UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

July 24, 2014 at 10:30 a.m.

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1. 11-94004-E-11 LUIS/ANGELA SOUSA
TOG-16 Thomas O. Gillis

MOTION FOR COMPENSATION FOR THOMAS O. GILLIS, DEBTORS' ATTORNEY
6-10-14 [380]

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Thomas O. Gillis, the Attorney ("Applicant") for Luis and Angela Sousa the Debtor in Possession ("Client"), makes a Request for the Allowance of the Balance of Approved Fees and Expenses in this case, Applicant seeking to waive any final fee application. The order of the court approving employment of Applicant was entered on December 13, 2011, Dckt. 30. The court approve interim compensation and authorizing payment of $20,807.24 of the total $26,627.24 approved.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	$26,400.00	$20,580.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$26,400.00	

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Prior Interim and Final Fees in the amount of $26,400.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is allowed, and the Plan Administrator under the confirmed plan is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $26,400.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Thomas O. Gillis ("Applicant"), Attorney, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Thomas O. Gillis is allowed the following fees and expenses as a professional of the Estate:
>
> Thomas O. Gillis, Professional Employed by Debtor in Possession:
>
> Fees in the amount of $26,400.00,
>
> The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Plan Administrator under the confirmed plan is authorized to pay, after providing full credit for all retainers paid to or held by Counsel, the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

2. 11-94004-E-11 LUIS/ANGELA SOUSA — MOTION FOR FINAL DECREE AND ORDER CLOSING CASE
TOG-18 Thomas O. Gillis — 6-10-14 [384]

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the 20 largest unsecured claims], parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 44 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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) additionally states 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* (9th Cir. BAP 1999) 241 BR 896, 911.

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

- the plan confirmation order is final;
- deposits required by the plan have been distributed;
- property to be transferred under the plan has been transferred;
- 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;

• plan payments have commenced; and

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

FRBP 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 FRBP 3022, Adv. Comm. Note (1991); *see In re John G. Berg Assocs., Inc.* (BC ED PA 1992) 138 BR 782, 786.

Under the Plan, the Debtors are responsible for making monthly distributions to creditors, as outlined in the Plan, with the first round of payments due May 1, 2012. Debtors state they have made the required payments in timely fashion and are current. Debtors assert that they are not currently in default under the terms of the Plan and while the Debtors reserve the right to seek to reopen the case should judicial intervention become necessary in the future; the Debtors do not anticipate a need for the Court's further involvement in the distribution process at this time.

Thus, the court finds that Debtors have satisfactorily met the above-listed factors, determining whether the Chapter 11 bankruptcy estate has been fully administered within the meaning of 11 U.S.C. § 350(a). The court will enter a final decree closing Debtors' 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 Final Decree and Order Closing Case filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and Debtors' Chapter 11 Bankruptcy Case is closed pursuant to 11 U.S.C. § 350(a) and Fed. R. Bankr. P. 3022.

3. 14-90505-E-7 ROBERT/BEVERLEY VOSHALL — MOTION TO EMPLOY FIRST CAPITOL AUCTION, INC. AS AUCTIONEER(S)
GRF-1 James D. Pitner — 6-19-14 [13]

Final Ruling: No appearance at the July 24, 201 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 19, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

Chapter 7 Trustee, Gary R. Farrar, seeks to employ First Capitol Auction, Inc., 50 Solano Avenue, Vallejo California as the Trustee's auctioneer. The Trustee states that the Debtors disclosed an interest in four (4) vehicles identified as 2002 GMC 1500 (the "GMC") valued at $1,200, no exemption; 1969 WESTERN BOAT, TRAILER (the "Boat and Trailer") valued at $500, no exemption; 2007 Yamaha IT 50 (the "Yamaha") valued at $500, no exemption; 2007 Yamaha Raptor Quad (the "Quad") valued at $1,800, no exemption. No exemptions were claimed in any of the vehicles. Furthermore, the Debtors did not schedule any liens or encumbrances against the subject vehicles and the Trustee states that he is unaware that any liens or encumbrances exist. The Trustee believes employing First Capital to sell the vehicles and obtain the equity for the estate is in the best interests of creditors.

The Declaration of Eric V. Smith, President of First Capitol Auction, Inc., testifies that he has been an auctioneer since 1987. Smith testifies he does not represent or hold any interest adverse to the Debtor or to the estate and that he has no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor in possession is

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

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. The court approves the fees computed as a commission equal to five percent (5%) of the gross sales priced of the property, subject to further review pursuant to 11 U.S.C. § 328(a). Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of the realtor, considering the declaration demonstrating that Smith does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ First Capitol Auction, Inc. as auctioneer for the Chapter 7 Trustee.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted and the Chapter 7 Trustee is authorized to employ First Capitol Auction, Inc. as auctioneer for the Chapter 7 Trustee to sell four (4) vehicles identified as 2002 GMC 1500 (the "GMC") valued at $1,200; 1969 WESTERN BOAT, TRAILER (the "Boat and Trailer") valued at $500; 2007 Yamaha IT 50 (the "Yamaha") valued at $500; 2007 Yamaha Raptor Quad (the "Quad") valued at $1,800.
>
> **IT IS FURTHER ORDERED** that compensation computed as a commission equal to five percent (5%) of the sales price sold at auction, plus reasonable expenses not to exceed $500.00 (absent further order of the court), is approved, subject to the provisions of 11 U.S.C. § 328(a). No compensation is permitted except upon court order following an application pursuant to 11 U.S.C. §§ 330-331, which may be made as part of the motion to approve the sale of the property.

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

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by the realtor in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

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

4. 14-90505-E-7 ROBERT/BEVERLEY VOSHALL — MOTION TO SELL
GRF-2 James D. Pitner — 6-19-14 [18]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 19, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule

9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Trustee to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here, Chapter 7 Trustee Gary Farrar proposes to sell at public auction the following vehicles (the "Vehicles"):

A. 2002 GMC 1500 (the "GMC") valued at $1,200;
B. 1969 WESTERN BOAT, TRAILER (the "Boat and Trailer") valued at $500;
C. 2007 Yamaha IT 50 (the "Yamaha") valued at $500; and
D. 2007 Yamaha Raptor Quad (the "Quad") valued at $1,800.

The Trustee states the Debtors did not schedule any liens or encumbrances against the vehicles and is unaware of any liens or encumbrances on them. The Trustee seeks to sell these vehicles at an online/live auction through the website of First Capitol Auction, Inc., 50 Solano Avenue, Vallejo California (www.1stcapitolauction.com). The Trustee believes the proposed sale of the personal property is in the best interests of the creditors and that there is equity in the Vehicles and a sale of the Vehicles at public auction is the best method of liquidating them for the benefit of the estate.

The Trustee believes that by using an auction process, the Vehicles will be exposed to a large number of prospective purchasers and, for that reason, will likely be sold for the best possible price. The Trustee intends to accept the highest reasonable bids. If, in the exercise of the Trustee's business judgment, no reasonable bids are received, the Vehicles may be held for subsequent auction or private sale without additional notice.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Sell Property is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Gary R. Farrar the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Trustee's proposed sale of the

vehicles, described as:

1. 2002 GMC 1500 (the "GMC") valued at $1,200;

2. 1969 WESTERN BOAT, TRAILER (the "Boat and Trailer") valued at $500;

3. 2007 Yamaha IT 50 (the "Yamaha") valued at $500; and

4. 2007 Yamaha Raptor Quad (the "Quad") valued at $1,800,

at public auction, by First Capitol Auction, Inc., 50 Solano Avenue, Vallejo, California, is granted.

5. 13-90514-E-7 SSA-5 | **ESTHER MARIN** **Pro Se** | **CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 5-13-14 [51]**

DISCHARGED 7-13-13

CONT. FROM 6-26-14

Final Ruling: No appearance at the June 26, 2014 hearing is required.

Local Rule 9014-1(f)(1) Objection to Debtor's Claim of Exemptions - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on May 13, 2014. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The Objection to Debtor's Claim of Exemptions is sustained.

JULY 24, 2014 HEARING

The court continued the hearing, allowing the Debtor (appearing in *pro per*) to file and serve written opposition to the Objection on or before July 17, 2014. Nothing has been filed to date.

JUNE 26, 2014 HEARING

No opposition was filed by the Debtor for the June 26, 2014 hearing and the court posted a final ruling, no appearance of Movant required. The Debtor appeared at the hearing and stated that she thought was unfair that the Trustee was seeking to object to the entire claim of exemption.

Because the Debtor is appearing in *pro per*, the court continued the hearing to afford the Debtor to seek counsel or file an opposition.

OBJECTION TO CLAIM OF EXEMPTION

Chapter 7 Trustee, Irma Edmonds, opposes Debtor's Amended Claim of Exemptions described as Property Real Description RMC under C.C.P. § 703.140(b)(1) for $29,129 and Property Personal Description CO under C.C.P. § 703.140(b)(11)(D) for $73,500 filed with this Court on April 23, 2014. Dckt. 45.

Trustee testifies that when Debtor's Chapter 7 case was initially filed on March 20, 2013, Debtor listed no claims for personal injuries or malpractice and made no attempt to exempt any monies. Trustee states that it was not until the First Meeting of Creditors held in this matter on April 29, 2013 that the Trustee, through her questioning, learned that Debtor had a pending medical malpractice claim against Stanislaus Surgical Hospital and other third parties, which had been pending in Stanislaus Superior Court, styled as case number 667873. Debtor on September 2, 2010 had executed a Contingency Fee Retainer Agreement with the Cochran Firm in Southern California.

As a result, the Trustee moved to employ general bankruptcy counsel to assist in the overall litigation matters attendant in this case and subsequently moved to appoint Debtor's malpractice counsel, Randy McMurray formerly of the Cochran firm, as special counsel in this case to prosecute the underlying medical malpractice action. Trustee states she has spent considerable time and effort in monitoring Debtor's personal injury action and assisting with its prosecution and ultimate settlement. Trustee states she has moved to secure the approval of the compromise of the medical malpractice settlement in bankruptcy court together with payment of special counsel's fees in Court.

However, on April 23, 2014, Debtor amended her Schedule B, Personal Property list, item 35, for the first time to list the personal injury settlement of $73,500 (although the settlement was for $72,500). In addition, on Schedule C, she purported to exempt the entire settlement pursuant to C.C.P. 703.140(b)(11)(D) for $73,500. Trustee argues that Debtor's purported amendments at this stage of the proceedings are in bad faith and are also prejudicial to the estate including but not limited to the professionals and creditors herein. In addition, the Trustee contends the section used by Debtor to purportedly exempt the entire settlement proceeds, C.C.P. § 703.140(b)(11)(D) for $73,500, is also inappropriate.

DISCUSSION

Section 522(l) of the Bankruptcy Code and Rule 4003(b) of the Federal Rules of Bankruptcy Procedure permit a party in interest to object to a debtor's claim of exemption. The Supreme Court has recognized the "broad authority granted to bankruptcy judges," pursuant to § 105(a) of the Bankruptcy Code, "to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor." *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 374-75 (2007); *see also Latman v. Burdette*, 366 F.3d 774, 784-86 (9th Cir. 2004)(recognizing inherent powers of bankruptcy courts to equitably surcharge a debtor's exemption to protect integrity of the bankruptcy process and to ensure debtor does not exempt amount greater than allowed under Bankruptcy Code despite lack of express Code provision for equitable surcharge of exemptions).

A party objecting to a debtor's claim of exemption must prove bad faith by a preponderance of the evidence and not by clear and convincing evidence. *Tyner v. Nicholson (In re Nicholson)*, 435 B.R. 622 (B.A.P. 9th Cir. 2010). Bad faith in claiming exemptions is determined by an examination of the "totality of the circumstances." *In re Rolland*, 317 B.R. 402, 414 (Bankr. C.D. Cal. 2004). Concealment of assets is the usual ground for a finding of "bad faith." *Id.* at 415. However, "a debtor's intentional and deliberate delay in amending an exemption for the purpose of gaining an economic or tactical advantage at the expense of creditors and the estate [also] constitutes 'bad faith.'" *Id.* at 416.

Intentional concealment can be inferred from the facts and circumstances of a case, including non-disclosure resulting from a debtor's reckless disregard for the truth of information furnished in the schedules and statements. *See Jordan v. Bren (In re Bren)*, 303 B.R. 610, 614 (B.A.P. 8th Cir. 2003) (stating that "multiple inaccuracies or falsehoods may rise to the level of reckless indifference to the truth, which is the functional equivalent of intent to deceive").

Furthermore, schedules and statements are signed under penalty of perjury. Fed. R. Bankr. P. 1008. Debtors are presumed to have read the schedules and statements before signing the documents, and are responsible for their contents. Debtors bear an independent responsibility for the accuracy of the information contained in their schedules and statements. *AT&T Universal Card Servs. Corp. v. Duplante (In re Duplante)*, 215 B.R. 444, 447 n.8 (B.A.P. 9th Cir. 1997) (noting that "schedules and statements of financial affairs are sworn statements, signed by debtors under penalty of perjury" and warning that "adopting a cavalier attitude toward the accuracy of the schedules and expecting the court and creditors to ferret out the truth is not acceptable conduct by debtors or their counsel").

Here, Debtor failed to initially disclose the personal injury claim on her bankruptcy schedules which were filed with the Court on March 20, 2013. Debtor had in fact engaged previous local counsel, the Cochran firm, through a general retainer as early as September 2, 2010. Trustee did not discover the claim until Debtor was questioned at the First Meeting of Creditors. Debtor elected to file the amendments listing the medical malpractice claim to her bankruptcy schedules until April 23, 2014, more

than one year following the commencement of the Chapter 7 case.

The Trustee has filed Motions to Employ, Motions to Approve Compromise and Motions for Professional Fees. Trustee provides that Special Counsel's fees and costs total $37,687.23, Trustee Counsel's fees are currently in excess of $6,000 with projected fees of $3,500.00 and Trustee's fees in the amount of $6,875.00 plus costs. Trustee has exerted significant effort, time and expense in the prosecution of this underlying medical malpractice claim.

Furthermore, it appears that Debtor's amendments exceeded the maximum exemption under the statute. Pursuant to the statute in effect under C.C.P. § 703.140(b)(11)(D) when Debtor filed her Chapter 7 bankruptcy proceedings on March 20, 2013, the allowed maximum value to exempt a personal injury award under the statute at the time was $22,075. The maximum exemption for which Debtor could claim would be $22,075, if allowed and not subordinated to the claims of administrative claimants and unsecured creditors.

Under the totality of the circumstances, the court finds that Debtor acted in bad faith in amending her exemptions in an intentional an deliberate delay to gain an economic advantage at the expense of the creditors and the estate. Debtor concealed the medical malpractice action, waited until the Trustee and her counsel negotiated the compromise, and then amended her schedules to exempt the asset.

IMPLICATIONS OF LAW V. SIEGEL

The objection to claims of exemption law has been changed by the recent Supreme Court decision, *Law v. Siegel*, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (2014). In *Siegel* the Chapter 7 Trustee sought to use the court's powers under 11 U.S.C. § 105 to surcharge a debtor's exemption due to the debtor's bad faith. However, the trustee in *Siegel* did not timely object to the claim of exemption. The Supreme Court concluded that 11 U.S.C. § 522 exhaustively states the criteria that will render property exempt. If the debtor claims an exemption, then the court may not refuse to honor the exemption absent a valid statutory basis for doing so. *Id.*, pg. *1196.

In the case before the court, the Trustee has timely objected the claim of exemption filed on April 23, 2014. Dckt. 45. The claim of exemption asserts that personal property described as "CO" is claimed exempt in the amount of $73,500.00 pursuant to California Code of Civil Procedure § 703.140(b)(11)(D). On Schedule B an asset is listed as a "Personal Injury Settlement" having a value of $73,500.00.

California Code of Civil Procedure § 703.140(11) provides that in a bankruptcy case a debtor may elect to claim exemptions which include,

> " (11) The debtor's right to receive, or property that is traceable to, any of the following:
>
> (A) An award under a crime victim's reparation law.
>
> (B) A payment on account of the wrongful death of an

individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(C) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(D) A payment, not to exceed twenty-four thousand sixty dollars ($24,060), on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent."

The maximum exemption which may be claimed in any payment for a personal bodily injury claim may not exceed $24,060.00.

So to begin, the Trustee's objection to a claim of exemption in the amount of $24,060.00 is supported by California exemption law.

The Chapter 7 Trustee asserts that when the Debtor filed the Chapter 7 case on March 20, 2013, the substantial personal injury claim was not disclosed and no exemption claimed. However, at the First Meeting of Creditors on April 29, 2013 (40 days into the Chapter 7 case) the Debtor disclosed the claim to the Trustee.

On December 6, 2013, the Chapter 7 Trustee filed her motion to employ special counsel (the attorney previously engaged by Debtor) for the personal injury claim. On April 9, 2014, the Chapter 7 Trustee filed her motion to have the court approve the settlement of the personal bodily injury claim which was disclosed at the First Meeting of Creditors.

The court approved the settlement, allowing the Trustee to recover for the Estate a gross settlement recovery of $72,500.00. To recover the $72,500.00, the court approved $37,687.28 in fees and costs for Special Counsel (Order, Dckt. 64), which has resulted in the estate recovering a net recovery of $34,812.72. As pleaded in Amended Schedule B, the Debtor tries to consume all of this recovery, freeloading on all of the efforts of the Trustee. The Debtor only claimed the exemption of $73,500.00 on April23, 2014, when she was assured that the Trustee had successfully prosecuted the claim.

In addition to the exemption provisions of the California Code of Civil Procedure, California has codified various Maxims of Jurisprudence. California Civil Code §§ 3509-3548. These Maxims are to aid in the application of the Code. These Maxims include,

- "One must so use his own rights as not to infringe upon the rights of another." Cal. Civ. § 3514.
- "No one can take advantage of his own wrong." Cal. Civ. § 3517.
- "For every wrong there is a remedy." Cal. Civ. § 3523.

- "The law helps the vigilant, before those who sleep on their rights." Cal. Civ. § 3527.

The Debtor is asserting her exemption in personal property which is property of the estate. California's general laws governing personal property are set forth in California Civil Code §§ 654-742, 946-998.

In the intersection between California law and federal law, Federal Rule of Bankruptcy Procedure 9011 comes into play, governing the conduct of parties and counsel. In this bankruptcy case the Debtor has chosen to represent herself. Even though she was asserting a $73,500.00 exemption, no counsel was engaged to represent her.

Federal Rule of Bankruptcy Procedure 9011 requires that when a pleading is filed, it constitutes a certification that the pleading (1) is not being presented for an improper purpose (such as harassment); (2) the claims are warranted by existing law or non-frivolous modification or reversal of existing law; (3) the allegations have evidentiary support; and (4) denials of factual contentions are warranted. Fed. R. Bankr. P. 9011(b). If the court determines that this certification was violated (whether by counsel or pro se party), the court may impose monetary, corrective sanctions. Fed. R. Bankr. P. 9011(c).

No Opposition to the Objection to Exemption

The Debtor has offered no Opposition to the Objection to Exemption, apparently acquiescing to having the exemption denied. Some court would readily enter an order so disallowing the exemption, the Debtor's default having been entered. Additionally, in claiming the exemption Debtor clearly misstates the plain language of California Code of Civil Procedure § 703.140(11)(D). In light of the Debtor being able to locate this specific Code section, there is little excuse for misstating what is provided in that section.

However, as stated in the Maxims of Jurisprudence, "For every wrong there is a remedy." A better remedy exists rather than the Debtor having admitted to having the entire exemption disallowed.

RULING

With respect to the exemption asserted pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $29,129.00 in real property described as "Real Property description RMC," the court considers the following. On Schedule A the Debtor lists an interest in real property described as "Residence, 1213 Karen Way, Modesto, California." Dckt. 1 at 9. On Original Schedule A Debtor asserted an exemption of $29,129.00 in this property pursuant to 11 U.S.C. § 522(d)(1). *Id.* at 13, filed on March 20, 2013.

On May 15, 2013, Debtor filed an Amended Schedule C, which continued to claim this exemption pursuant to 11 U.S.C. § 522(d)(1). Dckt. 9 at 3. No objection to this claim of exemption was filed by the Chapter 7 Trustee. On April 23, 2014, Debtor filed the Second Amended Schedule C to claim the

$73,500.00 exemption and exhaust the settlement proceeds. Dckt. 45. When filing the Second Amended Schedule C Debtor also re-identified the section by which the exemption in the Residence as being claimed pursuant to California Code of Civil Procedure § 703.140(b)(1). As bankruptcy practitioners know, this the additional bankruptcy exemptions, California having elected to opt-out of the 11 U.S.C. § 522(d) exemptions. Cal. C.C.P. § 703.130, California statutory disallowance of 11 U.S.C. § 522(d) exemption.

While stating in the title and introduction that an objection is asserted to the claim of exemption in the Residence, there is no basis stated in the Objection. The conclusion states that the "exemptions" should be subordinated to the estate's administrative expenses. The Trustee offers no explanation as to why there is now an objection to an exemption which was made in 2013 for which no objection was filed.

The court overrules the objection to the claim of exemption in the amount of $29,129.00 in 1213 Karen Way, Modesto, California.

With respect to the eleventh and one-half hour, excessive, and unsupported in amount under applicable law exemption stated in the $72,500.00 personal injury settlement, the Chapter 7 Trustee states a good exemption. Pro se debtors being debtors, the court's conscious is not shocked with the Debtor disclosing the existence of the personal injury claim at the First Meeting of Creditors. The Debtor did not hide the existence of the asset, even though she failed to disclose it on Schedule B.

At that point, the Debtor could have claimed an exemption (the Debtor clearing knowing how to claim exemptions, having done so in the Original and First Amended Schedule C). The Debtor did not claim an exemption, allowing the Trustee to believe that she was prosecution 100% of the claim for the estate. From the evidence presented, the court concludes that the Debtor intentionally set a trap for the Trustee, lying in wait until the Trustee recovered on the personal injury claim for the bankruptcy estate. Then, when the Trustee was recovering the money, the Debtor sprung the trap, pouncing by filing the Second Amended Schedule C.

In doing so, Debtor prejudiced the Trustee's and the Bankruptcy Estate's rights. If Debtor had claimed an exemption from the time the asset was disclosed, the Trustee could have included the Debtor in the negotiations. The $72,500.00 recovery may well have been sufficient with the Estate recovering 100% of the settlement (after paying Special Counsel fees). If the Trustee knew the Debtor was entitled to an exemption, the Trustee may have negotiated a higher settlement or considered the risk of litigation warranted to recover a sufficient amount for the Estate. Additionally, the Trustee and Debtor could of discussed the proposed settlement and reached a compromise by which both the Trustee and Debtor reduced the amounts they would otherwise be entitled to if the Debtor claimed the full exemption or the Trustee further pursued the litigation.

The Debtor's conduct was not merely not being vigilant, but intentionally evasive and misleading. It is from this wrong that Debtor now seeks to take advantage and have a gain at the Estate's expense.

The Chapter 7 Trustee, being the diligent fiduciary of the Estate not only brings to the attention of the court the correct amount of an exemption which could be claimed pursuant to California Code of Civil Procedure § 703.140(b)(11)(D), but proposes to recover the administrative expenses of the Estate ahead of the Debtor's claim of exemption.

Notwithstanding the Debtor not opposing the Objection to Claim of Exemption, the court fashion's the right remedy which properly provides for the Estate's rights and interests, protects a reasonable exemption for Debtor, and makes it clear that misrepresentations and "lying in the weeds" to harm a bankruptcy estate are not acceptable practices in federal court.

The Debtor's exemption of $22,075.00 is 30.5% of the $72,500.00 gross settlement. The Estate's interest in excess of that is $50,425.00, 69.5% of the gross settlement. After deducting $37,687.28 in court approved fees and costs for Special Counsel, there is a net recovery of $34,812.72 net recovery. This is allocated 30.5% to the Debtor for her exemption, $10,617.88; and a 69.5% allocation to the Estate, $24,194.84.

For the Debtor, she is recovering $10,617.88 on an exemption which could (and some would say should) have been disallowed in its entirety. The Estate carries the burden of paying 70% of the Special Counsel expenses, as well as all of the general bankruptcy counsel expenses necessary to prosecute the personal injury claim. FN.1.

FN.1. This right remedy may well inure to the further benefit of the Debtor, with the Chapter 7 Trustee concluding that the Estate's damage caused by the Debtor's violations of Federal Rule of Bankruptcy Procedure 9011 are not substantial in light of the fair allocation of counsel expenses, notwithstanding the court allowing the Debtor to retain an exemption even when the Debtor failed to oppose the Objection to Claim of Exemption.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Exemptions filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as to the exemption asserted in the real property described "Property Real Description RMC" under C.C.P. § 703.140(b)(1) for $29,129.
>
> **IT IS FURTHER ORDERED** that the Objection to Claim of Exemption in personal property described as "Property Personal Description CO," which the court construes to be an attempted claim of exemption in the $72,500.00 settlement

proceeds from the personal injury claim (Order Approving Settlement, Dckt. 65), pursuant to California Code of Civil Procedure § 703.140(b)(11)(D) is sustained and the exemption in the $72,500.00 is disallowed for all amounts in excess of $10,617.88.

6.	**14-90015-E-7 HCS-2**	**AMERICAN DAIRY EQUIPMENT INC. Steven S. Altman**	**MOTION TO EMPLOY JNR ADJUSTMENT COMPANY, INC. AS DEBT COLLECTOR 6-25-14 [17]**

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 25, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

Chapter 7 Trustee, Irma Edmonds, seeks to employ debt collector JNR Adjustment Company, Inc. ("JNR") to assist the Trustee in recovering accounts receivable that are property of the estate. On Schedule B the Debtor disclosed $122,639 of accounts receivable, which are property of the estate, and the Trustee wishes to employ JNR to recover the accounts receivable.

Trustee asserts that JNR's proposed fee is 30 percent of the gross recovery of the Accounts Receivable, subject to approval of the Bankruptcy Court and if there is no recovery, JNR will not receive any fees. Trustee believes employing JNR is in the best interests of the estate.

Robert J. Nielsen, Vice President of Bankruptcy and Liquidation at

JNR Adjustment Company, Inc., testifies he or his firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of JNR, considering the declaration demonstrating that JNR does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ JNR Adjustment Company, Inc. as debt collector for the Chapter 7 estate to recover $122,639 of accounts receivable. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted and the Chapter 7 Trustee is authorized to employ JNR Adjustment Company, Inc. as debt collector for the Chapter 7 Trustee to recover $122,639 of accounts receivable.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved

unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by processionals in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

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

7. 13-92028-E-7 JUANA ANDRADE — **MOTION FOR ENTRY OF DEFAULT JUDGMENT**
14-9010 MLG-1 — **6-2-14 [20]**
MODESTO IRRIGATION DISTRICT V. ANDRADE

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 2, 2014. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Default Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of

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

The Motion for Entry of Default Judgment is granted.

Plaintiff Modesto Irrigation District ("Plaintiff") requests this court enter a default judgment against Defendant Juana Andrade ("Defendant") for failure to answer its Complaint to Determine Non-Dischargeability of Debt Pursuant to 11 U.S.C. § 523 ("Complaint"). The Complaint was served on Defendant on February 18, 2014. The answer to the Complaint was required by Defendant within 30 days after the Summons was issued, in this case March 21, 2014. No answer or other responsive pleading has been filed to date. The Clerk of the Court entered Defendant's Default on May 1, 2014.

FACTS

Plaintiff states on November 12, 2013 Defendant filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. On February 14, 2014, Plaintiff filed this Complaint against Defendant seeking (I) a judgment in favor of Plaintiff and against Defendant in the amount of $141,000, plus interest and reasonable attorneys' fees according to proof; and (ii) seeking a determination that said amount owing to Plaintiff from Defendant, is nondischargeable pursuant to 11 U.S.C. §§ 523(a)(2), (4) or (6).

Plaintiff alleges that on May 13, 1998 (the "Contract Date"), Defendant opened an account with Plaintiff to provide electricity to her residence, located at 1100 Windy Court, Modesto, California (the "Service Address"), account no. 04341185074. According to Defendant's schedules, at all relevant times herein, Defendant was the owner of the property located at the Service Address, which property served as her primary residence. Plaintiff states its provision of electric services to Defendant, as with all of Plaintiff's other customers, is governed by its Electric Service Rules, which are expressly incorporated into Plaintiff's contracts for services with its customers (the "Service Rules").

Plaintiff alleges that subsequent to the Contract Date, without Plaintiff's knowledge or consent, Defendant caused Plaintiff's service equipment to be altered in order to divert electricity delivered directly to the Service Address, bypassing Plaintiff's installed meter. Through such illegal modification of the equipment, Defendant obtained and used unauthorized and unmetered electricity provided by Plaintiff. As a result of the alleged power diversion, Plaintiff's installed meter did not register actual electricity being consumed at the Service Address, and Defendant received electricity services for which she was not billed, and for which

she did not pay, for more than a decade in Plaintiff's estimation.

On or about August 8, 2013, Plaintiff discovered Defendant's power diversion and in accordance with its Service Rules (in particular, Rule No. 11, Discontinuance and Restoration of Service), and due to the unsafe conditions created by Defendant's tampering with Plaintiff's equipment, Plaintiff terminated all power delivered to the Service Address, and removed the installed meter. Plaintiff determined that energy diversion had occurred since the Contract Date. Plaintiff estimated unpaid electricity consumption from May 13, 1998 to August 8, 2013 to be $47,000 (the "Unauthorized Usage").

Plaintiff informed Defendant that power could not be restored at the Service Address until (a) repairs had been made to correct the damage caused by Defendant's tampering with the equipment; (b) such repairs had been inspected and approved by the City of Modesto; and (c) full payment had been made on account of the outstanding amount owing due to the Unauthorized Usage.

Plaintiff alleges that as of the commencement of this adversary proceeding, none of those preconditions have been satisfied, and in particular, Defendant has not paid any portion of the amounts arising from the Unauthorized Usage. As of the Petition Date, utility services had not been restored to the Service Address.

Plaintiff states that the Service Rules, as well as applicable law of the State of California, allows for the presumption that on premises controlled by a customer, that customer is the party responsible for any unauthorized use, and allows billing to the customer for the amount, excluding interest, for the entire underbilled period.

APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.* at 770.

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 Moore's Federal Practice - Civil ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, as the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors which the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,

(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471-72 (citing 6 Moore's Federal Practice - Civil ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.)).; *In re Kubick*, 171 B.R. at 661-662.

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff did not offer evidence in support of the allegations. *See id.* at 775.

DISCUSSION

11 U.S.C. § 523(a)(2)(A)

The Bankruptcy Code provides that any debt for money, property, services, or an extension, renewal, or refinancing of credit, obtained by actual fraud are nondischargeable. 11 U.S.C. § 523(a)(2)(A). Ninth Circuit case law has confirmed that the elements of fraud under California law are identical to the elements under § 523(a)(2)(A). *Younie v. Gonya*, 211 B.R. 367, 373-74 (B.A.P. 9th Cir. 1997) ("The elements of § 523(a)(2)(A) mirrors the elements of common law fraud and match those for actual fraud under California law."). To establish actual fraud supporting nondischargeability of a debt, the moving party has to prove: (1) misrepresentation, fraudulent omission (nondisclosure) or deceptive conduct by the debtor; (2) knowledge of the falsity or deceptiveness of his statement or conduct; (3) an intent to deceive; (4) justifiable reliance by the creditor on the debtor's statement or conduct; and (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct. *In re Harmon*, 250 F.3d 1240, 1246 (9th Cir. 2001), *citing Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman)*, 234 F.3d 1081, 1085 (9th Cir. 2000).

Here, as a result of Defendant's deceptive conduct of meter tampering at the Service Address, Plaintiff's installed meter did not register actual electricity being consumed at the Service Address, and Defendant received electricity services for which she was not billed, and for which she did not pay. Plaintiff relied on the installed meter for billing purposes. Defendant's continued unauthorized use of electricity while making payment to Plaintiff for a lesser amount than should have been paid for actual usage is an implicit misrepresentation and supports a discharge exception for the Unauthorized Usage. Plaintiff sustained damages of a loss based on the inability to bill and collect for the correct amount of power consumed by Defendant. Defendant's use of Plaintiff's electricity services through an illegally installed power diversion constitutes a false representation as to Defendant's actual consumption of electricity. Therefore, relief under 11 U.S.C. § 523(a)(2)(a).

11 U.S.C. § 523(a)(4)

11 U.S.C. § 523(a)(4) provides that an individual is not discharged "from any debt for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." Embezzlement does not require the existence of a fiduciary relationship. *Transamerica Commercial Fin. Corp. v. Littleton (In re Littleton)*, 942 F.2d 551, 555 (9th Cir. 1991); *see also First Delaware Life Ins. Co. v. Wada (In re Wada)*, 210 B.R. 572, 576 (B.A.P. 9th Cir. 1997). Plaintiff argues that the Defendant's actions amount to larceny under section 523(a)(4).

Larceny, as defined under federal common law, is "the felonious taking of another's personal property with intent to convert it or deprive the owner of the same." 4 COLLIER ON BANKRUPTCY ¶ 523.10(3) (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). In short, section 523(a)(4) excepts from discharge debts resulting from the fraudulent appropriation of another's property, whether the appropriation was unlawful at the outset. *Id.*

Here, Defendant caused Plaintiff's service equipment to be altered in order to divert electricity delivered directly to the Service Address, bypassing Plaintiff's installed meter. Through such illegal modification of the equipment, Defendant obtained and used unauthorized and unmetered electricity provided by Plaintiff. Defendant's use of Plaintiff's electricity services through an illegally installed power diversion constitutes larceny as to Defendant's actual consumption of electricity.

11 U.S.C. § 523(a)(6)

The Supreme Court in *Kawaauhau v. Geiger (In re Geiger), 523 U.S. 57, 118 S. Ct. 974, 140 L. Ed. 2d 90 (1998)*, made clear that for section 523(a)(6) to apply, the actor must intend the consequences of the act, not simply the act itself. *Id. at 60*. Both willfulness and maliciousness must be proven to block discharge under *section 523(a)(6)*.

In the Ninth Circuit,

> "§ 523(a)(6)'s willful injury requirement is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." *Carrillo v. Su* (*In re Su*), 290 F.3d 1140, 1142 (9th Cir. 2002). The Debtor is charged with the knowledge of the natural consequences of his actions. *Cablevision Sys. Corp. v. Cohen* (*In re Cohen*), 121 B.R. 267, 271 (Bankr. E.D.N.Y. 1990); see *Su*, 290 F.3d at 1146 ("In addition to what a debtor may admit to knowing, the bankruptcy court may consider circumstantial evidence that tends to establish what the debtor must have actually known when taking the injury-producing action.").

> "A malicious injury involves (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." *Petralia v. Jercich* (*In re Jercich*), 238 F.3d 1202, 1209 (9th Cir. 2001) (internal citations omitted). Malice may be inferred based on the nature of the wrongful act. See *Transamerica*

> *Commercial Fin. Corp. v. Littleton* (*In re Littleton*), 942 F.2d 551, 554 (9th Cir. 1991). 7 To infer malice, however, it must first be established that the conversion was willful. See *Thiara*, 285 B.R. at 434.

Ormsby v. First Am. Title Co. (*In re Ormsby*), 591 F.3d 1199 (9th Cir. 2010).

Here, Defendant caused Plaintiff's service equipment to be altered in order to divert electricity delivered directly to the Service Address, bypassing Plaintiff's installed meter. Through such illegal modification of the equipment, Defendant obtained and used unauthorized and unmetered electricity provided by Plaintiff. Defendant's illegal meter tampering, or knowledge of such meter tampering, constitutes a willful and malicious injury to Plaintiff and its property.

California Civil Code §§ 1882 - 1882.2

California Civil Code § 1882.1 states,

> § 1882.1. Actions
>
> A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts any of the following acts:
>
> (a) Diverts, or causes to be diverted, utility services by any means whatsoever.
>
> (b) Makes, or causes to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility.
>
> (c) Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function by tampering or by any other means.
>
> (d) Tampers with any property owned or used by the utility to provide utility services.
>
> (e) Uses or receives the direct benefit of all, or a portion, of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use, or that the use or receipt, was without the authorization or consent of the utility.

Furthermore, Section 1882.2 states, "[i]n any civil action brought pursuant to Section 1882.1, the utility may recover as **damages three times the amount of actual damages**, if any, **plus the cost of the suit and reasonable attorney's fees**" (emphasis added).

A review of the case law associated with California Civil Code

Section 1882.2 was fruitless. However, a review of similar treble damages in other statutes proves helpful for a damages analysis. Under federal antitrust law, persons and companies harmed by anticompetitive conduct may seek an award of triple their damages, an injunction, and costs of the action (including attorney fees) against a party that violates federal antitrust laws. *See* 15 U.S.C. § 15 et seq; *Kristian v. Comcast Corp.*, 466 F.3d 25, 47-48 (1st Cir. 2006) (*citing Mitsubishi Motors Corp. v. Soler Chrysler- Plymouth, Inc.*, 473 U.S. 614, 637 n.19 (1985)) (noting that other circuit courts also have disapproved of waiver of statutory remedies for antitrust violations). The RICO Act also permits persons harmed by the action of racketeers to collect treble damages. *See* 18 U.S.C. 1964(c); *Cullen v. Margiotta*, 811 F.2d 698 (2nd Cir. 1987)("civil RICO requires that a successful plaintiff be awarded treble damages").

The provisions of U.S. Patent Law, 35 U.S.C. § 284, are the most similar to the statutory damage provision in Section 1882.2, as the laws authorize a court to increase damages up to three times the amount assessed. This decision is discretionary with the court, but usually exercised only in cases of willful and wanton activity or bad faith litigation. *See Bard Periphera Vascular Inc. v. W.L. Gore & Associates, Inc.*, 682 F.3d 1003, (Fed. Cir. 2012).; see *Bartlett v. Winton*, 237 F. Supp. 631 (S.D. Fla. 1964) (Infringer knowingly, deliberately, and willfully infringed patent and such damages were trebled).

On August 8, 2013, service personnel from Modesto Irrigation District department observed and photographed an illegal line-side connection that was made to each of the two phase wires and one to the neutral wire, diverting electricity prior to it passing through the Meter. Based on Defendant's intentional tampering with Plaintiff's service equipment, Plaintiff was unable to acquire an accurate read of the actual electrical power provided. Through such illegal modification of the equipment, Defendant obtained and used unauthorized and unmetered electricity provided by Plaintiff. The estimated unpaid and unauthorized electricity consumption from May 13, 1998 to August 8, 2013 (over 15 years) even though the records provided by the Plaintiff only trace back to 2004 (and are only assessed from that date) total $47,000. Defendant's illegal meter tampering, or knowledge of such meter tampering, over the substantial time period of 15 years constitutes a willful and malicious injury to Plaintiff and its property. As such, based on the above, Plaintiff has shown evidence of the Unauthorized Usage to be damages in the amount of $47,000. The court finds sufficient deliberate and willful tampering with service equipment over a substantial amount of time and finds treble damages are appropriate in the amount of $141,000.

Attorneys' Fees

The prevailing party must establish that a contractual provision exists for attorneys' fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). Plaintiffs have provided California Civil Code Sections 1882.1-1882.2 as a statutory basis for attorneys fees.

Furthermore, Plaintiff has provided that attorneys fees in the amount of $8,445 (including estimated future fees and costs) have been

billed concerning this matter. See Declaration, Dckt. 24. Plaintiff's counsel has also provided a billing statement, showing approximately 10.1 hours working on the complaint, status conference, preparation of entry of default, and hearing for a total of $3,780.00. The hourly rate for attorney fees is $420.00. Counsel also provides costs in the amount of $375 for copy fees, filing fees and postage in addition to $37.00 for court call. This court does not generally allow the recovery of court call expenses on the theory that generally counsel use the Court Call service to make themselves more competitive in a larger geographic area. For those counsel, the Court Call service is akin to having phones in the office, legal resources, a desk and chair. The court finds the rate and time charged reasonable. The court finds fees in the amount of $3,780.00 and costs in the amount of $338.00 reasonable in relation to this matter.

Counsel also seeks "estimated additional fees" in the amount of $4,040.00 and "estimated additional costs" in the amount of $300.00. Exhibit B, Dckt. 31. However, Counsel fails to state or account for what these additional fees and costs will be. The court will not grant "estimated" fees and costs, doubling the amount requested, without explanation.

The court therefore grants Plaintiff's request for attorney's fees and costs in relation to the Motion for Entry of Default in the amount of $4,118.00.

CONCLUSION

Based on the evidence provided, the court enters a default judgment in favor of Plaintiff and against Defendant in the amount of $141,000, including treble damages, plus reasonable attorneys' fees and costs in the amount of $4,118.00, and enter default judgment determining that said amount owing to Plaintiff from Defendant, is nondischargeable pursuant to 11 U.S.C. §§ 523(a)(2), (4) and (6).

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 Entry of Default Judgment filed by the 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 for Entry of Default Judgment is granted. The court shall enter judgment for Plaintiff and against Defendant in the amount of $141,000.00, and attorneys fees and costs in the amount of $4,118.00, and that such amount is nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4) and (6).
>
> **IT IS FURTHER ORDERED** that the Plaintiffs are awarded $4,118.00 in attorneys fees pursuant to California Civil

Code §§ 1882 - 1882.2.

Counsel for the Plaintiff shall prepare and lodge with the court a proposed judgment, including attorneys fees and stating any costs allow Plaintiff shall be enforced as part of the judgment, consistent with this Order.

8.	**09-90032-E-7** **CWC-14**	**GOLDEN EAGLE ESTATES, LLC** **Michael R. Germain**	**OBJECTION TO CLAIM OF MELLOR FARMS, CLAIM NUMBER 12-1** **6-10-14 [559]**

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

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 44 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Objection to Claim of Mellor Farms is overruled without prejudice.

Stephen C. Ferlmann, the Trustee ("Objector") requests that the court disallow the claim of Mello Farms ("Creditor"), Proof of Claim No. 12 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured priority in the amount of $13,230.47. Objector asserts that there does not appear to be a basis for the designation as a priority claim.

Creditor asserts a claim for wages, salaries or commissions within 180 days before the filing of the bankruptcy case under 11 U.S.C. § 507(a)(4), but there is no documentation filed with the claim which indicates that the Creditor is an employee or agent of the Debtor. Trustee states that $11,141.60 of the services described in the claim are even outside the 180 day period before filing of the bankruptcy case.

SERVICE

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

Furthermore, the address served was not the address provided to the California Secretary of State's database. FN.1.

FN.1. The California Secretary of State lists Kipard D. Mellor, 16850 Frazier Rd, Linden, California 95236, as the agent for service of process for Mellor Farms, Inc. http://kepler.sos.ca.gov/. The Trustee's Objection identifies the creditor who is the subject (target) of the objection to be "Mellor Farms." This is an accurate statement based on how Proof of Claim No. 12 was completed. However, attached to the Proof of Claim is an Invoice on which the creditor is identified as B. Mellor Farms, Inc.

The California Secretary of State lists another entity with the words "Mellor Farms" as being a corporation authorized to do business in the State of California. This is B. Mellor Farms, Inc., for whom Brian Mellor, 17601 E. Frazier Rd, Linden, California 95236 is identified as the agent for service of process. The court does not know which "Mellor Farms" is the subject of the Objection or which "Mellor Farms" filed the Proof of Claim.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT CAN SHOW PROPER GROUNDS FOR WHICH THE REQUESTED RELIEF MAY BE ENTERED IN LIGHT OF THE FORGOING ISSUES

ALTERNATIVE RULING

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Based on a review of Creditor's Proof of Claim No. 12, there is no documentation provided that the unsecured amount of $13,230.47 has any basis for a priority claim. The documentation submitted appears to be a copy of a Statement describing various invoices for services rendered by Creditor, including finance charges. Additionally, Trustee is correct that $11,141.60 of the services appear to be rendered outside of the 180 day period before filing of the bankruptcy case as is required under 11 U.S.C. § 507(a)(4).

Based on the evidence before the court, the creditor's claim is disallowed as a priority claim but is allowed in its entirety as a general unsecured claim. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Mellor Farms, Creditor filed in this case by Stephen C. Ferlmann, 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 objection to Proof of Claim Number 12 of Mellor Farms is sustained and the claim is disallowed as a priority claim but is allowed in its entirety as a general unsecured claim.

9.	**09-90032-E-7 CWC-15**	**GOLDEN EAGLE ESTATES, LLC Michael R. Germain**	**OBJECTION TO CLAIM OF IKON FINANCIAL SERVICES, CLAIM NUMBER 24-1 6-10-14 [564]**

Final Ruling: No appearance at the July 24, 2014 hearing is required.

Local Rule 3007-1 Objection to Claim - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 44 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Objection.

The Objection to Claim of IKON Financial Services is overruled.

Stephen C. Ferlmann, the Trustee ("Objector") requests that the court disallow the claim of IKON Financial Services ("Creditor"), Proof of Claim No. 24 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be an unsecured priority claim in the amount of $1,339.21 and a general unsecured claim in the amount of $22,159.01 (total. Objector asserts that there does not appear to be any basis for the designation as a priority claim and the claim lacks adequate documentation to support any calculation of rejection of damages under 11 U.S.C. § 502(g).

Trustee states that the Creditor states the priority portion of the claim is an alleged administrative expense, but has not stated whether this occured in the Chapter 11 or Chapter 7 portion of the case. Trustee states the Creditor has not filed a motion to approve an administrative expense with the court in this case and the Court entered a Civil Minute Order on February 24, 2012 which required that all motions for the allowance of Chapter 11 administrative expense be filed on or before April 23, 2013. No such motion was filed by Creditor.

Trustee further objects to the unsecured portion of the claim in the amount of $22,159.01 because its based on the pre-petition debt of $5,357.17 and rejection damages of $16,801.84. Trustee states that Creditor has not provided analysis as to how the amount of the alleged rejection damages were calculated.

CREDITOR'S RESPONSE

Creditor GE Capital Information Technology Solutions, Inc. d/b/a Ikon Financial Services filed a response stating that it filed a motion seeking allowance and payment of administrative expense on September 15, 2009. By that time, the administrative expense had grown substantially due to the failure of the Debtor to pay its post-petition lease obligations to Creditor. Creditor states that although that motion was continued and ultimately withdrawn, this is only because it reached an agreement with the Debtor-in Possession which resulted in allowance of the Creditor's administrative expense, and a general unsecured priority claim.

The agreement reached between Creditor and the Debtor-in-Possession was contained in the Proposed Plan of Reorganization (the "Plan"). Specifically, Creditor was classified as the Class V creditor, and its claim was addressed in the Plan which was approved by order of this dated March 12, 2010. Pursuant to the confirmed Plan, Creditor was allowed an administrative expense of $9,830.21, and an unsecured claim in the amount of $22,159.01. To date, Creditor states it has received payment of only $1,000 on account of its administrative expense, which payment was in September, 2010. Creditor also states it discovered an error in its pre-petition claim in that it did not note when it settled with the Debtor-in-Possession that its pre-petition rejection damages claim was overstated based on the increase of the post-petition administrative expense. Creditor asserts that its actual unsecured, pre-petition claim is $16,031.55.

For these reasons, the Creditor respectfully requests that this Court confirm that it has previously been granted an allowed priority administrative expense in the amount of $8,830.21 and a general unsecured claim in the amount of $16,031.55.

TRUSTEE'S REPLY

Trustee replied, agreeing with the analysis provided by Creditor and requests the court adopt the relief requested by Creditor.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Based on the response of Creditor, stating it reached an agreement with the Debtor-in Possession which resulted in allowance of the Creditor's administrative expense, and a general unsecured priority claim that was contained in the Proposed Plan of Reorganization. Pursuant to the confirmed

Plan, Creditor was allowed an administrative expense of $9,830.21, and an unsecured claim in the amount of $22,159.01. Trustee agrees that this treatment and analysis is reasonable. To date, Creditor states it has received payment of only $1,000 on account of its administrative expense. Creditor having been previously been granted an allowed priority administrative expense in the amount of $8,830.21 and a general unsecured claim in the amount of $16,031.55 in the Proposed Plan of Reorganization, and no opposition from the Trustee, the court overrules the Trustee's objection.

Based on the evidence before the court, the creditor's Chapter 11 Administrative Expense is allowed claim in the amount of $9,830.21, for which $1,000.00 has previously been paid, leaving a remaining $8,830.21 of the Administrative Expense unpaid. by one payment from Debtor-in-Possession, and an allowed general unsecured claim in the amount of $16,031.55.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of IKON Financial Services, Creditor filed in this case by Stephen C. Ferlmann, 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 objection to Proof of Claim Number 24 of IKON Financial Services is overruled allowed as priority unsecured claim in the amount of $9,830.21, reduced to $8,830.21 by one payment from Debtor-in-Possession. Creditor's general unsecured claim is $16,031.55.

10.	**09-90032-E-7** **CWC-16**	**GOLDEN EAGLE ESTATES, LLC** **Michael R. Germain**	**OBJECTION TO CLAIM OF FRANK SHEAHAN TRUST, CLAIM NUMBER 27-1** **6-10-14 [569]**

Final Ruling: No appearance at the July 24, 2014 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 44 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Objection to Claim of Frank Sheahan Trust is sustained and the Claim is disallowed as a priority unsecured claim.

Stephen C. Ferlmann, the Trustee ("Objector") requests that the court disallow the claim of Frank Sheahan Trust ("Creditor"), Proof of Claim No. 27 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be an unsecured priority claim in the amount of $258,390.00 and a secured claim in the amount of $525,000.00. Objector asserts that Creditor does not provide grounds for the designation as a priority claim. The Creditor states that the priority portion of the claim is for contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5) but there is no documentation filed with the claim that supports this allegation.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of

claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

A review of Proof of Claim No. 27 shows Creditor asserts an unsecured priority claim in the amount of $258,390.00 and a secured claim in the amount of $525,000.00. Creditor states that the priority portion of the claim is for contributions to an employee benefit plan under 11 U.S.C. § 507(a)(5). However, the only documentation provided with the claim is a copy of the Installment Note, Deed of Trust and a statement of the amount of the claim, which all apparently related to the secured portion of the claim. There is no documentation to substantiate the priority amount claimed.

Based on the evidence before the court, the creditor's claim is disallowed as an unsecured priority claim, but allowed in its entirety as a secured claim. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Frank Sheahan Trust, Creditor filed in this case by Stephen C. Ferlmann, 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 objection to Proof of Claim Number 27 of Frank Sheahan Trust is sustained and the claim is disallowed as an unsecured priority claim. No objection has been stated to that portion of the claim asserted as a secured claim.

11.	**09-90032-E-7**	**GOLDEN EAGLE ESTATES, LLC**	**OBJECTION TO CLAIM OF AVAYA, CLAIM NUMBER 53-1**
	CWC-17	**Michael R. Germain**	**6-10-14 [574]**

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

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 44 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Objection to Claim of Avaya is sustained and Proof of Claim No. 53 is disallowed in its entirety.

Stephen C. Ferlmann, the Trustee ("Objector") requests that the court disallow the claim of "Avaya", Proof of Claim No. 53 ("Claim"), Official Registry of Claims in this case.

However, the court cannot determine from the evidence presented which legal entity the Debtors wish the court to include in the order. A review of the California Secretary of State's database shows seven (7) active corporations with the name "Avaya" and one (1) active LLC. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid themselves in finding the true creditor.

The Creditor has not made the Trustee's task any easier, failing to list the Creditor's name on Proof of Claim No. 53. The name and addresses where notices are to be sent is stated to be "Avaya, c/o RMS Bankruptcy

Recovery Service, PO Box 5126, Timonium, Maryland, 21094. Where notices are to be sent is not a statement under penalty of perjury of the name of the Creditor.

Attached to the Proof of Claim is an Invoice on "Avaya" letterhead, with a request that checks be made payable to "Avaya, Inc." But the invoices are from 2008, and do not necessarily mean that Avaya, Inc. is the creditor in 2008. It may well be that RMS Bankruptcy Recovery Services is a collection agency or debt buyer who has the legal rights to enforce the debtor or has purchased the debt. It appears that the identify of the actual creditor has been intentionally hidden from the court and the Trustee.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

However, Federal Rule of Bankruptcy Procedure 3001(f) states that "a proof of claim executed and filed **in accordance with these rules** shall constitute *prima facie* evidence of the validity and amount of the claim." (emphasis added). Thus, under section 502(a), a proof of claim or proof of interest **which was properly filed** pursuant to section 501(a) constitutes *prima facie* evidence of the validity and the amount of the claim. 4 COLLIER ON BANKRUPTCY ¶ 502.02[1] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) Here, whomever the creditor is, that identify has been omitted from the Proof of Claim. Such an "anonymous" Proof of Claim is not entitled to *prima facie* validity.

The court sustains the Objection and Proof of Claim No. 53 is disallowed in its entirety.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Avaya, Creditor filed in this case by Stephen C. Ferlmann, 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 objection to Proof of Claim Number 53 is sustained and said claim is disallowed in its entirety.

12.	09-90032-E-7 CWC-18	**GOLDEN EAGLE ESTATES, LLC** **Michael R. Germain**	**OBJECTION TO CLAIM OF RAFT RIVER VINTNERS, CLAIM NUMBER 62-1** **6-10-14 [579]**

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

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 44 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Claim of Raft River Vintners is sustained.

Stephen C. Ferlmann, the Trustee ("Objector") requests that the court disallow the claim of Raft River Vintners ("Creditor"), Proof of Claim No. 62 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $59,426.00. Objector asserts that the Claim has not been timely not timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is January 26, 2012. Notice of Bankruptcy Filing and Deadlines, Dckt. 387.

OPPOSITION

Creditor filed opposition stating that their claim should be allowed

as late filed due to excusable mistake and inadvertence, because Debtor previously did business as "Stevenot Winery" in Calaveras County and that counsel in this case has recently moved locations and changed personnel several times, resulting in difficulty calendaring. Creditor requests that the court allow the claim in its entirety.

TRUSTEE'S REPLY

Trustee replies, objecting to the opposition as Kim O. Dincel does not have personal knowledge of the conversation between Trustee Mr. Dincel's former association regarding whether or not Creditor was a documented creditor of Debtor. Trustee requests this allegation be stricken from the opposition.

Trustee also argues that Creditor has provided no evidence or any facts which would allow the enlargement of time to file proofs of claim in this case.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Federal Rule of Bankruptcy Procedure 9006(b) states that the court, for cause shown, may at any time in its discretion on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect. Fed. R. Bankr. P. 9006(b)(1). The Supreme Court stated the test for determining excusable neglect is "an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). The court should consider "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.* The court notes that excusable neglect is not limited to cases where the delay was the result of circumstances beyond the moving party's control. "By empowering the courts to accept late filings 'where the failure to act was the result of excusable neglect,' Rule 9006(b)(1), Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control." *Id.* at 388.

However, courts have uniformly held that no extension of the time fixed by Rule 3002(c) may be granted after the time has passed (except as specifically allowed by the provisions of Rule 3002(c)(1)-(6)). 9 COLLIER ON

BANKRUPTCY ¶ 3002.03 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The court has no equitable power to extend the time fixed by Rule 3002(c). *Id.* The excusable neglect standard provided by Rule 9006(b) does not permit the court to extend the time for filing proofs of claim under Rule 3002(c). *See Gardenhire v. IRS (In re Gardenhire)*, 209 F.3d 1145 (9th Cir. 2000); *In re Coastal Alaska Lines, Inc.*, 920 F.2d 1428, 1432-33 (9th Cir. 1990). There is no language in Rule 3002 permitting an extension of the 90-day period upon the request of a general, unsecured creditor who does not fall within the ambit of one of the subsections. The language of Rules 3002 and 9006 makes it clear that no such extension may be granted. *Gardenhire v. IRS (In re Gardenhire)*, 209 F.3d 1145 (9th Cir. 2000). FN.1.

FN.1. While the Opposition expressly requests that the court retroactively extend the time for filing of a proof of claim, Creditor provides no basis for retroactive extension of a claims bar date which has expired. The Opposition cites to no legal points and no legal authorities (either statutory, rule, or case law) in support of the retroactive relief requested. Even more importantly, Creditor has not filed a motion for leave to file an untimely claim. Instead, it has just been thrown into the Opposition to the Objection to Claim. Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 which permits the joinder of multiple claims into one complaint have not been incorporated into the Contested Matter proceedings (including objections to claims) by Federal Rule of Bankruptcy Procedure 9014.

The court cannot grant an extension of the time fixed by Rule 3002(c) after the time has passed and Creditor has not provided any exceptions allowed by the provisions of Rule 3002(c)(1)-(6). Even if the court did have authority, Creditor has provided no evidence in support of its opposition.

The deadline for filing a Proof of Claim in this matter was January 26, 2012. The Creditor's Proof of Claim was filed January 15, 2014. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Raft River Vintners, Creditor filed in this case by Stephen C. Ferlmann, 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 objection to Proof of Claim Number 62 of Raft River Vintners is sustained and the claim is disallowed in its entirety.

13. 14-90436-E-7 PBG-1 | **DEREK/LESLIE VANN** | **Patrick B. Greenwell** | **MOTION TO REDEEM PERSONAL PROPERTY** | **6-13-14 [19]**

DISCHARGED 7-8-14

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 7 Trustee, and Office of the United States Trustee on June 26, 2014. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Motion for Redemption of Personal Property is granted.

Derek W. Vann and Leslie M. Vann, "Debtor" seeks to redeem a 2005 Toyota 4 Runner Sr5 4WD, "Property," from the claim of Safe Credit Union, "Creditor," pursuant to 11 U.S.C. § 722. Under this provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien

securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Property, not just to the Debtor's exempt interest in it. *See* H.R. Rep. No. 95-595, at 381 (1977). To redeem the property, Debtor must pay the lien holder "the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption." 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). To determine the amount of the secured claim, the court looks to 11 U.S.C. § 506.

The Motion is accompanied by the declaration of Derek W. Vann. Debtor seeks to value the Property at a replacement value of $8,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). The lien perfected on Property secures a claim of Creditor with a balance of approximately $18,734.00. Therefore, Creditor's claim secured by the lien is under-collateralized and pursuant to 11 U.S.C. § 506(a) the court determines Creditor's secured claim to be in the amount of $8,500.00.

An exemption in the amount of $10,000.00 in the Property has been claimed by Debtor pursuant to California Code of Civil Procedure §§ 703.140(b)(5). Since Debtor claims an exemption in the Property, Debtor is permitted to redeem the Property by paying Creditor $8,500.00 at the time of the redemption, which payment is in full satisfaction of the secured claim.

The Motion to Redeem pursuant to 11 U.S.C. § 722 and Federal Rule of Bankruptcy Procedure 6008 is granted.

The court shall issue an order in 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 Redeem Personal Property filed by Derek W. Vann and Leslie M. Vann, "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 Debtor is authorized and allowed pursuant to 11 U.S.C. § 722 to redeem the 2005 Toyota 4 Runner Sr5 4WD ("Property") by paying Safe Credit Union, the creditor holding the claim secured by the Property, the total amount of $8,500.00, in full at the time of redemption, which must be paid on or before August 15, 2014.

14. 12-91338-E-7 ANNA PAULA/FRANK SOUSA — MOTION TO AVOID LIEN OF TARGET NATIONAL BANK
CLH-1 Charles L. Hastings — 6-24-14 [57]

DISCHARGED 8-27-12

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 7 Trustee, and Office of the United States Trustee on June 24, 2014. By the court's calculation, 30 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of TD Bank, USA, N.A. ("Creditor") successor in interest to Target National Bank against property of Anna Paula Sousa and Frank Joe Sousa ("Debtor") commonly known as 1300 Butte Way, Turlock, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,214.38. An abstract of judgment was recorded with Stanislaus County on March 2, 2012, which encumbers the Property.

The Motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $100,000.00 as of the date of the petition. The unavoidable consensual liens total $244,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $21,825 on Schedule C, leaving $5,099 available to assert an exemption in the Property..

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 this judicial lien impairs the 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 the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of TD Bank, USA, N.A., California Superior Court for Stanislaus County Case No. 659073, recorded on March 2, 2012, Document No. 2012-0017840 with the Stanislaus County Recorder, against the real property commonly known as 1300 Butte Way, Turlock, 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. 12-91338-E-7 CLH-2 — ANNA PAULA/FRANK SOUSA — Charles L. Hastings — MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC — 6-24-14 [62]

DISCHARGED 8-27-12

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 7 Trustee, and Office of the United States Trustee on June 24, 2014. By the court's calculation, 30 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed

material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Midland Funding, LLC ("Creditor") against property of Anna Paula Sousa and Frank Joe Sousa ("Debtor") commonly known as 1300 Butte Way, Turlock, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,670.20. An abstract of judgment was recorded with Stanislaus County on March 2, 2012, which encumbers the Property.

The Motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $100,000.00 as of the date of the petition. The unavoidable consensual liens total $244,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $21,825 on Schedule C, leaving $5,099 available to assert an exemption in the Property..

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 this judicial lien impairs the 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 the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Midland Funding, LLC, California Superior Court for Stanislaus County Case No. 671391, recorded on May 2, 2012, Document No. 2012-0038421 with the Stanislaus County Recorder, against the real property commonly known as 1300 Butte Way, Turlock, 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.

16. 14-90839-E-7 MICHAEL/KYLE LINGG MOTION TO COMPEL ABANDONMENT
BPC-1 Tamie L. Cummins 7-10-14 [11]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 10, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Property is granted.

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

The Motion filed by Michael Lingg and Kyle Lingg ("Debtor") requests the court to order the Trustee to abandon property identified as Gentle Sole, a sole proprietorship neuro-reflex therapy business consisting of four reflexology chairs, forty towels, massage lotion, ten pillows, five blankets, two lamps, twenty-five CD's, CD player, towel warmer, hot rocks, desktop computer, laptop computer, printer, tablet, and desk (the "Property").

This Property is exempted on Debtor's Amended Schedule C. The Declaration of Kyle Lingg has been filed in support of the motion asserting that the property has been fully exempted and is of inconsequential value to the estate.

The court finds that the Property has been fully exempted by the Debtor, and that there are negative financial consequences to the Estate retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate, and orders the Trustee to abandon the property.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by Michael Lingg and Kyle Lingg ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted and that the Property identified as:
>
> Gentle Sole, a sole proprietorship neuro-reflex therapy business consisting of four reflexology chairs, forty towels, massage lotion, ten pillows, five blankets, two lamps, twenty-five CD's, CD player, towel warmer, hot rocks, desktop computer, laptop computer, printer, tablet, and desk
>
> as listed on Schedule B by Debtor is abandoned to Michael Lingg and Kyle Lingg, Debtors by this order, with no further act of the Trustee required.

17. 12-91442-E-11 **ALEXANDRINO/DURVALINA VASCONCELOS** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION**
Thomas O. Gillis **5-18-12 [1]**

Final Ruling: No appearance at the July 24, 2014 Status Conference is required.

Debtors' Atty: Thomas O. Gillis

The court having granted the Motion to Close the Case and Motion for Allowance of Counsel's fees, **the Status Conference is removed from the Calendar.**

Notes:

Continued from 6/12/14 to be heard in conjunction with other matters on calendar.

18. 12-91442-E-11 ALEXANDRINO/DURVALINA VASCONCELOS
TOG-17 Thomas O. Gillis
MOTION FOR FINAL DECREE
6-10-14 [210]

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The Motion for Final Decree is granted.

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) additionally states 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* (B.A.P. 9th Cir. 1999) 241 BR 896, 911.

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

- the plan confirmation order is final;
- deposits required by the plan have been distributed;
- property to be transferred under the plan has been transferred;

• 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;

• plan payments have commenced; and

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

FRBP 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 FRBP 3022, Adv. Comm. Note (1991); *see In re John G. Berg Assocs., Inc.* (BC ED PA 1992) 138 BR 782, 786.

Under the Plan, the Debtors are responsible for making monthly distributions to creditors, as outlined in the Plan, with the first round of payments due July 1, 2013. Debtors assert they have made the required payments in timely fashion and are current. The Debtors are not currently in default under the terms of the Plan and while the Debtors reserve the right to seek to reopen the case should judicial intervention become necessary in the future; the Debtors do not anticipate a need for the Court's further involvement in the distribution process at this time.

Thus, the court finds that Debtors have satisfactorily met the above-listed factors, determining whether the Chapter 11 bankruptcy estate has been fully administered within the meaning of 11 U.S.C. § 350(a). The court will enter a final decree closing Debtors' 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 Final Decree and Order Closing Case filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and Debtors' Chapter 11 Bankruptcy Case is closed pursuant to 11 U.S.C. § 350(a) and Fed. R. Bankr. P. 3022.

19.	**12-91442-E-11 TOG-19**	**ALEXANDRINO/DURVALINA VASCONCELOS Thomas O. Gillis**	**MOTION FOR COMPENSATION FOR THOMAS O. GILLIS, DEBTORS' ATTORNEY 6-10-14 [214]**

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Thomas O. Gillis, the Attorney ("Applicant") for Alexandrino and Durvalina Vasconcelos the Debtor in Possession ("Client"), makes a Request for the Allowance of the Balance of Approved Fees and Expenses in this case. The order of the court approving employment of Applicant was entered on June 3, 2012, Dckt. 14. The court approved interim compensation and authorized payment of $18,088.07 of the total $25,810.07 approved.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	$25,810.07	$18,088.07
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$25,810.07	

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Prior Interim and Final Fees in the amount of $25,810.07 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is allowed, and the Plan Administrator under the confirmed plan is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $25,810.07

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Thomas O. Gillis ("Applicant"), Attorney, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Thomas O. Gillis is allowed the following fees and expenses as a professional of the Estate:
>
> Thomas O. Gillis, Professional Employed by Debtor in Possession:
>
> Fees in the amount of $25,810.07,
>
> The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Plan Administrator under the confirmed plan is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of under the confirmed Plan.

20. 14-90742-E-7 AMARJIT/KULVIR SINGH — ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
Robert D. Rodriguez — 6-20-14 [19]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case. The court docket indicates that on June 6, 2014, a document was filed that required a payment of $30.00. Shortly thereafter, the court generated and served on the filing party a Notice of Payment Due. Dckt. No. 17. The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based and as prescribed by 28 U.S.C. § 1930(b).

The court's tentative decision is to sustain the Order to Show Cause and order the case 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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is sustained, no sanctions are issued pursuant thereto, and the case is dismissed.

21. 13-91349-E-7 JASON RIVERS
13-9034
MODESTO IRRIGATION DISTRICT V. RIVERS

PRE-TRIAL CONFERENCE RE: COMPLAINT TO DETERMINE NON-DISCHARGEABILITY OF DEBT
10-2-13 [1]

Plaintiff's Atty: Merle C. Meyers
Defendant's Atty:

Adv. Filed: 10/2/13
Answer: 11/15/13

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

22. 13-91459-E-11 KDG-10 LIMA BROTHERS DAIRY Hagop T. Bedoyan

MOTION FOR COMPENSATION BY THE LAW OFFICE OF KLEIN, DENATALE, GOLDNER, COOPER, ROSENLIEB AND KIMBALL, LLP DEBTOR'S ATTORNEY(S)
6-26-14 [267]

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the Debtors-in-Possession, parties requesting special notice, and Office of the United States Trustee on June 26, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP, the Attorneys ("Applicant") for Debtor-in-Possession Lima Brothers Dairy, makes a Third Interim Request for the Allowance of Fees and Expenses in this case. Applicant moves the court for approval and payment of interim compensation for services rendered to the Debtor-in-Possession, Lima Brothers Dairy, and the bankruptcy estate in the sum of $47,381.50 and reimbursement of costs advanced in the sum of $671.86 for the period of March 20, 2014 through May 19, 2014 as a Chapter 11 expense of administration. The order of the court approving employment of Applicant was entered on December 11, 2013, and amended on March 31, 2014.

Applicant entered into a written legal services agreement with the Debtor-in-Possession dated December 2, 2013, which was signed by the partners of Debtor-In-Possession on December 3, 2013, and received a $25,000 retainer from the partners in Debtor-In-Possession. Applicant has filed two prior applications for interim compensation and reimbursement of costs, the first on

January 15, 2014, Dckt. No. 107, which was denied without prejudice. The denial was issued on several grounds: in that application, the Applicant sought fees as Counsel for the Debtor, failing to make the distinction between the terms "Debtor" and "Debtor in Possession."

In that application, the Applicant also did not provide a meaningful summary of what had been accomplished in the case. Instead, Applicant detailed "significant events" that had happened during the service period, and instructed the court to sift through the attached billing statements, declarations, and chronological list of tasks to discern the work that had been performed. The court requested that Applicant, in filing a revised motion, provide the court with a Motion to Allow Fees which stated with particularity the grounds upon which the relief is based, and describe the services rendered with specificity in the body of the Application for Fees and Costs. Civil Minutes, Dckt. No. 146.

The Applicant then filed a second application for interim compensation on April 10, 2014, Dckt. No. 214. The Second Application included fees and costs for the period including November 26, 2013, through March 19, 2014. On May 5, 2014, the court entered in its Civil Minute Order, Dckt. No. 29, the granting of the Second Application. The court authorized payment of 70% of fees and 100% of the costs. Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball was paid $25,000 from its retainer and $4,162.24 by the Debtor-in-Possession.

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

General Case Administration: The Applicant spent 8.00 total hours on this category of tasks, for a total of $1,846.00 in fees charged. Applicant reviewed and filed monthly operating reports for the period ending on February 28, 2014. The Applicant communicated with the bookkeeper retained by the Debtor-in-Possession regarding the completion of monthly operating reports, and with the partners of the Debtor-in-Possession regarding authorizations to disclose. The Applicant communicated with people employed at the Office of the United States Trustee regarding incorporation of business activity of P&M Dairy into monthly operating reports for the Debtor-in-Possession commencing with the March 2014 report and status of quarterly payments, and also with the Debtor-in-Possession regarding payment of quarterly fees.

Applicant also prepared amendments to the Debtor-in-Possession's Schedules E and F.

Asset Analysis and Recovery: Applicant researched potential 549 claims in the case, spending .60 hours and charging $90.00 for this task.

Relief from Stay and Adquate Protection: Applicant spent 4.60 hours on this task category, for a total of $1,181.00 in fees. The Applicant communicated extensively with counsel for secured creditor, and negotiated two stipulations for orders continuing the motion for relief from the automatic stay filed by American AgCredit.

Fee and Employment Applications: Applicant spent a total of 41.60 hours and charged $8,311.00 (and 1.0 hour at no charge) on communicating with GlassRatner regarding their employment as Business Consultants for the Debtor-in-Possession, and attending hearings on the employment of business consultants and counsel for Debtor-in-Possession, and preparing, filing, and serving the Second Application for Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball regarding the attorney's fee application, as well as the Interim Application for the allowance of Business Consultant's fees and expenses for GlassRatener and a court appearance the consultant's fee application.

Fee and Employment Objections: Applicant spent 3.40 hours on this task category for a total of $830.50 fees charged. Applicant communicated with the Office of the United States Trustee regarding the Objection filed to Business Consultant's fee application.

Non-Working Traveled: Applicant spent 7.0 hours and charged $1,095.00 in fees for traveling from Modesto, California, for a hearing on the motion for further use of cash collateral, and a client meeting, as well as for traveling to and from Merced, California, for meetings with secured creditor, American AgCredit and the Debtor-in-Possession.

Business Operations: Applicant communicated with the Business Consultants, Debtor-in-Possession, and other parties regarding the division of business operations between Debtor-in-Possession and P&M Dairy. Applicant also communicated with the Debtor-in-Possession and business consultants and creditors regarding hiring a bookkeeper for Plan compliance. Applicant communicated with the Debtor-in-Possession permitting and operations, analyzed cash transactions of P&M Dairy, and analyzed dairy valuation reports prepared by American AgCredit.

Financing and Cash Collection: Applicant spent 3.80 hours on this task, charging a total of $1,146.00 in fees for tasks like communicating with the Debtor-in-Possession on cash collateral budgets, with the business consultants regarding the budgets and the payment of taxes.

Tax Issues: Applicant communicated with the Debtor-in-Possession and Business Consultants regarding taxes and status of payment of taxes, and the Merced County Tax Collector regarding real property taxes. Applicant spent 3.0 hours on this task, for a total of $883.50 fees.

Claims Administration: Applicant spent a total of 8.70 hours and charged $1,840.00 in fees for communicating extensively with counsel for the Stanislaus Farm Supply company, A.L. Gilbert, and Gargill, Inc. regarding those creditors' claims.

Plan and Disclosure Statement: The Applicant spent 105.20 hours preparing a draft of reorganization and a draft of a disclosure statement. This was done with the input and after having participated in meetings with American AgCredit, Lima Brothers Dairy, and P&M Dairy. The Applicant also communicated with the Office of the United States Trustee regarding joint dairy operations.

Restructuring: Applicant worked with the Debtor-in-Possession and their principal accountant, as well as counsel for P&M Dairy and Business

consultants to figure out the restructuring of Debtor-in-Possession. This task category took 2.60 hours for $587.00 in fees.

Litigation: In this task category, the Applicant communicated with Debtor-in-Possession's principals and their counsel regarding the impact of the A.L. Gilbert v. Joe and Felipe Lima lawsuit on the Chapter 11 case.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including the proposal of a pending Chapter 11 Plan, and the authorization of the court to use cash collateral through July 13, 2014, in accordance with the court’s Order Authorizing Debtor Use of Cash Collateral and Setting Further Hearing entered on April 1, 2014, Dckt. No. 202. A continued hearing on the Debtor-in-Possession’s Motion was set for June 26, 2014. A continued hearing on American AgCredit’s Motion for Relief from the Automatic Stay is currently scheduled for this hearing date, which Applicant has been helping defend the Debtor-in-Possession. The plan of reorganization that was confirmed was done through the Applicant’s efforts to communicate and prepare a plan with counsel for American AgCredit and Cargill, Inc. The Plan that was circulated by Applicant included treatment for the claims held by American AgCredit and Cargill.

This Plan and the Disclosure Statement were both filed on June 12, 2014. A hearing on the approval of the Disclosure Statement, Dckt. No. 257, will be held on July 24, 2014, this same hearing date. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Hagop T. Bedoyan	.40	$0.00	$0.00
Hagop T. Bedoyan	3.00	$175.00	$525.00
Hagop T. Bedoyan	8.9	$350.00	$3,115.00
Jennifer Adams	.70	$350.00	$245.00
Jacob L. Eaton	2.50	$0.00	$0.00
Jacob L. Eaton	4.00	$142.50	$570.00
Jacob L. Eaton	122.00	$285.00	$34,770.00
Joseph Whittington	.20	$0.00	$0.00
Joseph Whittington	3.80	$155.00	$589.00
Karen Clemens, CBA (Paralegal)	4.90	$0.00	$0.00
Karen Clemens, CBA (Paralegal)	49.90	$150.00	$7,485.00
Sissy Rucker (Paralegal)	.30	$125.00	$37.50
Claudine Lalonde (Paralegal)	.30	$15,599.00	$45.00
Total Fees For Period of Application			$47,381.50

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Third Interim Fees in the amount of $47,381.50 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtor-in-Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $671.86ursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Travel-Mileage/Hotel		$426.02
Parking		$4.00

Postage		$107.04
Photocopies		$134.80
Total Costs Requested in Application		$671.86

Costs in the amount of $671.86 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

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

Fees $ 47,381.50
Costs and Expenses $ 671.86

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball ("Applicant"), Attorney for the Chapter 11 Debtors-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball is allowed the following fees and expenses as a professional of the Estate:
>
> Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, Professional Employed by Debtors-in-Possession
>
> Fees in the amount of $ 47,381.50
> Expenses in the amount of $ 671.86
>
> The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Debtors-in-Possession are authorized to pay the 75% of the fees allowed and 100% of the costs allowed by this Order from the available unencumbered funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

23. 13-91459-E-11 LIMA BROTHERS DAIRY
KDG-11 Hagop T. Bedoyan

MOTION FOR COMPENSATION FOR GLASSRATNER ADVISORY AND CAPITAL GROUP, LLC, CONSULTANT(S)
6-26-14 [274]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

GlassRatner Advisory & Capital Group, LLC (or "Applicant"), business consultants for Lima Brothers Dairy, the Debtor-in-Possession, makes a Second Interim Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period of April 1, 0214 through May 31, 2014. The court entered an order granting the application to employ GlassRatner Advisory & Capital Group, LLC on December 24, 2013. On March 31, 2014, the court issued its civil minute order, which amended the GlassRatner employment order.

Applicant entered into a written legal services agreement with the Debtor-in-Possession dated December 2, 2013, which was signed by the partners of Debtor-In-Possession on December 3, 2013, and received a $25,000 retainer from the partners in Debtor-In-Possession. Applicant has filed on prior application for interim compensation and reimbursement of costs on January 15, 2014, Dckt. No. 107. On February 18, 2014, the court denied the First Interim Application without prejudice. Dckt. No. 150. In the ruling rendered by the court denying the First Interim Application for Fees without prejudice, the court stated,

> The Applicant can go back and provide the court with a Motion to Allow Fees which states with particularity the grounds upon which the relief is based. The Motion can provide a billing summary, breaking up the task billing in a meaningful and clear way.
>
> The declarant can provide testimony to substantiate the billing summary and providing a discussion of the actual services provided within each task area. The declaration can explain why and how the services were staff and why the billing rates for the services were appropriate. The staffing for these services, which include what appears to be basic work, is all performed by professionals with 25+ years of experience and billing $275 to $395.00 an hour. No explanation is provided as to why and how all of the services provided are no less than $275.00 an hour services. These appear to include some basic bookkeeping services.

Civil Minutes, Dckt. No. 150.

On April 10, 2014, the Applicant filed a second application for interim compensation and reimbursement of costs on April 10, 2014, Dckt. No. 207, for the period from December 1, 2013 through March 31, 2014. The Second Application requested compensation for fees in the amount of $61,518.00, and costs in the amount of $598.24. On April 28, 2014, the United States Trustee filed opposition to the allowance of a portion of the fees. The Opposition indicated that the United States Trustee believed that some of the time billed by GlassRatner contained charges for bookkeeping and other services which should be billed at a reduced rate.

The court entered a Civil Minute Order on May 7, 2014, that allowed $30,000.00 of the fees requested in the Second Application. Debtor filed a Reply to the Opposition that among other things, reduced the total fee request. Dckt. No. 246. The court made a determination on the Second Application at the final hearing on June 12, 2014, entering a civil minute order on June 18, 2014, Dckt. No. 266 that provided that GlassRatner would be entitled to allowed fees included in the Second Application in the amount of $57,078.00 and costs in the amount of $598.24, payable at 75% of the fees ($42,808.50) and 100% of the costs, as the first interim fees (the First Application had been denied entirely).

With this Motion, Applicant seeks compensation for services rendered during the application period of April 1, 0214 through May 31, 2014 for $22,601.50 and reimbursement of costs advanced in the sum of $178.40.

Applicant has organized the entries in the time sheets that Applicant filed as Exhibit "D" in support of the Motion on Dckt. No. 278, the entries of which are separated by task code.

In the present Motion, Applicant provides a task billing analysis and supporting evidence for the services provided, which are summarized under the below categories.

Business Analysis: Applicant spent 3.50 hours, for a total of $437.50 in fees, on this task category. The Applicant updated accounting records, reconciled bank accounts, and assembled and distributed monthly operating reports for March 2014.

Business Analysis: Applicant spent 22.60 hours for a total of $6,433.00 charged for a variety of business analysis tasks performed by the Applicant. The applicant prepared monthly operating reports, communicated with the secured creditor regarding held funds account, reconciled milk check details to cash accounts and assignments, and compared to budget projections, and prepared production versus budget projections.

The Applicant participated in multiple discussions with the Debtor-in-Possession, partners of the Debtor-in-Possession, counsel for the Debtor-in-Possession regarding milk production issues and cash issues, and participated in discussions with secured creditor regarding milk production issues, Applicant communicated with and transferred accounting information to the bookkeeper retained by the Debtor-in-Possession, prepared multiple cash flow projections for use with obtaining authorization for the use of cash collateral and for the Plan, communicated with counsel for Debtor-in-Possession, partners in the Debtor-in-Possession, and secured creditors as needed in response to financial information requests. The Applicant also reviewed payroll tax records and reconciled to payments made.

Case Administration: Applicant spent 1.80 hours in this category fora total of $531.00 charged. Applicant traveled to Merced, California to Bakersfield, California, for meeting with secured creditors of Debtor-in-Possession (billed at half time from the Applicant's Bakersfield office), and reviewed case correspondence to keep abreast of developments.

Employment/Fee Application: Applicant spent 5.30 hours in reviewing, revising, approving, and signing the Application, for which Applicant charged $1,387.50 in fees.

Creditor Meeting: Applicant spent 3.00 hours and charged for $885.00 in fees for this category. The Applicant participated in meetings with partners of the Debtor-in-Possession, counsel for the Debtor-in-Possession, and secured creditor regarding current operations and Plan budget projections, and participated in telephone conference with counsel for Debtor-in-Possession and secured creditor regarding Plan issues.

Plan and Disclosure Statement: Applicant spent 44.90 hours in performing tasks under category, for a total of $12,927.50 charged. Applicant communicated with Counsel for Debtor-in-Possession and Debtor-in-Possession's partners regarding the plan of reorganization, communicated with secured creditor regarding acceptable treatment of claims, reviewed historical pricing

on quota and milk prices without quota, and began to develop the plan, analyzed tenant's dairy operations for inclusion into the Plan projections and expenses, participated in discussions with Counsel for Debtor-in-Possession and Debtor-in-Possession's partners regarding legal entity for the restructured debtor, prepared plan budgets and revised as required, reviewed secured creditor comments regarding the draft Plan, and prepared tax analysis for inclusion into the Plan budgets.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including the authorization of use of cash collateral, based on the budgets prepared by Applicant (according to Applicant's Motion and time entries). Applicant helped the Debtor-in-Possession obtain further and broader cash collateral approval orders, negotiated with secured creditors with respect to a plan of reorganization, performed day to day accounting in April in order to prepare and file the March Monthly Operating Report, reconciled the books and records for P&M Lima Dairy to incorporate the information in monthly operating reports and to help Debtor-in-Possession to determine the viability of incorporating the two business operations into one for purposes of a plan, and prepared multiple version of the cash flow statements for the Plan.

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

FEES REQUESTED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**

George Demos, CPA, Senior Managing Director of Applicant, and certified turnaround professional with over 30 years' experience in public accounting and private industry experience	56.80	$295.00	$16,756.00
Patrick Lacy	7.80	$235.00	$1,833.00
Brad Smith, Managing Director of Applicant and CPA, who holds a MBA and BS, with over 25 years' experience in advising and assisting businesses	3.50	$125.00	$437.50
Brad Smith, Managing Director of Applicant and CPA, who holds a MBA and BS, with over 25 years' experience in advising and assisting businesses	13.00	$275.00	$3,575.00
Total Fees For Period of Application			$22,601.50

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Third Interim Fees in the amount of $22,601.50 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtors-in-Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $178.40 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Pacer Charges		$30.10
Hotel costs		$130.90
Conference Calls		$10.00
Meals for out of town trip		$7.40
Total Costs Requested in Application		$178.40

The Third Interim Costs in the amount of $178.40 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtors-in-Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Applicant is allowed, and the Chapter 11 Debtor-in-Possession is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$22,601.50
Costs and Expenses	$ 178.40

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by GlassRatner Advisory & Capital Group, LLC ("Applicant"), Business Consultant for the Chapter 11 Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that GlassRatner Advisory & Capital Group, LLC is allowed the following fees and expenses as a professional of the Estate:
>
> GlassRatner Advisory & Capital Group, LLC , Professional Employed by the Chapter 11 Debtor-in-Possession
>
> Fees in the amount of $ 22,601.50
> Expenses in the amount of $ 178.40
>
> The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Debtor-in-Possession is authorized to pay the 75% of the fees and 100% of the costs allowed by this Order from the available unencumbered funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 Case.

24. 14-90664-E-7 ANABEL DE LUNA ORDER TO SHOW CAUSE
RHS-1 Pro Se 6-17-14 [21]

Tentative Ruling: The Order to Show Cause was issued to order the bankruptcy petition preparer in Debtor's bankruptcy case to appear to show cause as to why the court should not order a disgorgement of his fees for his failure to provide basic assistance to the Debtor in completing her bankruptcy documents.

The court's tentative decision is to sustain the Order to Show Cause.

The Debtor appeared on June 12, 2014, at a regularly scheduled hearing on an application to waive filing fees. In preparation for the matter, the court reviewed the following filing documents provided by the Debtor, which showed:

1. The Debtor's net income from her business and alimony/child support;

2. No attachment to Schedule I or Schedule J listing a breakdown of income and expenses of the business

3. The Debtor's business being listed on the Statement of Financial Affairs at Question 18, but no information provided as to the actual gross income from the business for the current year and prior two years.

The court then issued this Order to Show Cause, ordering that Manuel Jacquez, the bankruptcy petition preparer in Debtor's bankruptcy case, to appear on July 24, 2014, at 10:30 a.m. in Department E of the United States Bankruptcy Court, 1200 I Street, Second Floor, Modesto, California, to show cause as to why the court should not order Manuel Jacquez to disgorge his fee of $125.00 for failing to provide assistance to the Debtor in her completing the basic information in the bankruptcy documents essential to a debtor prosecuting a bankruptcy.

It was further ordered that any response or opposition to the Order to Show Cause shall be in writing and filed with the court in compliance with Local Rule 9014-1, and must be filed at least fourteen (14) days before the date of the hearing set forth in this order. The court also ordered that Manuel Jacquez appear at the hearing in person, and that no telephonic appearance is authorized for this order to show cause.

A review of the docket shows that Mr. Jacquez has not filed any responsive pleadings or opposition to the Order to Show Cause. The court's tentative decision is to sustain the Order to Show Cause and to issue an order disgorging the fees received by Mr. Jacquez for services rendered to the Debtor in this case.

JULY 24, 2014 HEARING

At the hearing, XXXXXXXXXXXXXXXXX

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is sustained, and that Manuel Jacquez disgorge his fee of $125.00 for services rendered to the Debtor, Anabel Mendoza De Luna, for the failure to provide assistance to the Debtor in completing the basic information in Debtor's bankruptcy documents that are essential in prosecuting her bankruptcy case.

25. 14-90665-E-7 SHEILA SPATZ — MOTION TO REDEEM
MRG-1 Michael R. Germain — 7-7-14 [15]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 7 Trustee, respondent creditor, and Office of the United States Trustee on July 7, 2014. By the

court's calculation, 17 days' notice was provided. 14 days' notice is required.

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

The Motion to Redeem is granted.

Debtor Sheila Ann Spatz (the "Debtor") seeks to redeem a 2002 Saturn SL automobile from the lien of One Main Financial pursuant to 11 U.S.C. § 722. Under the Bankruptcy Code, the Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722.

The right to redeem extends to the whole of the property, not just to the Debtor's exempt interest in it. *See* H.R. Rep. No. 95-595, at 381 (1977). To redeem the property, the Debtor must pay the lien holder "the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption." 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). To determine the amount of the secured claim, the court looks to 11 U.S.C. § 506.

The motion is accompanied by the Debtor's declaration. The Debtor seeks to value the property at a replacement value of $1,400.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). The lien on the vehicle's title secures a loan with a balance of approximately $6,969.82 on the petition filing date. Therefore, the respondent creditor's claim secured by the lien is under-collateralized. The creditor's secured claim is determined to be in the amount of $1,400. *See* 11 U.S.C. § 506(a).

According to Debtor's schedules and Debtor's Memorandum of Points and Authorities in Support of the Motion to Redeem, the Debtor claimed a $1,400 exemption for the 2002 Saturn Sedan vehicle under California Code of Civil Procedure §§ 703.140(b)(5). Since the Debtor claimed an exemption in the vehicle, Debtor is permitted to redeem the property by paying the holder of the lien, One Main Financial, the amount of the allowed secured claim in full at the time of redemption.

The Motion to Redeem pursuant to 11 U.S.C. § 722 and Federal Rule of Bankruptcy Procedure 6008 is granted. The court will issue a minute order holding that the Motion to Redeem 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 Redeem Personal Property filed by the 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 Debtor, Sheila Spatz, is authorized and allowed pursuant to 11 U.S.C. § 544 to redeem the 2002 Saturn Sedan by paying the to holder of the lien, One Main Financial, the total amount of $1,400.00, in full at the time of redemption.

26. 10-94467-E-7 TINA BROWN
CWC-6 Michael R. Germain

MOTION FOR CONSOLIDATION OF MONEY JUDGMENT AND CORRECTIVE CONTEMPT SANCTIONS FOR PURPOSES OF ENFORCEMENT
3-18-14 [122]

Tentative Ruling: The Motion for Consolidation of Money Judgment and Corrective Contempt Sanctions for Purposes of Enforcement has been set for hearing by the court, pursuant to the Order for Hearing and to Show Cause Why the Requested Relief Is Not Granted issued by the court on June 23, 2014. Dckt. No. 139.

Michael D. McGranahan, the Chapter 7 Trustee and Plaintiff in Adversary Proceeding No. 12-09003 ("Plaintiff-Trustee") filed an Ex Parte Application of Money Judgement and Corrective Contempt Sanctions For Purposes of Enforcement Under Federal Rule of Bankruptcy Procedure 7069(a) & (b). Dckt. 122.

On December 13, 2012, the court issued a Judgment in favor of the Plaintiff-Trustee and against Timothy Brown ("Brown") in Adversary Proceeding No. 12-09003 ("Adversary") determining that the bankruptcy estate was the owner of three vehicles ("Judgment"). The Judgment identifies the vehicles and monetary values determined by the court for each to be as follows:

1. 1997 Harley Davidson Red Fat Boy Motorcycle, VIN IBL15y032282, with a value of $7,000.00;

2. 2008 Harley Davidson Cross Bones Motorcycle, VIN IJM555840575, with a value of $11,000.00; and

3. 2007 Chevrolet Corvette Automobile, with a value of $24,915.00.

The Judgment ordered Brown to turn over the three vehicles to the Plaintiff-Trustee on or before December 31, 2012. The Judgment further provides that if Brown fails to timely turn over the vehicles,

Plaintiff-Trustee may elect to enforce the monetary Judgment for the value of the vehicles which were not turned over by Brown.

> The Plaintiff Michael D. McGranahan, the Chapter 7 Trustee, shall exercise the election to enforce the monetary judgment in lieu of the judgment for possession of one or more of the vehicles by filing in this Adversary Proceeding one or more notices of election to enforce monetary judgment. Each Notice shall identify the vehicles for which the election is made and the amount of the monetary judgment relating to such Notice. Such elections may be made by Plaintiff Michael D. McGranahan, the Chapter 7 Trustee, at any time during which the judgment, and any renewals of the judgment, are enforceable...

Judgment, Adversary Dckt. 41. On January 2, 2013, the Plaintiff-Trustee filed his bill of costs, totaling $381.55. Id., Dckt. 54. No objection or motion to tax costs was filed by Brown. No further pleadings have been filed in the Adversary Proceeding.

In this bankruptcy case filed by Tina Brown, Bank. E.D. Cal. 10-94467 ("Bankruptcy Case"), the Plaintiff-Trustee filed a Motion (DCN: CWC-4) to have Brown held in contempt for failing to turn over the three vehicles as ordered in the Judgment "Motion"). Dckt. 63. When Brown failed to appear at the regularly scheduled August 8, 2013 hearing on the Motion, the court issued an order for Brown to appear at the continued hearing on August 22, 2013. The Order also provided that if Brown failed to appear in compliance with the Order, the court could impose a $1,000.00 corrective sanction to induce Brown to appear as would be ordered for a further continued hearing. Order, Dckt. 71.

Brown and David Foyil, his attorney, appeared at the August 22, 2013 hearing and represented to the court the following,

1. Brown was told by some unidentified attorney that he could retain possession of the vehicles notwithstanding the Judgment and order to turn over possession.

2. Brown had not maintained insurance on the 2008 Harley Davidson Cross Bones, it had been "run over," and it was in pieces.

3. David Foyil, Brown's attorney, represented that he failed to communicate with Brown when contacted by counsel for the Plaintiff-Trustee concerning the demand for the vehicles. Mr. Foyil agreed to pay $1,593.56 to the Plaintiff-Trustee for legal fees incurred in connection with the failure to turn over the vehicles as of that time.

Civil Minutes, Dckt. 76.

Brown and his attorney represented that the vehicles would be turned over to the Plaintiff-Trustee. Based upon the representation of Brown and his attorney, the court set September 4, 2013, as the date by which the three vehicles had to be turned over to the Plaintiff-Trustee. Because of

the representations of Brown and his attorney, and Browns express representation that he would and could deliver the vehicles to the Plaintiff-Trustee by September 4, 2013, the court did not order any corrective sanctions to be paid by Brown at that time. Believing that the representations of Brown and his Counsel were in good faith and truthful, the court did not "hang" possible corrective sanctions over Brown's head in the event that he did not comply with the order to turn over the vehicles by September 4, 2013 as he promised. Order, Dckt. 78. The court continued the hearing on the Motion to September 26, 2013, as a follow-up date to confirm that Brown had turned over the vehicles to the Trustee.

At the September 26, 2013 hearing it was determined that Brown failed to comply with the order to turn over the vehicles. Thereon, the court then issued an Order on September 30, 2013, ordering Brown to turn over the vehicles to the Plaintiff-Trustee by October 15, 2013. Order, Dckt. 86. Further, the court ordered that corrective sanctions of $31,915.00 could be imposed if Brown failed to comply with that Order to timely turn over the vehicles by October 15, 2013.

Brown failed to comply with the Order and the vehicles were not turned over to the Plaintiff-Trustee by the October 15, 2013 deadline or the October 22, 2013 hearing date. Civil Minutes for October 22, 2013 hearing, Dckt. 76. While not appearing before the court or filing a response to Contempt Order No. 4, Brown filed a copy of a letter to the U.S. Trustee complaining about the bankruptcy process. This is addressed in detail by the court in the Civil Minutes for the October 22, 2013 hearing. Dckt. 107.

The court issued Contempt Order No. 1 on November 5, 2013, and ordered that corrective Sanctions in the amount of $31,915.00 be paid by Brown on or before November 26, 2013, to the Clerk of the Bankruptcy Court for deposit in the United States Treasury. Dckt. 105. The court also ordered Brown to turn over the 1997 Harley Davidson Red Fat Boy and the 2007 Chevrolet Corvette (the Plaintiff-Trustee having elected to abandoned the interest in the destroyed 2008 Harley Davidson Crossbones to the Debtor pursuant to order of the court, Dckt. 103) to the Plaintiff-Trustee on or before December 19, 2013.

The court also ordered Brown to pay corrective Sanctions in the amount of $2,532.00 in attorneys' fees and $151.34 to compensate the estate for that portion of the damages caused by Brown's failure to comply with the Judgment and orders to turn over the vehicles. Contempt Order No. 1.

Finally, Contempt Order No. 1, notified Brown that further corrective sanctions in the amount of $750.00 a day for each day after from and after December 1, 2013, that he failed to comply with the court's orders to turn over the vehicles to the Plaintiff-Trustee.

At the continued hearing on December 19, 2013, court determined that the vehicles had not been turned over to the Trustee and Brown had not complied with Contempt Order No. 1. Civil Minutes, Dckt. 115. The court then issued Contempt Order No. 2 on December 30, 2013, which ordered Brown to turn over the 1997 Harley Davidson Red Fat Boy Motorcycle and the 2007 Chevrolet Corvette on or before January 31, 2014. Dckt. 112. In addition, the court ordered that corrective sanctions in the amount of $750.00 a day

be paid by Brown for each day after December 1, 2013, that Brown failed to turn the two vehicles over by that date. The hearing on the Order to Show Cause for Contempt Order No. 2 has been continued to August 21, 2014. Dckt. 130.

The court has authorized the Plaintiff-Trustee to enforce sanctions Brown is ordered to pay the Clerk of the Court, in addition to the Plaintiff-Trustee being the authorized person to enforce the Judgment for the bankruptcy estate. The Plaintiff-Trustee has also been authorized to employ a collection attorney to enforce the monetary sanctions to be paid to the Clerk of the Court and the Judgment. Order Authorizing Employment of Special Counsel, Dckt. 121.

RELIEF REQUESTED IN EX PARTE MOTION

The Plaintiff-Trustee requests in the Motion an order "which supplements the Judgment" to determine that a "grand total" of $34,979.89 may be the subject of enforcement by the Plaintiff-Trustee pursuant to Federal Rule of Bankruptcy Procedure 7069(a) and the applicable non-bankruptcy enforcement of judgment law in California. Further, for the order to determine the total aggregate of all sanctions imposed, plus interest costs and fees previously ordered, to enable Plaintiff-Trustee to enforce those amounts.

Further, for an order that "would designate Michael D. McGranahan, Trustee, as and for the designee and agent for the court in the enforcement of the Sanctions Order as supplemented." Finally, for the court to "consolidate" the Judgment and Sanctions into "one Consolidated Judgment" which aggregates the amounts due into one, final, total balance.

The Plaintiff-Trustee requests that in enforcing the "Consolidated Judgment" he be permitted to first apply any monies collected to the Judgment and then to the Sanctions ordered to be paid to the Clerk of the Court.

The Plaintiff-Trustee further requests that the court order the Clerk of the Court to issue "any and all writs, abstracts, supplemental process, or other process as may be authorized under FRBP 7069 and FRBP 2004, or otherwise, in which Timothy Brown shall be designated as the Judgment Debtor and 'Michael D. McGranahan, Trustee and designee of the United States Bankruptcy Court, Eastern District of California," as and for the Judgment Creditor."

Finally, the Plaintiff-Trustee requests that this court order the United States Marshal, in any District in California, to "enforce the Writ of Execution as drafted herein." As with the request for an order for the Clerk of the Court, this request that the court order the United States Marshals to do certain acts is troubling. First, the court cannot identify the "Writ of Execution as drafted herein" referenced in the Motion. None has been filed as an exhibit, nor is a draft attached (which would be improper under the Local Rules) to the Motion or Declaration.

Second, the Plaintiff-Trustee offers no argument or evidence as to why this court ordering the United States Marshals to do something is

warranted. There is no contention that the United States Marshal in any District of California is not complying with the law or otherwise fulfilling his or her obligations in the enforcement of judgments. Just as this court would not redundantly order the Plaintiff-Trustee "to do your duties as provided under the Bankruptcy Code" if a party requested, the court will not do so merely because a bankruptcy trustee requests it.

DECLARATION OF DAVID J. COOK

The declaration of David J. Cook has been provided in support of the Motion. Mr. Cook is a very experienced attorney, specializing in the enforcement of judgments. Mr. Cook testifies that where there are multiple judgments to be enforced by one party, it can lead to duplicate expenses in obtaining and enforcing writs of execution. He recounts having to enforce two separate writs for one creditor, which he concluded increased the costs by 50 percent, "only because the Sheriff required fees and costs predicated upon each separate writ."

ANALYSIS AND AUTHORITIES CITED BY PLAINTIFF-TRUSTEE

In making the request for a consolidated judgment in the amount of $34,979.89, the Plaintiff-Trustee does not cite any legal authorities for the request. No points and authorities is filed in support of the present Motion. In his declaration, Mr. Cook makes no reference to a legal basis for solving the "problem" he perceives. Rather, it appears that the Plaintiff-Trustee merely requests that the court create something out of whole cloth because it might make life easier and more profitable. Alternatively, the Plaintiff-Trustee may believe that because a portion of what he has been authorized to enforce are sanctions to be paid to the Clerk of the Court, he and his attorneys can assign the research work to the court rather than have the professionals engaged by the Plaintiff-Trustee provide those services. Neither presents an appealing argument for the Plaintiff-Trustee.

Additionally, the Plaintiff-Trustee offers the court no explanation or analysis as to how he computes the "grand total" for the Supplemental Judgment to be $34,979.89. Rather, the court (without being offered any evidence) is told to issue the Supplemental Judgment in that amount.

DISCUSSION

The court was left confused and a bit bewildered after reviewing the Motion and the declaration of David Cook, a recognized collection attorney. Starting with the Judgment in the Adversary Proceeding, the court cannot identify from the Adversary Proceeding Docket any notices of election for issuance of a monetary judgment. Possibly the present Ex Parte Motion was intended to be such Notice. However, that is not clear. At this point in time, the awards by this court requiring monies to be paid by Brown are:

	Sanctions to Be Paid to the Clerk of the Court	**Owed to Plaintiff-Trustee**

Contempt Order No. 5		
Sanctions to be Paid the Court	$31,915.00	
Sanctions to be Paid the Trustee		$2,683.34
Judgment		
Fee and Cost Award to be Paid the Trustee		$ 381.55

There is pending the computation of sanctions for the $750.00 a day from December 1, 2013. Further, if Plaintiff-Trustee has properly complied with the Judgment and provided the notice of election for the monetary award of damages in lieu of the turnover of the vehicles, he does not provide a computation of that amount.

If the Trustee has elected to have a supplemental judgment for the monetary value of the 1997 Harley Davidson Red Fat Boy Motorcycle (determined in the Judgment to have a value of $7,000.00) and the 2007 Chevrolet Corvette (determined in the Judgment to have a value of $24,915.00) in lieu of possession of the two vehicles, then the monetary portion of the Judgment for the Plaintiff-Trustee increases by $31,915.00. When added to the fees and costs allowed as sanctions for the Trustee and in the Judgment, this would then equal the $34,979.89 amount which appears in the Motion. However, the court cannot identify how the Trustee has provided the notice of such election as required by the Judgment.

HEARING REQUIRED FOR MOTION

Upon review of the Motion, the files in the bankruptcy case and the Adversary Proceeding, and the declaration, the court has determined that a hearing is required to address several issues. The first is what basis exists, and what is the legal effect of, the "consolidation" of the Judgment and the Sanctions ordered by the court into one "Consolidated Judgment." As envisioned by the Plaintiff-Trustee, the court cannot determine if the "Consolidated Judgment" is a judgment in a separate adversary proceeding.

Second, in suggesting that when monies are collected on the "Consolidated Judgment," what basis exists for providing for payment first for the bankruptcy estate's judgment and only after all of that is collected to the Plaintiff-Trustee's satisfaction is effort made to enforce the Sanctions ordered by this court.

Third, the Plaintiff-Trustee must provide documentation that he has provided the Notice(s) of the Trustee exercising the election to enforce the monetary judgment in lieu of the judgment for possession.

STATEMENT OF DECISION FROM MEMORANDUM OPINION AND DECISION

Based upon the Motion, evidence and the files in the Adversary Proceeding and the Bankruptcy Case, the court determined that the proper relief which should be granted pursuant to the Motion is:

1. The court shall issue an order pursuant to Federal Rule of Civil Procedure 69, Federal Rule of Bankruptcy Procedure 7069, California Civil Code § 699.510 et seq., and 11 U.S.C. § 105(a) that the Judgment and the Sanctions may be enforced by the Plaintiff-Trustee through one common writ of execution, one common abstract of judgment, and such other common enforcement orders that may be issued by the court or the Clerk of the Bankruptcy Court. The writ of execution shall be in the combined amount of the Judgment and Sanctions, plus interest, costs and expenses as permitted by law. The writ of execution shall bear the Adversary Proceeding number and the Bankruptcy Case and Docket Control numbers for the Sanctions. The writ of execution, abstract of judgment, or other enforcement order shall be filed in both the Adversary Proceeding and the Bankruptcy Case by the Clerk of the Court.

2. The monies obtained pursuant to the writ of execution or other enforcement of the Judgment and the Sanctions shall be allocated equally (50/50) in monetary amount to the Judgment and Sanctions by the levying officer, the Plaintiff-Trustee, and the Clerk of the Court. All expenses and costs paid from the monies obtained from the enforcement of the Judgment and Sanctions shall also be equally divided between the two.

3. The combined monetary amounts in one writ of execution are appropriate under the extraordinary circumstances of the Judgment and Sanctions. The Plaintiff-Trustee has been authorized by the court to have the Sanctions enforced in the same manner as a judgment, as well as being the party to have the monetary Judgment enforced. The amounts of the Sanctions and Judgment are approximately equal. The equal allocation of the monies precludes there being any conflict for the Plaintiff-Trustee and counsel in whether the Sanctions or the Judgment should be enforced first. The use of one writ of execution or other judgment enforcement remedy reduces the costs and expenses of enforcement – for which Brown is ultimately liable.

4. Though issued as corrective sanctions to induce Brown to comply with the simple task of turning over the two vehicles as ordered, his failure to comply has caused the $750.00 in sanctions to balloon to $136,500.00 (computed as 182 days from December 1, 2013, through May 31, 2014, times $750.00 a day). Though entirely of his own making, such amount could be incorrectly construed as having passed from being corrective to becoming punitive. This court leaves (and is so required to leave) the issuance of punitive sanctions to the United States District Court.

5. -The court reduces the corrective portion of the sanctions to $75.00 a day, which totals $13,650.00. That is less than 50 percent of the monetary value of the vehicles at issue. The court leaves the $122,850.00 balance of the sanctions for determination by the District Court, if there are any further proceedings for punitive sanctions.

6. Based upon a proper showing that the Notice(s) of Election to enforce the monetary Judgment for the vehicles previously granted by this court, a supplemental judgment in the Adversary Proceeding shall be entered for $31,915.00 for the value of the vehicles determined by the court, $2,683.34 for costs, interest, and further recoverable costs and expenses of enforcement.

7. The court shall issue a current updated Order For Sanctions in the total amount of $45,565.00 ($31,915.00 and $13,650.00 corrective sanctions previously awarded), and setting the further hearing on the Motion for Contempt for November 6, 2014 at 10:30 a.m.

8. The court shall issue an order setting a hearing on the Plaintiff-Trustee's Motion to be conducted at 10:30 a.m. on July 24, 2014 to address the Motion. Notice of Election for the monetary judgment in lien of the turn over of the vehicles shall be made on or before June 30, 2014. Opposition or response to the Motion or Notice(s) of election of monetary judgment for the vehicles in lieu of possession shall be filed and served on or before July 16, 2014. Replies thereto filed and served on or before July 21, 2014.

A review of the docket shows that on June 30, 2014. the Plaintiff-Trustee filed a Notice of Election for Monetary Judgment Dckt. No 55, Adversary Proceeding Case No. 20012-09003. The Notice stated that the Trustee elects pursuant to the Judgment entered by the court in the proceeding on December 13, 2012, Dckt. No. 41 in the adversary case, to have a monetary judgment entered against the Defendant Timothy Brown in the following amounts for the vehicles which Timothy Brown failed to timely deliver possession thereof to the Plaintiff-Trustee:

1.) $7,000 for the 1997 Harley Davidson Red Fat Boy Motorcycle, VIN 1BL15Y032282 and;

2.) $24,915.00 for the 2007 Chevrolet Corvette Automobile, License No. 5XYR543, VIN 1GYY26U575133800

The Plaintiff states in the Notice that it is exercising this election to enforce a monetary judgment in lieu of judgment for possession of these vehicles. No responsive pleadings were filed, however, by the Defendant Timothy Brown or Debtor Tina Brown in response to this notice in the Adversary Case, Case No. 12-09003 or the Debtor's parent bankruptcy case, following the filing of this Notice, the Order to Show Cause, and the Memorandum Opinion and Decision on the Plaintiff Trustee's Motion for the

Consolidation of Money Judgment and Corrective Sanctions Awards for Enforcement.

The court's tentative decision is to sustain the Order to Show Cause and to grant the relief requested by the Plaintiff-Trustee.

JULY 24, 2014 HEARING

At the hearing, XXXXXXXXXXXXXXXXXX

27. 10-94467-E-7 TINA BROWN ORDER TO SHOW CAUSE
CWC-6 Michael R. Germain 6-23-14 [139]

Tentative Ruling: Michael D. McGranahan. the Chapter 7 Trustee and the Plaintiff-Trustee in Adversary Proceeding No. 12-09003 filed an *Ex Parte* Motion for the Consolidation of Money Judgment and Corrective Contempt Sanctions (Dckt. 122), from which the court determined that the following relief is requested:

I. For the Judgment in Adversary Proceeding 12-09003 in favor of the Plaintiff Trustee and against Timothy Brown,

A. Issuance of a Supplemental Judgment awarding the $31,915.00 in damages previously determined for the 1997 Harley Davidson Red Fat Boy Motorcycle, VIN IBL15Y032282, and the 2007 Chevrolet Corvette, VIN IGIYY26U575133800;

B. The Supplemental Judgment to include the $381.00 allowed as costs and judgment, and an additional $2,638.34 as sanctions previously awarded for Timothy Brown's failure to comply with the Judgment and orders to turn over the vehicles;

C. The Supplemental Judgment to provide for the $31,915.00 as an election under the Final Judgment (12-09003 Dckt. 41) of the Plaintiff-Trustee for a monetary award in lieu of the right to possession of the two vehicles.

II. For the Sanctions Awarded pursuant to the Orders of this Court in Contempt Order 4 in the amount of $31,915.00, and the additional per day corrective sanctions of $750.00 a day imposed from and after December 1, 2013, pursuant to the November 5, 2013 and December 20, 2013 order holding Brown in Contempt. Dckts. 105, 112.

The court determined that a hearing is necessary to address this request. A Memorandum Opinion and Decision concerning the *Ex Parte* Motion and the court's determination that a hearing is required was filed.

Upon review of the *Ex Parte* Motion, supporting pleadings, files in this case, and good cause appearing, the court ordered that a hearing on the Motion be conducted at 10:30 a.m. on July 24, 2014. It was further ordered

that before June 30, 2014, the Plaintiff-Trustee shall file and serve Notice(s) of Election for Monetary Judgment, if any, pursuant to the Judgment granted Plaintiff-Trustee and against Timothy Brown in Adversary Proceeding 12-09003.

The court also ordered that the parties shall show cause why the court should not compute the additional per day sanctions for Timothy Brown's failure to turn over the 1998 Harley Davidson Red Fat Boy Motorcycle and the 2007 Chevrolet Corvette Automobile to be $13,650.00, to be paid in addition to the $31,915.00 of sanctions previously ordered by the court. The $13,650.00 in sanctions is computed at the daily rate of $75.00 times the 182 days from December 1, 2013, through May 31, 2014. The Plaintiff-Trustee electing the monetary award under the Judgment in lieu of the turn over of the vehicles, the court terminates the corrective sanctions effective June 1, 2014.

The court ordered that Opposition to the Response to the Notice(s) of Election, if any, and the Motion and the relief above shall be filed and served on or before July 16, 2014. Replies were ordered to be filed and served on or before July 21, 2014.

Notice of Election for Monetary Judgment

A review of the docket shows that the Plaintiff-Trustee filed a Notice of Election for Monetary Judgment on June 30, 2014. Dckt. No 55, Adversary Proceeding Case No. 20012-09003. The Notice stated that the Trustee elects pursuant to the Judgment entered by the court in the proceeding on December 13, 2012, Dckt. No. 41 in the adversary case, to have a monetary judgment entered against the Defendant Timothy Brown in the following amounts for the vehicles which Timothy Brown failed to timely deliver possession thereof to the Plaintiff-Trustee:

1.) $7,000 for the 1997 Harley Davidson Red Fat Boy Motorcycle, VIN 1BL15Y032282 and;

2.) $24,915.00 for the 2007 Chevrolet Corvette Automobile, License No. 5XYR543, VIN 1GYY26U575133800

The Plaintiff states in the Notice that it is exercising this election to enforce a monetary judgment in lieu of judgment for possession of these vehicles. No responsive pleadings were filed, however, by the Defendant Timothy Brown or Debtor Tina Brown in response to this notice in the Adversary Case, Case No. 12-09003 or the Debtor's parent bankruptcy case, following the filing of this Notice.

The court's tentative decision is to sustain the Order to Show Cause and to grant the relief requested by the Plaintiff-Trustee.

JULY 24, 2014 HEARING

At the hearing, XXXXXXXXXXXXXXXXXX

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

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

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained.

IT IS FURTHER ORDERED THAT, for the Judgment in Adversary Proceeding 12-09003 in favor of the Plaintiff Trustee and against Timothy Brown, the court, issues a Supplemental Judgment awarding the $31,915.00 in damages previously determined for the 1997 Harley Davidson Red Fat Boy Motorcycle, VIN IBL15Y032282, and the 2007 Chevrolet Corvette, VIN IGIYY26U575133800.

IT IS FURTHER ORDERED THAT the Supplemental Judgment include the $381.00 allowed as costs and judgment, and an additional $2,638.34 as sanctions previously awarded for Timothy Brown's failure to comply with the Judgment and orders to turn over the vehicles;

IT IS FURTHER ORDERED THAT the Supplemental Judgment provide for the $31,915.00 as an election under the Final Judgment (12-09003 Dckt. 41) of the Plaintiff-Trustee for a monetary award in lieu of the right to possession of the two vehicles.

IT IS FURTHER ORDERED THAT the court awards the Plaintiff-Trustee Michael D. McGranahan against Timothy Brown, sanctions pursuant to the Orders of this Court in Contempt Order 4 in the amount of $31,915.00, and the additional per day corrective sanctions of $750.00 a day imposed from and after December 1, 2013, pursuant to the November 5, 2013 and December 20, 2013 order holding Brown in Contempt. Dckts. 105, 112.

28. 14-90669-E-7 ANN MCINTOSH MOTION TO COMPEL ABANDONMENT
JAD-1 Jessica A. Dorn 7-3-14 [13]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, parties requesting special notice, the Chapter 7 Trustee, and Office of the United States Trustee on July 3, 2014. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Property is granted.

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

The Motion filed by Ann Lorraine McIntosh("Debtor") requests the court to order the Trustee to abandon property commonly known as 2812 Rodney Avenue, Modesto, California (the "Property"). This Property is encumbered by the lien of Bank of America (though the exact Bank of America-associated institution holding the claim secured by the deed of trust in Debtor's is not identified), securing a of $55,619.00. The Declaration of Peter J. Coury, a certified real

estate appraiser retained by Debtor to conduct an appraisal of her residence, has been filed in support of the motion and values the Property to be $125,000. Debtor has claimed an exemption of $69,381.00 under California Civil Code of Procedure § 703.730 in the property, leaving no net equity to be administered for the benefit of the estate.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by Ann Lorraine McIntosh((“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted and that the Property identified as:
>
> 2812 Rodney Avenue, Modesto, California
>
> and listed on Schedule A by Debtor is abandoned to Ann Lorraine McIntosh(by this order, with no further act of the Trustee required.

29. 12-90675-E-7 HUMBERTO SALCEDO
JAD-3 Jessica A. Dorn

MOTION TO AVOID LIEN OF NATIONAL CREDIT ADJUSTERS, LLC
6-27-14 [34]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor, Chapter 7 Trustee, and the Office of the United States Trustee on June 27, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of National Credit Adjusters, LLC ("Creditor") against property of Humberto Salcedo ("Debtor") commonly known as 1813 Rose Avenue, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $9,555.13. An abstract of judgment was recorded with Stanislaus County Recorder on February 21, 2012, which encumbers the Property.

The Motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $120,000 as of the date of the petition. The unavoidable consensual liens total $298,269 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $5,000 on Schedule C.

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 this judicial lien impairs the 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 the 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 National Credit Adjusters, LLC, Stanislaus County Superior Court Case No. 565079, recorded on February 21, 2012, [Document No. 2012-0014251-00] with the Stanislaus County Recorder, against the real property commonly known as 1813 Rose Avenue, 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.

30. 13-90888-E-7 MICHAEL/ANN BADIOU **MOTION FOR ORDER AMENDING**
13-9027 EDF-2 **SCHEDULING ORDER**
SENTRY SELECT INSURANCE **6-12-14 [51]**
COMPANY ET AL V. BADIOU

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Plaintiff, the Chapter 7 trustee, and the Office of the United States Trustee on June 12, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

~~The Motion for an Order Amending the Scheduling Order is denied.~~

Relief Requested and Grounds Stated

Pursuant to Federal Rule of Bankruptcy Procedure 9013(which is similar to Fed. R. Civ. P. 7(b)) requires that the motion itself state both the grounds upon which the relief is based and the relief with particularity. The Motion appears to be incorporated into a combined Notice of Motion and Motion for Order Amending Scheduling Order; on first glance, the document fails to state the basis for the relief requested. FN.1.

FN.1 The moving party filed the Motion and Notice of Hearing in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting

documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). The opposing party is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1).

This hybrid "Motion" and Notice of Hearing on the Motion states:

A. The defendant in this case, Michael W. Badiou ("Defendnat"), moves the court for an order amending the scheduling order in this adversary case to allow the Defendant to bring a motion for an order allowing him to withdraw deemed admissions.

B. The current scheduling order set a discovery motion deadline of May 12, 2014. After the deadline for filing a discovery motion passed (28 days prior to May 12, 2014), Defendant learned his responses to requests for admissions, served three weeks late, were of no import and the requests were deemed admitted.

C. Defendant wishes to file a motion for an order allowing him to withdraw the deemed admissions, which requires, as a preliminary matter, an order amending the scheduling order.

D. Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen days preceding the date or continued date of the hearing. Opposition shall be accompanied by evidence establishing its factual allegations. Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

E. This motion is based on this notice of motion, the memorandum of points and authorities filed herewith, the declarations of Michael Badiou filed herewith and upon all of the court's files and pleadings and any other argument or evidence allowed at time of hearing.

Defendant instructs the court to read the Memorandum of Points of Authorities to determine the bases for this motion. It is not, however, for the court to canvas other pleadings, and wait until the hearing, to receive additional evidence from a movant to "draft the motion" for Movants. When a party combines the motion with the points and authorities (creating a "Mothorities") the grounds become lost in the extensive citations, quotations, factual arguments, and legal arguments. The motion must clearly state the grounds. The Mothorities hides the grounds, assigning to the court the responsibility to tease the grounds from the rest of the clutter.

Mothorities

The Defendant is essentially requesting the court to treat the points and authorities as the "motion." All of the factual contentions regrading the adversary case and the grounds for Defendant's request to file a motion for an order allowing him to withdraw the deemed admissions are contained in the Defendant's Memorandum of Points and Authorities in Support of the Motion for Order Amending the Scheduling Order. Dckt. No. 53. The facts alleged in the Memorandum are not included in Defendant's so-called Motion.

The Defendant us asking that the court accept a combined motion and points and authorities ("Mothorities") in which the court and Plaintiff are put to the challenge of de-constructing the Mothorities, divining what are the actual grounds upon which the relief is requested (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007), restate those grounds, evaluate those grounds, consider those grounds in light of Fed. R. Bankr. P. 9011, and then rule on those grounds for the Defendant.

The court has declined the opportunity to provide those services to a movant in other cases and adversary proceedings, and has required debtors, plaintiffs, defendants, and creditors to provide those services for the moving party. Law and motion practice in federal court, and especially in bankruptcy court, is not a treasure hunt process by which a moving party makes it unnecessarily difficult for the court and other parties to see and understand the particular grounds (the basic allegations) upon which the relief is based. The court does not provide a differential application of the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules as between creditors and debtors, plaintiff and defendants, or case and adversary proceedings. The rules are simple and uniformly applied. Defendants' Motion provides no basis for the relief requested. Defendants acknowledge as such, instructing the court to read the Memorandum of Points and Authorities to understand the basis for the Motion for Order Amending the Scheduling Order.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled. Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure

7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007.

No Legal Authority Cited

Defendant's Motion and Memorandum of Points and Authorities do not cite any legal authority. Failure to cite legal authority justifying the relief sought is a ground for denial of the motion. LBR 9014-1(d)(5), 1001-1(g). Local Bankruptcy Rule 9014-1(d)(5) requires that each motion, opposition, and reply cite legal authority relied upon by the filing party.

Here, Defendant sets forth the factual basis for Defendant's request in the Memorandum of Points and Authorities, but do not cite to any case authority or statutory provisions that would enable the Defendant to obtain an order amending a scheduling order, which would then allow him to file a new Motion for a court order withdrawing his deemed Requests for Admissions.

BACKGROUND OF THE CASE

Defendant Michael W. Badiou ("Defendant") and his wife, Ann M. Badiou, filed a voluntary petition for Chapter 7 relief. Plaintiffs Sentry and American Chevrolet-GEO, Inc. ("Plaintiffs") filed an adversary complaint seeking to declare certain debts owed by Badiou to Plaintiffs as nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (a)(4), and (a)(6). Defendant filed an answer that contained a counterclaim for fraud, which was dismissed on October 31, 2013. Civil Minutes, Dkct. No. 58.

This matter arises out of a personal and professional relationship Defendant had with American Chevrolet and its officers. Defendant bought and sold used vehicles wholesale for American Chevrolet. American Chevrolet gave Defendant considerable autonomy to perform his services, and unrestricted access to its records and computer systems. In early January, 2013, an employee of American Chevrolet, David Halvorson discovered a discrepancy in American Chevrolet's records. Upon further investigation, Halvorson realized that at least 34 American Chevrolet vehicles had been allegedly secretly sold by Defendant in 2012, without the knowledge or consent of American Chevrolet, that had never been designated to be sold wholesale, and that Defendant kept all the proceeds.

Halvorson met with Defendant to discuss the vehicle inventory reports, where Defendant admitted that he fraudulently removed the vehicles from the reports so that American Chevrolet could not see them and would lose track of them. Defendant also admitted that he sold the vehicles and never paid American Chevrolet its portion of the sale proceeds, and had taken steps to conceal his fraud. American Chevrolet submitted a claim to its insurance carrier, the Plaintiff, Sentry, for the loss of the 34 vehicles that Defendant had stolen. Plaintiff reimbursed American Chevrolet $349,899.75 per the terms of their policy.

On November 27, 2013, the Plaintiffs served Defendant targeted requests for admissions pursuant to Federal Rule of Civil Procedure 56. Defendant did not provide a timely response to these targeted requests for admissions, which Plaintiffs claims establishes liability in favor of Plaintiffs.

REQUESTED RELIEF

Relevant Facts

The Defendant describes the grounds of Defendant's requested relief in the body of the Memorandum. Dckt. No. 53. The Motion states that the Defendant needs to file a motion for an order allowing him to withdraw deemed admissions. The deadline for filing such a motion expired, so Defendant brings this Motion to amend the court's scheduling order. Defendant himself in this adversary proceeding from its inception until May 27, 2014.

On November 27, 2013, Sentry Select Insurance Company served requests for admissions, Set 1, on the Defendant. Defendant's responses to the requests for admissions were due December 30, 2013. On December 30, 2013, the Defendant contacted the attorneys representing Plaintiff to ask for an extension of time to respond to the outstanding discovery. Defendant initially spoke to a receptionist and was transferred to the voice mail for Robert B. Salley, an attorney for Sentry Select. The Defendant asked for an extension of time to respond to the discovery.

The Defendant did not receive a response that day. He followed up with an email to Mr. Salley on January 2, 2014, requesting an extension of time to respond to discovery to January 31, 2014. By letter dated January 3, 2014, Mr. Salley declined Defendant's request, saying in part:

> Your request that you be allowed to respond to any of the discovery to which responses remain owed until January 31, 2014, is not acceptable. This is simply too long. However, in an attempt to accommodate you please be advised that we will not file any motions based upon your failure to provide discovery of responses until after January 20, 2014. . .

Defendant served his response to requests for admissions, Set 1, on January 17, 2014. The Memorandum states that Defendant did not understand that the failure to provide timely responses would render those requests deemed admitted until receiving the plaintiff's motion for summary judgement. The Defendant, an "unsophisticated pro se litigant," attempted to obtain a single extension of time to respond to discovery in a case in which plaintiff is seeking many hundreds of thousands of dollars in nondischargable debt. The Plaintiff granted the Defendant what the Defendant thought was an "extension" but was merely a promise to not file motions to compel for a three week period.

Good Cause

Defendant argues that good cause exists to amend the scheduling order. The Court's scheduling order, filed January 2, 2014, established a deadline of May 12, 2014, by which all discovery motions must be heard; that the scheduling order may be modified for cause on the motion of a party; and that modifications to the scheduling order are not favored and will ordinarily be denied unless the moving party makes a strong showing of diligence in complying with the scheduling order.

Defendant states that he has good cause. Defendant states that he did not understand the significance of not providing timely responses to the

requests for admissions. He assumed Mr. Salley's letter of January 3, 2014, was an extension of time to respond and that by serving responses to the requests for admissions on January 23, 2014, he had fulfilled his obligations. The Motion states that Defendant did not realize the signifigance of not providing timely responses sometime after he received Sentry Select's motion for summary judgment, which was mailed to him on May 12, 2104, and which relies heavily, almost exclusively, upon the deemed admissions.

Two weeks after receiving the motion, Defendant retained a lawyer. As soon as Defendant retained counsel, an immediate effort was made to informally resolve the various disputes between the parties. When these efforts were unsuccessful, defendant brought the issues to the court's attention and filed his motion to amend the scheduling order. On this basis, Defendant requests that the court issue an order amending the scheduling order.

OPPOSITION BY PLAINTIFF

Plaintiff Sentry Select Insurance Company ("Sentry" or "Plaintiff") argues that the Motion should be denied on the basis that Defendant has not shown good cause to modify the order. Plaintiff states that the Motion is governed by Federal Rules of Civil Procedure, Rule 16, which allows a Scheduling Order to be modified only upon an affirmative showing of good cause; and to show good cause, a party must affirmatively demonstrate that he did not comply with a scheduling order despite exercising diligence. Sentry states that Defendant's only claimed good cause, which Plaintiff argues was the failure to interpret the statements regarding the Request for Admissions, does not constitute good cause.

Plaintiff states that the Request for Admissions served to Defendant on November 27, 2013, stated clearly that they were served pursuant to Federal Rule of Civil Procedure 36, and that Defendant was required to respond within 30 days. The Requests stated that if Defendant did not respond within that time frame, then the "matter of which an admission is requested and demanded shall be admitted in accordance with Rule 36 of the Federal Rules of Civil Procedure."

Due to a request by Defendant, the status conference initially schedule by the court to occur on October 10, 2013, was continued and held on December 19, 2013. Defendant appeared and participating, and this resulted in the court issuing its written scheduling order pursuant to Federal Rules of Civil Procedure 15 and 26, which are incorporated into the Federal Rules of Bankruptcy Procedure 7016 and 7026.

The Scheduling Order set forth firm deadlines, including May 12, 2014, as the deadline for the hearing of all discovery motions, to be set on the court's law and motion calendar. The court's order expressly states that it is applicable to "all parties, regardless as to whether represented by an attorney or in pro per."

The Scheduling Order issued on January 2, 2014, Dckt. No. 31, contains this limitation:

> **ORDERED**, that this scheduling order may be modified, for cause, only on the motion of a party or on a court-approved

> stipulation among all parties. Except for motions made and stipulations presented within thirty days after the date hereof based on conflicts created by the dates chosen by the court, requests for relief from or modification of this scheduling order are not favored and will ordinarily be denied unless the moving party makes a strong showing of diligence in complying with this scheduling order.

Federal Rule of Civil Procedure 36, which governs the Requests for Admissions, states,

The deadline to respond for Defendant was December 30, 2013. Defendant claims that on the last day, he left a voice message for Sentry's counsel, requesting an extension of time to respond to "discovery." Defendant concedes that no communication occurred; the Request for Admissions were deemed admitted as of December 31, 2013.

On January 2, 2014, Defendant sent an email to Sentry's counsel, asking for an extension to respond to discovery until January 31, 2014. Sentry's counsel responded on January 3, 2014 with letter. Exhibit D, Dckt. No. 78. FN.2.

FN.3. The opposing party filed the Declaration of Robert Salley in support of the Motion and the exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). The opposing party is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1).

The letter states that Defendant's failure to respond to Plaintiff's discovery, including responses to interrogatories, demands for production, and requests for admissions served previously, has resulted in "several things under the Federal Rules of Civil Procedure, including but not limited: waivers of objections, matters admitted, my client's right to move for any required response, and/or imposition of monetary sanctions." Defendant did not state that the matters admitted were excused, or that he was given an extension of time to respond. Rather, the letter informs Defendant that the Plaintiff will not file any motions based on Defendant's failure to respond to discovery until after January 20, 2014 (three weeks beyond when responses were originally due). Dckt. No. 78 at 28.

Plaintiff asserts that by the clear warning contained in the Request for Admissions, the language of Federal Rule of Civil Procedure 46, and the contents of the correspondence attached in support of the opposition, Defendant should have known that the Request for Admissions were deemed admitted. Defendant did nothing prior to the expiration of the deadline for any motion

for relief set by the court in the Scheduling Order. Plaintiff argues that Defendant did not realize that by failing to respond his admissions would be deemed admitted, and that he misinterpreted Plaintiff counsel's letter to mean that the Plaintiff was retroactively giving him more time to respond to the Request for Admissions.

Plaintiff argues that no good cause exists to modify the scheduling order. In the Ninth Circuit case of *Johnson v. Mammoth Recreations*, 975 F.2d 604 (9th Cir. 1993), the court states that once a court issues a pre-trial scheduling order pursuant to Federal Rule of Civil Procedure 16, the order controls the course of action unless modified under the standards set forth by the Rule, which can only be modified with a showing of good cause. The court held that inquiry into "good cause" necessary to justify amendment to scheduling order primarily considers diligence of party seeking amendment, rather than focusing on bad faith of parties seeking to interpose amendment and prejudice to opposing party. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992). The court states:

> A scheduling order "is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril." *Gestetner Corp.*, 108 F.R.D. at 141. The district court's decision to honor the terms of its binding scheduling order does not simply exalt procedural technicalities over the merits of Johnson's case. Disregard of the order would undermine the court's ability to control its docket, disrupt the agreed-upon course of the litigation, and reward the indolent and the cavalier.

Id. at 610. The court in *Johnson* also states that the carelessness of party seeking to amend scheduling order is not compatible with finding of diligence and offers no reason for grant of relief. *Id.* at 609. Although existence or degree of prejudice to party opposing modification of scheduling order might supply additional reasons to deny motion, focus of inquiry is upon moving party's reasons for seeking modification; if that party was not diligent, inquiry should end. *Id.*

Plaintiff argues that Defendant knew or should have known all along of the need to bring a motion for relief from the deemed admitted matters pursuant to Federal Rule of Civil Procedure 36. Plaintiff argues that Defendant has no excuse for not knowing that if he did not serve responses within 30 days of service for the Request for Admissions, they would automatically be deemed admitted. The Request for Admissions notified that should Defendant fail to serve the responses, the matters would be deemed admitted. The letter sent by Sentry's counsel on January 23, 2014, explained to Defendant that because he had failed to timely respond to the subject discovery, that matters would be deemed admitted. Plaintiff argues that Defendant has not and cannot meet the requirement of demonstrating that he was unable to bring a timely motion because of matters that could not have been reasonably foreseen, and has not made an affirmative showing of good cause to modify the subject scheduling order.

DISCUSSION

Federal Rule of Civil Procedure 16, which governs pre-trial procedures and issues, is made applicable to bankruptcy cases pursuant to Federal Rule of Bankruptcy Procedure 7015. Specifically, Federal Rule of Civil Procedure 16(b)(4) states that a scheduling order may only be modified for good cause, and with the judge's consent.

Although the Federal Rules of Bankruptcy and Civil Procedure do not provide a statutory definition of "good cause" within the meaning of Federal Rule of Civil Procedure 16, there is ample case authority raised by the Plaintiff and cases decided in this circuit that suggest the good cause is something more than a careless mistake, or ignorance of deadlines set by the scheduling order.

As stated above, the court in *Johnson v. Mammoth Recreations*, 975 F.2d 604 (9th Cir. 1993) held that an examination of the type of "good cause" necessary to justify amendment to scheduling order primarily considers diligence of party seeking amendment, rather than focusing on bad faith of parties seeking to interpose the amendment and to inflict prejudice to opposing party. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992). *The* carelessness of party seeking to amend scheduling order is not compatible with finding of diligence and offers no reason for grant of relief. *Id.* at 609.

In *Coleman v. Quaker Oats Co.*, the Ninth Circuit Court of Appeals determined that under the rule governing scheduling and planning by district courts, plaintiffs seeking to amend their complaints after the expiration of the time specified in a scheduling order must show good cause for failing to do so prior to expiration; this standard primarily considers the diligence of the party seeking the amendment. Federal Rule of Civil Procedure 16(b), *Coleman v. Quaker Oats Co.*, 232 F.3d 1271 (9th Cir. 2000).

Similarly, the Ninth Circuit held that once the party seeking modification of pretrial scheduling order is determined to be not diligent, the inquiry should end and the motion to modify should not be granted. *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080 (9th Cir. 2002). In that case, the appellate court determined that a modification of pretrial scheduling order was not warranted, even though the district court in that case caused a five-month delay in issuing written scheduling order which resulted in some confusion; movant's counsel did not seek to modify order until four months after it was issued, and the court determined that the movant did not demonstrate diligence in complying with dates set by district court and good cause for modifying order, as required by Federal Rule of Civil Procedure 16. *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080 (9th Cir. 2002).

In the Plaintiff's persuasive case cited from the Eastern District, Aurora Commercial Corp., 2014 U.S. Dist. Lexis 72117 (E.D. Cal. 2014), the court denied a motion to amend the scheduling order because the moving party had not met the good cause requirement under Federal Rule of Civil Procedure 16. The court held that in order for the requirement to be met, the moving party must demonstrate that noncompliance with the deadline in the court's scheduling order occurred despite diligent efforts to comply because "of the development of matters which could not have been reasonable foreseen or anticipated at the time of the Rule 16 Scheduling Conference."

The court is not convinced that good cause, the inquiry for which is so narrowly defined in cases that have been decided in this Circuit, exists to amend the scheduling order in this case. Using the criteria set out by the court in the *Johnson* and *Coleman* cases, in focusing exclusively on the Defendant's diligence in complying with the order and attempting to modify the court order, the court is not convinced that Debtor was particularly diligent in seeking to amend the scheduling order that this court signed on December 30, 2013, after a hearing attended by all parties.

The subject Scheduling Order was filed on January 2, 2014. The deadline which Defendant seeks to change, the deadline of May 12, 2014, by which all discovery issues must be heard according to the scheduling order, has months passed. Defendant files this Motion to Amend the Scheduling Order on June 12, 2014, arguing that he is an "unsophisticted pro se litigant" who desperately "attempted to obtain a single extension of time to respond to discovery in a case in which plaintiff is seeking many hundreds of thousands of dollars in nondischargeable debt." Motion, Dckt. No. 51 at 2.

Even after the Scheduling Order had been entered on January 2, 2014, however, Defendant sat on his hands and made no attempt to change or obtain relief from the Scheduling Order for a 6-month span of time. Defendant presents no evidence or testimony showing that he sought to change the order, once Defendant had failed to file responses to the Plaintiff's Requests for Admissions by the December 30, 2014 deadline. As Plaintiff points out, the text of the Requests propounded, and the letter from Plaintiff's Counsel, Robert B. Salley, advised Defendant that the admissions not sent in a timely manner would be deemed admitted (although it is not, as Defendant's pleadings appears to at times suggest, the responsibility of Plaintiff or Plaintiff's counsel to provide this legal advice to the *pro se* Defendant) Dckt. No. 78, Exhibit A-D.

Defendant also seems to be making the case that since Defendant contacted the attorneys representing Sentry Select to ask for an extension of time to respond to the outstanding discovery, that Defendant made diligent efforts to ask that the deadline be extended or waived so that he could properly file responses to the Plaintiff's discovery request. However, a review of the record shows that Defendant was perpetually tardy or did not submit responses to the requests for discovery responses at all; as acknowledged by the Defendant in his Motion, Defendant did not contact Plaintiff's counsel for an extension of time until December 30, 2013, the day the Admissions were due. The Admissions were served to Defendant on November 27, 2013. Defendant gives no explanation as to why he failed to respond to the Requests until that date. Defendant maintains that he is unsophisticated *pro se* party throughout his pleadings, but this is not a sufficient explanation for Defendant's failure to respond to the requests. At most, Defendant's actions can be considered careless, which unfortunately does not provide a basis for a grant of relief under Federal Rule of Civil Procedure 16. *Id.* at 609.

The Defendant states that he did not realize that the Admissions would be deemed conclusive for purposes of the case, until the Plaintiff filed its Motion Summary Judgment, filed on May 12, 2014, at which point Defendant recognized that unanswered requests would be deemed admitted if the answers are not tendered in a timely manner. In prosecuting his own case as a *pro se* litigant, however, the court cannot hold Defendant to a different legal

standard. Defendant did not file his admission responses by the stated deadline, and failed to file a Motion for an order seeking withdrawal of the admissions. Fed. R. Civ. P. Rule 36(a) states that a matter is deemed admitted "unless, within 30 days after service of the request ... the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney." Fed. R. Civ. P. 36(a). Once admitted, the matter "is conclusively established unless the court on motion permits withdrawal or amendment of the admission" pursuant to Rule 36(b). *Conlon v. United States*, 474 F.3d 616, 621 (9th Cir. 2007).

Once the answers were admitted, Defendant did not file an Objection in the matter, or file a Motion to Withdraw the Admissions. Defendant has failed to demonstrate that he exercised diligence in modifying the subject scheduling order.

The court finds no good cause to consent to the modification of the scheduling order pursuant to Federal Rule of Civil Procedure 16(b)(4) , as incorporate by the Federal Rule of Bankruptcy Procedure 7015. The Motion is therefore denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Amend the Scheduling Order having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Amend the Scheduling Order is denied.

31. 13-91588-E-12 MARY JO MEIRINHO
EDC-1 Scott A. CoBen

CONTINUED MOTION TO DISMISS CASE
12-3-13 [61]

CASE DISMISSED 5/27/14

Final Ruling: The case having previously been dismissed, the Motion is dismissed as moot.

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 having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having already been dismissed.

32. 12-91889-E-7 GERALD CRAWFORD
HCS-3 Pro Se

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM\CRABTREE\SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S)
6-4-14 [74]

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 4, 2014. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law*

Offices of David A. Boone v. Derham-Burk (In re Eliapo), 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Herum\Crabtree\Suntag, the Attorney(the "Applicant") for the Chapter 7 Trustee in this case, Gary R. Farrar ("Client"), makes a Final Request for the Allowance of Fees and Expenses in this case. The order of the court approving employment of Applicant was entered on November 1, 2012. The Applicant submits this first and final fee application for compensation for legal services rendered in the reduced amount of $4,500.00.

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

General Case Administration: The Applicant spent 9.2 hours on general case administration. This time included reviewing the Debtor's schedules to determine whether it was appropriate to object to exemptions or to file a complaint objecting to the Debtor's discharge, preparing the Applicant's employment application, and preparing the instant application for compensation. Applicant anticipates attending the hearing on this by telephone.

Recovery of Property of the Estate: At the continued Section 341 Meeting of Creditors on August 31, 2012, the Debtor disclosed that he had transferred money to his brother, Richard Crawford, on or about April 18, 2012, and April 23, 2012, totaling $18,400 (the "Transfers"). The Debtor testified that he made the Transfers to pay a past due debt.

On October 17, 2012, the Applicant sent Richard Crawford a demand letter requesting the return of the Transfers. The letter asserted that the Transfers were avoidable and recoverable under 11 U.S.C. § 548 because the Debtor made them within two years before filing bankruptcy, and the Debtor received less than a reasonably equivalent value in exchange for the Transfers. Crawford spoke with Applicant, and stated that the Debtor gave him only $8,000. Also on October 24, 2012, Applicant spoke with Debtor, who stated that he wanted to work with Trustee on the Transfer issues, but requested that Mr. Farrar "leave his brother out of it."

On November 8, 2012, the Applicant sent Debtor an email requesting the return of the Transfers, offering three possible settlement scenarios, and stating that if the Debtor or Crawford did not choose one of the three options by November 16, 2012, Trustee would file an adversary proceeding against Crawford to avoid the Transfers to recover them for the estate.

On November 9, 2012, the Applicant spoke with Debtor and Debtor agreed to turn over, for the benefit of the estate, the values of which totaled approximately $18,400. The Applicant told the Debtor that Trustee

would an auctioneer and would be in touch to schedule a time for the auctioneer to view the vehicles. The Applicant sent an email to Debtor reiterating the details of their phone conversation.

On November 11, 2012, the Debtor sent Applicant an email stating the terms of the settlement stated in the November 9, 2012 email did not reflect wheat he believed he had agreed to. Debtor stated that he wanted to retain counsel on January 11, 2013. Applicant then sent emails to Debtor in March, 2013, requesting an update on whether Debtor had retained counsel.

On March 14, 2013, Debtor sent an email to Applicant stating that he had met with several attorneys and would retain one soon. The Applicant requested that Debtor have his new counsel contact Applicant by March 27, 2013. Debtor's counsel then filed an improper adversary proceeding against the Trustee.

Debtor's Adversary Proceeding: On March 26, 2013, the Debtor through his counsel, John C. Brewer, filed an Adversary against Trustee and others, including the Internal Revenue and the Department of Treasury for "a determination of the amount, if any, owed to Trustee. On April 11, 2013, Applicant spoke with Mr. Brewer, and explained that the adversary case had to merit as to the Trustee. Mr. Brewer agreed to dismiss the case against the Trustee. On April 25, 2013, the court entered an order dismissing the Trustee as a defendant in the Debtor's Adversary Proceeding.

Adversary Proceeding on Avoidable Transfers: Crawford and Debtor failed to repay the value of the Transfers to the bankruptcy estate, prompting the Applicant to file an adversary proceeding to avoid and recover the Transfers. Crawford failed to file an answer to the complaint, so Applicant prepared a request for entry of default. However, before the Applicant submitted the request to the court, Mr. Brewer contacted Applicant, stating that he would be representing Crawford in the adversary proceeding, and requested an extension of time to file an answer. Mr. Brewer stated that Crawford contends that the Debtor made a transfer of $8,00 and not $18,400 to him pre-petition, in satisfaction of a business debt. The parties agreed that the Transfers, in whatever amount, were preferential transfers under 11 U.S.C. § 547 or fraudulent under 11 U.S.C. § 548.

Applicant prepared and filed stipulations and an order dismissing the adversary proceeding.

Settlement of Adversary Proceeding: Applicant assisted the Trustee in negotiating a settlement of the Dispute, in which Crawford paid the bankruptcy estate $10,00 in settlement of the adversary proceeding.

Review of Motion for Relief from Automatic Stay: Debtor disclosed an interest in real property located at 7440 Langworth Road, Oakdale, California. On August 16, 2013, Wells Fargo Bank filed a motion for relief from the automatic stay to pursue its interest in the Property. Applicant reviewed the motion and assisted the Trustee in determining not to oppose the motion, since the property had little or no equity for the estate.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including extensive work negotiating the settlement of an adversary case against the Debtor's brother for fraudulent transfers, which resulted in a settlement amount of $10,000 to be administered to the benefit of the estate, and the dismissal of a adversary claim filed by Debtor's brother against the Trustee of the bankruptcy estate. The Applicant provided legal advice and rendered legal services to the Trustee regarding general case administration and strategies on how to handle property of the estate, and assisted the Trustee in obtaining dismissal of an adversary proceeding the Debtor had filed against him, and in compromising the aforementioned controversy regarding an avoidable transfer of monies from Debtor to Debtor's brother.

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

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Dana A Suntag, Esq., shareholder	3.7	$315.00	$1,165.50
Loris L. Bakken, associate	22.7	$295.00	$6,696.50
Patrick Larsen, associate	2.3	$195.00	$448.50
Wendy Locke, associate	11.8	$225.00	$2,655.00

	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$10,965.50

It appears from the above chart that 4.2 hours are not accounted for based on Applicant's calculation of the total amount of hours worked as 40.7 on its billing sheets. This discrepancy, however, will not make a difference in the fees computed and requested because the Applicant requests the authorization of payment for a reduced amount of $4,500.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $78.53 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	($.10 per page)	$47.93
Postage		$30.60
Total Costs Requested in Application		$78.53

Costs in the amount of $ 78.53 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The Applicant requests, however, that a reduced amount of $4,500 in total for compensation and costs to be approved for payment from this application.

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

Reduced Total Amount for Fees and Costs and Expenses $4,500

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

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

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

> The Motion for Allowance of Fees and Expenses filed by Herum\Crabtree\Suntag ("Applicant"), Attorney for the Chapter 7 Trustee Gary Farrar, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:
>
> Herum\Crabtree\Suntag, Professional Employed by the Chapter 7 Trustee
>
> Reduced Total Amount for Fees and Costs and Expenses in the amount of $4,500
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

33. 13-90789-E-7 DANA/JENNIFER HENDERSON
EJN-2 Todd Allen Whiteley

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DANA LEE HENDERSON AND JENNIFER M. HENDERSON
6-24-14 [43]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 7 Trustee , parties requesting special notice, and Office of the United States Trustee on June 17, 2014. By the court's calculation, 35 notice was provided. 28 days' notice is required.

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

The Motion For Approval of Compromise is granted.

Eric Nims, the Chapter 7 Trustee ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Debtors Dana Lee Henderson, Jr. And Jennifer M. Henderson ("Debtors"). The claims and disputes to be resolved by the proposed settlement concern the Debtors' exemption in a combined 2013 State and Federal income tax refund ("Tax Refund").

The Trustee filed an objection to the Debtors' exemption of the Tax Refund, asserting Debtors' multiple amendments to Schedule C of their bankruptcy petition amounted to bad faith. Debtors filed an opposition, asserting (among other things), that a recent ruling of the United States Supreme Court in Law v. Siegel, 134 S. Ct. 1188, 188 L. Ed. 2d 146 limits the bankruptcy court's authority to deny an exemption on a ground not specified in the Code.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court. Under the proposed compromise, Debtors and the Trustee agree to split evenly the amount of the Tax Refund that is not property of the estate (i.e. $2,604.93) with Debtors receiving $1,302.47 and the Trustee receiving the balance less periodic bank fees incurred by the estate.

The Trustee intercepted Debtors' 2013 Federal Income tax refund in the amount of $8,403. Based on Debtors' filing date of April 24, 2013, thirty-one percent (315) of that refund is property of the estate. Thus, Trustee returned $5,798.07 to the Debtors and retained the remainder, or $2,604.93. The parties propose to split this amount, with the Debtors receiving $1,302.47, and the Trustee receiving $1,302.46 less nominal monthly bank fees (which amount to approximately $10.00 per month).

DISCUSSION

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

(1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Probability of Success

Trustee states that the probability of success of the dispute is uncertain. In its tentative ruling, and in light of the recent decision in Law v. Segal, the court directed the Trustee to file an Amended Objection to Claim of Exemption stating with particularity a clear state or federal law basis for not allowing Debtors' exemption of the Tax Refund. Debtors were directed to file an opposition, if any, and supporting evidence. It is unclear whether there is a clear state or federal law basis for not allowing Debtors' exemption of the Tax Refund; further, it is unclear whether sufficient evidence exists or is available to the Trustee to support an objection to the Debtors' exemption of the Tax Refund under such a state or federal law.

Difficulties in Collection

This factor does not apply, asserts Trustee, because the Trustee is already in possession of the portion of the 2013 Federal income tax refund that is property of the estate.

Expense, Inconvenience and Delay of Continued Litigation

Movant restates that success on the dispute is not certain. Even if Trustee prevails on his objection, the expense of continued law and motion filings will deplete the modest funds of the estate to likely $0.00. On the other hand, the Compromise avoids the expense, uncertainty, inconvenience, and delay of additional litigation.

Paramount Interest of Creditors

The Compromise allows Trustee to retain a small amount of funds for the estate without the expense or uncertainty of further law and motion filings. Trustee asserts that without the compromise, the estate will have nothing for creditors.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The 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 Eric Nims, the Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Compromise between Movant and Debtors Dana Lee Henderson, Jr. And Jennifer M. Henderson ("Settlors") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the Declaration of Eric J. Nims in Support of the Motion to Compromise the Controversy, Dckt. No. 46.

34. 13-91189-E-11 MICHAEL/JUDY HOUSE
RMY-10 Robert M. Yaspan

MOTION FOR COMPENSATION BY THE LAW OFFICE OF ROBERT M. YASPAN FOR ROBERT M. YASPAN, DEBTORS' ATTORNEY
6-25-14 [124]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor-in-Possession, all creditors, and Office of the United States Trustee on June 25, 2014. By the court's calculation, 29 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

The Motion for Allowance of Professional Fees is granted as to fees in the amount of $ 45,000.00 and expenses in the amount of $1,096.00.

REVIEW OF MOTION

The Law Offices of Robert Yaspan ("Applicant") the Attorney for Debtors-in-Possession ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period.

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based. The factual contentions in this Motion consist of mostly shorthand notes and appear to be filled-in answers to some type of form template for an Application for fees. The Motion asserts:

A. Name of Professional: Law Offices of Robert M. Yaspan

B. Type of Motion: First Interim Fee Application

C. Type of Services Rendered: Services covered by this fee application were rendered by the Law Offices of Robert M. Yaspan in its capacity as the General counsel for Chapter 11 Debtors-in-Possession this proceeding.

D. Date of Commencement of Chapter 11: June 25, 2013

E. Date of Commencement of Services: June 25, 2013

F. Date of Entry of Order Approving Employment: January 10, 2014 (effective as of June 25, 2013)

G. Date of Filing of Last Fee Application: Not Applicable

H. Total Amount Received from Third Party: -0-

I. Initial Retainer: $11,300. The total amount paid from the retainer prior to the commencement of the case was $4,547.00. The retainer remaining in the trust account as of the date of the motion is $6,752.00

J. Amount Remaining as of Filing Date for Benefit of Debtor: $6,752.00

K. "The major achievements by Law Offices of Robert M. Yaspan during the period described in the First Motion included: See Declaration of Robert M. Yaspan in Support of the First Motion for Compensation of Law Offices of Robert M. Yaspan:"

L. Amount Requested: $90,391.13 plus costs incurred in the amount of $1,238.80 for a total request from the period of June 25, 2013 through May 31, 2014, in the sum of $91,629.13

M. Movant acknowledges that the nature of the services are detailed in the Exhibits in Support of the First Motion for the Compensation of Law Offices of Robert M. Yaspan as Attorney for Debtor-in-Possession

N. Movant includes a chart summarizing the requested fees (prior to reductions, as set forth in the Declaration of Robert M. Yaspan)

O. The Motion states that the invoices generated by the Firm show a balance of $94,747.33. With reductions, the Firm is seeking $90,394.13

P. Movant requests $1,238.80 in expenses through this Motion

Q. Attached at the end of the Motion is a "Debtors' Statement Regarding Receipt of Attorneys' Bill and Statement of No Objections" from Declarant Michael House. The statement includes legal conclusions from Mr. House, who states that the fees and expenses incurred were necessary for the administration of the estate and are reasonable. Mr. House further states that he is able to pay the requested fees at this time without adversely harming his business.

The Motion for Compensation does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The Applicant provides no description of the actual services performed for the Debtors-in-Possession. The Motion actually instructs the court to review the Declaration of Robert M. Yaspan in support of the Motion for Compensation, and the Exhibits filed to determine the nature and scope of services rendered and that are the subject of this motion.

The Motion includes a chart showing the hours spent and fees charged, as separated by the task code used by the Applicant's billing system, but the Motion fails to describe the actual services performed. The

Applicant fails to provides a task billing analysis in the Motion for the services provided.

As this court has stated on multiple occasions, however, it is not the court's task to canvas other pleadings, and wait until the hearing, to receive additional evidence from a movant to "draft the motion" for Movants. When a party combines the motion with the points and authorities (creating a "Mothorities"), or states the grounds of the Motion elsewhere the grounds become lost in the extensive citations, quotations, factual arguments, and legal arguments. In including such information in Movant's declaration and exhibits, the moving party's factual contentions and basis for relief become buried in the declarant's testimony and evidence. The motion must clearly state the grounds for the requested relief. The Mothorities, supporting pleadings, and evidence filed in support of the Motion hides the grounds, assigning to the court the responsibility to tease the grounds from the rest of the clutter.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated 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 stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), 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 on the other parties in the bankruptcy case and 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.

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

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 particularity of pleading 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." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the 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 the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

DECLARATION OF ROBERT Y. YASPAN

The Declaration of Robert Y. Yaspan in support of the Motion provides some insight into the type of services Applicant rendered in this case. Dckt. No. 126. Although the first pages of the Declaration appear to restate and contain identical, shorthand answers to the form template sections listing information about the Motion, the date of commencement of the case, the date of entry of order approving employment, the total amount received from a third party, the retainer received, and other details of the case as stated in the Applicant's Motion, the Declaration also provides a brief statement of the tasks performed by the Applicant in the case.

> Starting in Paragraph 16 of the Declaration, Mr. Yaspan states:
>
> To date, in the course of the Chapter 11, the Applicant guided the Debtor. In the main the Applicant:
>
> A. Prepared the Schedules and Assets and Liabilities, and amended them as necessary
>
> B. Filed documents and papers in compliance with the requests and guidelines of the Office of the United States Trustee ("OUST")
>
> c. Attended hearings before this court and the OUST, as required by law;
>
> D. Negotiated with several key creditors:
>
> E. Filed a Plan of Reorganization and Disclosure Statement. The hearing is pending.

Declaration, Dckt. No. 126 at 4.

Task Billing Analysis

Further into the Declaration, and included in the Exhibits as Exhibit "A" filed in support of the Motion, the Declarant offers a summary of the professional services rendered on behalf of the Debtors from June 25, 2013 to May 31, 2014. Summarized from the descriptions provided by the Declarant, the work is described and categorized by task below.

Administrative Services: Applicant spent 90.23 hours on this task category, for a reduced fee request of $35,065.69. Applicant describes this task category as including the handling of compliance matters with the United States Trustee, and working with the client and banking institutions to prepare trustee compliance set up Debtor-in-Possession accounts and review and coordinate monthly operating reports. Applicant states that it prepared status conference reports, attended status conferences, attended the Initial Debtor Interview and the Meeting of Creditors, prepared a motion

to set the claims bar date, prepared employment applications and related motions, consideration of whether the case could convert to a Chapter 12, and helping the Debtor-in-Possession fulfill their obligations on behalf of the estate.

Amaral Claim: The applicant states that this category of billing, in which Applicant spent 3.88 hours for an amount of $1,706.83 charged in this category, relates to a claim filed by Emanuel Amaral, the southerly neighbor to the Smith Ranch Property owned by the Debtors. Amaral contends that a roadway built by a predecessor of the Debtor-in-Possessions is on his property. Applicant has discussed with the attorney at the tenant of the Smith Ranch Property as well as the attorney for the former owner of the property the boundary dispute.

Cash Collateral: Applicant spent 34.07 hours for a total of $15,055.50 of fees charged for motions for cash collateral involving two properties, the Smith Ranch Property and the Triumph Property. Applicant dealt with secured creditors regarding the budget and payments under the cash collateral motions, which were both granted.

Karen House: Karen House is the stepmother of Debtor-in-Possession, a former owner of the Smith Ranch Property and the Triumph Property, and a secured creditor on each of these properties. Applicant spent 2.00 hours for a total of $1,100 fees charged to substantively review the proofs of claim filed by her and amendments to a letter that was sent to her attorney

Petaluma: The 7.85 hours and $3,289.25 charged in fees of this category involves the work that relates to Petaluma Acquisition, LLC, the tenant at the Smith Ranch Property and the Triumph Property, and a secured lender for the two properties. Counsel reviewed documents relating to alleged deeds of trust and a Grower's agreement, and corresponded with the attorney for Petaluma regarding issues relating to the bankruptcy.

Plan: Applicant spent 75.48 hours, reduced to $32,900.86, in handling tasks related to the drafting, promulgation, confirmation, and settlement negotiations with creditors and reviewing documents relating to the Plan of Reorganization. Applicant states that this was a complicated plan that raised issues of considering potential uses for the property, analyzing potential budget issues, reviewing the various contracts relating to the property, discussions with the Debtor-in-Possession, relating to the plan issues, exploring options regarding refinancing, settlement negotiations with creditors, reviewing documents regarding the potential rule against perpetuities issues, and drafting a disclosure statement.

The Applicant states that it has voluntarily reduced its bills by 7.5 percent in this task category.

Triumph Property: Applicant spent 2.93 hours for a total of $1,276.00 charged in dealing with tasks relating to the Triumph Property, which is the larger of the two parcels that Debtors-in-Possession own.

OPPOSITION BY THE UNITED STATES TRUSTEE

Tracy Hope Davis, the United States Trustee for the Eastern and Northern Districts of California and the District of Nevada ("the United States Trustee") submits an objection to the Applicant's Motion For Compensation.

The Debtors are represented by Robert M. Yaspan of the Law Offices of Robert M. Yaspan. On May 22, 2014, the Debtors caused to be filed a disclosure statement and plan of reorganization in this case. Dckt. Nos. 116 and 116. The hearing on the Disclosure Statement is set for the same date as the hearing on this Fee Application, though later. A Plan has not been confirmed in this case. The most recently filed monthly operating report, for the month ending May 31, 2014, showed a cash balance of $23,875. Dckt. No. 121.

The burden is on the fee applicant to prove the value of the services rendered. It is well settled that the burden is on the attorney claiming a fee in a bankruptcy proceeding, to establish the value of his services. *See, e.g., In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted). The fee applicant's failure to satisfy this burden may result in the denial of the requested compensation. *See In re Beverly Mfg. Corp.* 841 F.2d 365, 371 (11th Cir. 1988).

The bankruptcy court may "award compensation that is less than the amount of the compensation that is requested." *See* 11 U.S.C. § 330(a)(2). The Fee Application does not state whether the Application seeks interim or final compensation. The Executive Office for United States Trustees adopted *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330* ("Guidelines"). *See* 28 C.F.R. Pt. 58, App. A. The Guidelines states that every fee application should contain information describing, among other things, whether the fee application is interim or final, and amounts of all previous payments. *See* 28 C.F.R. Pt. 58, App. A., ¶ (b)(1)(iv). 10.

The Trustee argues that, to the extent the Court allows any portion of the fees requested in the Fee Application, such fees should be allowed on an interim basis, at this time. 11 U.S.C. § 331.

The Fee Application seeks $90,394.13, voluntarily reduced from $94,747.33. Trustee asserts, however, that Debtors' payment of all fees requested in the Fee Application, as a final award, would prejudice other administrative claimants described in the Disclosure Statement. The Debtors' payment of all fees requested in the Fee Application as a final award may also render the bankruptcy estate administratively insolvent. The most recently filed monthly operating report, for the month ending May 31, 2014, shows a cash balance of $23,875. See Docket No. 121.

Therefore, the Unites States Trustee recommends that a small percentage of the fees requested in the Fee Application be allowed on an interim basis, at this time. Additionally, its civil minutes for the continued status conference in this case, the Court had expressed its concern for, among other things, "the payment of $10,485.00 in Professional Fees (without the court having [issued] an order approving any such fees or authorizing the payment) …" Dckt. No. 110. The Applicant should explain

whether it received any such unauthorized professional fees, in connection with the Fee Application.

RESPONSE BY APPLICANT

The Applicant responds to the Objection of the United States Trustee by stating that the Applicant seeks interim compensation. The Applicant states that the "Debtor" and the Applicant have "talked and agreed that the estate can afford at this time a payment on an interim basis of $14,000.00" subject to the order of this court. Of this amount, the sum of $3,985 was repaid to the Debtor from the Applicant's trust account, and the remainder is present in the Debtor-in-Possession's accounts at this time. FN. 1.

FN.1. In the Debtors' Statement Regarding Receipt of Attorneys' Bill and Statement of No Objections, attached to Applicant's Motion, the Debtors-in-Possession in this Chapter 11 case refer to themselves as the "Debtors and Debtors-in-Possession." In the Response of the Applicant to the United States Trustee's Objection, the Applicant refers to its client as a "Debtor" in the body of the Motion, while calling itself the "General Counsel for Debtors-in-Possession" on the left hand corner of the pleadings, above the caption and title of the case (and with references to the Debtor-in-Possession and "DIP" sprinkled throughout the response to the Trustee's objection). Dckt. No. 151.

Applicant appears to be indicating that it is both the counsel for the Debtors and the Debtors-in-Possession. If this is the case, there would be a disqualifying conflict arising under 11 U.S.C. § 327, thereby precluding Applicant from any compensation in this case. Counsel would not be entitled to be paid professional fees. Applicant is advised that the practice of using "Debtor" as an abbreviated term for "Debtor-in-Possession" is confusing the court and potential respondents, since both are legal terms of art that have distinct and particular meanings in the context of a Chapter 11 case.

The Applicant states that it did not receive any unauthorized fees. The Debtor-in-Possession sent $3,985 to the Applicant, which was placed in the Applicant's client trust account, and then returned to the Debtor-in-Possession. This is the part of $10,485 in "Professional Fees" that is referred to in the Trustee's papers. The remainder of the "Professional Fees" was a payment by the Debtor-in-Possession to the trust account of the appraiser that was authorized to be disbursed to the appraiser's general account by an order issued on May 1, 2014, Dckt. No. 113.

The court also questioned, at a previous status conference, why the Debtor-in-Possession conducted "investment activities" in the amount of $13,179. Monthly Operating Report No. 1, Dckt. No. 46 at 8. The Applicant states that this is "not what it seems to be as stated" in the report. The sum of $8,179 was spent by the Debtor-in-Possession to obtain a Disney timeshare; however, the Debtor-in-Possession also returned a Disney timeshare at the same time, and received $8,051, which is reflected as an income item. The Applicant claims that the Debtor-in-Possession spent $128

to exchange one timeshare for another, in an exchange that had been started in the pre-petition period.

The remaining of the $5,000.00 of "Investing Activities" related to the exchange of cash for silver bullion. When the Debtor-in-Possession discovered that he needed a court order to invest, he promptly reversed the transaction and sold the bullion for the same price he purchased it, and put the proceeds in the Debtor-in-Possession account. The Applicant states that as of today, there are no "investing activities."

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work

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

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

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

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

Id. at 959.

Although the United States Trustee has raised concerns that the Applicant has not met its burden to prove the value of the services rendered, which the Trustee asserts should result in either the denial of the requested compensation or a reduction in the fees requested, a review of the application and the court docket showing the progress of this case shows that Applicant has performed services that have benefitted the estate under 11 U.S.C. § 330(a)(4)(A).

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits, including the drafting and filing successful Motions to Use Cash Collateral, which has allowed the Debtor-in-Possession to maintain and operate the Smith Ranch and Triumph properties. Applicant has investigated potential claims and considered a conversion of the case to a Chapter 12 case. As the United States Trustees' Opposition to the Motion indicates, however, there has been confusion stemming from Applicant's failure to comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 and state the grounds for the requested fees with particularity, made it difficult for the Trustee, the court, and other parties in interest to determine what services were actually performed in this case, and what benefit resulted from Applicant's services performed on behalf of the estate.

In reviewing the Declaration filed in support of the Motion, Dckt. No. 126, and reviewing the file of the case, the court determines that the Applicant is assisting the Debtor-in-Possession in compliance with their Chapter 11 Duties, including setting up Debtor-in-Possession accounts, reviewing and coordinating timely monthly operating reports, and performing tasks connected to the administration of the Chapter 11 case (including preparing and amending schedules, sending letters to creditors notifying them of the automatic stay, advising the Debtors-in-Possession of their

responsibilities, etc.). A Chapter 11 Plan of Reorganization and Disclosure Statement have been filed and set for hearing for this hearing date.

In considering the United States Trustee's Objection, however, the court notes that according to the Debtors-in-Possession most recent Monthly Operating Report, Dckt. No. 141, for the Month of June, the cumulative cash balance is reported to be $23,305.00. This is a relatively low amount of unencumbered monies to be administered as of the filing of Applicant's Motion for Compensation. A final award of Applicant's requested fees may render the Estate administratively insolvent, and the Trustee is concerned that granting the Applicant's Motion may prejudice other administrative claimants listed in the Disclosure Statement.

Additionally, the delay with which Applicant has prepared and filed the Plan of Reorganization and Disclosure Statement perplexes the court. This case was filed in June 25, 2013. According to Applicant's billing sheets and Motion, Applicant has represented the Debtors-in-Possession since the inception of the case. The Debtors-in-Possession did not file a plan until nearly a year after the beginning of the case. The case has proceeded in a slow, almost glacial pace.

The Applicant firm has spent 215.44 hours, for a total of $94,747.33 in fees, for a case in which a Plan, a basic step towards the restructuring of the Debtors-in-Possession's finances, has not been confirmed, and there has been no real contested litigation. The Debtors-in-Possession have been authorized to continue using their cash collateral in their business operations, but it appears that Applicant's efforts have only now resulted in any real effort to reorganize the finances of the estate.

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Robert M. Yaspan	38.23	$550.00	$21,026.50
Joseph G. McCarty	123.30	$435.00	$53,635.50
Debra R. Brand	41.38	$435.00	$18,000.30
Tatyana Menachian (paralegal/ law school graduate)	6.20	$160.00	$992.00 (miscalculateed as $1,084.00 in Applicant's Motion)
Nancy Nakamura	6.03	$160.00	$964.80
Alla Viner	.30	$90.00	$27.00

	0	$0.00	$0.00
Total Fees For Period of Application			$94,646.10

Reasonableness of Fees and Issues in Case

Counsel is requesting in excess of $90,000.00 in fees in this bankruptcy case. Of this $35,065.69 is for "Administrative Services." When such a substantial amount appears, it generally indicates that an attorney has moved from providing legal services to taking over the case as the "*de facto* debtor in possession." As discussed above, these Debtors in Possession have suffered from significant fiduciary stumbles, acting as if the Bankruptcy Code and Rules do not apply to them.

While stated to be a "complicated" Chapter 11 case, the assets consist of two parcels of real property. The Debtors have no significant personal property assets or business assets. When the Debtors file Original Schedule I they reported $26,560.00 in monthly real property income. An another $3,000.00 a month was for "business income," for which no detailed statement was provided. Dckt. 1 at 31.

In the first Disclosure Statement filed the Debtors state that the real estate consists mostly of raw land, with some improvements for poultry grow-out facilities and "residential improvements." Dckt. 116. These properties are leased under long term leases for $26,000.00 a month. The disclosure statement that the Debtors nor the estate are involved in the poultry business - with most of the labor furnished by Petaluma Acquisitions, LLC.

The Disclosure Statement also identifies Mrs. House as having a photography business that grosses about $4,000.00 a month.

Nothing in the Disclosure Statement reflects a "complicated Chapter 11 case" for an experienced Chapter 11 attorney.

What is noteworthy in reviewing the file in this case is that relatively little, if any, of the items in this bankruptcy case have been contested.

Allowance of Interim Fees

In addition to the hours billed by Counsel appearing to be in excess of what is reasonable, the hourly rates charged do not appear consistent with the level of the legal services. This law firm has appeared in the court for several years now. Basic pleading requirements are well known. Still, with the present Motion Counsel, billing in excess of $400.00 an hour, ignores the Local Bankruptcy Rules and Federal Rules of Bankruptcy Procedure, filing motions which tell the court, "go read all the other pleadings and figure out what the grounds are for this motion."

In reviewing the billing statements, it appears that the attorneys have become involved in the business operations of the Debtors and estate, rather than being the attorneys for the Debtors in Possession.

Additionally, the "Plan" category of work is a stew of Debtor in Possession administrative duties and other matters. It appears to be a catch-all category for time to be billed to this file.

The Administrative items billed from include communications about the automatic stay, first meeting of creditors, conversion of case to Chapter 12, analyzing status of case, employment applications, issues relating monthly operating reports. As with the Plan, the "administrative" category of items appears to be a catch-all category for billing time to the file.

The attorney hourly rates of $435.00 to $550.00 an hour do not appear to be commensurate with the attorney services provided and the prosecution of this case. As noted by the court at the April 10, 2014 Status Conference,

> "The Monthly Operating Report raises several items of concern for the court. These include the liquidation of assets by the Debtors in Possession (with no order authorizing the sale having been issued by the court), the investing of $13,179.00, and the payment of $10,485.00 in Professional Fees (without the court having issuing an order approving any such fees or authorizing the payment).
>
> From the latest Monthly Operating Report the Debtors in Possession appear to be operating at a financial loss, being able to continue only with gifts from family members and liquidating assets (without court authorization)."

Civil Minutes, Dckt. 110.

Counsel has spent time, and billed money, for a motion to set a bar date in this case. When the court denied that motion, it noted,

> "However, Debtors-in-Possession have not provided sufficient "cause" under Federal Rule of Bankruptcy Procedure to extend the bar date. Debtors-in-Possession seek to "set" the bar date rather than "extend" the date. Further, Debtors-in-Possession provide no "cause shown" as required by Federal Rule of Bankruptcy Procedure 3003(c)(3)."

Civil Minutes, Dckt. 75.

The latest monthly operating report for June 2014, filed July 11, 2014 (Dckt. 141) shows $343,522 in cash receipts and ($383,058) in disbursements. This reflects a $23,505 ending cash balance, which has decreased ($39,546) since this case was commenced. These include $1,100.00 in family gifts in June 2014 ($2,340 during the case), $2,538 for "meals and entertainment," $13,179 for asset investment, and $205,500 (rounded) for payments on secured real property claims.

What's missing from the monthly operating report is what the Debtors are spending for their personal expenses –food, clothing, recreation, and the like.

Of the 215.44 hours billed to this case, the court computes the loadstar rate on 150.00 hours at a $300.00 hourly rate for interim fees. Interim fees of $45,000.00 are allowed, and the Debtors in Possession are authorized to pay said amount, after full credit is applied for the retainer held by Counsel, from unencumebered monies of the estate.

The court allows the following costs: (1) $137.82 postage, (2) $413.74 copies, (3) $44.00 Recorder Fees, (4) $27.14 Federal Express, and (5) $473.80 travel. The court disallows $142.30 for the basic Pacer charges that are part of a bankruptcy (or other federal court practitioner) attorneys' services that are necessary to provide legal services to a client.

The Other fees and costs, including hours and billing rate amounts, are disallowed without prejudice to being requested at the time of the final fee application in this case.

The First Interim Costs in the amount of $1,096.50 are approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtors-in-Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case. The court disallows $142.30 in costs.

Applicant is allowed, and the Debtors-in-Possession are authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$45,000.00
Costs and Expenses	$ 1,096.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case. All other requested fees are denied without prejudice, and to the extent determined proper by counsel, may be requested at the time of the filing of the final fee application in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Law Offices of Robert Yaspan ("Applicant"), Attorney for the Chapter 11 Debtors-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Law Offices of Robert Yaspan is allowed the following fees and expenses as a professional of the Estate:
>
> Law Offices of Robert Yaspan, Professional Employed by the Debtors-in-Possession
>
> Fees in the amount of $ 45,000.00

Expenses in the amount of $ 1,096.00,

The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Debtors-in-Possession is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 Case.

36. 12-92790-E-7 SSA-3 **CATHERINE TRIPP**
ATTORNEY
6-13-14 [40]

MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEE'S

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 13, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Steven S. Altman, the Attorney ("Applicant") for Irma Edmonds, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period of June 10, 2013 through July 24, 2014. The

order of the court approving employment of Applicant was entered on July 3, 2013, authorizing employment of Applicant effective June 10, 2013. Dckt. No. 10.

Applicant provides a task billing analysis and supporting evidence for the services provided.

Asset Analysis and Recovery: Applicant reviewed documentation provided by the Trustee concerning Debtor's prior transfer of various real property interests in which arguably the estate had an interest. Applicant communicated with the attorney for Debtor's ex-spouse, concerning potential offers to settle estate claims. Applicant corresponded with new counsel concerning relief from stay claims advanced against the former spouse, and resurrected settlement discussions between the bankruptcy estate and the former spouse to resolve property transfers, resulting in a resolution of these claims in exchange for $28,000, a settlement which was approved after a court hearing.

Asset Disposition: Applicant reviewed bankruptcy schedules and discussed with Trustee, Debtor's counsel, and the ex-husband's attorneys concerning prior transfers of real property interests from the Debtor to her former spouse. Applicant made multiple calls to the title company about the former spouse's property interests, and claims advanced by West America Bank and their counsel concerning loans held either jointly by Debtor and her former husband, or solely in her ex spouse's name. Applicant communicated with the counsel for West America Bank in regard to relief from stay motions involving a property located at 2101-2111 O Street in Merced, and prepared a motion to compromise the claims between the bankruptcy estate and the Debtor's former husband. Applicant also drafted a letter demanding the turnover of any "net proceeds" of sale to either office or Chapter 7 Trustee for further resolution of distribution.

Case Administration: Applicant reviewed with Trustee the case, discussed legal issues and potential areas of recovery, and communicated with Debtor's counsel, ex-husband's counsels, and other parties concerning real property transfer matters, community property issues, valuation of the properties and liens against the same.

Claims Administration and Objections: Applicant reviewed the claims filed in Debtor's case, and achieved settlement agreement with Debtor's spouse for real property transfers in his favor. Applicant discussed the effect of the settlement between the parties and collateral potential effect in post-divorce proceedings between the Debtor and her ex-husband with the counsel for all parties.

Fee and Employment Applications: Applicant prepared the applications appointing his firm as counsel for the Trustee, and prepared this first and final fee application for compensation and expenses.

Relief from Stay Proceedings: Applicant reviewed and discussed with title company and other parties concerning the reach of 11 U.S.C. § 541(a)(2) concerning continuance of foreclosure efforts by West America Bank after the Bank filed a Motion for Relief from Stay against the Debtor for real properties owned by the Debtor and her ex-husband.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free

reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including assisting in the negotiation of a settlement that resulted in $28,000 for administration for the estate. Applicant performed necessary services on behalf of the estate, which included reviewing the case file and securing an initial application for appointment, reviewing the Debtor's schedules and statement of affairs for conflicts and legal issues, and determining the principal tasks as counsel for the Trustee. Applicant identified and recovered, through a negotiated settlement, the sum of $28,000.00 in assets on behalf of the Trustee, which were pre-petition real property transfers between Debtor and her former spouse. The settlement was the subject of a Motion to Compromise which was filed with the court and approved on January 16, 2014. Dckt. No. 37.

Applicant communicated with Debtor's counsel, Trustee, and counsel for Debtor's ex-spouse concerning administration matters, including potential claims against the ex-husband, and claims in the bankruptcy estate and resolution of legal issues through the compromise motion. Applicant reviewed relief from the stay motion filed by West America Bank. Applicant also discussed the sale of real estate previously owned by Debtor in the name of her ex-husband with title company representatives, reviewed claims, and prepared this application.

The estate has $27,756.83 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Steven S. Altman	19.30	$250.00 and $300 (stating on March 1, 2014)	$4,825.00
	0	$0.00	$0.00
Total Fees For Period of Application			$5,030.00

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Fees in the amount of $5,030.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 Case.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $62.44 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying Charges for 6/10/2014		$21.80
Postage for 6/10/2014		$5.28
Postage for 6/10/2014		$7.28
Copying Charges on 12/30/13		$1.60
Copying Charges for Motion to Compromise		$13.50
Postage for 12/30/13		$11.42
Postage for 6/21/2013		$1.56
Total Costs Requested in Application		$62.44

Costs in the amount of $62.44 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 Case.

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

Fees	$5,030
Costs and Expenses	$ 62.44

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Steven Altman ("Applicant"), Attorney for the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Steven Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Steven Altman, Professional Employed by Trustee
>
> Fees in the amount of $ 5,030
> Expenses in the amount of $ 62.44,
>
> The Fees and Costs pursuant to this Applicant, and Fees in the amount of $5,030 and costs of $62.44 approved pursuant to prior Interim Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

37. 13-90490-E-7 ISRRAEL/SONIA RUIZ
CWC-3 Marilyn R. Thomassen

MOTION FOR COMPENSATION FOR CARL W. COLLINS, TRUSTEE'S ATTORNEY
6-17-14 [33]

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 17, 2014. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Carl W. Collins, the Attorney ("Applicant") for the Chapter 7 Trustee, Stephen C. Ferlmann ("Client"), makes a Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period May 1, 2013 through June 9, 2014. The order of the court approving employment of Applicant was entered on May 3, 2013, Dckt. No. 19.

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.
During the service period, Counsel performed services necessary to assist the Trustee in administering this bankruptcy estate, specifically including the following:

1. Conducted communications with the Trustee and investigated the financial affairs of the Debtors regarding identification and review of potential assets of the bankruptcy estate, including recovery of

an alleged fraudulent transfer of real property made to the Debtors' son, Edgar A. Ruiz.

2. Prepared and filed an application and obtained a court order authorizing the Trustee to employ counsel, Carl W. Collins.

3. Commenced Adversary Proceeding No. 13-9019, Complaint to Recover Avoidable Transfers against Edgar A. Ruiz. Performed legal research on the factors and procedure for the recording of a lis pendens against the Subject Property. Drafted initial disclosures, joint discovery plan, and amendments, and prepared status reports and appeared at status conferences. Applicant also propounded discovery and drafted correspondence to the Defendant's counsel regarding a failure to respond, and prepared and filed a Motion for Summary Judgment, and obtained Summary Judgment.

4. Conducted lengthy settlement negotiations with Defendant's counsel in the adversary case, and prepared a settlement agreement with the Defendant. Prepared and filed a fee application to compensate Trustee's Counsel.

The Trustee filed a statement of "approval" supporting this application on June 17, 2014, Dckt. No. 35.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including obtaining a settlement agreement with Debtors' son, who allegedly received a fraudulent transfer of real property from the Debtors, located at 2613 Glasgow Drive, Ceres, California, which had a fair market value of at least $122,000.00 during the date of the transfer. The Trustee had also alleged in the adversary case filed against Debtor's son that the he may have also received additional transfers from the Debtors for his benefit. Complaint, May 6, 2013, Adversary Np.13-09019, Dckt. No. 1. The bankruptcy estate acquired an interest in the Property upon entry of a summary judgment

on February 20, 2014, in Adversary Proceeding No. 13-09019, Complaint to Recover Avoidable Transfer, against Edgar Alfredo Ruiz, the Defendant in that proceeding. The judgment ordered the avoidance of the transfer of any rights and interests by the Debtors in the Property to their son, Edgar Alfredo Ruiz, through a deed recorded with the Stanislaus County Recorder, Document Number 2012-0089235 as a fraudulent transfer pursuant to 11 U.S.C. § § 547 and 548.

The Applicant helped negotiate a settlement whereby the Trustee, Debtor's son Edgar Alfredo Ruiz, the Debtors agreed to settle the dispute for the total sum of $11,000.00 in satisfaction of the Summary Judgment entered in Adversary Proceeding No. 13-09019. Civil Minutes, Dckt. No. 29.

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

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Carl W. Collins	34.10	$295.00	$10,059.50
Claudia Alarcon, Paralegal	5.10	$90.00	$459.00
Melissa Morena, Paralegal	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$10,518.50

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Fees in the amount of $10,518.50 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $118.40 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying Charge	9 copies	$0.90
Postage for Initial Disclosures		$1.72
Postage for Joint Disclosures		$1.38
Copying Charge	27 copies	$2.70
Postage		$4.16
Copying Charge	46 copies	$4.60
Copying Charge	4 copies	$0.40
Postage		$4.16
Postage		$0.92
Copying Charge	59 copies	$5.90
Postage for MSJ		$4.56
Copying Charge	4 copies	$0.40
Postage for proposed order		$1.58
Copying charge	6 copies	$0.60
Postage for Order on Summary Judgment		$1.44
Copying Charge	16 copies	$1.60
Postage		$1.92
Copying Charge		$1.92
Postage		$1.44
Copying Charge	132 copies	$13.20
Copying Charge	18 copies	$1.80
Postage		$2.76
Filing Fees, Notice of Lis Pendens		$23.00
Stanislaus County Assessor Receipt		$1.25

Copying Charge	6 copies	$0.60
Postage		$2.76
Copying Charge	30 copies	$3.00
Postage		$3.56
Copying Charge	23 copies	$2.30
Postage for Motion to Approve Compromise		$18.40
Copying Charge	2 copies	$0.20
Postage for Pendency Action		$6.11
Copying Charge	6 copies	$0.60
Postage for Letter to Recorder		$2.04
Postage	$18.40	$18.40
Total Costs Requested in Application		$118.40

Costs in the amount of $118.40 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $10,518.50
Costs and Expenses $ 118.40

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Carl W. Collins ("Applicant"), Attorney for the Chapter 7 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 Carl W. Collins is allowed the following fees and expenses as a professional of the Estate:

Carl W. Collins, Professional Employed by Trustee

Fees in the amount of $ 10,518.50
Expenses in the amount of $ 118.40,

The Fees and Costs pursuant to this Applicant, and Fees in the amount of $10,518.50 and costs of $118.40 are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7/11/12/13 case.

38. 09-93492-E-7 ALISA MCKNIGHT
HCS-3 Kristen A. Koo

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM, CRABTREE AND SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S)
6-19-14 [54]

Final Ruling: No appearance at the July 24, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Herum\Crabtree\Suntag, the Attorney(the "Applicant") for the Chapter 7 Trustee in this case, Gary R. Farrar ("Client"), makes a Final Request for the Allowance of Fees and Expenses in this case. The order of the court approving employment of Applicant was entered on February 11, 2014, effective on February 1, 2014. Dckt. 35. The Applicant submits this first and final fee application for compensation for legal services rendered in the reduced amount of $10,000.00, which was reduced from Applicant's actual fees of $12,427.00 and costs of $171.88 in this case.

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

General Case Administration: The Applicant spent 6.3 hours on general case administration. This time included preparing Dana Suntag's employment application, and preparing the instant application for compensation. The Applicant anticipates attending this hearing by telephone.

Motion to Reopen Case: The Applicant prepared a motion to reopen the case, which it submitted to the Office of the United States Trustee for service and filing. The court granted the motion by an order entered on January 29, 2013. Mr. Gary Farrar was reappointed as the Chapter 7 Trustee. The Applicant spent 1.3 hours in connection with these tasks.

Settlement and Compromise of Employment Discrimination Lawsuits: In late 2012, the Trustee was contacted by the California Attorney General's Office, who told him that the Debtor had filed two employment discrimination lawsuits against the State of California (the California Department of Corrections and Rehabilitation and its employees) pending in Sacramento County Superior Court (collectively, the "Lawsuits").

The Lawsuits alleged causes of action for race, sex, and disability discrimination; harassment; and retaliation in violation of the FEHA; violation of the Family Medical Rights Act; and whistleblower retaliation in violation of Labor Code Section 1102.5.

The Trustee requested that Applicant investigate the Lawsuits to assist the Trustee in the further prosecution or settlement of the Lawsuits. The Applicant began discussions with Debtor's counsel in the Lawsuits and the State through the Attorney General's Office, which represents Defendants in both cases, about the Lawsuits to determine the claims, defenses, and issues in the Lawsuits, and ths status of them. Applicant also reviewed pleadings and discovery documents from the Lawsuits.

A dispute arose as to whether the Lawsuits were property of the estate based on the fact that the Lawsuits were based both on pre-petition and post-petition events. Applicant researched and investigated these issues, and communicated with Debtor's bankruptcy counsel, who conceded that the claims were property of the state. However, Debtor's counsel in the

Lawsuits did not agree with this and sometimes conducted acrimonious communications with Debtor's counsel to reach an agreement to determine the extent to which the claims were property of the estate.

Applicant also tried to obtain special counsel for the Trustee to continue prosecution of the lawsuits, but was unable to locate counsel willing to take the case. Applicant also conducted settlement negotiations, which were lengthy, with the State, and the parties were able to reach a settlement under which the State agreed to pay $25,000 to the estate for a release and dismissal of the estate's claims.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including filing a successful motion to reopen the Debtor's bankruptcy case. After the case was reopened, the Applicant provided legal advice and legal services to the Trustee regarding general case administration and strategies on how to handle the property of the estate.

Applicant also assisted the Trustee in reviewing, analyzing, settling, and compromising a controversy regarding two employment discrimination lawsuits the Debtor filed. The Applicant negotiated a settlement in which the Attorney General's Office, representing the state of California, agreed to pay $25,000 to the bankruptcy estate for a release of and dismissal of the estate's claims. The Debtor agreed not to make any claim to those settlement funds, and she was also able to settle her claims with the State, resulting in a global settlement of the Lawsuits and the resolution of the dispute over who owned the claims in the Lawsuits. The Applicant prepared and filed a motion to compromise the controversy after working out the details of the settlement agreement on the bankruptcy estate's claims with the State.

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

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Dana A Suntag, Esq., shareholder	23.0	$315.00	$7,245.00
Loris L. Bakken, associate	6.3	$295.00	$1,858.50
Joshua Stevens, associate	7	$250.00	$1,750.00
Patrick Larsen, associate,	7.1	$195.00	$1,384.50
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$12,238.00

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $171.88 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	($.10 per page)	$87.60
Postage		$84.28
Total Costs Requested in Application		$171.88

Costs in the amount of $ 171.88 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The Applicant requests, however, that a reduced amount of $10,000 total for compensation and costs to be approved for payment from this application.

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

Reduced Total Amount for Fees and Costs and Expenses $10,000.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Herum\Crabtree\Suntag ("Applicant"), Attorney for the Chapter 7 Trustee Gary Farrar, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:
>
> Herum\Crabtree\Suntag, Professional Employed by the Chapter 7 Trustee
>
> Reduced Total Amount for Fees and Costs and Expenses in the amount of $10,000.00
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

39. 10-92299-E-7 JOHN MARQUEZ
IAM-4 Michael W. Malter

OBJECTION TO CLAIM OF GOLDS GYM OAKDALE, CLAIM NUMBER 10
6-6-14 [135]

Final Ruling: No appearance at the July 24, 2014 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, the Chapter 7 Trustee, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 45 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 court's decision is to sustain the Objection and disallow the claims of Golds Gym Oakdale, Proof of Claim No. 10.

Stephen Ferlmann, the Chapter 7 Trustee ("Objector") requests that the court disallow the claim of Golds Gym Oakdale ("Creditor" or "Claimant"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims as a priority status claim in this case. The Claim is asserted to be in the amount of $1,064.78. Objector asserts that the subject clam is not entitled to priority status under 11 U.S.C. § 507. The Trustee files a copy of Proof of Claim No. 10 in support of the Objection. FN.1.

FN.1. The objecting party filed the Objection and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). The opposing party is reminded of the court's expectation that documents filed with this court comply with the *Revised*

Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1).

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Proof of Claim No. 10, filed by Golds Gym Oakdale, located at 1275 East F Street, Oakdale, California, asserts a claim of $10,64.78 on the basis of "Gold's Gym Facility Access." Claimant indicates that the claim has "priority" status by checking the box that indicates that the claim consists of: "Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7)." This box is selected in response to Question 5, which states:

> Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

The Claim includes copies of "legally binding" Membership Contracts for Debtor John Marquez and an unknown party, Nora Vega. The cover letter explaining the supporting documentation attached to the Proof of Claim states that Debtor John Marquez is the "Account Responsible Party" for himself and Nora Vega, and has signed to authorize payment for both memberships. The memberships were reportedly sold during a pre-sale event for the gym, and activated 30 days after the opening of Gold's Gym Oakdale on September 5, 2009. The contract term is for 12 payments, to automatically renew after September 5, 2010.

The subsequent pages attached to the claim detail the general facility and late fees incurred by Debtor on his membership account. These fees span a time period starting on September 5, 2009 through September 5, 2010. Proof of Claim No. 10 on the Claim Registrar, Attachments. The Membership Agreement of Debtor and Nora Vega, both of which were signed by Debtor on December 21, 2008 to authorize the gym to draw payments from Debtor's credit account, and agreeing to pay enrollment, processing fees, and other dues, are attached to the Proof of Claim.

Claimant appears to be asserting that it has a so-called priority "deposit" claim under 11 U.S.C. § 507(a)(7), which accords priority status to,

> ...allowed unsecured claims of individuals, to the extent of $1,800 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the

> purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

Although the language of 11 U.S.C. § 507(a)(7) is quite broad, the case authority on this statute clearly describes the type of claims 11 U.S.C. § 507(a)(7) was enacted to cover. It appears from this court's review of the salient cases that the drafters of Section 507(a)(7) had specific circumstances in mind when carving out a provision to accord priority status to claim holders attempting to recover consumer deposits. This provision, which establishes priority for consumer deposits, was enacted to protect consumers who leave deposits or lay merchandise away, and who do not receive merchandise from retailer who files bankruptcy petition. *In re Cimaglia*, Bkrtcy.S.D.Fla.1985, 50 B.R. 9.

Put another way, the court in *In re Palmas del Mar Country Club, Inc.*, Bkrtcy.D.Puerto Rico 2010, 443 B.R. 569, stated that the purpose of this provision, which gives seventh-level priority to claims arising from pre-petition deposit of funds (by claimants for goods or services that are not provided), is to protect consumers who make payments, with the expectation that recipient of funds will hold them until the goods or services that they purchased are provided, and that funds will remain their property until goods or services are provided.

What debts constitute pre-petition "deposits" within the meaning of 11 U.S.C. § 507(a)(7) is also quite specific. For purposes of statute, and for conferring priority status on claims for deposits on undelivered goods and services pursuant to the statute, the term "deposit" means the tendering of consideration to purchase or rent specific property or services with expectation that such consideration will be applied toward purchase or rental of property or services, or be returned if either property or services are not delivered or if condition precedent for return of consideration is fulfilled by depositor. *In re Glass*, 203 B.R. 61 (Bankr. W.D. Va. 1996).

Additionally, 11 U.S.C. § 507(a)(7) is limited to individuals In re P.J. Nee Co., 36 B.R. 609 (Bankr. D. Md. 1983). Consequently, 11 U.S.C. § 507(a)(7) is not considered to be available for the claims of corporations and partnerships. *In re Carolina Sales Corp.*, 43 B.R. 596 (Bankr. E.D.N.C. 1984).

Here, the claim of Golds Gym Oakdale, the Claimant for Proof of Claim No. 10 on the Claims Registrar, does not appear to fall within the ambit of the claimants and types of claims contemplated by the drafters of 11 U.S.C. § 507(a)(7). Golds Gym Oakdale is not an individual creditor, especially not of the kind that Congress posited as the relevant claimant, in a situation where the creditor is unable to protect himself is unsophisticated in asserting his demand for money in the face of the debtor's insolvency. The Claimant is not the type of creditor contemplated by the legislators of this statute, who intended to confer priority status on claims for deposits on undelivered goods and services is to protect individual consumers who are not in position to protect themselves.

The language of 11 U.S.C. § 507(a)(7) positions the individual claimant as a consumer, who has tendered consideration to purchase or rent property, or to purchase services, who is now a creditor in the service or property provider's bankruptcy case. The consumer is one who given consideration to the service or property provider/ Debtor, before the commencement of the bankruptcy case, to purchase, lease, or rent property, or purchase personal, family, or household services, that were not delivered or performed by the service or property provider Debtor.

In this case, Golds Gym Oakdale is not the individual consumer creditor who has paid an unrecovered deposit, but rather, a provider of services who is pursuing the consumer debtor for late charges and unpaid membership fees for access to the Claimant's facilities. Thus, the Claimant's claim is not considered a priority claim under 11 U.S.C. § 507(a)(7). Claimant has not provided another basis to treat its claim as a priority status claim under 11 U.S.C. § 507(a).

The Objection is sustained and the creditor's claim is disallowed as a priority status claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Golds Gym Oakdale, Creditor filed in this case by Stephen Ferlmann, the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 10 of the Law Offices of Golds Gym Oakdale is sustained and the claim is disallowed in its entirety as a priority status claim.

40. 10-92299-E-7 JOHN MARQUEZ
IAM-5 Michael W. Malter

OBJECTION TO CLAIM OF CARL E. COMBS, CLAIM NUMBER 8
6-6-14 [132]

Final Ruling: No appearance at the July 24, 2014 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, the Chapter 7 Trustee, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 45 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 court's decision is to sustain the Objection and disallow the claim of Carl E. Combs, Proof of Claim No. 8.

Stephen Ferlmann, the Chapter 7 Trustee ("Objector") requests that the court disallow the claim of Carl E. Combs ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims as a priority status claim in this case. The Claim is asserted to be in the amount of $4,517.92. Objector asserts that the subject clam is not entitled to priority status under 11 U.S.C. § 507, and files a copy of Proof of Claim No. 8 in support of the Objection. FN.1.

FN.1. The objecting party filed the Objection and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). The opposing party is reminded of the court's expectation that documents filed with this court comply with the *Revised*

Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1).

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The Proof of Claim for the Law Offices of Carl E. Combs ("Claimant") asserts a claim of $4,517.92 for attorney's fees. Claimant indicates that the claim has "priority" status by checking the box that indicates that the claim consists of: "Wages, salaries, or commissions (up to $11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4)." This box is selected in response to Question 5, which states:

> Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

The Proof of Claim was filed on October 27, 2010. The Claim includes several attachments, which appear to be the billing sheets for the attorney Claimant. The tasks described in Claimant's time sheets include services--client meetings, correspondence to the Debtor, attending hearings, the review of court records and documents--for an unspecified case in the Santa Clara Superior Court. The time records cover the time period of February 11, 2010 to February 14, 2010.

All references to the case in which Claimant likely represented the Debtor appear to be redacted in the billing sheets and the cover sheet accompanying the Claimant's time records. The cover sheet preceding the Claimant's billing statements state that the fees charged consist of costs and fees for filing; "research file for deadlines to respond to complaint and file opposition"; and the filing of documents. Although Proof of Claim No. 8 contains only scant detail on the basis for Mr. Combs' claim, the court docket for Debtor's adversary cases offers some clues as to the context of Mr. Combs' demand for fees in this Chapter 7 case.

A search of the cases associated with the Debtor John Marquez's parent bankruptcy case results in the listing of an adversary proceeding, Carl E. Combs v. John Marquez, in which the Claimant filed a complaint against the Debtor to determine the dischargeability of a debt that Claimant states arose "in the context of Mr. Marquez's written promise to pay for legal services." The Complaint does not elaborate on the scope of Claimant's representation, and the exact nature of the state court case in which Claimant rendered his legal services, but Claimant argues that Debtor engaged in deceptive conduct by filing a bankruptcy petition on February

2010, without notifying his creditors that he was closing a case for a bankruptcy filed in San Jose, California. Dckt No. 1, Adversary Case No. 2010-09072. The Debtor, who argued that he did not intend to defraud creditors by filing a new bankruptcy case, and was ordered to change his bankruptcy case to a proper venue in Stanislaus County, prevailed on a Motion to Dismiss the Case, and the adversary proceeding was closed on March 4, 2011.

Though not entirely uniform in their circumstances and facts, the case authority on whether attorney's fees qualify as administrative expense and priority "wage" claims under 11 U.S.C. §§ 503 and 507 appear to unanimously establish that fees are not entitled to priority status under those statutory provisions.

For instance, the court in *In re Owen,* 324 B.R. 373 (Bankr. N.D. Fla. 2004) held that claims for unpaid fees filed by an attorney--who had previously represented a Chapter 7 debtor in marital dissolution proceedings--was not entitled to third-priority status as claim for "wages, salaries, or commissions" under 11 U.S.C. § 507(a)(4). The court in *Owen* determined that for a claim to be entitled to third-level priority as claim for "wages, salaries, or commissions" within the meaning of 11 U.S.C. § 507(a)(3), the relationship between claimant and debtor must be true employee-employer relationship. *In re Owen,* 324 B.R. 373, 375 (Bankr. N.D. Fla. 2004).

The Owen court reasoned that under Florida state law, an essential element of master/servant relationship is the master's right of control and right to direct manner in which work shall be done. An attorney, the court stated, has wide authority in conduct of litigation; he is chosen to speak for client in court, and when he speaks in court, whether it be during formal trial or in informal pretrial, he speaks for and as the client. The attorney-client relationship does not seem to come within the ambit of 11 U.S.C. § 507(a)(4), which the court noted was enacted to alleviate hardship on workers who lose their jobs or part of their salary when their employer files for bankruptcy, because a debtor/employer is typically the only source of income for employees. *In re Owen*, 324 B.R. 373 (Bankr. N.D. Fla. 2004).

Similarly, the court in *In re Hutchison*, 223 B.R. 586 (Bankr. M.D. Fla. 1998) determined that a Chapter 7 debtors' former attorney, who represented them in their prior Chapter 13 case, was not entitled to third-priority status for his claim for attorney fees. The court held in that case that although fees in question were arguably earned within 90 days of petition date, the scope of this priority section was intended to apply to traditional employer/employee relationships, rather than mere contractual relationships, such as those between attorney and debtors. *In re Hutchison, 223 B.R. 586* (Bankr. M.D. Fla. 1998).

The court in *Hutchison* described the test for determining whether claims are entitled to third-priority status as an evaluation into whether claimants are truly engaged in master/servant relationship with debtor or whether they have contractual relationship with debtor. The court in *Hutchison* echoed the *Owen* court's explanation of the policy behind according third-level priority to wage claims by providing a similar explanation for the enactment of 11 U.S.C. § 507(a)(4). The court explained that

Congress's purpose in enacting this provision was to enable employees displaced by bankruptcy to secure, with some promptness, money directly due to them in back wages, and thus to alleviate in some degree the hardship that unemployment usually brings to workers and their families. *Id.* at 588.

Even attorney's fees stemming from cases involving actual unpaid wage and severance issues may not qualify as priority wage claims under the Bankruptcy Code. An employee's claims for attorney fees, costs, and interest, incurred in connection with employee's state court action against debtor to collect unpaid wages and severance, were not deemed priority wage claims in the case of *In re C.J. Wright & Co., Inc.*, 183 B.R. 305 (Bankr. M.D. Fla. 1995)., *Inc;* the court in that case stated that the wage claim statute did not include attorney fees, interest and costs as priority claims, and state court action was stayed by debtor's bankruptcy filing. *In re C.J. Wright & Co., Inc.*, 183 B.R. 305 (Bankr. M.D. Fla. 1995). The courts have also typically determined that attorney's fees are not considered administrative expenses under the Bankruptcy Code. Creditor's claim for attorney fees that are incurred in the post-petition period are not considered administrative expense priority claims; *In re Kadjevich*, 220 F.3d 1016 (9th Cir. 2000)

The cases above suggest that the policy behind giving third-priority status to claims for wages, salaries, and commissions pursuant to 11 U.S.C. § 507(a)(4) is to give employees displaced by bankrupt businesses and employers an ability to file priority wage claims in an employer debtor's bankruptcy case. The courts in the cases of *In re Owen* and *In re Hutchison* looked at whether the claimant and debtors were parties to an employer-employee relationship under Florida state law.

In applying that approach to the present case, it does not appear to that the Claimant, Mr. Combs, was an "employee" of the Debtor under the criteria defined by California state law. Under California law, the principal test of an employment relationship is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired. *Juarez v. Jani-King of California, Inc.*, 273 F.R.D. 571 (N.D. Cal. 2011). In determining whether an employment relationship exists under California law, while the principal's right to control is the most important consideration, California courts will consider a number of additional factors, including: the right of the principal to discharge at will, without cause; whether the one performing services is engaged in a distinct occupation or business; whether the work is usually done under the direction of the principal; whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; the length of time for which the services are to be performed; the method of payment; whether the work is a part of the regular business of the principal; and whether the parties believe they are creating an employer-employee relationship. *Id.* at 288.

The Claimant, Mr. Combs, appears to have been employed by Debtor as an attorney representing the Debtor in an unidentified state court case in 2011. As the Debtor's attorney, Mr. Combs most likely had a high degree of flexibility in deciding how to prosecute Debtor's case and proceed with his representation of the Debtor in and out of court. Mr. Combs has not provided the court with a fee agreement that indicates otherwise, and other

circumstances that may make this relationship unusual than or suggest that this is other than a typical attorney-client relationship. The nature of Mr. Combs' claim is additionally, not the type of wage claim intended to be given priority status by the drafters of 11 U.S.C. § 507(a)(4). Based on the evidence before the court, the creditor's claim is disallowed as a priority status claim. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Law Offices of Carl E. Combs, Creditor filed in this case by Stephen Ferlmann, the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 8 of the Law Offices of Carl E. Combs is sustained and the claim is disallowed in its entirety as a priority status claim.