UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, until further order of the Chief Judge of the District Court. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

MODESTO DIVISION CALENDAR
June 4, 2020 at 10:30 a.m.

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1. **19-90400-E-7** **JUSTAN JOHNSON** **CONTINUED MOTION TO RESERVE ASSET AND LOAN REFINANCED PROCEEDS UPON CLOSING OF THE CASE**
BLF-4 **Steve Altman** **3-26-20 [56]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2020. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Reserve Asset and Loan Refinanced Proceeds Upon Closing of the Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Reserve Asset and Loan Refinanced Proceeds Upon Closing of the Case is xxxxxxx.

May 14, 2020 Request For Further Continuance

At the May 14, 2020 hearing, the Parties requested a further continuance to address the specific issues in tailoring the relief to be granted.

REVIEW OF MOTION

This Chapter 7 case is an example of the best in all parties and their professionals. The bankruptcy estate includes an inheritance to be received by the Debtor, which is more than sufficient to pay all claims in full, pay all administrative expenses, and generate a substantial surplus estate for the Debtor. The Debtor disclosed the pending inheritance at the First Meeting of Creditors, the decedent having passed away before this case was filed.

Debtor commenced this Chapter 7 case in *pro se*, not appreciating the legal effect of an inheritance and the broad reach of the provisions of 11 U.S.C. § 541 in creating the bankruptcy estate. The Trustee, appreciating the economic consequences of liquidating such asset, a home (the "Home"), to Debtor, encouraged Debtor to obtain counsel, rather than the Trustee blundering forward to liquidate the home. Debtor has engaged knowledgeable, experienced counsel, who has worked with the Trustee and Trustee's counsel to structure an economically advantageous resolution.

The Debtor initially filed a Motion to Dismiss this case, representing that after dismissal Debtor would voluntarily pay the creditors from a refinance. Dckt. 24. Through a series of hearings on the Motion, it was represented to the court that Debtor could obtain a loan, only if the bankruptcy case was dismissed. The court denied without prejudice the Motion, not convinced that the Debtor would be able to insure that creditors were paid. Civil Minutes, Dckt. 54. The court noted that the bankruptcy estate could retain a lien on the property, with the case reopened upon a refinance or sale, for the payment of claims.

REVIEW OF MOTION

The present Motion has been filed by Gary F. Farrar ("the Chapter 7 Trustee"), requesting "Court authorization for the estate to reserve its rights to the only asset [the interest in the House] that Mr. Farrar may be able to administer in this case. . . so that when the case closes the [House] will not automatically abandoned to the Debtor but will remain property of the estate." Motion, p. 2:1-6. The estate's interest is

in the real property commonly known as 5112 Soave Lane, Salida, California (the "House"). This request is so that when the case closes the Property will not be automatically abandoned to the Debtor but will remain property of the estate.

The Motion states that the Debtor and Trustee, with the assistance of their attorneys, have a solution that will allow the Trustee to "reserve the asset" [not a defined term in the Motion]. The proposal is stated as:

a. The court enter an order to "reserve the asset and proceeds from the loan refinance of the [Home] so the case will close without delay." Motion, ¶ 10.a.

b. "Directing" [order?] that the Debtor "will move forward" to secure financing on the Home and that the proceeds of the loan will be paid directly to the Trustee or Debtor's counsel. *Id.* ¶ 10.b.

c. Upon the loan proceeds being received, Debtor's counsel will reopen the case to allow the Trustee administer the loan proceeds, with the fee for reopening case waived. *Id.* ¶ 10.c.

Trustee asserts that the Debtor is in accord with the filing of this Motion to reserve the asset, direct Debtor to move forward with the financing, with loan proceeds going to the Trustee or Debtor's Counsel attorney-client trust account, and directing Debtor's Counsel to file motion to reopen the case so that Trustee may administer the proceeds. Additionally, in the event that the loan is not approved, they have also agreed for Debtor's Counsel to file a motion to reopen the case and allow Trustee to administer the Property.

DISCUSSION

The interest in the House is the only unencumbered asset of the estate with nonexempt equity that Trustee may be able to liquidate for the benefit of unsecured creditors. Thus, allowing Trustee to reserve its rights over this asset will move the case forward and can close without further delay.

Trustee points the court to *In re Delash*, where the court held that under Section 554(c), the court "as permitted in the preamble of section 554(c), the court may expressly order that a scheduled asset will not be abandoned when the case is closed. *In re Delash*, 260 B.R. 4, 9 (Bankr. E.D. Cal. 2000). Further noting that "[t]his permits a trustee to close the case yet preserve for the estate an asset with possible future value even though it has no immediately realizable value." *Id*.

In further support of the appropriateness of this request, Trustee discusses *In Re Hart*, where the court formulated a factors test to determine whether it is justifiable to close a case without an unadministered asset being abandoned to the Debtor. *In re Hart*, 76 B.R. 774 (Bankr. C.D. Cal. 1987). Closing a case would be justifiable under the following circumstances:

> 1. A reasonable possibility must exist that an asset valuable enough to pay substantial dividends to the creditors may be recovered in the future. A potential recovery of minimal value to the creditors would not be sufficient reason to except a claim from abandonment.

> 2. The event that will trigger the reopening of the case for distribution of that asset must be well-defined. It should not require any further action by any representative of the estate, for if action is required, then the Chapter 7 Trustee should not be discharged until the necessary steps are completed.
>
> 3. The events that may result in payment to the estate must not be likely to occur soon, for if the asset was expected to be liquidated within say, a year, the case should probably be kept open until then.

In re Hart, 76 B.R. 774, 777 (Bankr. C.D. Cal. 1987).

Trustee argues that all factors are met on the basis that: (1) the Property will have substantial value in the future and once Debtor has obtained the loan and Trustee is allowed to administered the proceeds, Trustee will be able to make a significant distribution to creditors; (2) the trigger for reopening the case is Debtor's Counsel receipt of loan proceeds or the receipt of notification that the loan cannot be approved, thus the trigger is well-defined; and lastly, (3) at this moment it is unknown when or if the Debtor will received the loan proceeds, though Debtor's Counsel reports that they have been diligently working with the lender so that the loan can be approved.

INTEREST RETAINED

In the Motion, the Trustee makes general reference to the court ordering that the estate will "reserve the asset and proceeds from the loan refinance." The Trustee does not state what is the "asset." If it is the Home, then one questions how the Debtor can obtain the loan and grant the lender a deed of trust. Then, the Trustee requests that the court order that the estate "retain" the loan proceeds which do not now exist.

In the Motion, the Trustee states that it is not likely that the Debtor would obtain any loan proceeds, if at all. Thus, it appears that the Trustee states that he does not know if, from this valuable asset of the estate, any recovery will be made for the estate. In the Motion to Dismiss, the Debtor stated that he "desires to procure a real property loan." Motion to Dismiss, ¶ 8. A); Dckt. 24. In February 2020, Debtor reported that the loan had been "preliminarily finalized." Civil Minutes, p. 2; Dckt. 54.

It is unclear to the court what is not to be abandoned upon the dismissal of this case. 11 U.S.C. § 349(b)(3).

Dismissal vs. Discharge

The Parties have presented this to the court as it being necessary for this case to be dismissed and Debtor not being granted a discharge. It has been represented that a discharge would impair Debtor's ability to obtain a loan.

On May 5, 2020, the Clerk of the Court issued a discharge for the Debtor. Dckt. 61. This appears to be a clerical error on the Clerk's part, if the Debtor does not intend to obtain a discharge. Such clerical error can be addressed by the court.

JUNE 4, 2020 HEARING

No further documents have been filed with respect to the requested relief. At the hearing, **xxxxxxxxxx**

2. 20-90200-E-7 JAIME MENDOZA
Pro Se

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
4-22-20 [22]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Chapter 7 Trustee, Creditors and Office of the United States Trustee on April 24, 2020. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is xxxxxxxx.

The Chapter 7 Trustee, Michael D. McGranahan ("Trustee"), seeks dismissal of the case on the grounds that Jaime Mendoza ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 10:30 a.m. on June 2, 2020. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 21, 2020. Dckt. 28. Debtor states the following:

> I, Jaime Mendoza, request to: Honorable Judge, Ronald H. Sargis, to forgive me for not appear[sic] at the meeting, I completely "forgot". I apologies[sic] for the mistake Your Honor please give me the opportunity to finish my bankruptcy.

Dckt. 28, at p. 1.

DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

The Trustee reports that for the June 2, 2020 continued Meeting of Creditors, **XXXXXXXXXX**

As provided in Amended General Order 20-02, the deadline for filing objections to discharge (in addition to other specified deadlines) are extended and computed from the date of the Meeting of Creditors that the debtor first attended. For Objections to Discharge and for nondischargeability of debt, such deadlines are extended to and expire 60 days after the first Meeting of Creditors for which the debtor is in attendance.

~~Based on the foregoing, cause exists to dismiss this 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 7 case filed by The Chapter 7 Trustee, Michael D. McGranahan ("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.~~

~~Amended General Order 20-02 provides for the extension of the deadline for filing Objections to Discharge to 60 days after the first Meeting of Creditors which is conducted with the debtor present, granted, and the case is dismissed, thereby addressing the additional requested relief.~~

3. 19-90939-E-7 RANDY/MARIE WESTON MOTION TO COMPEL ABANDONMENT
SSA-1 Steve Altman 4-29-20 [32]

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

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)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, and Office of the United States Trustee on April 29, 2020. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion to Compel Abandonment is granted.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is 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 Randy L. Weston and Marie E. Weston ("Debtors") requests the court to order Michael D. McGranahan ("the Chapter 7 Trustee") to abandon property identified as:

Asset	Value	Lien	Exemption Amount Claimed
18188 Kelley Ranch Road, Sonora, CA	$365,000.00	$312,912.00	C.C.P. §704.950-$100,000.00

2003 Dodge Dakota	$1,350.00	$0	C.C.P. §704.010- $1,350.00
Household belongings	$4,000.00	$0	C.C.P. §704.020- $4,000.00
Electronics: 2 TVS, DVD, computer, printer, phones	$750.00	$0	C.C.P. §704.020- $750.00
Books, pictures, etc	$100.00	$0	C.C.P. §704.020- $100.00
Treadmill, gun safe	$600.000	$0	C.C.P. §704.020- $600.000
Firearms for personal use: Browning 30-08 rifle, Winchester 12 ga pump shotgun, Remington 12 ga pump shotgun, 9mm Beretta pistol	$1,800.00	$0	C.C.P. §704.020- $1,800.00
Clothes	$800.00	$0	C.C.P. §704.020- $800.00
Jewelry: wedding bands	$1,500.00	$0	C.C.P. §704.040- $1,500.00
Costume Jewelry	$300.00	$0	C.C.P. §704.040- $300.00
Cash on hand	$50.00	$0	C.C.P. §704.070- $50.00
Checking- Oak Valley Bank- 3025	$4.52	$0	C.C.P. §704.070- $4.52
Checking- Westamerica Bank- 6277	$62.00	$0	C.C.P. §704.070- $62.00
Checking- Post City Financial CU- 5861	$1,200.00	$0	C.C.P. §704.070- $1,200.00
Savings- Post City Financial CU- 5861	$25.00	$0	C.C.P. §704.070- $25.00
Thrift Savings Plan employer sponsored	$15,611.00	$0	C.C.P. §704.110- $15,611.00

Monthly CalPERS inherited from wife's deceased mother	$375.49	$0	C.C.P. §704.1105(a)(1) & (2)(h)- $375.49
3 horses- pets	$800.00	$0	C.C.P. §704.010- $0.00

("Property"). The Real Property commonly known as 18188 Kelley Ranch Road, Sonora, CA is encumbered by the lien of Ditech Financial LLC, securing a claim of $312,912.00. The Declaration of Randy L. Weston has been filed in support of the Motion and the values listed above. Dckt. 34.

Trustee does not oppose the Motion. Trustee's May 5, 2020 Statement of Non-Opposition.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not 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 Compel Abandonment filed by Randy L. Weston and Marie E. Weston ("Debtors") 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 the Property identified as:

Asset
18188 Kelley Ranch Road, Sonora, CA
2003 Dodge Dakota
Household belongings
Electronics: 2 TVS, DVD, computer, printer, phones
Books, pictures, etc
Treadmill, gun safe
Firearms for personal use: Browning 30-08 rifle, Winchester 12 ga pump shotgun, Remington 12 ga pump shotgun, 9mm Beretta pistol

Clothes
Jewelry: wedding bands
Costume Jewelry
Cash on hand
Checking- Oak Valley Bank- 3025
Checking- Westamerica Bank- 6277
Checking- Post City Financial CU- 5861
Savings- Post City Financial CU- 5861
Thrift Savings Plan employer sponsored
Monthly CalPERS inherited from wife's deceased mother
3 horses- pets

and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Michael D. McGranahan ("Trustee") to Randy L. Weston and Marie E. Weston by this order, with no further act of the Trustee required.

4. **20-90293-E-7** **DAVID/MARIA VILLARREAL** **MOTION TO AVOID LIEN OF VALLEY FIRST CREDIT UNION**
BSH-1 **Brian Haddix** **5-20-20 [18]**

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

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)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7, and Creditor on May 20, 2020. By the court's calculation, 15 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). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Valley First Credit Union ("Creditor") against property of the debtors, David Diaz Villarreal and Maria Theresa Villarreal ("Debtor") commonly known as $1,081.41 in garnished funds held in custody by the Stanislaus County Sheriff ("Property").

A Wage Garnishment Order was entered against Debtor in favor of Creditor in the amount of $14,413.00 on December 30, 2019. Exhibit B, Dckt. 21.

Pursuant to Debtor's Amended Schedule A, the personal property has an approximate value of $1,081.41 as of the petition date. Dckt. 16. The unavoidable consensual liens that total $14,413.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $1,081.41 on Amended Schedule C. Dckt. 16.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by David Diaz Villarreal and Maria Theresa Villarreal ("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 judgment lien of Valley First Credit Union, California Superior Court for Stanislaus County Case No. CV19004002, Earnings Withholding Order dated December 30, 2019, against the personal property consisting of $1,081.41 in garnished funds held in custody by the Stanislaus County Sheriff, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

5.	**06-90574-E-7** **SSA-2**	**DANIEL/ANGELA HAUSER** **Randy Walton**	**MOTION TO EMPLOY CAROLINE L MAITA AS SPECIAL COUNSEL AND/OR MOTION TO EMPLOY KURT ARNOLD AS SPECIAL COUNSEL, MOTION TO APPOINT SPECIAL COUNSEL TO PROSECUTE PERSONAL INJURY/PRODUCT LIABILITY-MEDICAL DEVICE CLAIM AND SET TERMS AND CONDITIONS OF CONTINGENCY FEE AGREEMENT** **4-30-20 [51]**

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

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)(C).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 30, 2020. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion to Employ is granted.

Irma Edmonds ("Trustee") seeks to employ Caroline L. Maida for the Mostyn Firm and Kurt Arnold of the Arnold & Itkin LLP Firm ("Special Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Special Counsel to prosecute a personal injury/product liability-medical device suit.

Trustee argues that Counsel's retention is necessary in order to continue prosecuting, settle, and secure funds related to a personal injury/ product liability medical device litigation related to a 2006 medical

device implant ("Litigation Claim"). Trustee informs the court that Debtor employed Counsel on or about April 8, 2015 to prosecute the Litigation Claim pursuant to a 40% contingency fee and recovery of costs. The Debtor did not schedule her interest in the Litigation Claim.

Kurt Arnold, an attorney of Arnold & Itkin LLP Firm, testifies that the firm represented Debtor in the Litigation Claim since April 8, 2015; they have an agreement with Mostyn Firm to share the contingency fee where Arnold & Itkin LLP is entitled to 50% of the total recovery less costs and court fees; and that he is experienced in personal injury/product liability related claims. Kurt Arnold testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Caroline L. Maida, an attorney of Mostyn Firm, testifies that the firm represented Debtor in the Litigation Claim since April 8, 2015; they have an agreement with Arnold & Itkin LLP Firm to share the contingency fee where Mostyn is entitled to 50% of the total recovery less costs and court fees; and that she is experienced in personal injury/product liability related claims. Caroline L. Maida testifies she and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

DISCUSSION

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

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Contingency Fee: Litigation Requested

Applicant computes the fees for the services provided as a percentage of the monies recovered for the bankruptcy estate. Applicant represents the estate's interest in litigation to prosecute the estate's interest in certain product liability claims related to a 2005 medical device implant, for which Debtor agreed to a contingent fee of 40% of the gross amount after payment of expenses. However, if no settlement is obtained, the bankruptcy estate and Trustee will owe no fees or expenses to Special Counsel. The law firms will advance client's costs in performing the legal services covered under the contract. The advanced costs are deducted from client's settlement proceeds after attorneys' fees are first deducted from the gross recovery and before client Debtor receives the net recovery.

As originally agreed to by the Debtor, the terms for the division of the contingency fee is as follows: 40% contingency fee agreement, to be split 50% to Mostyn Firm and 50% to Arnold & Itkin LLP Firm. Through the approval of this motion to employ Counsel, the court approves the contingent fee.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Mostyn Firm and Arnold & Itkin LLP Firm as Special Counsel for the bankruptcy estate. Approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Irma Edmonds ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, and Trustee is authorized to employ Mostyn Firm and Arnold & Itkin LLP Firm as Special Counsel for Debtor as agreed to by Debtor. The court authorizes the employment with compensation computed on a contingent fee basis 40% contingency fee agreement, to be allocated 50% to Mostyn Firm and 50% to Arnold & Itkin LLP Firm.

6. 19-90989-E-7 **JAMIE/MELISSA BILLMAN** **MOTION TO EMPLOY TRANZON ASSET STRATEGIES AS AUCTIONEER(S) AND/OR MOTION TO SELL**
WF-2 **Walter Dahl**
6 thru 7
5-1-20 [159]

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 1, 2020. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Employ has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Employ is granted.

The Motion to Sell Property by Auction is granted.

Michael D. McGranahan ("Trustee") seeks to employ WFS, Inc., dba Tranzon Asset Strategies ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and

330. Trustee seeks the employment of Auctioneer to conduct an auction of certain property of the estate and sell such property at auction.

Trustee argues that Auctioneer's appointment and retention is necessary to conduct an auction of three vehicles and a tractor ("Assets"). Under the Agreement, Auctioneer is to store the Assets, advertise, and conduct an online auction. In exchange, the estate is responsible for all sale-related expenses, which are estimated to be $4,500.

The Trustee will pay a commission of 10% on all sales to the Auctioneer, and the Auctioneer will be entitled to charge an additional buyer's premium of 10%.

In substance, the Auctioneer is seeking to be paid 20% of the value of the property sold. Such may be appropriate for a modest auction sales proceeds of $4,500, but may not be appropriate if this property of the bankruptcy estate sells for substantially more.

Lonny Papp, an Auctioneer and Vice President of WFS, Inc., dba Tranzon Asset Strategies testifies that he has been retained by Trustee under the terms of Auctioneer's Agreement to sell the Assets. Lonny Papp testifies he and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ WFS, Inc., dba Tranzon Asset Strategies as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit A, Dckt. 161. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

Trustee's Request for Authority to Conduct Auction

The Bankruptcy Code permits Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property identified as:

1. 1951 Jeep AMC, VIN #5894

2. 2010 Harley Davidson FLHX, Motorcycle, VIN #7294
3. 2009 Arlen Nass (SPNS) Motorcycle, VIN #N0491
4. 2010 Kubota B 2630 Utility Tractor

("Property").

Trustee proposes the sale be made via online auction with WFS, Inc., dba Tranzon Asset Strategies as the Auctioneer. Trustee states that the Property are not encumbered and proceeds, net of selling of costs, will inure to the estate.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Property is not encumbered, and proceeds will inure to the estate after accounting for selling costs.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ and Motion to Sell filed by Michael D. McGranahan ("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 Michael D. McGranahan, the Chapter 7 Trustee, is authorized to sell at auction pursuant to 11 U.S.C. § 363(b) the property of the Estate identified as:
>
> 1. 1951 Jeep AMC, VIN #5894
> 2. 2010 Harley Davidson FLHX, Motorcycle, VIN #7294
> 3. 2009 Arlen Nass (SPNS) Motorcycle, VIN #N0491
> 4. 2010 Kubota B 2630 Utility Tractor
>
> which is located at a nonresidential property controlled by Auctioneer.
>
> **IT IS ORDERED** that the Motion to Employ is granted, and Trustee is authorized to employ WFS, Inc., dba Tranzon Asset Strategies as Auctioneer for Trustee on the terms and conditions as set forth in the Auction Agreement filed as Exhibit A, Dckt. 161.
>
> **IT IS FURTHER ORDERED** that compensation in the amount of 10% of the gross sales proceeds to be paid by the Trustee are authorized. Additionally, the Auctioneer may collect an additional 10% "buyer's premium" directly from

the buyers and retain that 10% on the first $6,000.00 of aggregate gross sales proceeds and pay to the Trustee the 10% buyer's premium computed on the gross sales proceeds in excess of $6,000.00.

Auctioneer, by separate post-auction motion may seek the allowance of all or a portion of the 10% buyer's premium on the aggregate gross sales proceeds in excess of $6,000.00 that are collected and paid to the Trustee.

The above percentage fees are subject to the provisions of 11 U.S.C. § 328.

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

7. 19-90989-E-7 JAMIE/MELISSA BILLMAN MOTION TO SELL
WF-3 Walter Dahl 5-1-20 [165]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 1, 2020. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property identified as:

1. 2006 Ford E450 van- mobile grooming van
2. 2018 Dodge Ram pickup
3. 1974 Chevrolet 1500 pickup
4. 1990 (or 1997) horse trailer
5. "Doggone Beautiful Mobile Grooming," a sole proprietorship

("Property").

The proposed purchaser of the Property is Jamie Benjamin Billman and Melissa Marnell Billman, the two Debtors, and the terms of the sale are:

A. Purchase price is $18,175.00.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because after Trustee consulted with two separate auctioneers regarding the value of the Vehicles and the cost of selling the Property through auction, this is the best value Trustee can obtain from the Property.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Michael D. McGranahan, the Chapter 7 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 Michael D. McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Jamie Benjamin Billman and Melissa Marnell Billman or nominee ("Buyer"), personal property identified as:
>
> 1. 2006 Ford E450 van- mobile grooming van
> 2. 2018 Dodge Ram pickup
> 3. 1974 Chevrolet 1500 pickup
> 4. 1990 (or 1997) horse trailer
> 5. "Doggone Beautiful Mobile Grooming" business
>
> ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $18,175.00, on the terms and conditions set forth in the Motion, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

8.	**16-90603-E-7**	**MARK ONE CORPORATION**	**MOTION FOR SUPPLEMENTAL ORDER**
	DB-3	**Cecily Dumas**	**TO ORDER APPROVING SETTLEMENT 5-7-20 [181]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, Attorney for Settling Party, and parties requesting special notice on May 7, 2020. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion for Supplemental Order to Order Approving Settlement is continued to 10:30 a.m. on July xxxxx, 2020.

Burger Physical Therapy Services ("Movant" or "Plaintiff") renews its requests to the court for a supplemental order to the court's earlier order approving the settlement agreement between Chapter 7 Trustee Irma Edmonds and John C. Sims, individually and as Trustee of the G&M Baker 1994 Trust regarding Trustee's Preference Claim against Sims. The request for such a supplemental order is provided for in this court's order remanding the *Burger Physical Therapy Services, Inc. v. Sims* adversary proceeding back to state court. 17-9021; Order, Dckt. 69.

HISTORY OF COURT GRANTING MOTION FOR CHAPTER 7 TRUSTEE TO SELL ASSETS AND RIGHTS OF THE BANKRUPTCY ESTATE TO JOHN SIMS

On January 31, 2018, Irma Edmonds, the Chapter 7 Trustee ("Trustee"), requested that the court approve a compromise and settle competing claims and defenses with John Sims, individually and as trustee of the G&M Baker 1994 Trust ("Defendant Sims").

After parties provided the court with supplemental pleadings addressing certain issues identified by the court, the Motion to Approve the Settlement was granted, with the terms thereof as modified in the order granting that motion stating that Movant's claims against Defendant-Sims, if any, were not transferred, therefore not included in the settlement. Order, Dckt. 100.

In the Civil Minutes from the hearing, the court addressed that supplemental proceedings might be required in this court. The court further noted that:

> In remanding and abstaining, this court recognizes that it could exercise federal court jurisdiction for this determination. Out of further regard for the State Court judge to whom the matter is remanded, if that judge determines that properly be determined by a federal court judge, this court will exercise such jurisdiction if the State Court judge orders the parties to obtain such determination by supplemental motion for determination of the rights transferred by the Chapter 7 Trustee under the Settlement and what rights, if any, were not transferred (or such other proceeding as Plaintiff and Defendants determine proper).

16-90603, Civil Minutes at p. 14, Dckt. 99.

Movant comes now and makes this motion pursuant to the court's order on the Motion for Remand in the Adversary Proceeding where the court provided that in the event the state court judge requires this court to determine the right and property of the parties involved, such determination may be sought by motion:

> If the State Court judge concludes that determination of this federal court of what rights and property were acquired by Defendants from the Chapter7 Trustee is necessary, in that State Court judge's opinion, upon order of said State Court judge, Plaintiff and Defendants may seek such determination by motion for supplemental order to the Order Approving the Settlement or such other federal court proceeding as proper under the Federal Rules of Bankruptcy Procedure.

17-09021, Order, Dckt. 69.

DISCUSSION

Prior Motion For Supplemental Order

Movant filed a prior Motion seeking a supplemental order. Defendant asserted an opposition. The court found serious shortcomings with both the Motion and the Opposition. For Movant, the Movant failed to comply with Federal Rule of Bankruptcy Procedure 9013 and the Local Bankruptcy Rules, failing to state with particularity the grounds upon which the requested for relief was based. For Defendant, the court found some arguments asserted to be without merit. Civil Minutes, Dckt. 179. In considering the present Motion, the court again begins with the Motion and identifies the grounds stated with particularity in the motion and the relief requested with particularity in the Motion.

Review of the Motion

The Motion begins with a recitation of the prior Motion to Approve the Compromise with Defendant Sims, the court's Order granting that Motion, and the court's order ordering to refile its Motion for a supplemental order and focus on the allegations in Plaintiff's First Amended Complaint. Motion, p. 1:21-28, 2:1; Dckt. 181.

The grounds stated with particularity, as required in Federal Rule of Bankruptcy Procedure 9024, in the Motion are:

1. "Burger may pursue its state law claims against Sims because the claims are personal to Burger and were never owned by Mark One Corporation's ("Mark One") bankruptcy estate." Motion, p. 2:2-4; Dckt. 181.

2. "Thus, the claims were not sold to Sims as part of his settlement of the Trustee's preference action against Sims." *Id.*, p. 2:3-5.

3. "Moreover, Burger's claims are particularized and not shared by any other creditors of Mark One." *Id.*, p. 2:5-6.

4. "Sims took specific and direct actions to tortiously interfere with Burger's contractual relationship with Mark One and the economic advantage Burger had with Mark One." *Id.*, p. 2:6-7.

5. "Under the relevant California and federal authorities, Burger thus has standing to pursue its state law claims against Sims in the Stanislaus County Superior Court." *Id.*, p. 2:7-9.

The Motion then continues to state that the Motion, which states the above grounds with particularity as required by Federal Rule of Bankruptcy Procedure 9013 (which incorporates the Federal Rule of Civil Procedure 7(b) motion pleading requirement into bankruptcy case motions), is based on the Motion, as well as:

The Notice,

The Points and Authorities,

The Request for Judicial Notice,

The Exhibit List (presumably the Exhibits themselves, and not merely the "list"),

All other unidentified pleadings, documents, and papers that are filed in this "action" (not a defined term), and

Whatever "others matters" presented to the court at the hearing.

Id., p. 2:10-13.

As the Hon. Christopher M. Klein has said to various attorneys as a judge of this court over the last thirty years, a judge should be able to read a motion and, assuming all of the allegations stated therein are true (but the court will actually consider the evidence), then applies the accurate law (which citations would be in a points and authorities) to those grounds stated in the motion, the court should be able to rule on the requested relief without having to mine the grounds from other pleadings filed.

Assuming the grounds stated in the Motion as true, the court has no idea of the basis for the relief, what claims are at issue, and why relief is proper. At best, the court would just rubberstamp the legal conclusions stated by Movant.

Movant has provided the court with a fourteen (14) page Points and Authorities. Dckt. 183. It is hard to imagine that there are fourteen pages of legal citations, quotations, and legal arguments about those legal authorities that are necessary for this Motion.

After the title page and tables, Movant begins on page 4 of the "points and authorities" with a statement of various alleged facts and grounds upon which Movant is basing the requested relief. These grounds continue being stated through the middle of page 7 of the "points and authorities." These statements of grounds comprise about one-third of the "points and authorities."

Beginning on the middle of page 7 of the Points and Authorities, Movant cites the court to various cases and legal authorities, and provides legal argument and analysis. This is written much in the way that an appellate brief would be written to the Ninth Circuit. As discussed below, a bankruptcy judge does not have the staff nor the time to deal with such appellate style briefs as does an appellate court.

The Request for Judicial Notice is three pages in length, listing one (1) document, Plaintiff's First Amended Complaint in the State Court Action. Dckt. 184.

There is one (1) exhibit filed: Exhibit 1, Plaintiff's First Amended Complaint in the State Court Action, pages 4 thru 12. Dckt. 185.

The Motion does not state what rights Movant asserts to have and why it is not a right or claim that the Chapter 7 bankruptcy trustee had and was sold to Defendant Sims. Instead it refers the court to the Memorandum of Points and Authorities.

Opposition Filed by Defendant Sims

On March 1, 2020, Defendant Sims filed a timely opposition (it being filed fourteen-days before the June 4, 2020 hearing date, L.B.R. 9014-1(f)(2)). Defendant Sims begins his Opposition with several assertions, namely that (a) Movant has admitted his claims are general and is barred from arguing otherwise; (b) Movant lacks standing because it cannot allege any cause of action that is particular to it; (c) Movant's cases are distinguishable; and (d) leave to amend should be denied. Dckt. 188.

The Opposition is ten pages of detailed argument and authorities. There are many California cases cited, and a discussion as to why this court should not be allowing Movant to amend its complaint.

Given that there is no adversary proceeding before this court, it is not clear why Defendant is arguing that amendment should not be allowed by this court. There is nothing in the grounds and relief stated with particularity in the Motion about seeking an order from this court to amend a complaint.

Reply Filed by Movant

On May 28, 2020, Movant filed a timely thirteen page Reply addressing the Opposition. Dckt. 195. While well written, the Reply is densely packed with complex arguments.

CONSIDERATION OF THE MOTION

This is Movant's second attempt to obtain a supplemental order to the order approving the settlement of claims between U.S. Trustee and Defendant. The court's previous ruling on the original Motion stated as follows:

> As shown above, the Motion filed by Plaintiff does not state any grounds for which supplemental relief may be granted. The Motion could be quite simple. It could identify each cause of action that Plaintiff is asserting in State Court Against Defendant Sims. It could state the grounds for each such claim and why such claim, and any of the necessary elements of such claims, are not claims and rights that the Chapter 7 trustee had as property and rights of the bankruptcy estate that the Chapter 7 trustee sold to Defendant Sims.
>
> Plaintiff could then have filed a simple points and authorities providing the legal support for the elements of such claims. The points and authorities could have simply identified why and how, as a matter of state and federal law, such claims and the elements of such claims were not rights of the Debtor that became property of the bankruptcy estate or were rights of the Chapter7 trustee and the bankruptcy estate under federal law.
>
> [. . .]
>
> Plaintiff may file a new motion, which states with particularity the claims that it is asserting in state court, the elements of those claims, and the basis for asserting that they were not property or rights of the bankruptcy estate that were transferred from the Chapter 7 trustee to Defendant Sims.

Civil Minutes, at p. 8, 10. Dckt. 179.

The instant Motion fails to state any grounds for which supplemental relief may be granted. Movant was asked to identify each cause of action that Movant is asserting in State Court against Defendant Sims, and state the grounds for each such claim and why such claim, and any of the necessary elements of such claims, are not claims and rights that the Chapter 7 trustee had as property and rights of the bankruptcy estate that the Chapter 7 trustee sold to Defendant Sims. Instead, Plaintiff chose to file a Motion that except for removal of a few words, remained identical to the original motion filed on March 26, 2020, and denied on April 23, 2020.

Movant attempted to follow the court's instructions and provided the court with a copy of the First Amended Complaint showing the causes of action pleaded, so that Movant would document that it is stating with particularity in the Motion those same claims. Gone are the hundreds of pages related to the state court action. Additionally, Movant filed a focused points and authorities which begins with a rich statement of background and procedural history showing the relationship between Movant, Debtor, and Defendant. It also provides a time line of the alleged actions taken by Defendant which led to Movant's State Court action against Defendant. The Points and Authorities then, beginning on page 7, provides the legal authorities and arguments applying the legal authorities to the "grounds" as stated in the first four pages of the Points and Authorities.

Initial Review of the Grounds Included in the Legal Points and Authorities

This court's one law clerk has added to her workload and made a preliminary review through the "points and authorities" to attempt to distill what "grounds" are being asserted by Movant to support the relief requested. This preliminary review is provided below. The court will review this in detail to insure that such grounds (which are subject to the Fed. R. Bankr. P. 9011 certifications) are correctly identified.

Movant states with particularity in the Points and Authorities (Dckt. 181) grounds upon which it asserts that the requested relief is proper. The court distills from the Points and Authorities the following grounds and treats them as being restated with particularity in the Motion (Fed. R. Bankr. P. 9013) by Movant.

Defendant John Sims is Trustee of the Baker Trust. Trustee Defendant Sims also served as President of Debtor, a corporation wholly owned by the Baker Trust. Defendant Sims sold Debtor's assets in a manner that ensured that Defendant Sims and his family members received the proceeds and for all amounts purportedly owed to the Baker Trust; instead of the proceeds being used to pay Debtor Mark One's creditors, like Movant, who were owed money for services rendered. The purchaser of Debtor Mark One's assets, Vista Del Sol Postacute Care ("Vista"), participated in Defendant's scheme by obtaining Debtor's entire operating business for little to no payment to Debtor. In a related transaction, Defendant Sims sold the Trust's interest in real property on which Debtor operated some facilities to Vista SNF Properties, LLC, a related entity to Vista for nearly $2,000,000.

Movant argues that Defendant structured the transaction to ensure that the Baker Trust received millions of dollars without subjecting the funds to creditor claims. Additionally, while conducting this purported scheme, Defendant continued to receive a salary from Debtor while Movant was not being paid for its services. Movant alleges that Defendant prioritized payment of vendors who threatened to stop working if they were not paid, over vendors who continued working despite not being paid such as Movant.

Movant asserts that after discovering this scheme, Movant had no choice but to file suit against Defendant.

<u>First Cause of Action</u>
<u>Intentional Interference with Prospective Economic Advantage</u>

Movant lists the following as the elements for this cause of action:

> (1) the existence, between the plaintiff and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff;
>
> (2) the defendant's knowledge of the relationship;
>
> (3) intentionally wrongful acts designed to disrupt the relationship; and
>
> (4) actual disruption of the relationship; and (5) economic harm proximately caused by the defendant's actions;

citing *Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.

Movant points the court to *Shaoxing County Huayue Import & Export v. Bhaumik,* 191 Cal.App.4th 1189, 1197 (Cal. Ct. App. 2011) where the court noted that there is a difference between the claims trustee may be bring on behalf of the estate and the claims of a creditor against a third party. In particular, the court held that

> "Although the line between 'claims of the debtor,' which a trustee has statutory authority to assert, and 'claims of creditors,' which Caplin bars the trustee from pursuing, is not always clear, the focus of the inquiry is on whether the Trustee is seeking to redress injuries to the debtor itself caused by the defendants' alleged conduct. [Citation.] If the debtor suffered an injury, the trustee has standing to pursue a claim seeking to rectify such injury. But, '[w]hen a third party has injured not the bankrupt corporation itself but a creditor of that corporation, the trustee in bankruptcy cannot bring suit against the third party.' [Citation.]"

Id. (quoting *Smith v. Arthur Andersen LLP* (9th Cir. 2005) 421 F.3d 989, 1002–1003.)

Movant asserts there was an economic relationship between Movant and Debtor on the basis that there was a contract for services between Movant and Debtor. Movant further argues that Defendant knew of this contract. Defendant took intentional wrong ful acts, namely causing the sale of Mark One's assets to Vista for unreasonably low consideration, which caused a disruption. This disruption is the lack of payment from Debtor to Movant. Defendant also ensured that the Baker Trust was repaid before repaying the creditors of Mark One, including Movant. This lack of payment caused loss of revenue for Movant and thus Movant suffered economic harm.

Movant argues that the instant case is analogous to *Shaoxing*. In that case, a creditor of a bankrupt corporation sought to recover from an individual shareholder of the corporation under an alter ego theory. 191 Cal.App.4th at 1193. The shareholder sought to escape liability by arguing that the causes of action were property of the estate and thus creditor did not have standing. *Id*. The appellate court disagreed finding that the creditor was not "assert[ing] rights belonging to the corporation" by seeking money from the shareholder that was owed to the creditor, and adding that creditor's claim "were not property of the bankruptcy estate." *Id*. at 1199.

Like in *Shaoxing*, Movant is seeking payment for services owed to it by the bankrupt corporation that a third party shareholder, Defendant Sims, deprived it of through tortious interference.

Movant argues that the allegations above are personal to Movant because it is damage done to Movant, not damage done to Debtor. The injuries Movant seeks redress are injuries to Movant, as a creditor, the claim thus belongs to Movant and cannot be pursued by a trustee.

Second Cause of Action
Negligent Interference with Prospective Economic Advantage

Movant asserts that the elements for negligent interference with prospective economic advantage are the same as intentional interference, with the exception that the wrongful acts were not intentional but that the Defendant knew that the economic relationship would be disrupted if the defendant failed to act with reasonable care, and the defendant indeed failed to act with reasonable care.

Here, Movant asserts that as explained there was an economic relationship and there was a prospective advantage that would become a realized advantage had it not been for the negligent actions taken by Defendant. Movant argues that it has established that Defendant acted without reasonable care because the allegations as stated show that Defendants acted in a way that disrupted the economic relationship.

Movant again argues that the allegations above are personal to Movant because it is damage done to Movant, not damage done to Debtor. The injuries Movant seeks redress are injuries to Movant, as a creditor, and thus the claim belongs to Movant and cannot be pursued by a trustee.

Third Cause of Action
Conspiracy to Intentionally Interfere with Prospective Economic Advantage

Movant lists the following as the elements for this cause of action: (1) formation and operation of the conspiracy and (2) damage resulting to plaintiff (3) from an act in furtherance of the common design. *I-CA Enterprises, Inc. v. Palram Americas, Inc.* (2015) 235 Cal.App.4th 257, 272, fn. 2.

Movant contends that the allegations stated for intentional interference with prospective economic advantage show that, at the very minimum, there was a conspiracy between Defendant and Vista, and moreover that Movant was damaged as a result of the wrongful acts taken by Defendant.

Movant again argues that the allegations above are personal to Movant because it is damage done to Movant, not damage done to Debtor. The injuries Movant seeks redress are injuries to Movant, as a creditor, and as such the claim belongs to Movant and cannot be pursued by a trustee.

Fourth Cause of Action
Unfair Competition Law Bus. & Prof. Code §§ 17200, et. seq.

Movant argues that the allegations as stated in the first amended Complaint show that a violation of the Unfair Competition Law (UCL) in that Defendant engaged in a fraudulent business practice and it was directed at Movant. Movant contends that by Defendant continuing to order services

from, while failing to disclose that Debtor could not pay Movant for those services, Defendant engaged in actions that amounted to misleading or deceiving Movant.

As with the previous causes of action, Movant argues that the allegations above are personal to Movant because it is damage done to Movant, not damage done to Debtor. The injuries Movant seeks redress are injuries to Movant, as a creditor, and as such the claim belongs to Movant and cannot be pursued by a trustee.

DISCUSSION

As referenced above, a bankruptcy judge does not have the same time and resources as an appellate judge in considering matters presented to it. A bankruptcy judge has one law clerk. A bankruptcy judge and the one law clerk have approximately seven days to analyze all of the motions on the court's weekly law and motion calendars, the evidence, and opposition, draft a tentative ruling, and conduct the hearings. During the high bankruptcy filings in the early 2010's, it was not unusual for the court to have more than 200 law and motion matters on a calendar (with the record being just short of 350 for one afternoon). This can be compared to an appellate court judge who has multiple law clerks and months to consider appellate briefs.

The Supreme Court has constructed the pleading requirements in the Federal Rule of Civil Procedure and Federal Rule of Bankruptcy Procedure in light of the large number of cases and quick turnaround time required in bankruptcy.

This being the "second pleading rodeo" for these parties, the court just gives up on trying to get the pleadings right, and will just go with what the court is given. Unfortunately for the parties, the court having to mine the pleadings to assemble what the court believes that Movant asserts (and make the Fed. R. Bankr. P. 9011 certifications) are the grounds upon which the relief is based.

While Movant's pleadings are well written, the court does not have a differential application of the rules for good writers and challenged writers. There are not favored attorneys or law firms who do not have to follow the rules, even if the way they do it is manageable. Such a differential application leads to perceived "judge favorites," and an "in crowd" and the "outsiders." Additionally, it raises the specter of attorneys always working to expand the Rules that are not "really" enforced.

Continuance of Hearing and Oral Argument

The court is going to have to organize the limited staff to consider this in the nature of an appellate brief filed by Movant. It appears that detailed analysis and mining of the pleadings will be necessary to address all of the issues, including the opposition to this court allowing the amendment of a complaint.

While the bankruptcy court is a fairly nimble judicial process, it cannot drop all other matters to mine the pleadings. Thus, the court has to continue the hearings.

It also appears that there will be extensive, lively oral argument, which will necessitate in person argument in court. Presumably, that will take place in July 2020, when it is anticipated that the federal courthouse will be reopened, or at least orders permitting access will be more routine.

At the hearing, **xxxxxxxxxx**

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 a Supplemental Order filed by Burger Physical Therapy 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 hearing on the Motion is continued to **10:30 a.m. on July xxxxx, 2020**.

IT IS FURTHER ORDERED that Jamie P. Dreher, Esq., counsel for Movant, and Walter J. Schmidt, counsel for Debtor, and each of them, shall appear in person at the continued hearing -No Telephonic Appearances Permitted for the counsel ordered to appear.

FINAL RULINGS

9.	**20-90318-E-7**	**TAWFIK SALEH**	**MOTION TO COMPEL ABANDONMENT**
	MSN-1	**Mark Nelson**	**5-8-20 [13]**

Final Ruling: No appearance at the June 28, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on May 8, 2020. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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.

The hearing on the Motion to Compel Abandonment was noticed for June 18, 2020, (Amended Notice, Dckt. 18), and the hearing is continued to 10:30 a.m. on June 18, 2020.

Continuance of June 2, 2020 Hearing

Movant initially set this hearing for June 2, 2020. Notice, Dckt. 14. The First Meeting of Creditors is scheduled for June 16, 2020. Dckt. 8.

Movant filed an Amended Notice, resetting the hearing on this Motion to June 18, 2020. The court theorizes that the date was re-set based on the Trustee needing to conduct the First Meeting of Creditors before the Trustee could address the requested abandonment.

Once set to the court's calendar, matters generally cannot be rescheduled without the authorization from the court. In light of the status of this case, the continuance is appropriate and granted.

REVIEW OF MOTION

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is 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 Tawfik Yahia Algafery Saleh ("Debtor") requests the court to order Michael D. McGranahan ("the Chapter 7 Trustee") to abandon property identified as business assets of Tawfik Saleh, DC, LAc (Acupuncture Chiropractic) business assets, including:

Asset	**Value / Exemption**
Bank of America Business Checking, Account # 9354	$3,416.02 / C.C.P. §703.140(b)(5)
Accounts Receivable	$26,826.27 / C.C.P. §703.140(b)(5)
Business Equipment, Fixtures and Supplies	$3,120.00 / C.C.P. §703.140(b)(6)

("Property"). The Declaration of Tawfik Saleh has been filed in support of the Motion and values the Property at $33,362.29.

The court shall issue an Order (not 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 Compel Abandonment filed by Tawfik Yahia Algafery Saleh ("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 hearing on the Motion to Compel Abandonment is continued to 10:30 a.m. on June 18, 2020.

10. 19-90464-E-7 RICHARD RICKS **CONTINUED STATUS CONFERENCE**
19-9020 **RE:COMPLAINT**
12-6-19 [1]

HIRST LAW GROUP, P.C. V. RICKS

Final Ruling: No appearance at the June 2, 2020 Status Conference is required.

Plaintiff's Atty: Mark A. Serlin
Defendant's Atty: Pro Se
Adv. Filed: 12/6/19
Reissued Summons: 12/17/19
Answer: 1/6/20
Nature of Action:
Dischargeability - other

The Status Conference is continued to 2:00 p.m. on July 16, 2020.

The court has granted Plaintiff's Summary Adjudication of the requested relief that the obligation owed by Defendant-Debtor is nondischargeable. Order, Dckt. 32. The court has now dismissed the other claims for relief in the Complaint seeking to deny the Defendant-Debtor his discharge.

All claims in the Complaint now being resolved, the court continues the Status Conference to allow for Plaintiff to lodge with the court a proposed judgment consistent with the order granting relief on the nondischargeability cause of action.

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 Status Conference having been scheduled, the court having adjudicated or dismissed all claims for relief, and upon review of the pleadings and good cause appearing,
>
> **IT IS ORDERED** that the Status Conference is continued to 2:00 p.m. on July 16, 2020.
>
> Counsel for Plaintiff shall lodge with the court within fourteen days after the issuance of this Order, a proposed judgment granting relief as provided in the court's Order for Summary Adjudication (Dckt. 32). The judgment shall provide that the request for attorney's fees or costs, if any are to be requested, shall be made as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054.

11. 19-90464-E-7 RICHARD RICKS **MOTION TO DISMISS CAUSE(S) OF**
19-9020 MAS-5 **ACTION FROM COMPLAINT**
HIRST LAW GROUP, P.C. V. RICKS **4-20-20 [37]**

Final Ruling: No appearance at the June 4, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant/Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on April 20, 2020. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Cause(s) of Action from Complaint has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Dismiss Cause(s) of Action from Complaint is granted.

Plaintiff Hirst Law Group requests the court an order authorizing Plaintiff to dismiss the second and third causes of action for denial of discharge under 11 U.S.C. §§ 727(a)(3) and 727(a)(5) against Richard Arland Ricks ("Debtor"), pursuant to FRBP 7041.

On April 13, 2020, the court granted Partial Summary Judgment in favor of Plaintiff; the court determining that there were no genuine disputes as to any material fact with respect to the denial of the Defendant-Debtor's discharge in his Chapter 7 Bankruptcy Case as provided in 11 U.S.C. § 727(a)(4)(A). Dckt. 32.

Plaintiff asserts that because the court granted partial summary judgment in favor of plaintiff pursuant to 11 U.S.C. § 727(a)(4)(A), there is no need to proceed with other denial of discharge claims.

DISCUSSION

Federal Rule of Bankruptcy Procedure 7041 provides for the dismissal of an adversary proceeding, and states:

> Federal Rule of Civil Procedure Rule 41 applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper.

F.R.B.P. 7041.

Objections to discharge under 11 U.S.C. § 727 generally involve allegations of conduct by debtor that are contrary to public policy and offensive to creditor body as a whole and it is with respect to such complaints that trustee must be notified of dismissal under Bankruptcy Rule 7041 and that receipt of consideration is proscribed. *In re Corban*, 71 B.R. 327 (Bankr. M.D. La. 1987).

Here, Plaintiff has provided notice to both Chapter 7 Trustee, Irma Edmonds, and the Office of the U.S. Trustee on April 20, 2020. Dckt. 40. The Motion to Dismiss the Causes of Action from the Complaint was filed and was set for hearing. A total of 45 days was provided for filing of written opposition and/or responses.

The court having granted Partial Summary Judgment in favor of Plaintiff, and having found denial of discharge pursuant to 11 U.S.C. § 727(a)(4)(A), the Motion is granted, and Plaintiff is authorized to dismiss the second and third causes of action for denial of discharge under 11 U.S.C. § 727(a)(3) and 11 U.S.C. § 727(a)(5).

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 Causes of Action from the Complaint filed by Hirst Law Group ("Plaintiff") 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 Causes of Action from the Complaint is granted, and Plaintiff is authorized to dismiss the second and third causes of action for denial of discharge under 11 U.S.C. §§ 727(a)(3) and 727(a)(5).