UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 13, 2019 at 10:30 a.m.

1.	**19-21303-E-7** **PGM-1**	**LAURA MONACO-VALENCIA** **Peter Macaluso**	**MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13** **5-13-19 [12]**

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 Trustee, creditors, and Office of the United States Trustee on May 13, 2019. By the court's calculation, 31 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice).

The Motion to Convert 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 Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is ~~granted, and the case is converted to one under Chapter 13~~.

The debtor, Laura C. Monaco-Valencia ("Debtor"), seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor asserts that the case should be converted because Debtor previously received a discharge in a Chapter 7 case in 2012 and therefore is not entitled to another discharge.

Here, Debtor's case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties. No opposition has been filed.

A review of the file discloses that the Debtor has twice failed to appear at the original and then continued First Meeting of Creditors. At the hearing, Debtor's counsel explained **xxxxxxxxxxx**

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 Convert filed by Laura C. Monaco-Valencia ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is ~~granted, and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code~~.

2. **17-25481-E-7** **JOHN ROSE**
HSM-8 **Paul Pascuzzi**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK AND MAROIS FOR HOWARD S. NEVINS, TRUSTEES ATTORNEY(S) 5-14-19 [108]

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, creditors, parties requesting special notice on May 14, 2019. By the court's calculation, 30 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees 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 for Allowance of Professional Fees is granted.

Hefner, Stark & Marois, LLP, the Attorney ("Applicant") for Kimberly J. Husted, the Chapter 7 Trustee ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 19, 2017, through April 30, 2019. The order of the court approving employment of Applicant was entered on October 2, 2017. Dckt. 15. Applicant requests fees in the amount of $42,692.00.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to 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?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include general case administration, asset investigation and disposition, and and prosecution of adversary proceeding. The Estate has $42,195.92 of unencumbered monies to be administered as of the filing of the application. Declaration ¶ 5, Dckt. 111. Counsel and the Trustee continue in the ongoing state court litigation to recover monies for the bankruptcy estate.

The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 51.90 hours in this category. Applicant performed services related to the general administration of the case, including reviewing the filing documents, prosecuting motions to employ, negotiating extensions for the deadline to object, and reviewing pending state court litigation.

Efforts to Assess and Recover Property of the Estate: Applicant spent 6.10 hours in this category. Applicant performed services related to asset recovery and disposition, including reviewing the First Meeting of Creditors transcript, considering testimony, reviewing communications with Client, communicating counsel in the pending state action.

Litigation: Applicant spent 50.20 hours in this category. Applicant performed services related to state court litigation and claims of the Estate in this case, including the supervision and prosecution of state court litigation, settlement of exemption disputes, and a motion to approve compromise.

Claims: Applicant spent 0.50 hours in this category. Applicant briefly reviewed and analyzed claims filed in this case.

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

Names of Professionals and Experience	**Time**	**Hourly Rate** FN.1.	**Total Fees Computed Based on Time and Hourly Rate**
A. Avery	20.50	$392.75	$8,051.38
H. Nevins	88.20	$392.75	$34,640.55
Total Fees for Period of Application			(approx.)$42,692.00

FN.1. Applicant used hourly rates varying from $320 to $420 during the application period. Applicant, for the purposes of this Motion and due to the numerosity of entries, has provided a blended estimate of the average hourly rate at $392.75 an hour.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $42,195.92 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay 80% of the fees allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $42,692.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Hefner, Stark & Marois ("Applicant"), Attorney for Kimberly J. Husted, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Hefner, Stark & Marois is allowed the following fees and expenses as a professional of the Estate:
>
> Howard S. Nevins, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $42,692.00
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330**.**
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay 80% of the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

3. **17-25114-E-7** **HSIN-SHAWN SHENG** **MOTION TO CONVERT CASE TO CHAPTER 11**
RJ-2 **Richard Jare** **5-13-19 [149]**

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 Chapter 7 Trustee, creditors, and Office of the United States Trustee on May 13, 2019. By the court's calculation, 31 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

The Motion to Convert 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 Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 11 is denied.

Debtor, Hsin-Shawn Cyndi Sheng (the "Debtor"), filed this Motion seeking conversion of the case to one under Chapter 11. Debtor notes in the Motion that coversion is not permitted under 11 U.S.C. § 706(a) because the case has been previously converted, and therefore seeks discretionary conversion under 11 U.S.C. § 706(b) after a notice and hearing. [FN. 1]

FN. 1. 11 U.S.C. § 706(a) provides (emphasis added):

> § 706. Conversion
>
> (a) The **debtor may convert a case** under this chapter **to a case under chapter** 11, 12, or **13** of this title at any time, **if the case has not been converted under** section 1112, 1208, or **1307 of this title**. Any waiver of the right to convert a case under this subsection is unenforceable.

This case was converted by the Debtor pursuant to 11 U.S.C. § 1307 on August 20, 2017. Voluntary Conversion, Dckt. 29.

Debtor received her Chapter 7 discharge on November 28, 2017. Discharge Order, Dckt. 61.

Debtor, concurrently, has a subsequent pending Chapter 13 case, No. 19-20302, which was filed on January 17, 2019. In that case, the court reviewed and commented on the current Motion and the Chapter 7 Trustee, Eric J. Nims's ("Trustee") Opposition (Dckt. 161), as follows:

> On May 13, 2019, Debtor, and her counsel filed a Motion to Convert her Chapter 7 case to one under Chapter 11. 17-25114; Motion, Dckt. 149. In the Motion Debtor asserts that the Chapter 7 Trustee "has acted inappropriately in attempting to sell outside of the ordinary course of business, WITHOUT A COURT ORDER, property of the estate in an amount grossly disproportionate to the minuscule amount of unsecured claims." *Id.* at p. 2:1-4. Debtor notes that she has already received her Chapter 7 discharge in that bankruptcy case.
>
> Debtor further asserts that the Trustee making demand for the Investment Fund brokered by Bangerter Financial Services, Inc. which Debtor had to be turned over to the Trustee is improper. Debtor is not arguing whether the investments are property of the bankruptcy estate, but asserts that by the Trustee instructing the sale of the investments so that they can be liquidated into cash to be administered by the bankruptcy estate is an improper "sale" of property of the bankruptcy estate without court order.
>
> > Debtor objects that the trustee has, by instructing Fidelity Investments to "remit those funds to the bankruptcy estate" tried to sell property without a court order.
>
> *Id.*, p. 4:10-12. Debtor asserts that such sale of all the investment is unreasonable in that there are only ($9,800) in general unsecured claims to be paid.
>
> In the Trustee's Opposition, he states that he has not instructed the sale of such investments, just that he asserts the right to control property of the bankruptcy estate. *Id.*; Opposition, Dckt. 161. The Trustee asserts that when he asserted control over the investments the Debtor was attempting to sell the investments. The Trustee projects that $40,200.00 is all that is required to administer the Chapter 7 estate. *Id.*, ¶ 23.
>
> With the assistance of her former counsel in this case, Debtor filed her original Schedules on August 30, 2017. *Id.*; Dckt. 32. On Schedule A Debtor stated under penalty of perjury that her real property had a value of only $830,000. *Id.*; Dckt. 32 at 2. She listed two other properties, one with a value of $850,000 and the other with $215,000. *Id.* at 3.

Case No. 19-20302, Civil Minutes, Dckt. 86. The court also reviewed the turnover action that occurred in this case, and speculated as to what the decision on this Motion might be as follows:

> **Turnover of Property of the Estate**

In the Chapter 7 Case the Trustee obtained an order for the Debtor to turn over the Barrington Terrace Real Property listed on the Schedules that was property of the Bankruptcy Estate. *Id.*; Order, Dckt. 109. The court's Findings of Fact and Conclusions of law in granting the Turnover Motion, include:

> Debtor's Response fails to acknowledge that a bankruptcy estate has been created and that, pursuant to Bankruptcy Code § 541(a)(1), the bankruptcy estate includes all legal or equitable interests of the debtor as of the commencement of the case. Rather, **Debtor appears to exempt herself from federal law** as enacted by Congress, assert that she can file Chapter 7 and **ignore the law**, and **assert that Chapter 7 exists as her personal tool** to use (and abuse) against others.
> . . .
> The court notes **that Debtor has chosen (or refused) to provide any testimony** in opposition to this Motion, instead using the two paragraph arguments of her counsel as a shield between her and the Motion. **Debtor's counsel ignores 11 U.S.C. § 541 and the obligations of the Chapter 7 Trustee to control, assemble, and manage all property of the bankruptcy estate.** 11 U.S.C. § 704, 721.

Id.; Civil Minutes, p. 5; Dckt. 108 (emphasis added).

The court's findings and conclusions in the above Civil Minutes include:

> **Apparent Quick Conclusion of Chapter 7 Case**
>
> There exists a very modest amount of claims and administrative expenses in the Chapter 7 case (at least modest in light of the very valuable investments which Debtor states exists and should not be "sold" by the Chapter 7 Trustee). A Debtor working in good faith with the Trustee could quickly identify the investments to be liquidated, claims and expenses paid, and Chapter 7 case closed. Then, all of the remaining property of the bankruptcy estate would be abandoned back to the Debtor when the Chapter 7 case was closed.
>
> There would be no need to convert the case to one under Chapter 11 and incur $20,000 to $30,000 in Chapter 11 plan confirmation and administration expenses - so long as the Debtor was working to prosecute her Chapter 7 case in good faith. To the extent a trustee was attempting to act improperly and waste property of the bankruptcy estate by unnecessarily liquidating property of the bankruptcy estate, the Debtor and/or the U.S. Trustee seeking relief from the court would quickly put an end to such "shenanigans" (as a former law clerk for this court would say).

Id.

**DEBTOR'S REPLY,
AMENDED REPLY, &
OTHER PLEADINGS**

After the hearing on the motion to dismiss the Chapter 13 case (where the court reviewed Debtor's Motion and Trustee's Opposition), Debtor filed an additional Reply and Amended Reply (Dckts. 170, 172) and a slew of other pleadings [FN.2.] .

FN.2. Including the Motion, nineteen (19) separate filings have been made in this case. Dckts. 149-160, 170-178. Excluding proofs of service, thirteen (13) pleadings have been filed. The court has reviewed all the filings, but for brevity only summarizes the more pertinent pleadings.

The Reply, filed June 6, 2019, merely states that Debtor reiterates she wants the case converted.

Debtor's Declaration filed on June 7, 2019, provides testimony that Debtor is frustrated with the Trustee's conduct, and that the Trustee is purposely not responding to reasonable settlement offers. Dckt. 171. Debtor further testifies (addressing the concern of the court that the Chapter 11 fees in this case are unnecessary and wasteful) that her current counsel, Richard Jare, has agreed to represent her in a Chapter 11 for a flat fee of $15,000.00 and estimated additional litigation costs of $7,000.00. *Id*.

Debtor argues she intends to vigorously oppose any administrative expenses of the Chapter 7 estate and its professionals anyway, so those expenses will be incurred notwithstanding conversion to Chapter 11. However, correspondingly, even if the case is converted to Chapter 11, the Debtor will finance such a fight, so there is no savings in that regard by the conversion.

Debtor also states:

> I want Cunningham and Nims ejected from the administration of this case and I hope that the court will convert the case to so facilitate. I am very elderly and I need to be returned to the possession of the estate so that at least I can spend a portion of my money while I am still alive.

Declaration ¶ 6, Dckt. 171.

In the Amended Reply filed June 7, 2019, Debtor's counsel states that additional information has been provided by the Debtor which counsel has not digested entirely.

Debtor's latest pleading filed June 9, 2019, is another Declaration of Debtor. Dckt. 177. Therein Debtor states that she has provided extensive statements as to wrongful deeds of the Trustee in this case, but is now seeking to focus on "truly pertinent issues for conversion."

In reviewing the Declaration, what sticks out from past declarations of Debtor are several interlineations and strikeouts.

Debtor testifies her high stress, severe depression, and resultant high blood pressure has been

relieved now that she understands that this motion is close to being a matter of right because Debtor never filed a "FULL Chapter "13" case" (emphasis in original). Debtor explains a "complete" case was never filed because several of the filing documents were never filed.

Debtor testifies further she needs her assets unfrozen in order to fund her Chapter 13 case. Debtor also explains:

> Conversion would benefit me because the Chapter 7 Trustee administration has kept me in the dark and cause me to suffer high stress sever depression [sic] and high blood pressure. I am being taken advantage of over a small amount less than $10,767.59 unsecured claims.
>
> I also understand that upon conversion, the court might vacate the order of discharge. That does not matter because this stress is killing me.

Declaration ¶¶ 13-14, Dckt. 177.

DISCUSSION

Dismissal Pursuant to 11 U.S.C. § 706(a)

Debtor in her Declaration provides her "expert legal opinion" that conversion is permitted as a matter of right in this case because she did not file all documents required after filing her Chapter 13 case. In substance, she argues that because she failed to file all of the Chapter 13 documents, and then elected to voluntarily convert her Chapter 13 case to one under Chapter 7 as provided in 11 U.S.C. § 1307(a), she can delete the limitations of 11 U.S.C. § 706(a) as they apply to her voluntary conversion to Chapter 7.

This frankenstein legal argument/testimony is inconsistent with credible layperson testimony and then an attorney providing the legal authorities and analysis. First, it is unclear why Debtor is providing legal analysis through her Declaration. Debtor has not stated that she is an attorney licensed to practice in the state of California, and a review of her schedules does not disclose such information.

Second, this "legal argument" appears to have no basis in law or fact.

The Bankruptcy Code states the following:

> The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, **if the case has not been converted under section 1112, 1208, or 1307 of this title**. Any waiver of the right to convert a case under this subsection is unenforceable.

11 U.S.C. § 706(a) [emphasis added].

Nowhere in the aforementioned does it state, "except where a debtor has failed to prosecute a Chapter 13 case by failing to file the required documents and then the debtor elects to convert the case to one under Chapter 7, then the limitations of 11 U.S.C. § 706(a) do not apply to such converted case."

Debtor (relying on argument of Debtor's counsel) is making up legal authority out of whole cloth and advancing legal arguments that are not supported by the law.

Possibly, this "legal argument" was introduced through Debtor's testimony because Debtor's counsel is aware it fails to meet the requirements of Federal Rule of Bankruptcy Procedure 9011. Notwithstanding tucking such arguments in the Declaration, Rule 9011 applies to the certifications may be the Debtor and counsel stated in the pleading filed with the court.

Clearly, this legal argument is a losing one. Debtor filed her case under Chapter 13 on August 2, 2017. Dckt. 1. A Notice of Voluntary Conversion to Chapter 7 was filed August 30, 2019. Dckt. 29.

Debtor previously converted the case, and therefore is not entitled to conversion under 11 U.S.C. § 706(a).

Conversion or Dismissal Pursuant to 11 U.S.C. § 706(b)

11 U.S.C. § 706(b) provides for the court's discretionary conversion to Chapter 11 after notice and hearing on a Motion by a party in interest. Colliers provides the following overview of this section of the Bankruptcy Code:

> Section 706(b) allows the court to convert a chapter 7 case to a chapter 11 case at any time, but only on request of a party in interest and after notice and hearing. **The decision whether to convert is left in the sound discretion of the court and should be based on what will most inure to the benefit of all parties in interest**. A court may order conversion to chapter 11 even if a case has previously been converted to chapter 7.
>
> Since the Bankruptcy Code permits involuntary chapter 11 cases to be filed, section 706(b), accordingly, empowers parties other than the debtor to seek a conversion from a chapter 7 to a chapter 11 case. A chapter 7 trustee, as representative of the creditors, is a party in interest under section 706(b) of the Code and, therefore, can move to convert a case to chapter 11.
>
> Although there is no absolute prohibition of involuntary conversion to chapter 11, courts have been sensitive to the issue of involuntary servitude under that chapter as well as under chapter 13. Despite the fact that individuals not engaged in business are clearly eligible to be debtors under chapter 11, courts have refused to grant motions to convert the cases of individual debtors when the intent of the movant was to compel the debtor to submit to an involuntary payment plan. Courts have properly held that such a motion should be brought under the provisions of section 707(b), and may be brought only by a party with standing to bring a motion under that section.

6 COLLIER ON BANKRUPTCY P 706.03 (16th 2019)(emphasis added).

Here, the record is replete with evidence as to Debtor's true reasons for wanting dismissal. Debtor states:

> I want Cunningham and Nims ejected from the administration of this case and I hope that the court will convert the case to so facilitate.

Declaration ¶ 6, Dckt. 171, and:

> I intend to oppose vigorously any fees of the Chapter 7 estate and its professionals anyway, so that is an expense that is not avoidable. Why should I Pay Cunningham and Nims if they just purposely play dumb to rack up fees.

Id., ¶ 6, and:

> I need my assets unfrozen in order to fund my other case under chapter 13, case number 19-20302-E-13.

Declaration ¶ 8, Dckt. 177.

There is much bad blood between the Debtor and Trustee in this case. The result of this has been the generation of significant administrative fees in a Chapter 7 with relatively modest unsecured claims. This appears to be driven in significant part by Debtor dictating to her counsel what will be done, what legal arguments will be made, and how the Debtor will not cooperate with the Trustee, nor will the Debtor turn over property of the bankruptcy estate to the Trustee.

The court repeats from an earlier hearing in the Chapter 13 case the issue of conversion, the simple conclusion to the Chapter 7 case if prosecuted by the Debtor in good faith, even if the Trustee were as evil and unreasonable as Debtor portrays:

> There exists a very modest amount of claims and administrative expenses in the Chapter 7 case (at least modest in light of the very valuable investments which Debtor states exists and should not be "sold" by the Chapter 7 Trustee). A Debtor working in good faith with the Trustee could quickly identify the investments to be liquidated, claims and expenses paid, and Chapter 7 case closed. Then, all of the remaining property of the bankruptcy estate would be abandoned back to the Debtor when the Chapter 7 case was closed.
>
> There would be no need to convert the case to one under Chapter 11 and incur $20,000 to $30,000 in Chapter 11 plan confirmation and administration expenses - so long as the Debtor was working to prosecute her Chapter 7 case in good faith. To the extent a trustee was attempting to act improperly and waste property of the bankruptcy estate by unnecessarily liquidating property of the bankruptcy estate, the Debtor and/or the U.S. Trustee seeking relief from the court would quickly put an end to such "shenanigans" (as a former law clerk for this court would say).

Case No. 19-20302, Civil Minutes, Dckt. 86.

Debtor has not identified in her Motion or the twelve (12) separately filed supporting and supplemental pleadings why conversion in this case makes sense.

Conspicuously absent is any word about what a Chapter 11 plan would be. Commonly, a debtor seeking such a conversion would have filed as an exhibit a draft of a good faith plan that shows how the debtor could prosecute a Chapter 11 case. This would diminish that the motion to convert is merely a ploy for the Debtor to be put in control and plunder the bankruptcy estate.

The court can see that Debtor wants to convert the case to be back in control of the Estate, to oust the Trustee and his counsel, and to relieve stress of having to comply with federal Bankruptcy Law. But, there has been no attempt to demonstrate what a possible Chapter 11 case would look like, whether a Chapter 11 case would be successful, or whether a Chapter 11 would make financial sense.

Debtor has demonstrate that she is not capable of complying with federal Bankruptcy Law or prosecute a bankruptcy case. As said before. If the Debtor were proceeding in good faith, she could bring the Chapter 7 case to a conclusion and have her fight over what reasonable fees and costs the professionals in the Chapter 7 case can be allowed. In light of the substantial assets in the Chapter 7 case, there could be an abandonment of some of the assets after all claims are paid to insure that Debtor has sufficient funds to pay her counsel to take up the fight over the professional fees in the Chapter 7 case.

This Chapter 7 case is relatively simple. The best interest of the creditors and other parties in this case is for Debtor to remain in Chapter 7. The Debtor has not demonstrated that she is seeking the conversion in good faith for a bona fide purpose as permitted under the Bankruptcy Code. To the contrary, Debtor's arguments and evidence demonstrate that her efforts and intentions are to circumvent the Bankruptcy Code. The Motion is denied.

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 Convert filed by Hsin-Shawn Cyndi Sheng ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is denied.

4. **14-29361-E-7** **WALTER SCHAEFER** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PRISCILLA CAMPERUD-SCHAEFER AND/OR MOTION TO ALLOW UNSECURED CLAIM, MOTION TO PAY**
DNL-31 **Douglas Jacobs** **5-16-19 [461]**

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, creditors, and Office of the U.S. Trustee on May 16, 2019. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise 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 for Approval of Compromise is granted.

Kimberly Husted, the Chapter 7 Trustee, ("Movant") requests that the court (1) approve a compromise and settle competing claims and defenses with Priscilla Camperud-Schaffer ("Settlor"); (2) allow Settlor's claim in the amount of $225,000.00; and (3) authorize early distribution on Settlor's claims. The claims and disputes to be resolved by the proposed settlement relate to family law claims asserted by Settlor, including those for court-ordered support, breach of fiduciary duty, separate property reimbursement, and attorney's fees (the "Family Court Litigation").

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 464):

A. Settlor's domestic support obligation and other claims shall be allowed in the amount of $225,000.00 , which claim shall be subordinated to all allowed administrative expenses (with Trustee having the ability to make an early distribution if funds are available).

B. Settlor's claim shall not bear interest.

C. Full payment of Settlor's claim shall satisfy all pre- and post-petition support obligations of the Debtor and orders and judgements issued in the Family Court Litigation.

D. Judgement may issue in the Family Court Litigation incorporating the Settlement Agreement and awarding Settlor her separate property (including real property known as 782B Via Los Altos, Laguna Woods, California and Settlor's retirement benefits earned while employed with St. Joseph's Hospital and El Camino Hospital), including all property of the Estate not administered by the Trustee.

Trustee states the Estate has $308,362.74 in unencumbered funds on hand. Declaration ¶ 9, Dckt. 463.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Probability of Success

As to the probability of success on the merits of the Family Court Litigation, Trustee states only that she is confident in her potion though the ultimate success is unknown.

Without further evidence as to the merits of the case, this factor appears neutral.

Difficulties in Collection

The Trustee argues this factor is neutral the Trustee is in a defensive position with respect to Settlor's claim.

Here, Trustee has not alleged claims against Settlor and states she is in a defensive position. Therefore, there will be no cost or difficulty associated with collection, which otherwise might be saved by settling claims. This tends to make settlement less necessary and weighs against settlement.

Expense, Inconvenience, and Delay of Continued Litigation

Trustee argues this factor supports settlement because the amount of claims will be reduced and saves the Estate significant expense attendant to litigation.

This argument is well-taken. The settlement sought avoids the cost, expense and delay associated with future claims litigation while reducing Settlor's asserted claims by nearly $1,000,000.00. This factor weighs strongly in favor of the Agreement.

Paramount Interest of Creditors

The Trustee argues that the settlement is in the best interest of the estate because it avoids future litigation expenses associated with potential claims objections and because of that, is in the paramount interest of the Creditors.

This argument is also well-taken. The preservation of Estate funds through settlement is in the best interest of creditors. This factor weighs in favor of the settlement.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because claims against the Estate will be liquidated at a significantly reduced amount, and the expense of litigation will be avoided. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Kimberly Husted, 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 the Motion for Approval of Compromise between Movant and Priscilla Camperud-Schaffer ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 464).

IT IS FURTHER ORDERED that Settlor's unsecured domestic support claim is determined to be in the amount of $225,000.00.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay Settlor's claim from the available funds of the Estate.

5. **14-29361-E-7** **WALTER SCHAEFER** **MOTION FOR ISSUANCE OF ORDER TO SHOW CAUSE AND/OR MOTION FOR HUSTED V. PECHBRENNER JUDGMENT OF CIVIL CONTEMPT, AND MOTION FOR SANCTIONS**
17-2178 **DNL-4** **5-16-19 [65]**

ADVERSAY PROCEEDING CLOSED: 02/20/2018

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 Defendant and Chapter 7 Trustee on May 16, 2019. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Motion for Sanctions for Violation of the Automatic Stay 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 for Sanctions is granted, with further proceedings to be conducted at 10:30 a.m. on July 30, 2019.

Kimberly Husted, the Chapter 7 Trustee ("Plaintiff-Trustee"), filed this motion seeking an order holding the defendant in this Adversary Proceeding, Michael Pechbrenner ("Defendant"), in civil contempt for willful violation of court order.

This Adversary Proceeding relates to persons and assets in multiple judicial systems and law - the United States and Costa Rica. There have been prior extensive proceedings in the related bankruptcy case concerning the real property of the Bankruptcy Estate, 184 Los Delfines, Tambor, Costa Rica (the "Property"), that is the subject of this Adversary Proceeding.

REVIEW OF ADVERSARY PROCEEDING

The instant Adversary Proceeding was commenced on September 20, 2017. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on September 20, 2017. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 66.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on November 30, 2017. Dckt. 10. Plaintiff filed its initial Motion for Default Judgement on December 12, 2017. Dckt. 12.

At the January 25, 2018, hearing, the court found Defendant was served personally in accordance with the Federal Rules of Civil Procedure and the Hague Convention, and sufficient time has elapsed for Defendant to appear in this case. Dckt. 20.

In granting the Motion for Entry of Default Judgement on January 31, 2018, the court issued the following order:

> **IT IS ORDERED, ADJUDGED, AND DECREED** that judgment is granted for Kimberly Husted, the Plaintiff Chapter 7 Trustee, and against Michael Pechbrenner, the Defendant; determining that Kimberly Husted, the Plaintiff Chapter 7 Trustee, through ABC Trustee of California Sociedad Anonima, a Costa Rican Entity, by which Plaintiff Chapter 7 Trustee holds title to property commonly known as 184 Los Delfines, Tambor, Costa Rica, has all the right, title, and interest to said property, and that Michael Pechbrenner, the Defendant, has no right, title, or interest to said property, and that Defendant does not have any lien against said property.
>
> **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Michael Pechbrenner, and his agents and representatives, shall immediately vacate and turnover possession of the real property commonly known as 184 Los Delfines, Tambor, Costa Rica, to Kimberly Husted, the Plaintiff Chapter 7 Trustee, and her agents and representatives, as directed by Ms. Husted.
>
> Further, that if Plaintiff Chapter 7 Trustee subsequently determines that the physical turnover of the Property is not in the best interests of the Bankruptcy Estate, Plaintiff Chapter 7 Trustee may seek a supplemental or amended judgment for a monetary judgment for the value of the Property.
>
> **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the request for the issuance of a prospective corrective sanction in the event of the failure of Defendant Michael Pechbrenner, and his agents and representatives' failure, to forthwith comply with the above mandatory injunction, is reserved for consideration by post-judgment motion for the entry of an order imposing compensatory and corrective sanctions or incarceration (to induce compliance with the mandatory injunction).

> Additionally, the court reserves for post-judgment determination of the referral of this Adversary Proceeding to the United States District Court for the exercise of the district court judge's Article III civil and criminal contempt powers in the event that Defendant Michael Pechbrenner, or his agents or representatives, fail to comply with the mandatory injunction after the issuance of this court's order for compensatory and corrective sanctions. The referral to the District Court may include a recommendation for the issuance of a punitive criminal monetary sanction and/or incarceration.
>
> **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that no claims for damages arising from the violation of the automatic stay are presented in the Complaint before the court, and any such claims shall properly be brought pursuant to a motion for contempt in the Bankruptcy Case, No. 14-29361, or as permitted by the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure, in an adversary proceeding if jointed with other claims for which such adversary proceeding is required. Kimberly Husted, the Plaintiff Chapter 7 Trustee, as the prevailing party shall file and set for hearing as appropriate a costs bill and a post-judgment motion for attorney's fees as provided by Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure7054. Any award of costs or attorney's fees shall be enforced as part of this judgment.

Judgement, Dckt. 26.

First Motion for Contempt

Plaintiff-Trustee filed a motion seeking an order holding Defendant in contempt for violating the court's Judgment and granting compensatory and corrective sanctions on February 22, 2018. Dckt. 31. The court granted the motion on March 22, 2018, noting that Defendant not only failed to comply with the court's judgement, but apparently had filed a lawsuit in Costa Rica contradicting what this court has adjudged already. Dckts. 36 and 37.

The court issued an Order holding Defendant in contempt, requiring Defendant to deliver possession of the Property by April 10, 2018, at 12:30 p.m. or have judgement entered against Defendant in the amount of $15,000.00 in corrective sanctions. Order, Dckt. 37. The Order also notified Defendant that further noncompliance with the court's January 31, 2018, judgment may result in referral of this Adversary Proceeding to the United States District Court for the exercise of the district court judge's Article III civil and criminal contempt powers. *Id*.

As discussed below, the Defendant failed to deliver the Property and Judgement was entered in the amount of $15,000.00 against Defendant on October 26, 2018. Dckt. 64.

Application for Amended Default Judgement

On August 8, 2018, the Plaintiff-Trustee filed a Motion for Amended Judgement seeking to amend the prior Judgement to include a monetary judgement of $190,000.00 and for additional sanctions. Dckt. 40.

At the September 20, 2018 hearing the court noted that no legal authority for issuing a dual turnover order and monetary judgment had been provided. Civil Minutes, Dckt. 49; *See also*, 11 U.S.C. § 542(a). Additionally, no authority had been provided for the joinder of motions for amended judgement and contempt sanctions.

At the continued hearing on August 4, 2018, the Defendant appeared and represented an openness to out of court resolution. Civil Minutes, Dckt. 57. Plaintiff-Trustee clarified at that hearing it no longer sought a monetary judgement or imposition of sanctions at that time, and the motion was therefore denied.

The court also noted at the continued hearing that the court's prior Order holding Defendant in contempt provided that delivery of the Property shall be made, or a corrective sanction would be entered. Plaintiff-Trustee subsequently sought and the court issued an Order in the amount of $15,000.00 against Defendant on October 26, 2018 for his failure to deliver the property as provided in the prior contempt order. Dckt. 64.

Second Motion For Contempt

On May 16, 2019, the Plaintiff-Trustee filed the present Motion seeking further contempt sanctions for Defendant's failure to comply with this court's Order. Dckt. 65. The Motion states the following with particularity (FED. R. BANKR. P. 9013) providing an overview of events since the last hearing in this Adversary Proceeding:

1. On December 17, 2018, the Trustee's general counsel- having received no communication from the Defendant since October 25, 2018- emailed the Defendant to advise him of the Trustee's intent to seek additional relief for his continuing violation of the Court's Order. Motion ¶ 23, Dckt. 65.

2. On December 19, 2018, the Defendant responded claiming he had consulted with an attorney who would be "filing the necessary documents" and would no longer be negotiating. *Id*., ¶ 24.

3. Defendant has to date refused to turnover the Property and sought further relief under Costa Rica law. Defendant ultimately perfected a lien which prevents Plaintiff-Trustee from selling the Property. *Id.,* ¶ 25.

4. Plaintiff-Trustee has not received communications with Defendant since December 19, 2018. *Id.*, ¶ 26.

5. Plaintiff-Trustee has incurred attorney's fees and loss of use damages due to Defendant's conduct. *Id.*, ¶ 27.

The Motion goes on to make several requests for relief, including that:

A. Defendant be found in civil contempt of court;

B. Plaintiff-Trustee be awarded loss of use damages in the amount of

$60,000.00;

C. Plaintiff-Trustee be awarded $39,955.00 for attorney's fees and costs;

D. Defendant be sanctioned $1,000.00 per day until he complies with this court's Order for turnover of the Property; and

E. the court issue a writ of bodily detention and detain Defendant until he complies with this court's Order for turnover of the Property.

Motion, Dckt. 65 at p. 8:15-9:7.

Filed in support of the Motion are the Declarations of Kimberly Husted, J. Russel Cunningham, Luis Carballo, and Joseph Callahan. Dckt. 67-69, 73. Several Exhibits have also been filed, named "A" through "V," which consists of several emails and other various documents related to this Adversary Proceeding. Dckts. 70, 71.

In reviewing the plethora of evidence provided, most of it is testimony and documents relating to less than recent events in this Adversary Proceeding. Exhibit T is an email from Defendant (properly authenticated (Declaration ¶ 29, Dckt. 67)) which indicates Defendant's position that he needs to be compensated for his work, that negotiations will not be continued, and that he will continue to seek relief through Costa Rica law. Exhibit T, Dckt. 71 at p. 84.

The Cunninhgham Declaration indicates Plaintiff-Trustee has not received a "direct response" from Defendant since January 6, 2017. Declaration ¶ 35, Dckt. 67. Cunningham also testifies Plaintiff-Trustee has incurred $17,455.00 in attorney's fees and suffered loss of use of the Property valued at $60,000.00. Declaration ¶¶ 33-34, Dckt. 67.

It is not explained how the loss of use damages were calculated by Cunningham, or whether he is a competent expert witness to testify as to such damages, or why the attorney's fee testified to is lower than the amount requested in the Motion. *See* FED. R. EVID 601, 602, 701, and 702.

The Husted Declaration provides testimony Defendant presently occupies and controls the Property. Declaration ¶ 14, Dckt. 69.

LEGAL STANDARD

A request for an order of contempt by a debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. FED. R. BANKR. P. 9020; *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189 (9th Cir. 2011).

A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996). The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. *Id.*

Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see In re Lehtinen*, 564 F.3d at 1058.

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

DISCUSSION

Plaintiff-Trustee has presented evidence that the Defendant is in possession of the Property (Declaration ¶ 14, Dckt. 69.) in willful violation of this court's January 31, 2018 Order granting default judgement (Dckt. 26) and March 22, 2018, Order finding Defendant in contempt. Order, Dckt. 37.

Therefore, the Motion is granted.

The court shall issue an order providing for a $500.00 per diem corrective sanction commencing if Defendant does not delivery possession of the Property by June 23, 2019, which sanction shall continue per diem until possession of the Property is delivered.

The value of the Property is estimated to be between $225,000.00 and $265,000.00. Declaration ¶ 3, Dckt. 73. The corrective sanction of $500.00 per diem is not substantial–after 9 days, the sanction amount of $4,500.00 would be only 2 percent of the overall (low end estimate) value of the Property. However, the $500.00 sanction would also become cumulative very quickly, totaling approximately $15,208.00 after 1 month, $45,625 after 3 months. If after three months Defendant is willing to incur an obligation of $45,625.00, the court concludes that any further accrual of per diem sanctions would no longer have a corrective effect. However, it is necessary to have the sanctions run a full three months so that the Defendant has a real dollar amount he would face and be likely to correct his behavior and comply with the court's order to turn over the Property. The corrective sanctions shall be effective and accrue, only if Defendant fails to comply, beginning on June 24, 2019, and continuing through and including September 30, 2019.

Attorney's Fees and Compensatory Damages

Evidence has also been presented that Plaintiff-Trustee has incurred $17,455.00 in attorney's fees and some damages for loss of use of the Property (though competent testimony as to the exact amount of loss of use damages has not been presented). Declaration ¶¶ 33-34, Dckt. 67.

Because some evidence of loss of use damages have been presented, the court shall set a briefing schedule allowing further evidence to be presented.

Additionally, the court will consider for the continued hearing the referral of this matter to the Chief Judge of the United States District Court for the exercise of a District Court judge's Article III corrective and punitive sanction powers (including punitive incarceration) for the failure to comply with the order of a federal bankruptcy judge.

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 Sanctions for Violation of the Automatic Stay by Kimberly Husted, 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,
>
> **FINDING OF CONTEMPT AND ORDERING OF SANCTIONS**
>
> **IT IS ORDERED** that the Motion is granted, and Michael Pechbrenner ("Defendant") is held in contempt of this court's judgment of January 31, 2018 (Dckt. 26) and contempt Order of March 22, 2018. Dckt. 37.
>
> **IT IS FURTHER ORDERED** that Defendant Michael Pechbrenner shall deliver by June 23, 2019, (local time in Costa Rica) possession of the real property commonly known as 184 Los Delfines, Tambor, Costa Rica, ("Property"), in good order, to Plaintiff Kimberly Husted or her designee.
>
> **IT IS FURTHER ORDERED** that if Defendant fails to timely deliver possession of the Property as provided by this Order, corrective sanctions in the amount of $500.00 per diem shall be entered against Defendant and in favor of Plaintiff, and Defendant shall pay Plaintiff, for Defendant's failure to comply with this Order until possession of the Property is delivered. The $500.00 per day corrective sanction for failure to turn over the property shall commence on June 24, 2019, and continue through and including September 30, 2019.
>
> **IT IS FURTHER ORDERED** that the Trustee is awarded $17,455.00 in compensatory sanctions for attorney's fees and costs as requested in the Motion against Defendant Michael Pechbrenner. This award of attorney's fees and costs may be enforced as a judgment pursuant to Federal Rules of Civil Procedure and

Federal Rules of Bankruptcy Procedure.

FURTHER HEARING AND ORDERED APPEARANCE OF DEFENDANT MICHAEL PECHBRENNER

IT IS FURTHER ORDERED that the hearing on the Motion is continued to **10:30 a.m. on July 30, 2019** (specially set day)**.**

IT IS FURTHER ORDERED that the Defendant, Michael Pechbrenner, shall appear at the July 30, 2019, continued hearing in person and show cause, if any, why corrective sanction should not be issued – **No Telephonic Appearance Permitted for Defendant.**

IT IS FURTHER ORDERED that a Supplemental Pleadings, if any, shall be filed by Plaintiff-Trustee on or before June 27, 2019, Reply by Defendant filed on or before July 11, 2019, and Additional Response by Plaintiff-Trustee, if any, on or before July 18, 2019.

IT IS FURTHER ORDERED that the court shall also consider at the continued hearing the referral of this matter to the Chief Judge of the United States District Court for the Eastern District of California for consideration of withdrawal of reference for the limited issue of the exercise of the district court judge's Article III civil and criminal contempt powers in the event that Defendant, or his agents or representatives, fails to comply with this court's order for turnover of the Property to the Trustee. corrective sanctions.

Any attorney's fees and costs related to this Motion shall be requested by the prevailing party as provided in Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

FINAL RULINGS

6.	**18-26415-E-11** **WSS-2**	**MAXIMUS US, LLC** **W. Steven Shumway**	**MOTION TO DISMISS CASE** **5-7-19 [49]**

Final Ruling: No appearance at the June 13, 2019 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 creditors and the Office of the United States Trustee on April 24, 2019. By the court's calculation, 50 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). 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 respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss Case is Granted.

The debtor in possession, Maximus US, LLC, ("ΔIP") filed this Motion seeking dismissal of the Chapter 11 case pursuant to 11 U.S.C. §1112(b)(1) and Federal Rule of Bankruptcy Procedure 9014.

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. The case was filed on October 11, 2018.

2. On the date of filing, ΔIP assets consisted solely of a single parcel of real property located at 10 E. Grass Valley St., Colfax, California (the "Property"), valued at $700,000 with encumbrances totaling $535,825.

3. ΔIP's creditors consist of PLM Lender Services and the City of Colfax.

4. On February 21, 2019, the Court granted PLM Lender Services relief

from the automatic stay as to the Property. Order on Motion, Dckt. 45.

5. On March 13, 2019, PLM Lender Services foreclosed on the Property.

6. No assets remain for the court to supervise.

ΔIP filed the Declaration of Brian Figueroa, ΔIP's managing member, on May 7, 2019. Dckt. 51. The Figueroa Declaration provides testimony attesting to the facts asserted in the Motion. Declaration, Dckt. 51.

DISCUSSION

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

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1).

Here, ΔIP asserts that its Property, the sole asset of ΔIP, was foreclosed on by creditor PLM Lender Services, therefore making this Chapter 11 unnecessary.

ΔIP's arguments are well taken. The requested dismissal allows ΔIP to resolve claims and move on to a "fresh start"outside of bankruptcy. No party in interest has opposed the Motion. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion To Dismiss filed by Maximus US, LLC ("ΔIP") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the case is dismissed.

7. **18-26021-E-7** **KENNETH/SUSAN RODGER** **MOTION TO AMEND**
DB-1 **Gerald White** **5-13-19 [68]**

Final Ruling: No appearance at the June 13, 2019 hearing is required.

Kenneth and Susan Rodger ("Debtors") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Correct Order Granting Alliance Community Bank's Motion for Relief From Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.**

8. **19-22566-E-11 AF-3** **JUANITO COPERO** **Arasto Farsad** **MOTION TO EMPLOY ARASTO FARSAD AS ATTORNEY(S) 5-10-19 [22]**

Final Ruling: No appearance at the June 13, 2019 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 creditors, parties requesting special notice, and Office of the United States Trustee on May 10, 2019. 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 Chapter 11 debtor in possession, Juanito W. Copero (" Debtor in Possession"), seeks to employ Arasto Farsad as bankruptcy counsel ("Counsel"), pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330.

Debtor in Possession argues that Counsel's appointment and retention is necessary to assist Debtor with the requirements of a Chapter 11 case and the confirmation of a Chapter 11 plan.

Counsel filed his declaration in support of the Motion. Dckt. 24. Arasto Farsad testifies he and the firm do not represent or hold any interest adverse to Debtor in Possession or to the Estate and that they have no connection with Debtor in Possession , creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Declaration ¶ 9, Dckt. 24.

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 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 Arasto Farsad as Counsel for the Chapter 11 Estate on the terms and conditions set forth in the Letter of Engagement filed as Exhibit A. Dckt. 26. 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.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by the debtor in possession, Juanito W. Copero ("Debtor in Possession "), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, and Debtor is authorized to employ Arasto Farsad as Counsel for Debtor on the terms and conditions as set forth in the Letter of Engagement filed as Exhibit A. Dckt. 26.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.
>
> **IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by Arasto Farsad in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

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

9.	**17-22347-E-11** **JJG-12**	**UNITED CHARTER LLC** **Jeffrey Goodrich**	**CONTINUED MOTION TO VALUE COLLATERAL OF WAYNE BIER** **9-27-18 [283]**

The court has set the Motion to Value Collateral and Secured Claim of Wayne Bier to be heard on the June, 13 2019 10:00 a.m. calendar alongside related matters in this bankruptcy case.