

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

August 25, 2016 at 10:30 a.m.

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| 1. | 13-91315-E-7
WFH-31 | APPLEGATE JOHNSTON, INC.
George C. Hollister | MOTION TO COMPROMISE
C O N T R O V E R S Y / A P P R O V E
SETTLEMENT AGREEMENT WITH
LAGUNA GOLD MORTGAGE, INC.
8-3-16 [653] |
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Tentative Ruling: The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on August 3, 2016. By the court’s calculation, 22 days’ notice was provided. 21 days’ notice is required. (Fed. R. Bankr. P. 2002(a)(3), 21 day notice.)

The Motion for Approval of Compromise 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 -----
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The Motion for Approval of Compromise is granted.
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Michael D. McGranahan, the Trustee, (“Movant”) requests that the court approve a compromise and settle competing claims and defenses with Laguna Gold Mortgage, Inc. (“Settlor”). The claims and disputes to be resolved by the proposed settlement are those arising from Adversary Proceeding No. 15-9023 that seek to avoid and recover pre-petition transfers of the Debtor to Settlor in the amount of \$12,857.62 pursuant to 11 U.S.C. §§ 547 and 550.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 656):

- a. Trustee and Settlor agree to resolve the litigation and all disputes between them, except the excluded items, for the sum of \$7,000.00. FN.1.
- b. Within ten (10) days of the execution of the agreement, Settlor will cause to be delivered to the Trustee a check in the amount of \$7,000.00.
- c. Settlor shall have the right to file an amended proof of claim asserting an additional claim pursuant to § 502(h) in the amount of the settlement amount.
- d. Upon receipt of the settlement payment, the Trustee will promptly file a motion with the Bankruptcy Court for approval of the compromise set forth herein.
- e. The parties jointly and severally release, remise, and forever discharge each other and their past and present members, officers, directors, employees, subsidiaries, affiliates, corporate parents, and agents of and from any and all claims, demands, express or implied contract rights, actions, causes of action, charges, debts, demands, damages, costs, attorneys’ fees, and/or expenses of any kind, nature and character, at law or in equity, accrued or inchoate, arising under any federal, state, or any other law, whether known and/or unknown, filed or otherwise, sounding in tort, contract, or otherwise, including but not limited to foreseen or unforeseen, disclosed or undisclosed, anticipated or unanticipated, and expected or unexpected claims, damages, losses, costs, expenses, and liabilities and the consequences thereof that either party has or may acquire for any reason whatsoever, arising out, connected with, or incidental to, or in any way related to the litigation up to and including the effective date of the settlement agreement.
- f. The parties specifically waive the benefit of the provisions of § 1542 of the Civil Code of the State of California.
- g. Each party shall bear any and all attorneys’ fees and costs it incurred in connection with or related to the settlement agreement and/or the litigation.
- h. The rights and obligations of the parties under the settlement agreement are subject to entry of an order of the Bankruptcy Court approving the settlement agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

- i. The parties agree that the interpretation and effect of the settlement agreement shall be governed by the laws of the State of California.
- j. The parties consent to the jurisdiction of the Bankruptcy Court for the enforcement of any and all provisions of the settlement agreement, both now and in the future.
- k. Should any provision of the settlement agreement require judicial interpretation, the parties agree that the court interpreting or construing it shall not apply a presumption that the terms of the settlement agreement shall be more strictly construed against one or more parties by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the document, it being acknowledged and agreed that all of the parties and their attorneys have participated in the preparation and review of the settlement agreement.
- l. The parties agree that the settlement agreement constitutes the entire agreement between them, and the agreement supersedes all prior or contemporaneous agreements and understandings, oral or written, between them as of July 28, 2016, pertaining to the terms and conditions of the settlement agreement.
- m. If any provision of the settlement agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way.
- n. No term or provision of the settlement agreement may be varied, changed, modified, waived, or terminated orally, but only by an instrument in writing signed by the party against whom the enforcement of the variation, change, modification, waiver, or termination is sought. The waiver by any party of any breach of any provision of the settlement agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision, nor shall any failure to enforce any provision operate as a waiver at such time or at any future time of such provision or of any other provision.
- o. The settlement agreement may be signed in any number of counterparts, with the same effect as if the signature were upon the same instrument. Complete sets of counterparts shall be delivered to each party to the settlement agreement. Facsimile or e-mail signatures shall have the same force and effect as original signatures.

FN.1. The court notes that the settlement agreement in the instant Motion is one of many similar settlement agreements that has been submitted for approval by the Trustee in the instant case. The inclusion of language about items excluded from the settlement agreement appears to be a scrivener's error and was remnants of another similar settlement in the instant case. This appears to have been a mere oversight and does not adversely impact the terms of the settlement.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Under the Settlement, Movant shall recover \$7,000.00 in satisfaction of the estate's claim for recovery of the property, with an asserted value of \$12,857.62, from Settlor. Movant asserts that the property can be recovered for the estate as a preference. This proposed settlement allows Movant to recover for the estate \$7,000.00 without further cost or expense and is 54.44% of the maximum amount of the claim identified by Movant.

Probability of Success

The Trustee asserts that a check in the amount of \$12,857.62 was issued as a preferential transfer from Debtor's bank account within ninety (90) days of the bankruptcy filing.

Settlor asserts that the check was made payable jointly to Settlor, Golden State Erectors, Inc., and Ahern Rentals, Inc. Settlor asserts that it endorsed the check over to Ahern Rentals, Inc., and Golden State Erectors, Inc., and consequently, did not receive any proceeds from the check. Also, Settlor asserts defenses under 11 U.S.C. § 547(c)(1) & (2). The Trustee doubts that Settlor can satisfy the burden of proof for those defenses.

Difficulties in Collection

The Trustee does not believe that there are any impediments to collection of any judgment obtained against the Settlor.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, estimated up to \$10,000.00, which

are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. Formal discovery would be required, with depositions of the Settlor and document production requests will be required. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a greater recovery for the Estate than if the case proceeds to trial, but without the costs of litigation.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors because 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.

The Motion to Approve Compromise filed by Michael D. McGranahan, the Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Approve Compromise between Movant and Laguna Gold Mortgage, Inc. (“Settlor”) is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Docket Number 656).

2. [13-91315-E-7](#) **APPLEGATE JOHNSTON, INC.** **MOTION TO COMPROMISE**
WFH-32 **George C. Hollister** **C O N T R O V E R S Y / A P P R O V E**
 SETTLEMENT AGREEMENT WITH
 SECURECOM, INC.
 8-3-16 [658]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Creditors, parties requesting special notice, and Office of the United States Trustee on August 3, 2016. By the court’s calculation, 22 days’ notice was provided. 21 days’ notice is required. (Fed. R. Bankr. P. 2002(a)(3), 21 day notice.)

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

The Motion For Approval of Compromise is granted.

Michael D. McGranahan, the Trustee, (“Movant”) requests that the court approve a compromise and settle competing claims and defenses with Securecom, Inc. (“Settlor”). The claims and disputes to be resolved by the proposed settlement are those arising from Adversary Proceeding No. 15-9023 that seek to avoid and recover pre-petition transfers of the Debtor to Settlor in the amount of \$277,654.23 pursuant to 11 U.S.C. §§ 547 and 550.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in

the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 661):

- A. Trustee and Settlor agree to resolve the litigation and all disputes between them, for the sum of \$55,000.00, to be paid in two (2) installments.
- B. Within ten (10) days of the execution of the agreement, Settlor will cause to be delivered to the Trustee a check in the amount of \$55,000.00.
- C. Settlor shall have the right to file an amended proof of claim asserting an additional claim pursuant to § 502(h) in the amount of the settlement amount.
- D. Upon receipt of the settlement payment, the Trustee will promptly file a motion with the Bankruptcy Court for approval of the compromise set forth herein.
- E. The parties jointly and severally release, remise, and forever discharge each other and their past and present members, officers, directors, employees, subsidiaries, affiliates, corporate parents, and agents of and from any and all claims, demands, express or implied contract rights, actions, causes of action, charges, debts, demands, damages, costs, attorneys' fees, and/or expenses of any kind, nature and character, at law or in equity, accrued or inchoate, arising under any federal, state, or any other law, whether known and/or unknown, filed or otherwise, sounding in tort, contract, or otherwise, including but not limited to foreseen or unforeseen, disclosed or undisclosed, anticipated or unanticipated, and expected or unexpected claims, damages, losses, costs, expenses, and liabilities and the consequences thereof that either party has or may acquire for any reason whatsoever, arising out, connected with, or incidental to, or in any way related to the litigation up to and including the effective date of the settlement agreement.
- F. The parties specifically waive the benefit of the provisions of § 1542 of the Civil Code of the State of California.
- G. Each party shall bear any and all attorneys' fees and costs it incurred in connection with or related to the settlement agreement and/or the litigation.
- H. The rights and obligations of the parties under the settlement agreement are subject to entry of an order of the Bankruptcy Court approving the settlement agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.
- I. The parties agree that the interpretation and effect of the settlement agreement shall be governed by the laws of the State of California.
- J. The parties consent to the jurisdiction of the Bankruptcy Court for the enforcement of any and all provisions of the settlement agreement, both now and in the future.
- K. Should any provision of the settlement agreement require judicial interpretation, the parties agree that the court interpreting or construing it shall not apply a presumption

that the terms of the settlement agreement shall be more strictly construed against one or more parties by reason of the rule of construction that a document is to be construed more strictly against the party who prepared the document, it being acknowledged and agreed that all of the parties and their attorneys have participated in the preparation and review of the settlement agreement.

- L. The parties agree that the settlement agreement constitutes the entire agreement between them, and the agreement supersedes all prior or contemporaneous agreements and understandings, oral or written, between them as of July 29, 2016, pertaining to the terms and conditions of the settlement agreement.
- M. If any provision of the settlement agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way.
- N. No term or provision of the settlement agreement may be varied, changed, modified, waived, or terminated orally, but only by an instrument in writing signed by the party against whom the enforcement of the variation, change, modification, waiver, or termination is sought. The waiver by any party of any breach of any provision of the settlement agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision, nor shall any failure to enforce any provision operate as a waiver at such time or at any future time of such provision or of any other provision.
- O. The settlement agreement may be signed in any number of counterparts, with the same effect as if the signature were upon the same instrument. Complete sets of counterparts shall be delivered to each party to the settlement agreement. Facsimile or e-mail signatures shall have the same force and effect as original signatures.

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 \$55,000.00 in satisfaction of the estate's claim for recovery of the property, with an asserted value of \$277,654.23, from Settlor. Movant asserts that the property can be recovered for the estate as a preference. This proposed settlement allows Movant to recover for the estate \$55,000.00 without further cost or expense and is 19.81% of the maximum amount of the claim identified by Movant.

Probability of Success

The Trustee asserts that six payments were made by joint checks issued from the general contractors who contracted with Debtor. Debtor endorsed those checks to Settlor.

Settlor asserts that the joint checks were not property of the estate based on the reasoning in *In re Flooring Concepts, Inc.*, 37 B.R. 957, 961 (B.A.P. 9th Cir.1984) and *Keenan Pipe & Supply Co. v. Shields*, 241 F.2d 486, 490 (9th Cir. 1956).

In *Flooring Concepts*, the defendant transferee was a materialman that supplied carpet to the debtor. The debtor was a subcontractor to the general contractor, Konwiser Corporation. When the debtor fell behind in its payments, the materialman entered into a three-party contract under which the general contractor agreed to pay the materialman directly. A trustee subsequently sought to recover the payment as a preference. The Bankruptcy Appellate Panel reversed the bankruptcy court and held that “[p]ayments made by a contract debtor of a bankrupt to a creditor of the bankrupt do not become part of the bankruptcy estate where there is an independent obligation on the part of the debtor to pay the creditor.” *In re Flooring Concepts, Inc.*, 37 B.R. at 961.

The Trustee argues that Settlor has not established an independent contractual or statutory liability of the general contractor to Settlor. The Trustee admits that there is a risk that Settlor may establish a statutory basis for liability, but the Trustee has not seen evidence of it yet.

Settlor asserts a defense under § 547(c)(1) as well, claiming that Settlor gave new value to the Debtor in the form of a release of its right to assert a claim under the general contractor's payment bond. Settlor relies upon *In re Modtech Holdings, Inc.*, 503 B.R. 737, 740 (Bankr. C.D. Cal. 2013) and *In re JWJ Contracting Co., Inc.*, 287 B.R. 501, 507 (B.A.P. 9th Cir. 2002), *aff'd*, 371 F.3d 1079 (9th Cir. 2004). The Trustee claims that those two cases are inapplicable because the Debtor here was not the general contract; Debtor was a subcontractor. Also, the Trustee states that in each of those cases, the bonding company had an equitable lien on amounts owed to the debtor general contractor, but here, the amounts owed by the owner and encumbered by equitable lien were not property of the estate. The Trustee questions if the general contractor would have a valid setoff right if Settlor had made a claim on the payment bond. The Trustee recognizes that the release of a valid setoff right could constitute new value and be a complete defense to adversary action.

Settlor also asserts a defense based on ordinary course of business, but the Trustee replies that

Settlor has not met its burden of proof on such defense.

Difficulties in Collection

The Trustee does not believe that there are any impediments to collection of any judgment obtained against the Settlor.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, estimated up to \$65,000.00, which are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. Formal discovery would be required, with depositions of the general contractor, the Settlor's representative, and the Settlor's expert witness being required. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a greater 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 because as the compromise provides prompt payment to creditors that 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.

The Motion to Approve Compromise filed by Michael D. McGranahan, the Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Approve Compromise between Movant and Securecom, Inc. ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Docket Number 661).

3. [15-90628](#)-E-7 **RICARDO/MARIA BALDERAS** **MOTION FOR COMPENSATION FOR**
MDM-2 Mark S. Nelson **MICHAEL D. MCGRANAHAN, CHAPTER**
DISCHARGED: 10/26/15 **7 TRUSTEE**
 7-26-16 [57]

Final Ruling: No appearance at the August 25, 2016, hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2016. By the court’s calculation, 30 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 Trustee Fees is granted.

Michael D. McGranahan (“Applicant”), the Chapter 7 Trustee for the bankruptcy estate of Ricardo Balderas and Maria Elena Balderas (“Debtors”), 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 June 25, 2015, through August 25, 2016. Applicant requests fees in the amount of \$1,618.68 and costs in the amount of \$21.46, totaling \$1,640.14.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

BENEFIT TO THE ESTATE

Even if the court finds that the services billed by 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 employing a certified public accountant, filing motions, and requiring turnover of Debtors' Health Savings Account. The estate has \$6,763.12 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant seeks to be paid a single sum of \$1,618.68 for an allowance of fees.

Costs & Expenses

Applicant seeks to be paid the allowance and recovery of costs and expenses in the amount of \$21.46.

The costs requested are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies (x85)	\$0.10/page	\$8.50
Postage (x3)	\$0.49/letter	\$1.47
Case Balance Total Postage		\$11.49
Total Costs Requested in Application		\$21.46

FEES AND COSTS & EXPENSES ALLOWED

Fees

Using the 11 U.S.C. § 326 trustee fee cap formula,

25% of first \$5,000.00	\$1,250.00
10% of next \$3,686.75	\$368.68
Calculated Maximum Total Compensation Permitted for Trustee	\$1,618.68

This represents the Maximum Trustee Fees in a case that works its way through conclusion. Here, Applicant seeks the full amount allowed by statute.

Applicant has performed for the benefit of the estate by securing \$8,686.75 in gross proceeds from Debtors' turnover of a health savings account. In light of Applicant having provided real and actual services to the benefit of the estate, the Motion is granted.

First and Final Fees in the amount of \$1,618.68 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 & Expenses

The First and Final Costs in the amount of \$21.46 pursuant to 11 U.S.C. § 330(a)(1)(B) are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$1,618.68
Costs and Expenses	\$21.46

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 Michael D. McGranahan ("Applicant"), 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 Michael D. McGranahan is allowed the following fees and expenses as the Trustee of the Estate:

Michael D. McGranahan, Chapter 7 Trustee

Fees in the amount of \$1,618.68, and
Expenses in the amount of \$21.46,

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.

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

BENEFIT TO THE ESTATE

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including reviewing and assisting Ricardo Balderas and Maria Balderas (“Debtors”) with a motion to pay projected estate taxes, handling claims administration and objections, and preparing and filing employment and fee applications for Applicant’s self and others. Applicant values total expenses and services rendered at \$5,491.62, but Applicant has agreed to reduce his compensation request to \$2,800.00. The estate has \$6,763.12 of unencumbered monies to be administered as of the filing of the application. FN. 1. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FN.1. The court notes a difference in the amount of unencumbered monies listed by the Trustee and by Applicant. Applicant lists \$6,773.29, and Trustee lists \$6,763.12. The amounts are post-tax. The court relies upon the Trustee’s amount of \$6,763.12.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Case Administration: Applicant spent 4.9 hours in this category. Applicant assisted Debtors with an administrative motion noticed to creditors and other parties in interest to pay projected estate taxes.

Claims Administration and Objections: Applicant spent 7.2 hours in this category. Applicant drafted motions and supporting documents relating to approval of payment of administrative tax claims for the estate, objected to motions, drafted responses to objections, and appeared before the court.

Fee and Employment Applications: Applicant spent 6 hours in this category. Applicant prepared employment and fee applications for self and others and established interim procedures.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Steven Altman, Attorney	18.1	\$300.00	\$5,430.00
Total Fees For Period of Application			\$5,430.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$61.62 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies (x251)	\$0.10/page	\$25.10
Postage: Fee Application		\$13.34
Postage (x41)	\$0.48	\$19.68
Postage (x5)	\$0.70	\$3.50
Total Costs Requested in Application		\$61.62

FEES AND COSTS & EXPENSES ALLOWED

Fees and Costs & Expenses

Applicant seeks to be paid a single sum of \$2,800.00 for fees and expenses incurred for the Client. First and Final Fees and Costs in the amount of \$2,800.00 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, Costs, and Expenses \$2,800.00

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 Steven S. Altman (“Applicant”), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Steven S. Altman is allowed the following fees and expenses as a professional of the Estate:

Steven S. Altman, Professional Employed by Trustee

Fees, Costs, and Expenses in the amount of \$2,800.00

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.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

BENEFIT TO THE ESTATE

Even if the court finds that the services billed by 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 correspondence, tax returns preparation, and fee and employment application preparation. The estate has \$6,763.12 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. FN. 1.

FN.1. The \$6,763.12 figure for unencumbered monies is the figure reported by the Trustee.

FEES REQUESTED

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

Correspondence: Applicant spent 0.9 hours in this category. Applicant discussed distribution of funds from a health savings account and a court declaration.

Tax Preparation: Applicant spent 5.4 hours in this category. Applicant prepared 2015 tax returns, attended court regarding those returns, and calculated interest and penalties due on late filed returns.

Fee Application: Applicant spent 0.5 hours in this category. Applicant prepared a fee and expenses application.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Maria Stokman, CPA	6.8	\$230.00	\$1,564.00
Total Fees For Period of Application			\$1,564.00

FEES ALLOWED

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 \$1,564.00 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees \$1,564.00

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 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 \$1,564.00

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.

6. [12-90029-E-7](#) **KENNETH/LISA WATT**
SSA-3 **David Foyil**

MOTION FOR COMPENSATION FOR
STEVEN S. ALTMAN, TRUSTEE'S
ATTORNEY
7-20-16 [54]

DISCHARGED: 4/23/12

Final Ruling: No appearance at the August 25, 2016, 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 20, 2016. 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.

Steven S. Altman, the Attorney ("Applicant") for Irma Edmonds the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period April 6, 2015, through August 25, 2016. The order of the court approving employment of Applicant was entered on April 20, 2015, Dckt. 38. Applicant requests fees in the amount of \$3,240.00 and costs in the amount of \$73.41.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

BENEFIT TO THE ESTATE

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including the turnover of all monies payable to a stipulated judgment in favor of the Debtors. The estate has \$13,696.00 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 AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Analysis and Recovery: Applicant spent 3.3 hours in this category. Applicant assisted Client with reviewing Debtors' initial bankruptcy schedules; preparation of a Motion for Turnover including declaration, points and authorities, supporting exhibits, and service to creditors and other parties in interest; reviewing the courts ruling granting the Motion; and follow-up communications with the Trustee relating to payments made on account to the bankruptcy estate.

Case Administration: Applicant spent 2.8 hours in this category. Applicant reviewed the file and supporting documents for purposes of engagement; performed case analysis concerning Section 524 and the trustee's rights to demand turnover of assets; emailed and called counsel Foyil who procured stipulated judgment on behalf of Debtors concerning inquiry regarding accounting; remittance and disposition of funds owed Debtors which need to be sent to the Trustee for the benefit of the bankruptcy estate.

Fee/Employment Applications: Applicant spent 4.2 hours in this category. Applicant reviewed the bankruptcy schedules and statement of affairs relative engagement and conflict check; prepared the initial application for employment and execution by trustee; transmitted the appointment documents with supporting order to the Office of the U.S. Trustee and Court for processing; reviewed the endorsed order; and prepared the first and final fee application and supporting documents for filing and service with the court, including declaration. Supporting project categories, and attorney narrative.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
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Steven Altman, Attorney	10.80	\$300.00	\$3,240.00
Total Fees For Period of Application			\$3,240.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$73.41 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying Charges	\$0.10	\$30.70
Postage	\$17.36	\$17.36
Postage	\$0.69	\$6.21
Postage	\$0.48	\$11.04
Postage	\$0.90	\$8.10
Total Costs Requested in Application		\$73.41

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim and Final Fees in the amount of \$3,240.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs and Expenses

The First and Final Costs in the amount of \$73.41 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$3,240.00
Costs and Expenses	\$73.41

pursuant to this Application as First Interim and Final fees in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Steven S. Altman (“Applicant”), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Steven S. Altman is allowed the following fees and expenses as a professional of the Estate:

Steven S. Altman, Professional employed by Trustee

Fees in the amount of \$3,240.00
Expenses in the amount of \$73.41,

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.

Tentative Ruling: The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *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 (*pro se*), Chapter 7 Trustee, parties requesting special notice, creditors, and Office of the United States Trustee on June 6, 2016. By the court's calculation, 80 days' notice was provided. 28 days' notice is required.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Debtor's Claimed Exemptions is sustained and the claim of exemptions disallowed in their entirety for the exemptions claimed in the following assets as listed on Schedule C, Dckt. 42: Household Furnishing, Wedding Ring, "Mis and Cars," Office Equipment, Miscellaneous, and "Tools of the Trade." The court disallows the exemption pursuant to 11 U.S.C. § 704.150 in the asset described as "Personal Injury, Malicious Prosecution" litigation, and bifurcates for separate proceedings the Trustee's objection to the claim of exemption in that asset pursuant to Cal. C.C.P. § 704.140.

Chapter 7 Trustee, Gary Farrar ("Trustee"), filed an Objection to Exemptions on June 6, 2016. Dckt. 445. The Trustee objects to the following claims of exemptions filed by Richard Sinclair ("Debtor"):

- A. All claims of exemption under 11 U.S.C. § 522,

- B. Unidentified vehicle claimed as a Tool of the Trade pursuant to an unidentified claim of exemption in the amount of \$4,850.00,
- C. Personal injury claim described as “malicious prosecution suit” pursuant to California Code of Civil Procedure § 704.140, and
- D. Personal injury claim described as “malicious prosecution suit” pursuant to California Code of Civil Procedure § 704.150.

11 U.S.C. § 522 Exemptions

Trustee argues that the federal exemptions in 11 U.S.C. § 522 are not allowed because California has opted out of them, and Trustee cites *In re Diaz*, 547 B.R. 329, 334 (B.A.P. 9th Cir. 2016) and *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) as support. Trustee notes that Debtor also claims California exemptions on Schedule C.

Regardless of whether the federal exemptions apply, Trustee objects to \$8,000.00 claimed as “Miscellaneous” pursuant to 11 U.S.C. § 522(d)(6). Trustee asserts that exempting assets described as “miscellaneous” is improper on its face.

Unidentified “Tool of the Trade” Vehicle

Trustee argues that Debtor’s claimed exemption of \$4,850.00 for a “tool of the trade” vehicle is improper because Debtor has not identified what vehicle is claimed for California Code of Civil Procedure § 704.060. Trustee notes that Debtor’s Schedule B lists four (4) vehicles: 1991 Chevrolet pick-up truck, 1956 Packard (inoperable), 1965 Valiant, and 1999 Dodge. Trustee notes that Debtor has claimed a vehicle exemption in the amount of \$2,400.00 already pursuant to California Code of Civil Procedure § 704.010. Also, Trustee notes that Debtor has not listed any vehicle as part of office equipment, furnishings, supplies, machinery, fixtures, and equipment used in business on Schedule B.

Trustee argues that Debtor has not met the burden of proving entitlement to a claimed exemption and cites *In re Tallerico*, 532 B.R. 774, 780 (Bankr. E.D. Cal. 2015) and *In re Pashenee*, 531 B.R. 834, 835, 837 (Bankr. E.D. Cal. 2015) as support.

Additionally, Trustee argues that Debtor’s claimed exemption for an unidentified “tool of the trade” vehicle should be disallowed because Debtor has stacked exemptions impermissibly. Trustee cites California Code of Civil Procedure § 704.060(c) for the proposition that “a motor vehicle is not exempt under subdivision (a) if there is a motor vehicle exempt under Section 704.010 which is reasonably adequate for use in the trade, business, or profession for which the exemption is claimed under this section.” Again, Trustee notes that Debtor has claimed vehicle exemptions under California Code of Civil Procedure §§ 704.010 and 704.060.

Personal Injury: California Code of Civil Procedure § 704.140

Trustee notes that Debtor maintains several claims against Andrew Katakis, California Equity

Management Group, Inc., New Century Townhomes (formerly Fox Hollow of Turlock Owner's Association), and their counsel. Those claims include: malicious prosecution, intentional infliction of emotional distress, stalking, elder abuse, violations of Due Process under the Constitution, and violations of Consumers Legal Remedies Act; Debtor seeks injunctive relief for those claims. Trustee believes that the "malicious prosecution suit" referred to on Debtor's Schedule C is Stanislaus County Superior Court Case No. 668157.

Trustee asserts that determining hypothetical proceeds allocated to Debtor's claims as personal injury is premature because if and when Debtor may recover funds is unclear. Accordingly, Trustee asserts that it is not possible yet to allocate funds under California Code of Civil Procedure § 704.140. Trustee asserts that what portion of any potential exempt personal injury damages would be necessary to support the judgment debtor and the spouse and dependents of the judgment debtor is not clear. Trustee notes that Debtor bears the burden of demonstrating entitlement to the exemption.

Trustee is not aware of any recovery by Debtor in the malicious prosecution suit and requests that the court defer ruling on the California Code of Civil Procedure § 704.140 exemption until a time when Trustee or Debtor notifies the court that funds are available to which the exemption might apply.

Personal Injury: California Code of Civil Procedure § 704.150

Trustee argues that California Code of Civil Procedure § 704.150 does not apply because that exemption applies to damages for wrongful death, and Trustee is not aware of any allegations of someone having died or of any basis for the exemption to apply to the disputes between Debtor and Andrew Katakis. Trustee asserts that the claimed exemption is improper, that Debtor cannot meet the burden of proof to demonstrate entitlement to the exemption, and that the exemption should be disallowed.

DEBTOR'S OPPOSITION

Debtor filed an opposition on August 8, 2016. Dckt. 452. Debtor argues numerous points—some relevant to Trustee's opposition of claimed exemptions, some irrelevant. Debtor is an attorney, though no longer authorized to practice law in the State of California. He is very familiar with the litigation process having prosecuted and defended claims in both the state and federal courts. When Debtor voluntarily commence this case (originally filed as a Chapter 11 case) he was asserting various claims against third parties in both state and federal court, which claims are property of the bankruptcy estate. 11 U.S.C. § 541(a). In reviewing the opposition, it appears that Debtor is refusing to recognize that such claims, and other assets, are property of the bankruptcy estate, under the control, management, and decision making of the Chapter 7 Trustee. 11 U.S.C. § 704.

As to the claimed 11 U.S.C. § 522 exemptions, Debtor concedes that Trustee is correct in stating that they do not apply in California. Debtor requests that the court "convert" his claimed 11 U.S.C. § 522 exemptions "to the properly written California bankruptcy exemptions."

Regarding the claimed exemption for the unidentified "tool of the trade" vehicle, Debtor states that the value of the four (4) vehicles he claimed on Schedule B is *de minimis*. Debtor admits that Trustee is correct in stating that Debtor has not identified a vehicle as a tool of the trade. Debtor states that he did not identify one of the vehicles as being a tool of the trade because each of them has a deficiency that makes

each one “not worth much.” Debtor offers contradictory remarks about what vehicle he identifies as a tool of the trade. First, Debtor states that he “imagine[s] that [he] must identify the 1999 Dodge Durango” as a tool of the trade, even though Debtor claims that it has a negative value. Then, Debtor states that he wants to use the exemption for the sale of the 1956 Packard and for the Dodge. Finally (in a separate section of Debtor’s opposition entitled, “Tools of Trade”), Debtor states that he “claimed \$4850 in vehicles which [he] doesn’t presently have.”

Debtor states that the 1991 Chevrolet pick-up truck was sold to cover the cost of having it towed and that Debtor owes approximately \$3,000.00 on the 1965 Valiant, a number that grows by \$55.00 per day.

As to the claimed California Code of Civil Procedure § 704.140 exemptions, Debtor lists his alleged personal injury causes of action, but he does not address Trustee’s opposition about the status of Debtor’s claims being uncertain and the possibility of exempt funds being hypothetical at this time.

Debtor admits that Trustee is correct in stating that California Code of Civil Procedure § 704.150 does not apply presently.

TRUSTEE’S RESPONSE

Trustee filed a response on August 18, 2016. Dckt. 453. Trustee states that Debtor’s opposition is contradictory regarding 11 U.S.C. § 522 exemptions because Debtor acknowledges that those exemptions are not allowed in California but then asks the court to convert them to the proper exemptions. Trustee states that such logic fails because Debtor cannot ask for improper, disallowed exemptions to be converted to proper, allowed exemptions. Also, Trustee notes that Debtor did not address Trustee’s opposition to claimed exemptions for assets described as miscellaneous. Trustee re-asserts that such-described exemptions are improper, that they do not indicate to creditors and Trustee what Debtor seeks to exempt, and that they should be disallowed.

Trustee notes that Debtor, in his opposition, does not identify a vehicle as a tool of the trade. Trustee notes that instead, Debtor alleges facts that devalue Debtor’s vehicles. Trustee asserts that Debtor has not met the burden of proving entitlement to the claimed exemption. Also, Trustee notes that Debtor did not address Trustee’s objection that Debtor stacked exemptions under California Code of Civil Procedure §§ 704.010 and 704.060 impermissibly. Trustee states that the claimed unidentified “tool of the trade” vehicle exemption should be disallowed.

Trustee notes that Debtor confirmed that the case giving rise to personal injury claims is Stanislaus County Superior Court Case No. 668157. Trustee re-asserts that recovery of funds from Debtor’s personal injury claims is unclear and hypothetical. Also, Trustee re-asserts that determining what portion of funds would be exempt is premature at this time. Trustee states that Debtor’s assertion that he is counting on funds from his suits for retirement and for alimony payments does not meet Debtor’s burden of proving entitlement to the claimed exemption. Again, Trustee requests that the court defer ruling on the malicious prosecution claims exemption until a time when Trustee or Debtor notify the court that funds have become available against which the exemption might apply.

Trustee notes that Debtor concedes that Trustee is correct about California Code of Civil Procedure § 704.150 not applying and being disallowed because that section applies to claims of exemption

for damages for wrongful death, and no evidence has been presented of that claim applying at this time.

APPLICABLE LAW

California has created its own set of exemptions for debtors in bankruptcy, which a debtor may elect in lieu of the standard exemptions otherwise available under California law. *In re Diaz*, 547 B.R. 329, 334 (B.A.P. 9th Cir. 2016). Debtors in California are not permitted to claim the Federal Bankruptcy Exemptions listed in 11 U.S.C. § 522(d). *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015).

“§ 703.130. Exemptions in bankruptcy

Pursuant to the authority of paragraph (2) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state.

Cal. C.C.P. § 703.130. The alternative exemptions which may be used under California law in a bankruptcy case are provided for (in pertinent part) as follows:

§ 703.140. Election of exemptions if bankruptcy petition is filed

(a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter [Cal. C.C.P. §§ 704.010 - 704.995], including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the **exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter,**

(3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), **but not both.**

Cal. C.C.P. 703.140(a) [emphasis added].

The general burden regarding California exemptions is for exemptions the claimant [debtor in a bankruptcy case or judgement debtor in a state court case] has the burden of proof in claiming an exemption. See *Diaz v. Kosmala (In re Diaz)*, 547 b.R. 329 (B.A.P. 9th Cir. 2016), and *In re Tallerico*, 532 B.R. 774, 780 (Bankr. E.D. Cal. 2015), both citing California Code of Civil Procedure § 703.580(b).

DISCUSSION

Homestead Exemption

Debtor spends a significant amount of time addressing what he asserts to be his homestead exemption in property at 8212 Oak View Drive. He challenges a lien asserted by Andrew Katakis and Mr.

Katakis' counsel (one of the main protagonists in Debtor's legal battles both in state court and federal court). Debtor's points and authorities include cut and pasted copies of California Code of Civil Procedure §§ 704.710, 704.720, 704.730, and 704.730; as well as a headnote for the decision in *In re McFall*, 112 B.R. 336 (B.A.P. 9th Cir. 1990).

However, on March 9, 2015, while Debtor was actively prosecuting the Chapter 11 case as the Debtor in Possession, the court entered an order disallowing the claim of a homestead exemption in its entirety. Dckt. 119. That order was not appealed and is a final order of this court.

Arguments Against Objections Not Raised

The Trustee asserts that Debtor has reached out to attack "objections" to exemptions which have not been asserted. It may be that Debtor is thinking that a good litigation strategy is to address what may have been some possible exemption for some assets which he could have claimed, but did not. It may be that Debtor is stating that there could have been exemptions claim in assets, if such assets had been listed on the Schedules. Or there may be some other legal strategy rationale that Debtor has found successful during his time as an attorney which he is attempting to implement here. For this court, only the actual exemptions asserted and for which exemptions have been made will be the subject of these proceedings.

Claim of 11 U.S.C. § 522 Exemptions

The Trustee's first objection is fairly simple, Debtor has asserted exemptions in some property of the estate for which the exemption cannot be properly claimed. These are for the exemptions stated under 11 U.S.C. § 522(d): (3) for household goods, (4) wedding ring, (5) "Misc and Cars," (6) office equipment, and (6) "miscellaneous." Schedule C, Dckt. 42.

Debtor has claimed exemptions under an inapplicable law and the Trustee's objection is valid.

In his Opposition, Debtor states as the reason for stating § 522 exemptions and what he asserts to be the correct ruling:

"1. Schedule C Claim for Exemptions: P. 2 Richard Sinclair as debtor is entitled to claim these exemptions. The 522 exemptions were listed because the form had them. If they are obsolete, please convert them to the properly written California bankruptcy exemptions which were also claimed"

Opposition, ¶ 1 at p. 2; Dckt. 452.

With respect to the latter request, no basis is given for the court to "convert" exemptions claimed by Debtor. As an attorney, Debtor is well aware of the need for there to be a legal basis for a court to take action requested by a party. Equally, Debtor is aware that the court does not act for, nor do the work of, the parties appearing before it.

While Debtor states that on the form there is a reference to 11 U.S.C. § 522(b)(2) and 11 U.S.C. § 522(b)(3), he ignores that when he went to read 11 U.S.C. § 522(b)(2) to see the possible exemptions, that Code section states [emphasis added],

“(2) Property listed in this paragraph is property that is specified under subsection (d), **unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.**”

For Debtor to determine (if he was merely relying on the form) that he “should” look to § 522(d) for exemptions, he also clearly saw that state law may not allow the § 522(d) exemptions to be used. Debtor did go to the California Code of Civil Procedure to pick the state exemptions he desired, California Code of Civil Procedure §§ 704.010, which is right next to the § 704.140 special California state law bankruptcy exemptions.

The court does not find the statement that the attorney Debtor was merely following the form and no one told him to be credible. Debtor constructed a hybrid claim of exemptions, dipping into the state exemptions and the non-applicable federal exemptions as advantageous to him.

If Debtor can properly claim exemptions at this point, he can proceed as is proper. It is not proper for the court to re-write the exemptions for the Debtor.

The court disallows, in their entirety, each of the following exemptions claimed pursuant to 11 U.S.C. § 522(d):

- A. Household Furnishing
- B. Wedding Ring
- C. “Mis and Cars”
- D. Office Equipment
- E. Miscellaneous.

In his Opposition Debtor states that virtually “all” of the exemptions have been robbed or destroyed. Opposition ¶ 2, p. 3; Dckt. 452. He confirms that only the following property remains in which he would claim an exemption:

- A. 1999 Dodge Durango (Damaged, struck a deer)
- B. 1965 Plymouth Valiant (Stolen and in storage for two months)
- C. 1956 Packard
- D. Stanislaus Superior Court Case 668157 - Cross Claim Against Katakis.

Unidentified “Tool of the Trade” Vehicle

While providing detailed code section citations for other exemptions, Debtor claims \$7,625.00 in “tools” and \$4,850.00 in “vehicle” exempt as “Tools of the Trade.” The court has no idea from Schedule C what constitutes such “tools” and why the “vehicle” is claimed as a tools of the trade for an exemption.

In his Opposition, Debtor states:

“I claimed \$7825 in tools of trade which is made up of my law. books and \$4850 in vehicles which I don’t presently have. I would retain the books as tools of trade in my university teaching career.”

Opposition, Sec. X, p.9; Dckt. 452. Debtor does not identify any vehicle or why such vehicle is a tool of the trade under California exemption law. He states that the \$7,825.00 is for “law books” for his trade of a university teaching career. On his Statement of Financial Affairs the Debtor does not list a “university teaching” income source. Statement of Financial Affairs Question 1, income from employment, trade, profession or operation of business; Dckt. 45 at 3. On his Schedule I, Debtor lists his only income being \$1,532.00 a month in Social Security benefits. Dckt. 42 at 24.

Debtor has not provided a legal basis for claiming a tools of trade exemption for assets on Schedule C. Additionally, Debtor has not identified assets which may be claimed as exempt, but merely uses it as a generic category to spill over whatever he subsequently would claim falls into that non-specific title for assets.

Under California Code of Civil Procedure § 704.010(a), a debtor is allowed to claim up to \$2,300.00 in motor vehicles as exempt and under § 704.010(c), the value of the motor vehicles is determined by reference to used car price guides used customarily by California automobile dealers. Debtor has claimed \$2,400.00 as exempt under that section, and in his opposition, he has not referenced the statutorily required price guides to determine the value of his motor vehicles.

Under California Code of Civil Procedure § 704.060(a), (c), and (d), a debtor may exempt a commercial motor vehicle up to \$4,850.00 as long as he has not claimed a motor vehicle exemption under California Code of Civil Procedure § 704.010. Here, Debtor has stacked his claimed exemptions impermissibly by claiming exemptions for motor vehicles under two sections. Additionally, Debtor has stated in his opposition that he does not yet have the unidentified “tool of the trade” vehicle for which he is claiming a \$4,850.00 exemption. Dckt. 452.

Debtor has failed to meet his burden of proving that he is entitled to the claimed exemption, has not identified the exemption, and did not assert the legal basis for such exemption to be claimed. Even if everyone ignored the last failure and assumed that the exemption would be considered under California Code of Civil Procedure § 704.060(a), the exemption has not been claimed in any specific tools and Debtor has not shown that there is any trade to which they relate.

The exemption in tools of the trade is disallowed in its entirety.

“Personal Injury” Property Exemption

Finally, the Trustee objects to Debtor claiming an unspecified amount exempt for the Property identified as “Personal injury.” On Schedule C, for this item under the “value claimed as exempt” heading, the further description of “malicious prosecution suit” is provided by Debtor.

The exemption is claimed under two California Code of Civil Procedure sections.

A. California Code of Civil Procedure § 704.140, which provides (emphasis added):

“California Code of Civil Procedure § 704.140:

(a) Except as provided in Article 5 (commencing with Section

708.410) of Chapter 6, a **cause of action for personal injury is exempt** without making a claim.

(b) Except as provided in subdivisions (c) and (d), an award of damages or a settlement arising out of personal injury is **exempt to the extent necessary for the support of the judgment debtor** and the spouse and dependents of the judgment debtor.

(c) Subdivision (b) does not apply if the judgment creditor is a provider of health care whose claim is based on the providing of health care for the personal injury for which the award or settlement was made.

(d) Where an award of damages or a settlement arising out of personal injury is payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).”

B. California Code of Civil Procedure § 704.150, which provides (emphasis added):

California Code of Civil Procedure § 704.150:

(a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a **cause of action for wrongful death** is exempt without making a claim.

(b) Except as provided in subdivision (c), an award of damages or a settlement arising out of the **wrongful death of the judgment debtor’s spouse** or a person on whom the judgment debtor or the judgment debtor’s spouse was dependent is **exempt to the extent reasonably necessary for support of the judgment debtor** and the spouse and dependents of the judgment debtor.

(c) Where an award of damages or a settlement arising out of the wrongful death of the judgment debtor’s spouse or a person on whom the judgment debtor or the judgment debtor’s spouse was dependent is payable periodically, the amount of such a periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

On Schedule B, the only possible claims which could relate to this exemption is the one described as “Katakis case for malicious prosecution plus Truax case.” There is nothing on Schedule B to indicate that either of these are personal injury or wrongful death claims.

In his Opposition, Debtor states that he has a malicious prosecution case against Mr. Katakis,

asserting damages for his lost business ventures. Opposition ¶ 4, p. 3; Dckt. 452. There is no reference to a “Truax case.” Debtor further states that the Trustee is correct as to the claim of exemption pursuant to California Code of Civil Procedure § 704.150, which applies to wrongful death claims, stating “Counsel for Trustee is correct for CCP 704.150.” *Id.*; Sec. VIII, p. 8.

Debtor argues that an exemption could be claimed pursuant to the exemption for personal injury claim. Cal. C.C.P. § 704.140. He contends that the causes of action in the malicious prosecution suit “are exempt by the Trustee’s attorney’s standards.” *Id.* However, it is not the attorney’s standards which control, but the state law by which Debtor claims exemptions for personal injury claims, and to the extent that it is necessary for the Debtor’s support. The court does not have in front of it all of the claims, but Debtor does describe the malicious prosecution claim as follows:

“4. Stanislaus County Superior Court Case No: 668157. I offered the Trustee 15% of the profits from the claim. It is a **Cross Claim to Mr. Katakis claim of malicious prosecution, but is actually a “Stalking” and “Financial Elder Abuse”** suit. Mr. Katakis has been stalking me for 21+ years, which is also a crime. He made **\$13 million criminally foreclosing on Fox Hollow and I lost about \$1 million on Las Palmas after he refused to remove his claim on Las Palmas**, a 30 unit apartment complex on which I had paid his lien. **Keeping his lien caused me to lose it in foreclosure because I could not complete the refinance due to Mr. Katakis lien.** He has done the same thing to **8212 Oak View Drive, Oakdale, even though I have no recorded ownership.** His attorney refused to remove the lien and it needs to be refinanced. The proceeds can be tripled by the state court because it is an intentional tort. We still also have to add whatever losses I suffer in 1:03 cv 05439 which also then can be trebled in 668157. That should more than pay for all bankruptcy debts and the trustee and his attorney. **I also have suggested that they file fraud on the court in 05439 and in Stanislaus Superior court case 332233 to get rid of those debt.** If they are not going to, I would be happy to do so to stop Katakis and Durbin’s onslaught. Durbin told me he is trying to get another \$5 million in 05439 which he will request to have trebled. That is even though he knows his client has no damages and is a fraud on the court. If they get \$15 million that will make my \$13 million go to \$28 million which can be trebled in 668157 and will take most of Katakis assets, plus I have included Mr. Durbin and McCormick Barstow in the suit as Cross Defendants.”

Dckt. 452 [emphasis added].

The court will first have to determine what portion of the claims are actual “personal injury” damages, if any, and what portion are financial damages, if any. Then, to the extent personal injury claims, the court will then need to determine what is **reasonably necessary** for the support of the Debtor.

The court sustains the objection to the claim of exemption pursuant to California Code of Civil Procedure § 704.150 in the “Personal Injury, Malicious Prosecution” litigation, and the claim of exemption is disallowed in its entirety.

The court bifurcates the objection to claim of exemption pursuant to California Code of Civil Procedure § 704.040 pending conclusion of the prosecution of those various claims. The Trustee shall file

an Amended Bifurcated Objection to Claim of Exemption, assigning a new docket control number for the objection to the claim of exemption pursuant to Notice asserting only the objection to California Code of Civil Procedure § 704.150 in the “Personal Injury, Malicious Prosecution” litigation in its entirety.

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

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

The Objection to 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 Objection to the Claims of Exemption are sustained, and each of the following exemptions disallowed in their entirety:

- A. The exemptions claimed in the following assets as listed on Schedule C, Dckt. 42,
 - 1. Household Furnishing
 - 2. Wedding Ring
 - 3. “Mis and Cars”
 - 4. Office Equipment
 - 5. Miscellaneous.
- B. The exemptions claim in “Tools of the Trade,” consisting of “\$7,625 tools; \$4,850 vehicle.
- C. The exemption claimed pursuant to California Code of Civil Procedure § 704.150 in asset identified as the “Personal Injury, Malicious Prosecution” litigation. This is without prejudice to the claim of exemption pursuant to California Code of Civil Procedure § 704.140 and the objection thereon in the bifurcated proceeding on that issue.

IT IS FURTHER ORDERED that pursuant to Federal Rule of Civil Procedure 54(b) and Federal Rules of Bankruptcy Procedure 7054 and 9014, the court bifurcates and set for further, separate proceedings the Trustee’s objection to the claim of exemption pursuant to California Code of Civil Procedure § 704.140 in the property described as in its entirety as “Personal Injury, Malicious Prosecution” litigation in its entirety, on Schedule C, Dckt. 42.

The Chapter 7 Trustee shall file and serve a pleading titled Amended Bifurcated Objection to Claim of Exemption, assigning a new docket control number, for the objection to the claim of exemption pursuant to asserting only the objection to California Code of Civil Procedure § 704.150 in the “Personal Injury,

Malicious Prosecution” litigation in its entirety. The Trustee shall serve the bifurcated objection and notice of hearing, setting the matter for 10:30 a.m. on December 1, 2016, at which time the court shall conduct a status conference on the Amended Objection.

The Chapter 7 Trustee and Richard Sinclair, the Debtor, shall file status reports on or before November 17, 2016, which may be filed as a joint report, providing the court with the status of the underlying claims, the litigation thereon, and recommendations for scheduling in this Objection.

9. [16-90380-E-7](#) **RENEE MACALPINE**
SCB-3 **Ashley R. Amerio**

**MOTION TO COMPROMISE
C O N T R O V E R S Y / A P P R O V E
SETTLEMENT AGREEMENT WITH
RENEE LYNN MACALPINE
7-28-16 [21]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 28, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Approval of Compromise is denied without prejudice.

Gary R. Farrar, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Renee Lynn Macalpine ("Debtor"). The claims and disputes to be resolved by the proposed settlement are four pre-petition transfers of funds to Debtor's relatives totaling \$21,845.97. First, Debtor gave a 1998 Mitsubishi Galant to her sister-in-law in October 2015, valued at \$516.00. Second, Debtor withdrew \$2,300.00 from her Wells Fargo CD and gave it to her daughter in April 2016 for car repairs. Third, Debtor gave \$778.00 to her mother in February and March of 2016 for mortgage payments. Finally, Debtor disclosed that she spent \$18,251.97 for her daughter's wedding.

Movant and Debtor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 26):

- A. Debtor shall pay \$5,000.00 to the bankruptcy estate at the time of signing the settlement agreement.
- B. Debtor shall not claim any of the settlement agreement payment as exempt.
- C. The settlement agreement is conditioned upon the Bankruptcy Court granting a motion to approve compromise of controversy, which the Trustee shall file. The Debtor shall support the compromise motion. If the court does not grant the compromise motion, then the terms of the settlement agreement shall be of no effect.
- D. Each party to the settlement agreement shall sign such further documents and take further action as reasonably may be necessary to effectuate the terms of the settlement agreement.
- E. Subject to Court approval, in consideration of the mutual covenants contained in the settlement agreement and except as to any obligations the settlement agreement creates, Debtor releases and forever discharges the Trustee, individually and as the representative of the bankruptcy estate, and his attorneys, agents, and employees, past and present, from any and all claims, causes of action, obligations, damages, and liabilities, known or unknown, that either one ever had or now has, arising directly or indirectly out of, or related to, the parties' dispute.
- F. Subject to Court approval, in consideration of the mutual covenants contained in the settlement agreement and except as to any obligations the settlement agreement creates, the Trustee, in his capacity as Chapter 7 Trustee of the bankruptcy estate, releases and forever discharges the Debtor and the recipients Debtor's transfers—Christina Michel, Brittany Childress, Sheila Puchta, and Lauren Stevenson—and their attorneys, agents, and employees, past and present, from any and all claims, causes of action, obligations, damages, and liabilities, known or unknown, that either one ever had or now has, arising directly or indirectly out of, or related to, the parties' dispute.

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).

The 1998 Mitsubishi Galant transferred in October 2015 was claimed as a gift, and the vehicle had 265,000 miles on it. The April 2016 Wells Fargo CD transfer was claimed to cover car repairs for Debtor's daughter, who Debtor disclosed is disabled and unable to work. Debtor made the February and March 2016 transfers to her mother to help with mortgage payments following her father's death. Debtor has not provided any information as to whether she is a beneficiary of a life insurance policy for her father. The final transfer was for expenses Debtor incurred for her daughter's wedding.

Under the Settlement, Movant shall recover \$5,000.00 in satisfaction of the estate's claim for recovery of the property, with an asserted value of \$21,845.97, from Debtor. Movant asserts that the property can be recovered for the estate as a fraudulent conveyance. This proposed settlement allows Movant to recover for the estate \$5,000.00 without further cost or expense and is 22.89% of the maximum amount of the claim identified by Movant.

Probability of Success

The Trustee asserts that he may avoid the transfers as fraudulent conveyances under 11 U.S.C. § 548 because: (1) they occurred within two years of the filing of this bankruptcy case; (2) Debtor did not receive a reasonably equivalent value for the transfers; and (3) Debtor was insolvent at the time of the transfers.

Whether the transfer recipients would assert defenses is unknown.

Difficulties in Collection

Debtor asserts that the transfer recipients do not have funds to pay to the bankruptcy estate. Additionally, Debtor asserts a defense that the wedding expenses do not qualify as fraudulent conveyances because the payments were made to vendors in exchange for goods or services and because Debtor received a reasonably equivalent value.

However, the Trustee does not provide the court with a rationale as to why the \$16,845.97 in additional amounts cannot be recovered from the family members who were the beneficiaries of the Debtor's largess.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, which are projected based on Trustee needing to filing four (4) separate adversary proceedings against the transfer recipients. Formal discovery would be required, including depositions of the Debtor and Debtor's relatives. The Movant estimates that if the matter went to trial, litigation expenses could cost more than any expected recovery.

However, the Trustee does not address why he would have to file four separate adversary proceedings. Federal Rules of Civil Procedure 18 and 20 and Federal Rules of Bankruptcy Procedure 7018 and 7020 allow the Trustee to assert multiple claims against multiple parties in one Complaint. Thus, it does not appear that the Trustee is facing the daunting task of having to prosecute four separate adversary proceedings.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors because the compromise provides prompt payment to creditors that could be consumed by the additional costs and administrative expenses created by further litigation. Additionally, Debtor has paid the settlement amount to the Trustee.

Movant and Debtor have not provided sufficient information at this time to warrant granting the instant Motion. Movant has asserted that the transfer recipients do not have funds to pay to the bankruptcy estate, but Movant has not provided any evidence in support of that contention. Additionally, the court does not know if Debtor or her mother, or any other family members, are beneficiaries of a life insurance policy for Debtor's father. If Debtor's mother is a beneficiary, then the court does not know why Debtor made preferential transfers to her mother to help pay a mortgage. The court would expect a life insurance payout to be sufficient to make mortgage payments. The court does not have an accurate picture of Debtor's financial reality at this time. The aforementioned concerns remain unanswered.

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

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

The Motion to Approve Compromise filed by Gary R. Farrar, 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 is denied without prejudice.

10. [16-90083](#)-E-7 VALLEY DISTRIBUTORS, CONTINUED MOTION TO USE CASH
SSA-2 INC. COLLATERAL
Iain A. MacDonald 2-12-16 [[16](#)]
CONTINUED: 6/16/16

The court having previously granted the use of cash collateral pursuant to this Motion, and the Trustee not filing any supplemental requests, the matter is removed the from the calendar.