UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

May 26, 2016 at 10:30 a.m.

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1. 15-28108-E-11 WILLARD BLANKENSHIP
KES-1

CONTINUED MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE TO CHAPTER 7
3-25-16 [77]

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

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

Below is the court's tentative ruling.

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

Correct Notice **NOT** Provided. The Proof of Service states that the Motion and supporting pleadings were served on (1) Debtor's attorney; (2) U.S. Trustee; (3) Thomas G. Mouzes; and (4) Judith Hotze on March 25, 2016. By the court's calculation, 60 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss the Chapter 11 Bankruptcy Case is denied without prejudice.

Initial Note:

The court notes that this Motion was filed in March 2016, which predates some of the acts by the Debtor in Possession to recover property and put substance to a possible plan to provide for creditor claims, short of a dismembering liquidation of assets through foreclosure. Thus, Movant and Movant's counsel did not have the benefit of that information when the Motion was filed.

REVIEW OF MOTION

This Motion to Dismiss the Chapter 11 bankruptcy case of Willard Blankenship ("Debtor-in-Possession") has been filed by Michael Kletchko and Patrick Ruedin ("Movant"), creditor]. Movant asserts that the case should be dismissed based on the following grounds.

A. Due to the encumbrances on the property located at 1304 Aspen Place, Davis, California, there is no equity left in the Davis Property. Dismissal of the case would allow Movant the right to foreclose.

B. Dismissal is better because if the case is converted, the Debtor-in-Possession will be afforded additional time to live in the Davis Property while the Chapter 7 Trustee attempts to sell the Davis Property. The Movant argues that this diminishes the value of the Davis Property and results in increased interest on the secured claims

C. Debtor-in-Possession has allegedly and fraudulently conveyed certain real property that should be part of the estate and the Debtor-in-Possession has allegedly dissipated bankruptcy estate proceeds.

ORDER CONTINUING HEARING

On April 20, 2016, based on the agreement of the parties, the court issued an order continuing the hearing to 10:30 a.m. on May 26, 2016. Dckt. 92.

DEBTOR-IN-POSSESSION'S OPPOSITION

Debtor-in-Possession filed an opposition on May 23, 2016. Dckt. 100. The Debtor-in-Possession opposes the Motion on the following grounds:

1. The Movant fails to address the fact that the Movant's abstract of judgment is avoidable and Debtor-in-Possession has filed an Adversary Proceeding No. 16-02068 to avoid that transfer.

2. Debtor-in-Possession has recovered the Indiana property for the benefit of the estate.

3. The Debtor-in-Possession has proposed a Plan that provides creditors with a significant dividend in excess of that likely in a Chapter 7 liquidation. The Debtor-in-Possession asserts that the proposed Plan provides for 5% more to general unsecured creditors than liquidation. Further, the Debtor-in-

> Possession argues that the proposed Plan provides for Debtor to remain in his home for as long as his health allows.

APPLICABLE LAW

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

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1).

DISCUSSION

Failure to Properly Notice and Serve the Motion

The Movant fails to properly serve the instant Motion.

First, the Movant's Notice of Motion cites "Local Bankruptcy Rule 9014-1(b)(3)" as the authority for the method of notice. In the Eastern District, there is no Local Bankr. R. 9014-1(b)(3).

Second, the Notice states the following,

> Any objection to the requested relief, or a request for hearing on the matter, must be filed and served upon the intiating party within 21 days of mailing the notice. If there is no timely objection to the requested relief or a request for hearing, the court may enter an order granting the relief by default.

Dckt. 78. This is improper. Local Bankr. R. 9014-1(d)(4) states:

> Contents of Notice. The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition. If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written oppositions.

In this District, a minimum of 28-days notice is required in order for the court to find that failure to timely opposition is a statement of non-opposition. Local Bankr. R. 9014-1(f)(1). Here, the Movant appears to be noticing the Motion on 21-days notice, which is 7-days short of the minimum for the court to issue final rulings without a hearing due to the default in responses.

Third, the Movant failed to properly serve all necessary parties. Fed. R. Bankr. P. 2002(a) requires that notice be given to "the debtor, the trustee, all creditors and indenture trustees." A review of the Proof of Service, which is improperly attached to the Notice of Motion, states that only: (1) Debtor's attorney; (2) U.S. Trustee; (3) Thomas G. Mouzes; and (4) Judith Hotze. Dckt. 78. Facially, the Movant has failed to serve the Debtor-in-Possession or the creditors. Rather, the Movant only provided notice to a total of four parties in this Chapter 11 case. This alone is grounds to deny the Motion.

Fourth, the Movant improperly served the Motion "via Notice of Electronic Filing." This is not permitted under the Local Rules. It appears that the Movant has improperly assumed that the Eastern District follows the same procedures as other districts in the state. Unfortunately, that assumption is inaccurate. In order for electronic service to be proper, the party must have consented and registered with the court's electronic filing system. The Eastern District does not offer a court "Notice of Electronic Filing." Therefore, the Movant failed to properly serve the Motion.

No Cause to Dismiss the Case

Assuming, arguendo, that the Motion was properly served and noticed, cause does not exist to dismiss this case pursuant to 11 U.S.C. § 1112(b). In considering the "grounds" advanced by Movant, the court begins with the requirements of Federal Rule of Bankruptcy Procedure 9013 in which the grounds must be stated with particularity in the Motion itself. Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents require that the motion is a separate pleading from the points and authorities, which are separate documents from each declaration, which are separate documents from the exhibits (which may be combined into one exhibit document.

The basis for the Movant's Motion seems to be solely based on the Movant's own legal conclusion that the only "hope to realize anything" is from "the sale of the Davis Property." Dckt. 77. The Movant argues that the cause that justifies dismissal pursuant to § 1112 is that there is no equity left in the Davis Property.

Based on this, the Movant makes the conclusion that the "quickest method to liquidate" Debtor-in-Possession's Davis Property is to all the Movants "the immediate right to foreclose and effectively stop the bleeding. The Movant asserts that in the scenario where the case is dismissed and the Movant is able to foreclose on the Property, that there "will very likely realize the excess proceeds after the first lienholder (AmeriHome Mortgage Company) and second lienholder (Movants) are paid."

Movant goes further to affirmatively represent that, "This is the only way Debtor can hope to realize anything from the sale of the Davis Property." Motion, p. 3:12-13; Dckt. 77. This appears to allege too much, that there is some equity not only for the bankruptcy estate, but even for the Debtor after

all claims are paid.

The Movant does not provide specifics as to how the continuation of the instant case has resulted in the "bleeding" of equity and assets. While the Movant does provide general grounds such as accrual of interest and general market conditions as "cause," the Motion seems to be based on the best interest of the Movant rather than the best interest of "creditors and the estate."

The Movant also asserts that dismissal is proper because of allegedly fraudulent conveyances of certain real property that would otherwise have been property of the estate. The Movant fails to provide specifics in the Motion as to which transfers are fraudulent and why dismissing the case rather than keeping the Debtor-in-Possession in bankruptcy would not result in a better outcome. The Movant appears to argue that the mere fact that the Movant accuses the Debtor-in-Possession of fraudulent conveyances that cause exists.

As to the Debtor-in-Possession's opposition, the Debtor-in-Possession raises numerous points that the continuation of the instant bankruptcy case is in the best interests of the estate and creditors. The Debtor-in-Possession states that he has filed an Adversary Proceeding to avoid the Movant's transfer, has recovered the Indiana property for the estate, and proposes a plan that would potentially result in a higher disbursements to unsecured.

It is highly significant, and cuts sharply against dismissing the case, that Debtor in Possession asserts that the judgment lien of Movant is avoidable as a preference. As set forth in the Complaint to avoid the preference, the Debtor in Possession asserts that the abstract of judgment was recorded on July 22, 2015, which date is within ninety-days of the October 17, 2015 commencement of this bankruptcy case. Adv. Pro. 16-2068; Complaint ¶ 4, Dckt. 1. (By the court's calculation, the October 17, 2015 date is eighty-seven days prior to October 17, 2015.)

The Debtor in Possession, as the fiduciary of the bankruptcy estate, (as would a trustee) is compelled to avoid such a preference. This is because though avoided, the judgement lien is preserved for the benefit of the bankruptcy estate and all creditors. 11 U.S.C. § 551. Though the judgment lien is avoided, that does not mean that Movant would not have an unsecured claim in the case and receive a pro-rata distribution of the proceeds from the recovered preference. Based on the Schedules, it appears that Movant's claim will be the 500 pound gorilla of claims, which would then entitle Movant to most of the monies disbursed on general unsecured claims. FN.1.

FN.1. In the Motion, Movant fails to state with particularity any value for the property and how Movant computes there is no equity. The only testimony provided in support of the Motion is that of Movant's counsel. While such testimony appears to go to matters which counsel has personal knowledge (such as statements made in his presence), Movant relies upon the values stated in the Schedules.

On Schedule A Debtor listed the Property as having a value of $610,000.00. Dckt. 1 at 11. On Schedule D Debtor lists ($113,663.00) in claims secured by the Property (excluding Movant's claim). *Id.* at 17. On Schedule C Debtor asserts an exemption in the Property of $175,000.00. *Id.* at 16. This would leave approximately $310,000.00 of value in the Property for

creditors (assuming Debtor's statement of value is accurate). It appears that by rough calculation Movant is asserting that it would have approximately 90% of the unsecured claim dividend distributed.

In viewing the totality of the case and the progress made thus far, the court does not find sufficient cause pursuant to 11 U.S.C. § 1112(b) that would justify dismissing or converting the case. The motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

2. 15-28108-E-11 WILLARD BLANKENSHIP
RLC-6 Stephen Reynolds

CONTINUED APPROVAL OF DISCLOSURE STATEMENT FILED BY DEBTOR
4-1-16 [82]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2016. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Approve Disclosure Statement 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 Approve Disclosure Statement is xxxxxx.

MAY 26, 2016 HEARING

At the hearing, xxxxx

MAY 18, 2016 HEARING

At the hearing, the Parties requested one further continuance to try and resolve most, if not all, of the plan issues. The court grants one final continuance.

MAY 5, 2016 HEARING

At the May 5, 2016 hearing the Debtor in Possession requested, and the appearing creditor concurred, to have the hearing continued so the parties could continue to work on agreed terms to a plan and disclosure statement.

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: October 17, 2015

Background: Debtor-in-Possession is an eighty-two year old retired physician. His career involved medical research and teaching. He helped found U.C. Davis School of Medicine. Debtor-in-Possession receives monthly social security benefits of $1,627.50 and monthly annuity benefits from a TIAA-CREF account in the amount of $694.22. He also receives occasional dividends on account of an 8% interest in Apnea Analysis Center, Inc. A closely held California Corporation.

From October 1997 onward, Mr. Charles Hoffmeister maintained Debtor-in-Possession's home. This was a significant benefit to the Debtor-in-Possession as his career often demanded extended stays away from Laguna Beach. The agreement between the Debtor-in-Possession and Mr. Hoffmeister was that upon retirement, Debtor-in-Possession would provide Mr. Hoffmeister with a small property. After selling his Laguna Beach home, Debtor-in-Possession provided that property in the form of a small farm (39.83 acres) located in Spencer, Indiana. Debtor-in-Possession purchased the farm in 2009 for $135,000.00, subsequently made improvements to it and harvested timber. The farm does not generate crop income and the primary revenue associated with the farm is the occasional timber sales. Mr. Hoffmeister has lived on the farm since 2009 and has maintained it. Debtor-in-Possession transferred title to Mr. Hoffmeister in June 2015. Mr. Hoffmeister has deeded his interest in the property back to Debtor-in-Possession. Spencer, Indiana is a very rural community and there is not an active market for property.

In 2008, Debtor-in-Possession decided to leave Laguna Beach and move to Davis, California. At the time, he was 74 years old. He listed and sold his residence located at 31401 Holly Drive, Laguna Beach, California to Michael Kletchko and Patrick Ruedin. Debtor-in-Possession used a licensed realtor Susan Neely associated with Prudential a real estate brokerage firm. Mr. Kletchko and Mr. Ruedin sued Debtor-in-Possession on a variety of tort theories regarding failures to disclose defects in the former residence in the Superior Court of California, County of Orange in 2010. A trial was held in February 2015 and a judgment in the amount of $664,000.00 for economic damages on theories of breach of contract, negligence, intentional misrepresentation, and concealment was entered on March 18, 2015. The jury specifically found that Debtor-in-Possession did not engage in the conduct with malice, oppression or fraud. The judgment was increased to include attorney's fees ($175,000.00), costs ($40,468.56) and interest ($37,293.60) on October 30, 2015 for a total of $916,762.16. The fees were reduced from $312,272.27 and the costs were reduced from $38,974.61. Mr. Kletchko and Mr. Ruedin filed an abstract of judgment against Debtor-in-Possession's Davis residence on July 22, 2015, within 90 days of the date of the present case. Debtor-in-Possession is seeking the avoidance of the abstract of judgment. Kletchko and Ruedin have filed a proof of claim in this case on December 22, 2015, in the amount of $1,164,436.00. If the claim is not reduced to the amount awarded by the Orange County Superior Court on

October 30, 2015, the Debtor-in-Possession will need to file a claim objection.

Creditor/Class	**Treatment**	
Administrative Expenses: Expenses arising in the Ordinary Course of Business After the Petition Date	**Claim Amount**	Estimated $30,000.00
	Impairment	
	(1) Expenses arising in the Ordinary Course of Business After the Petition Date; Estimated current at confirmation; Paid in full on the Effective Date of the Plan, or according to terms of obligation if later. (2)Professional Fees, as approved by the Court; Estimated to be $30,000.00; Paid in full upon the refinance of Debtor's residence. (3) Clerk's Office Fees; Estimated None; Paid in full on the Effective Date of the Plan. (4) Other administrative expenses; Estimated None; Paid in full on the Effective Date of the Plan or according to separate written agreement	
Priority Tax Claim	**Claim Amount**	Estimated $4,218.19
	Impairment	
	The Internal Revenue Service has filed a proof of claim for 2012 taxes in the estimated amount of $4,218.19. The proof of claim alleges that no return was filed in 2012. Debtor-in-Possession is reviewing his records to either find a copy of the filed return or will file the return.	
Class 1: Amerihome Mortgage Co. LLC	**Claim Amount**	
	Impairment	Unimpaired
	The secured claim of Amerihome Mortgage Co. LLC is a first priority deed of trust secured by 1304 Aspen Place, Davis, CA. This is Debtor-in-Possession's residence. Debtor-in-Possession shall continue to make monthly payments until the residence is refinanced and this claim is paid in full. It is anticipated that the refinance will occur in June 2016.	
Class 2: Michael Kletchko and Patrick Ruedin	**Claim Amount**	
	Impairment	

	The secured claim of Michael Kletchko and Mr. Ruedin is second priority abstract of judgment secured by 1304 Aspen Place, Davis, CA and recorded July 22, 2015. Debtor will seek to avoid the secured claim pursuant to 11 U.S.C. § 547(b)(2). To the extent allowed the unsecured claim will share pro rata with allowed Class 3 claims. Debtor estimates that the allowed unsecured claim will be $916,762.16. Payment to Class 2 shall be made in part upon the completion of the reverse mortgage, estimated within thirty days of the Effective Date of this Plan, with the balance of the reverse mortgage proceeds twelve months after the initial payment when the loan facility of the reverse mortgage is available and upon the sale of the Indiana property estimated to be within twelve months of the Effective Date. Class 2 claims will be paid pro rata with allowed Class 3 Claims.	
Class 3: General Unsecured Claims	**Claim Amount**	
	Impairment	Impaired
	The allowed general unsecured claims will be paid as follows: Payment to Class 2 shall be made in part upon the completion of the reverse mortgage, estimated within thirty days of the Effective Date of this Plan, with the balance of the reverse mortgage proceeds twelve months after the initial payment when the loan facility of the reverse mortgage is available and upon the sale of the Indiana property estimated to be within twelve months of the Effective Date. Class 3 claims will be paid pro rata with allowed Class 2 claims.	
Class 4: Interest of the Debtor	**Claim Amount**	
	Impairment	Impaired
	The Debtor shall retain his interest in his post-petition social security and TIAA-CREF income. He shall also retain his interest in his residence subject tot he Class 1 secured claim of Amerihome Mortgage and the contemplated reverse mortgage. The property of the estate shall revest to the Debtor upon the Plan Effective Date.	

A. C. WILLIAMS FACTORS PRESENT

__Y__Incidents that led to filing Chapter 11

__Y _Description of available assets and their value

____Anticipated future of the Debtor

__Y__Source of information for D/S

__Y__Disclaimer

__Y__Present condition of Debtor in Chapter 11

__Y__Listing of the scheduled claims

__Y__Liquidation analysis

____Identity of the accountant and process used

__N__Future management of the Debtor

__Y__The Plan is attached

In re A. C. Williams, 25 B.R. 173 (Bankr. N.D. Ohio 1982); *see also In re Metrocraft*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

OBJECTIONS:

Creditors Michael Kletchko and Patrick Ruedin's Opposition

Michael Kletchko and Patrick Ruedin ("Creditor") filed an opposition on May 16, 2016. Dckt. 96. The Creditor opposes approval of the Disclosure Statement on the following grounds:

1. The Plan cannot be confirmed which warrants the court denying the Disclosure Statement. The Plan is allegedly not feasible because:

   a. The Plan names Creditors as second priority and that they will share pro rata with allowed Class 3 claims, however, Debtor-in-Possession does not explain who the Class 3 claimants are or how much they are owed.

   b. There is no evidence that the Debtor-in-Possession will be able to pay the administrative claims, totaling $30,000.00, on the effective day. Additionally, there is no explanation of the administrative claims in the Disclosure Statement.

   c. The Plan states that $132,567.00 will be distributed to Class 2 and 3 in July 2016 and $168,635.00 in July 2017 but does not state how the pro rata share distribution will apply.

d. The Disclosure Statement is unclear whether or not a homestead exemption, however, the exhibit of the Disclosure Statement does imply that a homestead exemption will apply.

e. The Plan is uncertain and speculative because the proposal to various creditors will be based upon several possible alternatives.

2. The Disclosure Statement does not contain adequate information. The Creditor asserts that the Disclosure Statement understates their unsecured claim.

3. There is insufficient information or evidence that the Plan passes the liquidation analysis. The Creditor asserts that there is no basis for any of the valuations in the Disclosure Statement. The Creditor asserts because there is no breakdown of the liquidation in the Disclosure Statement, there is not enough adequate information

DISCUSSION:

1. Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

2. "Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

3. Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A. C. Williams, supra.*

4. There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bank. N.D. Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *In re Michelson*, 141 B.R. 715, 718-19 (Bankr. E.D. Cal. 1992).

5. The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

Determination of whether there is “adequate information” is a subjective determination made by the bankruptcy court on a case by case basis. In re Texas Extrusion Corp., 844 F.2d 1142 (5th Cir. 1988), cert. denied 488 U.S. 926 (1988). Non-bankruptcy rules and regulations concerning disclosures do not govern the determination of whether a disclosure statement provides adequate information. 11 U.S.C. § 1125(d), Yell Forestry Products, Inc. v. First State Bank, 853 F.2d 582 (8th Cir. 1988).

3. 14-29361-E-7 WALTER SCHAEFER **MOTION FOR ADMINISTRATIVE EXPENSES**
DNL-20 **5-5-16 [316]**

Tentative Ruling: 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).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Administrative 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Administrative Fees is granted.

Kimberly Husted, the Chapter 7 Trustee, filed the instant Motion for allowance of Administrative Tax Claims on May 5, 2016. Dckt. 316. The Trustee requests that the court authorize the payment of administrative expense claims for municipal tax claims associated with the real properties known as Los Delfines, Bayside, Unit #2, Tambor, Costa Rica and 184 Los Delfines, Tambor, Costa Rica and any other necessary expenses to maintain the estate's interest in the Bayside Condominium and the 184 Condominium, in an aggregate amount not to exceed $12,500.00 (of which approximately $7,700.00 is for the tax claims).

The Trustee is also requesting the authority to reimburse herself in the amount of $1,100.62 for expenses paid, for consulate fees, airfare to the Los Angeles consulate for Costa Rica, costs associated with transportation, and mailing authenticated documents, on account of the Condominiums.

The Trustee asserts that the relief sought is proper pursuant to 11 U.S.C. §§ 362 and 503.

PROPER PROCEDURAL RULES

In the present Motion, the Trustee stitches requests for the allowance of administrative expenses for two different parties in interest, which are based on different grounds and operative facts. The first is for the allowance and authorization to pay a municipal tax post-petition expense of the estate.

First Request for Relief

Kimberly Husted, the Chapter 7 Trustee, filed the instant Motion for allowance of Administrative Tax Claims on May 5, 2016. Dckt. 316. The Trustee requests that the court authorize the payment of administrative expense claims for municipal tax claims associated with the real properties known as Los Delfines, Bayside, Unit #2, Tambor, Costa Rica and 184 Los Delfines, Tambor, Costa Rica and any other necessary expenses to maintain the estate's interest in the Bayside Condominium and the 184 Condominium, in an aggregate amount not to exceed $12,500.00 (of which approximately $7,700.00 is for the tax claims). It is not clear in the Motion whether these are pre-petition secured taxes which were due and owing as of the commencement of this case, or are post-petition taxes incurred by the estate. The Motion does state that these are "property taxes" and not associated with the Trustee transferring title to the Property into a corporation which is owned by the bankruptcy estate and under the control of only the Trustee.

The Trustee also requests authorize to expend not more than $5,000.00 to pay for insurance to protect the interests of the estate in these properties.

The Trustee asserts that the relief sought is proper pursuant to 11 U.S.C. §§ 362 and 503.

Second, Other Party, Request for Relief

The Trustee is also requesting the court allow the Trustee an interim administrative expense and authority for the Trustee to reimburse herself for $1,100.62 for expenses paid, for consulate fees, airfare to the Los Angeles consulate for Costa Rica, costs associated with transportation, and mailing authenticated documents, on account of the Condominiums.

As all trustees and all bankruptcy counsel are aware the provisions of Federal Rule of Civil Procedure 18 allowing for multiple claims for relief to be joined in one complaint (Fed. R. Bankr. P. 9018) is not incorporated into the contested matter (law and motion, application, objections) practice in the bankruptcy case. Fed. R. Bankr. P. 9014(c).

The court has previously observed that the reason for this is relatively obvious - the rapidity in which substantive matters are determined are determined on a bankruptcy court's law and motion calendar. As opposed to a state court or district court complaint, where the substantive matters are determined and the final ruling issued years after the complaint is filed, in bankruptcy court a final order determining the substantive rights of the parties may be issued as early as fourteen days after the motion has been filed

or at the longest forty-two days (or the first available law and motion date for the limited number of matters for which forty-two days is required.

Allowing litigants to combine multiple claims, against multiple parties, is an invitation for the less scrupulous to try and "sneak it by" the other parties and the court. While the court does not have the slightest concern that the Trustee or her counsel are trying to sneak something by the court, U.S. Trustee, and creditors, the rules apply equally to the virtuous and the "virtuously challenged."

The court will, for ***purposes of this motion only*** make Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 applicable to this contested matter, ***and only this contested matter***. Fed. R. Bankr. P. 9014(c), authorizing the bankruptcy judge to make the other Part VII rules applicable to contested matter. Neither the Trustee or counsel should rely on the court granting such indulgence if this improper joining of claims and parties is repeated, and could well envision that the court could perceive the need to impose corrective sanctions.

APPLICABLE LAW

In relevant part, 11 U.S.C. § 503 states:

> (b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including--
>
> (1)(A) the actual, necessary costs and expenses of preserving the estate including–. . .
>
> (B) any tax--
>
> (I) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or
>
> (ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case;. . .

When a case is converted to one under Chapter 7, 11 U.S.C. § 726(b) provides that the administrative expenses of § 503(b) incurred under Chapter 7 after conversion have priority in distribution over the administrative expenses incurred under the other Chapters. 4 COLLIER ON BANKRUPTCY ¶ 726.03 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). 11 U.S.C. § 503(a) states that an entity may timely file a request for payment of an administrative expense, "or may tardily file such request if permitted by the court for cause."

DISCUSSION

For purposes of the instant Motion, the court separates the Motion into two requests: (1) Administrative Expense for Municipal Taxes; (2)

Administrative Expense for Property Insurance; and (3) Administrative Expense for Reimbursement of Trustee's Expenses.

Request for Payment of Administrative Expenses Relating to Property in Costa Rica

Municipal Taxes

As to the municipal taxes, the Trustee is seeking authorization to pay the taxes owed for 2014 and 2015 tax year. Pursuant to 11 U.S.C. § 503(b)(1)(B), these taxes to be paid by the Trustee are administrative expenses. These fees to be paid by the Trustee are actual and necessary administrative expenses of the estate. The Trustee is requesting authorization to pay the municipal taxes with an approximate amount due of $7,700.00 (based on the approximate exchange rate of 1 Colon to $0.0019 U.S. Dollar). The Trustee provides a copy of the municipal tax bills. Dckt. 319. The Trustee states these taxes would need to be paid in order for the Trustee to transfer and sell the properties.

Therefore, the Motion is granted and the Trustee is authorized to pay a total of no more than $7,700.00 for the municipal tax claims associated with the Baydside Condominium and 184 Condominium.

Property Insurance

As to the property insurance, the Trustee is requesting authorization to obtain property insurance not expected to exceed an aggregate of $5,000.00.

The Motion is granted and the administrative expenses are allowed and authorized to be paid by the Trustee.

Request for Reimbursement of Expenses of Trustee

As to the request for reimbursement, the Trustee asserts that the expenses were necessary in order to avoid the potential of the Debtor or other persons or entities attempting to take control of the Condominiums under Costa Rican law. The Trustee states that on the advice of the estate's counsel in Costa Rica, creating a separate entity and to transfer the Condominiums into that entity to avoid the third-party corporations holding title to the properties for the Debtor from impeding the Trustee's efforts to sell the properties.

In order to achieve this goal of creating an entity to transfer the property interest in to preserve for the estate, the Trustee alleges to have incurred the following expenses:

Expense	**Amount**
Consulate Fees	$500.00
Round Trip Airfare from Sacramento to Los Angeles	$353.96
Parking	$29.00

Mileage and Ground Transportation	$88.54
Copies of Documents	$0.90
Mailing of Original Authenticated Documents to Costa Rican Counsel	$128.22
TOTAL	**$1,100.62**

The Trustee asserts that these expenses were necessary to create the new entity and to begin the process for transferring the Condominiums. In order to achieve such, the Trustee had to personally appear at the Los Angeles consulate for Costa Rica to execute documents. The Trustee states that she sought alternative methods to avoid the cost, but the Trustee asserts that this was the most cost efficient means. By traveling to Los Angeles and transferring the Condominiums to a new entity, the Trustee states she is foregoing the need to travel to Los Angeles and appear at the consulate again.

Therefore, the Motion is granted and the Trustee is authorized to reimburse herself, as interim reimbursement of expenses pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330, a total of $1,100.62 for the expenses incurred in the creation of a new entity and the transferring of estate property interests into the new entity.

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 Fees filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, the following administrative expenses are allowed, and the Trustee is authorized to pay:
>
> 1. A total of no more than $7,700.00 for the municipal tax claims associated with the property of the bankruptcy estate commonly referred to in the Motion as the Bayside Condominium and te 184 Condominium located in Tambor, Costa Rica.
>
> 2. Premiums for property insurance for the properties of the estate identified in the forgoing paragraph.
>
> **IT IS FURTHER ORDERED** that the Kimberly Husted, the Chapter 7 Trustee, is allowed 1,100.62 in interest expenses pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, for the expenses incurred by the Trustee in the creation of a new entity and the transferring

of estate property interests into the new entity, as specifically delineated in the Motion.

4. 16-22282-E-7 GEORGE UPTON — **MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE**
4-12-16 [4]

No Tentative Posted
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5. 16-90083-E-7 SSA-6 VALLEY DISTRIBUTORS, INC. MOTION TO ABANDON O.S.T. 5-13-16 [99]

Tentative Ruling: The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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)(3) 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 May 13, 2016. By the court's calculation, 11 days' notice was provided.

The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Abandon Property is granted.

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

The Motion filed by Irma Edmonds ("Trustee") requests the court to authorize Trustee to abandon "all of Debtor's personal files, records, invoices, with the exception of Debtor's financial affairs and documents for the last three years, back to the Debtor and leave same at its facility at 1900

S. Paulson Rd., Turlock, California" (the "Property"). The Trustee, after consulting with her accountant, determined only the last 3 years of documents are necessary for tax and financial reporting purposes.

The Trustee set this Motion on shorten time because the Trustee wishes to vacate the Debtor's facility by or before the end of May 2016 to no longer incur further rent and related utility and administrative charges.

The court finds that the Property secures claims which exceed the value of the Property, and are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate, and authorizes the Trustee to abandon the Property.

The Motion also requests that the court grant a "waiver of the provisions set forth under Bankruptcy Rule 6007(a)." Dckt. 99. Federal Rule of Bankruptcy Procedure 6007(a) states,

> Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 14 days of the mailing of the notice, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct.

The Trustee fails to cite any basis for this request and fails to state what specifically of Rule 6007(a) the Trustee seeks the court to "waive." Therefore, the request is denied.

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 to Abandon Property 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 to Compel Abandonment is granted and that the Property identified as:
>
> 1. "all of Debtor's personal files, records, invoices, with the exception of Debtor's financial affairs and documents for the last three years"
>
> is abandoned to Valley Distributors, Inc. by this order and the Trustee is authorized to leave the Property at the facility at 1900 S. Paulson Rd., Turlock, California, with no

further act of the Trustee required.

No other relief granted.

6. 10-20293-E-7 LLOYD/KATRINA DOUGLAS GMR-4

MOTION FOR COMPENSATION FOR GEOFFREY RICHARDS, CHAPTER 7 TRUSTEE(S)
4-21-16 [136]

Final Ruling: No appearance at the May 26, 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 21, 2016. By the court's calculation, 33 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 Trustee Fees is granted.

Geoffrey Richards, the Trustee ("Applicant") for Debtor, Lloyd and Katrina Douglas("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 12, 2014 through April 21, 2016.

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

General Case Administration: Applicant spent 36.90 hours in this category. Applicant assisted Client by reviewing the case, emails from counsel, and all documents and information. Applicant worked along with Debtor and realtor to consummate the short sale of the Debtor's property. Worked with

title company to ensure the effectiveness of the short sale.

Trustee requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the balance of $23,000.00	$2,300.00
Calculated Total Compensation	**$3,550.00**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$3,550.00
Less Previously Paid	$0.00
Total Final Fees Requested	$3,550.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $157.87 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Utility Bill		$63.74
Utility Bill		$8.39
Utility Bill		$44.14
Mileage	34 miles @ $0.57/mile	$19.21
Notary fees		$10.00
Parking		$1.00
Postage		$12.39
Total Costs Requested in Application		$158.87

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including the sale of personal property as well as general case administration. The estate has $17,148.74 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 ALLOWED

Fees

The court finds that the requested fees reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. Final Fees in the amount of $3,550.00 pursuant to 11 U.S.C. § 330 are authorized to be paid by the Trustee from the available funds of the Estate Funds in a manner consistent with the order of distribution in a Chapter 7 case.

In this case the Chapter 7 Trustee currently has $17,148.74 of unencumbered monies to be administered. The Chapter 7 Trustee marshaled personal assets of Client for liquidation and aided in the consummation of the short sale.

Costs and Expenses

The Final Costs in the amount of $158.87 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

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

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

Fees	$3,550.00
Costs and Expenses	$158.87

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 Geoffrey Richards (“Applicant”), Chapter 7 Trustee having been

presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Geoffrey Richards, Trustee

Fees in the amount of $ 3,550.00
Expenses in the amount of $ 158.87,

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