UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

August 21, 2014 at 10:30 a.m.

1.	**13-91601-E-7** **HCS-4**	**TIMOTHY/KATHLEEN JOHNSON** **Christian J. Younger**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM/CRABTREE/SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S)** **7-17-14 [109]**

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

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

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Herum\Crabtree\Suntag ("Applicant"), the Attorney for Guy Farrar 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 December 20, 2013 through August 21, 2014. The order of the court approving employment of Applicant was entered on February 11, 2014, Dckt. 92.

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

General Case Administration: Applicant spent 5.5 hours in this category. Applicant assisted Client with preparing the employment application, reviewing Debtor's schedules, determining whether to object to exemptions or to file a complaint objecting to discharge, and preparing the instant application for compensation.

Review and Oppose Motion to Compel Abandonment: Applicant spent 6 hours in this category. Applicant reviewed Debtor's motion to compel abandonment of personal property including vehicles and equipment, prepared an opposition to the motion, and prepared a stipulation.

Application to Employ Auctioneer and Motion to Sell: Applicant spent 7.1 hours in this category. Applicant prepared and filed an application to employ First Capitol as an auctioneer for Debtor's 2007 Chevrolet Silverado, prepared and filed a motion to sell Debtor's 2007 Chevrolet Silverado at a public auction.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general case administration, reviewing and opposing motion to compel abandonment, application to employ auctioneer, and motion to sell at a value of $4,000.00. The estate has $11,485.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Dana A. Suntag, Esq., shareholder; admitted to California State Bar in 1986.	1.5	$315.00	$472.50
Loris L. Bakken, Esq., associate; admitted to California State Bar in 2001.	11.0	$295.00	$3,245.00
Ricardo Z. Aranda, Esq., associate; admitted to California State Bar in 2008.	4.6	$250.00	$1,150.00
Wendy A. Locke, Esq., associate; admitted to California State Bar in 2012.	.8	$225.00	$180.00
Audrey A. Dutra, Paralegal; received Paralegal Certificate, Humphreys College 2001	.7	$90.00	$63.00
Total Fees For Period of Application			$5,110.50

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $200.97 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$68.97
Copying Cost	$0.10	$132.00
Total Costs Requested in Application		$200.97

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Additionally, the court finds that the First and Final Costs are reasonable. The Applicant stipulated in the instant motion to reduce the First and Final Fees and Costs to $4,000.00.

Therefore, the First and Final Fees and Costs in the amount of

$4,000.00 pursuant to final review are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case. The court is authorizing that Trustee pay 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, Costs and Expenses $4,000.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Herum\Crabtree\Suntag ("Applicant"), Attorney for the 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 Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:
>
> Herum\Crabtree\Suntag, Attorney Employed by Trustee
>
> Fees and Expenses in the amount of $4,000.00
>
> The fees and costs are allowed 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.

2.	**14-90003-E-7**	**JAN SIMPSON**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM, CRABTREE, SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S)**
	HCS-2	**Pro Se**	**7-16-14 [19]**

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on July 16, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Herum\Crabtree\Suntag ("Applicant"), the Attorney 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 April 17, 2014 through July 31, 2014. The order of the court approving employment of Applicant was entered on April 27, 2014, Dckt. 18.

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

General Case Administration: Applicant spent 6.6 hours in this category. Applicant assisted Client with reviewing the case for the possibility of exemption or discharge issues and preparing the employment and fee applications.

Recovery of Property of the Estate: Applicant spent 6.7 hours in this category. Applicant wrote a demand letter to the Debtor requesting turnover of insurance proceeds, reviewed insurance distribution documentation to ensure that there was no wrongful disbursements, and wrote a demand letter to have distributions turned back over the estate to a recipient of wrongfully distributed proceeds.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including reviewing the Debtor's petition for possibility exemption or discharge issues, preparing employment and fee applications, drafting demand letters to turnover insurance proceeds valued at $3,169.00. The estate has $61,717.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Dana A. Suntag, Esq., shareholder; admitted to California State Bar in 1986.	1.5	$325.00	$487.50

Loris L. Bakken, Esq., associate; admitted to California State Bar in 2001.	5.2	$295.00	$1,534.00
Wendy A. Locke, Esq., associate; admitted to California State Bar in 2012.	4.1	$225.00	$922.50
Audrey A. Dutra, Paralegal; received Paralegal Certificate, Humphreys College 2001	2.5	$90.00	$225.00
Total Fees For Period of Application			$3,169.00

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 $3,169.00 pursuant to 11 U.S.C. § 330 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

COSTS AND EXPENSES ALLOWED

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $40.73 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$18.33
Copying	$0.10 per page	$11.20
Total Costs Requested in Application		$29.53

The Applicant pled for $0.20 per page in copying costs. In this jurisdiction, the maximum allowance for copying is $0.10 per page and the cost request has been reduced accordingly.

The First and Final Costs in the amount of $29.53 pursuant to 11 U.S.C. § 330 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case. The court is authorizing that Trustee pay 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	$3,169.00
Costs and Expenses	$29.53

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Herum\Crabtree\Suntag ("Applicant"), Attorney for 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 Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:
>
> Herum\Crabtree\Suntag, Attorney employed by Trustee
>
> Fees in the amount of $3,169.00
> Expenses in the amount of $29.53,
>
> The fees and costs are allowed 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.

3. 11-94410-E-11 SAWTANTRA/ARUNA CHOPRA — MOTION TO ABANDON
HSM-22 Robert M. Yaspan — 8-7-14 [919]

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

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

resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Property is granted.

The Motion filed by Gary Farrar, Chapter 11 Trustee ("Trustee") requests the court to authorize Trustee to abandon the real properties known as APN 079-015-029 ("29 Parcel") and APN 078-015-030 ("30 Parcel"), located at 4754 Dale Road, Modesto, California (collectively "The Properties").

Trustee states that on September 26, 2013, Joann Irene Bledsoe, et. al. ("Bledsoe Creditors"), filed a Motion for Relief From the Automatic Stay (the "Bledsoe Motion for Relief") seeking relief from the automatic stay with respect to the Properties, so that the Bledsoe Creditors can exercise their rights under state law, including foreclosure of the Properties. Dckt. 597. On December 4, 2013, Lucille E. Arterburn, et. al. ("Mid Valley Assignees"), filed a Motion for Relief From the Automatic Stay (the "Mid Valley Motion for Relief") seeking relief from the automatic stay with respect to the Properties so that the Mid Valley Assignees could exercise their rights under state law, including foreclosure of the Properties. Dckt. 684. At a hearing held July 24,2014, the Court granted the Bledsoe Motion for Relief and the Mid Valley Motion for Relief, and ordered that the automatic stay shall terminate as to the 029 Parcel and the 030 Parcel, effective August 21,2014. Dckts. 915 and 914.

Trustee states that he and his professionals have worked tirelessly to market the Dale Road Project as a whole, including 29 Parcel and 30 Parcel. Trustee states he has been involved in this case for almost two years, has participated in discussions with numerous third parties purportedly interested in developing the Dale Road Project. The Dale Road Project, as a whole, has been extensively exposed to the market, both through the Debtors' unsuccessful attempts to sell the property through a plan of reorganization or otherwise, and the Trustee's marketing of the property, independently and through his court-approved real estate broker,

Lee & Associates. Trustee states that while these efforts elicited interest in the Dale Road Project, neither the Trustee nor the Debtors have been able to sell the Dale Road Project to a bona fide buyer, able to perform on commercially reasonable terms within a reasonable period of time.

Trustee contends that his efforts were necessary to explore sale scenarios involving the entire Dale Road Project which could result in the maximum benefit for creditors and the estate, however, those efforts have reached their end. The Trustee and his professionals have thoroughly investigated the Properties through market exposure, sale negotiations, and numerous communications with interested third parties, attorneys for the Debtors, and attorneys for the Bledsoe Creditors and the Mid Valley Assignees. Based upon such review, and his experience as a trustee, the Trustee has determined that there is no realizable equity in the Properties, and that the Properties are therefore of inconsequential value and benefit to the estate.

The Trustee also argues that the Properties are burdensome to the estate due to potential security, maintenance and insurance costs, other potential risks faced by the estate through continued ownership of the Properties. The automatic stay will no longer prevent the Bledsoe Creditors and Mid Valley Creditors from foreclosing on the Properties after August 21, 2014. Trustee states that The Properties are burdensome to the estate due to the possible negative tax consequences to the estate from a foreclosure of the estate's interest in the Properties by those creditors.

DEBTOR'S OPPOSITION

Debtors Sawtantra and Aruna Chopra oppose the motion to abandon The Properties based on evidentiary objections to Trustee's Declaration. Debtor argues that there is not admissible evidence supporting that the properties are burdensome to the estate other than minimal security, maintenance and insurance costs over the next two to three weeks or until foreclosure.

Debtors first objection to the Trustee's declaration is that the statements in paragraphs 3, 4, 5, 6 and 12 are made "under information and belief." A review of the Declaration shows the following statements:

1. Based on my review of pleadings on the PACER Docket in this case, and familiarly with this case as Trustee, **I am informed and believe** that SAWTANTRA CHOPRA and ARUNA CHOPRA, the Debtors herein ("Debtors"), filed their voluntary petition under Chapter 11 of the Bankruptcy Code on December 30, 2011.

2. Based on my review of pleadings on the PACER Docket in this case, and familiarly with this case as Trustee, **I am informed and believe** that I was appointed Chapter 11 Trustee on October 12, 2012, which appointment was approved by order entered October 18, 2012.

3. Based on my review of pleadings on the PACER Docket in this case, specifically Docket No. 597, and familiarly with this case as Trustee, **I am informed and believe** that on September 26, 2013, Joann Irene Bledsoe, et. al. ("Bledsoe Creditors"),

filed a Motion for Relief From the Automatic Stay [SSA-4] (the "Bledsoe Motion for Relief') seeking relief from the automatic stay with respect to the Properties, so that the Bledsoe Creditors can exercise their rights under state law, including foreclosure of the Properties.

4. Based on my review of pleadings on the PACER Docket in this case, specifically Docket No. 684, and familiarly with this case as Trustee, **I am informed and believe** that on December 4, 2013, Lucille E. Arterburn, et. al. ("Mid Valley Assignees"), filed a Motion for Relief From the Automatic Stay [MG-4] (the "Mid Valley Motion for Relief') seeking relief from the automatic stay with respect to the Properties so that the Mid Valley Assignees could exercise their rights under state law, including foreclosure of the Properties.

5. **I am informed** that the automatic stay will no longer prevent the Bledsoe Creditors and Mid Valley Creditors from foreclosing on the Properties after August 21, 2014.

Declaration, Dckt. 922. While it is true that the Trustee only has information and belief as the basis for what he is stating, he is merely stating what is already in the court's record and which could be stated in a points and authorities citing to the record.

None of these facts - the date of the filing of the bankruptcy, the date he was appointed as Trustee, the dates the motions for relief were filed, or the status of the automatic stay - are facts which must be adjudicated in ruling on the current motion. These are general facts that any party viewing this case docket could find or that the Court has already made findings of fact and conclusions of law regarding. These facts are not the operating facts to this Motion to Abandon and therefore, the court will not have to consider them in its findings of fact.

Debtors also object to paragraph 11 of the Trustee based on "conclusory testimony without factual support." However, the Trustee lays out several facts, including the values of the subject Properties from Debtors' own admissions. Based on these undisputed facts and his position as Chapter 11 Trustee, a fiduciary of the estate, he concludes there is no equity in the properties and that they are of inconsequential value and benefit to the estate. This is well within his purview of decision making as a Chapter 11 Trustee, and states his conclusions, as Trustee, in seeking this relief from the court. 11 U.S.C. § 554(b).

Debtors also object to paragraph 12 stating that it is irrelevant, hearsay and improper opinion testimony. The Trustee's opinion that the property is burdensome to the estate is not irrelevant in a motion to abandon property (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)). In some respects the Debtors may argue that this testimony is redundant of the Motion itself, with the Trustee confirming that he has investigated and reached his personal conclusion on this point. Clearly stating this under penalty of perjury is the better court to clearly document in the record the Trustee's active

involvement in the administration of the estate. Furthermore, there is no "out-of-court statement introduced to prove the truth of the matter asserted therein." Fed. R. Evid. 801. Finally, the Trustee is well within his purview of decision making as a Chapter 11 Trustee to determine that "possible negative tax consequences to the estate" can arise from a foreclosure of the estate's interest in the property.

Debtor then appears to state no objection to the motion if the "net operating loss" attributable to the property being abandoned would also be abandoned as part of the same order, which is required by relevant cases. The motion before the court is to abandon the real properties known as APN 079-015-029 ("29 Parcel") and APN 078-015-030 ("30 Parcel"), located at 4754 Dale Road, Modesto, California. The court cannot and will not order other assets to be abandoned that were not noticed in the motion, including "net operating loss," tax claims or any other items.

DISCUSSION

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 Trustee has provided sufficient evidence that there is no realizable equity in the Properties and that they are inconsequential value and benefit to the estate. The court agrees that over the past two years that this case has been pending, Debtors have attempted to reorganize with the Properties: the time has come for action. Trustee and his professionals have worked to market the Dale Road Project as a whole, including 29 Parcel and 30 Parcel, participated in discussions with numerous third parties purportedly interested in developing the Dale Road Project, but to no success. Neither the Trustee nor the Debtors have been able to sell the Dale Road Project or the Properties to a bona fide buyer able to perform on commercially reasonable terms within a reasonable period of time.

Furthermore, on September 26, 2013 the Bledsoe Creditors, filed a Motion for Relief From the Automatic Stay seeking relief from the automatic stay with respect to the Properties, so that the Bledsoe Creditors can exercise their rights under state law, including foreclosure of the Properties. Dckt. 597. On December 4, 2013, the Mid Valley Assignees filed a Motion for Relief From the Automatic Stay seeking relief from the automatic stay with respect to the Properties so that the Mid Valley Assignees could exercise their rights under state law, including foreclosure of the Properties. Dckt. 684. At a hearing held July 24, 2014, the Court granted the Bledsoe Motion for Relief and the Mid Valley Motion for Relief, and ordered that the automatic stay shall terminate as to the 29 Parcel and the 30 Parcel, effective August 21,2014. Dckts. 915 and 914. Therefore, the automatic stay as to the 29 Parcel and the 30 Parcel is no longer in effect as of the date of this hearing. The court expressly found that these properties are not necessary for an "effective reorganization." See Minutes, Dckt. 914.

It appears the Debtors are arguing that after 3 years in this

pending bankruptcy, and the stay as to the Properties being terminated, they still want to stash the property in the bankruptcy estate so they can speculate on a reorganization when the Trustee has concluded that no "effective reorganization" with the property is possible. The does not find this argument persuasive. Debtors have failed to show that this property is a benefit to the estate. FN.1.

FN.1. It cannot be forgotten that not only were the Debtors afforded the first nine months of this case during which they were in control of this case as the Debtors in Possession, but the Chapter 11 Trustee has afforded them extensive leeway to advance a plan (for which the Trustee could have been a persuasive advocate) in this case. It is now, 32 months after the case has been filed and the court has finally terminated the automatic stay and the Trustee is abandoning the property that the Debtors contend it should remain in the bankruptcy estate. The Debtors' opportunity to prosecute and advance a good faith, bona fide plan in this case has not been impaired by the Trustee now abandoning the property.

The court finds that the negative financial consequences for the Estate if it retains the Property are also apparent, due to potential security, maintenance and insurance costs, other potential risks to the Properties. The Debtors cannot force the Trustee to shoulder burdens which he has determined are adverse to the best interests of the estate. The court determines that the Property is of inconsequential value and benefit to the Estate, and authorizes the Trustee to abandon the Property.

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 to Abandon Property filed by the Gary Farrar, Chapter 11 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 real properties identified as:
>
> APN 079-015-029 ("29 Parcel") and APN 078-015-030 ("30 Parcel"), located at 4754 Dale Road, Modesto, California,
>
> are abandoned to Sawtantra and Aruna Chopra, Debtors, by this order, with no further act of the Trustee required.

4. 11-94410-E-11 SAWTANTRA/ARUNA CHOPRA MOTION TO ABANDON
HSM-23 Robert M. Yaspan 8-7-14 [926]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Property is granted.

The Motion filed by Gary Farrar, Chapter 11 Trustee ("Trustee") requests the court to authorize Trustee to abandon the real properties known as (1) 1907 East F Street, Oakdale, California ("F Street Property") and (2) APN 078-015-007, located at 4754 Dale Road, Modesto, California ("07 Parcel")(collectively "The Properties").

Based on the Debtors' Schedules, proofs of claims filed in this case, and the Trustee's investigation of the Properties, the Trustee is informed that the following liens (other than real property taxes) encumber the Properties:

a. F Street Property

i. $700,000.00 - Mid Valley Services, Inc. ("700K Mid Valley Creditors").

(1) This deed of trust is scheduled as cross-collateralized on the 07 Parcel, as well as APN 078-015-029 ("29 Parcel") located at 4754 Dale Road, Modesto, California.

b. 07 Parcel

i. $860,000.00 - Don Mosco ("Mosco"). The Debtors' Amended Schedule D listed the beneficiary of this deed of trust as Mid Valley Services, Inc. The Trustee is informed based on communications with Mr. Mosco's attorney, Eric D. Capron, and review of Proof of Claim No. 8-1, that the beneficiary of this note and deed of trust is now Mosco.

(1) This deed of trust is scheduled as cross-collateralized on the properties located at 313 Banner Court, Modesto, California, and 1317 Oakdale Road, Modesto, California, however, the Trustee is aware of no evidence that Mosco is secured by the 1317 Oakdale Road property. Only the 07 Parcel and 313 Banner Court are listed as collateral in Mosco's Proof of Claim.

ii. $700,000.00 - 700K Mid Valley Creditors.

(1) Again, this deed of trust is scheduled as cross-collateralized on the 07 Parcel, as well as the 30 Parcel.

On July 18, 2014, the 700K Mid Valley Creditors filed a Motion for Relief From the Automatic Stay, Dckt. 898, seeking relief from the automatic stay, so that the 700K Mid Valley Creditors can exercise their rights under state law, including foreclosure. The 700K Mid Valley Creditors allege that the amount owed in connection with their secured claim has grown to at least $983,595.62. The Trustee intends to file a statement of non-opposition to the 700K Mid Valley Motion for Relief.

The Trustee has concluded that the 07 Parcel is of inconsequential value and benefit to the estate, and is otherwise burdensome to this estate and its administration. The Debtors' Disclosure Statement proposes to sell both the 07 Parcel (9.53 acres) and Dale Road APN 078-015-025 (also 9.53 acres) ("025 Parcel") for the aggregate total of $2,777,778.00. The joint venture entity which will buy the 007 Parcel and the 025 Parcel will be controlled 90% by Sanjiv and Sheena Chopra ("Sanjiv and Sheena"), the Debtors' son and daughter-in-law, who are themselves recently-reorganized former Chapter 11 debtors. The Trustee has little confidence that this proposed deal will ever come to fruition. Sanjiv and Sheena have not approached the Trustee or the Trustee's real estate agent, Jim Martin of Lee & Associates, to purchase the 007 Parcel or the 025 Parcel. Trustee argues

that the Debtors' efforts in connection with the 007 Parcel are "too little, too late" and are not credible at this late stage. Trustee argues that the estate and its creditors should not be made to bear the risk of continued ownership of the 07 Parcel, which is at risk of foreclosure in connection with the 700K Mid Valley Motion for Relief, while the Debtors pursue their plan.

Trustee states that he and his professionals have worked tirelessly to market the Dale Road Project as a whole, including 07 Parcel. Trustee states he has been involved in this case for almost two years, has participated in discussions with numerous third parties purportedly interested in developing the Dale Road Project. The Dale Road Project, as a whole, has been extensively exposed to the market, both through the Debtors' unsuccessful attempts to sell the property through a plan of reorganization or otherwise, and the Trustee's marketing of the property, independently and through his court-approved real estate broker, Lee & Associates. Trustee states that while these efforts elicited interest in the Dale Road Project, neither the Trustee nor the Debtors have been able to sell the Dale Road Project to a bona fide buyer, able to perform on commercially reasonable terms within a reasonable period of time.

Trustee contends that his efforts were necessary to explore sale scenarios involving the entire Dale Road Project which could result in the maximum benefit for creditors and the estate, however, those efforts have reached their end. The Trustee and his professionals have thoroughly investigated the Properties through market exposure, sale negotiations, and numerous communications with interested third parties, attorneys for the Debtors, and attorneys for the Bledsoe Creditors and the Mid Valley Assignees. Based upon such review, and his experience as a trustee, the Trustee has determined that there is no realizable equity in the Properties, and that the Properties are therefore of inconsequential value and benefit to the estate.

As with the Dale Road Project, the Trustee states that he and his professionals are thoroughly familiar with the F Street Property. The Trustee has concluded that the estate has no equity in the F Street Property, and that it is therefore of inconsequential value and benefit to the estate. Trustee states that his real estate broker believes the F Street Property will sell between $350,000-$375,000 at best, which is far less than the 700K Mid Valley Creditors' secured claim. Debtors filed a recent summary appraisal with their Disclosure Statement valuing the property at $856,000.00. The Trustee views the Debtors' latest efforts too little, too late. Trustee argues the estate and its creditors should not be made to bear the risk of continued ownership of the F Street Property, which is at risk of foreclosure in connection with the 700K Mid Valley Motion for Relief, while the Debtors pursue their plan.

The Trustee also argues that the Properties are burdensome to the estate due to potential security, maintenance and insurance costs, other potential risks faced by the estate through continued ownership of the Properties. The automatic stay will no longer prevent the Bledsoe Creditors and Mid Valley Creditors from foreclosing on the Properties after August 21, 2014. Trustee states that The Properties are burdensome to the estate due to the possible negative tax consequences to the estate from a foreclosure of

the estate's interest in the Properties by those creditors.

DEBTOR'S OPPOSITION

Debtors Sawtantra and Aruna Chopra oppose the motion to abandon The Properties based on evidentiary objections to Trustee's Declaration. Debtor argues that there is not admissible evidence supporting that the properties are burdensome to the estate. Debtor states they have proposed a joint venture for the property with the Debtor's son and daughter-in-law in return for cash payment of approximately $1.25 million.

Debtors first objection to the Trustee's declaration is that the statements in paragraphs 3, 4, 7, and 8 are made "under information and belief." A review of the Declaration shows the following statements:

1. Based on my review of pleadings on the PACER Docket in this case, and familiarly with this case as Trustee, **I am informed and believe** that SAWTANTRA CHOPRA and ARUNA CHOPRA, the Debtors herein ("Debtors"), filed their voluntary petition under Chapter 11 of the Bankruptcy Code on December 30, 2011.

2. Based on my review of pleadings on the PACER Docket in this case, and familiarly with this case as Trustee, **I am informed and believe** that I was appointed Chapter 11 Trustee on October 12, 2012, which appointment was approved by order entered October 18, 2012.

3. Based on the Debtors' Schedules, proofs of claims filed in this case, and the my investigation of the Properties, **I am informed** that the following liens (other than real property taxes) encumber the Properties...

4. Based on my review of pleadings on the PACER Docket in this case, specifically Docket No. 898, and familiarly with this case as Trustee, **I am informed and believe** that on July 18, 2014, the 700K Mid Valley Creditors filed a Motion for Relief From the Automatic Stay [Docket No. 898] ("700K Mid Valley Motion for Relief") seeking relief from the automatic stay, so that the 700K Mid Valley Creditors can exercise their rights under state law, including foreclosure.

Declaration, Dckt. 929. While it is true that the Trustee only has information and belief as the basis for what he is stating, he is merely stating what is already in the court's record and which could be stated in a points and authorities citing to the record.

None of these facts - the date of the filing of the bankruptcy, the date he was appointed as Trustee, the dates the motions for relief were filed, or the status of the automatic stay - are facts which must be adjudicated in ruling on the current motion. These are general facts that any party viewing this case docket could find or that the Court has already made findings of fact and conclusions of law regarding. These facts are not the operating facts to this Motion to Abandon and therefore, the court will not have to consider them in its findings of fact.

Debtors also object to paragraphs 10 and 13 of the Trustee based on "conclusory; improper testimony; hearsay" and "conclusory testimony without factual support." A review of paragraph 10 shows that there is no "out-of-court statement introduced to prove the truth of the matter asserted therein." Fed. R. Evid. 801. Furthermore, the Trustee lays out several facts, including the values of the subject Properties from Debtors' own admissions. Based on these undisputed facts and his position as Chapter 11 Trustee, a fiduciary of the estate, he concludes there is no equity in the properties and that they are of inconsequential value and benefit to the estate. This is well within his purview of decision making as a Chapter 11 Trustee. 11 U.S.C. § 554(b).

Debtors also object to paragraphs 15 and 18 stating that it is irrelevant, hearsay and improper opinion testimony. The Trustee's opinion that the property is burdensome to the estate is not irrelevant in a motion to abandon property (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)). In some respects the Debtors may argue that this testimony is redundant of the Motion itself, with the Trustee confirming that he has investigated and reached his personal conclusion on this point. Clearly stating this under penalty of perjury is the better court to clearly document in the record the Trustee's active involvement in the administration of the estate. Furthermore, there is no "out-of-court statement introduced to prove the truth of the matter asserted therein." Fed. R. Evid. 801. Additionally the Trustee is well within his purview of decision making as a Chapter 11 Trustee to determine that "possible negative tax consequences to the estate" can arise from a foreclosure of the estate's interest in the property.

Debtors state they are not opposing the motion for relief from the automatic stay as to the F Street Property but are opposing abandonment. Debtors state that the Trustee does not take into account that the Parcel 07 property is essential to the reorganization of Debtors and for making proposed payments to creditors. Debtors state they have proposed a plan that requires this parcel to remain part of the estate and if it is abandoned, the court could lose jurisdiction to adjust the debt and would severely impact the plan and the claims to be paid pursuant to the proposed plan.

Debtor then appears to state the Trustee is attempting to substitute the tax obligations on the property from the estate to the Debtors. The court is not clear how this argument is grounds not to abandon the property, especially when relief from stay has been granted as to the properties and Debtors have not shown how these properties benefit the estate.

DISCUSSION

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).

On July 18, 2014, the 700K Mid Valley Creditors filed a Motion for

Relief From the Automatic Stay, Dckt. 898, seeking relief from the automatic stay, so that the 700K Mid Valley Creditors can exercise their rights under state law, including foreclosure. The court having granted the motion, the automatic stay is no longer in effect as of this hearing date.

The Trustee has provided sufficient evidence that there is no realizable equity in the Properties and that they are inconsequential value and benefit to the estate. The court agrees that over the past two years that this case has been pending, Debtors have attempted to reorganize with the Properties: the time has come for action. Trustee and his professionals have worked to market the Dale Road Project as a whole, including 29 Parcel and 30 Parcel, participated in discussions with numerous third parties purportedly interested in developing the Dale Road Project, but to no success. Neither the Trustee nor the Debtors have been able to sell the Dale Road Project or the Properties to a bona fide buyer able to perform on commercially reasonable terms within a reasonable period of time.

It appears the Debtors are arguing that after 3 years in this pending bankruptcy without confirming a plan, they still want to hide the property in the estate so they can speculate on a reorganization. The Court does not find this argument persuasive. Debtors have failed to show that this property is a benefit to the estate or that the Properties are part of an effective reorganization. FN.1.

FN.1. It cannot be forgotten that not only were the Debtors afforded the first nine months of this case during which they were in control of this case as the Debtors in Possession, but the Chapter 11 Trustee has afforded them extensive leeway to advance a plan (for which the Trustee could have been a persuasive advocate) in this case. It is now, 32 months after the case has been filed and the court has finally terminated the automatic stay and the Trustee is abandoning the property that the Debtors contend it should remain in the bankruptcy estate. The Debtors' opportunity to prosecute and advance a good faith, bona fide plan in this case has not been impaired by the Trustee now abandoning the property.

The court finds that the negative financial consequences for the Estate if it retains the Property are also apparent, due to potential security, maintenance and insurance costs, other potential risks to the Properties. The court determines that the Property is of inconsequential value and benefit to the Estate, and authorizes the Trustee to abandon the Property.

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 to Abandon Property filed by the Gary Farrar, Chapter 11 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 real properties identified as:

1907 East F Street, Oakdale, California and APN 078-015-007, located at 4754 Dale Road, Modesto, California,

are abandoned to Sawtantra and Aruna Chopra, Debtors, by this order, with no further act of the Trustee required.

5. 11-94410-E-11 SAWTANTRA/ARUNA CHOPRA MOTION TO ABANDON
HSM-24 Robert M. Yaspan 8-7-14 [934]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Property is granted.

The Motion filed by Gary Farrar, Chapter 11 Trustee ("Trustee")

requests the court to authorize Trustee to abandon the real properties known as (1) 6978 Hillcrest Drive, Modesto, California ("Hillcrest Property"), and (2) 313 Banner Court, Modesto, California ("Banner Court Property") (collectively "The Properties").

Based on the Debtors' Schedules, as modified by the Debtors' Disclosure Statement to Debtors Second Amended Plan of Reorganization, Dated July 3, 2014 ("Disclosure Statement"), and filed proofs of claims, the Trustee is informed that the following consensual liens (other than real property taxes) encumber the Properties:

a. Hillcrest Property

i. $383,667.00- Bank of the West ("BOW").

b. Banner Court Property

i. $1,804,000 - Commercial Loan Solutions ("CLS").

ii. $860,000.00 - Don Mosco ("Mosco"). The Debtors' Amended Schedule D listed the beneficiary of this deed of trust as Mid Valley Services, Inc. The Trustee is informed based on communications with Mr. Mosco's attorney, Eric D. Capron, and review of Proof of Claim No. 8-1, that the beneficiary of this note and deed of trust is now Mosco.

(1) This deed of trust is scheduled as cross-collateralized on the properties located at APN 078-015-007, located at4754 Dale Road, Modesto, California ("007 Parcel"), and 1317 Oakdale Road, Modesto, California, however, the Trustee is aware of no evidence that Mosco is secured by the 1317 Oakdale Road property. Only the 007 Parcel and 313 Banner Court are listed as collateral in Mosco's Proof of Claim.

iii. $102,000.00 - Bulmaro Palafox ("Palafox").

(1) The Debtors scheduled this debt as being crosscollateralized on a Mercedes vehicle, and have alleged that Mosco repossessed the vehicle post-petition, without relief from stay.

iv. $40,000.00 - Palafox.

With respect to the Hillcrest Property, in addition to the above consensual encumbrances, the Trustee is informed and believes and on that basis alleges that on October 19, 2011, BOW recorded an abstract of judgment in Stanislaus County, Document No. 2011-0086751, in the amount of $2,599,556.43 (the "Abstract of Judgment"). The amount appears to have been subsequently reduced to $2, 144,082.95. In Adversary No. 13-09042-E, the Trustee sought to avoid the Abstract of Judgment, recorded within the

preference look back period, as to all estate assets other than the Hillcrest Property and the Debtors' real property located at 1317 Oakdale Road, Modesto, CA 95355 (the "Oakdale Property"), because BOW levied writs of attachment as against those properties outside of the preference look back window. The Trustee intends to administer the Oakdale Property. BOW's rights in connection with the Abstract of Judgment have been assigned to Triunfo One Acquisition, LLC ("Triunfo").

In their Disclosure Statement, the Debtors assert that the value of the Hillcrest Property is $953,000.00. With respect to the Banner Court Property, the Debtors have alleged in their Disclosure Statement that the amount owed in connection with Mosco's secured claim, as of June 2014, was estimated by Mosco to be $1,190,000.00. In their Disclosure Statement, the Debtors assert that the value of the Banner Court Property is $1,936,000.

The Trustee has concluded that the Hillcrest Property is of inconsequential value and benefit to the estate, and is otherwise burdensome to this estate and its administration. The Debtors, in their own Disclosure Statement, concede that there is no equity in the Hillcrest Property as the total of the BOW consensual lien, and the Triunfo Abstract of Judgment greatly exceed the value of the Hillcrest Property. Therefore, the estate has no equity in the Hillcrest Property, and it is of inconsequential value and benefit to the estate.

The Trustee has concluded that the Banner Court Property is of inconsequential value and benefit to the estate, and is otherwise burdensome to this estate and its administration. The Debtors, in their own Disclosure Statement, appear to concede that there is no equity in the Banner Court Property. The total of the CLS consensual lien alone nearly equals the Debtors' valuation of the property. The Trustee has concluded, based on the above information, and his familiarity with the Banner Court Property and encumbrances thereon, that the estate has no equity in the Banner Court Property, and it is of inconsequential value and benefit to the estate.

The Trustee also argues that the Properties are burdensome to the estate due to potential security, maintenance and insurance costs, other potential risks faced by the estate through continued ownership of the Properties.

DEBTOR'S OPPOSITION

Debtors Sawtantra and Aruna Chopra oppose the motion to abandon The Properties based on evidentiary objections to Trustee's Declaration. Debtor argues that there is not admissible evidence supporting that the properties are burdensome to the estate.

Debtors first objection to the Trustee's declaration is that the statements in paragraphs 3, 4, 7, 8, 9, 10 and 11 are made "under information and belief." A review of the Declaration shows the following statements:

1. Based on my review of pleadings on the PACER Docket in this case, and familiarly with this case as Trustee, **I am informed and believe** that SAWTANTRA CHOPRA and ARUNA CHOPRA, the

Debtors herein ("Debtors"), filed their voluntary petition under Chapter 11 of the Bankruptcy Code on December 30, 2011.

2. Based on my review of pleadings on the PACER Docket in this case, and familiarly with this case as Trustee, **I am informed and believe** that I was appointed Chapter 11 Trustee on October 12, 2012, which appointment was approved by order entered October 18, 2012.
3. Based on the Debtors' Schedules, as modified by the Debtors' Disclosure Statement to Debtors Second Amended Plan of Reorganization, Dated July 3, 2014 ("Disclosure Statement"), and filed proofs of claims, **I am informed** that the following consensual liens (other than real property taxes) encumber the Properties...
4. **I am informed** based on proofs of claims filed in this case that BOW's rights in connection with the Abstract of Judgment have been assigned to Triunfo One Acquisition, LLC ("Triunfo").
5. **I am informed** based on my review of the Debtors' Disclosure Statement, that in their Disclosure Statement, the Debtors assert that the value of the Hillcrest Property is $953,000.00.
6. **I am informed** based on my review of the Disclosure Statement that, with respect to the Banner Court Property, the Debtors have alleged in their Disclosure Statement that the amount owed in connection with Mosco's secured claim, as of June 2014, was estimated by Mosco to be $1,190,000.00.
7. **I am informed** based on my review of the Debtors' Disclosure Statement, that in their Disclosure Statement, the Debtors assert that the value of the Banner Court Property is $1,936,000.

Declaration, Dckt. 936. While it is true that the Trustee only has information and belief as the basis for what he is stating, he is merely stating what is already in the court's record and which could be stated in a points and authorities citing to the record.

None of these facts - the date of the filing of the bankruptcy, the date he was appointed as Trustee, the dates the motions for relief were filed, or the status of the automatic stay - are facts which must be adjudicated in ruling on the current motion. These are general facts that any party viewing this case docket could find or that the Court has already made findings of fact and conclusions of law regarding. These facts are not the operating facts to this Motion to Abandon and therefore, the court will not have to consider them in its findings of fact.

Debtors also object to paragraphs 14 and 15 of the Trustee based on "conclusory testimony without factual support." However, the Trustee lays out several facts, including the values of the subject Properties from Debtors' own admissions. Based on these undisputed facts and his position as Chapter 11 Trustee, a fiduciary of the estate, he concludes there is no equity in the properties and that they are of inconsequential value and benefit to the estate. This is well within his purview of decision making as a Chapter 11 Trustee. 11 U.S.C. § 554(b).

Debtors also object to paragraph 16 stating that it is irrelevant,

hearsay and improper opinion testimony. The Trustee's opinion that the property is burdensome to the estate is not irrelevant in a motion to abandon property (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)). In some respects the Debtors may argue that this testimony is redundant of the Motion itself, with the Trustee confirming that he has investigated and reached his personal conclusion on this point. Clearly stating this under penalty of perjury is the better court to clearly document in the record the Trustee's active involvement in the administration of the estate. Furthermore, there is no "out-of-court statement introduced to prove the truth of the matter asserted therein." Fed. R. Evid. 801. Additionally the Trustee is well within his purview of decision making as a Chapter 11 Trustee to determine that "possible negative tax consequences to the estate" can arise from a foreclosure of the estate's interest in the property.

Debtors state that the Trustee does not take into account that the property is essential to the reorganization of Debtors and for making proposed payments to creditors. Debtors state they have proposed a plan that requires this parcel to remain part of the estate and if it is abandoned, the court could lose jurisdiction to adjust the debt and would severely impact the plan and the claims to be paid pursuant to the proposed plan.

Debtor then appears to state the Trustee is attempting to substitute the tax obligations on the property from the estate to the Debtors. The court is not clear how this argument is grounds not to abandon the property, especially when relief from stay has been granted as to the properties and Debtors have not shown how these properties benefit the estate.

DISCUSSION

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 Trustee has provided sufficient evidence that there is no equity in the Properties and that they are inconsequential value and benefit to the estate. The Debtors concede in their proposed Disclosure Statements that the Properties have no equity. Debtors state that they are planning to value the secured claims of the creditors with security interest in the Properties, but none have been filed in the two years this case has been pending. The court agrees that the Debtors are essentially in the position of "too little, too late."

It appears the Debtors are arguing that after 3 years in this pending bankruptcy without confirming a plan, they still want to hide the property in the estate so they can speculate on a reorganization. The Court does not find this argument persuasive. Debtors have failed to show that this property is a benefit to the estate or that the Properties are part of an effective reorganization. FN.1.

FN.1. It cannot be forgotten that not only were the Debtors afforded the first nine months of this case during which they were in control of this case as the Debtors in Possession, but the Chapter 11 Trustee has afforded them extensive leeway to advance a plan (for which the Trustee could have been a persuasive advocate) in this case. It is now, 32 months after the case has been filed and the court has finally terminated the automatic stay and the Trustee is abandoning the property that the Debtors contend it should remain in the bankruptcy estate. The Debtors' opportunity to prosecute and advance a good faith, bona fide plan in this case has not been impaired by the Trustee now abandoning the property.

The court finds that the negative financial consequences for the Estate if it retains the Property are also apparent, due to potential security, maintenance and insurance costs, other potential risks to the Properties. The court determines that the Property is of inconsequential value and benefit to the Estate, and authorizes the Trustee to abandon the Property.

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 to Abandon Property filed by the Gary Farrar, Chapter 11 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 real properties identified as:
>
> 6978 Hillcrest Drive, Modesto, California and 313 Banner Court, Modesto, California are abandoned to Sawtantra and Aruna Chopra, Debtors, by this order, with no further act of the Trustee required.

6. 11-93411-E-11 SANJIV/SHEENA CHOPRA — MOTION FOR FINAL DECREE AND ORDER CLOSING CASE
RMY-44 Robert M. Yaspan — 7-23-14 [955]

Final Ruling: No appearance at the Agusut 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors, parties requesting special notice, and Office of the United States Trustee on July 23, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

Federal Rule of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) additionally states that the court is required to close a case after an estate is fully administered and the court has discharged the trustee." The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk*, 241 B.R. 869, 911 (B.A.P. 9th Cir. 1999).

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

- the plan confirmation order is final;
- deposits required by the plan have been distributed;
- property to be transferred under the plan has been transferred;
- the debtor (or the debtor's successor under the plan) has taken

control of the business or of the property dealt with by the plan;

• plan payments have commenced; and

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

Fed. R. Bankr. P. 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. See Fed. R. Bankr. P. 3022, Adv. Comm. Note (1991); *see In re John G. Berg Assocs., Inc.* (BC ED PA 1992) 138 BR 782, 786.

Here, the present case was filed as a voluntary Chapter 11 case on September 27, 2011. A Plan was confirmed on February 20, 2014. Under the Plan, Debtors are responsible for operating their business and making distribution in accordance with the confirmed plan, which they testify they are doing. Debtors state they are current on the distributions to be made under the Plan and that the post-confirmation operating reports are current and have been filed through the second quarter of 2014. The third quarter will be filed prior to the hearing date, with all Trustee fees paid as well. The Trustee fees are current through the first quarter of 2014, and the second and third quarters (which are not due yet) will be paid prior to the hearing.

The hearing on the motion for final allowance of attorney's fees was heard and granted on June 12, 2014.

The court finds that Debtors have satisfactorily met the above-listed factors, and the Chapter 11 bankruptcy estate has been fully administered within the meaning of 11 U.S.C. § 350(a) for purposes of closing this case.

The Debtors or other party in interest may seek to reopen the case as necessary and appropriate for the court's exercise of post-confirmation jurisdiction, including entry of the discharge for the Debtors.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Final Decree and Order Closing Case filed by the Debtors-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the bankruptcy is closed, with the court retaining, as a matter of law, post-confirmation jurisdiction for all matters in and relating to the confirmed plan and this bankruptcy case.

7. 10-94411-E-7 CAROLE CAMERON
CWC-4 David C. Johnston

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH KAREN J. GARRETT AND GLENN ALAN GARRETT
7-17-14 [51]

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 17, 2014. By the court's calculation, 35 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.

Stephen Fermann, the Trustee ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Karen and Glenn Alan Garrett ("Settlor"). The claims and disputes to be resolved by the proposed settlement are the issues over an alleged avoidable transfer of real property located at 289 Rivertree Way, Sacramento, California, APN 247-010-025 (the "Real Property"), Debtor's one-half interest in stock certificate No. 269 representing one share of the common capital stock, Series J, of Seal Beach Mutual No. Nine (the "Stock Certificate"), Debtor's one half interest in Certificate No. 48194 representing one active membership in the Golden Rain Foundation (the "Membership Certificate), and the pending Adversary Proceedings No. 14-09005 and No. 14-09006.

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 1 in support of the Motion, Dckt. 54):

A. Settlor shall pay Movant as Trustee a total of $50,000 in

settlement of any and all claims that the bankruptcy estate may have against Settlor regarding the avoidable transfers alleged in the Adversary Proceeding No. 14-09005 and the dispute over the bankruptcy estate's right to sell a co-owner's interest in the real property as alleged in Adversary Proceeding No. 14-09006.

B. Upon receipt of the $50,000.00 of settlement funds, the Movant shall dismiss Adversary Proceedings No. 14-09005 and No. 14-09006 with prejudice and shall convey to Settlor the bankruptcy estate's undivided one-half interest in the Real Property.

C. Movant will furnish to Settlor all instruments and documents reasonably requested to consummate the conveyance of the real property.

D. Movant will not object to Proof of Claim No. 5 filed by Settlor in the amount of $49,876.00 as an unsecured claim in the Chapter 7 case.

E. Settlor will withdraw Proof of Claim No. 6 filed by Settlor in the amount of $100,000.00 in its entirety.

F. Settlor will amend Proof of Claim No. 7 filed by Settlor in the amount of $400,000 as a secured claim in the amount of $282.920 and unsecured in the amount of $117,080.00 to reflect an unsecured portion of this claim as $20,000.00 and not $117,080.00.

G. Settlor waives her rights under 11 U.S.C. § 502(h) to file or amend proofs of claim for the bankruptcy estate's recovery of the $50,000.00 in the Settlement Agreement.

H. The Settlement Agreement acts as a complete waiver of any and all claims, debts, liabilities, demands, obligations, costs, expenses, attorneys fees, and actions and causes of action against each other arising from Adversary Proceedings No. 14-09005 and No. 14-09006.

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 $50,000.00 in satisfaction of the estate's claim for recovery of the property as alleged in Adversary Proceedings No. 14-09005 and No. 14-09006. Movant asserts that the property can be recovered for the estate as an avoidable transfer. Upon receipt of the $50,000.00 of settlement funds, the Movant shall dismiss Adversary Proceedings No. 14-09005 and No. 14-09006 with prejudice and shall convey to Settlor the bankruptcy estate's undivided one-half interest in the Real Property.

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

In the Adversary Proceeding No. 14-09005, Movant alleges that Settlor transferred the Debtor's one-half interest in the Stock Certificate and the Membership Certificate. Based on the information provided for in the motion and the Settlement Agreement, the court finds that it is uncertain whether the Movant would succeed in avoiding the post-petition transfer.

In the Adversary Proceeding No. 14-09006, Movant commenced the action to obtain authorization to market and sell the bankruptcy estate's interest and the interest of the Settlor as co-owner of the Real Property pursuant to 11 U.S.C. § 363(h). Based on the information provided for in the motion and the Settlement Agreement, the court finds that it is uncertain whether the Movant would succeed in obtaining authorization to market and sell the Real Property.

Difficulties in Collection

The financial situation of the Settlor appears to be precarious. The medical condition and the limited financial resources of the Settlor would make it difficult to enforce any potential resulting judgment in the Adversary Proceedings, favoring settlement.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. The Movant alleges that the expense of litigating the pending Adversary Proceedings would

substantially erode the funds of the estate. 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 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.
>
> Stephen Fermann, 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 Karen and Glenn Alan Garrett ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit 1 in support of the Motion(Docket Number 54).

8. 10-94411-E-7 CAROLE CAMERON
14-9006 SKV-1
FERLMANN V. GARRETT

CONTINUED AMENDED MOTION TO DISMISS CASE
5-30-14 [27]

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff and Plaintiff's Attorney on March 17, 2014. By the court's calculation, 45 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 court's decision is to deny the Motion to Dismiss Adversary Proceeding.

AUGUST 21, 2014 HEARING

The Motion to Dismiss is denied. While the court has granted the Motion to Compromise Controversy and to Approve the Settlement Agreement, the Motion to Dismiss is denied because the parties have not filed a notice of dismissal under Federal Rules of Civil Procedure 41(a)(1)(A)(ii) or file a motion to dismiss under Federal Rules of Civil Procedure 41(a)(2). As discussed below, since this Motion was filed the parties have settled this Adversary Proceeding, and no basis has been shown for dismissal pursuant to the terms of the Stipulation.

Pursuant to the Settlement and Mutual Release Agreement, "upon receipt of the $50,000.00 settlement funds, the Trustee shall dismiss Adversary Proceedings 14-09005 and 14-09006 with prejudice. . . ." Dckt. 54. The terms of the Settlement and Mutual Release Agreement essentially require that the Trustee file a motion to dismiss or a notice of dismissal under Federal Rule of Civil Procedure 41(a)(1)(A)(ii) or 41(a)(2) only after the $50,000.00 is received. The Stipulation providing the agreed grounds for dismissal, which are not the grounds upon with this Motion is based, the Motion is denied.

PRIOR HEARING

Defendant Karen J. Garrett moves for dismissal of this case pursuant to Federal Rule of Civil Procedure 12(b)(6) failure to state a claim.

Defendant asserts the following grounds for dismissal:

A. The Complaint places an undue hardship on the Defendant due to health issues.

B. The Adversary Proceeding was filed (on January 30, 2014) more than two years after the commencement of the bankruptcy case (November 8, 2010). It is asserted that the "two year statute of limitations period has expired, citing to 11 U.S.C. § 108. (Which addresses an extension of time for periods for the Debtor to act under applicable nonbankruptcy law, order in a nonbankruptcy proceeding, or agreement.)

C. The Trustee cannot "wait for years for real property to appreciate in value and then seek to recover."

D. The Defendant addresses medical and physical burdens created by a sale of the property.

However, the pleading titled "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.

Further, Defendant filed the motion and exhibits and declaration and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the*

Preparation of Documents, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

TIMELINESS OF MOTION TO DISMISS

Defendant filed the answer to the complaint and this motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) on the same day. Dckts. 8 & 12. Pursuant to Rule 12(b), a motion to dismiss for failure to state a claim upon which relief can be granted **must** be made before pleading if a further pleading is permitted. Fed. R. Civ. P. 12(b) (emphasis added). A motion to dismiss is timely only if filed before the answer. *Aetna Life Ins. Co. v. Alla Medical Services, Inc.*, 855 F.2d 1470, 1474 (9th Cir. 1988); *see also Hargrove & Costanzo v. United States*, 2007 U.S. Dist. LEXIS 65593 (E.D. Cal. 2007) (Defendants' motion to dismiss for failure to state claim filed under Fed. R. Civ. P. 12(b)(6) was considered as motion for judgment on pleadings under Fed. R. Civ. P. 12(c) because motion was filed simultaneously with answer and thus was not considered as timely).

When a Rule 12(b)6) motion to dismiss for failure to state a claim upon which relief can be granted is filed after an answer is filed, a court may deny the motion to dismiss as untimely, or the court may consider the Rule 12(b)(6) motion to dismiss as a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). *Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980). Federal Rule of Civil Procedure 12(h)(2) states that a motion to dismiss for failure to state a claim may be made in a motion for judgment on the pleadings pursuant to Rule 12(c). In *Aldabe*, the Ninth Circuit reasoned,

> Rule 12(h)(2) specifically authorizes use of the latter motion to raise the defense of failure to state a claim. Because it is only after the pleadings are closed that the motion for judgment on the pleadings is authorized Rule 12(c)Rule 12(h)(2) should be read as allowing a motion for judgment on the pleadings, raising the defense of failure to state a claim, even after an answer has been filed. Under that interpretation, Rules 12(c) and 12(h)(2) together constitute a qualification of Rule 12(b)(6).

Id. at 1093.

As the Defendant filed an answer simultaneously with the Motion to Dismiss, the court must consider the motion to dismiss as a motion for judgement on the pleadings pursuant to Federal Rule of Civil Procedure 12(c).

While the Defendant's Motion to Dismiss is timely, the Settlement and Mutual Release Agreement has specific methods and procedures in which the parties must follow in order to have the case dismissed pursuant to its terms. Dckt. 54. Specifically, there is no evidence presented that the settlement funds have been received by the Trustee nor was the Motion to Dismiss brought by Trustee under the terms of the Settlement and Mutual

Release Agreement. The conditions outlined in the agreement have yet to be met and, therefore, the Motion to Dismiss is denied. The Trustee can bring a motion pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) or 41(a)(2) after the Settlement has been consummated.

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 Complaint 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 to Dismiss is denied.

9. 13-91214-E-7 SSA-3 | **IVAN GUTIERREZ AND MARIBEL CHAVEZ**

Jessica A. Dorn

MOTION FOR COMPENSATION FOR COUNSEL TO MICHAEL D.MCGRANAHAN, CHAPTER 7 TRUSTEE(S)

7-15-14 [51]

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 15, 2014. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Law Offices of Steven S. Altman ("Applicant"), the Attorney for Michael McGranahan 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 November 8, 2013 through August 21, 2014. The order of the court approving employment of Applicant was entered on December 3, 2013, Dckt. 51.

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 8.1 hours in this category. Applicant assisted Client with identifying and reviewing potential assets including causes of action and non-litigation recoveries, reviewing estate's interest in Debtor's assets, preparing an Asset Purchase Agreement, and reviewing a Purchase Agreement between the Debtor and the estate.

Asset Disposition: Applicant spent 1 hour in this category. Applicant reviewed case file and the court's tentative decision regarding asset sale back to Debtor and drafted a memo for Trustee concerning the asset sale back.

Case Administration: Applicant spent 1 hour in this category. Applicant communicated with Debtor's counsel concerning the asset Purchase Agreement, reviewed deadlines for objections to Debtor's exemptions, and communicated with Trustee concerning the deadline for objections.

Claims Administration and Objection: Applicant spent 1 hour in this category. Applicant reviewed claims filed, reviewed and analyzed Debtor's amended exemption scheme, and communicated with Trustee conclusions on the exemption scheme as well as the calculations of the exemption scheme.

Fee and Employment Applications: Applicant spent 6.1 hours in this category. Applicant drafted and filed the employment application on behalf of the Trustee, prepared and filed the fee application by counsel on behalf of the Trustee, prepared the fee application for payment of CPA professionals fees and costs.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

(b) To what extent will the estate suffer if the services

are not rendered?

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including asset analysis and recovery, asset disposition, case administration, claims administration and objections, and fee and employment applications valued at $4,728.00. The estate has $23,069.75 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Steven S. Altman, Esq.; admitted to the California State Bar in 1975.	11.1	$250.00	$2,775.00
Steven S. Altman, Esq.; admitted to the California State Bar in 1975. (Effective rate commencing March 1, 2014)	6.3	$300.00	$1,890.00
Dawn Darwin, Paralegal	.7	$90.00	$63.00
Total Fees For Period of Application			$4,728.00

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 $4,728.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

COSTS AND EXPENSES ALLOWED

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $63.62 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.10 per page	$21.30
Postage		$28.92
Total Costs Requested in Application		$50.22

The Applicant pled for $0.20 per page in copying costs. In this jurisdiction, the maximum allowance for copying is $0.10 per page and the cost request has been reduced accordingly.

The First and Final Costs in the amount of $50.22 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case. The court is authorizing that Trustee pay 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 $4,728.00
Costs and Expenses $50.22

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 Law Offices of Steven S. Altman ("Applicant"), Attorney for 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 Law Offices of Steven S. Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Law Offices of Steven S. Altman, Attorney employed by Trustee
>
> Fees in the amount of $4,728.00
> Expenses in the amount of $50.22,
>
> The fees and costs are allowed 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.

10.	13-91214-E-7 SSA-4	IVAN GUTIERREZ AND MARIBEL CHAVEZ Jessica A. Dorn	MOTION FOR COMPENSATION FOR ATHERTON AND ASSOCIATES, LLP, ACCOUNTANT(S) 7-15-14 [57]

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 15, 2014. 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.

FEES REQUESTED

Atherton & Associates LLP, Maria Stokman, CPA ("Applicant"), the Accountant for Michael McGranahan 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 March 7, 2014 through June 9, 2014. The order of the court approving employment of Applicant was entered on April 4, 2014, Dckt. 57.

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

categories.

Correspondence: Applicant spent 1 hour in this category. Applicant assisted Client with reviewing information and sent correspondences for additional information in connection with her role as an Accountant.

Tax Preparation: Applicant spent 4.4 hours in this category. Applicant prepared worksheet of gain and loss on sale of assets, checked final returns, prepared the initial and final tax returns for the period ending on May 31, 2014.

Fee Application: Applicant spent .4 hour in this category. Applicant prepared fee application and supplemental documentation to submit.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including correspondences, tax preparation, and fee application preparation valued at $942.00. The estate has $23,069.75 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Maria Stokman, CPA	3	$230.00	$690.00
Tyler Wookey, Staff	2.8	$90.00	$252.00

Total Fees For Period of Application	$942.00

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 $942.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $942.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Atherton & Associates LLP ("Applicant"), Accountant for 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 Atherton & Associates LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Atherton & Associates LLP, Professional employed by Trustee
>
> Fees in the amount of $942.00,
>
> The fees and costs are allowed 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.

11. 14-90521-E-7 DAVID RICE
14-9019
TURLOCK IRRIGATION DISTRICT V. RICE

MOTION TO SET ASIDE O.S.T. 8-6-14 [15]

Tentative Ruling: The Motion to Set Aside has been properly set for hearing on the notice required by the Local Bankruptcy Rules. Consequently, the 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.

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)(3) Motion.

The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 6, 2014. By the court's calculation, 15 days' notice was provided.

The Motion to Set Aside Entry of Default was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Plaintiff or any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Set Aside Entry of Default is denied.

On August 7, 2014, the court granted the *Ex Parte* Application for Order Shortening Time for Hearing on Motion to Set Aside Entry of Default as set the hearing on shortened time. Defendant David Roy Rice, in *pro per*, applied for the application, but Scott Mitchell filed the application electronically and lodged the proposed order with the court. The court ordered Mr. Mitchell to appear, no telephonic appearance permitted, to address whether he is the attorney of record for the Defendant, and if not, why he is electronically filing documents in this Adversary Proceeding. Dckt. 22.

IDENTIFICATION OF ATTORNEY OF RECORD

Local Bankruptcy Rule 2017-1(b)(2)(A) states that an appearance as

an attorney of record is made by signing and filing and initial document. This document was electronically filed by Scott Mitchell. Based on the Local Bankruptcy Rules, the Debtor is not in this Adversary Proceeding in pro se, but represented by counsel. The privilege of electronic filing is not a license to ghost draft documents and providing a filing service by the attorney for cases, contested matters, and adversary proceedings where the attorney is attempting to remain behind the scenes, shrouded from identification to the court.

REVIEW OF THE MOTION

In Adversary Proceedings Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007 govern law and motion practice. Rule 7(b) states,

> (b) Motions and Other Papers.
>
> > (1) In General. A request for a court order must be made by motion. The motion must:
> >
> > > (A) be in writing unless made during a hearing or trial;
> > >
> > > (B) state with particularity the grounds for seeking the order; and
> > >
> > > (C) state the relief sought.
> >
> > (2) Form. The rules governing captions and other matters of form in pleadings apply to motions and other papers.

For the present motion, the sum total of attempting to state with particularity pursuant to Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007, is

> "I am requesting a motion to set aside entry of default and order re: Default Judgment Procedures entered on July 17, 2014. It appears from record that I failed to plead or otherwise defend in this proceeding as required by law. However I am requested that the default be set aside based upon mistake, inadvertence and excusable neglect."

Defendant fails to state with particularity in the Motion, the grounds in which he is seeking relief to set aside the entry of default judgment.

The procedural defects of this Motion notwithstanding, the Movant has not made a showing that meets the standard of Federal Rule of Civil Procedure 60(b), as made applicable in the bankruptcy context by Federal Rule of Bankruptcy Procedure 9024, that the default order obtained by the Plaintiff, Turlock Irrigation District, should be set aside.

Answer Sought to be Filed

The court (and Federal Rule of Civil Procedure and Federal Rule of

Bankruptcy Procedure) does not permit attorneys to avoid the simple pleading requirements of Federal Rule of Civil Procedure 7(b) and hide allegations in various declarations, exhibits, documents, pleadings, and because Defendant purports to be appearing in pro se, the court has reviewed the declaration. In it Defendant states under penalty of perjury:

A. I am not an attorney.

B. I did not nor do I fully comprehend the procedures after receiving the summons.

C. I thought I could just appear at the hearing and defend myself, and I did not realize that I had to file a formal response with the court.

D. I am a cancer patient and I have been in and out of the hospital while the bankruptcy was pending and while this adversarial action was pending.

E. Unfortunately I was not in a financial situation where I could afford to hire an attorney to defend me in this matter.

F. I am requesting to have the opportunity to file my response and defend my case.

Declaration, Dckt. 17.

Though the Defendant's default has been entered, an "answer" has been filed. Dckt. 21. The "answer" does not admit and deny the allegations stated in the complaint, but merely asserts,

A. Defendant did not authorize any person to alter or damage TID property at the premises.

B. During the period January 3, 2011 and January 3, 2011, Defendant did not consent to diversion of electrical services.

C. Between January 3, 2011 and January 3, 2014, power was not diverted from TID Equipment on the premises, through the use of a splice into TID's power line located on the premises.

D. Defendant did not divert any electrical power at the premises without the consent of TID.

E. There was no power theft on the premises.

F. I deny any and all allegations.

G. All allegations are incorrect.

Response, Dckt. 21. Even giving this a liberal reading, it is little more than "I didn't do it." The Defendant cannot, in good faith, being denying all of the allegations, which include allegations of jurisdiction, venue,

the bankruptcy filing, and the Defendant residing on the premises. See Fed. R. Civ. P. 8(b), Fed. R. Bankr. P. 7008(a). In effect, the "Response" merely states that "everything, irrespective of whether it is true or not, is denied, don't enter a judgment against me." To make this worse, Debtor has signed the Response under penalty of perjury - misstating true allegations are false.

Denial of Requested Relief

Defendant's stated grounds for relief do not meet any of the factors enumerated by Federal Rules of Civil Procedure Rule 60(b). Federal Rule of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

However, entry of a default judgment (which would be the next step if the default is not set aside) is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, as the judicial process prefers determining cases on their merits whenever reasonably possible. Id. at 1472. Factors which the court may consider in exercising its discretion in granting a default judgment include:

> (1) the possibility of prejudice to the plaintiff,

(2) the merits of plaintiff's substantive claim,

(3) the sufficiency of the complaint,

(4) the sum of money at stake in the action,

(5) the possibility of a dispute concerning material facts,

(6) whether the default was due to excusable neglect, and

(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

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

Defendant has failed to properly plead grounds for vacating the default.

The Motion is denied.

It may be that Defendant is actually represented by counsel who has filed the documents for Defendant in this case. Counsel may well be able to prepare a sufficient answer and seek vacating the dismissal. But merely filing insufficient documents for the purpose of creating delay is not grounds to vacate the default.

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 Set Aside the Default filed by Defendant David Roy Rice 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.

12. 14-90633-E-7 SDM-2 — LONALD/MARY MILLER — Scott D. Mitchell — MOTION TO AVOID LIEN OF BLEIER AND COX, APC — 7-2-14 [30]

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

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

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

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 2, 2014. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of **Bleier and Cox, APC** ("Creditor") against property of Lonald Dwiete Miller and Mary Miller ("Debtor") commonly known as 1624 Shirley Court, Modesto, California (the "Property").

However, a review of the Abstract of Judgment recorded with Stanislaus County shows the Plaintiff/Creditor to be Capital One Bank (USA), N.A. for the amount of $4,543.87. Exhibit 1, Dckt. 32. The Creditor named and served in the motion, Bleier and Cox, APC appears to be the attorney for

the Judgment Creditor, Capital One Bank (USA), N.A. enforcing the judgment obtained by Capital One Bank (USA).

The actual creditor, Capital One Bank (USA), N.A. failing to be named in the present Motion to Avoid Judicial Lien, the motion is denied without prejudice. FN.1.

FN.1. While the Debtor has properly served Capitol One Bank (USA) this time around with the motion, appearing to understand the deficiencies of their first attempt at this motion in May, Debtor and Debtor's attorney has failed once again to **properly name** Capitol One Bank (USA) as the holder of the judicial lien. To clarify, a law firm representing a party is not the party who holds the judicial lien - it is the client. Debtor and Debtor's attorney should refer back to the Abstract of Judgment to see in black-and-white who actually holds the judicial lien.

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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

13. 14-90634-E-7 SDM-1 — TERRY/TINA MARIE WITT — Scott D. Mitchell — MOTION TO DISMISS TINA MARIE EULALIA WITT — 7-2-14 [21]

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 2, 2014. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Tina Marie Eulalia Witt 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 Dismiss Tina Marie Eulalia Witt is granted.

Terry Witt and Tina Marie Eulalia Witt ("Debtors") filed a Motion to Dismiss Joint Debtor in Chapter 7 Case, seeking to have Tina Marie Eulalia Witt dismissed as a joint debtor.

The Debtors allege that they have been separated for about six (6) years. During this time period, Tina Marie Eulalia Witt has lived in Colorado. In the motion and declaration, the Debtors note that:

1. The Trustee does not oppose the motion;

2. Tina Marie Eulalia Witt understands that if the motion is granted, she will not receive a discharge and will no longer be protected by 11 U.S.C. § 362 automatic stay; and

3. Tina Marie Eulalia Witt understands that if she attempts to file a new Bankruptcy petition within 365 days of the filing of the original petition, the 11 U.S.C. § 362 automatic stay for any new petition would only last 30 days.

DISCUSSION

11 U.S.C. Section 707 governs motions to dismiss bankruptcy petitions which provides, in relevant part:

> The court may dismiss a case. . . only after notice and a hearing and only for cause, including-
>
> 1. Unreasonable delay by the debtor that is prejudicial to creditors;
>
> 2. nonpayment of any fees or charges required under chapter 123 of title 28; and
>
> 3. failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

11 U.S.C. § 707(a).

A Chapter 7 debtor may have the right to voluntarily dismiss their case but this right is not absolute. *In re Kaur*, 510 B.R. 281, 286 (Bankr. E.D. Cal. 2014). In order for a Chapter 7 debtor to obtain a voluntary dismissal, the debtor must establish cause. *Leach v. United States* (*In re Leach*), 130 B.R. 855, 856 (B.A.P. 9th Cir. 1991). To show cause, "[t]he law in the Ninth Circuit is clear: a voluntary Chapter 7 debtor is entitled to dismissal of his case so long as such dismissal will cause no 'legal prejudice' to interested parties." *Id.* at 857 (citing *In re International Airport Inn Partnership*, 517 F.2d 510, 512 (9th Cir. 1975)). Legal prejudice means "prejudice to some legal interest, some legal claim, some legal argument." *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir.1996). Whether legal prejudice exists "may be evaluated using both legal and equitable considerations," *Hickman v. Hana* (*In re Hickman*), 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008).

The Chapter 7 debtor seeking voluntary dismissal bears the burden of showing "that there would be no legal prejudice resulting from the dismissal." *Hickman*, 384 B.R. at 840. A decision of whether to grant a motion to voluntarily dismiss a bankruptcy petition is within the discretion of the court. *Leach*, 130 B.R. at 856.

Here, the Debtors have sufficiently shown that there would not be any legal prejudice to interested parties, and, therefore, the court will grant the motion.

The circumstances and facts surrounding this case supports granting the voluntary motion to dismiss.

No interested party, creditor or otherwise, have objected to the dismissal of Tina Marie Eulalia Witt as a joint debtor in the instant bankruptcy case. There does not appear to be any indication that the removal of Terry Witt as a joint debtor would result in any adverse treatment of any legal claims.

Tina Marie Eulalia Witt recognizes and appreciates the repercussions of such a dismissal, including the lift of the automatic stay as it applies to her, the abridged automatic stay if she chooses to re-file, and that she will not receive a discharge if the motion is granted.

Furthermore, the fact that Tina Marie Eulalia Witt no longer resides in California and has been separated from her co-debtor, Terry Witt, for six years suggests that the parties are no longer entwined in such a way that the joint treatment of any debts and assets of the parties is required for fair treatment to joint creditors, if any remain after the six years the Debtors have been separated.

After taking into consideration all of the facts of the case and any potential legal prejudices that may result from a voluntary dismissal, the court finds that the Debtors have satisfied their burden showing that there would be no legal prejudice resulting from the dismissal. Therefore, 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 Dismiss Tina Marie Eulalia Witt filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Tina Marie Eulalia Witt is dismissed from this Bankruptcy Case.

14. 13-91135-E-7 HCS-2 | **RONALD/STEPHANIE HANNINK** **Scott A. Tibbedeaux** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM/CRABTREE/SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S)** **7-17-14 [51]**

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

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

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Herum\Crabtree\Suntag ("Applicant"), the Attorney for Gary Farrar 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 July 8, 2013 through August 21, 2014. The order of the court approving employment of Applicant was entered on September 9, 2013, Dckt. 51.

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

General Case Administration: Applicant spent 13.1 hours in this category. Applicant assisted Client with preparing the employment application, reviewing Debtor's schedules and petition to determine whether there were objections to any exemptions, and preparation of compensation application.

Application to Employ Auctioneer and Motion to Sell: Applicant spent 6.7 hours in this category. Applicant prepared and filed an application to employ an auctioneer, prepared and filed a motion to sell Debtor property at public auction, and appeared by CourtCall for the hearings.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by an attorney "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 general case administration and application to employ auctioneer and motion to sell valued at $4,807.00. The estate has $9,649.13 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 ALLOWED

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Dana A. Suntag, Esq., shareholder; admitted to California State Bar in 1986.	2.9	$315.00	$913.50
Loris L. Bakken, Esq., associate; admitted to California State Bar in 2001.	6.5	$295.00	$1,917.50
Ricardo Z. Aranda, Esq., associate; admitted to California State Bar in 2008.	6.5	$250.00	$1,625.00
Audrey A. Dutra, Paralegal; received Paralegal Certificate, Humphreys College 2001	3.9	$90.00	$351.00
Total Fees For Period of Application			$4,807.00

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $211.32 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$88.32
Copying	$0.10 per page	$123.00
Total Costs Requested in Application		$211.32

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Additionally, the court finds that the First and Final Costs are reasonable. The Applicant stipulated in the instant motion to reduce the First and Final Fees and Costs to $3,250.00.

Therefore, the First and Final Fees and Costs in the amount of $3,250.00 pursuant to final review are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case. The court is authorizing that Trustee pay 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, Costs, and Expenses $3,250.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Herum\Crabtree\Suntag ("Applicant"), Attorney for 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 Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:
>
> Herum\Crabtree\Suntag, Attorney employed by Trustee
>
> Fees and Expenses in the amount of $3,250.00,
> The fees and costs are allowed 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.

15. 10-94836-E-7 JDP-2 — SAMUEL/FLORDELIZA GARCIA — Randall K. Walton — MOTION TO AVOID LIEN OF CITIBANK, N.A. — 8-5-14 [22]

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative

ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 5, 2014. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank N.A. F.D.B.A. Citibank (South Dakota) N.A. ("Creditor") against property of Samuel and Flordeliza Garcia ("Debtor") commonly known as 5606 Saxon Way, Riverbank, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,765.61. An abstract of judgment was recorded with Stanislaus County on April 7, 2010, which encumbers the Property.

The Motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $180,000.00 as of the date of the petition. The unavoidable consensual liens total $230,171.91 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Citibank N.A. F.D.B.A. Citibank (South Dakota) N.A., California Superior Court for Stanislaus County Case No. 642516, recorded on April 7, 2010, Document No. 2010-0031308-00 with the Stanislaus County Recorder, against the real property commonly known as 5606 Saxon Way, Riverbank, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

16. 12-92036-E-7 REYNOL/ENEDINA GARCIA
14-9018 UST-1
U.S. TRUSTEE V. GARCIA ET AL

MOTION FOR ENTRY OF DEFAULT JUDGMENT
6-26-14 [17]

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendants, Defendants' Attorney, Chapter 7 Trustee, and parties requesting special notice on June 26, 2014. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Default Judgment is granted.

Plaintiff United States Trustee ("Plaintiff") seeks entry of a default judgment against Reynol and Endina Garcia, the Defendant-Debtors ("Defendants") in this adversary proceeding. Entry of a default judgment is authorized by Federal Rule of Civil Procedure 55(b)(2), as made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7055.

This adversary proceeding was commenced on April 17, 2014. Dckt. 1. Summons was issued by the Clerk of the United States Bankruptcy Court on April 17, 2014. The complaint and summons were properly served on the Defendant-Debtors.

Defendants failed to file a timely answer or response or a request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055(a) by the Clerk of the United States Bankruptcy Court on June 3, 2014. Dckt. 15.

FACTS

In the Complaint Plaintiff seeks a judgment (I) prohibiting the Defendants from filing a new bankruptcy case for four years, pursuant to 11 U.S.C. §§ 105 and 349 and (ii) denying Defendants' discharge in the Underlying Case, pursuant to 11 U.S.C. § 727(a)(6)(A) and § 727(a)(6)(C).

Plaintiff alleges that the Defendants have now filed four bankruptcy cases in which they have failed to satisfy their duties as debtors. The Underlying Case is the Defendants' fourth bankruptcy case since 2011. Each of the prior cases was dismissed. The first case, Case No. 11-94029-D-13, was dismissed because the Defendants failed to timely file documents. See Dckt. 13 in Case No. 11-94029. The second case, Case No. 12-90179-D-13, was dismissed because the Defendants failed to make plan payments. See Dckts. 34, 35, 37 in Case No 12-90179. The third case, Case No. 12-91162-D-13, was also dismissed because the Defendants failed to make plan payments. See Dckts. 25, 37 in Case No. 12-91162. Moreover, the Defendants failed to obey the Court's Order to appear at the Special Meeting of Creditors in the Underlying Case. See Dckt. 138.

ANALYSIS

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

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 Moore's Federal Practice - Civil ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986); *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006)(citing *In re Kubick*, 171 B.R. 658, 659-60 (B.A.P. 9th Cir. Alaska 1994)). Default judgments are not favored, as the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors which the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Eitel v. McCool, 782 F.2d at 1471-72 (citing 6 Moore's Federal Practice - Civil ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.)); *In re Kubick*, 171 B.R. at 661-662.

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff's claim. *Id.* at

662. Entry of a default establishes well-pleaded allegations as admitted, In re *McGee*, 359 B.R. at 772, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *Id.* at 774. Thus, a court may refuse to enter default judgment if Plaintiff did not offer evidence in support of the allegations. *See id.* at 775. Finally, Federal Rule of Civil Procedure 9(b), made applicable through Federal Rule of Bankruptcy Procedure 7009, raises the bar by requiring that allegations of fraud be stated with particularity.

In *Kubick*, the Bankruptcy Appellate Panel held that the Bankruptcy Court must exercise its independent duty, arising under Federal Rule of Bankruptcy Procedure 55(b)(2), to determine the sufficiency of the plaintiff's claim before entering a default judgment. *In re Kubick*, 171 B.R. at 662. In *Kubick,* the plaintiff-creditor filed a complaint objecting to Debtor's discharge. *Id.* at 171 B.R. at 659. The debtor did not file a response, and the court granted the plaintiff's motion for default judgment without a hearing. *Id.* On appeal, the Bankruptcy Appellate Panel held that the plaintiff's complaint could not support a default judgment, because it merely recited the statutory elements without sufficiently alleging elements of the claim. *Id.* at 662. In vacating the judgment, the Bankruptcy Appellate Panel held that the Bankruptcy Court must exercise its discretion to determine the legal sufficiency of the complaint before entering a default judgment. *Id.*

Furthermore, in *McGee* the Bankruptcy Appellate Panel affirmed that the Bankruptcy Court may require Plaintiff to present evidence in support of its complaint. *In re McGee*, 359 B.R. at 775. In *McGee*, the creditor filed a complaint to establish its claim as nondischargeable under Federal Rule of Bankruptcy Procedure 532(a)(2)(B). *Id.* at 767. When the defendant-debtor failed to appear, the Bankruptcy Court entered a default. *Id.* at 768. However, the court denied a motion for default judgment, because the creditor did not offer direct proof supporting an essential element of their claim: that they relied on the defendant's fraudulent misrepresentations. *Id.* On appeal, the Bankruptcy Appellate Panel affirmed, holding that merely *pleading* a prima facie case, without proving one, does not entitle the creditor to a default judgment. *Id.* at 774. The Bankruptcy Court properly used its discretion in requiring competent, admissible evidence before granting a default judgment. *Id.* at 775.

Applying these factors to determine whether the court should exercise its discretion, the court finds that the Defendant-Debtors will not be prejudiced by the court considering the merits of the present Motion, as they has had ample opportunity to respond to the claims.

11 U.S.C. §§ 105 and 349: prohibiting the Defendants from filing a new bankruptcy case for four years

Section 349(a) governs a dismissal of a bankruptcy case with prejudice. It states:

> (a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischageable in the case dismissed; nor does the dismissal of a case under this title

> prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

11 U.S.C. § 349.

Section 349 establishes the general rule that a dismissal of a case is without prejudice. However, Section 349 also "expressly grants a bankruptcy court the authority to 'dismiss the case with prejudice thereby preventing the debtor from obtaining a discharge with regard to the debts existing at the time of the dismissed case, at least for some period of time.'" *In re Leavitt*, 209 B.R. 935, 939 (B.A.P. 9th Cir. 1997) (citing 3 Collier On Bankruptcy § 349.01, at 349-2-3 (15th ed.1997)). A dismissal with prejudice is a complete adjudication of the issues presented by the pleadings and a bar to further action between the parties. *Id.* (citing *In re Tomlin*, 105 F.3d 933-37 (4th Cir. 1997)).

The Bankruptcy Code does not explicitly define "cause" for purposes of Section 349. Case law suggests that "egregious" conduct must be present. *Id.* Cases have found that "if a debtor engages in egregious behavior that demonstrates bad faith and prejudices creditors. . . will a bankruptcy court forever bar the debtor from seeking to discharge then existing debt." *Tomlin*, 105 F.3d at 937. Bad faith is a justifiable cause for dismissing with prejudice under Section 349. *Landis v. Pinedo (In re Pinedo)*, No. 11-61500-B-13, 2011 Bankr. LEXIS 5655 at *2 (Bankr. E.D. Cal. Dec. 30, 2011).

When determining if bad faith exists, courts should ask "whether the debtor 'misrepresented facts in his [petition or] plan, unfairly manipulated the Bankruptcy Code, or an otherwise [filed his . . [petition or] plan in an inequitable manner.'" *In re Eisen*, 14 F.3d 469 (9th Cir. 1994) (quoting *In re Nash*, 765 F.2d 1410, 1415 (9th Cir. 1985)). "A debtor's history of filings and dismissals is relevant." Id. Some factors that a court may consider when evaluating a debtor's history of filings include: "(1) the time between the prior case and the present one; (2) whether the second case was filed to obtain the favorable treatment afforded by the automatic stay; (3) the effort made to comply with the prior case plan; (4) the fact that Congress intended the debtor to achieve its goals in a single case; (5) any other facts the court finds relevant." *In re Huerta*, 137 B.R. 356,367 (Bankr. C.D. Cal 1992).

Under 11 U.S.C. § 105(a):

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

11 U.S.C. § 105(a).

In exercising these general statutory powers, a bankruptcy court may "'carry out' the provisions of the Code" but must "yield to specific prohibition found elsewhere." *Law v. Siegel*, 134 S.Ct. 1188, 1194 (2014).

Here, Plaintiff has shown sufficient basis for dismissal with prejudice. Applying the factors for bad faith filing outlined in In re Huerta to the instant case, it is apparent that the Defendant-Debtors were acting in bad faith, justifying a dismissal with prejudice under Section 349. The instant bankruptcy case is the fourth one in the past four years, signaling an abuse of the bankruptcy system, especially since "Congress intended to debtor to achieve its goals in a single case." *Huerta*, 137 B.R. at 367. All of the prior cases have been dismissed because of the failure of Defendant-Debtors to either abide by the terms of a plan or directly violating court orders. The second case, Case No. 12-90179-D-13, was dismissed for Defendant-Debtors failure to make payments.

This is not a situation where "well intentioned but least sophisticated consumers" tripped over "technicalities of federal law." In each of the four bankruptcy cases the Debtors have been represented by bankruptcy counsel who regularly appears in all three divisions in this District. The first bankruptcy case was filed as a Chapter 13 on November 22, 2011. 11-94029. Other than filing the Petition, the Debtors failed to file any of the basic and necessary documents (including Chapter 13 Plan, Schedules, Statement of Financial Affairs) to prosecute that case. It was dismissed on December 12, 2011.

Debtors, represented by the same attorney, filed the second Chapter 13 bankruptcy case on January 23, 2012. 12-90179. While the Debtors were able to file the necessary basic documents in the second bankruptcy case, on April 5, 2012, it too was dismissed. This was pursuant to a Conditional Order of Dismissal based on the Debtors' failure to make the monthly payments promised under their Chapter 13 Plan. 12-90179, Conditional Order of Dismissal, Dckt. 34; Order Dismissing Case, Dckt. 34; Declaration ($4,500.00 default in plan payments), Dckt. 23.

Debtors, represented by the same attorney filed the third Chapter 13 bankruptcy case on April 23, 2012. 12-91162. This third bankruptcy case was dismissed on June 20, 2014. The Trustee's motion to dismiss was based on the Debtors again being $4,500.00 in default in plan payments. *Id.*, Declaration, Dckt. 27. This was the amount of the first payment due under the Chapter 13 Plan.

On July 25, 2012, Debtors commenced their fourth bankruptcy case with the assistance of the same attorney. (The current case, 12-92036.) However, instead of filing it as a Chapter 13 case (for which the Chapter 13 Trustee provides oversight and accountability), the Debtors commenced the current case as one under Chapter 11. (In addition to avoiding the Chapter 13 Trustee, as counsel for the Debtors is aware, the Chapter 11 cases in the Modesto Division are assigned to a different judge than the Chapter 13 cases. The decision to switch to Chapter 11 after three Chapter 13 filings (which presumably counsel did in good faith and consistent with Federal Rule of Bankruptcy Procedure 9011) smacks of judge shopping or an attempt to avoid the judge who had personal knowledge of the three prior failures.

The Civil Minutes from the November 8, 2011 Chapter 11 Status Conference clearly reflect that the Debtors failed to prosecute the Chapter 11 case. Findings of the court relating to this lack of prosecution include, but are not limited to, the following:

> "**Counsel for the Debtors in Possession appeared, but advised the court that he had not met with his clients.** The court announced at the prior hearing that it had decided to convert the case to one under Chapter 7. The court conducted a further hearing to afford the Debtors in Possession an opportunity to present sufficient information and evidence as to why the court should not enter an order converting the case. The Debtors in Possession and their counsel failed to do so. See 11 U.S.C. § 1112(b)(2) factors."
>
> "The arguments and declaration provided by the Debtors in Possession do not provide any specific information as to why or how the Debtors in Possession can prosecute a reorganization in this case (their fourth bankruptcy case in the past year). In each case they were represented by the same counsel as is their counsel of record in this case."
>
> "No explanation is provided as to the three prior bankruptcy cases filed by the Debtors, each of which they were represented by counsel (the same attorney representing them in this Chapter 11 case). **The Debtors in Possession offer no explanation as to why now they do not meet the debt limits for a Chapter 13 case or why the multiple filing of prior Chapter 13 cases was in good faith.**"
>
> "**In the current Chapter 11 case the Debtors have failed to file monthly operating reports.** Though represented to have been long term owners of the rental properties in this estate and being stable, the Statement of Financial Affairs states under penalty of perjury that the Debtors had no rental income in 2010. **No explanation was provided at the hearing as to how no income in 2010 corresponded to the representations at the Status Conference that the Debtors were the long term owners and operators of the rental properties.**"
>
> "The **Debtors in Possession were not present at the hearing. Counsel could not affirmatively state that the Debtors in Possession have established a cash collateral account, that all cash collateral is being deposited in that account, and that no cash collateral is being used** since there are no stipulations for cash collateral and no order entered authorizing the use of cash collateral."

> "For the prior ill fated Chapter 13 cases, the Statement of Financial Affairs states that **counsel was paid $5,500.00**. In July 2012, just prior to the commencement of the current Chapter 11 case, **counsel was paid an additional $7,500.00** in connection with bankruptcy representation."
>
> "On Schedule J, the Debtors ignore any expenses relating to the rental properties. The **information on Schedule J is clearly incomplete and fails to accurately and truthfully disclose the expenses of these Debtors**. After filing four bankruptcy cases, no good faith reason exists for inaccuracies and incomplete information being provided by the Debtors under penalty of perjury."

Civil Minutes, Dckt. 62 [emphasis added].

By order of the court dated July 23, 2013, Counsel for the Debtors was ordered to disgorge $7,500.00 in fees he received from Debtors, which were paid to the Chapter 7 Trustee. Order, Dckt. 96. Counsel filed no opposition or response to the motion to disgorge, though the court continued the hearing to so allow at Counsel's request. Civil Minutes, Dckt. 90. The court's findings with respect to the motion to disgorge include, but are not limited to,

> "From the evidence presented and review of the court's files for the Debtors' four cases, the bankruptcy filings have been nothing more than a Chapter 7 liquidation. **No serious, good faith effort was made for a rehabilitation under Chapter 13 or a reorganization under Chapter 11**. The court does not allow attorneys to separate consumers from their money by filing non-productive bankruptcy cases solely for the purpose of filing a case. Counsel's reasonable fees to be paid are those for filing a Chapter 7 bankruptcy case."

Id. [Emphasis added].

In attempting to continue in the non-productive use of the bankruptcy laws, Debtors, with the assistance of Counsel, sought to have the Chapter 7 case reconverted to one under Chapter 7. In denying that motion, the courts findings include, but are not limited to,

> "Here, the court finds that Debtors have not shown sufficient good faith to reconvert to Chapter 11. First, the Debtors have not prosecuted this basic Chapter 7 case properly. As the Trustee testifies, Debtors have failed to appear at the Chapter 7 meeting of creditors on December 14, 2012, January 11, 2013, and February 28, 2013. If the Debtors cannot prosecute this case properly, then the court does not believe that they could prosecute a more complicated Chapter 11, in which monthly operating reports and other fiduciary responsibilities are required by the Debtors-in-Possession."

Civil Minutes, Dckt. 123.

The Debtors bad faith (not merely lack of good faith) is further documented by the Chapter 13 Trustee's reports of continued first meeting of creditors. These include,

> "Report of Trustee at 341 Meeting. The 341 Meeting was adjourned on 08/24/2012. Debtor Did Not Appear. Joint Debtor Did Not Appear. Counsel Did Not Appear. Jason Blumberg, Attorney for the U.S. Trustees Office, appeared. Continued Meeting of Creditors to be held on 9/7/2012 at 10:00 AM at Meeting Room 7-C. (Wolny, Susan)"

August 27, 2012 Docket Entry Report.

> "Report of Trustee at 341 Meeting. 341 Meeting was adjourned on 12/14/12. Debtor Did Not Appear; Joint Debtor Did Not Appear; Counsel Did Not Appear; Continued Meeting of Creditors to be held on 01/11/13 at 02:30 PM at Modesto Meeting Room. (Ferlmann, Stephen)"

December 14, 2012 Docket Entry Report.

> "Report of Trustee at 341 Meeting. 341 Meeting was adjourned on 01/11/13. Debtor Did Not Appear; Joint Debtor Did Not Appear; Counsel Did Not Appear; Continued Meeting of Creditors to be held on 02/28/13 at 02:30 PM at Modesto Meeting Room. (Ferlmann, Stephen)"

January 11, 2013 Docket Entry Report.

> "Report of Trustee at 341 Meeting. 341 Meeting was adjourned on 03/13/2014. Debtor Did Not Appear; Joint Debtor Did Not Appear; Counsel Appeared; Continued Meeting of Creditors to be held on 04/10/14 at 02:30 PM at Modesto Meeting Room. (Ferlmann, Stephen)"

March 18, 2014 Docket Entry Report.

> "Report of Trustee at 341 Meeting. 341 Meeting was adjourned on 04/10/2014. Debtor Did Not Appear; Joint Debtor Did Not Appear; Counsel Appeared; Continued Meeting of Creditors to be held on 05/08/14 at 11:00 AM at Modesto Meeting Room. (Ferlmann, Stephen)"

April 4, 2014 Docket Entry Report.

All of these facts support the conclusion that Defendant-Debtors have acted egregiously and in bad faith by filing multiple bankruptcies in a short period of time and having the prior ones dismissed due to failures on part of the Defendant-Debtors.

Furthermore, due to the particularly egregious acts of the Defendant-Debtors in the multiple bad faith filings and under this court's authority under Section 105, this court finds that an injunction barring the Defendant-Debtors from filing any subsequent petition for relief under the

Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of California for a period four-year proper.

11 U.S.C. § 727(a)(6)(A) and § 727(a)(6)(C): denying Defendants' discharge in the Underlying Case

11 U.S.C. § 727 provides, in relevant part:

(a) The court shall grant the debtor a discharge, unless-. . .

(6) the debtor has refused, in the case-

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;. . .

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;. . .

11 U.S.C. § 727.

The burden of proof is on the moving party "to show by a preponderance of the evidence that the debtor's case falls within one of the enumerated exceptions of § 727(a), thereby permitting the Court to deny the debtor a discharge." *In re Wells*, 426 B.R. 579, 587-88 (Bankr. N.D. Tex. 2006).

For 11 U.S.C. § 727(a)(6)(A), "[t]he term used. . . is 'refused' not failed'" and therefore, "the Court must find that the Debtors' lack of compliance with the relevant court order was wilful and intentional." *In re Lebbos*, 439 B.R. 154, 164-65 (Bankr. E.D. Cal. 2010) (citing *Smith v. Jordan* (*In re Jordan*), 521 F.3d 430, 433-34 (4th Cir. 2008)) (internal citations omitted).

For 11 U.S.C. § 727(a)(6)(C), "'Court' means a judge, and not a trustee, United States trustee or other official." 6 COLLIER ON BANKRUPTCY ¶ 727.09 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The debtors' refusal to answer a question that has been approved by the court is a basis for denial of a discharge. *Id.*

Here, the Plaintiff has shown that the Defendant-Debtors have violated both § 727(a)(6)(A) and (C). The court issued an order on January 15, 2014 compelling the Defendant-Debtors to appear at the Special Meeting of Creditors on March 13, 2014. Dckt. 138. The court issued this order only after the Defendant-Debtors failed to attend the earlier set Special Meeting of Creditors. Even after the court order, the Defendant-Debtors failed to attend the court-ordered Special Meeting of Creditors. Following this failure, the Special Meeting of Creditors was continued until April 10, 2014. Yet again, the Defendant-Debtors failed to appear.

Plaintiff's complaint mentions that the Defendant-Debtors did provide a medical note for their absence at the Special Meeting of Creditors, citing "knee pain" as the reason for the absence of the March 13th

meeting. However, knee pain does not sufficiently excuse absence from a court-ordered Special Meeting of Creditors.

This court finds that the Defendant-Debtors wilfully and intentionally refused to comply with a court order and, through this refusal to attend, refused to respond to a material question approved by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Entry of Default Judgment filed by Plaintiff having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the Defendant-Debtors Reynol V. Garcia and Enedina Garcia are denied their discharge in Bankruptcy Case No. 12-92036-E-7 pursuant to 11 U.S.C. §§ 727(a)(6)(A) and 727(a)(6)(C).
>
> **IT IS FURTHER ORDERED** that the Defendant-Debtors are prohibited from filing, or from causing to be filed, any subsequent petition for relief under the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of California, for a period of four-years.

17. 14-90048-E-7 GRF-1 — ROBERT/PASCUALA SELOVER — Steven S. Altman — MOTION TO EMPLOY BRUCE E. RAMSEY AS SPECIAL COUNSEL — 7-1-14 [33]

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

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, and Office of the United States Trustee on July 1, 2014. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

Chapter 7 Trustee, Gary Farrar, seeks to employ counsel Bruce E. Ramsey of Ulrich & Ramsey, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of counsel to assist the Trustee as special litigation counsel to institute an insurance litigation lawsuit.

The Trustee argues that counsel's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present insurance litigation lawsuit. Additionally, the Trustee argues that employing other counsel "may result in significant delays." Dckt. 33, pg. 3.

Bruce E. Ramsey, an member of Ulrich & Ramsey, testifies that he would represent the estate as special counsel in the possible insurance litigation lawsuit. Mr. Ramsey testifies he, his firm, or proposed joint special counsel do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

However, Mr. Ramsey represents an unsecured creditor, Meriwest Mortgage, of the Debtors in the instant bankruptcy case. In Mr. Ramsey's Declaration, he claims that his representation of Meriwest Mortgage in the instant bankruptcy case is not an adverse interest that would bar Mr. Ramsey from representing the estate in the possible insurance litigation lawsuit. In his supplemental declaration (Dckt. 38), Mr. Ramsey testifies that "[a]bsent court approval, Meriwest Mortgage will submit no claim in the bankruptcy estate except as a pro-rata unsecured creditor."

DISCUSSION

Pursuant to § 327(e), five elements must be met for the employment of an attorney for a "specified special purpose" to be proper: "(1) the trustee must be persuaded to request the employment of debtors' counsel; (2) the purpose must be a specified special purpose that does not include represent the trustee in conducting the case; (3) the employment must be in the best interest of the estate; (4) the attorney must not represent or hold

any interest adverse to the debtor or to the estate with respect to the services to be rendered; and (5) the court must approve the employment." *In re Johnson*, 397 B.R. 486, 491 (Bankr. E.D. Cal. 2008)(citing 11 U.S.C. § 327(e)). The situs of most problems in the context of § 327(e) employment is the fourth element and showing that there is no adverse interest.

At the stage of granting employment under § 327(e), the court can only "predict whether the Strait of Conflicts will be successfully navigated when the services are performed." *Id.* In the context of "specified special purpose" employment, "§ 327(e) employment is necessarily preliminary and contingent upon the course of performance." *Id.* The standard for granting employment under § 327(e) is less strict than employment under § 327(a), which requires that the professional must not hold or represent an interest adverse to the estate and be a "disinterested person" as that term is defined in section 101(14) of the Code.

While the authorization of employment under § 327(e) is "necessarily preliminary," there are two mechanisms that balance the risk of such employment. First, the trustee may decline to support compensation. Secondly, the court is authorized to deny compensation if counsel "represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed." 11 U.S.C. § 327(c).

Here, the elements for employment under § 327(e) have been met. The trustee has been persuaded to request Mr. Ramsey as special counsel for the insurance litigation lawsuit, as evidenced by his declaration. Dckt. 36. The specified special purpose is acting as special counsel in the insurance litigation lawsuit and not conducting the bankruptcy case. The employment is in the best interest of the estate because it has the potential of increasing the value of the overall estate if the lawsuit is successful. Mr Ramsey, while representing a creditor in the case, does not represent any interest adverse to the Debtor in the context of the insurance litigation lawsuit. FN.1. The last element is met with the issuance of this order.

FN.1. The court wants to note that, while employment of Mr. Ramsey under § 327(e) is proper, Mr. Ramsey may hold an interest materially adverse to the estate in his representation of Meriwest Mortgage. Under 11 U.S.C. § 101(14)(C), Mr. Ramsey's "representation of an adversary," here Meriwest Mortgage, is a materially adverse interest, barring Mr. Ramsey from being employed under 11 U.S.C. § 327(a). Mr. Ramsey has direct relationship with Meriwest Mortgage which holds an interest that is materially adverse to the Debtor's bankruptcy estate. The fact that Meriwest Mortgage may be willing to not submit a claim and instead be an unsecured creditor does not cure this material adverse interest. Meriwest Mortgage, even in an unsecured creditor capacity, will be seeking to deplete the bankruptcy estate to the extent it may under the law.

After review of the Motion to Employ and the relevant factors under § 327(e), the court grants the motion to employ Bruce E. Ramsey as counsel for the Chapter 7 estate on the terms and conditions set forth in the Legal Services Agreement filed as Exhibit A, Dckt. 36.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted and the Chapter 7 Trustee is authorized to employ Bruce E. Ramsey of Ulrich & Ramsey as counsel for the Chapter 7 Trustee on the terms and conditions as set forth in the Contingency Fee Employment Agreement filed as Exhibit A, Dckt. 36.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.
>
> **IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.
>
> **IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

18. 12-92049-E-7 **ROBERT/KATHERINE MATTEUCCI**
12-9032 **GRANT BISHOP MOTORS, INC. V. MATTEUCCI ET AL**

STATUS CONFERENCE RE: COMPLAINT 11-2-12 [1]

Plaintiff's Atty: Steven S. Altman
Defendant's Atty: Pro Se

Adv. Filed: 11/2/12
Answer: 1/2/13

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

Notes:

Specially set by order dated 6/17/14 [Dckt 56]

19. 12-92049-E-7 **ROBERT/KATHERINE MATTEUCCI SSA-1**
12-9032 **GRANT BISHOP MOTORS, INC. V. MATTEUCCI ET AL**

MOTION TO DISMISS CAUSE(S) OF ACTION FROM COMPLAINT 7-18-14 [57]

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors/Defendants, Plaintiff, Chapter 7 Trustee parties requesting special notice, and Office of the United States Trustee on July 18, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Joint Motion to Dismiss a Portion of Plaintiff's Adversary Complaint Against the Debtors' Discharge 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 Joint Motion to Dismiss a Portion of Plaintiff's Adversary Complaint Against the Debtors' Discharge is granted.

Plaintiff Grant Bishop Morotos, Inc., dba Modesto European ("Plaintiff") and Defendants Robert Anthony Matteucci and Katherine Sherice Matteucci (herinafter referred to as "Debtors" or "Defendants") file this Joint Motion to Dismiss a Portion of Plaintiff's Adversary Complaint Against the Debtors' Discharge.

On November 2, 2013, Modesto European commenced an adversary proceeding in the court, referenced as Grant Bishop Motors, Inc., dba Modesto European, a California Corporation v. Robert Anthony Matteucci and Katherine Sherice Matteucci, Adversary Case No. 12-03032, advancing claims of objection to discharge and false oath under 11 U.S.C. § 727(a)(4), objection to discharge of debts-fraud, 11 U.S.C. § 523(a)(2)(A) and 2(B)(i-iv), objection to debts-fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny, 11 U.S.C. § 523(a)(4), objection to discharge of debts-willful and malicious injury by Debtor to another entity or the property of other entity, 11 U.S.C. § 523(a)(6).

The case was resolved by the parties through a Stipulation for Entry of Judgment and Judgment. Exhibits 1, 2, Dckt. No. 61.

On June 17, 2014, this court issued an order setting a status conference. The order invited the parties to file and serve an appropriate motion to address the remaining unresolved cause of action, which is that under 11 U.S.C. § 727(a)(4) for false oath.

Federal Rule of Civil Procedure 41(a)(1)(ii), made applicable to this adversary by Federal Rule of Bankruptcy Procedure 7041, allows the subject action to be dismissed, but only after a noticed hearing. The parties request that the court enter a dismissal of a portion of the selected adversary action with prejudice (the Bankruptcy Code 727 claim) by virtue of the settlement and compromise in this matter, and based on the fact that Plaintiff, through diligent discover and judgment of its counsel, elected not to pursue its 727 claims. The Motion states that this is buttressed by the fact that the Chapter 7 Trustee, in the course of his own separate investigation, decided not to pursue 727 claims under the Bankruptcy Code against Debtors as well.

The parties aver that the settlement meets the standards set forth in *In re Speece*, 159 BR 314, 317 (Bankr. E.D. Cal. 1993).

The Plaintiff and Defendants having reached a settlement agreement and compromise in this adversary proceeding, and the Plaintiff wishing to dismiss the remaining claim for relief under 11 U.S.C. § 727(a)(4), objection to Debtors' discharge for false statements under oath, the court enters the dismissal of Adversary Case No. 12-03032.

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 Joint Motion to Dismiss a Portion of Plaintiff's Adversary Complaint Against the Debtors' Discharge 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 that Adversary Case No. 12-03032, objecting to the discharge of Robert Anthony Matteucci and Katherine Sherice Matteucci, is hereby dismissed.

20. 13-90950-E-7 ADJ-7 | **FEDERICO/ILENE RUEZGA** | **James P. Mootz** | **MOTION FOR COMPENSATION FOR ATHERTON & ASSOCIATES, ACCOUNTANT(S)** | **6-17-14 [110]**

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

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

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Atherton & Associates, LLP, the Accountant ("Applicant" or "Accountant") for Michael D. McGranahan, the Chapter 7 Trustee ("Client"), makes a Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period of February 3, 2014 through May 30, 2014. The order of the court approving employment of Applicant was entered on March 17, 2014, Dckt. No. 92.

On March 31, 2014, the court entered a civil minute Court entered the Civil Minute Order Granting 10 Motion/ Application to Approve Settlement Agreement (docket number 95). Pursuant to the the terms of the settlement agreement, the Trustee received for the benefit of the bankruptcy estate an amount equal to one-half (1/2) of the total revenue generated by an almond orchard located at 13 11243 Merced Court, Turlock, California, to settle a claim in full by the Trustee that the Debtors hold an equitable interest in said almond orchard.

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories. Accountant provided accounting services necessary to assist the in the administration of this case, by performing tax planning services, preparation of federal and state fiduciary tax returns, and preparation of time records (project billing) for this fee application.

Tax Planning: The Accountant spent .90 hours for total fees of $207.00. All services were rendered by Maria T. Stokman, CPA, Partner with the Accountant.

Tax Preparation: The Accountant spent 7.80 hours related to the preparation of final federal and state fiduciary tax returns for total fees of $1,234.00 (Maria T. Stokman rendered 3.80 hours of services for fees of $874.00. Tyler Wookey rendered 4.00 hours of services for fees of $360.00).

Fee Application: The Accountant spent .50 hours preparing the time records (divided by project billing) for this fee application. (Maria T. Stokman rendered .50 hours of services for fees of $115.00.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the

service was rendered toward the completion of, a case under this title;

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including helping the Trustee file federal and state fiduciary tax returns, the preparation of which required a certified public accountant. The court entered a discharge of the Debtors in this case on May 16, 2014. The estate has $56,420.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Maria Stokman	5.2	$230.00	$1,196.00
Tyler Wookey	4.0	$90.00	$360.00
	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			$1,556.00

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Fees in the amount of $1,556.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $1,556.00
Costs and Expenses $ 0.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Atherton & Associates, LLP ("Applicant"), Accountant for the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED that Atherton & Associates, LLP**, is allowed the following fees and expenses as a professional of the Estate:
>
> Atherton & Associates, LLP, Professional Employed by Trustee,
>
> Fees in the amount of $ 1,556.00
> Expenses in the amount of $ 0.00,
>
> The Fees and Costs pursuant to this Applicant, and Fees in the amount of $1,556.00 are approved pursuant to prior Interim Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

21. 13-90950-E-7 ADJ-8 | **FEDERICO/ILENE RUEZGA** | **James P. Mootz** | **MOTION FOR COMPENSATION FOR ANTHONY D. JOHNSTON, TRUSTEE'S ATTORNEY(S)** **6-19-14 [117]**

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 19, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Anthony D. Johnston, Attorney for the Chapter 7 Trustee Michael D. McGranahan ("Applicant"), makes a Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period of July 26, 2013 through June 19, 2014. The order of the court approving employment of Applicant was entered on July 26, 2013. The Applicant moves for an order awarding the sum of $9,725.00 for fees, and $463.44 in reimbursement of costs advanced from the court.

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:

(i) Equitable Interest in Almond Orchard

On the Debtors' original Schedule A, filed on May 16, 2013, the Debtors listed the following: "Residence located at 11243 Merced Court, Turlock, CA. (Half interest and Co-owner with mother) Debtors [sic] interest in home is $15,383.00." Hereinafter, the real property located at 11243 Merced Court, Turlock, California shall be referred to as the "Real Property." The Merced Court Property in fact is comprised of a 30-acre parcel. It includes an almond orchard of approximately 24-acres with eight year old trees (the "Almond Orchard'').

In fact, the Debtors do not hold legal title to the Real Property. Since 2008, title to the Real Property has been held by Wenceslada P. Ruesga and Federico Ruesga, Co-Trustees of the Wenceslada Ruesga 2008 Revocable Trust (the "Trust"). Wenceslada Ruesga, who is elderly, is the settlor of the Trust. The Trust is revocable and during her lifetime, the settlor is the sole beneficiary of the Trust. Wenceslada Ruesga, the mother of Debtor Federico Ruesga (aka Ruezga), is alive.

According to the Debtors, the Debtors and Oscar Ruezga (brother of Debtor Federico Ruezga) paid in equal shares all expenses to plant the Almond Orchard. The Trustee and the Attorney claimed that the Debtors hold an equitable interest in the Almond Orchard; thus, it is property of the

estate pursuant to 11 U.S.C. § 541. The Attorney negotiated a settlement of this equitable interest claim, as represented by the written Settlement Agreement and Mutual Release of Claims (the "Settlement Agreement"), executed by the Debtors, the Trustee, and approved by Oscar Ruezga.

The Court entered an order approving the Settlement Agreement, upon motion by the Trustee, on March 31, 2013. Pursuant to the terms of the Settlement Agreement, the Trustee received for the benefit of the bankruptcy estate an amount equal to 1/2 of the total revenue collected for the Almond Orchard's 2013 crop. As a result of the Settlement Agreement, the Trustee collected from the 2013 Almond Orchard crop proceeds the sum of $56,719.92 for the benefit of the bankruptcy estate.

(ii) Miscellaneous Assets

The Attorney prepared a motion to compel the Debtors to tum over the following assets:

a. Almond Orchard crop proceeds;

b. PT Cruiser;

c. horses; and

d. horse trailer.

On October 18, 2013, the Court entered an order granting said tum over motion. Under amended Schedule C filed on September 5, 2013, the PT Cruiser, horses, and horse trailer were non-exempt assets. The Attorney and Trustee also pursued potential recovery of the Debtors' interest in a horse racing business. After investigation, the Attorney and Trustee confirmed the horse racing business has no value. Prior to resolution of the Almond Orchard equitable interest issue, the Debtors had claimed an exemption in the Real Property pursuant to C.C.P. § 704.730.

Because the Debtors' resolved the almond orchard equitable interest issue, on April 7, 2014, the Debtors filed an amended Schedule C, switching to C.C.P. § 703 exemptions. Under this amended Schedule C, filed on April 7, 2014, the PT Cruiser, horses, and horse trailer were rendered exempt (the PT Cruiser has non-exempt equity of $200.00 which is not worth pursuing). Without resolution of the Almond Orchard issue, these assets would have been potentially available to the creditors and were properly pursued.

Fee/Employment Applications: The Attorney prepared his employment application and ancillary documents. The Attorney prepared the application for allowance of fees and ancillary documents for the Trustee's certified public accountant. The Attorney prepared this fee application and the supporting declarations, notice of hearing, exhibits (including project billing worksheets), and certificates of service. The Attorney will appear at the hearing on this application and the application for allowance of fees for the Trustee's certified public accountant. The Attorney is waiving compensation for appearing at the fee application hearings.

Litigation:

(i) Motion to Vacate Order Converting Case from Chapter 7 to Chapter 13.

The Attorney prepared a motion to vacate the order converting the case from Chapter 7 to a case under Chapter 13. The Court, based upon the motion and supporting documents, found that the Debtors had not properly served the motion for conversion and entered an order vacating the order converting the case from Chapter 7 to Chapter 13. The Court further found that the Debtors acted in bad faith by not giving service of the motion and by not disclosing the true nature and value of the Real Property on the original Schedule A filed in this case.

(ii) Stipulation Extending Trustee's Time to Object to Discharge.

The Attorney prepared a stipulation and order extending the time for the Trustee to object to the Debtors' discharge. The Attorney also negotiated with Debtors' counsel and ultimately obtained the Debtors' signatures on the stipulation. The Court entered an order confirming the stipulation.

Asset Dispositions: The Attorney reviewed an email from Debtors' counsel with an offer by the Debtors purchase the horse trailer, and wrote an email to the Trustee regarding the same.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including successfully having the order converting the case from Chapter 7 to Chapter 13 vacated. As a result, there is now a Chapter 7 bankruptcy estate for the benefit of the creditors. The Attorney also formulated the claim that the bankruptcy estate holds an equitable interest in the Almond

Orchard. As a result of the Attorney's efforts in pursuing this claim, the bankruptcy estate recovered $56,719.92 in estate funds.

in connection with pursuing the bankruptcy estate's claim relative to the Almond Orchard, the Attorney investigated the factual and legal basis for this claim, obtained an order for a Rule 2004 examination, held a meeting with the Trustee, Debtors, and their counsel in lieu of a Rule 2004 examination, prepared a turn over motion which was granted, negotiated and prepared the Settlement Agreement, and prepared the motion for approval of the Settlement Agreement. Pursuant to the terms of the Settlement Agreement, the Trustee received for the benefit of the bankruptcy estate an amount equal to 1/2 of the total revenue collected for the Almond Orchard's 2013 crop. As a result of the Settlement Agreement, the Trustee collected from the 2013 Almond Orchard crop proceeds the sum of $56,719.92 for the benefit of the bankruptcy estate.

Because the Debtors' resolved the almond orchard equitable interest issue, on April 7, 2014, the Debtors filed an amended Schedule C, switching to C.C.P. § 703 exemptions. Under this amended Schedule C, filed on April 7, 2014, the PT Cruiser, horses, and horse trailer were rendered exempt (the PT Cruiser has non-exempt equity of $200.00 which is not worth pursuing). Without resolution of the Almond Orchard issue, these assets would have been potentially available to the creditors and were properly pursued.

Further, the Attorney pursued recovery of the PT Cruiser, horses, and horse trailer. Without resolution of the Almond Orchard issue, these assets would have been potentially available to the creditors to be pursued. The Attorney also successfully negotiated the stipulation extending the time to object to discharge.

The estate has $56,420.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Anthony D. Johnston	38.90	$250.00	$9,725.00
			$0.00
	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			$9,725.00

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Fees in the amount of $9,725.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $463.44 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
10/18/2013 Fee to copy Ex Parte Application for Rule 2004 Exam and Proposed Order	(36 copies@ $.10 per page)	$3.60
10/18/2013 Postage to mail Ex Parte Application for Rule 2004 Exam and Proposed Order		$3.36
3/5/2014 Fee to copy of Motion for Approval of Settlement Agreement and Accompanying Documents.	(2,576 copies@ $.10 per page)	$257.60
3/5/2014 Postage to mail Motion for Approval of Settlement Agreement and Accompanying Documents.		$25.76

6/17/2014 Fee to copy Application for Allowance of Compensation for Chapter 7 Trustee's Account and Supporting Documents	(464 copies@ $.10 per page)	$46.40
6/17/2014 Postage to mail Application for Allowance of Compensation for Chapter 7 Trustee's Account and Supporting Documents.		$38.08
6/18/2014 Fee to copy Application of Trustee's Attorney for Allowance of Final Compensation and Supporting Documents	(472 copies@ $.10 per page)	$47.20
6/18/2014 Postage to mail Application of Trustee's Attorney for Allowance of Final Compensation and Supporting Documents.		$41.44
Total Costs Requested in Application		$463.44

The Final Costs in the amount of $463.44 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$ 9,725.00
Costs and Expenses	$ 463.44

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Anthony D. Johnston ("Applicant"), Counsel for the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED that** Anthony D. Johnston, is allowed the following fees and expenses as a professional of the Estate:
>
> Anthony D. Johnston, Professional Employed by Trustee,
>
> Fees in the amount of $9,725.00
> Expenses in the amount of $ 463.44,
>
> The Fees and Costs pursuant to this Applicant, and Fees in the amount of $9,725.00 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.

22. 14-90150-E-7 MIGUEL/SILVIA TOSCANO — MOTION TO ABANDON
SCF-1 Thomas O. Gillis — 7-21-14 [127]

Tentative Ruling: 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).

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 Debtors, Debtors' Attorney, all

creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2014. By the court's calculation, 31 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). 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 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 the Chapter 7 Trustee Stephen Ferlmann ("Trustee") requests the court to order the Trustee to abandon property commonly known as 1200 6th Street, Modesto, California, which is a gas station, and 3200 Sierra Street, Riverbank, California, which is the Debtors' home (the "Property"). The above listed properties, together with Debtors' interest in the inventory and gasoline of the gas station located at 1200 6th Street, Modesto, California, were the subject properties of the Motion for Relief from Stay, filed by secured creditor Focus Business Bank.

On June 15, 2014, the court entered a civil minute order, Dckt. No. 98, granting the secured creditor's Motion for Relief from Stay. The Trustee asserts that the subject property (the Gas Station and its inventory and gasoline, as well as Debtors' home) have inconsequential or no value to the bankruptcy estate, and should be abandoned to the Debtors by application of 11 U.S.C. § 554(a) and (c) of the Bankruptcy Code, and Federal Rule of Bankruptcy Procedure 6007(a).

The total debt secured by the real properties commonly known as 1200 6th Street, Modesto, California and 3200 Sierra Street, Riverbank, California, in addition to personal property collateral described in the Debtors' Commercial Security Agreement (which is substantially all of Debtor's personal property assets and an assignment of all rents, issues and profits from each of the two properties) is $1,082,991.32, as stated in the Schedule D filed by Miguel and Silvia Toscano ("Debtor"). Dckt. 95.

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 Chapter 7 Trustee Stephen Ferlmann ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted and that the Property identified as:
>
> 1. 1200 6th Street, Modesto, California, together with Debtors Miguel Toscano and Silvia Toscano's interest in the inventory and gasoline of this property
>
> 2. 3200 Sierra Street, Riverbank, California
>
> and listed on Schedule A by Debtors is abandoned to Debtors Miguel Toscano and Silvia Toscano by this order, with no further act of the Trustee required.

23. 14-90150-E-7 MIGUEL/SILVIA TOSCANO
UST-2 Thomas O. Gillis

MOTION FOR THE COURT'S DETERMINATION OF THE REASONABLE VALUE OF THE SERVICES OF THOMAS O. GILLIS AND/OR MOTION TO DISGORGE FEES
6-23-14 [108]

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Debtors, Debtors' Attorney, and parties requesting special notice on June 23, 2014. By the court's calculation, 59 days' notice was provided. 28 days' notice is required.

The Motion for the Court's Determination of the Reasonable Value of Services of Thomas O. Gillis and/or Motion to Disgorge 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 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 the Court's Determination of the Reasonable Value of Services of Thomas O. Gillis and/or Motion to Disgorge Fees is granted.

The United States Trustee moves the Court to (i) review the legal services provided by the Thomas O. Gillis ("Counsel"), the attorney of Debtors Miguel and Silvia Toscano ("Debtors") in this case; (ii) determine the reasonable value of those services, considering that his employment has been previously denied in the case and no new application for approval of his employment has been filed; as well as (iii) order any excessive payments from his $17,500 retainer disgorged and turned over to its payer or to the estate, whichever is appropriate based on the status of the case at the time of the hearing on this motion.

On February 6, 2014, a Voluntary Petition was filed by Counsel for Debtors in this case (Docket #1). Counsel filed Debtors' schedules and statements on February 18, 2014 (Docket #22).

According to the Disclosure of Compensation of Attorney for Debtor Debtors' Counsel, Thomas Gillis, received $17,500 "for services rendered or to be rendered on behalf of the debtor(s)" on or before February 3, 2014. Dckt. No. 22.

On March 10, 2014, Counsel filed its Order Denying Without Prejudice *Ex Parte* Motion to Employ Counsel, Dctk. No. 41, requiring that:

> The Motion to Employ Counsel shall be set for a noticed hearing. The Motion shall be supported by credible, properly authenticated evidence, which shall include:
>
> > 1. The attorneys who will personally be responsible for the prosecution of this Chapter 11 case and the attorney designated as lead counsel for the Debtors in Possession;
> >
> > 2. The other active Chapter 11 and Chapter 12 cases that each of the above identified attorneys are currently responsible for or working on, and the current status of each of those cases;
> >
> > 3. Other Chapter 11 and 12 cases each of the above identified attorneys is or has been responsible for, worked on, or designated as the lead attorney which were filed in or pending from January 1, 2013, through the date

> the motion to employ is filed and the current status of each case (such as confirmed plan, dismissed, converted); and,
>
> 4. The experience and qualifications of the above identified attorneys to prosecute this Chapter 11 case for the Debtors in Possession.

Oddly, Counsel signed as the Responsible Party on the Monthly Operating Reports ("MORs") for February 2014 and March 2014. Dckt. Nos. 56 and 66. Subsequently, the Amended MOR for February 2014 and the MOR for April 2014 were filed.

On June 5, 2014, Counsel filed the Debtor in Possessions' *Ex parte* Motion for an Order Converting [the Case from] Chapter 11 to Chapter 7 (Docket #91).

On June 15, 2014, the Court ordered that the automatic stay be vacated for the secured creditor on all of Debtors' real properties. Dckt. No. 98. Counsel has not filed a Motion to Employ Counsel as required by the Court's March 10, 2014, and there appear no extraordinary circumstances to justify his failure to do so. Counsel has not filed a fee application in the case. Based on the foregoing, the Trustee argues that compensation should be denied and Counsel should be directed to return his retainer to its payer or to the estate.

DISCUSSION

This court has the authority, and responsibility, to consider attorneys' fees obtained or to be paid prior to or during a bankruptcy case. 11 U.S.C. § 329, 330, 331. Fees in excess of the reasonable value of such services may be ordered repaid. The application of 11 U.S.C. § 329 and Federal Rule of Bankruptcy Procedure, may seem harsh, but are necessary to not only protect vulnerable consumers and business owners, but to protect the integrity of the federal judicial process. *See Neben & Starrett v. Chartwell Fin. Corp.* (In re Park-Helena Corp.), 63 F.3d 877, 881 (9th Cir. Cal. 1995).

Debtor's counsel must lay bare all its dealings regarding compensation and must be direct and comprehensive. See *In re Bob's Supermarket's, Inc.*, 146 Bankr. 20, 25 (Bankr. D. Mont. 1992) aff'd in part and rev'd in part, 165 Bankr. 339 (Bankr. 9th Cir. 1993). The burden is on the person to be employed to come forward and make full, candid, and complete disclosure. *In re B.E.S. Concrete Products*, Inc., 93 B.R. 228 (E.D. Cal. 1988). The federal courts are not mere devices to be used to generate fees for attorneys irrespective of any bona fide rights to be adjudicated.

Pursuant to Bankruptcy Code Section 329(b), a bankruptcy court is invested with the authority to review the reasonableness of pre-petition payments received by a debtor's attorney during the one year period immediately preceding the commencement of the debtor's bankruptcy case. See 11 U.S.C. § 329(b). Consistent with this authority, a bankruptcy court may order the return of any such payments, to the extent that they exceed the reasonable value of the services provided by the debtor's attorney. See *id.;*

see also In re C & P Auto Transport, Inc., 94 B.R. 682, 687 (Bankr. E.D. Cal. 1988) ("The bankruptcy court may order refund of any payment, including purportedly nonrefundable payments, made to an attorney representing a debtor within one year preceding bankruptcy for services rendered or to be rendered in contemplation of or in connection with the bankruptcy case to the extent that the payment exceeds the reasonable value of such services.... If the prepetition payments exceed the reasonable value of the services, the court may order refund to the extent of the excessive payment. 11 U.S.C. § 329(b)."). The initial burden under Section 329(b) is upon the attorney to justify the compensation charged in connection with a bankruptcy case. *See In re Jastrem*, 253 F.3d 438, 443 (9th Cir. 2001); *In re Basham*, 208 B.R. 926, 931-32 (B.A.P. 9th Cir. 1997) (Under Section 329(b), "[t]he burden is upon the applicant to demonstrate that the fees are reasonable."). The Court has broad discretion under Section 329(b) to disallow and require disgorgement of attorney compensation found to be excessive. *See In re Clark*, 223 F.3d 859, 863 (8th Cir. 2000).

Counsel was paid a $17,500 retainer, but has failed to obtain court approval of his appointment. "In this circuit, a retroactive award of fees for services rendered without court approval is not necessarily barred. A court may exercise its discretion to award fees for valuable but unauthorized services." *In re THC Financial Corp.,* 837 F.2d 389, 392 (9th Cir.1988) (citations omitted). However, "[s]uch awards should be limited to exceptional circumstances where an applicant can show both a satisfactory explanation for the failure to receive prior judicial approval and that he or she has benefitted the bankrupt estate in some significant manner." *Id.* (Citations omitted.) Here, the Trustee asserts that exceptional circumstances do not appear.

STIPULATED VOLUNTARY DISMISSAL OF MOTION

On August 14, 2014, the Debtor filed her declaration, stating that Thomas O. Gillis, Esq., was paid a total of $17,500 during 2013 and 2014. Dckt. No. 39.

On August 13, 2014, Debtors exempted the above $17,500 in their Amended Schedule C, and on August 14, 2014, Mr. Gillis refunded to Debtors the $17,500.

The stipulation, dated August 14, 2014 (Dckt. No. 39) filed by the Trustee states that nothing in the stipulation alters the chapter 7 trustee's standing to object to any of Debtors' claims of exemptions pursuant to 11 U.S.C. § 522(l) and Fed. R. Bankr. P. 4003(b). Pursuant to Fed. R. Civ. P. 41(a)(1), as incorporated by Fed. R. Bankr. P. 7041, the United States Trustee ("UST") voluntarily dismisses the "Motion for the Court's Determination of the Reasonable Value of Services of Thomas O. Gillis, Esq." that was filed on June 23, 2014, Dckt. No. 108.

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 the Court's Determination of the Reasonable Value of Services of Thomas O. Gillis and/or Motion to Disgorge Fees filed by Chapter 7 Trustee Stephen Ferlmann ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed pursuant to the Stipulated Voluntary Dismissal filed by the United States Trustee Tracy Hope Davis, the terms of which are stated in the Stipulation filed by the Trustee on August 15, 2014, Dckt. No. 139.

24. 14-90858-E-7 JDP-1 **RAYMOND YOUNG** **Christian J. Younger** **MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC** **7-24-14 [9]**

Final Ruling: No appearance at the August 21, 2014 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor, parties requesting special notice, and Office of the United States Trustee on July 24, 2014. 28 days' notice is required. This requirement was met.

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 granted.

This Motion requests an order avoiding the judicial lien of Portfolio Recovery Associates ("Creditor") against property of Raymond Kai Young ("Debtor") commonly known as 3020 Freedom Lane, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,165.57. An abstract of judgment was recorded with Stanislaus County on December 12, 2013, which encumbers the Property.

The Motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an

approximate value of $149,000.00 as of the date of the petition. The unavoidable consensual liens total $134,365.00 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 $14,635.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(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 Portfolio Recovery Associates, California Superior Court for Stanislaus County Case No. 682879, recorded on December 12, 2013 [Document No. 2014-0102459-00] with the Stanislaus County Recorder, against the real property commonly known as 3020 Freedom Lane, 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.

25.	**14-90858-E-7**	**RAYMOND YOUNG**	**MOTION TO AVOID LIEN OF CAPITAL**
	JDP-2	**Christian J. Younger**	**ONE BANK (USA), N.A.**
			7-24-14 [15]

Final Ruling: No appearance at the August 21, 2014 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor, parties requesting special notice, and Office of the United States Trustee on July 24, 2014. 28 days' notice is required. This requirement was met.

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 granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of Raymond Kai Young ("Debtor") commonly known as 3020 Freedom Lane, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $6,639.21 An abstract of judgment was recorded with **Stanislaus** County on March 21, 2012, which encumbers the Property.

The Motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $149,000.00 as of the date of the petition. The unavoidable consensual liens total $134,365.00 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 $14,635.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(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 Capital One Bank (USA), N.A., California Superior Court for Stanislaus County Case No. 666372, recorded on March 21, 2012 [Document No. 2012-0025362-00] with the Stanislaus County Recorder, against the real property commonly known as 3020 Freedom Lane, 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.

26. 13-90161-E-7 SWARD TRUCKING, INC.
HCS-2 Steven S. Altman

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM\CRABTREE\SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S)
7-3-14 [59]

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 3, 2014. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Herum\Crabtree\Suntag, the Attorney(the "Applicant") for the Chapter 7 Trustee in this case, Gary R. Farrar ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. The order of the court approving employment of Applicant was entered on October 15, 2013. The Applicant submits this first and final fee application for compensation for legal services rendered in the amount of $3,800 and costs incurred in the amount of $127.93, for a total of $3,927.93.

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

General Case Administration: The Applicant spent 8.4 hours on general case administration. This time included preparing the Applicant's employment application, preparing an application for compensation of

Trustee's certified public accountant, and preparing this application for compensation. Applicant anticipates attending the hearing on this application by phone.

Recovery of Property of the Estate: The Trustee learned that the Debtor held shares of publicly traded stock in Rock-Tenn Company. Trustee requested Applicant's assistance in liquidating the stock.

Applicant located and contacted the transfer agent, Computershare, for the stock and explained that Trustee had a right to the stock. Based on this, Computershare agreed to issue the appropriate paperwork to allow Trustee to liquidate the stock. Applicant assisted Trustee in preparation of the paperwork and prepared and sent a demand letter to Computershare requesting that Computershare liquidate the shares and to send the proceeds to Trustee. Computershare complied. Applicant spent 5.8 hours in connection with these tasks.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
>
> (ii) services that were not--

> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including locating and contacting the transfer agent of Debtor's held shares of publicly traded stock of Rock-Tenn Company. Applicant asserted to the transfer agent Trustee's right to the stoc. Computershare, the agent, agreed to issue the appropriate paperwork to allow Trustee to liquidate the stock, and Applicant helped Trustee prepare the paperwork and send a demand letter to Computershare, requesting the Compputershare liquidate the shares and send the proceeds to Trustee. Computershare complied.

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

FEES ALLOWED

The fees request is computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The

persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Dana A Suntag, Esq., shareholder	5.4	$315.00	$1,701.00
Loris L. Bakken, associate	6.5	$295.00	$1,917.50
Wendy Locke, associate	1.4	$225.00	$315.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$3,933.50 (reduced to $3,800)

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Final Fees in the amount of $3,800 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $127.93 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	($.10 per page)	$63.60
Postage		$64.33
Total Costs Requested in Application		$127.93

Costs in the amount of $127.93 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$ 3,800
Costs and Expenses	$ 127.93

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

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

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

> The Motion for Allowance of Fees and Expenses filed by Herum\Crabtree\Suntag ("Applicant"), Attorney for the Chapter 7 Trustee Gary Farrar, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:
>
> Herum\Crabtree\Suntag, Professional Employed by the Chapter 7 Trustee
>
> Fees in the amount of $ 3,800
> Expenses in the amount of $ 127.93,
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

27. 13-90161-E-7 SWARD TRUCKING, INC. MOTION FOR COMPENSATION FOR
PEQ-2 Steven S. Altman PAUL E. QUINN, ACCOUNTANT(S)
7-3-14 [64]

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 3, 2014. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Paul E. Quinn, the Accountant ("Applicant" or "Accountant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period of February 3, 2014 through May 30, 2014. The order of the court approving employment of Applicant was entered on March 6, 2013. The Applicant requests $715.00 for compensation for 3.4 hours of services performed in this case.

On January 28, 2013, the Debtor, Sward Trucking, Inc. filed this case. Subsequently, the Trustee, Gary Garrar, learned that the Debtor held shares of publicly traded stock in Rock-Tenn Company and liquidated the stock. Thus, at the Trustee's direction, the Accountant amended the 2013 corporate tax return, and prepared and filed 2014 federal state and corporate tax returns to properly account for the sale of the discovered stock.

On July 2, 2013, the court entered an order granting Accountant's first and final fee application in the amount of $1325. Applicant provides a task billing analysis and supporting evidence for the services provided for the relevant time period.

The Applicant spent .5 hours on case administration. This time consisted of the time required to prepare the instant fee application. Applicant spent 1.8 hours on tax preparation and tax related matters, including amending the 2013 corporate tax return, and preparing the 2014 federal and state corporate tax return, amounting to $315.00 in fees.

Applicant spent 1.1 hours on correspondence. This time included letters to the respective tax authority's insolvency groups for each year (four letters), and letters of instruction to the Trustee to each year (Two letters), representing $275.00 in fees.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
>
> (ii) services that were not--

> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including amending and revising Debtor's 2013 corporate tax returns, to account for the liquidation of the Debtor's newly discovered stock in Rock-Tenn Company. The Applicant prepared taxes and related matters, including amending the 2013 federal and state corporate tax return, and preparing the 2014 tax return to report the sale of Debtor's stock.

FEES ALLOWED

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Paul E. Quinn	3.4	$210.00	$714.00
	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			$714.00

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Fees in the amount of $715.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $715.00
Costs and Expenses $ 0.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Paul E. Quinn ("Applicant"), Accountant for the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED that** Paul E. Quinn is allowed the following fees and expenses as a professional of the Estate:
>
> Paul E. Quinn, Professional Employed by Trustee,
>
> Fees in the amount of $ 715.00
> Expenses in the amount of $ 0.00,

The Fees and Costs pursuant to this Applicant, and Fees in the amount of $1,556.00 are approved pursuant to prior Interim Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

28. 10-91466-E-7 SDM-1 — ISRAEL/MARY FLORES — Scott D. Mitchell — MOTION TO AVOID LIEN OF CACH, LLC O.S.T. 8-6-14 [23]

Tentative Ruling: The Motion to Avoid Judicial Lien was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent Creditor, parties requesting special notice, Chapter 7 Trustee, and Office of the United States Trustee on August 6, 2014. By the court's calculation, 15 days' notice was provided.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Cach, LLC ("Creditor") against property of Israel Flores, Sr. And Mary Louise Flores ("Debtor") commonly known as 725 Musick Avenue, Modesto, California (the "Property").

INCORRECT NOTICE OF HEARING

In the Notice of Hearing filed with the Motion, Dckt. No. 27, Debtors advise potential respondents that if opposition is filed, respondents must serve and file opposition with the Court not less than

fourteen calendar days preceding the date of the hearing, presumably in compliance with the requirements of Local Bankruptcy Rule 9014-1(f)(1).

Local Bankruptcy Rule 9014-1(f)(1), however, requires that at least twenty-eight (28) days' notice of hearing be given to all parties, before parties are required to submit written opposition in order to respond. This Motion was set on 15 days' notice, 13 days short of the 28-day requirement of Local Bankruptcy Rule 9014-1(f)(1).

The Notice of Hearing states that the court may decide that parties in interest "do not opposes this action and may grant the Motion, in some circumstances without even conducting an actual hearing." Dckt. No. 27. This statement is incorrect. Because the Motion has been set for notice on less than 28 days' notice, written opposition is not required, and respondents may appear at the hearing without having filed written opposition. Debtors have not provided potential respondents with adequate opportunity to file opposition or appear at the August 21, 2014 hearing. Based on this procedural defect, the Motion is denied without prejudice.

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 Motion to Avoid the Judicial Lien is denied without prejudice.

29. 14-90972-E-7 MICHAEL/DEBORAH MCCLELLAN
Brian S. Haddix

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
7-17-14 [11]

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent Creditor on July 17, 2014. By the court's calculation, 35 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 Capital One Bank (USA), N.A. ("Creditor") against property of Michael Lee McClellan and Deborah Sue McClellan ("Debtors") commonly known as 1205 Athens Ave., Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,565.80. An abstract of judgment was recorded with Stanislaus County on February 25, 2014, which encumbers the Property.

The Motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $175,000.00 as of the date of the petition. The unavoidable consensual liens total $106,006.80 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 § 704.730 in the amount of $74,499.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore,

the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Capital One Bank (USA), N.A., California Superior Court for Stanislaus County Case No. 682228, recorded on February 25, 2014 [Document No. 2014-0011650-00] with the Stanislaus County Recorder, against the real property commonly known as 1205 Athens Ave., Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

30. 14-90773-E-7 PAUL MACLIN — MOTION TO COMPEL ABANDONMENT
DFH-1 Drew Henwood — 7-27-14 [19]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 27, 2014. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Property is granted as to the trade name Techstone, Portable grout cleaner, Floor and machine tools, Hand machines, and tool braces.

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 Paul Michael Maclin ("Debtor") requests the court to order the Trustee to abandon property commonly known as the Debtor's business name, Techstone, (a maintenance and finishing business for finishing and cleaning stone and tile) and the general machinery, equipment and supplies used in the business including a portable grout cleaner, floor and hand machines and tool braces that are used in the business on the grounds that the business has no equity and the equipment used in the business is listed on the Debtor's Schedule B and exempted on Schedule C (the "Property").

The Debtor specifically seeks an order compelling abandonment of the following property:

A. The trade name Techstone. (A maintenance and finishing business for finishing and cleaning stone and tile)

B. General machinery, equipment and supplies used in the business.

C. Portable grout cleaner.

D. Floor and machine tools.

E. Hand machines.

F. Tool Braces.

The Declaration of Paul Michael Maclin has been filed in support of the motion, and states that Debtor at this time wishes to compel the

abandonment of his business name, Techstone as being burdensome and of inconsequential value to the estate. He also requests the abandonment of the general office equipment and supplies and general machinery, equipment and supplies used in business including portable grout cleaner, floor and hand machines and tool braces. Dckt. 21.

Debtor's Schedule B lists the name Techstone as being of $0.00 value "because it is a self-service business that relies on the Debtor's post-petition personal services." Dckt. 1. Debtor also claims exemptions in the "General machinery, equipment and supplies used in business" including portable grout cleaner, floor and hand machines and tool braces in the total amount of $8,000, the full value listed for the personal property on Schedule B, under California Civil Code of Procedure §§ 703.140(b)(5) and (6).

The Chapter 7 Trustee filed a statement of non-opposition to the Motion on August 7, 2014.

LACK OF SPECIFICITY IN DESCRIBING PROPERTY

In seeking an order from the court to compel the Trustee to abandon property of the estate, a debtor must establish by a preponderance of the evidence that the Property is burdensome or of inconsequential value and benefit to the estate. *In re Viet Vu*, 245 B.R. 644, 650 (B.A.P. 9th Cir. 2000). The courts have held that an order compelling abandonment is the exception, not the rule; abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *Id.* at 647 (quoting *Morgan v. K.C. Mach. & Tool Co. , 816* F.2d at 246).

The Debtor has not met this burden of proof, however, in listing and describing the property that he wishes abandoned by way of the present Motion. Specifically, Debtor fails to describe with particularity the "general machinery, equipment, and supplies" used in his maintenance and finishing business. Debtor references his filed Schedules B and C, and the listing of the assets that he requests to be abandoned and the exemptions claimed in the assets in his bankruptcy schedules; however, Debtor's description of the property in his schedules and Motion are inadequate.

Debtor's current Schedule B, Dckt. No. 12, lists the following as personal property: "general machinery, equipment and supplies used in business including portable grout cleaner, floor and hand machines and tool braces," suggesting that the term "general machinery, equipment, and supplies" encompass the other items enumerated in the list of items appearing on Debtor's Schedule B. This is inconsistent with the description of property appearing on Debtor's Motion. The Motion contains listings of each item as separate pieces of machinery and equipment, indicating that the descriptive "general machinery, equipment, and supplies" refer to other items not yet enumerated in the pleadings and Debtor's schedules.

Without a precise understanding of what property Debtor wishes to be abandoned, the court can only abandon the assets that were properly described in the pleadings. This court cannot issue vague orders and

speculate as to what types of machinery and equipment Debtor is asking to be abandoned.

Debtor's Schedule B lists the name Techstone as being of $0.00 value "because it is a self-service business that relies on the Debtor's post-petition personal services." Dckt. No. 1. Debtor also claims exemptions in the "General machinery, equipment and supplies used in business" including portable grout cleaner, floor and hand machines and tool braces in the total amount of $8,000, the full value listed for the personal property on Schedule B, under California Civil Code of Procedure §§ 703.140(b)(5) and (6).

The court finds that the business name, portable grout cleaner, floor and hand machines and tool braces, not to exceed the amount of $8,000, are exempted on Schedule C, 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 Paul Michael Maclin ("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:
>
> A. The trade name Techstone. (A maintenance and finishing business for finishing and cleaning stone and tile);
>
> B. Portable grout cleaner;
>
> C. Floor and machine tools;
>
> D. Hand machines;
>
> E. Tool Braces;
>
> total value not exceeding $8,000, listed on Schedule B by Debtor are abandoned to Paul Michael Maclin, Debtor by this order, with no further act of the Trustee required.

31. 13-92179-E-7 CURTIS/SANDRA ARLT
HCS-4 Brian S. Haddix

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM/CRABTREE/SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S)
7-16-14 [66]

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 16, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Herum\Crabtree\Suntag, the Attorney(the "Applicant") for the Chapter 7 Trustee in this case, Gary R. Farrar ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. The order of the court approving employment of Applicant was entered on March 18, 2014. The Applicant submits this first and final fee application for compensation for legal services rendered and costs incurred in the reduced amount of $2,300.

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

General Case Administration: Applicant spent 7.2 hours on general case administration, which included preparing the Applicant's employment

application, reviewing the Debtors' schedules to determine whether to object to exemptions or to file a complaint objecting to discharge, and preparing the instant application for compensation.

Review Legal Issues Regarding Motion to Compel Abandonment: On March 19, 2014, Debtors filed a Motion to Compel Abandonment of real property and numerous items of personal property. At Trustee's direction, Applicant reviewed the motion and advised Trustee regarding whether to oppose the Motion. Applicant spent 1.0 hour in connection with these tasks.

Application to Employ Auctioneer and Motion to Sell: In their amended schedules, Debtors disclosed an interest in a 2006 Dodge Charger. Debtors valued the vehicle at $6,000, and did not claim an exemption for it. Trustee believed the Vehicle had equity for the estate, and determine that he required the services of First Capitol Auction, Inc., 50 Solano Avenue, Vallejo California, to sell the Vehicle to expose it to the largest number of prospective purchases to sell the vehicle for the best possible price. At Trustee's direction, Applicant prepared and filed an application to employ First Capitol, and a Motion to Sell the vehicle at a public auction. Applicant appeared by telephone at the hearing on the motions. On April 14, 2014, the court entered an order granting the application to employ First Capitol, and on April 16, 2014, the court entered an order granting the Motion to Sell the Vehicle. Applicant spent 6.5 hours in this task category.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including providing legal advice to the Trustee regarding general case administration and strategies on how to handle property of the estate, and assisted Trustee in employing an auctioneer and preparing and filing a motion to sell vehicles at public auction. Applicant’s work also included

a review of the legal issues regarding the Debtors' Motion to Compel Abandonment of Property of the Estate.

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

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Dana A Suntag, Esq., shareholder	1.5	$325.00	$487.50
Loris L. Bakken, associate	9.9	$295.00	$2,920.50
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			3,705.00 (reduced to $2,300)

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Final Fees in the amount of $2,300 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $175.06 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	($.10 per page)	$133.20
Postage		$41.86

Total Costs Requested in Application	$175.06

Costs in the amount of $127.93 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The Applicant requests, however, that a reduced amount of $2,300.00 in total for compensation and costs to be approved for payment from this application.

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

Reduced Amount of Fees and Costs Incurred: $2,300.00

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

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

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

> The Motion for Allowance of Fees and Expenses filed by Herum\Crabtree\Suntag ("Applicant"), Attorney for the Chapter 7 Trustee Gary Farrar, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:
>
> Herum\Crabtree\Suntag, Professional Employed by the Chapter 7 Trustee
>
> Reduced Amount of Fees and Costs Incurred: $2,300.00
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

32. 13-90888-E-7 MICHAEL/ANN BADIOU **AMENDED MOTION FOR SUMMARY**
13-9027 RBS-2 **JUDGMENT**
SENTRY SELECT INSURANCE **6-24-14 [70]**
COMPANY ET AL V. BADIOU

Final Ruling: No appearance at the August 21, 2014 hearing is required.

The Movant having filed a "Withdrawal of Motion" for the pending Motion for Summary Judgment, Dckt. No. 100, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion for Summary Judgment, and good cause appearing, **the court dismisses without prejudice the** Motion for Summary Judgment.

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.
>
> A Motion for Summary Judgment having been filed by the Plaintiff Sentry Select Insurance Company, the Sentry Select Insurance Company having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Summary Judgment is dismissed without prejudice.

33. 13-90789-E-7 EJN-1 | DANA/JENNIFER HENDERSON Todd Allen Whiteley | CONTINUED OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS 3-27-14 [31]

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

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 - Response Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and all creditors on March 27, 2014. By the court's calculation, 46 days' notice was provided. 28 days' notice is required. That requirement was met

The Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to dismiss the Objection to Debtor's Claim of Exemptions pursuant to the Settlement Agreement, with the terms stated and summarized in the Court's Civil Minute Order Approving the Motion to Compromise, Dckt. No. 49.

Relief Requested and Grounds Stated

Pursuant to Federal Rule of Bankruptcy Procedure 9013 (which is similar to Fed. R. Civ. P. 7(b)) requires that the motion itself state both the grounds upon which the relief is based and the relief with particularity. The Motion states:

> A. The Chapter 7 Trustee in this case, Eric Nims ("Trustee"), objects to the Debtors', Dana L. Henderson, Jr. and Jennifer Henderson ("Debtors"), tardy exemption to their 2013 state and federal income tax refunds.

B. Trustee objects pursuant to 11 U.S.C. § 522(l), which provides that a party in interest may object to the "list of property that the debtor claims as exempt..."

C. Trustee qualifies as an interested party per Federal Rule of Bankruptcy Procedure 4003(b).

D. This Motion is supported by the Memorandum of Points and Authorities filed concurrently with this Motion, the Trustee's Declaration, the pleadings and papers on file in this case, and written and oral argument as may be presented before the motion is considered by the court.

Mothorities

The Trustee is requesting the court to treat the points and authorities as the "motion." The factual contentions upon which Trustee's request for relief is based are included in the Memorandum of Points and Authorities, and are not stated in the Motion. Instead, the Trustee instructs the court to review the Memorandum of Points and Authorities to determine the facts of this case.

The Trustee is asking that the court accept a combined motion and points and authorities ("Mothorities") in which the court put to the challenge of de-constructing the Mothorities, divining what are the actual grounds upon which the relief is requested (Fed. R. Bankr. P. 9013), 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 Trustee.

The court has declined the opportunity to provide those services to a movant in other cases and adversary proceedings, and has required debtors, plaintiffs, defendants, and creditors to provide those services for the moving party. Law and motion practice in federal court, and especially in bankruptcy court, is not a treasure hunt process by which a moving party makes it unnecessarily difficult for the court and other parties to see and understand the particular grounds (the basic allegations) upon which the relief is based. The court does not provide a differential application of the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules as between creditors and debtors, plaintiff and defendants, or case and adversary proceedings. The rules are simple and uniformly applied.

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

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that

the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled. Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007.

MEMORANDUM OF POINTS AND AUTHORITIES

On April 24, 2013, the Debtors filed their Chapter 7 petition. In their original Schedule C to the Petition, Debtors used $22,000 of their "wildcard" exemption under California Code of Civil Procedure 703.140(b)(5) to protect any recovery from a potential class-action lawsuit against a builder. The initial meeting of creditors was held on June 3, 2013, at which time the meeting was concluded.

Two days later, on June 5, 2013, Trustee filed a notice of assets and creditors were advised to file claims. On June 18, 2013, Debtors filed an Amended Schedule C in which they shifted their use of the "wildcard" exemption; specifically, Debtors' June 18 amendment dedicated only $5,000 of their wildcard exemption to their class action litigation, and $15,752.00 to equity in their residence.

In their initial bankruptcy petition filed on April 24, 2013, Debtors did not claim any exemption relative to their residence. Trustee's review of Debtors' 2012 Federal and California income tax returns showed they received in the months prior to filing their Petition, approximately $6,800 in combined 2012 State and Federal income tax refunds; of that amount, $5,063.00 was attributed to the Federal refund. In 2011, Debtors' Federal income tax refund alone was $4,548.

Trustee's analysis of Debtors' 2012 Federal Income Tax Return and Pay advises Debtors submitted as part of their "521 documents" shows that approximately 85% of their taxable income is derived from wages, salaries, and other W-2 income. Debtors did not list or exempt any income tax refund for 2013 or otherwise in their Petition. In June of 2013, Trustee submitted to the Internal Revenue Service a tax intercept letter for Debtors' 2013 federal income tax refund. Based on the date of the Debtors' Petition, 31% of any 2013 refund is property of the estate.

On July 1, 2013, Debtors filed a Motion to Compel Abandonment of their residence from the bankruptcy estate. In light of Debtors' June 18, 2013 Amended Schedule C, in which they exempted almost $16,000 of equity in the residence, and other reasons, Trustee filed a non-opposition to the Motion. Pursuant to a Jule 24, 2013 order from the court, the residence was abandoned from the estate.

On February 26, 2014, Debtors filed an Amended Schedule B and (another) Amended Schedule C to their Petition in which they listed and exempted, respectively, their "2013 State and Federal income tax refund" (sic). In February 26, Amended Schedule C, Debtors again shifted their use of the wildcard exemption--this time, they eliminated entirely any claim to the proceeds from the class-action litigation, and dedicated $8,171 of the "wildcard" to the 2013 tax refunds.

On or about March 20, 2014, Trustee received from the IRS Debtors' 2013 Federal Income tax refund in the amount of $8,403. A review of the claims docket in this case shows 11 creditor claims totaling over $52,000. Trustee is obligated to file periodic reports to the Office of the United States Trustee and otherwise perform various case management tasks for all asset cases.

While exemption planning may be permissible, to ensure that it does not trigger denial of discharge or attack as fraudulent transfer, debtors must engage in such exemption planning without any badges of fraud, the most significant of which involves concealment. *In re Gray*, 498 B.R. 238 (Bankr. D. Ariz. 2013). Trustee argues that the facts in that case are similar to the ones in the instant case, in that the court in *Gray* sustained the trustee's objection (on bad faith grounds) to the belated attempted by debtors to claim exempt an unscheduled asset only after the asset was discovered by the trustee.

In the case of *Gray*, Debtors amended their Schedule C to claim prepaid rent and a security deposit for rental properties that weren't initially included in their schedules, until the Trustee inquired about the payments in Debtors' Meeting of Creditors and demanded turnover the originally unscheduled funds. *Id.* The Trustee argued that the debtors' failure to disclose the asset at the outset of this case is grounds for the denial of the exemption.” Debtors responded that an amended claim of exemption may not be denied, solely because of delay or late filing, absent “a showing of a debtor's bad faith or of prejudice to creditors,” citing the Ninth Circuit's holding in *In re Michael*, 163 F.3d 526, 529 (9th Cir.1998).

The court found convincing Trustee’s argument that Trustees should not be expected to ferret out undisclosed assets, by careful examination of check books and bank statements and by examining debtors at the first meeting of creditors, “only to have the assets so discovered to be belatedly claimed as exempt, especially when trustees are paid only $60 for no asset cases.” *Id.* at 240. Trustee argues that here, Debtors' conduct shows gamesmanship. In the space of 10 months, they have presented this court and Trustee with no less than 3 versions of Schedule C. Trustee argues that Debtors are "conducting a shell game-each version moves the amount of the "wildcard exemption to an asset Debtors then find most valuable or vulnerable."

Trustee brings up the case of *In re Andermahr*, in which the court adopted the rule suggested in *Matter of Doan*, 672 F.2d 831, 833 (11th Cir.1982) that an exemption should be allowed no matter when it is claimed absent a showing of bad faith by the debtor or prejudice to creditors. *In re Andermahr*, 30 B.R. 532, 533 (B.A.P. 9th Cir. 1983). In *Andermahr*, the court

found that the tax refund did not exist at the time of filing, and otherwise did not require any investigation by the trustee.

Here, there is evidence to suggest Debtors knew that they would be entitled to sizeable 2013 tax refund based upon their prior experience; specifically, the $6,800 refund they received in 2012, and the $4,548 federal refund received in 2011. The 2013 tax refund did exist at the time of filing, Trustee's pre-341 meeting of creditors analysis indicated that approximately 85% of Debtors' adjusted gross income is from wages and salaries; thus, it can be fairly said that Debtors made a calculated decision to withhold funds sufficient to consistently generate sizeable annual tax refunds, a portion of which was property of the estate at the time of filing.

Trustee also highlights the chronology of the events in the case. Debtors' 2012 federal income tax return was signed by their CPA on January 31, 2013. Trustee states that it is reasonable to presume that it was filed on that date or shortly thereafter. Trustee states that in the course of Trustee's experience in dealing with thousands of debtors and tax intercept letters, it is his opinion that taxpayers can normally expect to receive their refund no later than 6-10 weeks from the submission of their return. Debtors then likely received their 2012 federal income tax refund in early to mid March of 2013. They filed their petition on April 24, 2013. Trustee states that it is unlikely that Debtors "forgot" about the possibility of a federal income tax refund for 2013 when they filed their petition, when they had just received almost $7,000 in tax refunds the prior month, and are represented by counsel.

Trustee distinguishes the facts of *Andermahr* to those of this case. Presumably, the *Andermahr* case was only open for a few days or weeks before the refund was received by the trustee. Debtors' case was open for eleven months before the Trustee received Debtors' unscheduled federal refund. Trustee assumes that the small delay to creditors in the *Andermahr* court that was found to be non-prejudicial was not similar to the facts in this matter.

Trustee further states that this case was filed in an interim report submitted by the Trustee to the OUST in October, 2013, and other case management tasks required further information; the Trustee obtained a federal tax identification number for the estate, and opened a bank account; he analyzed and evaluated Debtors' finances and assets; investigated the value of Debtors' residence and following further analysis, filed a non-opposition to Debtors' Motion to Compel Abandonment of that residence. Creditors and Trustee have expended considerable time, effort, and resources on Debtors' case. Trustee argues that Debtors' failure to list their 2013 income tax refunds, and belatedly doing so 10 months later, is prejudicial to creditors and the Trustee. Trustee believes that the "attempt to shield that asset, following multiple iterations of Schedule C, smacks of bad faith."

OPPOSITION BY DEBTOR

Debtors respond by arguing that the March 4, 2014 ruling of the Supreme Court in *Law v. Siegel* determined that federal law provides no

authority for bankruptcy courts to deny an exemption on a ground not specified in the Bankruptcy Code. Debtors argue that unlike their conduct in this case, the conduct of the debtor in *Law v. Siegel* was egregious and intentionally fraudulent; Debtors states that in the case of *Law v. Siegel*, the Debtor created a fictional loan to preserve equity in his house. This conduct, however, was not substantial enough for the Supreme Court to find that it outweighed a Debtors' inherent right to claim and exercise the exemptions provided in the Bankruptcy Code to protect his assets.

Debtors state that they committed no bad acts, and did not conceal assets and create an intentional and deliberate delay in amending an exemption at the expense of creditors and the estate, like the Debtors in the Trustee's cited case of *Tyner v. Nicholson* (In Re Nicholson), 435 B.R. 622 to demonstrate bad faith.

Debtors state that they "timely provided" the Trustee with their 2012 tax return, which led to the Trustee's expectation of a sizeable 2013 tax refund. Debtors state that they did not expect a larger tax refund because they were in unstable financial circumstances; Mr. Henderson, the income earner for Debtors, had lost-long-term employment in June 26, 2012 and had been employed without income, and then was hired at Walmart in November 2012, and finally promoted in March 2013. He had no income and then three different incomes within an 8 month period. The Debtors lacked the stability needed to form an expectation of tax refunds based on past years of stable earnings.

Debtors state that "in the worst case scenario, omitting the tax return was an oversight." Debtors assert that in no event was the omission of the 2013 tax refund from Schedules B and C was an intentional act to conceal. Debtors state that they allotted the wild card exemption to the construction defect class action because Debtors were unaware of other assets in need of protection; since Defendant, the contractor in the lawsuit had the "first right to repair any defects, the Debtors did not have an expectation of a money award.

Debtors claim that the wildcard exemption was claimed on the "off-chance" that some money might trickle down to Debtors from the class action suit. Debtors deny that they intentionally and deliberately delayed in amending exemption at the expense of creditors. Debtors state that once they were aware of this unprotected asset, they acted quickly to amend exemptions to protect the asset. The Trustee filed the notice to file claims on June 6, 2013, and the Debtors state that they "immediately sought to discover the asset" which might provide a recovery. Debtors state that on June 11, 2013, after being unable to reach the Trustee by phone, Debtor's counsel sent an email communication to Trustee, asking Trustee to identify which asset may provide possible recovery to creditors.

On June 12, 2013, Debtor's counsel received a reply email stating that an asset report was provided to the Trustee's office to give Trustee an opportunity to verify the fair market value of the scheduled assets, and to investigate the existence of any unscheduled assets. Among those assets include Debtors' Newman residence.

Debtors replied to that email, offering a zillow.com valuation to assist Trustee with his valuation of the home, and informing Trustee that they didn't intend to "place any real value" in any award that might be received in the defective construction suit, because of the contractor's right to repair as a remedy, rather than monetary value to the award. Debtors state that they communicated to the Trustee that they were willing to divert the wildcard exemption from the class-action suit to the asset identified by the Trustee. Debtors also claim that when Trustee identified the Debtors' home as the single asset that was the subject of investigation for value, Debtors "panicked" and obtained a professional valuation for their residence. It was on these grounds that Debtors' Schedules B and C were amended to protect the equity in the home as reflected in the new valuation.

Debtors state that they only learned of the Trustee's interest in the tax return after the Internal Revenue Service informed them that the Trustee had intercepted their 2013 refund, prompting Debtors to amend their Schedules B and C within one day to divert only the wildcard exemption amount of the class action lawsuit which was no longer an asset of the estate, and the unused portion of the wildcard exemption to the 2013 refunds. Debtors argue that their quick response to attempt to discover non-exempt assets and therefore amend exemptions does not meet the "bad faith" element in deliberately delaying in amending exemptions.

Debtors assert that the Trustee was aware that Debtors did not expect any value to come from the construction defect case, and that they were willing to divert those wildcard exemption amounts to other protected assets. Debtors state that thus, it could not be surprising that Debtors amended their Schedule C to protect the 2013 tax income refunds, as was their right under Federal Rule of Bankruptcy Procedure 1009(a), once the Internal Revenue Service had informed them that Trustee had intercepted the 2013 refund.

DISCUSSION

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." Debtors must list all of their assets on their bankruptcy schedules whether or not they claim them as exempt. 11 U.S.C. § 521(a)(1)(B)(I), 522(l).

Federal Rule of Bankruptcy Procedure 1009(a), in which "[a] voluntary petition, list, schedule, or statement may be amended, including exemption claims, by the debtor as a matter of course at any time before the case is closed." The court may disallow the amendment only upon "a showing of bad faith or prejudice to third parties." *Greene v. Savage (In re Greene)*, 583 F.3d 614, 625 (9th Cir. 2009); *Arnold v. Gill (In re Arnold)*, 252 B.R. 778, 784 (9th Cir. BAP 2000). On the issue of "prejudice" to third parties, there is an additional requirement: merely showing "prejudice" does not automatically trigger disallowance of an amendment. The court must balance the prejudice to the debtor of disallowing the exemption against the prejudice to third parties in allowing the exemption. *In re Arnold*, 252 B.R.

at 785. The usual ground for a finding of "bad faith" is the debtor's attempt to hide assets. *Id.*

A bankruptcy court may disallow an amended exemption claim if the trustee or another party in interest timely objects and shows that the debtor has acted in bad faith, or that the creditors have been prejudiced. *Tyner v. Nicholson* (*In re Nicholson*), 435 B.R. 622, 634 (9th Cir. BAP 2010). Concealment of assets and the intentional and deliberate delay in amending an exemption at the expense of creditors and the estate constitute "bad faith." *Id.*

The Supreme Court recently held that while a Bankruptcy Court has the authority to issue any order, process, or judgment necessary to carry out the provisions of the Bankruptcy Code, it may not contravene specific statutory provisions. *Law v. Siegel*, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (2014). The Supreme Court found that the Bankruptcy Court exceeded the limits of its authority by awarding Law's homestead exemption to Siegel, stating that although the statute does not require a debtor to establish a homestead exemption, once he has done so the Bankruptcy Court may not refuse to honor that exemption absent a valid statutory basis for doing so. *Id.* The court stated "The Code's meticulous—not to say mind-numbingly detailed—enumeration of exemptions and exceptions to those exemptions confirms that courts are not authorized to create additional exceptions." *Id. citing Hillman v. Maretta*, 569 U. S. ___, ___, 133 S. Ct. 1943, 186 L. Ed. 2d 43 (2013) (slip op., at 12); *TRW Inc. v. Andrews*, 534 U.S. 19, 28-29 (2001). The Court made clear that when a debtor claims a state-created exemption, the exemption's scope is determined by state law, which may provide that certain types of debtor misconduct warrant denial of the exemption, but that federal law provides no authority for bankruptcy courts to deny an exemption on a ground not specified in the Code. *Id.*

The Trustee's Objection pre-dated *Law v. Segal* and appears to have fallen into the 11 U.S.C. § 105(a) trap that a bankruptcy judge can order whatever he or she thinks is necessary. In Law v. Segal the Supreme Court made it clear (once again) that 11 U.S.C. § 105(a) is not a free license for a bankruptcy judge to "meet out justice." Rather, § 105 fills in the gaps when Congress, the legislatures, or common law has not provided for an issue or situation which must necessarily be addressed in the bankruptcy case. Law v. Segal does not mean that the Debtors in this case necessarily win, but that the Trustee must do something more than point at the Debtors and say "bad faith." Legal and equitable claims of the estate or trust, whether under federal or state law, need to be provided to the court.

Facts Presented by Debtors

The only evidence presented by the Debtors in opposition to the Objection to Claim of Exemption is the declaration of Todd Whiteley, Debtors' counsel in this case. While the Opposition is long on the state of mind of the Debtors and there intentions, it appears that the Debtors have carefully avoided making any statements under penalty of perjury to oppose the Motion. Some of counsel's testimony relates to conversations he had with the Debtors, which in addition to being hearsay raise the specter of whether the attorney-client privilege has now been waived.

Arguments

In this case, Trustee argues that Debtors' amendments to their Schedule C--three different versions of the Schedule within the span of 10 months--indicates gamesmanship on the Debtors' part and an intent to conceal their federal income tax refund for 2013, when Debtors should have been aware that they would receive a large refund based on their prior federal and California tax returns.

Trustee's analysis of Debtors' 2012 returns and pay advices shows that approximately 85% of Debtors' taxable income is derived from wages, salaries, and other W-2 income, creating an expectation and anticipation that Debtors would receive a similar amount in subsequent years. Instead, Debtors did not list or exempt any income tax refund for 2013, and Trustee submitted to the IRS a tax intercept letter in June, 2013 to seize the refund as property of the estate. Trustee interprets Debtors' shift of their wildcard exemption, which previously included a dedication of $5,000 of their exemption to class-action litigation of which the Joint Debtor husband is involved in, to protecting the proceeds of their previously omitted 2013 tax refunds.

Trustee points to Debtors' dubiously timed amendments to their Schedule C, and their failure to schedule a tax refund that they should have known would be issued the following year, and allegedly retained for eleven months before the Trustee received Debtors' unscheduled federal refund, causing prejudicial delay to Debtors' creditors. Trustee argues that he has made the requisite showing of bad faith and intentional concealment of an asset on the part of the Debtors, warranting denial of the subject exemptions.

Debtors respond by arguing that they have not intentionally and deliberately delayed amending their exemptions, that they did not conceal their tax refund, and that they diligently offered the Trustee assistance in investigating the potential recovery in their residence to creditors in their case. Dckt. No. 39.

Continuance for Pending Settlement

The Trustee's Objection pre-dating *Law v. Segal*, it does not provide the court with a clear state or federal law basis for not allowing the exemption. The Debtors, while arguing about their intent and knowledge, fail to provide any evidence thereof. The court stated that it was not going to make a decision without each party pulling its weight.

At the May 22, 2014 hearing on the instant Objection, the Trustee advised the court that the parties settled the matter (on the morning of May 22, 2014) and were in the process of documenting the settlement and preparing the pleadings for approval of the settlement. The parties requested a continuance of the hearing and the court granted this request. Dckt. No. 40.

COMPROMISE AND SETTLEMENT OF CONTROVERSY

On July 24, 2014, the Trustee filed a Motion to Compromise the subject controversy, and requested that the court approve a settlement agreement between the Trustee and the Debtors, Dana Lee Henderson and Jennifer M. Henderson. Dckt. No. 49.

Eric Nims, the Chapter 7 Trustee, requested that the court approve a compromise and settle competing claims and defenses with the Debtors. The claims and disputes resolved by the proposed settlement concerned the Debtors' exemption in a combined 2013 State and Federal income tax refund.

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

In the Motion to Approve the Compromise, Dckt. No. 43, Trustee argued that the probability of success of the dispute is uncertain. In its tentative ruling, and in light of the recent decision in Law v. Segal, the court directed the Trustee to file an Amended Objection to Claim of Exemption stating with particularity a clear state or federal law basis for not allowing Debtors' exemption of the Tax Refund. Debtors were directed to file an opposition, if any, and supporting evidence. Trustee states that it was unclear, however, whether there was a clear state or federal law basis for not allowing Debtors' exemption of the Tax Refund; further, it was unclear whether sufficient evidence existed or was available to the Trustee to support an objection to the Debtors' exemption of the Tax Refund under such a state or federal law.

Trustee represented that he and the Debtors resolved these claims and disputes through the Settlement Agreement. Under the compromise, Debtors and the Trustee agreed to split evenly the amount of the Tax Refund that is not property of the estate (i.e. $2,604.93) with Debtors receiving $1,302.47 and the Trustee receiving the balance less periodic bank fees incurred by the estate. The Trustee stated that he had intercepted Debtors' 2013 Federal Income tax refund in the amount of $8,403. Based on Debtors' filing date of April 24, 2013, thirty-one percent (315) of that refund was property of the estate.

The Settlement Agreement and Compromise provided that the Trustee return $5,798.07 to the Debtors and retain the remainder, or $2,604.93. The parties agreed to split this amount, with the Debtors receiving $1,302.47, and the Trustee receiving $1,302.46 less nominal monthly bank fees (which amount to approximately $10.00 per month).

At the hearing on the Motion to Approve the Compromise, the court determined that the compromise was in the best interest of the creditors and the Estate upon weighing the factors outlined in *A & C Props and Woodson*, 784 F.2d 1377, 1381 (9th Cir. 1986), and granted the Motion. The Settlement Agreement resolving the subject dispute having been approved by the court on

July 24, 2014, the instant Objection to the Debtors' Claim of Exemptions in Debtors' combined 2013 State and Federal Income Tax Refund is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Debtor's Claim of Exemptions filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Debtors' Claim of Exemptions is dismissed pursuant to the Settlement Agreement reached between the Trustee, Eric J Nims, and Debtors Dana Lee Henderson and Jennifer M. Henderson, with the terms stated and summarized in the Court's Civil Minute Order Approving the Motion to Compromise, Dckt. No. 49.

34. 14-90491-E-7 UST-1 | **SEBASTIAN GUERRERO** | **Thomas O. Gillis** | **MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR 7-14-14 [18]**

Final Ruling: No appearance at the August 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and the Chapter 7 Trustee on July 14, 2014. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion to Extend the Time to File an Objection to Discharge was properly 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 to Extend the Time to File an Objection to Discharge is granted.

The United States Trustee, Tracy Hope Davis ("Trustee") seeks an extension of time to file a complaint under 11 U.S.C. § 727(a). 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). The Chapter 7 Trustee explains that he is currently investigating the assets and liabilities of the Debtor and Debtor's pre-petition use of assets of the Estate. This was caused by the repeated continuance of the Meeting of Creditors. To permit a proper investigation, the Chapter 7 Trustee requests the deadline to object to the entry of discharge be extended to November 21, 2011.

The United States Trustee is informed that the Debtor may have a legal or equitable interest in real property located at 519 Airport Way (or N. Airport Way), Stockton, California, and in real property located in Zacatecas, Mexico. Both properties were not listed in the Debtor's Schedule A in this case. The only real property listed in Schedule A in this case was 805 Crippen Ave., Modesto, CA 95351. Dckt. No. 1, Schedule A.

The United States Trustee states that she is also informed that the Debtor may have a legal or equitable interest in a 1989 Honda vehicle with registration expired as of October 2, 2011. See Declaration of L.Renee Morgan, ¶ 5. This 1989 Honda vehicle was not listed in the Debtor's Schedule B in this case. The only vehicle listed in Schedule B in this case was a 2007 Chevrolet Tahoe. Dckt. No. 1, Schedule B, Item 25.

The real property and vehicle referenced by the Trustee were not described in the Statement of Financial Affairs in this case. In the Schedule F filed in this case, Debtor seeks to discharge $150,571 in general unsecured debt.

Federal Rule of Bankruptcy Procedure 4004(b) states that, on motion of any party in interest, after a hearing on notice, the Court may extend for cause, the time for filing a complaint objecting to discharge. FED.R.BANKR.P. 4004(b). The deadline for filing a complaint objecting to discharge is not later than sixty (60) days after the first date set for the meeting of creditors under 11 U.S.C. § 341(a). Fed. R. Bankr. P. 4004(a).

The last day for Trustee to object to the Debtor's discharge in this case is July 14, 2014. The United States Trustee requests that the deadline to object to the Debtor's discharge be extended to November 1, 2014, so that the Chapter 7 Trustee, the United States Trustee, and other interested parties will have an opportunity to investigate the Debtor's financial affairs, to determine if the Debtor made accurate and complete disclosure of his assets, liabilities, income, expenses, and financial affairs in connection with this case.

A statement of non-opposition was filed by Debtor Sebastian Guerrero on August 9, 2014. Dckt. No. 27.

The Trustee suspects that Debtor may have omitted the reporting of this interest in the two subject real properties, and his 1989 Honda vehicle. The court finds the Trustee's need to perform further investigation of the Debtor's assets, liabilities, and pre-petition use of Estate property to be sufficient cause. Therefore, the motion is granted and the deadline for the United States Trustee to object to Debtor's discharge is extended to November 1, 2014.

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 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 Chapter 7 Trustee, United States Trustee, and all parties in interest to object to Debtor's discharge is extended to November 1, 2014.

35. 14-90893-E-7 PAM REGGIANI — **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Pro Se — **7-16-14 [19]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Pam C. Reggianai, "Debtor," Trustee, and other parties in interest on July 16, 2014. The court computes that 36 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case ($30.00 due on July 2, 2014).

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The court's docket reflects that the default has not been cured. The following filing fees are delinquent and unpaid by Debtor: $30.00 in filing fees for a statements and schedules filed on July 2, 2014.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

36. 13-90795-E-7 JOSE IRAHETA AND ALBA MARTINEZ SSA-1
14-9016
MCGRANAHAN V. IRAHETA ET AL

MOTION FOR ENTRY OF DEFAULT JUDGMENT
7-10-14 [31]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 4, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Default Judgment is granted.

REVIEW OF MOTION

Plaintiff, the Chapter 7 Trustee, Michael D. McGranahan, brought an adversary complaint against Debtors and Defendants Jose Iraheta and Alba Martinez on March 28, 2014. The adversary complaint included a claim to revoke the discharge of the Debtors under 11 U.S.C. § 727(d) for their failure to obey a lawful order of the bankruptcy court, namely in committing misrepresentations and in their schedules concerning assets and transfers pursuant to 11 U.S.C. § 727(a)(6)(A) and (d)(3).

The action was brought within on year of Debtors receiving their bankruptcy discharge, which occurred on October 11, 2013, as required under 11 U.S.C. § 727(e)(1). Defendants' answer was due in these proceedings by or before April 24, 2014. A short courtesy extension was granted to Debtors by letters sent to them and their counsel Thomas Gillis on May 2, 2014, requiring an answer to be filed by May 5, 2014. Neither Debtors not their counsel filed an answer.

As a result, Plaintiff filed a Second Amended request for Entry of Judgment against Defendants Jose Iraheta and Alba Martinez on June 10, 2014. Dctk. Nos. 24 and 26. The court entered the defaults of Defendants Jose Iraheta and Alba Martinez on June 12, 2014. Dckt. Nos. 28 and 29.

The proposed default judgment seeks entry of judgment against Defendants Jose Iraheta and Alba Martinez to revoke the discharge of Debtors under 11 U.S.C. § 727(d), for their failure to obey a lawful order of the bankruptcy court and misrepresentations in their schedules concerning assets and transfers. 11 U.S.C. § 727(a)(6)(A) and (d)(3). Defendants, following a civil minute order of this court to turnover the demanded property in the case in chief, Case No. 13-90795, did not turnover to the Trustee the fair market value proceeds of $6,000, arising from the transfer of their 2002 Nissan, and the additional sum of $1,050, arising from their post-petition unauthorized transfer of their funds in their Wells Fargo Account as well.

Among the property of the bankruptcy estate is Debtors' interest in a 2002 Nissan, bearing license number 6TAYa714 and Vehicle Identification Number 5N1EDE28YX2C590012 and cash, which resulted in an unauthorized post-petition expenditure from a Wells Fargo account held by Debtors, in the principal amount of $1,050. Declaration of Michael D. McGranahan at 2. Dckt. No. 32. The vehicle was not listed on Debtors' schedules, and only following post-petition investigation did the Trustee discover the vehicle. The Trustee argues that the vehicle cannot be exempted based upon Debtors' bad faith in failing to initially disclose on their schedules. Moreover, their schedules have not been amended to reflect this asset.

11 U.S.C. § 521(a)(4) mandates that if a trustee is serving in the case, or an auditor serving under Section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records and papers relating to the property of the estate, whether or not immunity is granted...

APPLICABLE LAW

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

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

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

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

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

DISCUSSION

11 U.S.C. § 541(a)(2) provides that the bankruptcy estate consists of all "interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is --(a) under the sole, equal, or join management and control of the debtor... On June 6, 2013, and July 10, 2013, Trustee McGranahan remitted a series of letters to counsel Gillis for the Debtors demanding surrender of the vehicle and an explanation of withdrawals from their Wells Fargo checking account.

Debtors and their counsel failed to respond to the initial turnover letter. The Trustee enlisted the services of his legal counsel, Mr. Altman, who then sent a courtesy transmittal to the Debtors' counsel, Thomas Gillis, prior to the commencement of further legal proceedings. Despite repeated

demands, Debtor have not responded and turned over the subject 2002 Nissan or remitted the additional bank account funds of $1050.

As a result, the Trustee filed with the court seeking turnover of the Nissan vehicle (or its value $6,000), and turnover of the $1050 unauthorized post-petition withdrawal and further sanctions. The motion and supporting documents were filed with the court on December 26, 2013, Dckt. Nos. 26 through 32 for which judicial notice is taken. Debtors did not file a reply contesting the turnover motion. Debtors did not personally appear at the hearing, but were represented by counsel. The court granted the motion for turnover of the property, Dckt. Nos. 33 and 37. The Debtors did not appeal the granting of the Motion, and Debtors have not cooperated and repaid the monies due to the estate.

The Trustee contends that the unlisted or undisclosed subject property was property of the estate under 11 U.S.C. § 541, which was under the possession and control of the Debtors. Based on the companion declaration submitted, Trustee further contends based upon that Debtors have a duty to list all assets and cooperate with his office in the administration of the case pursuant to 11 U.S.C. § 521. Despite service of a court order on Debtors, Debtors have not complied the court order and repaid the monies due to the estate.

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *In re Hernandez*, 483 B.R. 713 (B.A.P. 9th Cir. 2012). See also 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires one in possession of property of the estate to deliver such property to the Trustee. Pursuant to 11 U.S.C. § 542, a Trustee is entitled to turnover of all property of estate from Debtors. Most notably, pursuant to 11 U.S.C. § 521(a)(4), the Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

The Debtors failed to disclose in their schedules, the purported transfer of the 2002 Nissan vehicle, to their daughter, and that they had estate property in a Wells Fargo deposit account, which they apparently spent without bankruptcy court approval post-petition, and never turned over to the Trustee as property of the estate. The subject petition and supporting schedules were never amended by the Debtors to accurately reflect Debtor's circumstances.

Applying the factors enumerated in *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986), the court finds that the Complaint is sufficient and the relief requested therein is therefore meritorious. In support of this Motion and the Trustee’s Motion demanding the turnover of property, the Trustee testifies that he has repeatedly attempted to obtain the property of the estate, suggesting that Debtors and Debtors' counsel have intentionally concealed their expenditures and evaded Trustee's attempts to collect information regarding the cash withdrawal and the vehicle purchase. Dckt. No. 33, Case No. 2013-90795.

In the court's decision on the duly noticed Motion for Imposition of Sanctions and Turnover of Property filed by the Trustee, which was unopposed and heard by the court on January 30, 2014, the court determined that the

funds withdrawn by Debtors from their Wells Fargo account in the post-petition period, and the purchase of their 2002 Nissan (both transfers having been undisclosed in their schedules and petition) are property of the estate. As Debtors are statutorily required to turnover all property of the estate, the court granted the motion to compel turnover of property of the estate, and that the 2002 Nissan and $1,050 in withdrawn funds be turned over to the Chapter 7 Trustee immediately.

11 U.S.C. § 727(a)(6)(A) mandates that the court grant a discharge unless the debtor has refused to obey any lawful order of the court, other than an order to respond to a material question or to testify.

11 U.S.C. § 727(d)(3) provides that on request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if the debtor committed an act specified in subsection (a)(6) of that section (which allows the court to preclude a debtor from receiving a discharge if the debtor refuses to obey any lawful order of the court, other than an order to respond to a material question or to testify).

Here, the court ordered Debtors to turnover to the Trustee the sum of $6,000 (for the 2002 Nissan), and $1,050 (for the bank account) by or before noon on February 20, 2012. The deadline for Debtors to comply has passed. At the request of Debtors' attorney, Thomas Gillis, a courtesy extension for Debtors' compliance was extended to March 3, 2014, by the Chapter 7 Trustee. The deadline of March 3, 2014, has also passed, without Debtors complying with the court's order issued on January 30, 2014. Case No. 2013-90795, Dckt. No. 33.

The court finds that the Complaint is sufficient and the requests for relief requested therein are meritorious. It has not been shown to the court there is or may be any dispute concerning material facts. Debtor Defendants have not contested any facts in this Adversary Proceeding, nor have they disputed facts presented in the Trustee’s complaint.

Further, there is no evidence of excusable neglect by the Defendants. Although the Federal Rules of Civil Procedure favor decisions on the merits through the crucible of litigation, Defendants have been given several opportunities to respond, and extensions to comply with the court’s turnover order. There is no indication that Defendants have a meritorious defense or disputes Plaintiff’s right to judgment in this Adversary Proceeding. Failing to fulfill one’s contractual and statutory obligations, and then failing to respond to judicial process, is not a basis for denying relief to an aggrieved plaintiff. The court finds it necessary and proper for the entry of a default judgment against the Defendants.

The court grants the default judgment in favor of Plaintiff and against Defendants, and revokes the discharge of Jose Iraheta and Alba Martinez under 11 U.S.C. § §§ 727(a)(6)(A) and (d)(3).

Counsel for the Plaintiff shall prepare and lodge with the court a proposed judgment consistent with this Order. The judgment shall further provide that any attorneys’ fees and costs allowed by the court shall be enforced as part of the judgment. On or before September 15, 2014, Plaintiff

shall file a costs bill and motion for attorneys' fees, if any. The motion for attorneys' fees, if any, shall clearly set forth the contractual or legal basis for an award of attorneys' fees.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Entry of Default Judgment filed by the Plaintiff having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Entry of Default Judgment is granted and that the discharge of the Debtors is revoked pursuant to 11 U.S.C. §§ 727(a)(6)(A) and (d)(3).

37. 13-91299-E-7 CWC-2 | **JUANA CHAVEZ** / **George L. Alonso** | **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH NOLBERTA WILSON 7-17-14 [20]**

Tentative Ruling: 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).

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, all creditors, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 17, 2014. By the court's calculation, 35 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 and other parties in interest are entered.

The Motion for Approval of Compromise is granted.

Irma C. Edmonds, the Chapter 7 Trustee in this case ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Nolberta Wilson ("Settlor").

Among the assets which constitute property of the bankruptcy estate is Debtor's undivided one-half interest in real property located at 1339 Snake Creek Drive, Patterson, California, APN 021-053-066. Nolberta Wilson holds the remaining undivided one-half interest as her sole and separate property. Ms. Wilson alleges that Debtor holds only bare legal title to the undivided one-half interest in the subject property, having contributed no consideration for purchase or maintenance of the subject property and never having lived in the premises. The Trustee alleges that Debtor contributed her credit status and obligated herself on the purchase money loan which enabled Ms. Wilson to acquire the subject property.

Nolberta Wilson has engaged in settlement negotiations with the Trustee in a dispute over the bankruptcy estate's right to sell her co-owner's interest the subject property pursuant to 11 U.S.C. § 363(h). No adversary proceeding has been commenced by the Trustee in this matter.

Trustee has determined the average sales price for properties comparable to the subject property is approximately $246,225. The subject property is encumbered by the following liens and encumbrance:

A. Abstract of Support Judgment against the Debtor, Juana M. Chavez, recorded on May 31, 1996, as Instrument No. 96-0043487 of the Official Records of Stanislaus County in an unknown amount in the favor of the County of Stanislaus. The Trustee disputes the validity of this judicial lien.

B. Abstract of Judgment against the Debtor, Juana M. Chavez, recorded on Jun 14, 2007 as Instrument No. 20070079583 of the Official records of Stanislaus County in the amount of $4,821.87 in favor of Target National Bank, or its successor in interest. The Trustee disputes the validity of this judicial lien.

C. Deed of Trust against the Debtor, Juana M. Chavez, and Nolberta Wilson recorded on September 28, 2009, as Instrument No. 200993977 of the Official Records of Stanislaus County in the amount of approximately $142,000 in favor of Primary Residential Mortgage, Inc., or its successor in interest. The Trustee does not dispute the validity of this Deed of Trust; and

D. Abstract of Judgment against the Debtor, Juana M. Chavez, recorded on March 12, 2013, as Instrument No. 20130020897 of $1,890.02 in favor of the Boardwalk Apartments, 193 LLC, or its successor in

interest. The Trustee does no dispute the validity of this judicial lien.

The Trustee and Nolberta Wilson have entered into a Settlement and Mutual Release Agreement, conditioned upon this court's approval. Nolberta Wilson will pay to Irma C. Edmonds, the total sum of $25,000.00 in settlement of any and all claims that the bankruptcy estate may have against Nolberta Wilson regarding Debtor's undivided one-half interest in the subject property. Nolberta Wilson has tendered to the Trustee the sum of $25,500.00 which Trustee will hold in trust, pending court approval of said settlement.

In consideration, the Trustee will convey to Nolbert Wilson, the bankruptcy estate's undivided one-half interest in the subject property. Such transfer will be free and clear of the Abstract of Support Judgment against Debtor, recorded May 31, 1996, as Instrument No. 96-0043487 of the Official Records of Stanislaus County in favor of the County of Stanislaus and the Abstract of Judgment against Debtor, recorded on June 14, 2007, as Instrument No. 96-0043487 of the Official Records of Stanislaus County in favor of the County of Stanislaus and the Abstract of Judgment against the Debtor, recorded June 14, 2007, as Instrument No. 20070079583 of the Official Records of Stanislaus County in the amount of $4,821.87, in favor of Target National Bank, or its successor in interest.

Such transfer will be subject to the Deed of Trust against the Debtor and Nolberta Wilson, recorded September 28, 2009, as Instrument No. 200993977 of the Official Records of Stanislaus County in the amount of approximately $142,000 in favor of Primary Residential Mortgage, Inc., or its successor in interest and the Abstract of Judgment against the Debtor, recorded March 12, 2013, as Instrument No. 20130020897 of the Official Records of Stanislaus County in the amount of $1,890.02 in favor of the Boardwalk Apartments 193, LLC, or its successor in interest.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Probability of Success

The probability of success in litigating the issue of whether the estate is entitled to sell the co-owner's interest in the subject property under 11 U.S.C. § 363(h) is difficult to predict. The threshold issue of whether Debtor has a viable interest in the subject property must be established. The facts indicate that Debtor has a legal interest only having allegedly contributed no monetary consideration for acquisition of the property.

The resolution of the rights of Nolberta Wilson in the Debtor's undivided one-half interest in the subject property will be complex and the probability of success in any litigation is unknown. The uncertainty of success in litigation in a significant factor favoring this settlement.

Difficulties in Collection

The financial position of the defendant is unknown at this time. However, as the relief requested is not monetary in nature, the enforcement of any resulting judgment is not a primary factor in determining the merits of this compromise.

Expense, Inconvenience and Delay of Continued Litigation

The complex issues of determining the estate is entitled to sell the co-owner's interest in the subject property under 11 U.S.C. § 363(h) will require significant legal research and discovery. The expense to the bankruptcy estate of pursuing litigation to resolve the dispute and the duration of completing a trial may exceed the $25,500 settlement amount; and The expense of litigating the action would erode the amount ultimately available to distribute to creditors and delay distribution.

Paramount Interest of Creditors

Given the costs of litigation and the probability of success at trial are unknown, Trustee believes that the compromise is in the best interest of the Debtor's estate and creditors therein.

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

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

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

The Motion to Approve Compromise filed by Irma C. Edmonds, the Chapter 7 Trustee in this case, ("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 Nolberta Wilson ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit 1 in support of the Motion(Docket Number 23).

38. 13-92199-E-7 MARK THOMPSON — MOTION TO COMPEL ABANDONMENT
PJE-2 Patrick J. Edaburn — 8-6-14 [63]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 5, 2014. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest

were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Abandon Property is granted.

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

The Motion filed by Mark Thompson ("Debtor") requests the court to order the Trustee to abandon property commonly known as 14 Windamere Cove, Ward, Arkansas (the "Property"). This Property is encumbered by the liens of Colwell Banker and Ocwen Loan Servicing, LLC, securing claims of $120,000 and $5,000, respectively. The Declaration of Mark Thompson has been filed in support of the motion and values the Property to be $120,000.

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 Mark Thompson ("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:
>
> 14 Windamere Cove, Ward, Arkansas
>
> and listed on Schedule A by Debtor is abandoned to Mark Thompson by this order, with no further act of the Trustee required.

39. 13-92199-E-7 MARK THOMPSON
RDG-2 Patrick J. Edaburn

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-13-14 [42]

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

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 - Response Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and all creditors on June 13, 2014. By the court's calculation, days' notice was provided. 28 days' notice is required. That requirement was met

The Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to overrule the Objection to Debtor's Claim of Exemptions.

The Standing Chapter 13 Trustee in this case, Russell D. Greer ("Trustee), objects to Debtor Mark Thompson's ("Debtor") claim of exemptions.

The Trustee states that Debtor testified at the 341 Meeting of Creditors that he had moved to Oregon in October 2010, and resided there through July 2012 and then moved to California in August 2013.

On these facts, Trustee states that Debtor's Schedule C should have utilized the Oregon exemption code sections as opposed to the California code sections that were utilized on the Debtor's bankruptcy petition. Dckt. No. 1. Accordingly, the California exemptions claimed on Schedule C are inappropriate.

CONTINUANCE

The Debtor's Chapter 13 bankruptcy case was converted to a case under Chapter 7 on July 17, 2014 and was transferred from the court of the Hon. Robert S. Bardwil to this court. As a result, the objection to claim of exemptions was continued from its original hearing date of August 5, 2014, to this hearing date to be heard by this court. Dckt. No. 62.

DISCUSSION

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." Debtors must list all of their assets on their bankruptcy schedules whether or not they claim them as exempt. 11 U.S.C. § 521(a)(1)(B)(I), 522(l).

Here, the Chapter 13 Trustee has identified an improper claim of exemption as a matter of federal law. No opposition to this Objection has been filed by the Debtors, which may be in recognition of the legal infirmity of what has been claimed as exempt.

Though the case has now been reconverted to one under Chapter 7, the Chapter 13 Trustee continues to be a party in interest. If the Chapter 7 Trustee sought to take control of this Motion, he could have been substituted in for the Chapter 13 Trustee.

In filing the Objection to Claim of Exemption, the Chapter 13 Trustee does not direct the court to any statutes or the legal authority for the proposition that the Oregon exemptions is required under federal law. It may well be that the Chapter 13 Trustee believes that this legal proposition is so simple that Debtor's counsel and even the court would be aware of the unidentified law. This court's belief is that if such law is "so obvious," then it is very easy for a movant or objector to simply state it in the motion or objection with particularity. See Fed. R. Bankr. P. 9013, Fed. R. Civ. 7(b). FN.1.

FN.1. The federal courts do not have the luxury of providing legal research and drafting services for parties - be they debtors, creditors, or trustees.

The court not having been provided with the legal authority for the Trustee's Objection to Claim of Exemption and the Objection not stating how or why the relief is proper, the Objection is overruled 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 Objection to Debtor's Claim of Exemptions filed by Trustee having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Debtor's Claim of Exemptions is overruled without prejudice.