UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

August 20, 2015 at 10:30 a.m.

1.	**15-90414-E-7**	**JESSE SELLERS**	**MOTION TO CONVERT CASE TO**
	CJY-1	**Christian J. Younger**	**CHAPTER 13**
			7-14-15 [27]

Final Ruling: No appearance at the August 20, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 14, 2015. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

This Motion has been filed by Jesse Michael Sellers, Sr. ("Debtor") to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor asserts that the case should be converted because he originally filed the bankruptcy without the assitance of counsel. The Debtor asserts that the Chapter 7 Trustee will likely determine that the instant Chapter 7 case is an asset case following the Meeting of Creditors. The Debtor claims that there may be some liquidation issues with Debtor's home and vehicles. The Debtor claims he was unaware of these potential issues before filing the case. The Debtor is unable to compe up with the funds necessary to retain these assets at the present time in the Chapter 7. Therefore, the Debtor seeks to convert the case to a Chapter 13 so he can repay the funds through a plan.

Debtor has now obtained the assistance of counsel to prosecute this motion and the Chapter 13 case.

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

The court finds that, pursuant to the near absolute right of conversion under 11 U.S.C. § 706(a) and for cause, the Motion is granted and the case is converted to a Chapter 13.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert filed by Jesse Michael Sellers, Sr. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is granted and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code.

2. 13-91315-E-7 APPLEGATE JOHNSTON, INC.
WFH-11 George C. Hollister

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ANNING-JOHNSON, INC.
7-23-15 [460]

Final Ruling: No appearance at the August 20, 2015 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's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 23, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. FN.1.

FN.1. Though Movant did not serve the Debtor with the pleadings (Fed. R. Bankr. P. 9019(a)), Debtor's counsel of record was served with the Motion in this Contested Matter. Cert. of Service, Dckt. 464. In light of the modest amount of money at issue, the court will waive any defect in service on the Debtor itself, based on the unique facts in this Contested Matter.

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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Approval of Compromise is granted.

Michael D. McGranahan, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Anning-Johnson, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement revolve around a payment in connection with the Debtor's business issued by the Debtor in the amount of $14,900.35 prior to filing the instant case. The Movant filed an Adversary Proceeding to avoid and recover the payment pursuant to 11 U.S.C. §§ 547 and 550.

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 (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 463):

A. Settlor will pay the estate the sum of $7,450.18 (50% of the amount in controversy) within 10 days of entry of an order approving the settlement.

B. The Movant agrees to release Settlor from liability to return the $14,900.35 payment.

C. The Movant also agrees to dismiss the Adversary Proceeding with prejudice, and agrees that Settlor will be entitle to file an amended claim pursuant to 11 U.S.C. § 502(g)

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).

Under the Settlement Movant shall recover $7,450.18 in satisfaction of the estate's claim for recovery of the property, with an asserted value of $14,900.35, from Settlor. Movant asserts that the property can be recovered for the estate pursuant to 11 U.S.C. §§ 547 and 550. This proposed settlement allows Movant to recover for the estate $7,450.18 without further cost or expense and is 50% of the maximum amount of the claim identified by Movant.

Probability of Success

The Movant suggests that the probability of success is uncertain because the Settlor is asserting a defense that the payment was under the ordinary court of business under § 547(c)(2). The Movant states that the defense is fact intensive and would require discovery.

Difficulties in Collection

The Movant does not address this factor.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, which are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial, especially the claimed defense of ordinary course of business. Formal discovery would be required, with depositions of the Settlor, and document production requests of third parties to determine the ordinary course of business among the parties and the industry. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The settlement allows for the estate to get 50% of its claim back without the need of prosecuting an Adversary Proceeding which would result in litigation and discovery costs which would ultimately diminish the total return to 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 Michael D. McGranahan, 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 Anning-Johnson ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion(Docket Number 463).

3. 13-91315-E-7 APPLEGATE JOHNSTON, INC.
WFH-12 George C. Hollister

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PDM STEEL SERVICE CENTERS, INC.
7-23-15 [465]

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 Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 23, 2015. By the court's calculation, 28 days' 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.

Michael D. McGranahan, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with PDM Service Centers, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are in regard to a pre-petition payment made by Debtor to Settlor in the amount of $,494.11. The Movant filed a number of actions to avoid and recover certain pre-petition transfers. In connection with the Settlor, the Trustee filed Adversary Proceeding No. 15-09020 against Settlor.

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 (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 468):

A. Settlor will pay the estate the sum of $4,246.00 within 10 days of entry of execution of the agreement.

B. Movant will:

1. release Settlor from liability to return the $8,494.00 payment,

2. agrees to dismiss the adversary proceeding with prejudice as to Settlor only and

3. agrees that Settlor will be entitled to file an amended claim pursuant to 11 U.S.C. § 502(g).

CONDITIONAL OBJECTION OF C&T WELDING, INC.

C&T Welding, Inc. ("Creditor") filed a conditional objection on July 30, 2015. Dckt. 473. The Creditor is a co-defendant in the Adversary Proceeding No. 15-09020 with Settlor. The Creditor states that the Creditor may be adversely affected by the compromise unless the Movant agrees to strike all allegation in the Adversary Proceeding that involve the Creditor and Settlor jointly and/or unless the Movant and Settlor agree to jointly release Creditor from liability to return the $8,494.00 payment mentioned in the second, sixth, and eighth causes of action.

The Creditor argues that for the Movant to success in his avoidance action against Settlor, the Movant must prove that Settlor is a creditor. However, the Settlor is not listed as a creditor on the Debtor's schedules.

The Creditor reiterates if the Movant also releases the Creditor from liability, the Creditor will have no objection to the settlement.

MOVANT'S REPLY

The Movant filed a reply on August 13, 2015. Dckt. 477. The Movant first asserts that the Creditor is arguing that the estate is getting too much in the settlement. Additionally, the Trustee argues that the Creditor misstated the Movant's burden since the Movant only needs to prove that it was "for the benefit of a creditor." 11 U.S.C. § 547(b).

Secondly, the Movant asserts that the Creditor is objecting improperly, attempting to force the estate to make certain concessions to the Creditor for the settlement to be "fair and equitable." The Movant argues that 11 U.S.C. § 550 provides that the Movant has the authority to settle with just Settlor and not Creditor.

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).

Under the Settlement Movant shall recover $4,247.00 in satisfaction of the estate's claim for recovery of the property, with an asserted value of $8,494.11, from Settlor, for its claims against that one of the multiple defendants. Movant asserts that the property can be recovered for the estate as an avoidable pre-petition payment. This proposed settlement allows Movant to recover for the estate $4,247.00 without further cost or expense and is 50% of the maximum amount of the claim identified by Movant.

Probability of Success

The Movant suggests that the probability of success is uncertain because the Settlor is asserting a defense that the payment was under the ordinary court of business under § 547(c)(2). The Movant states that the defense is fact intensive and would require discovery.

Difficulties in Collection

The Movant does not address this factor.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, which are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial, especially the claimed defense of ordinary course of business. Formal discovery would be required, with depositions of the Settlor, and document production requests of third parties to determine the ordinary course of business among the parties and the industry. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further

litigation.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate.

While the Creditor appears to take offense to the Movant only settling with one of the parties in the Adversary Proceeding rather than all the defendants, the Creditor has not provided any specific grounds that show that the compromise is not in the best interest of the estate. A review of the settlement provides for 50% of the claim amount without the need for litigation costs and expenses. Instead, the Creditor is merely asserting that it is "unfair" without providing any authority as to how such a conclusion could be drawn. Therefore, the objection is overturned.

Therefore, after reviewing the Motion and proposed settlement, the court finds that the settlement provides for the best result for the Debtor, estate, and Trustee. The estate will receive 50% of its total alleged claim against the Settlor while avoiding the need for any litigation. The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael D. McGranahan, 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 PDM Service Centers, Inc. ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion(Docket Number 468).

4. **13-90323-E-12 JPJ-2** **FRANCISCO/ORIANA SILVA** **Peter L. Fear** **OBJECTION TO CLAIM OF STANISLAUS COUNTY TAX COLLECTOR, CLAIM NUMBER 25** **7-2-15 [128]**

Final Ruling: No appearance at the August 20, 2015 hearing is required.

The Chapter 12 Trustee having filed a Withdrawal of the Objection to Allowance of Claim, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Allowance of Claim was dismissed without prejudice, and the matter is removed from the calendar.**

5. **13-90323-E-12 JPJ-3** **FRANCISCO/ORIANA SILVA** **Peter L. Fear** **OBJECTION TO CLAIM OF STANISLAUS COUNTY TAX COLLECTOR, CLAIM NUMBER 26** **7-2-15 [132]**

Final Ruling: No appearance at the August 20, 2015 hearing is required.

The Chapter 12 Trustee having filed a Withdrawal of the Objection to Allowance of Claim, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Allowance of Claim was dismissed without prejudice, and the matter is removed from the calendar.**

6. **13-90323-E-12 JPJ-4** **FRANCISCO/ORIANA SILVA** **Peter L. Fear** **OBJECTION TO CLAIM OF STANISLAUS COUNTY TAX COLLECTOR, CLAIM NUMBER 27** **7-2-15 [136]**

Final Ruling: No appearance at the August 20, 2015 hearing is required.

The Chapter 12 Trustee having filed a Withdrawal of the Objection to Allowance of Claim, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Allowance of Claim was dismissed without prejudice, and the matter is removed from the calendar.**

7. 08-91933-E-7 BULMARO/MARIA PALAFOX **MOTION TO DISMISS ADVERSARY**
15-9017 Steven S. Altman **PROCEEDING**
MH-1 **7-10-15 [11]**
MCGRANAHAN ET AL V. MI HOGAR, LLC

Tentative Ruling: The Motion to Dismiss Adversary Proceeding 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 Plaintiff's Attorney, and Interested parties on July 10, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding 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 Dismissal of Adversary Proceeding is denied.

Mi Hogar, LLC ("Defendant") filed the instant Motion to Dismiss Complaint on July 10, 2015. Dckt. 11. FN.1. The Defendant is seeking for the court to grant the Motion and dismiss the Complaint filed by Michael McGranahan, the Chapter 7 Trustee ("Plaintiff") for failing to state a claim.

FN.1. The pleading title motion is a combined motion and points and authorities in which the grounds upon which the motion is based are buried in detailed citations, quotations, legal arguments, and factual arguments (the pleading being a "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.

The court has also observed that the more complex the Mothorities in which the grounds are hidden, the more likely it is that no proper grounds exist. Rather, the moving party is attempting to beguile the court and other party.

In such situations, the court routinely denies the motion without prejudice and without hearing. 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.

COMPLAINT

The Plaintiff filed the instant complaint on May 29, 2015. Dckt. 1. The complaint alleges the following:

1. The underlying bankruptcy case was reopened on October 6, 2015 for the purpose of recovering unscheduled assets

2. Plaintiff was reappointed as the Chapter 7 Trustee.

3. Prior to filing, Debtor purchased a home on Alturas Avenue in Modesto, California.

4. To secure financing for the home, Debtor took a mortgage from EMC Mortgage, a listed creditor.

5. The purchase of the home was closed by Alliance Title Company on February 14, 2007.

6. For reasons unknown, Alliance Title held back $73,174.00 in escrow at closing from the purchase price.

7. Alliance Title was part of the Mercury Title Company that filed its own bankruptcy in 2009.

8. Defendant is a defunct California limited liability company. Manuel Jacquez was one of its members.

9. At this time and since May 2012, there is an active but unrelated California entity with different principals and agents called Mi Hogar, LLC.

10. At some point subsequent to the closure of Alliance Title, all of its escrow funds were sent to the California comptroller as

unclaimed property. At this time, the Comptroller is holding these $73,174.00 as property ID # 972730282.

11. Plaintiff filed a claim to recover these funds.

12. The Comptroller received a competing claim for recovery of these funds by Mi Hogar, LLC.

13. Plaintiff asserts Defendant has no standing to take any legal action and did not contribute to these funds.

14. Defendant transferred title to the home in Modesto at closing in full without any secured claim to future payment

15. Any claim that Defendant may have that it was not paid the agreed amount is long past the statute of limitations; even if it were not, it would at best be one of many unsecured claims against this debtor.

16. These funds are titled to, in part, and owned it full by Debtor; it is the Trustee's primary duty under 11 U.S.C. § 704 to collect these funds.

The prayer requests the following:

1. That the court determine that all funds, specifically $73,173.34, held by the State Controller as Unclaimed Property ID # 972730282 be determined to be funds rightfully belonging to the bankruptcy estate of the debtor in favor of Plaintiff Trustee McGranahan

2. For costs of the suit

3. For attorney fees if allowed by statute or established case law.

MOTION

The Defendant asserts that the court should dismiss the complaint because Plaintiff has failed to state a claim to quiet title to purchase funds. The Defendant asserts that state law governs whether the purchase funds are part of the estate and, as such, the purchase funds are not part of the estate because the Debtor has no right, title, or interest in the funds. The Defendant alleges that the upon closing, the purchase funds belonged solely to the Defendant and Debtor relinquished all right, title, and interest to the purchase funds.

The Defendant further asserts that the court should deny leave to amend the complaint because any amendments would be futile since the Defendant argues there are no amendments that can cure the deficiencies.

Lastly, the Defendant argues, in anticipation of arguments from Plaintiff, that Defendant has standing. The Defendant state that while it is a dissolved limited liability company, the Defendant argues that the corporation still exists for purposes of defending actions against it.

The Defendant concludes by simply stating that the Defendant sold the property to the Debtor. Title in the property transferred to the Debtor. According to the Defendant, under California law, the Debtor's bankruptcy estate has no cognizable legal claim to the purchase funds since the Debtor obtained title to the property.

TRUSTEE'S RESPONSE

The Plaintiff filed a response on July 31, 2015. Dckt. 22. The Trustee argues that the Defendant is attempting to make a Fed. R. Civ. P. 56 motion rather than a Fed. R. Civ. P. 12(b)(6) motion because the Defendant argues that there is in fact a controversy but that it should be ruled in the Defendant's favor.

The Trustee asserts that he is acting within his duties as a Chapter 7 Trustee. The Plaintiff states that the U.S. Trustee's office reopened the underlying bankruptcy case on October 6, 2014 for purposes of administering that portion of an asset held by the California Controller's Office and titled to the Debtor and Defendant. The amount of the asset is $73,173.34. The Plaintiff states that, due to the history of the funds, he brought the instant action to have the court determine who owns what.

The Plaintiff then argues that the history of the funds is not relevant. While there appears to be a question of how the funds ended up with the Comptroller's office, the history does not affect the need for the court to determine the ownership of the funds.

Lastly, the Plaintiff argues that even if the court has to look at the genesis of the title of the funds, the Plaintiff argues that the Defendant is merely an unsecured creditor. The lack of there being a copy of the escrow instructions available, the escrow does not exist and it cannot be said that the Debtor gave these funds to an agent of the Defendant. The Plaintiff argues that without the instructions, the funds are in a "limbo."

The Plaintiff emphasizes that the Defendant did not attempt to collect the funds between closing on February 2007 through the title closing in February 2009.

DEFENDANT'S REPLY

The Defendant filed a reply on August 13, 2015. Dckt. 25. The Defendant first asserts that they are properly moving under Fed. R. Civ. P. 12(b)(6).

The Defendant then argues that the Debtor does not have an interest in the funds because, while the Controller's Office listed the funds as belonging to the Debtor and Defendant, the actual ownership is still with the Defendant under California Code of Civil Procedure § 1501.5.

The Defendant next argues that the Probate Code § 5301 does not help the Plaintiff's action because: (1) the statute references "account" which does not include escrow account (Prob. Code § 5122) and (2) Debtor did not deposit the funds in escrow but the mortgage company did.

The escrow instructions are irrelevant because the Defendant asserts that the escrow instruction were complied with because the transaction closed

and title was transferred. The Debtor argues that the Plaintiff has not alleged in the complaint or cited authority that would justify a departure from the general rule in California that purchase funds belong to the seller.

APPLICABLE LAW

Fed. R. Civ. P. 12(b)(6)

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that complaints contain a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. Fed. R. Civ. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.*, citing to 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235-36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action").

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether a motion to dismiss is to be granted should be resolved in favor of the pleader. *Pond v. General Electric Co.*, 256 F.2d 824, 826-27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Under the Supreme Court's formulation of Rule 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal, 129* S.Ct. 1937, 1954 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1964-66 (2007). ("[A] plaintiff's obligation to provide 'grounds' of his 'entitle[ment]' to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.").

In ruling on a 12(b)(6) motion to dismiss, the Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court required to "accept legal conclusions cast in the form of factual allegations if those conclusions cannot be reasonably drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

Declaratory Relief

Declaratory relief is an equitable remedy distinctive in that it allows adjudication of rights and obligations on disputes regardless of whether claims

for damages or injunction have arisen. See Declaratory Relief Act, 28 U.S.C. § 2201. FN.1. "In effect, it brings to the present a litigable controversy, which otherwise might only be tried in the future." *Societe de Conditionnement v. Hunter Eng. Co., Inc.*, 655 F.2d 938, 943 (9th Cir. 1981). The party seeking declaratory relief must show (1) an actual controversy and (2) a matter within federal court subject matter jurisdiction. *Calderon v. Ashmus*, 523 U.S. 740, 745 (1998). There is an implicit requirement that the actual controversy relate to a claim upon which relief can be granted. *Earnest v. Lowentritt*, 690 F.2d 1198, 1203 (5th Cir. 1982).

FN.1. 28 U.S.C. §2201,

> § 2201. Creation of remedy
>
> (a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.
>
> (b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

The court may only grant declaratory relief where there is an actual controversy within its jurisdiction. *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994). The controversy must be definite and concrete. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937). However, it is a controversy in which the litigation may not yet require the award of damages. *Id.*

DISCUSSION

The Plaintiff's complaint requests, in part, the following:

> That the court determine that all funds, specifically $73,173.34, held by the state Controller as Unclaimed Property ID #972730282 be determined to be funds rightfully belonging to the bankruptcy estate of the debtor in favor of Plaintiff Trustee McGranahan.

Dckt. 1.

The Plaintiff is essentially asking the court to make a determination

of whether the monies belong to the Estate or the Defendant. (This is not merely "declaratory relief" of what would happen if the parties take, or do not take acts in the future, but to determine the rights of the parties.) The Defendant, it its Motion, attempts to argue the merits of the allegations in the Complaint and possible evidence, delving deeper than the complaint itself.

The court agrees that it appears that the Defendant is attempting to structure its Motion as a Motion for Summary Judgment rather than a Fed. R. Civ. P. 12(b)(6) motion. As such, the court must examine whether the factual allegations in the complaint are enough to raise a right to relief above the speculative level. Reviewing the Motion and responsive pleadings, it is clear to this court that there is an actual controversy that is definite and concrete.

The only basis that the court can discern from the Defendant's Motion is that the purchase funds at issue are not part of the estate because, under California law, once the transaction closes, the equitable title to the funds vested in the Defendant.

However, a review of the complaint reveals that there are factual allegations that raise legitimate questions of law and ownership over the property that dismissing the case at this stage would be improper. The fact remains that there is no clear title as to who is the owner of the property. Without this determination, there is an actual controversy between the Plaintiff and the Defendant as to who is the real owner of the funds and without a formal determination as to who the owner is, the funds will remain in limbo.

Additionally, the court finds that the escrow instructions may, in fact, be essential to the instant case. While the Defendant argues that since the sale went through, the escrow instructions must have been followed, the court can think of instances where the escrow instructions might have had instructions as to what to do with the $73,173.34. The instructions may have had some specific clauses or instructions in certain conditions precedents which would explain the held funds and what the proper mechanisms would be in the instant situation. This just further highlights that there are legitimate questions remain that makes this complaint survive a Fed. R. Civ. P. 12(b)(6) motion.

The Defendant's Motion cites extensive law, going to the actual merits of the complaint, which raise questions of law and fact that need to be determine, ultimately, by the court. The Defendant seems to narrowly be viewing the facts of the case as "we win, give us the money," and, as such, believes that summary dismissal of the complaint through Fed. R. Civ. P. 12(b)(6) is proper. Unfortunately, the Defendant has not shown that there is not a viable claim on the face of the complaint.

Therefore, the Motion is denied.

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

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

The Motion to Dismiss filed by Defendant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

IT IS FURTHER ORDERED that Defendant, to the extent permitted to appear in judicial proceedings, shall file an answer on or before **September 8, 2015.**

8. 15-90535-E-7 SCOTT/SHERRY HODGES — MOTION TO COMPEL ABANDONMENT
JAD-1 Jessica A. Dorn — 7-21-15 [18]

Final Ruling: No appearance at the August 20, 2015 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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Abandon 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). 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 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 Scott Thomas Hodges and Sherry Lynne Hodges ("Debtor") requests the court to order the Trustee to abandon property commonly known as The Tint Shop, a sole proprietorship business, business supplies and tools, and goodwill (the "Property"). The Declaration of Scott Thomas Hodges and Sherry Lynne Hodges has been filed in support of the motion and values the Property to be $3,044.00, which is the business supplies and tools. The Debtor claimed an exemption in the full amount pursuant to California Code of Civil Procedure § 703.140(b)(6).

The court finds that the exemptions claimed on 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 Scott Thomas Hodges and Sherry Lynne Hodges ("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:
>
> 1. The Business Name, The Tint Shop;
>
> 2. Business supplies and office equipment, which do not exceed $3,044.00 in aggregate value; and
>
> 3. Goodwill
>
> and listed on Schedule B by Debtor are abandoned to Scott Thomas Hodges and Sherry Lynne Hodges by this order, with no further act of the Trustee required.

9. 15-90535-E-7 SCOTT/SHERRY HODGES — MOTION TO COMPEL ABANDONMENT
JAD-2 Jessica A. Dorn — 7-21-15 [22]

Final Ruling: No appearance at the August 20, 2015 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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Abandon 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). 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 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 Scott Thomas Hodges and Sherry Lynne Hodges ("Debtor") requests the court to order the Trustee to abandon property commonly known as Hair Unlimited, a sole proprietorship business, business supplies and office equipment, and goodwill (the "Property"). The Declaration of Scott Thomas Hodges and Sherry Lynne Hodges has been filed in support of the motion and values the Property to be $2,104.00. The Debtor claimed an exemption in the full amount pursuant to California Code of Civil Procedure § 703.140(b)(6).

The court finds that the exemptions claimed 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 Scott Thomas Hodges and Sherry Lynne Hodges ("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:
>
> 1. The business name Hair Unlimited;
>
> 2. Business supplies and office equipment, not to exceed an aggregate value of $2,104.00; and
>
> 3. Goodwill
>
> and listed on Schedule B by Debtor are abandoned to Scott Thomas Hodges and Sherry Lynne Hodges by this order, with no further act of the Trustee required.

10. 15-90535-E-7 SCOTT/SHERRY HODGES — MOTION TO COMPEL ABANDONMENT
JAD-3 Jessica A. Dorn — 7-21-15 [13]

Final Ruling: No appearance at the August 20, 2015 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, Chapter 7 Trustee, Tri Counties Bank, creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Abandon 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). 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 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 Scott Thomas Hodges and Sherry Lynne Hodges ("Debtor") requests the court to order the Trustee to abandon property commonly known as 3720 Dragoo Park Drive, Modesto, California (the "Property"). This Property is encumbered by the liens of Tri Counties Bank, securing claims of $153,407.00 and $141,202.00, respectively. The Declaration of Scott Thomas Hodges, Sherry Lynne Hodges and Mark C. Vershelden has been filed in support of the motion and values the Property to be $220,000.00.

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 Scott Thomas Hodges and Sherry Lynne Hodges ("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:
>
> 1. 3720 Dragoo Park Drive, Modesto, California
>
> and listed on Schedule A by Debtor is abandoned to Scott Thomas Hodges and Sherry Lynne Hodges by this order, with no further act of the Trustee required.

11. 15-90459-E-7 RAC-4 | **PRAVINKUMAR/MADHUKANTA GANDHI**
David C. Johnston | **MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR**
7-23-15 [30]

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 23, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion and Notice were served on counsel for Debtors, but not on Debtors. Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 2002(f)(4) provides that service of the notice of a motion to extend time to object to discharge must be served on the Debtor. Bankruptcy Rule 9014(b) requires that the motion itself be served on the effected parties in the sam manner as a summons and complaint in an adversary proceeding. Here, Debtor was not served with either the notice or the motion,.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of Debtor 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 Hearing on the Motion to Extend Deadline to File a Complaint Objecting to Discharge of Debtor is continued to 10:30 a.m. on October 1, 2015.

The Patel Law Firm, P.C. ("Creditor") filed the instant Motion to Extend Deadline to Object to Discharge on July 23, 2015. Dckt. 30. Pravinkumar and Madhukanta Gandhi ("Debtor") filed the instant case under Chapter 7 on May 12, 2015.

The deadline to file a complain objecting to the discharge of the Debtor is set for September 8, 2015. Creditor requests that the deadline for the Creditor to file a complain objecting to the discharge of Debtor until November 8, 2015. The instant Motion was filed before the expiration of the deadline for filing objections to discharge.

The Creditor seeks the extension because, after the Debtor filed the instant case, the Creditor moved the court for 2004 examinations which will not take place until the late part of August. The current deadline is set just seven days after the last of the Creditor's 2004 examinations. The Creditor argues that it has acted quickly and diligently to schedule the 2004 examinations in order to get sufficient information to determine if such an objection is proper.

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b)(1). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 4004(b)(1).

Unfortunately, Movant has not served the Debtor. As opposed to District Court where there is one action, and once an attorney appears for a party, the attorney is counsel of record for all purposes – and may be served in lieu of the party him/her/itself. However, in a bankruptcy case, each motion or application is a separate contested matter, for which the initiating pleading must be served in the same manner as a summons and complaint. Fed. R. Bank. P. 9014(b).

Here, only a notice was sent to the Debtors. While seemingly technical, the court cannot presume that the counsel who filed the bankruptcy case is the attorney of record in the future filed contested matter. Cutting the corner and only sending a notice does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9014. There is no reason for the court to issue a "maybe effective, maybe not order," or Movant learning later that no effective order was entered (Debtor not having been served and Debtor's counsel stating that he was not authorized to accept service) and the time to objection to Debtor's discharge has expired.

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 Extend the Time to File an Objection to Discharge filed by The Patel Law Firm, P.C. ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to 10:30 a.m. on October 1, 2015.

IT IS FURTHER ORDERED that on or before August 31, 2015, Movant shall serve on Debtor the Motion and supporting pleadings, and notice of continued hearing, and notice of continued hearing on the Debtor, Debtor's counsel, the Chapter 7 Trustee, and the U.S. Trustee.

12. 10-94467-E-7 TINA BROWN — CONTINUED MOTION FOR CONTEMPT
CWC-4 Michael R. Germain — 7-11-13 [63]

Proper Service: The Order to Appear was served through the Bankruptcy Noticing Center on February 19, 2015. Cert. of Service, Dckt. 165. The court computes that 17 days notice of the hearing was provided to David Foyil and Timothy Brown.

The Motion for Contempt is xxxxxx

In connection with Adversary Proceeding 12-9003 entered a judgment; which is final, no appeal taken; determining that the bankruptcy estate owned three vehicles which were in the possession of Timothy Brown. Mr. Brown was ordered to turn over the vehicles. When he failed to do so, corrective sanctions were ordered. When he repeatedly violated the court's order to turn over the vehicles, the Trustee obtained a monetary judgment for the value of the vehicles, in addition to the corrective sanctions previously ordered by the court.

CHAPTER 7 TRUSTEE'S DECEMBER 11, 2014 STATUS REPORT

The Chapter 7 Trustee filed a status report on December 11, 2014. Dckt. 157.

In the status report, the Trustee states that as of December 10, 2014, the Debtor has failed to comply with the court's order. No vehicles or required documents or information has been turned over to the Trustee. No monetary sanctions have been paid to the Trustee.

On August 6, 2014, the court entered a supplemental Order for Election of Monetary Damages under Judgment (Dckt. 41) and Authorized Enforcement of Monetary Sanctions (10-49477, DCN: CWC-4) and Judgment Through Combined Writ of Execution and Other Judgment Enforcement ("Supplemental Order"). This Supplemental Order was forwarded to the Trustee's Special Counsel, David Cook, on August 11, 2014. On November 10, 2014, the court entered an Order Granting Motion for Assignment of Rights, Restraining Order and Turnover (12-09003; DCN: CCA-1).

On November 18, 2014, the court entered an Order Authorizing Process Server to Levy Execution (12-09003; Dckt. 72). On December 2, 2014, Bank of America advised David Cook of a safe deposit box in the name of Debtor, Tim Brown, which they had frozen pursuant to the Temporary Restraining Order.

On December 4, 2014, Defendant Timothy Brown filed a Chapter 13 case, Case No. 14-91596, in the Eastern District of California, Modesto Division, assigned to Judge Bardwil.

Special counsel, David Cook and Defendant's counsel, David Foyil, have entered into a Stipulation to Modify Automatic Stay to Continue Freeze Upon

Safety Deposit Box Pending Further Order of the Court.

DECEMBER 18, 2014 HEARING

The court continued the hearing to February 12, 2015. Dckt. 159.

FEBRUARY 6, 2015 HEARING

Since the December 18, 2015 hearing, no supplemental pleadings have been filed.

At the hearing, the court reviewed the Schedules filed by Tim Brown in the Chapter 13 Case. In those Schedules, Mr. Brown states under penalty of perjury that he has possession of the 1997 Harley Davidson Red Fat Boy and the 2007 Chevrolet Corvette which he was previously ordered to turn over. In addition, he states under penalty of perjury that he has the 2008 Harley Davidson Crossbones which was the subject of this court's prior orders. On Schedule B Debtor states under penalty of perjury that all three of the vehicles are "Asset of Related Chapter 7 Bankruptcy Estate In re Brown, Tina." 14-91596; Amended Schedule B, Dckt. 40

Mr. Brown is represented by David Foyil in the Chapter 13 case. Mr. Foyil represented Mr. Brown in earlier contempt proceeding and Mr. Foyil was ordered, and did pay, sanctions to the Trustee. Mr. Foyil also represented Mr. Brown when he stated to the court that all of the vehicles would be turned over to the Trustee in this case in September 2013. Civil Minutes, Dckt. 76, and Order, Dckt. 78.

Tim Brown having lists on Schedule three vehicles which he admits are property of this Bankruptcy Estate, the court is at a loss as to why said vehicles have not been turned over to this Chapter 7 Trustee. Given that Debtor is represented by counsel, David Foyil, the continued improper possession of property of this bankruptcy estate is mystifying.

The court continued the hearing and ordered David Foyil to appear at the continued hearing to address the admitted possession and control of property of this Bankruptcy Estate by Tim Brown.

FEBRUARY 13, 2015 ORDER

On February 13, 2015, the court issued the following order:

> The court conducted a continued hearing on this Motion for Contempt relating to the failure of Tim Brown to comply with prior orders of this court. The court noted that in Tim Brown's current bankruptcy case he lists three vehicles which have previously been determined to be property of the Tina Brown estate to be property in which he has an interest and lists on Schedule B of his Chapter 13 Petition. Case N. 14-91596. Further, Tim Brown states under penalty of perjury on such Schedule B that the vehicles are property of the Tina Brown bankruptcy estate. David Foyil, Tim Brown's attorney in this bankruptcy case is also Tim Brown's attorney in his Chapter 13 case. Tim Brown stating under penalty of perjury that the vehicles are property of the Tina Brown bankruptcy

estate, cause exists for an explanation as to why he continues in possession or control of such property which he lists on his Schedule B under penalty of perjury.

Therefore, upon review of the current motion, files in this case, the statements of penalty of perjury by Tim Brown on his Schedule filed in his Chapter 13 case, and good cause appearing;

IT IS ORDERED that the hearing on the Motion is continued to 10:30 a.m. on March 5, 2015.

IT IS FURTHER ORDERED that David Foyil, who has appeared previously appeared in this case as counsel for Tim Brown and is currently Tim Brown's attorney of record in Chapter 13 case 14-91596, to address the following:

A. That under penalty of perjury Tim Brown states on Amended Schedule B in Chapter 13 case 14-91596 that 1997 Harley Davidson Red Fat Boy Motorcycle, 2007 Chevrolet Corvette, and 2008 Harley Davidson Crossbones are each "Asset of Related Chapter 7 Bankruptcy Estate in re Brown, Tina,"

B. Admitting that the property is not Tim Brown's, why he lists the property on his Schedules, admits that they are owned by the Tina Brown bankruptcy estate, and has failed to turn over such property to the Trustee in the Tina Brown case; and

C. Provide the name, address, and relationship to Tim Brown of any person that Tim Brown asserts is in possession of each of the above vehicles.

IT IS FURTHER ORDERED that David Foyil shall appear at the March 5, 2015 hearing in person, no telephonic appearance permitted.

IT IS FURTHER ORDERED that Tim Brown and David Foyil, and each of them, shall file a written response listing the names, addresses, and relationship of each person who is in possession of each of the vehicles shall be filed and served on or before February 28, 2015.

Dckt. 162.

MARCH 5, 2015 HEARING

David Foyil, the attorney for Tim Brown, and Tim Brown failed to comply with the order of the court to provide the information concerning the location of the assets. Mr. Foyil told the court that due to short staffing, his office did not read the requirement for a written response in the order. No reason for Tim Brown's failure to comply with the order was provided.

It was also reported to the court that Tim Brown has converted his case

to one under Chapter 7. The election to convert was filed on March 3, 2015.

The court continued this hearing to June 11, 2015, and stated that the court will issue an order to show cause why Mr. Brown is not incarcerated until he discloses the location of the vehicles and the person holding the vehicles, or such persons and locations that he has knowledge of the vehicles being in possession thereof.

CHAPTER 7 TRUSTEE'S JUNE 4, 2015 STATUS REPORT

The Trustee filed a status report on June 4, 2015. Dckt. 169. The Trustee states that on December 4, 2014, the Defendant Tim Brown filed a Chapter 13 case. Case No. 14-91596. On March 3, 2015, the case was voluntarily converted to a Chapter 7 case.

The Trustee states that he has been working with the Chapter 7 Trustee, Gary Farrar, towards identifying assets of the estate. The Meeting of Creditors was concluded on May 28, 2015 and a Notice to Creditors to File Proof of Claim Due to Possible Recovery of Assets was issue don May 29, 2015.

JUNE 11, 2015 HEARING

At the hearing the Trustee for the Tim Brown estate appeared and provided a brief report of the efforts to recover assets and non-exempt value of assets in that estate. The court continued the hearing to 10:30 a.m. on August 20, 2015. Dckt. 173.

AUGUST 20, 2015 HEARING

No supplemental papers have been filed since the last hearing.

Xxxxxx

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 Contempt 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 xxxxxx

13. 15-90468-E-7 ROBERT/KARRI HUSMAN — MOTION TO AVOID LIEN OF CITIBANK, N.A.
CJY-1 Christian J. Younger — 6-29-15 [9]

Final Ruling: No appearance at the August 20, 2015 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, Chapter 7 Trustee, Citibank, N.A., and Office of the United States Trustee on June 29, 2015. By the court's calculation, 52 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 Citibank, N.A. ("Creditor") against property of Robert Hans Husman and Karri LeAlyn Husman ("Debtor") commonly known as 2037 San Marco Drive, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $15,413.15. An abstract of judgment was recorded with Stanislaus County on January 17, 2012, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $368,000.00 as of the date of the petition. The unavoidable consensual liens total $441,749.00 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 $100.00on 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(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 CitiBank, N.A., California Superior Court for Stanislaus County Case No. 666495, recorded on January 17, 2012, Document No. 201-0004231-00 with the Stanislaus County Recorder, against the real property commonly known as 2037 San Marco Drive, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

14. 15-90468-E-7 ROBERT/KARRI HUSMAN **MOTION TO AVOID LIEN OF UNIFUND**
CJY-2 Christian J. Younger **CCR, LLC**
6-29-15 [15]

Final Ruling: No appearance at the August 20, 2015 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, Chapter 7 Trustee, Unifund CCR Partners, and Office of the United States Trustee on June 29, 2015. By the court's calculation, 52 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 Unifund CCR, LLC ("Creditor") against property of Robert Hans Husman and Karri LeAlyn Husman ("Debtor") commonly known as 2037 San Marco Drive, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $59,562.35. An abstract of judgment was recorded with Stanislaus County on October 15, 2014, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $368,000.00 as of the date of the petition. The unavoidable consensual liens total $441,749.00 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 $100.00on 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(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 Unifund CCR, LLC, California Superior Court for Stanislaus County Case No. 2006326, recorded on October 15, 2014, Document No. 2014-0068187-00 with the Stanislaus County Recorder, against the real property commonly known as 2037 San Marco Drive, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

15. 14-91074-E-7 MDM-1 — CESAR PIMENTEL AND VERONICA CASTRO — Thomas O. Gillis — MOTION TO ABANDON — 7-1-15 [69]

Final Ruling: No appearance at the August 20, 2015 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, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2015. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Motion to Abandon 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). 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 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 D. McGranahan ("Trustee") requests the court to order the Trustee to abandon property commonly known as Stanislaus County Superior Court, State of California, Pimentel/Castro vs. Perez, Case No. 2013938 (the "Suit"). The Debtor claimed an exemption in the amount of $50,000.00 pursuant to California Code of Civil Procedure § § 703.140(b)(5) and (11)(D). The Trustee states that the Suit settled and that Debtor Cesar Pimental is to receive $25,000.00 and Debtor Veronica Castro is to receive $12,324.07.

The court finds that the exemptions claimed in the Suit 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 Michael D. McGranahan ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted and that the Property identified as:
>
> 1. Stanislaus County Superior Court, State of California, Pimentel/Castro vs. Perez, Case No. 2013938
>
> and listed on Schedule B by Debtor is abandoned to Cesar C. Pimental and Veronica Castro by this order, with no further act of the Trustee required.

16. 10-94580-E-7 INDER/KANCHAN WALIA — MOTION FOR COMPENSATION FOR
SSA-3 David C. Johnston — STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY(S)
7-14-15 [77]

Final Ruling: No appearance at the August 20, 2015 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, creditor, parties requesting special notice, and Office of the United States Trustee on July 14, 2015. By the court's calculation, 37 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.

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 May 26, 2014 through August 20, 2015. The order of the court approving employment of Applicant was entered on June 10, 2015, Dckt. 68. Applicant requests fees in the amount of $6,033.00 and costs in the amount of $199.56.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the

extent, and the value of such services, taking into account all relevant factors, including–

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by 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 reviewed case file and secured the initial application for appointment, reviewed Debtor's schedules and statement of affairs for conflicts and legal issues, and determination of the principal tasks assigned as counsel for the Trustee, and identified and recovered Debtor's non-exempt assets on behalf of Trustee. The estate has $26,852.64 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Analysis and Recovery: Applicant spent 3.8 hours in this category. Applicant assisted Client with reviewing Debtor's schedules and possible non exempt tax refunds, stock interests, and residual monies in non exempt life insurance proceeds, reviewed Trustee's request to Debtor's for tax and other document production, drafted communications concerning turnover of records and nonexempt assets, and communicated Trustee's proposal to settle claims over non-exempt assets..

Business Operation: Applicant spent .8 hours in this category. Applicant review of transmittal letters and financial information relative to turnover of documents, including Debtor's filed tax returns, stock holdings, insurance related policies, contact terms and cash surrender values.

Case Administration: Applicant spent 9.7 hours in this category. Applicant communicated with the Trustee over scope of representation, prepared Motion for Turnover and prepared 2004 examination of Debtor, coordinated and complied with Bankruptcy Code requirements, including preparation of statement of financial affairs, schedules, list of contracts, U.S. Trustee interim statements, and operating reports.

Claims Administration and Objection: Applicant spent 4.2 hours in this category. Applicant reviewed legal issues concerning turnover of insurance/annuity related monies, possible amendments to Schedules by Debtor to claim exemptions, reviewed bar date on motions and determined whether objections were proper.

Fee/Employment Application: Applicant spent 4.2 hours in this category. Applicant prepared employment application and prepared instant Motion.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Steve Altman, Esq.	19	$300.00	$5,700.00
Dawn Darwin, paralegal	3.7	$90.00	$333.00
	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			$6,033.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $199.56 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copy	401 pages @ $0.10	$40.10
Postage		$29.46
Misc. Fee/Al Cala & Associates		$130.00
Total Costs Requested in Application		$199.56

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $6,033.00 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

Costs and Expenses

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as on-line access to bankruptcy and state law and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include "Misc Fee Al Cala & Associates". No information has been provided to the court by Applicant that these cost items were extraordinary expenses than one would expect for Applicant providing professional services to Client to be changed in additional to the professional fees requested as compensation. The court disallows $130.00 of the requested costs.

The First and Costs in the amount of $69.56 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court is authorizing that Trustee pay 100% of the fees and costs allowed by the court.

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

Fees	$6,033.00
Costs and Expenses	$69.56

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 S. Altman ("Applicant"), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Steven S. Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Steven S. Altman, Professional Employed by Trustee
>
> Fees in the amount of $6,033.00

Expenses in the amount of $69.56,

IT IS FURTHER ORDERED that the costs of $130.00 are not allowed by the court.

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 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.

17. 14-91186-E-7 DIMITRIOS/NANET VOULGARAKIS — MOTION TO SELL
HCS-3 David C. Johnson — 7-8-15 [48]

Tentative Ruling: 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).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, interested parties, parties requesting special notice, and Office of the United States Trustee on July 8, 2015. By the court's calculation, 36 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 defaults of the non-responding parties are entered.

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Eric Nims, the Chapter 7 Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

A. Estate's membership interest in Deanami Development Group, LLC

The proposed purchaser of the Property is Sami Khayat and the terms of the sale are:

1. Purchase Price is $25,000.00

2. Sold “as is”, “where is”, and “with all faults,” without any warranty or representation by the Trustee or the estate.

3. Buyer has entered into the Agreement with the knowledge that the Operating Agreement contains provisions relating to the transfer of the membership interest, and that it is buying the membership interest subject to those provisions.

4. The Buyer will pay the purchase price on the following terms:

   a. Within 5 calendar days following the signing of the Agreement, the Buyer shall deliver to the Trustee a deposit of $10,000.00 by cashier’s check or money order. Deposit is nonrefundable unless the court orders the interest to be sold to another or does not grant the motion

   b. Within 5 calendar days following the entry of the order of the court approving the Motion, the Buys shall deliver the remaining balance by cashier’s check or money.

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: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The court finds that the purchase price is fair, especially in light of the fact that such sale avoids the need to incur additional fees, expenses and uncertainty of marketing and selling the membership interest to a non-member party.

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 Eric J. Nims the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Eric J. Nims, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Sami Khayat or nominee (“Buyer”), the Property commonly known as Estate’s membership interest in Deanami Development Group, LLC (“Property”), on the following terms:
>
> 1. The Property shall be sold to Buyer for $25,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 51, and as further provided in this Order.

2. The sale proceeds shall first be applied to closing costs and other customary and contractual costs and expenses incurred in order to effectuate the sale.

4. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

18. 13-91189-E-11 MICHAEL/JUDY HOUSE
RMY-11 Robert M. Yaspan

CONTINUED PRE-TRIAL CONFERENCE RE: OBJECTION TO CLAIM OF KAREN D. HOUSE, CLAIM NUMBER 11 AND/OR OBJECTION TO CLAIM OF KAREN D. HOUSE, CLAIM NUMBER 12
7-14-14 [142]

Debtors' Atty: Robert M. Yaspan
Creditor's Atty: Steven Altman; John T. Resso

Notes:

Continued from 7/23/15 to be conducted in conjunction with the hearing on the motion to approve a compromise between the parties.

19. 13-91189-E-11 MICHAEL/JUDY HOUSE
RMY-19 Robert M. Yaspan

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH KAREN D. HOUSE
7-2-15 [302]

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 - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, creditors holding the 20 largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on July 2, 2015. By the court's calculation, 49 days' 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Approval of Compromise is granted.

Michael House and Judy House, the Debtor in Possession, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Karen D. House as Trustee of the Arthur C. House and Karen D. House 1998 Living Trust, UDT ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising from Proof of Claim No.

11 and 12 filed by Settlor arising from alleged secured claims on two poultry-farm properties held by Movant.

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 (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit 3 in support of the Motion, Dckt. 306):

A. The parties have agreed to the Restated Note which reduces the amount owed on the Triumph Ranch on the petition date to the amount of $416,000.00 with monthly payments of $5,500.00 with a maturity date of October 202.

B. Movant will receive credit for the payments that have been made during the pendency of this bankruptcy through June 6, 2015 which will reduce the amount owed on the Restate Note to the sum of $300,418.90 as of June 6, 2015. (Proof of Claim No. 12.)

C. Any alleged amount owed on the Smith Note shall be deemed satisfied in full and a full reconveyance on the Smith Ranch deed of trust will be executed by Settlor. (Proof of Claim No. 11.)

D. Upon approval by the court of the compromise, all litigation among the parties will be dismissed with prejudice including but not limited to the Adversary Proceeding and the Objection.

E. Movant's plan of reorganization shall provide for treatment of the House Trust's claim consistent with this settlement. Settlor shall support, and vote for, a plan of reorganization that contains the terms of the settlement agreement.

F. Each side to bear their own attorneys fees and costs.

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).

Under the terms the Settlement all claims of the Estate, including any pre-petition claims of the Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

The Movant states that the probability of success is uncertain and it could cost in excess of $60,000.00 to $100,000.00 to litigation the action. Due to the long factual history with regard to the transactions between the parties, the probability of success is uncertain.

Difficulties in Collection

The Movant states that there does not seem to be any collection issue in the case since Movant is seeking credits against amount owed.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, which are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. Formal discovery would be required, with depositions of the Settlor, Settlor's relatives, and document production requests of third parties in both California and possible expert testimony will be required. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The settlement provides for a substantial decrease in the amount the Settlor allege to be owed on the Smith Ranch ($118,000.00 to $0.00) and on the triumph Ranch (from $604,000.00 to about $300,000.00), resolves the dispute between the parties, removes the litigation risks, and eliminates any future litigation costs. 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 Michael House and Judy House, Debtor in Possession, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Compromise between Movant and Karen D. House, as Trustee of the Arthur C. House and Karen D. House 1998 Living Trust, UDT ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit 3 in support of the Motion(Docket Number 306).

20. 13-91189-E-11 MICHAEL/JUDY HOUSE
14-9024 Robert M. Yaspan
HOUSE ET AL V. HOUSE

CONTINUED PRE-TRIAL CONFERENCE
RE: COMPLAINT
8-1-14 [1]

Plaintiff's Atty: Robert M. Yaspan
Defendant's Atty: John T. Resso, Steven S. Altman

Adv. Filed: 8/1/14
Answer: 8/29/14

Nature of Action:
Validity, priority or extent of lien or other interest in property
Declaratory judgment
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

Continued from 7/23/15 to be conducted in conjunction with the hearing on the motion to approve a compromise between the parties.

21.	**13-90795-E-7 SSA-4**	**JOSE IRAHETA AND ALBA MARTINEZ Thomas O. Gillis**	**MOTION TO COMPEL AND/OR MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY 7-1-15 [67]**

Tentative Ruling: The Motion to Compel 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, and Chapter 7 Trustee on July 1, 2015. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Motion to Compel and Motion for Compensation for Steven S. Altman, Trustee's Attorney 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 Compel and Motion for Reimbursement of Attorneys' Fees and Costs is granted.

Michael McGranahan, the Chapter 7 Trustee, filed the instant Motion to Compel Answers to Discovery Requests and Attendance to 2004 Examination and for Reimbursement of Attorney Fees and Costs on July 1, 2015. Dckt. 67.

The Trustee states that the court issued an order requiring Jose Iraheta and Alba Martinez ("Debtor") to turnover to the Trustee and the estate the sum of $7,050.00 on December 18, 2014. Dckt

The court issued an order approving the Application for 2004 Examination for both Debtor and for both to produce documents at the Trustee's office on June 17, 2015 at 9:0 a.m. Dckt. 65.

The Trustee requests that the court compel the attendance of the Debtor.

The Trustee further requests that the Trustee get reimbursed for expenses. Specifically, the Trustee is seeking reimbursement of:

Service	Cost
Court reporter fees	$139.60
Translator fees	$45.00
Attorney fees and costs in the prosecution of the instant Motion	$1,215.00 + $23.16
TOTAL	**$1,422.76**

APPLICABLE LAW

Pursuant to Fed. R. Bankr. P. 2004:

(c) Compelling attendance and production of documents

> The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

Furthermore, when a debtor does not comply with a subpoena for a 2004 examination, Fed. R. Bankr. P. 2005 provides the following:

(a) Order to compel attendance for examination

> On motion of any party in interest supported by an affidavit alleging (1) that the examination of the debtor is necessary for the proper administration of the estate and that there is reasonable cause to believe that the debtor is about to leave or has left the debtor's residence or principal place of business to avoid examination, or (2) that the debtor has evaded service of a subpoena or of an order to attend for examination, or (3) that the debtor has willfully disobeyed a subpoena or order to attend for examination, duly served, the

> court may issue to the marshal, or some other officer authorized by law, an order directing the officer to bring the debtor before the court without unnecessary delay. If, after hearing, the court finds the allegations to be true, the court shall thereupon cause the debtor to be examined forthwith. If necessary, the court shall fix conditions for further examination and for the debtor's obedience to all orders made in reference thereto.

Bankruptcy Courts have the jurisdiction to impose sanctions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-49 (9th Cir. 2004). The court also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see also* 11 U.S.C. § 105(a).

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience to a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemptor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Lehtinen*, 564 F.3d at 1058. However, the court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

Cases have found that when a debtor evades a court-ordered Rule 2004 examination, a court may find civil contempt and impose monetary sanctions. *Stasz v. Gonzalez* (In re Stasz), 387 B.R. 271 (B.A.P. 9th Cir. 2008).

DISCUSSION

A review of the docket shows that the court granted an order that required that the Debtor attend Rule 2004 examination that may be compelled through subpoena. Dckt. 65.

The Trustee provides, as exhibits, the copies of the subpoenas for both Debtor, which set the date and time for the Rule 2004 examination on June 17, 2015 at 9:00 a.m. Dckt. 71, Exhibits 2 and 3. The Debtor failed to attend the Rule 2004 examination.

Not only is it imperative for the estate and Trustee for the Debtor to appear at a court authorized Rule 2004 examination but, pursuant to the Bankruptcy Code, the Debtor has a fiduciary duty to attend such. Here, the Debtor blatantly avoided the attendance of the Rule 2004 examination, even after the parties were properly served. Pursuant to Fed. R. Bankr. P. 2005(a), the court can compel the Debtor to attend the Rule 2004 examination, including the request for document production.

As such, the court orders that the Debtor's Rule 2004 examination and production shall be made on xxxxx.

As to the issue of sanctions, the Debtor has been noticed of the pending 2004 examination not only through the court authorizing the application for such but also through the Trustee's subpoena. The Debtor has not replied

to the instant Motion nor does the court find anything in the record to excuse the Debtor from facially disobeying a subpoena. The Trustee has incurred unnecessary fees and expenses in connection with the not-yet-complete Rule 2004 examination. Upon a review of the attached time sheets and expenses, the court finds that the Debtor shall pay $1,422.76 in attorneys' fees and costs, as fines imposed for Debtor's disobedience of the subpoena.

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 Compel filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel pursuant to Fed. R. Bankr. P. 2004 and 2005 is granted and the Debtor shall attend the Rule 2004 examination and production on xxxxx.
>
> **IT IS FURTHER ORDERED** that Debtor pay $1,422.76 to Trustee, representing Trustee's reasonable and necessary expenses in bringing the instant Motion and the expenses incurred at Debtor's failure to attend the first scheduled Rule 2004 examination.

22. 15-90295-E-7 FELIX/BLANCA BASULTO MOTION TO AVOID LIEN OF
WMS-1 Wilber Manuel Salgado AMERICAN EXPRESS BANK, FSB
7-15-15 [27]

Tentative Ruling: 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).

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 Chapter 7 Trustee, American Express Bank, and Office of the United States Trustee on July 15, 2015. By the court's calculation, 36 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of American Express Bank, FSB ("Creditor") against property of Felix Basulto and Blanca Estela Basulto ("Debtor") commonly known as 1807 Hotsprings Lane, Riverbank, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $9,744.79. An abstract of judgment was recorded with Stanislaus County on December 1, 2014, which encumbers the Property.

NO EXEMPTION CLAIMED

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $195,000.00 as of the date of the petition. The unavoidable consensual liens total $242,130.00 as of the commencement of this case are stated on Debtor's Schedule D.

However, the Debtor has failed to claim an exemption pursuant to Cal. Civ. Proc. Code on Schedule C. On the most recently filed supplemental Schedule C, the Debtor only claims an exemption on their second piece of real property but not the Property at issue in the instant Motion. Dckt. 15. Because Debtor has not claimed any value under any exemption, the fixing of this judicial lien does not impair the Debtor's exemption. Therefore, the Motion is denied without prejudice

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to 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 Motion is denied without prejudice.

23. 14-91596-E-7 TIMOTHY BROWN
UST-2 David Foyil

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS CASE UNDER SEC. 707(B)
6-26-15 [105]

Final Ruling: No appearance at the August 20, 2015 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, Trustee's Attorney, and parties requesting special notice on June 26, 2015. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor and Motion to Extend Time to File A Motion to Dismiss Case Under Sec. 707(B) 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 Extend Deadline to File a Complaint Objecting to Discharge of the Debtor and Motion to Extend Time to File A Motion to Dismiss Case Under Sec. 707(B) is granted.

Tracy Hope Davis, the United States Trustee, ("UST") filed the instant Motion for Extension of Time for Filing Complaint or Motion Objection to Debtor's Discharge Under 11 U.S.C. § 727(a) on June 26, 2015. Dckt. 105.

The UST states that on December 4, 2014, Timothy Brown ("Debtor") filed a voluntary petition. Case No. 14-91596. On March 3, 2015, the case was converted from a Chapter 13 to a Chapter 7. Case No. 14-91596, Dckt. 63.

In a related bankruptcy, *In re Tina M. Brown*, Case No. 10-94467, the Chapter 7 Trustee filed a lawsuit to compel Debtor to turn over property of the bankruptcy estate including: (1) 1997 Harley Davidson Red Fat Boy motorcycle; (2) a 2008 Harley Davidson Cross Bones motorcycle; (3) a 2007 Chevrolet Corvette automobile; and real property located in San Felipe, Mexico. Adversary Proceeding No. 12-09003. On December 13, 2012, the court entered a judgment against the Debtor and ordered him to turnover the Harley's and the Corvette. Adversary Proceeding No. 12-09003, Dckt. 41.

The UST asserts that even after the court order, the Debtor has not turned over the vehicles. The UST states that it appears that the 2008 Harley is in the possession of the Debtor but is disassembled. Dckt.40. The Debtor is seeking to discharge approximately $85,000.00 in general unsecured debt.

The UST states that the deadline for filing a complaint objecting to discharge is not later than 60 days after the first set of meeting of creditors under 11 U.S.C. § 341(a), which translates to a deadline of June 29, 2015.

The UST notes that the Chapter 7 Trustee obtained an extension of time for him to file a complaint to deny the Debtor's discharge, pursuant to a court approved stipulation. Dckt. 103.

The UST requests that the deadline to object to the Debtor's discharge be extended to February 1, 2016.

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b)(1). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 4004(b)(1).

The court finds that the complicated nature of the case, emphasized by the Debtor failing to comply with previous court orders for turnover of certain vehicles and the interest of the UST to complete its investigation is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted and the deadline for the Creditor to object to Debtor's discharge is extended to February 1, 2016.

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 Motion for Extension of Time for Filing Complaint or Motion Objection to Debtor's Discharge Under 11 U.S.C. § 727(a) filed by the United States Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the deadline for the United States Trustee to object to Debtor's discharge is extended to February 1, 2016.

24.	**14-91197-E-7 RHS-1**	**NICOLAS PEREZ AND MARIA MOSQUEDA DEPEREZ Thomas O Gillis**	**ORDER TO APPEAR AND ORDER TO SHOW CAUSE 7-14-15 [102]**

No Tentative Ruling: The Order to Appear and Order to Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Bankruptcy Notice Center states that the Order and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Ana Gonzales, and Office of the United States Trustee on July 16, 2015. By the court's calculation, 35 days' notice was provided.

The Order to Appear and Order to Show Cause 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 Order to Appear and Order to Show Cause is ----------.

On July 14, 2015, the court issued an Order to Appear and Order to Show Cause. Dckt. 102. In the order, the court ordered the following:

> **IT IS ORDERED** that Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes, and aka Anna Jaimes-Gonzales, the bankruptcy petition preparer; Nicolas Perez; and Maria DePerez, and each of them, shall appear in person at the hearing on this Order which shall be conducted at 10:30 a.m. on August 20, 2015. No telephonic appearances are permitted for each of these persons ordered to appear.
>
> **IT IS FURTHER ORDERED** that:

A. On or before July 24, 2015, the Debtors, Chapter 7 Trustee, U.S. Trustee, and any other parties in interest shall file any further pleadings they believe appropriate, if any, concerning the conduct of Ana Gonzales aka Anna Gonzales aka Anna Jaimes aka Anna Jaimes-Gonzales in the bankruptcy case.

B. On or before August 7, 2015, Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes, and aka Anna Jaimes-Gonzales, shall file any Response Pleadings she deems appropriate, including, without limitation, evidence of:

1. The Debtors, and each of them, understanding and review of the Petition, Schedules, Statement of Financial Affairs, and related documents prepared by Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes, and aka Anna Jaimes-Gonzales.

2. The Debtors' selection of the exemptions claimed on Schedule C prepared by Ana Gonzales aka Anna Gonzales aka Anna Jaimes aka Anna Jaimes-Gonzales.

3. The actions taken by Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes, and aka Anna Jaimes-Gonzales to reasonably believe in good faith that the Debtors:

   a. understood the information in the documents prepared by Ana Gonzales aka Anna Gonzales, aka Anna Jaimes, and aka Anna Jaimes-Gonzales in this case;

   b. confirmed that information in such documents was true and correct;

   c. understood that they were stating such information in the documents as true and correct under penalty of perjury;

   d. made the decision of what exemptions to claim on Schedule C; and

   e. understood all of the information which was required to be provided to truthfully and accurate complete the Petition, Schedules, Statement of Financial Affairs, and the related documents filed in this bankruptcy case.

4. The policies and procedures Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes, and

aka Anna Jaimes-Gonzales has in place to reasonably provide for consumer debtors understanding what information is required; that the information must be complete, true, and correct; that they understand they are signing the documents under penalty of perjury; and that Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes, and aka Anna Jaimes-Gonzales cannot provide them with legal advice (including the selection of exemptions).

C. On or before August 14, 2015, Replies, if any, to the Responses of Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes, and aka Anna Jaimes-Gonzales shall be filed and served.

On August 28, 2014, Nicolas Perez and Maria Mosqueda DePerez ("Debtors") commenced this voluntary Chapter 7 case ("Chapter 7 Case") in pro se. Dckt. 1. No attorney signed the Petition, and a non-attorney bankruptcy petition preparer, Ana Gonzales, aka Anna Gonzales, aka Anna Jaimes and aka Anna Jaimes-Gonzales, ("Bankruptcy Petition Preparer"), is reported to have been paid $125.00 for preparing the Petition, Schedules, Statement of Financial Affairs, and supporting documents. Id. at 3, 30, 34, and 41. The Debtors provide the following information under penalty of perjury in their Petition, Schedules, and Statement of Financial Affairs:

A. They both reside at 1613 7th Street, Hughson, California ("7th Street Property"). Petition, Id. at 1.

B. Debtors own only one piece of real property, the 7th Street Property. Schedule A, Id. at 10.

C. Debtors have only one creditor with a secured claim, "Wells Fargo Mortgage," which claim is secured by the 7th Street Property. Schedule D, Id. at 15.

D. Debtor Nicolas Perez is unemployed and has $0.00 average monthly income. Schedule I, Id. at 26.

E. Debtor Maria DePerez is employed, within monthly gross income of $2,560.00. Id.

F. No other income is listed by the Debtors. Id.

G. Debtors list having $26,774.00 in income in 2013 and $25,980.00 in income in 2012. Though the bankruptcy case was filed August 27, 2014, no income information is provided for 2014. Statement of Financial Affairs ("SOFA") Question 1, Id. at 31-32.

On the Chapter 7 Statement of Current Monthly Income, Debtors state that their income for the six months prior to the commencement of the case is an annualized amount of $25,440.00. Id. at 42-44. Further, that this is less than the applicable median income of $29,685.00 for a family of three persons and the presumption of abuse does not arise. Id.

The Schedules prepared by the Bankruptcy Petition Preparer include Schedule C in which the Debtors, under penalty of perjury and subject to Federal Rule of Civil Procedure 9011, claim the following exemptions:

Asset	Statutory Basis	Amount
Cash on Hand	Cal. C.C.P. § 703.140(b)(5)	$165
Checking Account	Cal. C.C.P. § 703.140(b)(5)	$397
Household Furnishings	Cal. C.C.P. § 703.140(b)(3)	$1,950
Reading Material/Bible	Cal. C.C.P. § 703.140(b)(3)	$100
Clothing/Shoes etc.	Cal. C.C.P. § 703.140(b)(3)	$1,600
Fashion Jewelry/Access.	Cal. C.C.P. § 703.140(b)(3)	$100
1998 Ford F-150	Cal. C.C.P. § 703.140(b)(5)	$2,450
2003 P.T. Cruiser	Cal. C.C.P. § 703.140(b)(5)	$1,400
Desk & Computer	Cal. C.C.P. § 703.140(b)(5)	$225
Primary Residence	Cal. C.C.P. § 703.140(b)(2)	$1
Household Misc Yard, Tools	Cal. C.C.P. § 703.140(b)(5)	$350

Dckt. 1 at 14.

After the First Meeting of Creditors, the Chapter 7 Trustee issued a Notice of Assets in this case. November 5, 2014 Docket Entry Report. On December 12, 2015, the Trustee filed a motion to employ counsel. Dckt. 15. On November 26, 2014, Modesto Irrigation District filed a Motion to Extend Deadlines for the filing of objections to discharge and to determine nondischargeability of debt. Dckt. 18. That Motion alleges that Debtor DePerez held title to real property commonly known as 4904 Ebbett Way which was transferred to a Jose Luis Moctezum on June 19, 2013, for no consideration. No disclosure of the Ebbett Way Property was made in the Schedules or the transfer disclosed on the Statement of Financial Affairs.

The Chapter 7 Trustee filed his own motion to extend the deadline to objection to discharge. Dckt. 27. The Trustee's motion further alleges that Debtor DePerez testified at the first meeting of creditors that the Ebbett Way Property had been transferred to her brother-in-law approximately fourteen months prior to the commencement of the Debtor's Chapter 7 case.

The Chapter 7 Trustee then filed two adversary proceedings to recover real property transferred by Debtors to third parties. In Adversary Proceeding 14-9030 the Chapter 7 Trustee sought to avoid the transfer of the Ebbett Way Property. On March 11, 2015, the Chapter 7 Trustee filed a notice of dismissal of the Adversary Proceeding, stating, "With the assistance of new counsel, Thomas Gillis, secured the voluntary transfer of the real property [Ebbett Way] back to Maria Mosqueda DePerez..." 14-9030, Dckt. 16.

In the second adversary proceeding the Chapter 7 Trustee sought to avoid the transfer by Debtors of the real property commonly known as 136 Algen

Avenue." 14-9031. In this second Adversary Proceeding the Chapter 7 Trustee filed a dismissal, stating, "With the assistance of new counsel, Thomas Gillis, secured the voluntary transfer of the real property [Ebbett Way] back to Maria Mosqueda DePerez..." 14-9031, Dckt. 16.

The court granted the Trustee's Motion to Extend the Deadline to Object to Discharge. Order, Dckt. 56. On April 27, 2015, the Chapter 7 Trustee filed a Motion to Compel Debtors to Turnover Property of the Estate consisting of the 490 Ebbett Way Property and the 136 Algen Avenue Property. Dckt. 59.

Debtors opposed the Chapter 7 Trustee's Motion to Turnover Property of the Estate, asserting that the Chapter 7 case had been filed by mistake. Response, Dckt. 68. Debtors stated that they would be filing a motion to dismiss the Chapter 7 case. Further, Debtors argue that they filed and prosecuted the Chapter 7 case in pro se, and did not understand the requests of the Trustee, until they engaged the service of Thomas Gillis. On June 11, 2015, the court filed its order requiring Debtors to turnover both real properties and related personal property to the Trustee by June 19, 2015. Order, Dckt. 81.

On July 7, 2015, Debtor Nicholas Perez, in pro se, filed a Motion to Dismiss the bankruptcy case. Dckt. 92. It appears identical to the Motion to Dismiss that Thomas Gillis filed for Debtor Maria DePerez on June 9, 2015. Dckt. 75. In the DePerez Motion to Dismiss, it is asserted,

A. Debtors have disposable income of $248.50 a month, and asserts that this "exceeds eligibility for Chapter 7."

B. Debtors assert that over a five-year period, they would have $10,000.00 of disposable income.

C. Debtor Nicholas Perez is unemployed and uneducated (having only attended through the second grade in Mexico).

D. Co-Debtor Maria DePerez is also asserted to being uneducated, and unable to read or write English.

E. Debtors obtained a $100,000.00 life insurance payment when their son died in 2008.

F. Debtors (who are stated to be uneducated) then used the $100,000.00 to invest in two rental properties located in Modesto, California.

G. Co-Debtor was suffering from depression when the Chapter 7 Case was filed.

H. Debtors did not know that the tenant in the Everett Street Property was growing marijuana on the property and was stealing electricity from Modesto Irrigation District.

I. When Debtors were served with a complaint filed by Modesto Irrigation District they state that they were told by an unidentified employee of the District to "file some papers" and that the employee recommended a "typing service."

J. Debtors went to a paralegal who prepared the bankruptcy for Debtors. They further state that the documents were filed out in pen and not explained to them.

K. Debtors further assert that they did not read or understand what they were signing.

Dckt. 75.

On June 9, 2015, the declaration of Debtor Maria DePerez was filed in support of the Motion to Dismiss. Dckt. 77. In her Declaration, Ms. DePerez purports to state under penalty of perjury:

A. She is uneducated, having attended school only through the sixth grade in Mexico.

B. She is not able to read or write English.

C. The Co-Debtor Nicholas Perez is also uneducated, having attended school only through the second grade in Mexico. Further, the Co-Debtor is not employed.

D. Debtor and Co-Debtor have been "separated" for eight years.

E. Debtors used the $100,000.00 in life insurance proceeds to purchase two rental properties in Modesto, California.

F. Ms. DePerez states that she is under medical treatment for depression arising from several different sources.

G. Debtors were not aware that their tenant for the Everett Street Property was using it for illegal purposes and was stealing electricity.

H. She states that she and the Co-Debtor never reviewed the bankruptcy documents filed with the court, and did not understand them when she signed them [under penalty of perjury].

I. Finally, Ms. DePerez goes so far as to provide her personal legal conclusion that "We are not eligible for Bankruptcy."

Declaration, Dckt. 77.

A declaration, prepared by counsel for Ms. DePerez, has also been filed by Co-Debtor Nicholas Perez. Dckt. 78. Mr. Perez states:

A. Mr. Perez is uneducated, having only attended through second grade in Mexico.

B. He is disabled and unable to work.

C. The bankruptcy petition preparer did not explain the documents and Mr. Perez did not know what he was signing.

Declaration, Dckt. 78.

This Motion to Dismiss and the testimony under penalty of perjury in the Debtors' declarations raise some very serious issues concerning the conduct of not only the Debtors, but the Bankruptcy Petition Preparer who assisted the Debtors in filing the bankruptcy case. Taken at face value, the Bankruptcy Petition Preparer has engaged in the business practices of: (1) being paid by less sophisticated consumer debtors for bankruptcy petitions and other documents to be filed with the court; (2) not having the less sophisticated consumer debtors read the documents prepared before signing them and filing them with the court; (3) not having a good faith belief that the less sophisticated consumer debtors understand what is stated in the documents or that the less sophisticated consumer debtors confirm that the information is accurate; and (4) preparing inaccurate documents for filing for with the court.

BANKRUPTCY PETITION PREPARER IN THIS CASE AND DUTIES TO DEBTORS AND COURT

The Debtors report, and the Bankruptcy Petition Preparer confirms on the documents filed in this case, that Anna Gonzales [though the printed name and signature are almost illegible on the documents filed in this case] provided the services of a bankruptcy petition preparer for the Debtors. Congress has statutorily defined a "bankruptcy petition preparer" in 11 U.S.C. § 110(a) as follows,

> (a) In this section--
>
> (1) "bankruptcy petition preparer" means a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing; and
>
> (2) "document for filing" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

This statutory definition is very broad in scope, excluding only an attorney for a debtor or an employee of, and directly supervised by, that attorney for a debtor.

The bankruptcy petition preparer must sign and print the preparer's name and address on the document which was prepared for a debtor to be filed with a United States bankruptcy court or United States district court. 11 U.S.C. § 110(b)(1). In addition, the bankruptcy petition preparer shall provide the debtor a written notice that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice. The written notice must be signed by the debtor and, under penalty of perjury, by the bankruptcy petition preparer. 11 U.S.C. § 110(b)(2).

The bankruptcy petition preparer is also required to provide an identifying number, after the preparer's signature, which identifies the

individual who prepared the document. This identifying number is the Social Security account number of each individual bankruptcy petition preparer, or the officer, principal, responsible person, or partner if the bankruptcy petition preparer is not an individual. 11 U.S.C. § 110(c).

Congress created specific limitations on the services provided by, and the conduct of, a bankruptcy petition preparer.

A. A bankruptcy petition preparer shall not execute any document on behalf of a debtor.

B. A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including, without limitation,

1. whether–

    a. to file a petition under this title; or

    b. commencing a case under chapter 7, 11, 12, or 13 is appropriate;

2. whether the debtor's debts will be discharged in a case under this title;

3. whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title;

4. concerning–

    a. the tax consequences of a case brought under this title; or

    b. the dischargeability of tax claims;

5. whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

6. concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or

7. concerning bankruptcy procedures and rights.

11 U.S.C. § 110(e). (All of the above collectively referred to as “Prohibited Services” by the court in this Order to Appear and Order to Show Cause.) The bankruptcy petition preparer is also prohibited from using the word "legal" or any similar term in any advertisements, or advertise under any category that includes the word "legal" or any similar term. 11 U.S.C. § 110(f).

This statute further provides that the Supreme Court by rule or the Judicial Conference of the United States by guidelines, may set the maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy petition preparer is required to notify a debtor of any such maximum amount

before preparing any document for filing for that debtor or accepting any fee from, or on behalf of, that debtor. 11 U.S.C. § 110(h)(1). The bankruptcy petition preparer's declaration shall include a certification that the bankruptcy petition preparer provided notification of the maximum fee set by rule or guidelines which may be charged by the bankruptcy petition preparer. In the Eastern District of California the maximum fee charged by a bankruptcy petition preparer is $125.00. *Guidelines Pertaining to Bankruptcy Petition Preparers in Eastern District of California Cases*, dated October 20, 1997, ¶ 2.

A bankruptcy petition preparer's disclosure of fees is not limited to only those fees which the bankruptcy petition preparer allocates for the preparation of documents to be filed with the court. A bankruptcy petition preparer must also file a declaration under penalty of perjury disclosing any fee received from or on behalf of a debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor. 11 U.S.C. § 110(h)(2).

If a bankruptcy petition preparer charges any fee in excess of the value of any services rendered by the bankruptcy petition preparer during the 12-month period immediately preceding the date of the filing of the petition, or which is in violation of any rule or guideline, the court "shall" (not "may") disallow and order the immediate turnover of such fee, in excess of the amount permitted, to the bankruptcy trustee. 11 U.S.C. § 110(h)(3)(A). The consequences are more severe for a bankruptcy petition preparer determined by the court to have engaged in any Prohibited Services. All fees charged by such bankruptcy petition preparer engaging in Prohibited Services "may" (not "shall") be forfeited. 11 U.S.C. § 110(h)(3)(B).

A bankruptcy petition preparer who violates § 110 or commits any act that the court finds to be fraudulent, unfair, or deceptive "shall" (not "may") be ordered by the court to pay to the debtor,

A. the debtor's actual damages;

B. the greater of–

1. $ 2,000; or

2. twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

C. Reasonable attorneys' fees and costs in moving for damages under 11 U.S.C. § 110.

11 U.S.C. § 110(i)(1). If the trustee or creditor moves for damages on behalf of the debtor under this subsection, the bankruptcy petition preparer "shall" (not "may") be ordered to pay the movant the additional amount of $ 1,000.00, plus reasonable attorneys' fees and costs. 11 U.S.C. § 110(i)(2).

Congress provides in 11 U.S.C. § 110(l)(1) and (2) additional fines in an amount of not more than $500.00 which "may" (not "shall") be imposed for each Prohibited Service at issue in this Motion. In addition, the amount of

such fines "shall" (not "may") be trebled if the court finds that a bankruptcy petition preparer,

A. advised the debtor to exclude assets or income that should have been included on applicable schedules;

B. advised the debtor to use a false Social Security account number;

C. failed to inform the debtor that the debtor was filing for relief under this title; or

D. prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer.

11 U.S.C. § 110(l)(1),(2). Fines imposed under § 110(l) shall be paid to the United States Trustee, who shall deposit an amount equal to such fines in the United States Trustee Fund.

The Ninth Circuit Court of Appeals addressed issues relating to bankruptcy petition preparers in *Frankfort Digital Servs. v. Kistler (In re Reynoso)*, 477 F.3d 1117 (9th Cir. 2007). Services provided by bankruptcy petition preparers are strictly limited to typing bankruptcy forms. *Id.* at 1125. Services or goods which do more than merely fill in forms with information provided by the debtor exceed the permitted activities for a bankruptcy petition preparer. In Frankfort, the Court of Appeals affirmed the determination that software provided by a bankruptcy petition preparer which chose the exemptions to be used by the debtor was similar to other goods and services provided by a bankruptcy petition preparer which made decisions for the debtor (rather than merely filing out documents with information from the debtor) that violate 11 U.S.C. § 110. This includes providing software programs to consumers which "determines" the exemptions that the consumer should elect for his or her bankruptcy schedules. There is not even a requirement that the bankruptcy petition preparer meet or interact with the consumer for the input of the information or use of the software to generate the documents for filing. *Id.* at 1123-24.

AUTHORITY OF COURT TO ADDRESS CONDUCT OF PERSONS IN THE COURT

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. Cooter & *Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or sua sponte by the court itself. These sanctions are corrective, and limited to what is required to

deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemptor must have an opportunity to reduce or avoid the fine through compliance. Id. The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. Id. at 1059.

This power has been augmented by Congress in 11 U.S.C. § 110. Congress has specifically provided for federal judges to address, sanction, and correct conduct of bankruptcy petition preparers. This includes the disgorgement of fees, and imposition of mandatory and discretionary statutory fines and fees.

ISSUES RAISED BY DEBTORS' TESTIMONY UNDER PENALTY OF PERJURY

Taken at face value, the testimony of the Debtors is that the Bankruptcy Petition Preparer accepted payment of $125.00 to prepare the Petition, Schedules, Statement of Financial Affairs, and related documents to commence this bankruptcy case, which the Debtors did not review, signed without reading, and had filed without knowing what information was stated therein. Further, Debtors' testimony is that they did not understand what was in these documents, and implicitly therein, that the Bankruptcy Petition Preparer did not make any effort to have the information translated or presented in a manner for Debtors to understand.

Taken at face value, Debtors have no idea of the exemptions claimed on Schedule C prepared by the Bankruptcy Petition Preparer. The selection of exemptions is a legal decision, one which cannot be performed by a bankruptcy petition preparer.

TRUSTEE'S RESPONSE

Michael McGranahan, the Chapter 7 Trustee, filed a response to the Order on July 17, 2015. Dckt. 107. The Trustee states that the Debtors have not complied with the deadline to turnover information, rents, and the subject properties 4904 Ebbett Way, Modesto, California, and real property at 136 Algen Ave., Modesto, California.

The Trustee states that the Debtors have only provided only one rent payment for the Algen property for the period of June 2015. Additionally, Debtor Maria Mosqueda DePerez provided an unsworn and unfiled document entitled "Accounting of Debtor for Funds Received ($600 per month)." The Trustee states

that no back up information was provided nor have cancelled checks as requested been provided.

Debtor Mosqueda De Perez's entry on October 15, 2014 to the Accounting reflects that Debtors have paid their paralegal to do the bankruptcy between the period of "Aug-Mar" a sum of $2,000.00 without court authorization which conflicts with the statements on the Statement of Financial Affairs.

Lastly, the Trustee states that he has learned that the Debtors continue to interfere with the Trustee's efforts to collect ongoing rent concerning the Ebbett Way property in that the tenants at the establishment have apparently been contacted by Debtor Maria Mosqueda DePerez and they do not want to turnover perspective rents to the Trustee.

AUGUST 20, 2015 HEARING

At the hearing, xxxxx

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 Appear and Order to 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 xxxxxxxxxxxx.

25. 13-91299-E-7 JUANA CHAVEZ
ICE-1 George L. Alonso

OBJECTION TO CLAIM OF LANNY AND NOLBERTA WILSON, CLAIM NUMBER 8
7-14-15 [38]

Final Ruling: No appearance at the August 20, 2015 hearing is required.

Local Rule 3007-1 Objection to Claim.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee(s) Attorney, Lanny and Nolberta Wilson, Creditors, parties requesting special notice, and Office of the United States Trustee on July 14, 2015. By the court's calculation, 37 days' notice was provided. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.)

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 Proof of Claim Number 8 of Lanny and Nolberta Wilson is sustained and the claim is disallowed in its entirety.

Irma Edmonds, the Chapter 7 Trustee, filed the instant Objection to Claim No. 8 on July 14, 2015. Dckt. 38. FN.1. Proof of Claim No. 8 is filed by Lanny and Nolberta Wilson ("Claimants"), who are listed as secured creditors in the amount of $102,515.20.

FN.1. The court notes that in the Trustee's Notice of Hearing, the Objection is said to be on Local Bankr. R. 9014-1(f)(2) notice but states that written opposition is required. This is incorrect under the local rules. However, because the Claimants have responded, such defect is waived.

The Trustee objects on the grounds that claimants fail to provide a basis for the secured claim, other than claiming they have equitable lien rights.

On August 21, 2014, the court approved a settlement between the Trustee and Claimants resolving the objection. Dckt. 27. The settlement resolved claims with the real property at issue and the Claimants paid the estate $25,500.00 in satisfaction of the claim.

The Trustee argues that, in light of the settlement, the claim should be denied in its entirety.

On August 3, 2015, the Claimants filed a Notice of Non-Opposition. Dckt. 47. The Claimants state that they do not oppose because the claims have been settled and released as part of the settlement.

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 evidence before the court and the previously approved settlement, the Claimant's claim is disallowed in its entirety. 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 Lanny and Nolberta Wilson, Creditor filed in this case by Irma Edmonds, Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 8 of Lanny and Nolberta Wilson is sustained and the claim is disallowed in its entirety.

26. 13-91299-E-7 JUANA CHAVEZ — OBJECTION TO CLAIM OF LANNY WILSON, CLAIM NUMBER 7
ICE-2 George L. Alonso — 7-14-15 [42]

Final Ruling: No appearance at the August 20, 2015 hearing is required.

Local Rule 3007-1 Objection to Claim.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee(s) Attorney, Lanny and Nolberta Wilson, Creditors, parties requesting special notice, and Office of the United States Trustee on July 14, 2015. By the court's calculation, 37 days' notice was provided. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.)

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 Proof of Claim Number 7 of Lanny Wilson is sustained and the claim is disallowed in its entirety.

Irma Edmonds, the Chapter 7 Trustee, filed the instant Objection to Claim No. 8 on July 14, 2015. Dckt. 42. FN.1. Proof of Claim No. 7 is filed by Lanny Wilson ("Claimant"), who are listed as secured creditors in the amount of $6,000.00.

FN.1. The court notes that in the Trustee's Notice of Hearing, the Objection is said to be on Local Bankr. R. 9014-1(f)(2) notice but states that written opposition is required. This is incorrect under the local rules.

The Trustee objects on the grounds that claimants fail to provide a basis for the secured claim, other than claiming they have equitable lien rights.

On August 21, 2014, the court approved a settlement between the Trustee and Claimants resolving the objection. Dckt. 27. The settlement resolved claims with the real property at issue and the Claimants paid the estate $25,500.00 in satisfaction of the claim.

The Trustee argues that, in light of the settlement, the claim should be denied in its entirety.

On August 4, 2015, the Claimants filed a Notice of Non-Opposition. Dckt. 49. The Claimants state that they do not oppose because the claims have been settled and released as part of the settlement.

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 evidence before the court and the previously approved settlement, the Claimant's claim is disallowed in its entirety. 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 Lanny Wilson, Creditor filed in this case by Irma Edmonds, Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 7 of Lanny Wilson is sustained and the claim is disallowed in its entirety.