \$1,600.

The Declaration of Gene Gonzales, partner at G&S, states that he is a certified public accountant licensed to practice in California, and that he has performed a conflicts check which revealed that G&S does not have any connections with the Debtor, Trustee, Office of the United States Trustee, creditors, any of the Debtor's accountants, or any other person with an interest in this case. The Gonzales Declaration further states that Mr. Gonzales has reviewed the motion and that all factual statements therein are correct.

Pursuant to section 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, 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. The court approves the flat fee of \$1,600 subject to further review pursuant to 11 U.S.C. § 328(a). FN. 1. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under

the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

FN.1. There appears to be a typographical error in the Gonzales Declaration, it states that G&S has agreed to a flat fee of \$120. This is in contrast to the \$1,600 flat fee provided for in the motion. The court assumes that G&S is not in the business of working for proverbial peanuts, and that the \$1,600 flat fee is the correct amount. The parties shall appear at the hearing and clarify the proper fee amount.

Taking into account all of the relevant factors in connection with the employment and compensation of the accountants, considering the declaration demonstrating that Gonzales 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 G&S as accountants.

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 Gonzales and Sisto, LLP as accountants to perform tax-related accounting, as well as income tax preparation.

IT IS FURTHER ORDERED that compensation computed as a flat fee of \$1,600, is approved, subject to the provisions of 11 U.S.C. § 328(a). No compensation is permitted except upon court order following an application pursuant to 11 U.S.C. §§ 330-331, which may be made as part of the motion to approve the sale of the property.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by the accountants in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be

property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

3. [13-20051-E-7](#) **TYRONE BARBER** **MOTION TO EXTEND TIME**
 HSM-3 Cory A. Birnberg 3-24-14 [[217](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on March 24, 2014. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

Gary Farrar, the Chapter 7 Trustee ("Trustee") seeks an Order Extending Time to File Objections to the Debtors' Claims of Exemptions. The deadline to file objections to the Debtors' amended claims of exemptions is presently set for March 24, 2014. Trustee seeks to extend the deadline to object to the Debtors' amended claims of exemptions until May 23, 2014.

Trustee argues that cause exists for the requested extension because the Trustee requires additional time to investigate the Debtor's complex assets, liabilities, asset valuations and claims of exemptions. Trustee states that the Debtor has filed more than ten (10) schedule amendments, which the Trustee requires additional time to review. Of particular importance to the Trustee is the Debtor's ownership interest in the Tadyaw Beach Resort & Spa, in Tolosa, Leyte, Philippines (the "Resort"). The Debtor asserts that the Resort was completely destroyed by Super-Typhoon Haiyan in

late 2013, that the associated improvements have been ruined, and that the Resort property is subject to a building moratorium, enacted in the wake of the typhoon, which substantially reduces its value. The Debtor's amended Schedules C, filed December 9, 2013, lists the value of the Resort at \$0.00, the value of associated personal property at \$0.00, but claims exemptions in both assets, in the amount of \$0.00, pursuant to Cal. Code Civ. P. § 703.10(b)(1) and § 703.10(b)(5), and § 703.10(b)(6), respectively. Trustee states he is working to obtain an independent assessment of the Resort and related assets, but their location complicates the process. The Trustee is working to diligently evaluate all of the Debtor's claims of exemptions, and asserts that an extension of the deadline within which to object to the exemptions for approximately sixty (60) days is appropriate in light of the complexities this case presents.

OPPOSITION

Debtor Tyrone Barber opposes the motion stating he has provided an appraisal and photographs of the destroyed property to the Trustee as well as a letter from a Philippine lawyer. Debtor argues that the Trustee has had five months to investigate and that there is no reason to "drag this discharge out."

DISCUSSION

Pursuant to Federal Rule of Bankruptcy Procedure 4003(b)(1), the court may, for cause, extend the time to file an objection, if before the time to object expires, a party in interest files a request for an extension.

Here, the Trustee has filed the request before the time to file objections to exemptions has expired. This case was converted on November 23, 2013. The Debtor amended his schedules at least twice since the conversion of the case. Further, the Trustee provides cause exists for requesting the extension, as the Trustee is continuing to evaluate the Debtors' recently amended schedules and to evaluate the real property located in the Philippines. It appears the nature and location of the property to be valued poses a hardship on the Trustee. Debtor has not provided a sufficient rebuttal for the need for additional time to object to Debtors' amended claims of exemption.

Based on the foregoing, the court finds sufficient cause to grant the stipulation and extend the deadline to file objections to Debtors' amended claims of exemption to and including May 23, 2014.

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 filed by the Chapter 11 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the deadline for the Trustee to file objections to Debtors' amended claims of exemption is extended to and including May 23, 2014.

4. [13-35954-E-7](#) ICING ON THE CUPCAKE, MOTION FOR APPROVAL OF
SMR-1 LLC STIPULATION
Matthew R. Eason 3-27-14 [[102](#)]

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's Attorney, Chapter 7 Trustee, Office of the United States Trustee on March 27, 2014. By the court's calculation, 28 days' notice was provided. 21 days' notice is required.

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

The parties, including Debtor Icing on the Cupcake, LLC, through its attorney, Matthew Eason, Esq., the Chapter 7 Trustee, John R. Roberts and the Claimant, John Douglas McGilvray (Landlord), request for entry of an order approving the Stipulation filed as Exhibit "A" in support of the Motion as the Stipulation for Rejection of Lease Agreement and Voluntary Surrender of Possession of Premises. Dckt. No. 104.

The Stipulation provides that,

1. The Lease Agreement dated April 14, 2010, pursuant to which Debtor has occupied and conducted business operation at the premises located at 1121 Alhambra Boulevard, Sacramento, California, 95816, is hereby rejected by the Chapter 7 Trustee and abandoned to the debtor, and that the Debtor, through its counsel also rejects and abandons said Lease Agreement to the Claimant, Landlord, John Douglas McGilvray.
2. Possession of the subject premises located at 1121 Alhambra Boulevard, Sacramento, California, 95816, is hereby voluntarily surrendered to the Claimant, Landlord, John

Douglas McGilvray.

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). The Trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interest of the estate. *In re Walsh Construction*, 669 F.2d at 1328. The reasonableness of a compromise is determined by the particular circumstances of each case. *Id.*

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). FN.1.

FN.1. The court notes that this Motion seeks to have the court approve a stipulation and to abandon certain property. While Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure allow for a plaintiff to join multiple claims against a defendant in one complaint in an adversary proceeding, those rules are not applicable to contested matter in the bankruptcy case. Federal Rule of Bankruptcy Procedure 9014, which does not incorporate Rule 9018 for contested matters. The Movant has improperly attempted to join a motion to compromise with a motion to abandon.

As with the present Motion, the reason for not incorporating Rule 7018 into contested matters is in part based on the short notice period for motions and the substantive matters addressed by the bankruptcy court in motions. These include sales of property, disallowing claims, avoiding interests in real and personal property, confirming plans, and compromising rights of the estate - proceedings which in state court could consume years. In the bankruptcy court, such matters may well be determined on 28 days notice. Allowing parties to combine claims and create potentially confusing pleadings would not only be a prejudice to the parties, but put an unreasonable burden on the court in the compressed time frame of bankruptcy case law and motion practice.

However, the two requests for relief being so interrelated, the court will consider the motion.

The Stipulation calling for a rejection of the Lease Agreement, and to the Debtor relinquishing possession of the premises located at 1121 Alhambra Boulevard, Sacramento, California 95816 to the Landlord, appears warranted based on the Trustee's reasonable business judgment. All parties, including Debtor, Icing on the Cupcake, the Chapter 7 Trustee, and the Claimant Landlord have agreed to reject the Lease Agreement entered into by Debtor and Landlord. Debtor, which has defaulted on its rental payments, is giving up its possession of the property in which Landlord John Douglas McGilvray holds an ownership interest.

Based on the foregoing, the Stipulation is granted and the property is abandoned to the Debtor.

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

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

The Motion to Compromise filed by all parties 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 the Stipulation, 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 on March 27, 2014 (Docket Number 104).

5. [13-26159](#)-E-11 IVAN RAVLOV
SAC-26 Scott A. CoBen

MOTION FOR COMPENSATION FOR
SCOTT A. COBEN, DEBTOR'S
ATTORNEY
3-25-14 [[329](#)]

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 Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 25, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Final Ruling: The Interim Application for 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 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 Interim Application for Fees is granted. No appearance required.

FEES REQUESTED

Scott CoBen, Counsel for the Debtor-in-Possession ("Counsel"), makes an Interim Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period May 3, 2013 through April 24, 2014. The order of the court approving employment of counsel was entered on May 3, 2013. Dckt. No. 8.

Counsel has received from Debtor-in-Possession, a \$10,963.95 retainer for attorney fees. On May 2, 2013, Counsel paid himself from trust \$7,538.00 for pre filing attorney fees and costs and the court filing fee. This leaves a balance in trust of \$3,425.95. There have been no orders authorizing interim compensation in this case.

No agreement has been made by Counsel or his employees, directly or indirectly, and no understanding exists for a division of fees requested with any other person or persons. Counsel certifies that he has not entered into any agreements, written or oral, express or implied, with any other party-in-interest in this case, for the purpose of fixing the amount of any fee or compensation to be paid from the assets of the estate.

Description of Services for Which Fees Are Requested

Administration: Counsel spent 8.1 hours in this category for total

fees of \$2,025.00. Counsel obtained court permission to use cash collateral, and obtained court approval to pay one creditor cash collateral payments and secured vote for plan. Counsel also negotiated attorney fees for one over secured creditor and secured vote for plan. Counsel reviewed monthly operating reports.

Motion to Value Collateral: Counsel spent 21.5 hours for total fees of \$5,375.00 on this task. Because this case involved a number of mostly undersecured residential rental properties, Counsel states that a significant amount of time was devoted to prosecuting and settling multiple motions to value the claims of holders of unsecured claims. The motions to value the secured claims were granted by default or by some type of compromise.

Plan Confirmation: Counsel spent 54.1 hours for total fees of \$13,525.00 on this task. Counsel prepared a first amended plan and disclosure statement which resulted in the filing of objections by multiple creditors. The motion to approve the disclosure statement was continued multiple times to encourage creditors to negotiate agreed upon plan treatment. Counsel correctly assumed that creditors would not ignore Debtor's proposals if there was a pending hearing. After securing stipulations for agreed upon plan treatment by all objecting creditors except one, the Debtor-in-Possession filed an amended plan incorporating all of the agreed upon plan treatment. The one creditor that had been objecting to the plan, sold the loan and then did not seriously opposed confirmation. Ultimately the plan was confirmed.

IDI and Meeting of Creditors: 3 hours of paralegal work and 3.9 attorney 3.9 hours were expended on this task. Counsel's paralegal assembled all of the documentation required for the IDI. Counsel and Debtor then attended the IDI and meeting of creditors.

Fee Application: Counsel prepared a first and final fee application in 4.5 hours for a total of \$1,125.00 11 in fees.

DISCUSSION

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

(D) whether the services were performed within a

reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

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

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

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

- (a) Is the burden of the probable cost of legal 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 Counsel's services rendered successful confirmation of the Chapter 11 Plan, and approval of the Disclosure Statement. Debtor-in-Possession has achieved its stated goal of valuing the secured portion of the mortgages secured by Debtors' residential

rental properties, and in drafting the plan to repay these debts over a period of time. All quarterly fees have been paid and all monthly operating reports have been filed. The court finds that Counsel's services were beneficial to the estate and reasonable.

FEES ALLOWED

The hourly rates for the fees billed in this case are \$250.00/hour for Counsel for 92.10 hours, for a total of \$23,025.00 charged for Counsel's services. Counsel's paralegal, Chandra Lau, spent 3.00 hours on this case at a rate of \$125/hour, for an amount of \$375.00 charged for this case. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$23,400.00 are approved 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 11 case.

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

Attorneys' Fees	\$23,400.00
Costs and Expenses	\$ 0.00

For a total interim allowance of \$23,400.00 in Attorneys' Fees and Costs in this 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 Allowance of Fees and Expenses filed by Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Scott CoBen, Counsel for the Estate
Applicant's Fees Allowed in the amount of \$23,400.00
Applicants Expenses Allowed in the amount of \$0.00,

IT IS FURTHER ORDERED that this is an interim award of fees pursuant to 11 U.S.C. § 331, which are subject to final review and allowance pursuant to 11 U.S.C. § 330, and the Trustee is authorized to pay such fees from funds of the Estate as they are available.

IT IS FURTHER ORDERED that this is a interim allowance of fees and the debtor in possession is authorized to pay such fees from funds of the Estate as they are able to be paid in the ordinary course of business and from such funds that are unencumbered or are cash collateral

authorized to be used pursuant to a cash collateral stipulation or order.

6. 13-21878-E-7 THOMAS EATON MOTION TO COMPEL ABANDONMENT
DEF-2 David Foyil 4-4-14 [[104](#)]

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on April 4, 2014. By the court's calculation, 20 days' notice was provided. 28 days' notice is required. That requirement was not met.

Tentative Ruling: The Motion to Compel Abandonment was not properly set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 6007(b) and Local Bankruptcy Rule 9014-1(f)(1). The Notice of Hearing indicates that this Motion was served pursuant to Local Bankruptcy Rule 9014(f)(1), and advises potential respondents to serve and file with the court opposition at least fourteen (14) days preceding the date of the hearing. Local Bankruptcy Rule 9014-1(f)(1), however, that the moving party file and serve the motion at least twenty-eight (28) days prior to the hearing date. This Motion was served on 20 days' notice before the hearing.

The court's tentative decision is to deny Motion to Compel Abandonment without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

INCORRECT NOTICE OF HEARING

In his notice of hearing, Debtor advises potential respondents that if opposition is filed, respondents must serve and file opposition with the Clerk of the Court not less than fourteen calendar days preceding the date of the hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1). Local Bankruptcy Rule 9014-1(f)(1), however, requires that at least twenty-eight (28) days' notice of hearing be given to all parties, before parties are required to submit written opposition in order to respond. This Motion was set on 20 days' notice, in violation of the requirements of Local Bankruptcy Rule 9014-1(f)(1). Based on this procedural defect, the Motion is denied without prejudice.

If the court decides to shorten time for notice of the Motion, or waive the defect in service, the court will issue the following alternative ruling:

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C.

§ 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

Here, Debtor seeks an order compelling the Chapter 7 Trustee to abandon inventory used by Debtor in his business. The Debtor has listed his dental equipment and office supplies on Schedule B, valued at \$35,000. Debtor identifies the following as his business assets: four operating chairs, four operating lights, four ex-ray units, one autoclave, one ex-ray processor, four computers, two cabinets, two carts, one lathe polisher, four stools, various dental hand tools, drills, four dental units, one couch, four office chairs, two printers, one typewriter, one copy machine, miscellaneous office supplies, a patient list and good will.

The Debtor has claimed all of his business assets as exempt on Schedule C. Debtor states that there is no value in the assets to the creditors in the exempted dental equipment and office supplies. The debtor asks the court to order the trustee to abandon the dental equipment and office supplies associated with his business. Debtor states that the value of the business and its related assets have not been disputed. After the Debtor's claim of exemption, there is no value reasonably subject to administration by the bankruptcy trustee for distribution to any creditors.

Since the negative financial consequences of the Estate retaining the property, the court determines that the property is of inconsequential value and benefit to the Estate, and orders the Trustee to abandon the property.

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 Abandon Property 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 Compel Abandonment is granted and that the personal property identified as:

1. Four operating chairs;
2. Four operating lights;
3. Four ex ray units;
4. One autoclave;
5. One ex ray processor;
6. Four computers;
7. Two cabinets;

8. Two carts;
9. One lathe polisher;
10. Four stools;
11. Various dental tools;
12. Drills;
13. Four dental units;
14. One couch;
15. Four office chairs;
16. Two printers;
17. One typewriter;
18. One copy machine;
19. Miscellaneous office supplies;
20. A patient list; and
21. Good will of business.

on Schedule B by the Debtor are abandoned to Thomas William Eaton, the Debtor by this order, with no further act of the Trustee required.