UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

July 18, 2019 at 10:30 a.m.

1.	**19-90122-E-11** **MF-24**	**MIKE TAMANA FREIGHT LINES, LLC** **Matt Olson**	**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH NEVADA COUNTY DISTRICT ATTORNEY** **6-27-19 [304]**

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 in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on June 27, 2019. By the court's calculation, 21 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 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.

Mike Tamana Freight Lines, LLC, the Debtor in Possession, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Nevada County District Attorney

("Settlor"). The claims and disputes to be resolved by the proposed settlement related to criminal charges in a case pending before the Superior Court of California for the County of Nevada, captioned *People v. Mike Tamana Freight Lines LLC*, Case No. CU19-083663 (the "State-Court Action").

The State Court Action seeks civil penalties in the amount of $2,277,500.00, an injunction requiring compliance with various state statutes, and the recovery of costs for investigation, attorney's fees, enforcement, and suit.

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 Stipulated Judgement filed as Exhibit 1 in support of the Motion, Dckt. 307):

A. Settlor receives injunctive relief requiring Movant to:

   i. comply with various state laws at issue in the State Court Action; and

   ii. implement an employee training program regarding hazardous spill mitigation and reporting protocols.

B. Movant must pay a civil penalty in the amount of $150,000.00 (the "Settlement Amount").

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

Movant argues the probability of success is low because some charges are strict liability, the Settlor has significant resources to pursue charges, and elements of the defense relying on unavailable witness testimony. Declaration ¶ 9, Dckt. 9.

Movant's argument is well-taken. Based on the evidence presented, it appears unlikely Movant would be successful at avoiding all criminal charges, and the settlement is likely for a lower penalty than would be obtained after a trial on the merits.

Difficulties in Collection

Movant argues that difficulty of collection is a neutral factor here.

The court agrees. There is no sum to be collected here. If te Debtor in Possession does not prevail in the State Court Action, the consequence is civil penalties. Therefore, this factor is neutral.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that the expense, delay, and expense will be significant here, which the Estate cannot afford and which will hinder a successful reorganization.

Movant's argument is well-taken. Based on the information provided about the State Court Litigation, the delay and expense of litigation would likely be significant. Therefore, this factor weighs in favor of settlement.

Paramount Interest of Creditors

Movant argues that the settlement is in the paramount interest of creditors because it significantly reduces the potential civil penalty (from over 2 million to $150,000.00), and liquidates the amount for treatment as a general unsecured claim. Declaration ¶ 12, Dckt. 306.

Movant's argument is well-taken. The potential civil liability is greatly reduces through the settlement. Furthermore, the expense of litigation will be avoided and those funds will be preserved for creditors.

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 it allows Movant to avoid the cost, risk, and delay of litigating the claim, all while reducing the potential civil penalties by a significant amount 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 Mike Tamana Freight Lines, LLC, the Debtor in Possession, ("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 Nevada County District Attorney ("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 1 in support of the Motion (Dckt. 307).

2. 19-90489-E-11 CCI INVESTMENTS LLC MOTION TO DISMISS CASE
UST-1 Pro Se 6-18-19 [17]

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 in Possession (*pro se*) and creditors on June 18, 2019. By the court's calculation, 30 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 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 is granted.

The United States Trustee, Tracy Hope Davis ("Trustee"), filed this Motion seeking dismissal of the Chapter 11 case filed by the debtor in possession, CCI Investments LLC ("Debtor in Possession"). Trustee argues dismissal is proper here because Debtor is a limited liability company in *pro per*.

The court has issued an order for Robert Merchant, the principal of the Debtor and responsible representative of the Debtor in Possession and Susan Merchant, the other member of Debtor limited liability company to appear at 10:30 a.m. on July 18, 2019, at the Status Conference being conducted in conjunction with this Motion. Failure to appear was ordered to result in a corrective sanction of $2,500.00 for Mr. Merchant. If Susan Merchant failed to appear, such failure to comply with the order of the court would be addressed in further proceedings. Order, Dckt. 22.

Corporations, partnerships, and other non-individual entities must be represented by a licensed attorney and cannot purport to participate in federal court proceeding in pro se or through a non-attorney officer, partner, or other representative. *Rowland v. California Men's Colony*, 506 U.S. 194, 201-202 (1993); *In re America West Airlines*, 40 F3d 1058, 1059 (9th Cir. 1994) ("Corporations and other unincorporated associations must appear in court through an attorney."); *Church of the New Testament v United States,* 783

F2d 771, 773 (9th Cir 1986); and *Multi Denominational Ministry of Cannabis and Rastafari, Inc., et al v. Gonzales*, 474 F.Supp. 1133 (N.D. Cal. 2007), affrm. 2010 U.S. App. LEXIS 2976 (9th Cir. 2010).

At the hearing, xxxxxxxxxxxxxx.

As discussed, supra, the Debtor in Possession cannot represent itself. Therefore, 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 the United States Trustee, Tracy Hope Davis ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the case is dismissed.

3. 19-90489-E-11 CCI INVESTMENTS LLC
Pro Se

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
5-28-19 [1]

The Status Conference is xxxxxxxxxxxxxxxx

JULY 18, 2019 STATUS CONFERENCE

At the Status Conference xxxxxxxxxxxxxx

JUNE 27, 2019 STATUS CONFERENCE

The Debtor, a limited liability company, filed a voluntary Chapter 11 Petition on May 28, 2019. The Debtor purports to be filing this case and now serving as the Debtor in Possession ("ΔIP") in *pro se*.

Corporations, partnerships, and other non-individual entities must be represented by a licensed attorney and cannot purport to participate in federal court proceeding in pro se or through a non-

attorney officer, partner, or other representative. *Rowland v. California Men's Colony*, 506 U.S. 194, 201-202 (1993); *In re America West Airlines*, 40 F3d 1058, 1059 (9th Cir 1994) ("Corporations and other unincorporated associations must appear in court through an attorney."); *Church of the New Testament v United States*, 783 F2d 771, 773 (9th Cir 1986); and *Multi Denominational Ministry of Cannabis and Rastafari, Inc., et al v. Gonzales*, 474 F.Supp. 1133 (N.D. Cal. 2007), affrm. 2010 U.S. App. LEXIS 2976 (9th Cir. 2010).

Review of Schedules

On Schedule A/B Debtor lists having $91 in the bank, a $5,000 deposit with city, and 20 mobile homes, with no other personal property relating to the mobile homes or real property also listed on Schedule A/B. Dckt. 14 at 2-6.

Debtor lists real property identified as a Mobile Home Park in Ocean Springs, Mississippi, with a value stated to be $900,000. *Id.* at 7.

On Schedule D Community Bank is listed as having a claim for $556,345.18 that is secured by the real property. *Id.* at 10.

On Schedule E/F Debtor states that it has no creditors with any unsecured claims. *Id.* at 12-13.

The California Secretary of State lists CCI Investments, LLC as being an active entity registered to do business in California. https://businesssearch.sos.ca.gov/CBS/Detail.

Motion to Dismiss

The U.S. Trustee has filed and set for hearing on July 18, 2019, a motion to dismiss this case. The grounds for dismissal include that the Debtor and ΔIP are not represented by counsel, which is required of a non-individual entity.

This bankruptcy case was commenced by CCI Investments, LLC, the Debtor, in *pro se*, notwithstanding that it is a limited liability company and not a living individual. As addressed above, this Debtor and the Debtor in Possession must be represented by counsel.

Robert Merchant, who is identified as the "Manager" of the Debtor is the person who completed and filed the bankruptcy documents for Debtor in this case. The California Secretary of State provides the following information about the Debtor on his website:

Registration Date:	12/09/2004
Jurisdiction:	CALIFORNIA
Entity Type:	DOMESTIC
Status:	ACTIVE
Agent for Service of Process:	ROBERT MERCHANT 144 SOUTH FIRST AVE OAKDALE CA 95361

Entity Address:	144 SOUTH FIRST AVE OAKDALE CA 95361
Entity Mailing Address:	144 SOUTH FIRST AVE OAKDALE CA 95361
LLC Management	Managers

https://businesssearch.sos.ca.gov/CBS/Detail.

It is necessary for the Debtor in Possession and its responsible representative Robert Merchant to appear at the Status Conferences and properly and diligently prosecute this case.

In the List of Equity Security Holders filed on June 11, 2016, Robert Merchant and Susan Merchant are listed as each owing 50% of the membership interests in the Debtor. The address for the two Members is the same as shown for Mr. Merchant as agent for service of process above.

4. 18-90029-E-11 HCS-1 | **JEFFERY ARAMBEL** **Matt Olson** | **MOTION FOR ADMINISTRATIVE EXPENSES 6-4-19 [818]**

Continuance of September 19, 2019 Status Conference
CCBA Conflict

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 in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on June 4, 2019. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Administrative Expenses 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 for Allowance of Administrative Expenses is denied without prejudice as to all other administrative expenses requested therein..

Creditor West Stanislaus Irrigation District ("Movant" or "Creditor") requests payment of administrative expenses for unpaid post-petition utility water services used by the debtor in possession, Jeffrey Edward Arambel ("Debtor in Possession"). Movant seeks an administrative expense in the amount of $83,359.30, incurred during the period of November 1, 2017, through March 1, 2019.

Movant asserts the water services were provided to roughly 176 acres of land used largely to produce almonds, peaches, and apricots. Movant states water services are provided with a $35 per acre stand-by charge, an annual "water charge" predetermined by th amount of water preserved for the properties' use, and a Westside San Joaquin River Watershed Coalition membership fee.

Movant argues the water services were necessary to preserving the Estate because they provided water to the agricultural properties and allowed compliance with the Water Board's rules and regulations.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed a limited Opposition to Movant's motion on July 8, 2019. Dckt. 845. Debtor in Possession argues that only one of the five parcels cited in the Motion, APN 016-041-002, is property of the Arambel Estate. Debtor in Possession asserts the remaining four parcels are owned by JEA2, LLC, which is owned by the Estate.

Debtor in Possession argues only $5,951.51 in charges are attributable to the property directly owned by the Arambel Estate, and does not oppose the Motion being granted as to those amounts.

The factual assertion made in the Opposition are supported by Debtor in Possession's Declaration. Dckt. 846.

MOVANT'S REPLY

Movant filed a Reply on July 11, 2019. Dckt. 851. Movant argues the following:

1. Movant's Opposition was filed on July 8, 2019, only 10 days prior to the hearing date. Movant was required to file an Opposition by July 3, 2019.

2. The water services provided by Movant helped preserve the Estate.

3. Debtor in Possession's Disclosure Statement notes that all 5 of the land parcels are integral to the reorganization in this case, and may be sold to fund the plan.

4. 11 U.S.C. § 503 allows an administrative expense if it preserves the Estate notwithstanding whether the services were rendered to another entity.

5. Wholly owned entities are property of the Estate. [FN. 1.]

FN. 1. It appears in this contention Movant seeks to admit that all property of an entity owned by a debtor are included in property of the bankruptcy estate, that the automatic stay from the debtor's bankruptcy case applies to all of the assets of the wholly owned entity, that all payments made by the separate entities after the owner debtor files bankruptcy are subject to review and authorization to be paid by the bankruptcy court, and all prepetition transfers and payments are subject to the avoidance powers in a bankruptcy case.

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6. The policy reasoning behind allowing payment of administrative expenses supports granting the Motion because the water services preserved the Estate and provided a possible avenue for reorganization.

DISCUSSION

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant argues that providing

water services to the property was necessary for the preservation of the Estate because the properties supplied with water were largely agricultural with various fruit and nut tree orchards.

In Reply, Debtor in Possession argues that services were not actually provided to or necessary for preserving the Estate because the 4 of the 5 parcels serviced are owned by Debtor in Possession's company JEA2, LLC.

Along with the Motion, Movant filed as Exhibit A a copy of the Service Contract underlying the water services provided. Dckt. 822. The Service Contract states it is made between West Stanislaus Irrigation District and "the undersigned (Landowner)." At the bottom of the document, the undersigned landowner is identified as Jeffery Arambel.

Thus, it appears that when the contract was entered into it was the Debtor who owned the property to which water has been provided, rather than JEA2, LLC. It appears that sometime between 2014 when the Water Services Contract was entered into and the filing of his bankruptcy case, the property was transferred to JEA2, LLC. It is unknown whether Movant was aware of the transfer of the property and that there was a new owner of the property.

The court has reviewed the California Secretary of State website to see what information is available concerning JEA2, LLC. The Secretary of State reports:

> The California Business Search is updated daily and reflects work processed through Tuesday, July 16, 2019.Please refer to document Processing Times for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.
>
> 201709710148 JEA2, LLC
>
> Registration Date: 04/06/2017
> Jurisdiction: CALIFORNIA
> Entity Type: DOMESTIC
>
> Status: FTB SUSPENDED
>
> Agent for Service of Process: JEFFREY E. ARAMBEL
> 433 ROXANNE DR
> PATTERSON CA 95363
>
> Entity Address: 433 ROXANNE DR
> PATTERSON CA 95363
>
> Entity Mailing Address: 433 ROXANNE DR
> PATTERSON CA 95363
>
> LLC Management One Manager

https://businesssearch.sos.ca.gov/CBS/Detail.

The Articles of Organization provided by the Secretary of State webpage is filed on April 6, 2017.

An LLC is considered a separate legal entity, distinct from its stockholders, officers and directors, with separate and distinct liabilities and obligations. *Curci Investments, LLC v. Baldwin,* 14 Cal. App. 5th 214, 220 (Ct. App. 2017). An exception to this is where a member has entered into a contractual obligation other than the operating agreement. Cal. Corp. Code § 17703.04.

In determining whether an expense is "actual" and "necessary," Colliers provides the following guidance:

> Most courts apply a two-part test to determine whether a claim is entitled to administrative expense priority under section 503(b)(1)(A). **First, it must arise from a transaction with the bankruptcy estate, and second, it must have directly and substantially benefitted the estate.** These two requirements are discussed separately below.
>
> [a] Transaction with the Estate
>
> The principle that an administrative expense can arise only from a transaction with the trustee (or debtor in possession) of the estate is derived from the reference in section 503(b)(1)(A) to the "estate." The earliest a bankruptcy estate exists is on the petition date. Accordingly, for a claim to be allowed as an administrative expense, goods or services must be delivered or provided pursuant to a postpetition transaction; it is not enough that payment becomes due after the petition date if the transaction was entered into with the debtor prepetition.
>
> **"Transaction" with the estate does not require a contractual relationship with the debtor.** For example, in one case, a landlord was granted an administrative expense claim against a debtor who used and occupied its premises postpetition even though the lease was with a non-debtor affiliate.
>
> Several cases have considered whether attorney's fees awarded to an entity during the case are entitled to administrative expense priority. Generally, the courts deny administrative expense treatment for the fees if the litigation giving rise to the fees arose out of a prepetition transaction, rather than a transaction with the estate.
>
> The transaction with the estate requirement also applies to tort claims. If an accident occurs postpetition but the claim is for negligence in the design or manufacturing of the product prepetition, the claim will be treated as a claim arising prepetition, not as an administrative expense. The Court of Appeals for the Third Circuit rejected an administrative expense claim for alleged postpetition defamation by the debtor in In re Philadelphia Newspapers, LLC. The court found that the debtor's postpetition publication of an article with links to allegedly

defamatory prepetition articles was not a republication that could establish a postpetition tort giving rise to an administrative claim.

The reference to preserving the "estate" in section 503(b)(1)(A) also sets an outside time limit for the occurrence of administrative expenses. Although section 503 is silent as to when expenses of a debtor in a reorganization case cease to be accorded administrative priority, courts generally recognize that plan confirmation cuts off the accrual of further administrative expenses. This is true because the "estate" usually no longer exists after plan confirmation or, at the latest, after the effective date of the plan of reorganization. Similarly, postpetition expenses to preserve property that a trustee later recovers in an avoidance action do not qualify as administrative expenses because the property was not yet property of the estate when the expenses were incurred.

[b] Benefit to the Estate

The requirement that an administrative expense "benefit" the estate, although not expressly found in the statute, continues a standard found in pre-Code case law interpreting the predecessor to section 503(b)(1)(A). **The "benefit" analysis is a way of testing whether a particular expense was "necessary" to preserve the estate. The underlying reasoning is that an expense incurred in exchange for something that is not beneficial to the estate cannot be considered as an expense necessary for preserving the estate.**

The question of how much "benefit" must be shown prior to the allowance of an administrative expense under section 503(b)(1)(A) is not often raised. A few courts have made the "benefit" requirement difficult to satisfy by finding that the benefit must be "substantial" and "direct." At the extreme, one court engaged in an examination of the creditor's subjective motives to determine whether the creditor's postpetition transaction with the estate was undertaken "in order to benefit the estate as a whole," or merely "to further its own self-interest." Despite finding a transaction with and a benefit to the estate, the court held that "the benefit to the estate was only incidental to [the creditor's] actions, which were made primarily in its own self-interest." This type of examination of a claimant's self-interest was unwarranted. Although such an examination may be relevant in determining whether a creditor has made a "substantial contribution" to a case under section 503(b)(3)(D), the analysis should not be applied in the context of section 503(b)(1)(A). Examining a claimant's subjective motivations is contrary to the policy underlying section 503. Indeed, creditors who transact business with an entity in bankruptcy are and should be motivated to do so not by a selfless desire to confer a benefit on the estate but by the reasonable and self-interested expectation of receiving compensation from the estate.

Some cases recognize that benefit to the estate is merely one factor to consider, rather than an indispensable requirement, in allowing administrative expense requests. Those cases involve situations in which administrative expense status should be afforded to certain types of claims because they are actual and necessary

> to the preservation of the estate even though they may not "benefit" the estate within the usual meaning of the word.

4 Collier on Bankruptcy P 503.06 (16th 2019).

The facts here do not appear to be in dispute. Movant's claim arose as a result of water utilities provided to property owned by a limited liability company for which the Debtor's interest therein is included in the bankruptcy estate. As presented to the court, the property to which the water service was provided is not property of the bankruptcy estate.

The Debtor is the managing member of, and fiduciary to, the limited liability company in which the Estate has an interest. The Debtor has his fiduciary duties to that limited liability company and its members, including the Bankruptcy Estate in this case.

The contract provided by Movant is a pre-petition contract with the Debtor, not a contract with the Debtor in Possession. Such contract is not an obligation of the bankruptcy estate, but at best a possible pre-petition, dischargeable contractual obligation.

The Debtor in Possession, as the fiduciary of the bankruptcy estate, was not authorized or permitted to undertake the operation of other, separate legal entities or burden the bankruptcy estate with obligations of such entities.

The Debtor, in fulfilling his business obligations and fiduciary duties to the limited liability company was not empowered to foist upon this Bankruptcy Estate an obligation of the separate legal entity limited liability company.

There being $5,951.51 in post-petition water utility services charges for property of this bankruptcy estate, said amount is allowed as an administrative expense. All additional amounts of administrative expenses requested for property of the separate legal entity JEA2, LLC for real property that is not property of the Bankruptcy Estate is denied without prejudice. The Bankruptcy Estate merely holds a member interest in said limited liability company and is not personally obligated to pay the obligations of the limited liability company relating to the limited liability company's assets.

Mr. Arambel, the Debtor, is legally incompetent in fulfilling his duties, management and fiduciary, as Debtor in Possession to obligate the bankruptcy to pay the debts of a third party entity without court authorization. As the managing member of JEA2, LLC and in fulfilling his management and fiduciary duties to that limited liability company, Mr. Arambel is legally incompetent to obligate the Bankruptcy Estate in this case to pay obligations of the limited liability company.

To the extent that Mr. Arambel has signed a pre-petition contract to pay for pre-petition goods and services, such may be a claim in this case, but is not a contract by the Debtor in Possession, stating in the place of a bankruptcy trustee and exercising the management and fiduciary duties and responsibilities of such bankruptcy trustee, to pay such obligations as an administrative expense.

The denial of the motion for a portion of the expenses is without prejudice. If the properties purported to be owned by the limited liability company turn out to be property of the bankruptcy estate, Movant could seek to renew its request at that time. [FN. 2]

FN. 2. On his original Schedule A/B filed under penalty of perjury in this case Debtor listed a 100% ownership interest of JEA2, LLC. Dckt. 96 at 8. It is not clear if this property was included in the $190,000,000 of properties listed on Exhibit A to Schedule A/B purporting to state under penalty of perjury property that Debtor personally owned (as opposed to it being owned by an entity in which he had an interest) as of the commencement of the bankruptcy case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by West Stanislaus Irrigation District ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted , and the Chapter 11 Trustee is authorized to pay West Stanislaus Irrigation District $5,951.41 as an administrative expense of the Chapter 11 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).
>
> **IT IS FURTHER ORDERED** that the Motion is denied without prejudice as to all other administrative expenses requested therein.

5. **18-90030-E-11 STJ-30** | **FILBIN LAND & CATTLE CO., INC. Michael St James** | **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DOROTHY M. ARNAUD, HELEN F. JACOBSON, GARRY DEWOLF AND DEBORAH DEWOLF, MARY ETTA FILBIN, JAMES P. FILBIN, AND THOMAS R. FILBIN**
7-3-19 [497]

Continuance of September 19, 2019 Status Conference
CCBA Conflict

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on July 2, 2019. By the court's calculation, 16 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 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, ----------.

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, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on July 2, 2019. By the court's calculation, 16 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 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.

Filbin Land & Cattle Co., Inc., the Reorganized Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Dorothy M. Arnaud, individually, and as Co-Trustee of the Patrick H. and Margaret J. Filbin Trust UTA, dated December 30, 1973; and Helen F. Jacobson, individually, and as Co-Trustee of the Patrick H. and Margaret J. Filbin Trust UTA, dated December 30, 1973, Garry DeWolf and Deborah DeWolf, and Mary Etta Filbin, James P. Filbin, and Thomas R. Filbin (collectively, "Settlor").

The claims and disputes sought to be settled include those centered around a promissory note executed in return for the purchase of all equity in Movant, which relate to Adversary Proceeding, No. 19-09009-E (the "Claims").

Movant and Settlor have resolved these claims and disputes after mediation, 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. 500):

A. Movant shall pay $878,991.16 by wire transfer to Settlor in full satisfaction of Settlor's Claims.

B. Settlor will retain unaffected all of their rights and claims against Jeffery Arambel's bankruptcy estate and its property.

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

Movant argues that more likely than not Movant would prevail on the Claims. However, Movant notes success is uncertain due to conflicting Ninth Circuit opinions. *See* Declaration ¶ 3, Dckt. 499.

Here, Movant has represented (1) that Movant is confident in its likely success on the merits, and (2) that Movant's success is actually uncertain due to conflicting opinions and pending appeals. Movant's first assertion is an unsupported opinion, while the latter assertion appears to be based on an actual analysis of the claims. Based on Movant's representation that likelihood of success is uncertain, this factor is neutral.

Difficulties in Collection

Movant argues that this factor is not even relevant because the Debtor is holding the funds at issue.

From the evidence presented it appears Movant might not have any claim to recover against settlor for which the court could assess the difficulty of recovery.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues this factor weighs in favor of settlement because the Claims involve factual disputes which must be resolved at trial. Furthermore (argued under the "paramount interest" factor), evidence is presented that litigation would likely take 18 to 24 months and generate $150,000.00 in attorney's fees. Declaration ¶ 6, Dckt. 499.

This argument is well taken. Movant has presented evidence that litigation would take near two years, excluding potential appeals, and generate near $150,000.00 in attorney's fees. In settling the Claims, this time and expense would be avoided. Therefore, this factor weighs in favor of settlement.

Paramount Interest of Creditors

Movant argues the paramount interest of creditors lies in settlement as a way to avoid further cost and expense, preserve assets of the Estate, and allow a prompt distribution of remaining Estate funds and a final decree.

Movant's argument is well-taken. By settling the Claims here, the Claims will be resolved, and the case will be able to move forward towards completion.

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 the Claims will be resolved for a reasonable amount, avoiding the expense and time of litigation, and allowing the case to proceed. 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 Filbin Land & Cattle Co., Inc., Reorganized Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Dorothy M. Arnaud , Helen F. Jacobson, Garry DeWolf, Deborah DeWolf, Mary Eta Filbin, James P. Filbin, and Thomas R. Filbin ("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. 500).

6. **18-90030-E-11 STJ-31** **FILBIN LAND & CATTLE CO., INC. Michael St James** **MOTION FOR FINAL DECREE 7-3-19 [502]**

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 creditors and the Office of the United States Trustee on October 26, 2018. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Final Decree and Order Closing 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 for Final Decree and Order Closing Case is granted.

Filbin Land & Cattle Co., Inc., the Reorganized Debtor, ("Movant"), filed the present Motion seeking an order for a final decree closing the case.

The Motion (Dckt. 502) states the following with particularity (FED. R. BANKR. P. 9013):

1. The case was filed on January 17, 2018.

2. The court issued an Order confirming the First Amended Plan of Reorganization on March 18, 2019.

3. The Plan provided for distribution of real property sale proceeds to all unsecured creditors other than Summit.

4. On March 28, 2019, all unsecured creditors other than Summit received payment in full, with interest.

5. On April 18, 2019 all final fee applications for professionals of the Estate were granted.

6. The Plan provided for the payment of all taxes arising out of the sale. To date, the Reorganized Debtor has paid $1,464,600 on account of estimated taxes arising out of the sale. The Reorganized Debtor contemplates paying the balance of those estimated taxes, aggregating approximately $1,019,000 in due course and before they become due.

7. The sole remaining material dispute involving the estate has been resolved through mediation, which resulting settlement is the subject of a Motion for Approval of Compromise set for hearing the same day as this Motion.

8. The Plan provides that "[a]fter the Plan is substantially consummated, the Debtor in Possession shall file and prosecute an application for a Final Decree."

APPLICABLE LAW

Final Decree and Closing of Case

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) states additionally that the court is required to close a case after an estate is "fully administered and the court has discharged the trustee." The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk,* 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been "fully administered," factors the court considers include whether:

A. the plan confirmation order is final;

B. deposits required by the plan have been distributed;

C. property to be transferred under the plan has been transferred;

D. the debtor (or the debtor's successor under the plan) has taken control of the business or of the property dealt with by the plan;

E. plan payments have commenced; and

F. all motions, contested matters, and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open

solely because plan payments have not been completed. *See id.*; *In re John G. Berg Assocs., Inc.*, 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

DISCUSSION

Movant argues the following factors support approval of the Motion:

1. In this case, a Plan has been confirmed.

2. The Plan did not provide for required deposits.

3. Property to be transferred has vested in the Movant.

4. Movant has assumed administration and management of the property dealt with by the Plan.

5. Payments under the Plan have commenced. All unsecured claims other than Summit have been paid in full, and the secured claims were partially paid and the unpaid balance of those will be paid promptly.

6. With the exception of an Adversary Proceeding proposed to be resolved by settlement, all motions, contested matters and adversary proceedings have been finally resolved.

Movant's arguments are well-taken. Further, in reviewing the docket, the court has granted Movant's Motion For Approval of Compromise, and resolved the remaining Adversary Proceeding.

In consideration of the factors indicating full administration, the court finds the Estate has been fully administered. The Motion is granted, and the court shall enter a final decree and close the Chapter 11 case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Filbin Land & Cattle Co., Inc., Reorganized Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Chapter 11 case filed by Debtor Filbin Land & Cattle Co., Inc. is closed.

7. 17-90492-E-7 JED GLADSTEIN
17-9020 MH-1
GLADSTEIN V. EDUCATIONAL CREDIT MANAGEMENT CORPORATION

MOTION TO DISMISS ADVERSARY PROCEEDING AND/OR MOTION TO SUBSTITUTE THE DEPARTMENT OF EDUCATION AS PROPER-PARTY IN INTEREST AND TO DISMISS NAMED DEFENDANT EDUCATIONAL CREDIT MANAGEMENT CORPORATION
6-20-19 [52]

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 Plaintiff's Attorney on June 20, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion To Dismiss And/Or Motion To Substitute 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 alternative relief requesting substitution is granted and the Department of Education is substituted as the defendant in this Adversary Proceeding.

The Motion To Dismiss is denied without prejudice.

The defendant, Educational Credit Management Corporation ("Defendant"), seeks dismissal of the case on the grounds that the Plaintiff has obtained the relief sought and the Adversary Proceeding is now moot. In the alternative, Defendant seeks to substitute the Department of Education, the alleged proper defendant (the "Proper Defendant"), as proper party in interest, pursuant to Federal Rule of Civil Procedure 25 made applicable in adversary proceedings by Federal Rule of Bankruptcy Procedure 7025.

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

1. At the outset of litigation, Defendant became the holder of Plaintiff's consolidated student loan promissory note. Motion, Dckt. 52 at p. 2:6-7.

2. Defendant was substituted in as the proper party in interest and all other defendants dismissed. *Id*. p. 2:7-8.

3. In early 2019 Plaintiff submitted a Total and Permanent Disability Application which was approved on February 21, 2019. *Id.* at p. 10-11.

4. Plaintiff's student loan has been discharged, and therefore there is no longer a matter of controversy. *Id.* at p. 3:1-2.

5. Because Proper Plaintiff is the holder of the note, it should be substituted as defendant in this Adversary Proceeding.

In support of the Motion, Defendant filed the Declaration of Kerry Klisch. Dckt. 54. Kerry presents testimony that after the total and permanent disability discharge was approved by Defendant, applicable regulations required subrogation of the debt to Proper Defendant. *Id.*, ¶ 9. Kerry further testifies the loan will only be reinstated if during the next 3 years Plaintiff (1) receives a new student loan, (2) has annual income exceeding the poverty guidelines for a family of two, and (3) fails to provide any documentation requested by the Proper Defendant. *Id.*

PLAINTIFF'S OPPOSITION

Plaintiff filed an Opposition on July 5, 2019. Dckt. 56. Plaintiff argues the request for dismissal of the Adversary Proceeding should be denied because the student loan debt will not be discharged until 2022.

Plaintiff does not oppose substitution of the Proper Defendant as the defendant in this Adversary Proceeding, and notes that Plaintiff has already filed a Motion for leave to file a Second Amended Complaint identifying Proper Defendant as the defendant in this Adversary Proceeding.

DISCUSSION

Case or Controversy Requirement

Subject matter jurisdiction defines a court's power to hear cases. *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 89 (1998). Before a federal court exercises its jurisdiction over parties, it must determine that there is a sufficient "case" or "controversy as required by the United States Constitution, Article III, Section 2, Clause 1, which states,

> Sec. 2, Cl 1. Subjects of jurisdiction.
>
> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;–to all Cases affecting Ambassadors, other public Ministers and Consuls;–to all Cases of admiralty and maritime Jurisdiction;–to Controversies to which the United States shall be a Party;–to Controversies between two or more States;–between a State and Citizens of another State;–between Citizens of different States,–between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

As stated by the Ninth Circuit Court of Appeals in *Southern Pacific Company v. McAdoo*,

> Unless this proceeding was within the original jurisdiction of the District Court, it could not be brought within that jurisdiction by removal. *In re Winn*, 213 U.S. 458, 464, 29 S. Ct. 515, 53 L. Ed. 873. Unless it presents a "case" or "controversy," within the meaning of section 2, art. 3 of the Constitution, it is not within the jurisdiction of any federal court. *Nashville, C. & St. L. Ry. Co. v. Wallace*, 288 U.S. 249, 259, 53 S. Ct. 345, 77 L. Ed. 730, 87 A.L.R. 1191; *Willing v. Chicago Auditorium Ass'n*, 277 U.S. 274, 289, 48 S. Ct. 507, 72 L. Ed. 880; *Liberty Warehouse Co. v. Grannis*, 273 U.S. 70, 74, 47 S. Ct. 282, 71 L. Ed. 541.

82 F.2d 121, 121–22 (9th Cir. 1936).

Defendant seeks dismissal of the Adversary Proceeding on the basis that the Plaintiff's discharge of student loan debt was approved, and therefore there is no case or controversy remaining.

However, as Plaintiff argues, the student debt is not actually discharged for another 3 years. Until the discharge is granted and made final, a case and controversy still exist.

Substitution of Defendant

Federal Rule of Civil Procedure 25(c), incorporated by Federal Rule of Bankruptcy Procedure 7025, states the following:

> If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

Here, Defendant argues Proper Plaintiff should be substituted as defendant because it is now the holder of the note. Plaintiff does not oppose substitution.

Based on the Proper Defendant holding the note securing the debt and Plaintiff's non-opposition, 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 Substitute filed by defendant, Educational Credit Management Corporation ("Defendant"), 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 Department of Education, the successor-in-interest to Educational Credit Management Corporation, is substituted as the defendant in this Adversary Proceeding.

8. 17-90492-E-7 **JED GLADSTEIN** **MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT AND OTHER RELIEF**
17-9020 **RKW-2**

GLADSTEIN V. EDUCATIONAL CREDIT MANAGEMENT CORPORATION

6-18-19 [48]

Final Ruling: No appearance at the July 18, 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 Plaintiff, Defendant, Defendant's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 18, 2019. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Leave to File Second Amended 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 for Leave to File Second Amended Complaint is granted.

The Plaintiff-Debtor, Jed Rackson Gladstein ("Plaintiff-Debtor"), filed this Motion seeking an order allowing the filing of a second amended complaint ("SAC"), reissuing summons, and issuing a new scheduling order in this Adversary Proceeding against the defendant, U.S. Department of Education, Educational Credit Management Group ("Defendant"). Plaintiff-Debtor argues this relief is proper pursuant to 11 U.S.C. § 105.

Though not specified, presumably Plainitff-Debtor specifically references the following section:

> (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any

determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

Despite the seemingly broad above language, 11 U.S.C. § 105 is not the applicable Bankruptcy Code section here. If Plaintiff-Debtor's counsel did their homework they would find that Federal Rule of Civil Procedure 15, incorporated into adversary proceedings through Federal Rule of Bankruptcy Procedure 7015, states the following with respect to amending a complaint:

> (a) Amendments Before Trial.
>
> (1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:
>
> > (A) 21 days after serving it, or
> >
> > (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.
>
> (2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.
>
> (3) Time to Respond. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

FED. R. CIV. P. 15.

Here, Plaintiff has sought leave from the court to file a second amended complaint to substitute in the party currently holding the note. Good cause appearing, 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 For Leave to File Second Amended Complaint and Other Relief filed by Jed Rackson Gladstein ("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 is granted. Plaintiff shall file and serve the Second Amended Complaint on or before **xxxxxx, 2019**.

9. 18-90494-E-7 MELINDA BROOME
18-9015 ADJ-3
BILLINGTON WELDING & MFG., INC. V. BROOME

MOTION FOR SUMMARY JUDGMENT
6-6-19 [71]

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 Defendant/Debtor (*pro se*), Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 6, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion for Summary Judgment 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 for Summary Judgment is denied without prejudice.

The Plaintiff, Billington Welding & MFG., Inc., ("Plaintiff"), seeks partial summary judgment in this Adversary Proceeding pursuant to Federal Rule of Civil Procedure 56, incorporated by Federal Rule of Bankruptcy Procedure 7056, on the grounds that there is no dispute of material fact upon which the defendant, Melinda Anne Broome ("Defendant"), could prevail.

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

1. An Order by the Labor Commissioner of the State of California was issued on June 20, 2017 that Defendant was overpaid 2,298.5 of vacation hours. Motion, Dckt. 71 at p. 2:7-11.

2. Plaintiff seeks summary judgement as to the material fact that Defendant was overpaid 2,298.5 of vacation hours. *Id.* at p. 2:18-21.

3. By application of collateral estoppel, there is no genuine dispute of the material fact that Defendant was overpaid a total of2,298.5 in vacation hours. *Id*. at p. 2:22-24.

4. Plaintiff does not seek partial summary judgment as to the monetary value of the 2,298.5 hours of excess vacation pay. Plaintiff merely seeks partial summary judgment of the fact that Defendant received an excess of2,298.5 vacation hours. *Id*. at p. 2:25-27.

DEFENDANT'S OPPOSITION

Defendant filed an Opposition on July 1, 2019. Dckt. 79. Defendant cites to Federal Rule of Bankruptcy Procedure 9013, and states she opposes the Motion so she may prove her innocence in the allegations made. In the Opposition, Defendant makes several factual assertions disputing the amount of overpaid vacation hours.

The Opposition is filed a single 73 page mega-pleading. This violates the Local Bankruptcy Rules, which require the Opposition and Exhibits to be filed separately. LOCAL BANKR. R. 9004-2(c)(1).

REVIEW OF COMPLAINT

Plaintiff filed a complaint objecting to the discharge generally and of several specific claims owed by Defendant-Debtor. The Complaint contains the following general allegations as summarized by the court:

A. Defendant-Debtor was an employee of Plaintiff holding the positions of bookkeeper and then chief financial officer between the years of 1992 and 2016. Dckt. 1 at ¶ 3.

B. Defendant-Debtor used her position with Plaintiff to pay herself $220,947.09 above her authorized wages, and $72,394.51 above her authorized vacation wages. *Id.* at ¶ 13. Defendant-Debtor also used Plaintiff's credit cards to make purchases totaling $13,588.66. *Id.*

C. Defendant-Debtor in her position as Chief Financial Officer was responsible for ensuring the taxes of Plaintiff were paid. *Id*. at ¶ 16. Defendant-Debtor neglected her duty to pay taxes owed to the Internal Revenue Service and State of California Employment Development Department, resulting in damages of $112,338.39. *Id*. Furthermore, Defendant-Debtor represented to Plaintiff that taxes had been paid. *Id*.

D. Defendant-Debtor's conduct resulted in total damages to Plaintiff in the amount of $419,268.65.

First Claim for Relief—False Oath

Plaintiff alleges the following for the First Cause of Action:

A. On July 3, 2018, Defendant-Debtor filed this bankruptcy case, along with her Schedules A/B.

B. Defendant-Debtor failed to report converted income received on her Statement of Financial Affairs.

C. Debtor failed to report significant tax obligations owing from converted monies.

D. As a result of intentional and material omissions in her Schedules and Statement of Financial Affairs, Defendant's discharge should be denied under section 11 U.S.C. § 727(a)(4)(A).

Second Claim for Relief—Fraud

Plaintiff alleges the following for the Second Cause of Action:

A. While working for Plaintiff, Defendant-Debtor embezzled funds of Plaintiff in amounts totaling $306,930.26.

B. As a result of Defendant-Debtor's conduct, discharge as to this debt should be excepted from discharge pursuant to 11 U.S.C. § 523(a)(2)(A) and (B)(I)-(iv).

Third Claim for Relief—Tax Duty

Plaintiff alleges the following for the Second Cause of Action:

A. While working for Plaintiff in a capacity where she was responsible for paying Plaintiff's taxes, Defendant-Debtor represented paying taxes of Plaintiff where Defendant-Debtor did not.

B. Defendant-Debtor's failure to pay taxes resulted in $112,338.39 in tax penalties to Plaintiff.

C. As a result of Defendant-Debtor's conduct, discharge as to this debt should be excepted from discharge pursuant to 11 U.S.C. § 523(a)(1).

Fourth Claim for Relief—Fraud or Defalcation While Acting in a Fiduciary Capacity, Embezzlement or Larceny

Plaintiff alleges the following for the First Cause of Action:

A. While working for Plaintiff, Defendant-Debtor embezzled funds of Plaintiff in amounts totaling $306,930.26.

B. While working for Plaintiff in a capacity where she was responsible for paying Plaintiff's taxes, Defendant-Debtor represented paying taxes of Plaintiff where

Defendant-Debtor did not. Defendant-Debtor's failure to pay taxes resulted in $112,338.39 in tax penalties to Plaintiff.

C. As a result of Defendant-Debtor's conduct, discharge as to these debts should be excepted from discharge pursuant to 11 U.S.C. § 523(a)(4).

Fifth Claim for Relief—Willful and Malicious Injury by Debtor to Another Entity or to the Property of Other Entity

Plaintiff alleges the following for the First Cause of Action:

A. While working for Plaintiff, Defendant-Debtor embezzled funds of Plaintiff in amounts totaling $306,930.26.

B. While working for Plaintiff in a capacity where she was responsible for paying Plaintiff's taxes, Defendant-Debtor represented paying taxes of Plaintiff where Defendant-Debtor did not. Defendant-Debtor's failure to pay taxes resulted in $112,338.39 in tax penalties to Plaintiff.

C. As a result of Defendant-Debtor's wilful and malicious injury, discharge as to these debts should be excepted from discharge pursuant to 11 U.S.C. § 523(a)(6).

Prayer

Plaintiff requests the following relief in the Complaint's prayer:

A. Debtor's discharge in this case is denied;

B. Plaintiff's claims be determined to be nondischargeable;

C. Award attorneys' fees and costs; and

D. For such other relief as the court deems just and proper.

DISCUSSION

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 7007. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545

(2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely

drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

Plaintiff here seeks partial summary judgment of the fact that Defendant received an excess benefit equivalent to 2,298.5 hours of vacation time from Plaintiff while in Plaintiffs employ and that Defendant is therefore estopped from contradicting this finding from the Labor Commissioner.

Federal Rule of Civil Procedure 56(emphasis added), incorporated into this Adversary Proceeding by Federal Rule of Bankruptcy Procedure 7056, states the following:

> (a) Motion for Summary Judgment or Partial Summary Judgment. **A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought**. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact **and the movant is entitled to judgment as a matter of law**. The court should state on the record the reasons for granting or denying the motion.

The relief that may be granted pursuant to Federal Rule of Civil Procedure 56 includes:

> (g) Failing to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

Fed. R. Civ. P. 56(g).

The grounds as stated in the motion are summarized as follows:

A. An Order, Decision, or Award (actual title of the order) of the Labor Commissioner has been issued determining that Defendant-Debtor was overpaid for 2,298.5 hours of vacation time while employed by Plaintiff. Motion, p. 2:6-11; Dckt. 71.

B. The Labor Commissioner's Order is filed as Exhibit B. *Id.*, The Order includes the following explicit findings:

1. "Plaintiff [the Defendant-Debtor] was employed by Defendant to perform personal services as a Chief Financial Officer, for the period November 22, 1999 through June 30, 2016 in the County of Stanislaus, California, under

the terms of an oral agreement at the promised rate of compensation of $75,000.00 per year." Exhibit B, Finding of Fact p.2 7-10; Dckt. 77. (The page number given for the finding of fact is the page number of the Order itself and not the page number of the total exhibits.)

2. "The evidence and testimony presented at the hearing shows Plaintiff has been properly compensated for her vacation accrual pursuant to the company's compensation plan. In addition, Plaintiff was overpaid a total of 2,298.5 in vacation hours. The ultimate and essential facts of the Complaint are unproven and do not support the Plaintiff's claim for vacation wages. Therefore, Plaintiff takes nothing in her claim for vacation wages." *Id.*, p. 5:1-5.

C. The Labor Commission Order is final and enforceable as a judgment in a court of law. Motion, p. 2:12-15; Dckt. 71.

D. Plaintiff seeks a determination in this Adversary Proceeding that the fact that Defendant-Debtor was overpaid a total of 2,298.5 vacation hours is not subject to a genuine dispute of material fact. *Id.*, p. 2:18-21.

E. By the application of the Principle of Collateral Estoppel there can be no genuine dispute that Defendant-Debtor was overpaid a total of 2,298.5 of vacation hours. *Id.*, p. 2:22-24.

F. Defendant-Debtor was an employee of Plaintiff, including serving as the chief financial officer of Plaintiff. *Id.*, p. 3:4-6.

G. Defendant-Debtor, in her capacity as bookkeeper and then chief financial office paid herself extensively in excess of her vacation benefits. *Id.*, p. 3:6-8.

H. Defendant-Debtor filed a complaint with the California labor commission and an evidentiary hearing was conducted thereon. At issue in the evidentiary hearing was the vacation hours to which Plaintiff-Debtor was entitled to while employed by Plaintiff. *Id.*, p. 3:8-16.

I. In this evidentiary hearing the Labor Commissioner determined that Defendant-Debtor was overpaid for 2,295 vacation hours. *Id.*, p. 3:17-19.

J. The Labor Commissioner Order is final, no appeal having been taken therefrom. *Id.*, p. 3:20-22.

In its Points and Authorities Plaintiff directs the court to applicable law for the application of Collateral Estoppel under California law. These elements are:

(1) the issue sought to be precluded from relitigation is identical to that decided in a former proceeding;

(2) the issue was actually litigated;

(3) the issue was necessarily decided;

(4) the decision in the former proceeding is final and on the merits; and (5) the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.

The authorities cited by Plaintiff are *In re Cantrell* 329 F.3d 1119, 1123 (9th Cir. 2003) ; *In re Harmon* 250 F.3d 1240, 1245 (9th Cir. 2001); and *Lucido v. Superior Court*, 51 Cal.3d 335,341 (1990).

Collateral Estoppel is a variant of the fundamental Doctrine of *Res Judicata*. In describing the five elements for Collateral Estoppel under California law, the Ninth Circuit Court of Appeals stated:

> Under California law, collateral estoppel only applies if certain threshold requirements are met:
>
> First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. *Harmon v. Kobrin (In re Harmon*), 250 F.3d 1240, 1245 (9th Cir. 2001).

Cal-Micro, Inc. v. Cantrell, 329 F.3d 1119, 1123 (9th Cir. 2003). The party asserting collateral estoppel bears the burden of establishing these requirements. *In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001). As stated by the court in *Harmon*,

> Under the Full Faith and Credit Act, 28 U.S.C. § 1738, the preclusive effect of a state court judgment in a subsequent bankruptcy proceeding is determined by the preclusion law of the state in which the judgment was issued. *Gayden v. Nourbakhsh (In re Nourbakhsh)*, 67 F.3d 798, 800 (9th Cir. 1995) (citing *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380, 84 L. Ed. 2d 274, 105 S. Ct. 1327 (1985)).

Id. at 1245. The application of collateral estoppel is greater than merely the convenience of the court, but is required of the federal courts to respect and give effect to state court judgment.

The party "asserting collateral estoppel carries the burden of proving a record sufficient to reveal the controlling facts and pinpoint the exact issues litigated in the prior action." *In re Lambert*, 233 Fed. Appx. 598, 599 (9th Cir. 2007). If the Court has a reasonable doubt as to what was actually decided by the prior judgment, it will refuse to apply preclusive effect. *Id.*

The California Supreme Court discussed the Doctrine of Collateral Estoppel *in Murray v. Alaska Airlines, Inc.* , 50 Cal. 4th 860, 879 (2010), stating:

> We find that the public policies underlying the doctrine of collateral estoppel will best be served by applying the doctrine to the particular factual setting of this case. Those policies include conserving judicial resources and promoting judicial

> economy by minimizing repetitive litigation, preventing inconsistent judgments which undermine the integrity of the judicial system, and avoiding the harassment of parties through repeated litigation. (*Allen v. McCurry* (1980) 449 U.S. 90, 94; *Montana v. United States* (1979) 440 U.S. 147, 153–154; *Sims*, *supra*, 32 Cal.3d at pp. 488–489; *Syufy Enterprises v. City of Oakland* (2002) 104 Cal.App.4th 869, 878.)
>
> Considerations of comity and federalism further support application of the doctrine of collateral estoppel in this case. The AIR 21 whistleblower statute offers complainants strong incentives to invoke the administrative remedies as an alternative to a court action. If the Secretary finds a statutory violation, she must provide relief that includes immediate reinstatement with backpay and other compensatory damages. (§ 42121(b)(3)(B).) By choosing to proceed under the AIR 21's federal administrative whistleblower protection scheme, Murray availed himself of these distinct advantages. To allow him to relitigate the factual issue of causation decided against him in the Secretary's final nonappealable order in this subsequent court action between the same parties would reduce the AIR 21 statutory scheme to a mere "rehearsal[] for litigation" (*Johnson*, *supra*, 24 Cal.4th at p. 72) should the complainant not prevail.

Congress has provided in 28 U.S.C. § 1738 (emphasis added) for the federal courts to give full force and effect to state court rulings in federal court as they would have in that state court:

> § 1738. State and Territorial statutes and judicial proceedings; full faith and credit
>
> The Acts of legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> The records and judicial proceedings of **any court of any such State, Territory or Possession**, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.
>
> Such Acts, records and **judicial proceedings** or copies thereof, so authenticated, **shall have the same full faith and credit in every court within the United States** and its Territories and Possessions **as they have by law or usage in the courts of such State**, Territory or Possession **from which they are taken**.

Thus, this federal bankruptcy court gives full force and effect (faith and credit) to the ruling in a state judicial proceeding in California as would any state court in California.

As noted in Plaintiff's Points and Authorities, it is established law that administrative proceedings provided for under state law to adjudicate disputes, rather than the state judicial court, are sufficient, and must be given full force and effect by the application of Judicial Estoppel so long as the parties are provided an adequate opportunity to litigate those disputes.

> Both this Court's cases and the Restatement make clear that issue preclusion is not limited to those situations in which the same issue is before two *courts*. Rather, **where a single issue is before a court and an administrative agency, preclusion also often applies**. Indeed, this Court has explained that because the principle of issue preclusion was so **"well established" at common law, in those situations in which Congress has authorized agencies to resolve disputes, "courts may take it as given that Congress has legislated with the expectation that the principle [of issue preclusion] will apply except when a statutory purpose to the contrary is evident**." *Astoria, supra*, at 108, 111 S. Ct. 2166, 115 L. Ed. 2d 96. This reflects the Court's longstanding view that "'**[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose.**'" *University of Tenn. v. Elliott*, 478 U. S. 788, 797-798, 106 S. Ct. 3220, 92 L. Ed. 2d 635 (1986) (quoting *United States v. Utah Constr. & Mining Co.*, 384 U. S. 394, 422, 86 S. Ct. 1545, 16 L. Ed. 2d 642, 176 Ct. Cl. 1391 (1966)); *see also Hayfield Northern R. Co. v. Chicago & North Western Transp. Co.*, 467 U. S. 622, 636, n. 15, 104 S. Ct. 2610, 81 L. Ed. 2d 527 (1984) (noting *Utah Construction*); *Kremer v. Chemical Constr. Corp.*, 456 U. S. 461, 484-485, n. 26, 102 S. Ct. 1883, 72 L. Ed. 2d 262 (1982) (characterizing *Utah Construction's* discussion of administrative preclusion as a holding); Restatement (Second) of Judgments §83(1), at 266 (explaining that, with some limits, "a valid and final adjudicative determination by an administrative tribunal has the same effects under the rules of res judicata, subject to the same exceptions and qualifications, as a judgment of a court").

B&B Hardware, Inc. v. Hargis Indus., 135 S. Ct. 1293, 1303, (2015). *See also University of Tennessee v. Elliott*, 478 U.S. 788, 797 (1986), addressing the application to state administrative agencies, to the extent that 28 U.S.C. § 1738 would not apply.

The Opposition cites to Bankruptcy Rule 9013, which restates the provisions of Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007 in this case, stating that Defendant-Debtor opposes the Motion "so I may prove my innocents in the allegations made." Opposition, p. 2:13-14; Dckt. 79.

However, the Motion does state grounds with particularity for a factual determination made in another proceeding for which a final decision has been made for which the state court must accept it as having been determined.

Defendant-Debtor states that the person responsible for maintaining the vacation log had made a mistake and had created a new vacation log sheet for Defendant-Debtor. *Id.* at 2:18-20. Defendant-Debtor disputes the accuracy of the evidence presented in the proceeding before the Labor Commissioner.

Defendant-Debtor then states that the claim before the Labor Commissioner was only for "regular vacation time earned." Further, that she did not claim additional compensation hours. *Id.* at 23-26.

Defendant-Debtor then provides additional arguments about evidence concerning vacation time that she believes she was entitled to and that the purported vacation time was additional compensation she was entitled to. *Id.* at 16-18.

Defendant-Debtor then concludes that the determinations of the Labor Commissioner were wrong and:

> I have included my records of additional compensation from January 1, 2009 through March 31, 2016. I am requesting that the Plaintiff, Billington Welding turn over the additional compensation records from late 2000 through June 30, 2016 and **once they have been reviewed it will show that I was not overpaid 2,298.50 vacation hours and that I am owed for the unpaid hours**.

Id. at 3:19-23 (emphasis added).

Clearly, Defendant-Debtor seeks to relitigate and obtain from this court a contrary ruling, which would effectively overrule the final decision of the Labor Commissioner.

Defendant-Debtor offers no rationale for why the final ruling of the Labor Commissioner should not be afforded the required conclusive effect on the specific issue requested by Plaintiff as determined by the Labor Commissioner:

> The evidence and testimony presented at the hearing shows Plaintiff has been properly compensated for her vacation accrual pursuant to the company's compensation plan. In addition, Plaintiff was overpaid a total of 2,298.5 in vacation hours.

Exhibit B; Labor Commissioner Order, p. 5:1-5, Dckt. 77.

California law provides that the decision or award of a Labor Commissioner shall become final and enforceable as a judgment of the California Superior Court. Cal. Labor Code § 98.1(a). Under California Labor Code § 98(a), the California Legislature has authorized the Labor Commissioner to conduct hearings on actions to recover wages, penalties, and other demands for compensation.

When a decision is issued by the Labor Commissioner on a complaint, the parties may seek an appeal to the California Superior Court, for which a trial *de novo* will be conducted. Cal. Labor Code § 98.2(a). However, that appeal must be filed and served within ten days after service of the Labor Commissioner's order, decision, or award. *Id.* The California Legislature further provides in California Labor Code § 98.2(d):

> (d) If no notice of appeal of the order, decision, or award is filed within the period set forth in subdivision (a), the order, decision, or award shall, in the absence of fraud, be deemed the final order.

These provisions continue, requiring action by the Labor Commission to act upon such order, decision, or award being final, which is to file a certified copy of the final order with the clerk of the superior court within 10 days of becoming final. The superior court is then to issue a judgment thereon.

The Labor Commissioner's Order and Decision denying Defendant-Debtor any relief based on the complaint filed with the Labor Commissioner and ruling for Plaintiff in this Adversary Proceeding, was issued on June 20, 2017. The Certificate of Service attached to the Order and Decision states that it was served by mail on July 10, 2017. Defendant-Debtor's bankruptcy case, 18-90494, was filed on July 3, 2019 - almost one year after service of the Labor Commissioner's Order and Decision, well after the appeal period expired.

Here, the request has been made for the court to make the limited determination pursuant to Federal Rule of Civil Procedure 56(g) that it has been determined that Defendant-Debtor was overpaid a total of 2,298.5 in vacation hours by Plaintiff. That has been clearly determined by the Labor Commissioner in the administrative proceedings established by the California Legislature to adjudicate employee claims, including wage and compensation such as this.

Though Defendant-Debtor may desire a second bite at the apple to relitigate this specific finding made by the Labor Commissioner, the federal court through bankruptcy proceedings are not *de facto* appellate courts or automatic *de novo* retrial courts. Though Defendant-Debtor may believe that she now has additional evidence which could have produced a different result if she had presented it as part of her Complaint filed with the Labor Commissioner, she does not get a retrial to run that other evidence by this court to come up with a conflicting finding.

Based on the foregoing, 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 for Summary Judgment filed by the Plaintiff, Billington Welding & MFG., Inc., ("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 is granted and as provided in Federal Rule of Civil Procedure 56(g), as incorporated into Federal Rule of Bankruptcy Procedure 7056, it is determined for this Adversary Proceeding that Defendant-Debtor Melinda Anne Broome was overpaid for 2,298.5 hours of vacation time by Plaintiff Billington Welding & Mfg., Inc. in the course of her employment by Plaintiff.

10. 19-90209-E-7 BLF-3

ELSA CASILLAS
Seth Hanson

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ELSA MARIA CASILLAS
6-5-19 [19]

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, creditors, parties requesting special notice, and Office of the United States Trustee on June 5, 2019. By the court's calculation, 43 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 Motion for Approval of Compromise is granted.

Gary Farrar, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with the debtor, Elsa Maria Casillas ("Settlor" or "Debtor"). The claims and disputes to be resolved by the proposed settlement involve Settlor's interest in $25,071.15 of life insurance benefits received after her husband passed away (the "Insurance Proceeds").

Movant believes the Insurance Proceeds are not entirely exempt as necessary for Settlor's support as a widowed, unemployed mother of 2 children aged 11 and 17.

On Schedules I and J, Debtor lists monthly disposable income of ($1,137.94). Dckt. 1. This income was calculated when Debtor was employed, using her then gross monthly income of $5,700.87. *Id*.

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 B in support of the Motion, Dckt. 23):

A. Settlor shall pay Movant $6,000.00 within 10 days of entering into the Settlement Agreement.

B. The deadline for Movant's objection to Debtor's claim of exemptions shall extend (via stipulation) until the full settlement amount is received by Movant.

C. The parties will mutually release claims against each other.

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

Movant argues that while he is confident in his position, the probability of success in litigation over the Insurance Proceeds is uncertain because of disputed issues of fact.

In support of the Motion, Movant filed the Declarations of Loris Bakken and Gary Farrar. Dckts. 21, 22. Both Declarations present testimony that Seth Hanson, Debtor's attorney, told Farrar and

Bakken Debtor was recently employed at UC San Francisco Medical Center as an Administrative Assistant until her husband passed away, at which time the commute became too much for Debtor as a widowed parent of 2 children. Dckt. 21 at ¶ 5; Dckt. 22 at ¶ 2.

In the Motion, Movant does not argue there is any exception or exemption from the rule against hearsay on this information Farrar and Bakken were "told." *See* FED. R. EVID. 801, et seq. Movant does not argue that the statement here, made by Debtor's attorney, was an opposing party statement. Thus, no evidence was presented as to what amount of the Insurance Proceeds Debtor may need for her support.

Nothing is provided by Debtor as to this settlement. On the face of what the Trustee presents as evidence (the Trustee and counsel clearly being candid and transparent with the court), one wonders how the insurance proceeds could not be necessary for this unemployed Debtor with two children.

Difficulties in Collection

Movant argues there are no foreseeable difficulties in collection, but that collection is not an issue because of the settlement.

Here, Movant confidently asserts there is no anticipated difficulty in collection.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues the litigation here would be costly and time consuming. However, this conclusion is not explained.

Movant argues further that even if successful at trial, the maximum amount of recovery, $25,000.00, would likely be eclipsed by litigation costs.

Paramount Interest of Creditors

Movant argues that the settlement is in the paramount interest of creditors because it avoids the cost and expense of litigation.

DECISION

The court has been presented with little evidence beyond the Trustee's testimony that settling for $6,000 of $25,000 is fair. Possibly this is because the Trustee, counsel, Debtor, and counsel for Debtor have concluded that leaving the widow and two children with one unemployed parent with $19,000 to cover them while the Debtor finds work is sufficient. Or it may be that Debtor and Debtor's counsel have succumbed to assertions by the Trustee that it would cost them more than $6,000 to defeat the Trustee in even a "simple" (to the extent that any legal proceedings are simple) evidentiary hearing.

The court presumes that it is the former and not the latter, with Debtor's knowledgeable bankruptcy counsel having determined the best legal course for Debtor, not merely capitulating to an over aggressive trustee (which the court would not expect of this Trustee given his reputation in this District).

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 a modest amount is recovered for the Estate which would otherwise be exhausted in the court of litigation. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Gary Farrar, the 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 Elsa Maria Casillas ("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 B in support of the Motion (Dckt. 23).

FINAL RULINGS

11.	**18-90488-E-7** **JAD-2**	**ROBIN COLEMAN** **Jessica Dorn**	**MOTION TO AVOID LIEN OF CACH, LLC** **6-20-19 [29]**

Final Ruling: No appearance at the July 18, 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 Debtor, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 20, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of CACH, LLC ("Creditor") against property of the debtor, Robin Danice Coleman ("Debtor"), commonly known as 306 Jones Street, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $8,446.30. Exhibit A, Dckt. 31. An abstract of judgment was recorded with Stanislaus County on January 24, 2013, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $200,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $195,102.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b) in the amount of $18,000.00 on Schedule C. *Id.*

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 Robin Danice Coleman ("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 CACH, LLC, California Superior Court for Stanislaus County Case No. 676292, recorded on January 24, 2013, Document No. 2013-0006577-00, with the Stanislaus County Recorder, against the real property commonly known as 306 Jones Street, Modesto, California, 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.

12. 18-90488-E-7 JAD-3 | **ROBIN COLEMAN** **Jessica Dorn** | **MOTION TO AVOID LIEN OF CACH, LLC** **6-20-19 [23]**

Final Ruling: No appearance at the July 18, 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 Debtor, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 20, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of CACH, LLC ("Creditor") against property of Robin Danice Coleman ("Debtor") commonly known as 306 Jones Street, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $2,896.55. Exhibit A, Dckt. 26. An abstract of judgment was recorded with Stanislaus County on July 11, 2013, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $200,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $195,102.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b) in the amount of $18,000.00 on Schedule C. *Id.*

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 Robin Danice Coleman ("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 CACH, LLC, California Superior Court for Stanislaus County Case No. 678137, recorded on July 11, 2013, Document Number 2013-0059210-00, with the Stanislaus County Recorder, against the real property commonly known as 306 Jones Street, Modesto, California, 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.

13. 18-90488-E-7 JAD-4 | **ROBIN COLEMAN** **Jessica Dorn** | **MOTION TO AVOID LIEN OF CACH, LLC** **6-20-19 [41]**

Final Ruling: No appearance at the July 18, 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 Debtor, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 20, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of CACH, LLC ("Creditor") against property of the debtor, Robin Danice Coleman ("Debtor"), commonly known as 306 Jones Street, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $2,896.55. Exhibit A, Dckt. 44. An abstract of judgment was recorded with Stanislaus County on August 12, 2014, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $200,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $195,102.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b) in the amount of $18,000.00 on Schedule C. *Id.*

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 Robin Danice Coleman ("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 CACH, LLC, California Superior Court for Stanislaus County Case No. 678137, recorded on August 12, 2014 Document No. 2014-0052478-00, with the Stanislaus County Recorder, against the real property commonly known as 306 Jones Street, Modesto, California, 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.

14. 18-90488-E-7 **ROBIN COLEMAN** **MOTION TO AVOID LIEN OF MIDLAND**

JAD-5 **Jessica Dorn** **FUNDING, LLC**

6-20-19 [35]

Final Ruling: No appearance at the July 18, 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 Debtor, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 20, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Midland Funding, LLC ("Creditor") against property of the debtor, Robin Danice Coleman ("Debtor"), commonly known as 306 Jones Street, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $13,652.41. Exhibit A, Dckt. 37. An abstract of judgment was recorded with Stanislaus County on November 14, 2014, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $200,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $195,102.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b) in the amount of $18,000.00 on Schedule C. *Id.*

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 Robin Danice Coleman ("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 Midland Funding, LLC, California Superior Court for Stanislaus County Case No. 682185, recorded on November 14, 2014, Document No. 2014-0075653-00, with the Stanislaus County Recorder, against the real property commonly known as 306 Jones Street, Modesto, California, 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.

15. 19-90206-E-7 GRF-1

BERNICE GARCIA
Pro Se

CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-10-19 [14]

Final Ruling: No appearance at the July 18, 2019 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on May 12, 2019. By the court's calculation, 46 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 denied without prejudice.

The Chapter 7 Trustee, Gary Farrar ("Trustee"), seeks dismissal of the case on the grounds that Bernice Flora Garcia, debtor in *pro se* ("Debtor"), did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

JUNE 27, 2019 HEARING

Debtor appeared at the hearing, acknowledged her failure to comply with the meeting requirements and several other issues, and promised to address them. Civil Minutes, Dckt. 24. At the hearing she had the opportunity to meet with the Trustee.

The Trustee did not oppose the court continuing the hearing, on the condition that deadlines for objecting to discharge and for the nondischargeability of debt be extended until sufficient after the continued First Meeting of Creditors on July 11, 2019. The Debtor agreed at the hearing to extending those deadlines as a condition of continuing this hearing rather than dismissing the case.

DISCUSSION

On July 11, 2019, the Trustee entered a Trustee Report on the docket. The Report stated that Debtor appeared at the continued Meeting of Creditors on July 11, 2019, which was concluded, and that there is no distribution to be made in 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, Gary Farrar ("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 hearing on the Motion to Dismiss is denied without prejudice.

16. **19-90293-E-7 ZZA-1** | **MICHAEL JENNINGS** **Glen Gates** | **CONTINUED MOTION TO COMPEL ABANDONMENT** **4-4-19 [9]**

Final Ruling: No appearance at the July 18 hearing is required.

The debtor, Michael Winfred Jennings ("Debtor"), 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 Compel Abandonment was dismissed without prejudice, and the matter is removed from the calendar.**