UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

May 12, 2016 at 10:30 a.m.

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1. 15-90811-E-7 ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS
15-9063 INDIAN VILLAGE ESTATES, LLC ET AL V. GOLD STRIKE HEIGHTS

MOTION TO DISMISS ADVERSARY PROCEEDING
4-6-16 [25]

APPEARANCE OF TRUSTEE'S COUNSEL, CLIFFORD W. STEVENS AND JOSHUA P. HUNSUCKER, IS REQUIRED

NO TELEPHONIC APPEARANCES PERMITTED

No Tentative Ruling: The Motion to Dismiss Adversary Proceeding 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 Plaintiff's Attorney on April 6, 2016. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding 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 Adversary Processing is XXXXX.

Gary Farrar, the Chapter 7 Trustee ("Defendant-Trustee") filed the instant Motion to Dismiss Adversary Proceeding on April 6, 2016. Dckt. 25. The Motion states with particularity (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007), the following grounds upon which the requested relief is based:

> Pursuant to Federal Rule of Civil Procedure 12(b)(6), as incorporated by Federal Rule of Bankruptcy Procedure 7012(b), Gary Farrar, the Chapter7 Trustee for Gold Strike Height Homeowners Association ("Trustee"), herby [sic] moves the Court for an order dismissing Plaintiffs INDIAN VILLAGE ESTATES, LLC and DON LEE's Complaint if favor of Trustee.
>
> The motion is based on this Motion, the Notice of Motion, the Memorandum of Points and Authorities filed in support thereof, the Request of Judicial Notice filed in support thereof, and the complete files and records in this action and on any such other matters as may be presented or submitted at or before the time of hearing.
>
> Summary of Evidence:
>
> 1. Debtor's filed the Voluntary Petition in this Court on August 20, 2015 (Case No. 15-90811).
>
> 2. Plaintiffs filed the Complaint in state court (Case No. 15CV41092) on August 24, 2015.
>
> Relief Requested:
>
> Pursuant to Federal Rule of Civil Procedure 12(b)(6), as incorporated by Federal Rule of Bankruptcy Procedure 7012(b), Trustee respectfully requests that the Court enter an order dismissing Plaintiffs INDIAN VILLAGE ESTATES, LLC and DON LEE's Complaint for failure to state a claim upon which relief may be granted.

Motion, Dckt. 25.

Failure to State with Particularity

In federal court, Federal Rule of Civil Procedure 7 and Federal Rule of Bankruptcy Procedure 7007 govern law and motion practice in federal court. Rule 7(b) specifically requires,

> Rule 7. Pleadings Allowed; Form of Motions and Other Papers
>
> (b) Motions and Other Papers.
>
> (1) In General. A request for a court order must be made by motion. The motion must:

> (A) be in writing unless made during a hearing or trial;
>
> (B) **state with particularity the grounds for seeking the order**; and
>
> (C) state the relief sought.

Fed. R. Civ. P. 7(b) [emphasis added].

Plaintiff's Motion fails to state grounds upon which the relief is based, but merely summarizes the general facts around the case. This Motion fails to meet the pleading requirements of Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007. First, the Motion's only ground for relief is based on the dates. The Motion does not specifically plead how, pursuant to Rule 12(b)(6), the Complaint does not state a claim. This is not sufficient under the requirements of the Rules. While the Defendant does provide a Memorandum of Points and Authorities, in which various grounds may or may not be woven between citations, quotations, arguments, and speculation, the Motion itself does not state with particularity the grounds for relief.

In essence, the Defendant is requesting the court to mine the docket and Defendant's filing to piecemeal a proper motion under the Rules. Specifically, This is not the court's responsibility nor role.

Furthermore, the Motion states that it will be based upon "this Motion, the Notice of Motion, the Memorandum of Points and Authorities filed in support thereof, the Request of Judicial Notice filed in support thereof, and the complete files and records in this action and on any such other matters as may be presented or submitted at or before the time of hearing." This, however, is not permitted. The Defendant is not be able to present further evidence at the time of the hearing in support. As required by the rules, all evidence in support of the instant Motion should be filed in conjunction with the Motion. Any evidence presented at the time of hearing would be improper and would not be considered. In fact, the broad statement made by Defendant-Trustee would require the court to not only "mine" through the instant Adversary Proceeding, but also the underlying bankruptcy and an undisclosed number of other actions, whether federal or state, to compile what the Defendant-Trustee believes is a basis under Rule 12(b)(6) that does not require the moving party to particularly and specifically plead in the Motion.

Mothorities

Taking a look at the Defendant-Trustee's Memorandum of Points and Authority, it appears to be akin to a combined motion and points and authorities in which the grounds upon which the motion is based are buried in detailed citations, quotations, legal arguments, and factual arguments (the pleading being a "Mothorities"). When presented with these Mothorities, the court and Plaintiff are put to the challenge of de-constructing the Mothorities, divining what are the actual grounds upon which the relief is requested (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007), restate those grounds, evaluate those grounds, consider those grounds in light of Fed. R. Bankr. P. 9011, and then rule on those grounds for the Defendant. The court

has declined the opportunity to provide those services to a movant in other cases and adversary proceedings, and has required debtors, plaintiffs, defendants, and creditors to provide those services for the moving party.

The court has also observed that the more complex the Mothorities in which the grounds are hidden, the more likely it is that no proper grounds exist. Rather, the moving party is attempting to beguile the court and other party.

In such situations, the court routinely denies the motion without prejudice and without hearing. Law and motion practice in federal court, and especially in bankruptcy court, is not a treasure hunt process by which a moving party makes it unnecessarily difficult for the court and other parties to see and understand the particular grounds (the basic allegations) upon which the relief is based. The court does not provide a differential application of the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules as between creditors and debtors, plaintiff and defendants, or case and adversary proceedings. The rules are simple and uniformly applied.

However, in reviewing the Mothorities, the Defendant-Trustee states the grounds with particularity for the instant Rule 12(b)(6) Motion. Specifically, the Mothorities states:

> Debtor filed the Voluntary Petition for bankruptcy on August 20, 2015 (Case No. 15-90811). Plaintiffs filed the Complaint in state court (Case No. 15CV41902) on August 24, 2015. The file endorsed date disclosed on the face of the Complaint operates to bar Plaintiffs's claims because they are void and cannot be cured. [citation]. As a matter of law Plaintiffs cannot state a claim upon which relief can be granted because filing the Complaint on August 24, 2015 is in violation of the automatic stay, which began on August 20, 2015, when Debtor filed the Voluntary Petition to initiate the bankruptcy case.

Dckt. 27.

APPLICABLE LAW

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that complaints contain a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. Fed. R. Civ. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.*, citing to 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235-36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action").

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether a motion to dismiss is to be

granted should be resolved in favor of the pleader. *Pond v. General Electric Co.*, 256 F.2d 824, 826-27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Under the Supreme Court's formulation of Rule 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal, 129* S.Ct 1937, 1954 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1964-66 (2007). ("[A] plaintiff's obligation to provide 'grounds' of his 'entitle[ment]' to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.").

In ruling on a 12(b)(6) motion to dismiss, the Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court required to "accept legal conclusions cast in the form of factual allegations if those conclusions cannot be reasonably drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

Conduct of Plaintiffs

It appears uncontradicted that the state court complaint was filed after the commencement of the bankruptcy case. Given the close proximity in time, the court will infer that the Plaintiffs were not aware of the bankruptcy case when the state court complaint was filed. However, it is clear from the record that the Plaintiffs, and Plaintiff Indian Village Estates, LLC's counsel have known of this bankruptcy case since early September 2015 when each filed proofs of claims in the bankruptcy case (Bankr. E.D. Cal. 15-90811, Proofs of Claim Nos. 1, 2, and 3).

Though aware of the bankruptcy case and the automatic stay, no action has been taken by either Plaintiff to annul the stay or dismiss without prejudice the void complaint. An act taken in violation of the automatic stay is void, not merely voidable. *Far Out Productions, Inc. v. Oskar et al.*, 247 F.3d 986, 995 (9th Cir. 2001); *Schwartz v. United States of America (In re Schwartz)*,954 F.2d 569, 571 (9th Cir. 1992). When a creditor has notice of a bankruptcy case, it is the creditor's burden to determine the extent of the automatic stay and seek such relief as is appropriate. COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 362.02; *Carter v. Buskirk (In re Carter)*, 691 F.2d 390 (8th Cir. 1982); *Hillis Motors v. Hawaii Automobile Dealers' Association (In re Hillis Motors)*, 997 F.2d 581, 586 (9th Cir. 1993) ("Where through an action an individual or entity would exercise control over property of the estate, that party must obtain advance relief from the automatic stay from the bankruptcy court. *Carroll v. Tri-Growth Centre City Ltd. (In re Carroll)*, 903 F.2d 1266, 1270-71 (9th Cir. 1990).")

Disturbingly, though well aware of the stay and violation thereof, neither Plaintiff has acted to remedy the violation.

DISCUSSION

At the hearing, **xxxxx**

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 Adversary Proceeding filed by Defendant-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 **xxxxxx**.

2. 15-90811-E-7 DHL-4 — ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS — Peter G. Macaluso — OBJECTION TO CLAIM OF COMMUNITY ASSESSMENT RECOVERY SERVICES, CLAIM NUMBER 10 — 3-17-16 [107]

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, Debtor, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, and Office of the United States Trustee on March 16, 2016. By the court's calculation, 57 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 10 of Community Assessment Recovery Services is overruled without prejudice.

Don Lee, the Creditor ("Objector") requests that the court disallow the claim of Community Assessment Recovery Services ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $81,732.42. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is February 1, 2016. Notice of Bankruptcy Filing and Deadlines, Dckt. 35.

Improper Service

The only address served for Community Assessment Recovery Services was a post office box. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

On this ground alone the Objection is overruled without prejudice.

Lack of Authorization to Raise Objection

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).

This is not the first time the court has addressed the "intermeddling" of the Creditor Don Lee. On the Creditor's prior Objection to Claim of AFCO, the court stated the following in the civil minutes:

> The objecting party is a creditor, not the Chapter 7 Trustee. 11 U.S.C. § 502(a) provides that a "party in interest" may file an objection to a claim. However, to provide for an orderly administration of bankruptcy cases, it is the Chapter 7 Trustee who has the initial right to file an objection to a claim. A creditor shall seek leave to file an objection to a claim, if the Chapter 7 trustee elects or fails to object. In re Thompson, 965 F.2d 1136, 1147 (Cir. 1st 1992); In re Dominelli, 820 F.2d 313, 317(9th Cir. 1987); and Collier on Bankruptcy, 16th Edition, ¶ 502.02[d], which states,
>
> > "It has been held, however, that creditors have an 'indirect right' to object to the claim of another creditor. The Court of Appeals for the First Circuit has stated that, as a general rule, the chapter 7 trustee alone may interpose objections to proofs of claim unless the trustee refuses to act and the bankruptcy court permits the creditor to act on behalf of the trustee. Other courts have followed this lead. 22 In addition, in

> instances in which the rights of the creditor are directly implicated by a claim, the creditor should be accorded standing to object. For example, in *In re Dominelli*, the court recognized that although the trustee normally represents the interests of all creditors in objecting to claims, on occasion the interest of a secured creditor may diverge from that of other creditors and may be effectively represented only by the secured creditor.
>
> Yet apart from the line of cases permitting some indirect mode of contest, the right of individual creditors to object to the claim of another creditor is restricted. While a creditor may object before a trustee is qualified or when there is no trustee, once the trustee has been duly appointed it is the duty of the trustee to examine and take action concerning the disallowance of claims."

Here, it is another creditor, Don Lee, who has stepped up and filed the objection. There is a long history of litigation by Mr. Lee with the Debtor. The court has several adversary proceedings pending. In one, in which Mr. Lee has an attorney representing him, the Trustee has informed the court (in a adversary proceeding status report) that the attorney has represented he will be dismissing part of the case and Mr. Lee will proceed to litigate the matter on his own. The court has not allowed for the withdrawal of any counsel in that adversary proceeding.

The court has not granted Mr. Lee authorization to unilaterally proceed with an objection to the claim. There has been no showing that the Chapter 7 Trustee does not intend to review the claims and file objections as appropriate.

This primary objection standing for the Trustee is necessary for the orderly, and proper, administration of the case. The Trustee is not to be tugged and pulled by creditors from objection to objection. Individual creditors, who may, or may not, have the ability to properly object, may not preemptive create claim objections that may have a final, preclusive ruling on the Trustee and rest of the creditors if that objecting creditor loses.

Dckt. 111.

The court recognizes that the hearing on the previous Objection to Claim was on the same day that the instant Objection was filed. The court presumes that at the time of filing, the Creditor Don Lee did not have the opportunity to review the ruling prior to serving the instant Objection.

However, as before, this is grounds to overrule, without prejudice, the objection to claim.

Unsecured Claim

Lastly, reviewing the Proof of Claim No. 10 shows that the Creditor is asserting the claim as an unsecured claim. On Schedule F, the Debtor lists Creditor as having an unsecured claim which is not listed as contingent, disputed, or unliquidated.

When Debtor listed this claim on Schedule F and did not state it was disputed, contingent or unliquidated, the claim is "deemed allowed. 11 U.S.C. § 1111(a) provides:

> (a) A proof of claim or interest is deemed filed under section 501 of this title for any claim or interest that appears in the schedules filed under section 521(a)(1) or 1106(a)(2) of this title, except a claim or interest that is scheduled as disputed, contingent, or unliquidated.

Particularly, § 1111(a) dispenses the necessity for every creditor to file a proof of claim. Rather if they are listed in the schedules, they are deemed as allowed and filed. Therefore, pursuant to 11 U.S.C. § 1111(a), the claim was deemed as filed under 11 U.S.C. § 501.

Objector incorrectly bases the Objection on the fact that the Creditor filed the proof of claim after the deadline. This is not correct. As discussed supra, the Debtor listing the Creditor on Schedule F in effect deemed the claim as timely filed. At "worst," the filed Proof of Claim works to amend the deemed filed and allowed claim as stated by Debtor in the Schedules.

Failure to Dismiss Invalid Objection

Don Lee, the objecting party, has been and is the subject of substantial litigation in this case – litigation filed and prosecuted by Don Lee. The court has given Mr. Lee the "benefit of the doubt" since he is choosing to represent himself in *pro se*. As the court addressed in open court at a recent hearing, Mr. Lee's continuing conduct is causing the court to doubt whether such benefit of the doubt is warranted.

On March 17, 2016, the court conducted a hearing overruling another of Mr. Lee's objection to a claim of a creditor. The court extensively discussed the standing issue, both in writing in the tentative ruling, final ruling, and in open court with Mr. Lee. On the very same day as that hearing, Mr. Lee filed the present Objection to Claim. Even if Mr. Lee filed it before coming to court that day, presumably he read the court's tentative ruling posted the day before.

Even if Mr. Lee read the tentative ruling in front of the courtroom, after having filed this Objection, he was well aware that such an Objection was not supported by the law. Mr. Lee has had 56 days from the March 17, 2016 hearing to this May 12, 2016 hearing to dismiss this Objection that he clearly knows is improper and not supported by the law. He has elected not to dismiss it, but rather have it presented to the court.

The court's doubt as to Mr. Lee's credibility continues to grow. There is no doubt that he clearly understood at the March 17, 2016 hearing that he had no standing to object to another creditor's claim – absent obtaining authorization from the court. It appears that the only plausible inference to draw is that Mr. Lee hoped to sneak this by the court or cause the Chapter 7 Trustee and counsel to waste time in dealing with Mr. Lee's filings. Possibly, Mr. Lee has the erroneous belief that a Chapter 7 Trustee capitulates to a creditor who is "difficult" to deal with. That is not the case with the Office of the United States Trustee and the trustee appointed by the U.S. Trustee in the Eastern District of California.

Therefore, as discussed supra, the Objection is overruled 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 Objection to Claim of Community Assessment Recovery Services, Creditor filed in this case by Don Lee, 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 objection to Proof of Claim Number 10 of Community Assessment Recovery Services is overruled without prejudice to the rights of the Trustee or other party in interest (other than Don Lee) to object to the claim of Community Assessment Recovery Services..

3. 13-91315-E-7 APPLEGATE JOHNSTON, INC.
WFH-26 George C. Hollister

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH SECURITY NATIONAL INSURANCE COMPANY
4-12-16 [601]

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's Attorney, parties requesting special notice, creditors, and Office of the United States Trustee on April 12, 2016. By the court's calculation, 30 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.

Michael D. McGranahan, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Security National Insurance Company ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising from Adversary Proceeding No. 15-9051 which seeks to avoid and recover pre-petition transfers of the Debtor to Settlor in the amount of $56,650.52 pursuant to 11 U.S.C. §§ 547 and 550.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 604):

A. Trustee and Settlor agree to resolve the litigation and all disputes between them, except the excluded items, for the sum of $15,000.00.

B. Within ten days of the execution of this agreement, Settlor will cause to be delivered to the Trustee a wire transfer in the amount of $15,000.00 in full and complete settlement of the claim in the litigation.

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

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

E. The parties jointly and severally release from any and all claims, demands, express or implied contract rights, actions, causes of action, charges, debts, demands, damages, costs, attorneys' fees and/or expenses of any kind, nature and character, at law or in equity, accrued or inchoate, arising under any federal, state, or any other law, whether known and/or unknown, filed or otherwise, sounding in tort, contract, or otherwise, including, but not limited to foreseen or unforeseen, disclosed or undisclosed, anticipated or unanticipated, and expected or unexpected claims, damages, losses, costs, expenses and liabilities and the consequences thereof which either party now has or may hereafter acquire for any reason whatsoever, arising out, connected with or incidental to, or in any way related to the litigation up to and including the effective date of this agreement.

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 $15,000.00 in satisfaction of the estate's claim for recovery of the property, with an asserted value of $56,650.52, from Settlor. Movant asserts that the property can be recovered for the estate as a preference. This proposed settlement allows Movant to recover for the estate $15,000.00 without further cost or expense and is 26.5% of the maximum amount of the claim identified by Movant.

Probability of Success

The Trustee asserts the Settlor is asserting the ordinary course of business defense of 11 U.S.C. § 547. The Trustee argues that while the Settlor has the burden of proof, the Trustee notes that there is a risk inherent in any litigation. In analyzing the risk, the Trustee argues that the recovery of 26.5% of the amount demanded without the need for further litigation makes the factor weigh in favor of the settlement.

Difficulties in Collection

The Trustee does not believe there are any impediments to collection of any judgment obtained against the Settlor.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. Formal discovery would be required, with depositions of the Settlor and document production requests will be required. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

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

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the

creditors and the Estate. The proposed settlement allows for the Trustee and the estate to recover $15,000.00, 26.5%, of the claim asserts without the need of litigation. In light of the possible defense of the Settlor, the nature of the claim, and the terms of the settlement, the settlement and recovery of the estate is in the best interest of all parties. The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael D. McGranahan, the Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Compromise between Movant and Security National Insurance Company ("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 604).

4. 13-91315-E-7 APPLEGATE JOHNSTON, INC.
WFH-27 George C. Hollister

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH AJR DOOR SERVICE, INC.
4-12-16 [606]

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's Attorney, parties requesting special notice, creditors, and Office of the United States Trustee on April 12, 2016. By the court's calculation, 30 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.

Michael D. McGranahan, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with AJR Door Service ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising from Adversary Proceeding No. 15-9027 which seeks to avoid and recover pre-petition transfers of the Debtor to Settlor in the amount of $31,950.00 pursuant to 11 U.S.C. §§ 547 and 550.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 609):

A. Trustee and Settlor agree to resolve the litigation and all disputes between them, except the excluded items, for the sum of $10,000.00.

B. The Settlor shall pay the settlement amount in the following installments:

1. $800.00 the first of every month from April 1, 2016 through February 1, 2017.

2. $1,200.00 on March 1, 2017

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

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

E. The parties jointly and severally release from any and all claims, demands, express or implied contract rights, actions, causes of action, charges, debts, demands, damages, costs, attorneys' fees and/or expenses of any kind, nature and character, at law or in equity, accrued or inchoate, arising under any federal, state, or any other law, whether known and/or unknown, filed or otherwise, sounding in tort, contract, or otherwise, including, but not limited to foreseen or unforeseen, disclosed or undisclosed, anticipated or unanticipated, and expected or unexpected claims, damages, losses, costs, expenses and liabilities and the consequences thereof which either party now has or may hereafter acquire for any reason whatsoever, arising out, connected with or incidental to, or in any way related to the litigation up to and including the effective date of this agreement.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Under the Settlement Movant shall recover $10,000.00 in satisfaction of the estate's claim for recovery of the property, with an asserted value of $31,950.00, from Settlor. Movant asserts that the property can be recovered for the estate as a preference. This proposed settlement allows Movant to recover for the estate $15,000.00 without further cost or expense and is 31.3% of the maximum amount of the claim identified by Movant.

Probability of Success

The Trustee asserts the Settlor is asserting the ordinary course of business defense of 11 U.S.C. § 547. The Trustee argues that while the Settlor has the burden of proof, the Trustee notes that there is a risk inherent in any litigation. In analyzing the risk, the Trustee argues that the recovery of 31.3% of the amount demanded without the need for further litigation makes the factor weigh in favor of the settlement.

Difficulties in Collection

The Trustee does not believe there are any impediments to collection of any judgment obtained against the Settlor.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. Formal discovery would be required, with depositions of the Settlor and document production requests will be required. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

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

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The proposed settlement allows for the Trustee and the estate to recover $10,000.00, 31.3%, of the claim asserts without the need of litigation. In light of the possible defense of the Settlor, the nature of the claim, and the terms of the settlement, the settlement and recovery of the estate is in the best interest of all parties. The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael D. McGranahan, the Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Compromise between Movant and AJR Door Service, Inc. ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Docket Number 609).

5. 11-93722-E-7 KENNETH/CYNTHIA SEAVER — MOTION TO AVOID LIEN OF AMERICAN EXPRESS CENTURION BANK
Pro Se — 4-11-16 [32]

REOPENED: 3/21/16

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 American Express Centurion Bank and Chapter 7 Trustee on April 11, 2016. By the court's calculation, 31 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 denied without prejudice.

This Motion requests an order avoiding the judicial lien of American Express ("Creditor") against property of Kenneth and Cynthia Seaver ("Debtor"), in *pro se*, seeks an order of "avoidance of a judgment lien that has attached to a specific property described herein that Debtors are attempting to sell." Dckt. 32. In the Motion, Debtor alleges:

a. Subject property is described as follows:

i. Street address: 320 Rivergate Drive, Oakdale, CA 95361

ii. Legal description: The Vineyard No. 3, Lot 023 of

Tract Map 04M046, City of Oakdale, Stanislaus County, California, as per map recorded in Book 063, page 066 in the Office of the Recorder in said county. (Tract Map 04M046, Book 063, Page 066, Lot 023.)

b. Debtors acquired title to subject property through a Deed in Lieu of Foreclosure executed by their daughter, Tracy J. Grady, in November, 2015. This Deed was recorded on January 8, 2016. Debtors transferred title to a trust of which Debtors are Co-Trustees on January 12, 2016.

c. Debtors contacted a real estate agent in January, 2016 to provide market analysis and provide a preliminary title report. The report showed an abstract of judgment described as follows:

i. Amount: $6,402.87

ii. Debtor: Cynthia Seaver, an individual

iii. Creditor: American Express Centurion Bank

iv. Date entered: March 1, 2011

v. County: Stanislaus

vi. Court: Superior Court

vii. Case No.: 660041

viii. Recording Date: June 16, 2011

ix. Recording No.: 2011-0050113-00 of Official Records

d. Title company that performed the title report has requested an order from the appropriate court to void this particular lien.

e. 11 U.S.C. § 524(a)(3) states provides that creditors are enjoined from attempting to recover from property of the Debtor acquired after the bankruptcy for a debt which was discharged.

f. Without an underlying obligation, the creditor is unable to enforce an abstract of judgment. However, no mechanism exists to expunge the abstract of judgment from official records “in toto”, or in and of itself. With an abstract of judgment on official records, it will automatically attach to any property acquired by debtors even though it is not enforceable in the present case against subject property. The problem for the title company is that it sees a potential controversy over the amount of the abstract of judgment, and will require a court order to resolve the matter before it will disburse the amount to any party out of escrow.

g. Debtors therefore respectfully request that the court issue an order to avoid this judgment lien as it applies and is attached to the property described herein.

Dckt. 32.

MOTION DOES NOT SEEK RELIEF WHICH MAY BE GRANTED PURSUANT TO 11 U.S.C. § 522(f)

The Motion seeks to have the court avoid and remove the judgment lien as void, in and of itself, and not avoid it as to any specific property. The Bankruptcy Code provides for the avoiding of a judgment lien to the extent it impairs and exemption in property of the Debtor.

(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is–

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5);...

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of–

(I) the lien;
(ii) all other liens on the property; and
(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

11 U.S.C. § 522(f).

The judgment lien may be avoided only to the extent that it impairs an exemption in exempt property. Debtor does not allege any exemption is impaired, but argues that the lien is void, thus the abstract of judgment should be removed (apparently from the real property records).

The judgment lien may not be avoided to the extent it encumbers non-exempt property or does not impair the exemption. COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 522.11[2].

Here, Debtor does not assert that the judgment lien impairs an exemption.

Application of Discharge Injunction

The effect of a bankruptcy discharge includes the following:

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

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

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

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

While rendering the judgment "void" as a determination of personal liability, it does not void the judgment as it may apply to any liens or right to enforce the judgment against property. Johnson v. Home State Bank, 501 U.S. 78, 82-82 (1991); COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 514.02[1]. The discharge also enjoins against attempting to enforce the discharged judgment against the debtor personally. However, this does not render the lien, to the extent it exists as of the filing of the bankruptcy case void.

Ownership Interest of Debtor

Debtor's state that they received title to the subject property by a deed in lieu of foreclosure executed by their daughter in November 2015. Though the deed in lieu of foreclosure is stated to have been executed in November 2015, the Motion states that it was not record until January 2016.

No copy of this deed is provided in support of the Motion. A deed in lieu of foreclose is a reference to a deed which is issued by the trustor or mortgagor to the lender, transferring title to real property collateral without requiring the lender to go through a nonjudicial or judicial foreclosure sale. MILLER AND STARR CALIFORNIA REAL ESTATE 4TH, § 13:55, Deed in Lieu of Foreclosure.

No loan or security interest for any obligation of Debtor's daughter to Debtor is listed on Schedule B. Dckt. 1 at 23-25. Debtor having filed bankruptcy in 2011, it is possible that they may have loaned money post-petition to their daughter and were given a deed of trust to secure that obligation.

No Lien Exists to be Avoided

Debtor, at the urging of the unnamed title company, again is back before the court asking for a "comfort order" avoiding a judgment lien for property of Debtor which is purported not to have been owned prior to the commencement of the bankruptcy case and the pre-petition judgment lien of Creditor could not have attached to the property pre-petition.

The Bankruptcy Code, by operation of federal law, voids the state court judgment to the extent that it is a determination of personal liability of a debtor who receives a discharge. 11 U.S.C. § 524(a)(1). As discussed by the Bankruptcy Appellate Panel in *Lone Star Security & Video v. Gurrola (In re Gurrola)*, 328 B.R. 158, 163 (B.A.P. 9th Cir. 2005), interpreting a statute begins with the language of the statute. See United Savings Association of Texas v. Timbers of Inwood Forest Associates, LTD., 484 U.S. 365, 371 (1988), (quoting *Hartford Underwriters Insurance Company v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000) ("we begin with the understanding that Congress 'says in a statute what it means and means in a statute what it says there,....;'" *United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241, 103 L. Ed. 2d 290, 109 S. Ct. 1026 (1989)* ("when 'the statute's language is plain, 'the sole function of the courts'' -- at least where the disposition required by the text is not absurd –''is to enforce it according to its terms.''"

Addressing this provision voiding the pre-petition judgment, as to personal liability of a debtor, the Bankruptcy Appellate Panel stated:

> "As a matter of 'plain English,' the language of § 524(a)(1), although circular with respect to the irrelevant issue of which debts are discharged (Lone Star having conceded the point), is both unambiguous and absolute as to questions of effect, time, and waiver.
>
> The status of a judgment as 'void' (which replaced the 1970 term "null and void") implies that it is a judgment that may be disregarded as a nullity and cannot be enforced.
>
> The phrase 'at any time obtained' (which replaced the 1970 term 'theretofore or thereafter obtained') plainly means that judgments voided by the discharge include judgments obtained before, during, and after the bankruptcy."

Lone Star Sec. & Video, Inc. v. Gurrola, 328 at 164.

In addressing the term "void," the Supreme Court instructs, "A void judgment is a legal nullity. See Black's Law Dictionary 1822 (3d ed.1933); see also id., at 1709 (9th ed.2009)." *United Student Aid Funds, Inc. v. Espinosa*, 559, U.S. 260, 270 (2010).

In connection with the predecessor "stay" to the discharge injunction, violations of the automatic stay (11 U.S.C. § 362(a)) are void, not merely voidable, and of no force and effect. " As noted above in our discussion of the federal Bankruptcy Code issue, transfers in violation of an automatic stay under section 362(a) are void: The property interests remain the same as they would have been if no transfer had been attempted. See *Schwartz*, 954 F.2d at 571." *40235 Wash. St. Corp. v. Lusardi*, 329 F.3d 1076, 1084 (9th Cir. 2003). The term "transfer" is clearly defined by the Bankruptcy Code to include the "creation of a lien." 11 U.S.C. § 101(54)(A).

In reviewing 11 U.S.C. § 522(f), the basis for "avoiding" a judgment lien, the plain language of the statute upon which the Debtor and unnamed title company rely in seeking such an "avoiding" order from the court. Debtor may seek to avoid the lien on an interest of the Debtor in property to the extent which the Debtor may claim in an exemption as allowed in 11 U.S.C. § 522(b). 11 U.S.C. § 522(f)(1). In 11 U.S.C. § 522(b)(1), Debtor may claim exemptions in "property of the estate." "Property of the Estate" is defined in 11 U.S.C. § 541(a) to be: (1) all legal and equitable interests of the debtor in property as of the commencement of the bankruptcy case, (2) all community property interests as of the commencement of the bankruptcy case, (3) any interests recovered by the bankruptcy trustee for pre-petition property transferred by the Debtor, (4) any interests in an inheritance within 180-days of the commencement of the bankruptcy case, (5) proceeds, profits, offspring, rents, and proceeds of property of the estate, and (6) any interests acquired by the bankruptcy estate after the commencement of the case. The bankruptcy estate, except for the inheritance provision, does not include property acquired by a debtor after the commencement of the case.

11 U.S.C. § 522(f)(3) reenforces this legal principle. For an opt-out of federal exemptions state, as is California, 11 U.S.C. § 522(f)(3) states (emphasis added) that property in which an exemption may be claimed consists of:

> "(3) Property listed in this paragraph is--
>
> (A) subject to subsections (o) and (p) [not applicable limitations], **any property that is exempt under** Federal law, other than subsection (d) of this section, or **State** or local **law** that is **applicable on the date of the filing of the petition** to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place;
>
> (B) **any interest in property in which the debtor had, immediately before the commencement of the case**, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint

> tenant **is exempt from process under applicable nonbankruptcy law**; and
>
> (C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986....”

From the Debtor’s own motion, Debtor did not have any interest in the property immediately before the commencement of the bankruptcy case. It was not until December 2015 (assuming the deed was delivered at that time), more than four years after the bankruptcy case was filed, that Debtor acquired the interest in the real property.

In substance, the unnamed title company is telling the Debtor to obtain an order avoiding a lien which does not, and cannot exist. This offends the fundamental basis for the exercise of federal judicial power, that there be an actual claim or controversy at issue between real parties in interest. U.S. Const. Art. III, Section 2. Here, there is no contention that the discharged judgment creditor is asserting that the judgment lien for the pre-petition debt is attaching to post-petition after acquired property of the Debtor. There is not a motion before the court seeking to enforce the discharge injunction against a creditor violating the discharge injunction.

Rather, it appears that the title company is instructing the Debtor to use the court as a “for free” legal department to provide a “comfort order” of no legal effect and significance. The court does not provide such “free legal services” to private businesses. Debtor has elected, for whatever reason, not to engage knowledgeable bankruptcy counsel to properly enforce Debtor’s rights. Debtor too seeks to have the court provide Debtor with for free legal services and provide a “comfort order,” which is of no legal force or effect. As with the unnamed title company, the court does not provide such services to a debtor.

Conclusion

The Debtor and the unnamed title company cannot have the court order a non-existent judgment lien “void” and “remove it” from this property that Debtor somehow obtained by a deed in lieu of foreclosure. The only “justification” for the request is that “The problem for the title company is that it sees a potential controversy over the amount of the abstract of judgment, and will require a court order to resolve the matter before it will disburse the amount to any party out of escrow. (See in Re Thomas 102 B.R. 199 (Bankr. E.D. Cal., 1989.)” Motion, p. 3:22-27.

Unfortunately, the very case cited by Debtor (quite possibly provided by the title agent) states exactly the opposite of the unnamed title company’s concern in the bankruptcy case they cite. In *Thomas*, a judgment was obtained by the creditor and the abstract of judgment was recorded on August 11, 1983. The debtor in *Thomas* filed bankruptcy in September 1983. The debtor in Thomas then purchased a house in 1988 in the county in which the pre-petition judgment lien was record. The pre-petition judgment creditor asserted that the pre-petition judgment lien had attached to the post-petition acquired property because the judgment lien “had not

been avoided" by the debtor in *Thomas*.

> "Working chronologically, this court finds that no lien could have existed as a matter of law on the date the Debtors filed their respective petitions in bankruptcy because of the absence of attachable property at that date. Conversely, no judgment lien could have been created post-discharge even though the Debtors had acquired attachable property because the underlying judgment was previously discharged and rendered void. Consequently, this court must find that the FTC lien currently encumbering the proceeds from sale of the Debtors' residence is void and unenforceable. (See e.g., *In re Yates*, 47 B.R. 460, 462 (D.Colo. 1985) (when underlying judgment is discharged before "res" exists upon which the "lien" could attach, no subsequent basis for a lien exists)."

In re Thomas, 102 B.R. 199, 201 (Bankr. E.D. Cal. 1989).

Therefore, for the reasons detailed above, the Motion to Avoid Judicial Lien is denied without prejudice. The court denies it without prejudice not so that Debtor (and the unnamed title company) may once again just file the same motion, but if a real reason exists for Debtor asserting that the pre-petition judgment lien is improperly being asserted for the void (as to any post-petition personal liability) judgment, Debtor may obtain competent, experienced counsel and properly assert such rights.

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 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 Motion is denied without prejudice.

6. 16-90322-E-7 GREGORIO SALCEDO
Wilber Manuel Salgado

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-22-16 [16]

Final Ruling: No appearance at the May 12, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Gregorio Padilla Salcedo ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on April 22, 2016. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case ($335.00 due on April 8, 2016).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

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

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

7. 15-90628-E-7 RICARDO/MARIA BALDERAS **CONTINUED MOTION FOR**
SSA-2 Mark S. Nelson **ADMINISTRATIVE EXPENSES**
2-22-16 [35]

DISCHARGED: 10/26/15
CONTINUED: 3/17/16

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 22, 2016. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

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

The Motion for Administrative Expenses is granted.

REVIEW OF MOTION

Michael McGranahan, the Chapter 7 Trustee, seeks authorization to pay certain post-petition tax liabilities to be paid by the estates as an administrative expense pursuant to 11 U.S.C. § 503(b).

The Trustee asserts that the Trustee was informed that

administrative taxes to state and/or federal governmental entities have been incurred in the principal amount of $1,737.00 due, specifically:

1. Taxes incurred by the **estate in the amount of $1,737.00 to the Internal Revenue Service.**

MARCH 17, 2016 HEARING

At the hearing, Debtor's counsel appeared and advised the court of an opposition. The opposition is based on Debtor's CPA stating that there will be a larger tax owed. The court set this for a briefing schedule and further oral argument. The court continued the hearing on the Motion to 10:30 on May 12, 2016. Dckt. 46. Debtor was ordered to file and serve opposition on or before April 6, 2016, and a reply, if any, were to be filed and served on or before April 27, 2016.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on April 6, 2016. Dckt. 47. Debtor asserts that they have an HSA Account with Wells Fargo Bank, with an account balance of $8,568.04. The purpose of the HSA Account is that any monies deposited into the account are to be used for medical purposes only. Any monies withdrawn from said account and not used for medical purposes, are taxed.

Debtors claimed an exemption in the HSA Account pursuant to California Code of Civil Procedure § 704.010 at the time of filing.

After the Meeting of Creditors, the Trustee issued a Notice of Assets, which the Debtors assert is based on the HSA Account.

Debtors assert that on December 7, 2015, Debtors met with a CPA to "run a tax return based on what the anticipated tax liability would be based on the disbursement of the HSA Account monies by the Trustee. The Debtors assert that the CPA provided an anticipated tax return, with an alleged approximation of federal tax liability.

On December 7, 2015, the Debtors filed and served an amended Schedule B and C, deducting from the total HSA Account $3,675.00 to be intended for the use of the anticipated tax liability to be incurred from the disbursement of the HSA Account.

On January 26, 2016, the Trustee filed a Motion to Employ Accountants for Trustee, which was granted on January 26, 2016. Dckt. 34.

The Trustee's CPA's preparation of the tax return it was determined the federal liability would be $1,737.00.

On February 26, 2016, the Debtors allege that they had their taxes prepared by their tax preparer, which came in higher than the Trustee's accountant.

On March 23, 2016, Debtors returned to their CPA to ask for a return based on the Debtor's liability without the inclusion of the HSA Account, which came in different than the Trustee's accountant.

The Debtor asserts that the Debtors' true tax liability comes from subtracting the Tax Return prepared by the Debtors' tax preparer from the tax return prepared by the Debtors' CPA.

TRUSTEE'S EVIDENTIARY OBJECTIONS

The Trustee filed an evidentiary objection to Debtors' evidence submitted with the opposition. Dckt. 51.

First, the Trustee asserts that Exhibit D and Exhibit E are not properly authenticated, lack foundation, and the Debtors are not experts. Specifically, the Trustee asserts that the tax returns the Debtors claim to have been prepared for them by third parties, and therefore requires authentication which the Debtors failed to provide. Additionally, the Debtors failed to authenticate the CPAs or tax preparer's returns through a declaration from either. The Trustee also asserts that due to thse failures, the exhibits are hearsay and not admissible.

Additionally, the Trustee asserts that Exhibit E, referencing calculation involving their 2015 taxes, does not contain the social security numbers of Debtors. Rather, they have "5555" and "6666" for each Debtor which is not correct. The Trustee argues that if the tax return was meant as a "mock" that should have been completely disclosed by the Debtors.

The Trustee then requests that the court strike certain statements of the Debtors or for the court to give them little weight. Specifically, these requests are:

Line	**Objection**
"Based on the presented anticipated tax return, debtors believed their Federal tax liability to be approximately $3,675.00" Dckt. 47, pg.2, lines 9-10	Assuming the Exhibits are stricken, the Trustee objects that the evidence is hearsay. The Debtors are not tax experts and are not competent to render an opinion concerning tax liability from prepared tax documents not properly authenticated or for which a proper foundation is not laid for introduction.
"The tax return shows debtors' Federal tax liability in the sum of $4,196." Dckt. 47, pg. 2, line 26.	Assuming the Exhibits are stricken, the Trustee objects that the evidence is hearsay. The Debtors are not tax experts and are not competent to render an opinion concerning tax liability from prepared tax documents not properly authenticated or for which a proper foundation is not laid for introduction.

“That tax return shows that debtors’ tax liability, not with the inclusion of the HSA funds, is $1308.” Dckt. 47, pg. 3, lines 3-4.	Assuming the Exhibits are stricken, the Trustee objects that the evidence is hearsay. The Debtors are not tax experts and are not competent to render an opinion concerning tax liability from prepared tax documents not properly authenticated or for which a proper foundation is not laid for introduction.
“Debtors believe that the actual tax liabilities incurred from the disbursements by Trustee of the HSA account to be $2,888. (Debtors actual tax liability per Federal Tax Return prepared February 26, 2016, of $4196-$1308.00=$2,888.00).” Dckt. 47, pg. 3, lines 5-7	Debtors are not tax experts and they are not competent to render an opinion concerning tax liability from prepared tax documents not properly authenticated or for which a proper foundation is not laid for introduction. Debtors’ “opinion” or “statement of mind” is not probative of the amount of tax owed by their fiduciary estate.

DISCUSSION

11 U.S.C. § 503 of the Bankruptcy Code provides for the "allowance" of administrative expenses. Section 503(b)(1)(A) allows as administrative expenses “the actual, necessary costs and expenses of preserving the estate.” The burden of proving an administrative expense is on the claimant. *Microsoft Corp. v. DAK Indus. (In re DAK Indus.)*, 66 F.3d 1091 (9th Cir. 1995). The claimant must show that the debt asserted to be an administrative expense (1) arose from a transaction with the debtor-in-possession as opposed to the preceding entity; and (2) directly and substantially benefitted the estate. *Id.* In order to keep administrative costs to the estate at a minimum, "the actual, necessary costs and expenses of preserving the estate," § 503(1)(A), are construed narrowly. *In re Palau*, 139 Bankr. 942, 944 (B.A.P. 9th Cir. 1992), *aff'd*, 18 F.3d 746 (9th Cir. 1994).

In the instant case, the expenses the Trustee is seeking authorization to pay are federal taxes to the Internal Revenue Service. 11 U.S.C. § 503(b)(2) specifically allow for the payment of taxes as an administrative expense.

First, the court discerns what appears to be the actual opposition of the Debtor: There will be a penalty in using the HSA Account funds to pay taxes that the Trustee’s calculation does not account for.

The Debtor used the prepared tax returns and mock return prepared by the Debtor’s CPA and tax preparer to highlight the difference and the penalty. However, as the Trustee states in his opposition, the Debtor has failed to provide proper foundation and authentication to admit such evidence nor does the Debtor provide a declaration in order to authenticate any of the information asserted in the Opposition.

However, though not so stated by Debtor, it may well be that the Debtor, rather than attempting to provide the Trustee with the actual amount of taxes owed, is attempting to "flag" for the Trustee the penalties associated with the HSA Account. Due to the failure to properly authenticate, provide foundation, and establish any hearsay or expert opinion exception, the exhibits provided by the Debtor are not admitted. Local Bankr. R. 9014-1(d); Fed. R. Evid. 702, 703, 704, 705, and 901.

The Trustee, in response, also provided the Declaration of his CPA, Maria Stokman. Dckt. 52. Based on the opposition of the Debtor, Ms. Stokman states that she reviewed her tax return she prepared on behalf of the estate. Ms. Stokman first states that the Debtor appears to fail to recognize that income and tax attributes of the estate are different and separate from Debtors' personal income tax and tax returns. The estate's liability is based on 1041 returns, not individual 1040 returns as submitted by the Debtors. Second, Ms. Stokman states that the treatment and calculations advanced in the 1041 fiduciary returns stem from tax consequences associated from distributions for the HSA Account, which triggered both income and penalty consequences.

Ms. Stokman concludes by stating after reviewing the tax return prepared by her on behalf of the Trustee and estate, that her original amount of $1,737.00 is correct.

The "$64,000" question is on whose tax return is the income and any penalty reported and paid? If the Debtor is correct and it is the Trustee's return for the estate and it is not so disclosed and paid, then the Trustee and his accountant will address any such shortcoming. If it is properly reported by Debtor, then the Debtor will address it on Debtor's tax return.

At the hearing, the Trustee addressed the court's and the Debtor's concern about the allocation and accounting of liability for any consequences from the use of the HSA funds. The Trustee stated at the hearing, xxxxxx

Here, the Trustee has shown that the $1,737.00 are taxes incurred by the estate. The Trustee's CPA, properly employed by the estate, reaffirms that the estate's tax liability is and remains $1,737.00. The court, in authorizing the payment, does not make a determination as to what the "correct" amount of tax liability. Rather, the court is just authorizing the payment of the taxes as an administrative expense based on the properly authenticated and admitted evidence of the Trustee's CPA.

Therefore, the Motion is granted and the administrative expense is allowed.

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 Administrative Expenses 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 approved and Michael McGranahan, the Chapter 7 Trustee, is authorized to pay post-petition federal taxes to the Internal Revenue Service in the principal amount of $1,737.00 and any accrued interest and penalties by the estate, with the returns when filed, and is an allowed administrative expense under 11 U.S.C. § 503(b).

The court makes no determination as to the "correct" amount of tax liability, but only allows the administrative expense so that the Trustee may pay the amount which the Trustee asserts is due and owing.

8. 14-91231-E-7 MALUK/RANJIT DHAMI
HSM-4 Nelson F. Gomez

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH HARDEV SINGH DHAMI
4-21-16 [72]

DISCHARGED: 7/28/15

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, Hardev Singh Dhami, parties requesting special notice, and Office of the United States Trustee on April 21, 2016. By the court's calculation, 21 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.

Gary Farrar, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Hardev Singh Dhami ("Settlor"). The claims and disputes to be resolved by the proposed settlement are arising from an alleged insider transfer of property that the Trustee alleges can be avoided pursuant to 11 U.S.C. § 547.

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. 76):

A. Settlor shall deliver a Deposit to the Trustee in the amount of $10,000.00, payable to Gary Farrar, Trustee, In re Maluk S Dhami and Ranjit K Dhami, E.D. Cal. Bk Case No. 14-91231-E-7. The Deposit will be non-refundable, but will become refundable only if:

1. This Motion is not granted

2. Settlor is outbid on the claims at issue and does not elect to be a approved as a backup buyer; or

3. The bankruptcy estate fails to perform under this Agreement.

B. Settlor shall pay to the Trustee the sum of $65,000.00, less a credit for the Deposit actually paid, payable to Gary Farrar, Trustee, in exchange for the Trustee's settlement of the Claims at issue in the Adversary Proceeding. The entire payment shall be paid within 60 days after entry of the Approval Order approving this Motion, and subject to refund if the approval order does not become a final order as defined in the Agreement

C. Settlor shall not file a proof of claim in the Bankruptcy Case, and will not seek payment of any sum from the bankruptcy estate unless Settlor is not the prevailing bidder. If Settlor is not the prevailing bidder Settlor reserves all rights to file a proof of claim, and the Trustee, on behalf of the bankruptcy estate, reserves all rights with respect to any such proof of claim.

D. Upon receipt of the full payment from Settlor only, the Adversary Proceeding will be dismissed with prejudice.

E. In the event of a default under the terms of the Agreement by the Settlor, the Trustee may, in his discretion, declare a default and seek to enforce any and all of his rights and remedies, including by, but not limited to the Adversary Proceeding against Settlor. In the event that a default is declared by the Trustee, any collected payments shall be administered as assets of the estate.

F. Excepting only the obligations imposed by the Agreement, and upon payment in full of the payment, the Trustee, as authorized by law, on behalf of the bankruptcy estate, fully waives and releases and discharges Settlor and his agents, successors, decedents, dependents, heirs, executors, administrators, principals, attorneys and any other representatives from the claims at issue in the Adversary Proceeding.

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 terms the Settlement all claims of the Estate are fully and completely settled, with all such claims released. The settlement provides the terms for the Trustee and the Settlor to settle the alleged claim of the Settlor's interest in the property. Settlor has granted a corresponding release.

Probability of Success

The Trustee asserts that the factor waives in favor of granting the Motion. The Trustee states that while he is confident in his position, he does note that he will have to prove that the Debtors were insolvent at the time of transfer which would require discovery. But, based on the transfer being within one year of the commencement and the individual was an insider, the Trustee is confident.

Difficulties in Collection

The Trustee asserts that the factor weighs strongly in favor of settlement. Although the Trustee is confident that the estate will prevail on the claims, the ability to generate proceeds for the benefit of the estate and its creditors is still in question, given the fact that there are senior liens and a non-Debtor party who also has an interest in the property. Furthermore, the Trustee notes that due to the unknown interest in the property and the administrative costs of sale, including real estate commission would further dilute any possible return.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, which are projected based on the unsettled nature of the claim, given the

questions of law and fact which would be the subject of a trial. Formal discovery would be required, with depositions of the Settlor, Settlor's relatives, and document production requests of third will be required. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

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

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The Trustee, in his business judgment and upon weighing the facts of the complex case, that the proposed settlement allows for the immediate resolution of the Adversary Proceeding, resulting in a benefit to the estate in the amount of $65,000.00. The Trustee would not need to worry about diminution of any return to the estate due to cost of sale or prosecuting the Adversary Proceeding. The instant Settlement provides for the release and bars the Settlor from filing a Proof of Claim. 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 and Hardev Singh Dhami ("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 76).

9. 15-91045-E-7 SJS-2 MATTHEW/GERALYN TRUBY Scott J. Sagaria

CONTINUED MOTION FOR ORDER TO SHOW CAUSE FOR CONTEMPT 2-16-16 [41]

CONTINUED: 4/7/16

No Tentative Ruling: The Motion for Damages for Violation of the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on February 16, 2016. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

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

The Motion for Damages for Violation of the Automatic Stay is xxxxxxxxx.

The present Motion for Damages for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Matthew and Geralyn Rae Truby. The Claims are asserted against Sprint Corporation.

MAY 12, 2016 HEARING

At the hearing, xxxxxxxxxxxxxxxxx.

STIPULATION

On April 6, 2016, the parties filed a stipulation to continue the instant Motion to 10:30 a.m. on May 12, 2016. The court granted the continuance request. Dckt. 45.

LEGAL STANDARD

A request for an order of contempt by the Debtor, United States Trustee or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283-85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to wilful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (an Congressionally created injunction) pursuant to its inherent power as a federal court. *Steinberg v. Johnston*, 595 F.3d 937, 946, (9th Cir. 2009). FN. 1. A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g)(2).

FN.1. Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The automatic stay imposes an affirmative duty on compliance on the nondebtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151-52 (9th Cir. 1996). A party which takes an action in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191-92 (9th Cir. 2003).

REVIEW OF MOTION

Grounds Asserted in the Motion

In asserting this claim pursuant to 11 U.S.C. § 362(k), Movant states with particularity (Fed. R. Bankr. P. 9013) the following grounds and

relief:

A. This action arises from a willful violation of the Automatic Stay committed by Sprint by mailing to Debtors a demand for payment despite the Automatic Stay.

B. Debtors filed the instant case on October 30, 2015 [Docket #1]. The commencement of this case "constitutes an order for relief." 11 U.S.C. § 301(b).

C. The Debtors listed a pre-petition unsecured debt owed to Sprint on Schedule F [Docket #1].

D. On November 3, 2015 the bankruptcy Noticing Center sent Sprint notice of Debtors' bankruptcy petition via electronic transmission to nextel.com [Docket #9].

E. Sprint sent Debtors a collection notice for the billing period ending on November 19, 2015 with a balance of $721.58 due immediately.

F. On December 1, 2015 GC Services Limited Partnership, a debt collector acting on behalf of Spring, sent Debtors a collection notice with a balance of $721.58 due immediately.

G. Receiving collection letters after their bankruptcy case was filed has been stressful for the Debtors. The Debtors have had to take time to further provide the evidence of these letters to their attorney expending gas, fees for faxing, and their time. Mr. Truby has also spent less time with his family as he has been attending to the instant motion.

H. By continuing to attempt to collect on a pre-petition debt, Sprint has willfully acted to collect on debt that is currently subject to the automatic stay in violation of 11 U.S.C. §§ 362 and 105.

Dckt. 41.

The Debtor requests the following:

1. An order holding Sprint in Contempt

2. An award of compensatory damages "in an amount to be determined reasonable by the Court."

3. An award of deterrent sanctions "in an amount to be determined reasonable by the Court."

4. An award of the reasonable attorneys' fees and costs necessary to prosecute the motion, as to be determined by the Court upon the filing of a supplemental accounting and declaration and once approved payable directly to the Debtors' attorney

The Parties requested that the hearing be continued to May 12, 2016, from the original hearing date to allow for discovery to proceed and engage in "discussions." Stipulation, Dckt. 43.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Damages for Violation of the Automatic Stay by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **xxxxxxxxxxxxxx**.

10. 15-90358-E-11 LAWRENCE/JUDITH SOUZA MOTION TO USE CASH COLLATERAL
MHK-1 David M. Meegan 4-30-15 [32]

CONTINUED: 1/14/16

Tentative Ruling: L.B.R. 9014-1(f)(2) Final Hearing. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

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

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

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

The Motion to Use Cash Collateral is granted.

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

The Debtors-in-Possession holds fee title to the following properties:

PROPERTY LOCATION	TYPE OF RENTAL
121 W. Syracuse Ave.	Single Family Residential
200 W. Syracuse Ave./842 N. Golden State Blvd.	Single Family Residential
201 W. Syracuse Ave.	Single Family Residential
223 W. Syracuse Ave.	Single Family Residential
235 W. Syracuse Ave.	Single Family Residential
87 W. Canal Drive	Single Family Residential
97 W. Canal Drive	Single Family Residential

830 N. Golden State Blvd.	Commercial

The Debtors-in-Possession states that each of the properties are encumbered. The Curtis Family Trust Dated May 27, 1994 ("Creditor") holds three different deeds of trust that secure three separate obligations, and two of those deeds encumber more than one of the properties. The Internal Revenue Service has also recorded two Notices of Tax Lien on all the properties. The following chart describes the encumbrances:

RENTAL	**CREDITOR**	**RECORDATION DATE**	**ASSIGNMENT OF RENTS?**
121 Syracuse	Maiman Revocable Trust A/Deed of Trust	3/8/11	yes
	Internal Revenue Service	4/26/11; 3/26/12	No
200 Syracuse	Stanislaus County/unpaid property taxes	n/a	No
	Curtis Family Trust/ Deed of Trust	9/21/05	Yes
	Internal Revenue Service	4/26/11; 3/26/12	No
235 Syracuse	Seterus/Deed of Trust	4/25/05	No
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11; 3/26/12	No
830 Golden State	Stanislaus County/ Unpaid Property Taxes	n/a	No
	Curtis Fam. Trust/Deed of Trust	9/30/05	Yes

	Internal Revenue Service/Tax lien	4/26/11;3/26/12	No
87 Canal	Provident Credit Union/Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11;3/26/12	No
97 Canal	Provident Credit Union/ Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax Liens	4/26/11;3/26/12	No

The Debtors-in-Possession have opened a segregated bank account of the purpose of holding all rents and for paying necessary expenses. Only rents from the properties are deposited into this account.

The Debtors-in-Possession expect to obtain property insurance proceeds for 121 Syracuse and request the authority to use the proceeds to rehabilitation expenses for that property so that it can be rented to new tenants. The insurance proceeds will be $10,850.00 for damages.

The Debtors-in-Possession state that the use of cash collateral to pay ongoing expenses of the properties will ensure that the properties remain occupied and that there will be continued collection of rent. The Debtors-in-Possession propose that the use of cash collateral be restricted to those expenses described below within a 20% variance for each category of expense and that case remaining after the payment of the same be retained by the Debtors-in-Possession in the rental bank account.

121 W. Syracuse Ave.

	April	**May**	**June**	**July**	**August**	**September**
Revenue						

Rent	0	0	900	900	900	900
Insurance Proceeds	$10,850.00	0	0	0	0	0
Expenses						
Insurance Premium	$81.00	$81.00	$81.00	$81.00	$81.00	$81.00
Utilities	$100.00	$100.00	$100.00	$100.00	$100.00	$100.00

200 W. Syracuse Ave./842 N. Golden State Blvd.

	April	**May**	**June**	**July**	**August**	**September**
Revenue						
Rent	$800.00	$800.00	$800.00	$800.00	$800.00	$800.00
Expenses						
Late property tax installment			$601.00			
Insurance Premium	$235.00	$235.00	$235.00	$235.00	$235.00	$235.00
Utilities	$30.00	$30.00	$30.00	$30.00	$30.00	$30.00
Management fees	$64.00	$64.00	$64.00	$64.00	$64.00	$64.00
Reserve for misc. maintenance exp.	$50.00	$50.00	$50.00	$50.00	$50.00	$50.00

235 W. Syracuse Ave.

	April	**May**	**June**	**July**	**August**	**September**
Revenue						
Rent	$1,195.00	$1,195.00	$1,195.00	$1,195.00	$1,195.00	$1,195.00
Expenses						

Insurance Premium	$85.00	$85.00	$85.00	$85.00	$85.00	$85.00
Utilities	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Management fees	$96.00	$96.00	$96.00	$96.00	$96.00	$96.00
Reserve for misc. maintenance exp.	$25.00	$25.00	$25.00	$25.00	$25.00	$25.00

87 W. Canal Street

	April	**May**	**June**	**July**	**August**	**September**
Revenue						
Rent	$875.00	$875.00	$875.00	$875.00	$875.00	$875.00
Expenses						
Insurance Premium	$77.00	$77.00	$77.00	$77.00	$77.00	$77.00
Utilities	$65.00	$65.00	$65.00	$65.00	$65.00	$65.00
Management fees	$70.00	$70.00	$70.00	$70.00	$70.00	$70.00
Reserve for misc. maintenance exp.	$100.00	$100.00	$100.00	$100.00	$100.00	$100.00

97 W. Canal Street

	April	May	June	July	August	September
Revenue						
Rent	$900.00	$900.00	$900.00	$900.00	$900.00	$900.00
Expenses						
Insurance Premium	$61.00	$61.00	$61.00	$61.00	$61.00	$61.00
Utilities	$65.00	$65.00	$65.00	$65.00	$65.00	$65.00
Management fees	$72.00	$72.00	$72.00	$72.00	$72.00	$72.00
Reserve for misc. maintenance exp.	$50.00	$50.00	$50.00	$50.00	$50.00	$50.00

830 N. Golden State Blvd.

	April	May	June	July	August	September
Revenue						
Rent	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00	$1,000.00
Expenses						
Late property tax installment				$2,135.00		
Insurance Premium	$76.00	$76.00	$76.00	$76.00	$76.00	$76.00
Utilities	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
Management fees	$80.00	$80.00	$80.00	$80.00	$80.00	$80.00
Reserve for misc. maintenance exp.	$25.00	$25.00	$25.00	$25.00	$25.00	$25.00

MAY 21, 2015 HEARING

At the hearing, the court entered an order on May 27, 2015 authorized the use of cash collateral for the period of April 10, 2015 through September 30, 2015. Dckt. 63. The court additionally continued the hearing to September 3, 2015 at 10:30 a.m. for the court to continue authorizing the further use of cash collateral. On or before August 13, 2015, the Debtors in Possession were ordered to file Supplemental Pleadings, if any, in support of authorization for the further used of cash collateral. Opposition to such further use, if any, were ordered to be filed and served on or before August 27, 2015.

SUPPLEMENTAL PAPER

The Debtor-in-Possession filed a supplemental paper on August 11, 2015. Dckt. 114. The Debtor-in-Possession states they own the following properties, some having become vacant and there being no tenants for the foreseeable future:

PROPERTY LOCATION	**TYPE OF RENTAL**
235 W. Syracuse Ave.	Single Family Residential
87 W. Canal Drive	Single Family Residential
830 N. Golden State Blvd.	Commercial

The following chart describes the encumbrances:

RENTAL	**CREDITOR**	**RECORDATION DATE**	**ASSIGNMENT OF RENTS?**
121 Syracuse	Maiman Revocable Trust A/Deed of Trust	3/8/11	yes
	Internal Revenue Service	4/26/11; 3/26/12	No
200 Syracuse	Stanislaus County/unpaid property taxes	n/a	No
	Curtis Family Trust/ Deed of Trust	9/21/05	Yes
	Internal Revenue Service	4/26/11; 3/26/12	No

235 Syracuse	Seterus/Deed of Trust	4/25/05	No
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11; 3/26/12	No
830 Golden State	Stanislaus County/ Unpaid Property Taxes	n/a	No
	Curtis Fam. Trust/Deed of Trust	9/30/05	Yes
	Internal Revenue Service/Tax lien	4/26/11;3/26/12	No
87 Canal	Provident Credit Union/Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11;3/26/12	No
97 Canal	Provident Credit Union/ Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax Liens	4/26/11;3/26/12	No
223 W. Syracuse	Seterus, Inc. - FNMA/ Deed of Trust	4/25/05	Yes

	Curtis Family Trust/ Deed of Trust dtd. 7/15/10	8/25/10	Yes
	Internal Rev. Service/ Tax Liens	4/26/11; 3/26/12	No

The Debtors-in-Possession state that the use of cash collateral to pay ongoing expenses of the properties will ensure that the properties remain occupied and that there will be continued collection of rent from February 1, 2016 to May 31, 2016. The Debtors-in-Possession propose that the use of cash collateral be restricted to those expenses described below within a 20% variance for each category of expense and that case remaining after the payment of the same be retained by the Debtors-in-Possession in the rental bank account.

235 W. Syracuse Ave.

	October	**November**	**December**	**January**
Revenue				
Rent	$1,195.00	$1,195.00	$1,195.00	$1,195.00
Expenses				
Insurance Premium	$85.00	$85.00	$85.00	$85.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$96.00	$96.00	$96.00	$96.00
Reserve for misc. maintenance exp.	$25.00	$25.00	$25.00	$25.00
Projected Surplus	$989.00	$989.00	$989.00	$989.00

87 W. Canal Street

	October	**November**	**December**	**January**
Revenue				
Rent	$875.00	$875.00	$875.00	$875.00
Expenses				
Insurance Premium	$77.00	$77.00	$77.00	$77.00

Utilities	$65.00	$65.00	$65.00	$65.00
Management fees	$70.00	$70.00	$70.00	$70.00
Real Property Tax Reserve	Balance of Net Rent	Balance of Net Rent	Balance of Net Rent	Balance of Net Rent
Reserve for misc. maintenance exp.	$100.00	$100.00	$100.00	$100.00
Projected Surplus	$563.00	$563.00	$563.00	$563.00

830 N. Golden State Blvd.

	October	**November**	**December**	**January**
Revenue				
Rent	$1,000.00	$1,000.00	$1,000.00	$1,000.00
Expenses				
Insurance Premium	$76.00	$76.00	$76.00	$76.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$80.00	$80.00	$80.00	$80.00
Reserve for misc. maintenance exp.	$25.00	$25.00	$25.00	$25.00
Projected Surplus	$819.00	$819.00	$819.00	$819.00

PROVIDENT CREDIT UNION'S OPPOSITION

Provident Credit Union ("Creditor) filed an opposition on August 27, 2015. Dckt. 138. The Creditor objects on the ground that there is a surplus as to the 87 W. Canal property and that such surplus should be used to make the monthly payments owing to Creditor.

SEPTEMBER 3, 2015 HEARING

At the hearing, the court entered an order on May 27, 2015 authorized the use of cash collateral for the period of August 11, 2015 through January 31, 2016. Dckt. 154. The court additionally continued to January 14, 2016 at 10:30 a.m. for the court to continue authorizing the further use of cash collateral. On or before December 17, 2015, the Debtors in Possession shall file Supplemental Pleadings, if any, in support of authorization for the further used of cash collateral. Opposition to such further use, if any, shall be filed and served on or before December 24, 2015.

SUPPLEMENTAL PAPER

The Debtor-in-Possession filed a supplemental paper on December 10, 2015. Dckt. 207. The Debtors-in-Possession holds fee title to the following properties:

PROPERTY LOCATION	TYPE OF RENTAL
121 W. Syracuse Ave.	Single Family Residential
200 W. Syracuse Ave./842 N. Golden State Blvd.	Single Family Residential
223 W. Syracuse Ave.	Single Family Residential
235 W. Syracuse Ave.	Single Family Residential
87 W. Canal Drive	Single Family Residential
97 W. Canal Drive	Single Family Residential
830 N. Golden State Blvd.	Commercial

The following chart describes the encumbrances:

RENTAL	CREDITOR	RECORDATION DATE	ASSIGNMENT OF RENTS?
235 Syracuse	Seterus/Deed of Trust	4/25/05	No
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11; 3/26/12	No
830 Golden State	Stanislaus County/ Unpaid Property Taxes	n/a	No
	Curtis Fam. Trust/Deed of Trust	9/30/05	Yes
	Internal Revenue Service/Tax lien	4/26/11;3/26/12	No
87 Canal	Provident Credit Union/Deed of Trust	10/16/02	Yes

	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11;3/26/12	No

The Debtors-in-Possession state that the use of cash collateral to pay ongoing expenses of the properties will ensure that the properties remain occupied and that there will be continued collection of rent from October 1, 2015 through January 31, 2015. The Debtors-in-Possession propose that the use of cash collateral be restricted to those expenses described below within a 20% variance for each category of expense and that case remaining after the payment of the same be retained by the Debtors-in-Possession in the rental bank account.

235 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				
Rent	$1.00	$1.00	$160.00	$1.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$0.00	$0.00	$0.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$159.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

87 W. Canal Street

	February	**March**	**April**	**May**
Revenue				
Rent	$875.00	$875.00	$875.00	$875.00
Expenses				
Property Taxes			$675.00	
Insurance Premium	$77.00	$77.00	$77.00	$77.00

Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$70.00	$70.00	$70.00	$70.00
Projected Surplus	$678.00	$678.00	$ 53.00	$678.00

97 W. Canal Street

	February	**March**	**April**	**May**
Revenue				
Rent	$1.00	$1.00	$621.00	$1.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$620.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

121 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				
Rent	$1.00	$1.00	$390.00	$1.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$389.00	$0.00
Management Fees	$0.00	$0.00	$0.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

200 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				
Rent	$1.00	$236.00	$977.00	$236.00
Expenses				
Insurance Premium	$0.00	$235.00	$0.00	$235.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$976.00	$0.00
Management Fees	$0.00	$0.00	$0.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

223 W. Syracuse Ave.

	February	**March**	**April**	**May**
Revenue				
Rent	$1.00	$1.00	$588.00	$1.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$587.00	$0.00
Management Fees	$0.00	$0.00	$0.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

830 N. Golden State Blvd.

	February	March	April	May
Revenue				

Rent	$1,000.00	$1,000.00	$1,000.00	$1,000.00
Expenses				
Insurance Premium	$249.00	$249.00	$249.00	$249.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$80.00	$80.00	$80.00	$80.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$543.00	$0.00
Projected Surplus	$671.00	$671.00	$128.00	$671.00

JANUARY 14, 2016 HEARING

At the hearing, the court entered an order on January 21, 2016 authorized the use of cash collateral for the period of January 21, 2016 through May 31, 2016. Dckt. 248. The court additionally continued the hearing to May 12, 2016 at 10:30 a.m. for the court to continue authorizing the further use of cash collateral. On or before April 14, 2016, the Debtors in Possession were ordered to file Supplemental Pleadings, if any, in support of authorization for the further used of cash collateral. Opposition to such further use, if any, were ordered to be filed and served on or before April 28, 2016.

SUPPLEMENTAL PAPER

The Debtor-in-Possession filed a supplemental paper April 13, 2016. Dckt. 282. The Debtors-in-Possession holds fee title to the following properties:

PROPERTY LOCATION	**TYPE OF RENTAL**
121 W. Syracuse Ave.	Single Family Residential
200 W. Syracuse Ave./842 N. Golden State Blvd.	Single Family Residential
223 W. Syracuse Ave.	Single Family Residential
235 W. Syracuse Ave.	Single Family Residential
87 W. Canal Drive	Single Family Residential
97 W. Canal Drive	Single Family Residential
830 N. Golden State Blvd.	Commercial

The following chart describes the encumbrances:

RENTAL	CREDITOR	RECORDATION DATE	ASSIGNMENT OF RENTS?
235 Syracuse	Seterus/Deed of Trust	4/25/05	No
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11; 3/26/12	No
830 Golden State	Stanislaus County/ Unpaid Property Taxes	n/a	No
	Curtis Fam. Trust/Deed of Trust	9/30/05	Yes
	Internal Revenue Service/Tax lien	4/26/11;3/26/12	No
87 Canal	Provident Credit Union/Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11;3/26/12	No

The Debtors-in-Possession state that the use of cash collateral to pay ongoing expenses of the properties will ensure that the properties remain occupied and that there will be continued collection of rent from June 1, 2016 through September 30, 2016. The Debtors-in-Possession propose that the use of cash collateral be restricted to those expenses described below within a 20% variance for each category of expense and that case remaining after the payment of the same be retained by the Debtors-in-Possession in the rental bank account.

235 W. Syracuse Ave.

	June	July	August	September
Revenue				

Rent	$900.00	$900.00	$900.00	$900.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$72.00	$72.00	$72.00	$72.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$159.00	$0.00
Projected Surplus	$828.00	$828.00	$828.00	$828.00

87 W. Canal Street

	June	**July**	**August**	**September**
Revenue				
Rent	$875.00	$875.00	$875.00	$875.00
Expenses				
Property Taxes			$675.00	
Insurance Premium	$77.00	$77.00	$77.00	$77.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$70.00	$70.00	$70.00	$70.00
Projected Surplus	$678.00	$678.00	$ 53.00	$678.00

97 W. Canal Street

	June	**July**	**August**	**September**
Revenue				
Rent	$1.00	$1.00	$621.00	$1.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$620.00	$0.00

Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

121 W. Syracuse Ave.

	June	**July**	**August**	**September**
Revenue				
Rent	$100.00	$100.00	$100.00	$100.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$0.00	$0.00
Management Fees	$8.00	$8.00	$8.00	$8.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$92.00	$92.00	$92.00	$92.00

223 W. Syracuse Ave.

	June	**July**	**August**	**September**
Revenue				
Rent	$100.00	$100.00	$100.00	$100.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$0.00	$0.00
Management Fees	$8.00	$8.00	$8.00	$8.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$92.00	$92.00	$92.00	$92.00

830 N. Golden State Blvd.

	June	**July**	**August**	**September**
Revenue				
Rent	$1,000.00	$1,000.00	$1,000.00	$1,000.00
Expenses				
Insurance Premium	$126.00	$126.00	$126.00	$126.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$80.00	$80.00	$80.00	$80.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$543.00	$0.00
Projected Surplus	$794.00	$794.00	$794.00	$794.00

The Debtor-in-Possession now have tenants, each paying rent on a month to month basis in the following real properties

1. 97 W. Canal

2. 121 W. Syracuse

3. 223 W. Syracuse

The Debtor-in-Possession states that these properties are also encumbered, but the Debtor-in-Possession do not expect to use rents from these properties to pay expenses during the period of June 1, 2016 through September 30, 2016. Property taxes on these properties are current and the cost of insurance will be paid as to 97 W. Canal from the Debtor-in-Possession's personal income and by Seterus for 121 W. Syracuse and 223 W. Syracuse. The Debtor-in-Possession will deposit rents from each of these properties into the Rental Account pending further order of the court.

The other rental properties of the estate are now vacant and are anticipated to remain that way through September 30, 2016.

PROVIDENT CREDIT UNION'S OPPOSITION

Provident Credit Union ("Creditor) filed an opposition on August 27, 2015. Dckt. 138. The Creditor states it has no opposition to the Debtor-in-Possession using the cash collateral for payment of utilities, taxes, management fees or to set up a reserve for miscellaneous maintenance.

However, Creditor requests that any creditor, due to its security interest in the cash collateral generated by the 87 Canal and 97 Canal

properties, is given a replacement lien in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of the cash collateral resulted in a reduction of the Creditor's claim.

The Creditor also requests that the Debtor-in-Possession provide a copy of the lease and information regarding the tenants of 97 Canal.

APPLICABLE LAW

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

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

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

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

immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

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

The Debtors-in-Possession do not request any use of cash collateral for the properties that are currently unoccupied which raises questions of whether there are normal expenses that the Debtors-in-Possession must cover in order to keep the properties habitable if a tenant does arise. However, for purposes of this Motion, the use of cash collateral is authorized as to the three properties discussed supra.

Therefore, the court authorizes the use of cash collateral for the period of June 1, 2016 through September 30, 2016.

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

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

235 W. Syracuse Ave.

	June	**July**	**August**	**September**
Revenue				
Rent	$900.00	$900.00	$900.00	$900.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00

Management fees	$72.00	$72.00	$72.00	$72.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$159.00	$0.00
Projected Surplus	$828.00	$828.00	$828.00	$828.00

87 W. Canal Street

	June	**July**	**August**	**September**
Revenue				
Rent	$875.00	$875.00	$875.00	$875.00
Expenses				
Property Taxes			$675.00	
Insurance Premium	$77.00	$77.00	$77.00	$77.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$70.00	$70.00	$70.00	$70.00
Projected Surplus	$678.00	$678.00	$ 53.00	$678.00

97 W. Canal Street

	June	**July**	**August**	**September**
Revenue				
Rent	$1.00	$1.00	$621.00	$1.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$620.00	$0.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$1.00	$1.00	$1.00	$1.00

121 W. Syracuse Ave.

	June	July	August	September
Revenue				
Rent	$100.00	$100.00	$100.00	$100.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$0.00	$0.00
Management Fees	$8.00	$8.00	$8.00	$8.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$92.00	$92.00	$92.00	$92.00

223 W. Syracuse Ave.

	June	July	August	September
Revenue				
Rent	$100.00	$100.00	$100.00	$100.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Utilities	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$0.00	$0.00
Management Fees	$8.00	$8.00	$8.00	$8.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$92.00	$92.00	$92.00	$92.00

830 N. Golden State Blvd.

	June	July	August	September
Revenue				
Rent	$1,000.00	$1,000.00	$1,000.00	$1,000.00

Expenses				
Insurance Premium	$126.00	$126.00	$126.00	$126.00
Utilities	$0.00	$0.00	$0.00	$0.00
Management fees	$80.00	$80.00	$80.00	$80.00
Reserve for misc. maintenance exp.	$0.00	$0.00	$0.00	$0.00
Property Taxes	$0.00	$0.00	$543.00	$0.00
Projected Surplus	$794.00	$794.00	$794.00	$794.00

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

IT IS FURTHER ORDERED that the hearing is continued to September 8, 2016 at 10:30 a.m. for the court to continue authorizing the further use of cash collateral. On or before August 18, 2016, the Debtors in Possession shall file Supplemental Pleadings, if any, in support of authorization for the further used of cash collateral. Opposition to such further use, if any, shall be filed and served on or before September 1, 2016.

11. 11-93765-E-7 JACK BIDDLE
SSA-8 Jakrun Sodhi

MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY
4-8-16 [94]

DISCHARGED: 2/8/12

Final Ruling: No appearance at the May 12, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Steven S. Altman, the Attorney ("Applicant") for 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 December 5, 2011 through May 12, 2016. The order of the court approving employment of Applicant was entered on July 29, 2013, Dckt. 30. Applicant requests reduced fees in the amount of $31,292.03 and costs in the amount of $1,207.97.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

account all relevant factors, including–

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation

to the size of the estate and maximum probable recovery?

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including reviewing the issues arising from the administration of the Debtor's father's probate estate, reviewing any property held by the Debtor that could be sold, including a liquor license, for the benefit of the estate, prepared necessary motions to hire and compensate professionals of the estate, conducted settlement conferences to resolve any outstanding claim, communicated with all attorneys as to how the estate would move forward as to the Debtor's interest in the father's probate estate. The estate has $55,644.95 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 Analysis and Recovery: Applicant spent 13.5 hours in this category. Applicant assisted Client with identifying and reviewing potential assets including causes of action and non-litigation recoveries. Specifically, the Applicant reviewed the case, prepared questions for Meeting of Creditors, spoke with Debtor and Debtor's counsel as to potential settlements, held meetings concerning the Debtor's bar "Running Iron," reviewed issues concerning the administration of the Debtor's father's estate and appointment of public administrator, and to determine any sale or surcharge available to the estate.

Asset Disposition: Applicant spent 16 hours in this category. Applicant reviewed and prepared documentation for the sale of the Debtor's business, liquor license, and how the estate should handle the Debtor's father's probate estate and what follow up is necessary to effectuate the sales.

Business Operation: Applicant spent .6 hours in this category. Applicant held conferences relative to the case administration, including researching breach of fiduciary duties in allowing the Debtor's former girlfriend to take over the lease and bar.

Case Administration: Applicant spent 27.3 hours in this category. Applicant coordinated the preparation of statement of financial affairs,

schedules, list of contact, operating reports and other necessary documentation. The Applicant took part in multiple status conferences in connection with the sell of the property, the probate interest, and possible contempt issues. The Applicant spent substantial time researching and ensuring that all necessary documentation is in for the sale. Applicant also conducted meetings as to how the probate estate should proceed.

Claims Administration & Objection: Applicant spent 40.3 hours in this category. Applicant reviewed the liquor license claim issue in the probate estate, prepared declaration for the removal of the Debtor's brother as personal representative in estate and suspension of powers. The Applicant reviewed filed claims and followed up with creditors to request the withdrawing of claim. Prepared a substantial objection to the Debtor's claim of exemption.

Fee and Employment Applications: Applicant spent 15.3 hours in this category. Applicant reviewed the case to determine if any conflicts exist. Prepared the application to hire the CPA. The Applicant prepared the instant fee application, prepared the task billing and served.

Litigation: Applicant spent 27.8 hours in this category. Applicant prepared Rule 2004 examination, conference with probate counsel and Debtor's adversary counsel to attempt to settle. The Applicant also provided services in connection with the probate proceedings.

Meeting of Creditors: Applicant spent .6 hours in this category. Applicant reviewed case and attended the Meeting of Creditors.

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**
Steven Altman	93.50	$250.00	$23,375.00
Steve Altman	49.0	$300.00	$14,700.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$38,075.00

The Applicant indicates that, in light of discussions with Client, he reduces his request for fees to $31,292.03.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $1,207.97 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$177.57
Copying	$0.05 per page(53 pages)	$2.65
Copying	$0.10 per page (1,484 pages)	$151.10
Copying	$0.15 per page (383 pages)	$57.45
Court Representation	$157.50	$157.50
Filing Fees		$460.00
Travel	$125.00 per hour	$201.70
Total Costs Requested in Application		$1,207.97

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $31,292.03 for its fees incurred for the Client. First and Final Fees in the amount of $31,292.03 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

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as on-line access to bankruptcy and state law and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include “Court Representation.” No information has been provided to the court by Applicant that these cost items were extraordinary expenses than one would expect for Applicant providing professional services to Client to be changed in additional to the professional fees requested as compensation. The court disallows $157.50 of the requested costs.

Additionally, the standard charge for copies in the Eastern District is $0.10 per page. The Applicant charged $0.05 and $0.15 per copy throughout the case. The court will standardized the number of copies at a rat of $0.10, for a total of 189.00. Therefore, the court disallows an additional $22.20.

The First and Final Costs in the amount of $1,028.27 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$31,292.03
Costs and Expenses	$1,028.27

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Steven S. Altman ("Applicant"), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Steven S. Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Steven S. Altman, Professional Employed by Trustee
>
> Fees in the amount of $31,292.03
> Expenses in the amount of $1,028.27,
>
> **IT IS FURTHER ORDERED** that the costs of $179.70 are not allowed by the court.
>
> 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 case.

12. 14-91565-E-7 RICHARD SINCLAIR MOTION TO EXTEND TIME
HSM-7 Pro Se 4-1-16 [431]

Final Ruling: No appearance at the May 12, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 1, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Extend Time to File Objections to Debtor's 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.

The Motion to Extend Time to File Objections to Debtor's Claims of Exemptions is granted.

Gary Farrar, the Chapter 7 Trustee, filed the instant Motion for Order Extending Time to File Objections to the Debtors' Claims of Exemptions. Dckt. 431.

The current deadline to file objections to the Debtors' claims of exemptions is presently set for April 4, 2016. Dckt. 351. The Trustee requests that the deadline for the Trustee to object to the Debtors' claims of exemptions be extended until June 6, 2016. The Motion to Extend the deadline was filed on April 1, 2016.

The Trustee argues that cause exists because the Trustee just recently concluded the Debtor's Meeting of Creditors on March 3, 2016, after a number of non-appearances by the Debtor. Since the Trustee's appointment, the Trustee states that he has evaluated the Debtor's business affairs, assets, and other property interests. Due to the significant complexity of the case, the Trustee's investigative efforts have not nearly concluded. Notwithstanding the thousands of pages of documents obtained and to reviewed by the Trustee and his professionals, the Trustee expects that additional requests fore information will be made to the Debtor in connection with the

Debtor's financial affairs and assets, as well as his schedules filed in this case, including his Schedule C and specific assets claimed as exempt, as well as the bases for such claims.

The Trustee states that he has identified some potentially objectionable claims of exemptions and is working to evaluate others.

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).

In 2010 the Supreme Court amended Federal Rule of Bankruptcy Procedure 1019 to provide in pertinent part as follows with respect to the time period to file objections to exemptions (emphasis added),

> "Rule 1019. Conversion of Chapter 11 Reorganization Case, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case to a Chapter 7 Liquidation Case
>
> When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:
> ...
> (2) New filing periods.

> (A) A new time period for filing a motion under § 707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of dischargeability of any debt shall commence under Rules 1017, 3002, 4004, or 4007, but a new time period shall not commence if a chapter 7 case had been converted to a chapter 11, 12, or 13 case and thereafter reconverted to a chapter 7 case and the time for filing a motion under § 707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of the dischargeability of any debt, or any extension thereof, expired in the original chapter 7 case.
>
> (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."

Neither of the two exceptions apply with respect to this Chapter 7 case. No plan was confirmed by either the debtor in possession or creditors during the Chapter 11 portion of this case and this case was never previously pending in Chapter 7.

The Advisory Committee made the following notes concerning the amendments made to Rule 1019 (emphasis added):

> Subdivision (2). Subdivision (2) is redesignated as subdivision (2)(A), and a new subdivision (2)(B) is added to the rule. **Subdivision (2)(B) provides that a new time period to object to a claim of exemption arises when a case is converted to chapter 7 from chapter 11, 12, or 13.** The new time period does not arise, however, if the conversion occurs more than one year after the first order confirming a plan, even if the plan was subsequently modified. A new objection period also does not arise if the case was previously pending under chapter 7 and the objection period had expired in the prior chapter 7 case.

Fed. R. Bankr. P. 1019.

The discussion of Rule 1019 in Collier on Bankruptcy notes that the 2010 amendment to add the express provision for a new time period for objecting to claims of exemptions following a conversion to Chapter 7 resolved a disagreement of whether such new time period existed under the prior rule.

> "Prior to the 2010 amendments to the Federal Rules of

> Bankruptcy Procedure, courts had disagreed about whether a new deadline for objections to exemptions arose after conversion of a case. 21 Rule 1019(2)(B) resolves that dispute, taking something of a compromise position. In most cases, a new deadline under Rule 4003(b) shall arise. 22 However, a new deadline does not arise if the case was converted more than one year after the first order confirming a plan under chapter 11, 12, or 13. It also does not arise if the case had previously been pending under chapter 7 and the exemption deadline had expired before it was converted to chapter 11, 12, or 13."

9 COLLIER ON BANKRUPTCY, SIXTEENTH EDITION (2014), ¶ 1019.04.

DISCUSSION

The court finds that cause does exist to extend the deadline, pursuant to Fed. R. Bankr. P. 4003(b)(1). This is an extremely complicated case that has involved many moving parts, possible misrepresentations, and numerous assets. If the complexity is delaying Debtor in providing the requested documents and information concerning assets of the Estate to the Trustee, then they have the additional time to provide the Trustee with that information (rather than the Trustee's only remedy to seek to have the discharge denied in this case). The need for the Trustee to collect more information concerning the retirement accounts and whether the Debtors have properly taken an exemption on it is justified given the complexity of the case and the information learned by the Trustee at the Meeting of Creditors.

Therefore, the court grants the Motion and extends the deadline to file an objection to the Debtors' claim of exemptions to June 6, 2016.

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 Debtor 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 granted and the deadline to file an objection to claim of exemptions of the Debtors is extended to June 6, 2016.

13. 14-91369-E-7 ADJ-3 | **ALDO LEONARDI TOSO AND MEREDITH LEONARDI**
Gary Ray Fraley

MOTION FOR COMPENSATION FOR THE LAW OFFICE OF FORES MACKO FOR ANTHONY D. JOHNSTON, TRUSTEE'S ATTORNEY
4-21-16 [61]

DISCHARGED: 4/8/16

Tentative Ruling: The Motion for Allowance of Professional Fees 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, and Office of the United States Trustee on April 21, 2016. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

The Motion for Allowance of Professional Fees is granted.

Anthony D. Johnston of Fores Macko,("Applicant") the attorney for Michael D. McGranahan the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period August

18, 2015 through April 20, 2016. The order of the court approving employment of Applicant was entered on August 23, 2015, Dckt. 40. Applicant requests fees in the amount of $2,000.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preparing fee and employment applications, reviewed and flagged potential preferential payments not reported by the Debtor. The estate has $6,250.37 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.

Fee and Employment Applications: Applicant spent 3.5 hours in this category. Applicant prepared the instant Motion, Motion to Employ, and prepared all necessary paperwork to ensure success on both motions.

Asset Analysis and Recovery: Applicant spent 6.5 hours in this category. Applicant reviewed the Debtor’s Schedule F, finding that certain accounts were not disclosed by the Debtor. The Applicant pursued the collection of records and information for the Debtor and evaluated potential claims, including preference claims. The Applicant prepared Motion to Compel documentation of the Debtor. While the Trustee ultimately determined the cost of pursuing such action would not be beneficial, the Applicant provided substantial, necessary work.

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**
Anthony D. Johnston	10.0	$275.00	$2,750.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$2,750.00

However, the Applicant is only requesting $2,000.00 so that there can be remaining monies to distribute to creditors.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $2,000.00 for its fees incurred for the Client. First and Final Fees in the amount of $2,000.00 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.

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

Fees $2,000.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Anthony D. Johnston of Fores Macko (“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 Applicant is allowed the following fees and expenses as a professional of the Estate:

Applicant, Professional Employed by Trustee

Fees in the amount of $2,000.00

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 case.

14. 14-90780-E-7 RITU/ELISHA RAJ
ADJ-5 Thomas O. Gillis

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES MACKO FOR ANTHONY D. JOHNSTON, TRUSTEE'S ATTORNEY(S)
4-19-16 [105]

REOPENED: 3/29/15

Tentative Ruling: The Motion for Allowance of Professional Fees 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, and Office of the United States Trustee on April 19, 2016. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

The Motion for Allowance of Professional Fees is granted.

Anthony D. Johnston of Fores Macko, the Attorney ("Applicant") for Michael D. McGranahan the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period April 3, 2015 through May 12, 2016. The order of the court approving employment of Applicant was entered on April 6, 2016, Dckt. 45. Applicant requests fees

in the amount of $3,675.00 and costs in the amount of $95.25.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958

(9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including reviewing potential assets of the estate, namely a piece of real property that the Debtor failed to list, preparing employment application for a recovery specialist, preparing motions for compensation, and reviewing asset distribution. The estate has $74,282.48 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 Analysis and Recovery: Applicant spent 3.9 hours in this category. Applicant communicated with asset recovery specialist, reviewed agreement to hire specialist, reviewed the requirements by Stanislaus County Tax Collector for submission of a claim for tax sale excess proceeds, drafted letter to tax authority.

Fee and Employment Applications: Applicant spent 10.5 hours in this category. Applicant prepared the necessary application to obtain approval for the Trustee to employ Applicant, prepared necessary application to obtain approval for the Trustee to employ Mr. Younger, prepared the Motion for compensation for Mr. Younger, prepared the Motion for Compensation for Trustee’s accountant, and prepared the instant Motion.

Asset Disposition: Applicant spent .2 hours in this category. Applicant reviewed the Motion to Order a Judgment Lien Removed.

Tax Issues: Applicant spent .1 hours in this category. Applicant reviewed emails between the Trustee and accountant regarding tax returns and their request for information concerning the subject tax sale. The Applicant wrote a responsive email.

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**
Anthony D. Johnston	14.7	$250.00	$3,675.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$3,675.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $95.25 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	$0.10 per copy	$51.60
Postage		$43.65
Total Costs Requested in Application		$95.25

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 Application in the amount of $3,675.00 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 $95.25 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$3,675.00
Costs and Expenses	$95.25

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 Anthony D. Johnston of Fores Macko ("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 Applicant is allowed the following fees and expenses as a professional of the Estate:
>
> Applicant, Professional Employed by Trustee
>
> Fees in the amount of $3,675.00
> Expenses in the amount of $95.25,
>
> 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 case.

15.	**16-90083-E-7 KHH-1**	**VALLEY DISTRIBUTORS, INC. Iain A. MacDonald**	**MOTION FOR ADMINISTRATIVE EXPENSES 4-12-16 [79]**

Final Ruling: No appearance at the May 12, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 11, 2016. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

The Motion for Administrative Expenses is granted.

Stan Boyett & Son, Inc., a California corporation dba Boyett Petroleum ("Creditor") filed the instant Motion for Administrative Expense on April 12, 2016. Dckt. 79. The Creditor requests that Creditor's claim be allowed as an administrative expense in the amount of $1,029.30 pursuant to 11 U.S.C. § 503(b)(9).

The Creditor states that it is in the business of selling petroleum products and services to businesses on credit using fleet fueling cards through the Boyett platform pursuant to the terms and condition of the Boyett Petroleum Cruise Americard Credit Application. On January 12, 2011, Debtor, by and through its authorized agent, Brandi Alves, submitted a Boyett Petroleum Cruise Americard Credit Application to Creditor seeking to purchase petroleum products and services on credit.

Pursuant to Creditor's contract with Debtor, Creditor would invoice Debtor for the petroleum products and services purchased by Debtor using the Cruise Americards and payment would be by Debtor due ten days after the invoice date.

The Creditor alleges that in the 20 days preceding the petition date, January 13, 2016 and February 2, 2016, the Debtor used its Cruise Americards to fuel up its fleet of vehicles 16 times which specifically consisted of gasoline/fuel. Debtor received the goods that Creditor sold on credit to the Debtor in the ordinary course of business, in the amount of $1,029.30. The Creditor asserts that it has no received payment for the goods delivered during the 20 days preceding the petition date.

DISCUSSION

After a notice and hearing, the court can determine if certain expenses shall be allowed as administrative expenses. 11 U.S.C. § 503(b) states, in relevant part:

> (b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including–
>
> (9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

Section 503(b) requires that an administrative expense under this section must actually be allowed by court order. *In re Fullmer*, 962 F.2d 1463 (10th Cir. 1992). For a creditor to assert a valid 11 U.S.C. § 503(b)(9) administrative claim, the debtor must have physically received the goods and not merely the value of the goods within the 20-day period before commencement of the case. 4 COLLIER ON BANKRUPTCY ¶ 503.16[1] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

In the instant case, the Creditor provides the Debtor’s Invoice, which specifically details the goods, i.e. petroleum, that the Debtor received from the Creditor, on credit, during the 20 days preceding the filing of the instant bankruptcy.

The court’s review of the invoice indicates that the Creditor is correct that the $1,029.30 incurred by the Debtor between January 16, 2016 and February 2, 2016 were in the ordinary course of business and during the 20 days preceding the petition. As such, the Creditor’s claim of $1,029.30 is deemed allowed as an administrative expense pursuant to 11 U.S.C. § 503(b)(9).

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 Administrative Expenses filed by 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 granted and Stan

Boyett & Son, Inc., a California corporation dba Boyett Petroleum shall be allowed an administrative expense of $1,029.30 pursuant to 11 U.S.C. § 503(b)(9) .

16. 13-90893-E-7 LYNN MORGAN
MLP-1

MOTION TO REOPEN CHAPTER 7 BANKRUPTCY CASE
4-14-16 [17]

CASE CLOSED: 08/16/2013

Final Ruling: No appearance at the May 12, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 14, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Reopen this Bankruptcy Case is granted, and the reappointment of a Chapter 7 Trustee ordered.

Lynn Simek Morgan, the Debtor ("Movant") filed this petition for relief on May 7, 2013, and the Meeting of Creditors was concluded on June 4, 2013. The case was closed by the court on August 16, 2013. Movant asserts the following grounds as the basis for reopening this bankruptcy case.

A. In early 2013, Debtor had consulted an attorney to discuss issues she was having with a previous employer wondering if she had a case against them and if they owed the Debtor any money. At that time, it was just an investigation. There was no expectation of receiving any money. The Debtor did not believe it was an actual asset to disclose.

B. Approximately one year after the bankruptcy, a civil case was

filed on behalf of the Debtor in State Court against her previous employers Healthcare Cost Containment United Association, Inc. And Ican Benefit Group, LLC for wrongful termination, nonpayment of wages, failure to pay all wages due upon discharge, unfair competition, invasion of privacy, and intentional infliction of emotional distress.

C. The action was removed to the U.S. District Court, Eastern District of California on October 31, 2014, case no. 1:14-cv-01721-MCE-SMS.

D. In November 2015, after a settlement conference, it was decided that Defendants would pay the Debtor the sum of approximately $91,000.00 for wrongful termination plus severance, unpaid wages, and unpaid vacation pay.

E. Even though at the same time of the bankruptcy was filed there was no real asset for the Debtor to have included "and/or an asset of little or no value at the time and would have been exempt", the Defendants will not authorize the disbursement of the settlement until the previous Chapter 7 Trustee has abandoned his interest in this asset

F. The Debtor has filed Amended Schedules B and C

When an asset was not disclosed, courts have found,

> "This Panel has previously stated, "[a]bandonment pursuant to Section 554 requires that the property to be abandoned is properly scheduled under Section 521(l)." *In re Pace*, 146 B.R. at 564. Here, if the Alleged Partnership exists, it was not scheduled. Accordingly, it has not been fully administered and was not abandoned back to Clarks."

Clark v. Strand (In re Clark), 2008 Bankr. LEXIS 4738 at 11 (B.A.P. 9th Cir. Apr. 3, 2008) FN.1. The confirmed Chapter 13 Plan expressly provides that only scheduled property was revested in the Debtors upon confirmation of the Plan. 09-26667; Modified Chapter 13 Plan Paragraph 6.01.

In the earlier decision in *Pace*, the Bankruptcy Appellate Panel stated:

> "Abandonment pursuant to § 554(c) requires that the property to be abandoned is properly scheduled under § 521(l). *Vreugdenhill v. Navistar Int'l Transp. Corp.*, 950 F.2d 524, 526 (8th Cir.1991) (unless formally scheduled, property is not abandoned at the close of the estate, even if the trustee knew of the existence of the property when the case was closed); *In re Harris*, 32 B.R. 125, 127 (Bankr. S.D. Fla.1983) (property not scheduled was not deemed abandoned and remained property of the estate); *In re Medley*, 29 B.R. 84, 86-87 (Bankr. M.D. Tenn. 1983) (an unscheduled asset was not deemed abandoned and trustee could reopen case to administer the asset to creditors)."

In re Pace, 146 B.R. 562, 564 (B.A.P. 9th Cir. 1992).

Further, not having been disclosed and not having been abandoned back to the Debtors, this property of the bankruptcy estate has been protected from "harm" by the automatic stay provisions of 11 U.S.C. § 362(a).

> "Undisclosed property of the estate does not revert to a debtor upon discharge in a Chapter 7. *Pace v. Battley (In re Pace)*, 146 B.R. 562, 564 (9th Cir.BAP1992). As such, under Section 362(c)(1) a stay against property of the estate remains in place until the property is no longer property of the estate.11 Thus, stay relief was required to pursue the matter in state court."

Clark v. Strand, 2008 Bankr. LEXIS 4738 at *9.

There has been identified, at least from the Defendant's perspective, a possible asset of the estate which was not disclosed or administered by the Chapter 7 Trustee. To the extent that it was not disclosed, it has been protected by the automatic stay as property of the bankruptcy estate. 11 U.S.C. § 362(a), (1); § 554(c). The Trustee may determine that it is property of the estate, and take over for the Debtor, determine that it is not property of the estate and not something for the Trustee to administer, or that while property of the estate, the value to the estate is minor and should properly be abandoned so that the Debtor may conclude enforcing the rights at issue.

The motion is granted and the case is reopened.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Reopen the Bankruptcy Case filed by Lynn Simek Morgan, the Debtor ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the bankruptcy case is reopened. The U.S. Trustee shall reappoint a Chapter 7 trustee in this case.

17. 15-90852-E-7 BERNARD/SANDRA LEIGHTON
ALF-2

MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY, LLC
4-18-16 [35]

REOPENED: 4/15/16

Final Ruling: No appearance at the May 12, 2016 hearing is required.

The court having previously issued an order granting the Motion to Avoid Lien of Ford Motor Credit Company, LLC (Dckt. 61), **the matter is removed from the calendar.**