UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

September 4, 2014 at 10:30 a.m.

1.	**13-91505-E-7**	**NORVIN/BRENDA BOTLEY**	**MOTION TO EMPLOY ADVANCED**
	ICE-1	**Pro Se**	**RECEIVABLE SOLUTIONS AS ASSET LOCATOR**
			7-28-14 [28]

Final Ruling: No appearance at the September 4, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), parties requesting special notice, and Office of the United States Trustee on July 28, 2014. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

Chapter 7 Trustee, Irma C. Edmonds, seeks to employ Asset Locator David Linn of Advanced Receivable Solutions, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Asset Locator to assist the Trustee in locating various assets in the form of unclaimed funds of the bankruptcy estate.

The Trustee argues that counsel's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present unclaimed property. David Linn will assist the Trustee in actively researching for unclaimed funds due to the bankruptcy estate via

various nationwide data basis and assist in recovering the unclaimed funds.

David Linn, an associate of Advanced Receivable Solutions, testifies that he is representing the Trustee as a duly Certified Asset Recovery Specialist, compete to conduct asset recovery. David Linn testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of counsel, considering the declaration demonstrating that counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ David Linn as Asset Locator for the Chapter 7 estate on the terms and conditions set forth in the instant motion, which states that David Linn would be paid 25% commission from the assets recovered for the bankruptcy estate as described in David Linn's Declaration. Dckt. 30. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted and the Chapter 7 Trustee is authorized to employ David Linn as Asset Locator for the Chapter 7 Trustee on the terms and conditions of 25% commission from the assets recovered for the bankruptcy estate as set forth in the Declaration of David Linn filed as Dckt. 30.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

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

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

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

2.	11-94410-E-11 RMY-3	SAWTANTRA/ARUNA CHOPRA Robert M. Yaspan	MOTION TO VALUE COLLATERAL OF TRIUNFO ONE ACQUISITION, LLC 8-20-14 [982]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Bank of the West, Triunfo One Acquisition LLC, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 21, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Triunfo One Acquisition LLC ("Creditor") is granted and Creditor's secured claim is determined to have a value of $559,833.09.

The Motion to Value filed by Sawtantra and Aruna Chopra ("Debtor") to value the secured claim of Triunfo One Acquisition, LLC. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6978 Hillcrest Drive, Modesto, California

("Property"). Debtor seeks to value the Property at a fair market value of $943,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor offers the Declaration of William Bartha, a licensed real estate appraiser with 40 years' experience, who opines that the value of the property is $943,500.00. Dckt. 985. FN.1.

FN.1. The court notes that the value of the Property given by William Bartha, the appraiser, is identical to the value of the Property given by the Debtor. It appears to the court that Debtor is not relying on personal knowledge of the value of the Property but rather of that of a professional.

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parities seeking relief from a federal court.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $383,667.00. Creditor's second deed of trust secures a claim with a balance of approximately $1,804,172.00. Therefore, Creditor's claim secured by a junior deed of trust is partially under-collateralized. Creditor's secured claim is determined to be in the amount of $559,833.00, and

therefore payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Sawtantra Chopra and Aruna Chopra ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Triunfo One Acquisition, LLC secured by a second in priority deed of trust recorded against the real property commonly known as 6978 Hillcrest Drive, Modesto, California , is determined to be a secured claim in the amount of $559,833.090, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $943,500.00 and is encumbered by senior liens securing claims in the amount of $383,667.00, which do not exceed the value of the Property which is subject to Creditor's lien.

3. 11-94410-E-11 SAWTANTRA/ARUNA CHOPRA
RMY-4 Robert M. Yaspan

MOTION TO VALUE COLLATERAL OF TRIUNFO ONE ACQUISITION, LLC
8-20-14 [992]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 20, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Triunfo One Acquisition, LLC ("Creditor") is granted and Creditor's secured claim is determined to have a value of $105,269.12.

The Motion to Value filed by Sawtantra Chopra and Aruna Chopra ("Debtor") to value the secured claim of Triunfo One Acquisition, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1317 Oakdale Road, Modesto, California ("Property"). Debtor seeks to value the Property at a fair market value of $336,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence

of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor offers the Declaration of William Bartha, a licensed real estate appraiser with 40 years' experience, who opines that the value of the property is $336,000.00. Dckt. 985. FN.1.

FN.1. The court notes that the value of the Property given by William Bartha, the appraiser, is identical to the value of the Property given by the Debtor. It appears to the court that the Debtor is not relying on their own personal knowledge of the value of the Property but rather of that of a professional.

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parities seeking relief from a federal court.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $230,730.88. Creditor's second deed of trust secures a claim with a balance of approximately $1,801,172.00. Therefore, Creditor's claim secured by a junior deed of trust is partially under-collateralized. Creditor's secured claim is determined to be in the amount of $105,269.12, and therefore payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam*

v. Investors Thrift (In re Lam), 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Sawtantra Chopra and Aruna Chopra ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Triunfo One Acquisition, LLC secured by a second in priority deed of trust recorded against the real property commonly known as 1317 Oakdale Road, Modesto, California, is determined to be a secured claim in the amount of $105,269.12, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $336,000.00 and is encumbered by senior liens securing claims in the amount of $230,730.88, which do not exceed the value of the Property which is subject to Creditor's lien.

4. 11-94410-E-11 SAWTANTRA/ARUNA CHOPRA — MOTION TO VALUE COLLATERAL OF
RMY-5 Robert M. Yaspan — MICHAEL LAPLANTE, ET AL.
8-20-14 [1002]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 20, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Michael LaPlante and Elizabeth LaPlante, Trustees of the LaPlante Family Trust; Larry Cleveland, Trustee of the Larry Cleveland 401(k) Profit Sharing Plan; Gregory Smith and Amanda Smith, Trustees of the Gregory and Amanda Smith Family Trust dated 19 March 2007; Ted Smith and Joyce Smith, Trustees of the Ted and Joyce Smith Trust; John A. Miller Retirement Account; Vida B. Harris, Trustee of the Vida B. Harris Revocable Living Trust dated April 1, 1992; John A. And Jeanie Miller, Trustees of the Miller Family Trust dated November 1, 2000; and George H. Lehman, Trustee of the George H. Lehman Family Trust **("Creditor") is granted and Creditor's secured claim is determined to have a value of $856,000.00.**

The Motion to Value filed by Sawtantra and Aruna Chopra ("Debtor") to value the secured claim of Michael LaPlante and Elizabeth LaPlante, Trustees of the LaPlante Family Trust; Larry Cleveland, Trustee of the Larry Cleveland 401(k) Profit Sharing Plan; Gregory Smith and Amanda Smith, Trustees of the Gregory and Amanda Smith Family Trust dated 19 March 2007; Ted Smith and Joyce Smith, Trustees of the Ted and Joyce Smith Trust; John A. Miller Retirement Account; Vida B. Harris, Trustee of the Vida B. Harris Revocable Living Trust dated April 1, 1992; John A. And Jeanie Miller, Trustees of the Miller Family Trust dated November 1, 2000; and George H. Lehman, Trustee of the George H. Lehman Family Trust ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1907 East F Street, Oakdale, California ("Property"). Debtor seeks to value the Property at a fair market value of $856,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor offers the Declaration of William Bartha, a licensed real estate appraiser with 40 years' experience, who opines that the value of the property is $856,000.00. Dckt. 985. FN.1.

FN.1. The court notes that the value of the Property given by William Bartha, the appraiser, is identical to the value of the Property given by the Debtor. It appears to the court that the Debtor is not relying on their own personal knowledge of the value of the Property but rather of that of a professional.

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parities seeking relief from a federal court.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

Creditor's deed of trust secures a claim with a balance of approximately $983,595.62. Therefore, Creditor's claim secured by a junior deed of trust is partially under-collateralized. Creditor's secured claim is determined to be in the amount of $856,000.00, and therefore payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Sawtantra Chopra and Aruna Chopra ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Triunfo One Acquisition, LLC secured by a second in priority deed of trust recorded against the real property commonly known as 1907 East F Street, Oakdale, California, is determined to be a secured claim in the amount of $856,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $856,000.00 and is encumbered by Creditor's liens securing a claim in the amount of approximately $983,595.62, which exceeds the value of the Property which is subject to Creditor's lien.

5. 14-90910-E-7 RICHARD/BARBARA PAROLA — MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.
BSH-1 Brian S. Haddix — 8-13-14 [11]

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

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

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

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were improperly served on Citibank, N.A. on August 13, 2014. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

The Motion on its face identifies the creditor as being Citibank, N.A., which is a federally insured financial institution. Congress created a specific rule to provide for service of pleadings, including this contested matter, on federally insured financial institution, Federal Rule of Bankruptcy Procedure 7004(h), which provides:

> (h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding

shall be made by certified mail addressed to an officer of the institution unless–

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Here, Debtors served Citibank, N.A. via certified mail at the address stated on the FDIC and California Secretary of State for the Bank, but neglected to serve the documents on an officer as required by the Federal Rules of Bankruptcy Procedure. Rather than the pleadings having been served on a specifically named officer or to "Attn: Officer, Service of Process," Debtor instead directed service to "Bankruptcy Department." This is not what Congress specified in Federal Rule of Bankruptcy Procedure 7004(h) apply.

The court finds that because proper notice was not provided, the Motion to Avoid Lien is denied without prejudice.

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

ALTERNATIVE RULING

This Motion requests an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against property of Richard and Barbara Parola ("Debtor") commonly known as 369 Laurel Avenue, Oakdale, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $25,185.05. FN. 1. An abstract of judgment was recorded with Stanislaus County on February 28, 2012, which encumbers the Property.

FN.1. Debtor's Memorandum of Points and Authorities and the supporting abstract of judgment list conflicting amounts for this judgment lien. Dckt. 14, 15. The Debtor does not address the difference in the amounts. Because the Property is fully encumbered either way, the court will use the amount listed on the Abstract of Judgment in the amount of $25,185.05.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $216,000.00 as of the date of the petition. The unavoidable consensual liens total $138,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $78,000.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Citibank, N.A., California Superior Court for Stanislaus County Case No. 666093, recorded on February 28, 2014, Document No. DOC-2012-0016501-00 with the Stanislaus County Recorder, against the real property commonly known as 369 Laurel Avenue, Stanislaus, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

6. 12-90414-E-7 YESENIA RAMIREZ
ICE-1 Pro Se

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MIGUEL RAMIREZ
7-28-14 [31]

APPEARANCE OF MOVANT TRUSTEE, IRMA EDMONDS REQUIRED FOR HEARING (TELEPHONIC APPEARANCE PERMITTED)

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 (*pro se*), parties requesting special notice, and Office of the United States Trustee on July 28, 2014. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion For Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

The Motion for Approval of Compromise is granted.

Irma C. Edmonds, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Miguel Ramirez ("Settlor"). The claims and disputes to be resolved by the proposed settlement arise from an alleged preferential payment or fraudulent conveyance by the Debtor to Settlor within one year preceding the bankruptcy case.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court. The Movant has not submitted a copy of the proposed settlement agreement. However, Movant does state the terms and conditions as:

A. Approval of a gross settlement of the claim of the bankruptcy estate for a settlement payment of $6,000.00 by Settlor.

B. Release by the estate of the claims against Settlor in their entirety.

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 $6,000.00 in satisfaction of the estate's claim for recovery of a preferential payment or fraudulent conveyance from Settlor.

Probability of Success

While the Movant notes in the motion that she believes there is a high success of likelihood of success, the Movant contends that the proposed settlement provides as much that the estate would be able to recover if litigation continued.

Difficulties in Collection

Movant contends that collection will not be an issue and the proposed settlement will save the estate litigation costs.

Expense, Inconvenience and Delay of Continued Litigation

The Movant states that the litigation would consists a mix of law and facts. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Irma C. Edmonds, the 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 Miguel Ramirez ("Settlor") is granted and the respective rights and interests of the parties are settled as requested in the Motion (Dckt. 31), which are:
>
> 1. Settlor shall pay to the Trustee $6,000.00, in the form of cash or certified funds on a check issued by a bank or credit union with physical branches in California, on or before September 21, 2014.
>
> 2. The Trustee, upon timely payment of the above settlement amount, shall release claims of the estate against Settlor for the subject transfer in their entirety.
>
> 3. If the $6,000.00 settlement amount is not timely paid by Settlor, the authorization for the Trustee to settle these claims terminates without further order of the court.

7. 13-90514-E-7 ESTHER MARIN
SSA-6 Pro Se

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STEVEN ALTMAN, PC FOR STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY(S)
8-13-14 [76]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*),, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 13, 2014. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Steven S. Altman, the Attorney ("Applicant") for Irma C. 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 October 5, 2013 through September 4, 2014. The order of the court approving employment of Applicant was entered on October 21, 2013, Dckt. 20.

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

General Case Administration: Applicant spent 6.0 hours in this category. Applicant assisted Client with reviewing Trustee's messages and concerns about the case status. Completed investigations in Debtor's medical malpractice case and advised Trustee's council the claim was an asset of the estate. Requested copies of retainer agreement by McMurray's predecessor firm and discussed engagement of counsel as special counsel to continue in the prosecution of the medical malpractice claim. Ensured McMurray's qualifications for prosecution of case. After the success of the malpractice case applicant requested McMurray turnover funds for case administration. Upon facing refusal from the firm applicant proceeded in communicating with Trustee to require the turnover of funds as a compromise motion and proceeded to argue compromise until funds were transferred.

Fee Applications: Applicant spent 12.2 hours in this category. Applicant reviewed case files and assisted the Trustee with engagement of Special Counsel, McMurray, in their prosecution of the medical malpractice case. Reviewed engagement agreement and discussed the procedure for appointment of special counsel with McMurray through phone calls and emails. Prepared the initial application for the appointment of the special counsel and appeared in court for the motion granting the appointment. Prepared fee reimbursement and firm's application for appointment as general bankruptcy counsel following successful resolution the medical malpractice claim on behalf of the bankruptcy estate and the Debtor.

Efforts to Assess and Recover Property of the Estate: Applicant spent 1.3 hours in this category. Applicant reviewed Debtor's Schedules and Statement of Affairs and discussed them with the Trustee during 341 where Debtor's pending medical malpractice claims were discovered. After this discovery applicant proceeded to secure copies of the complaint and relevant pleadings from McMurray who was Debtor's counsel for the claim and discussed the nature of the suit with applicant.

Adversary Proceedings: Applicant spent 7.6 hours in this category. Applicant assisted Trustee and Special Counsel in the prosecution of the suit Marin v. Stanislaus Surgical Hospital, et al., reviewed State Court 998 motions for settlement from multiple defendants in the case, and reviewed the possible acceptance or rejection of these settlements with Special Counsel and Trustee. Worked with Special Counsel and Trustee in a settlement of $72,500.00 to go towards the bankruptcy estate. Reviewed and revised the terms and conditions of the settlement. Applicant had extensive communication by phone and email with Special Counsel in getting the settlement amount turned over to the bankruptcy estate. Prepared a Motion to Compromise Claims and Turnover of Estate Monies along with supporting documents for court hearing regarding the turnover of funds.

Significant Motions and Other Contested Matters: Applicant spent 7.2 hours in this category. Applicant reviewed claims filed in Debtor's estate and discussed these with Trustee. Additionally, applicant reviewed Debtor's amended claim of exemptions filed and researched then objected to amended exemptions filed based upon bad faith claims. Appeared at court for these exemptions and reviewed the Court's ruling sustaining Trustee's Objection to Debtor's Claim.

Reviewed and discussed with Trustee the Court's notice of continuance of exemption hearing and Court's second ruling on exemption claims.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). 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 the professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget*

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including the medical malpractice settlement of $72,500.00. The estate has $34,802.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Steven S. Altman; Admitted to the California State Bar in 1975	10.1	$250.00	$2,525.00
Steven S. Altman (as of March 2014)	24.2	$300.00	$7,260.00
Total Fees For Period of Application			$9,785.00

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $116.47 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying Charges	$0.10	$88.60
Postage		$27.87
Total Costs Requested in Application		$116.47

The First and Final Costs in the amount of $116.47 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case. The court is authorizing that Trustee pay 100% of the fees and costs allowed by the court.

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

Fees $9,785.00
Costs and Expenses $ 116.47

pursuant to this Application as first and final fees pursuant to 11 U.S.C. § 503(b)(1) 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 $ 9,785.00
Expenses in the amount of $ 116.47,

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.

8.	14-91123-E-7 EJN-1	CATALINO LANDA AND ANA TAPIA Thomas O. Gillis	MOTION TO ABANDON 8-21-14 [11]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on August 20, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Property is granted.

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

The Motion filed by Eric J. Nims ("Trustee") requests the court to authorize Trustee to abandon property commonly known as 500 goats (the "Property"). The Property is encumbered by the liens of U.S. Department of Agriculture ("Creditor"), securing claims of $160,000.00. The Declaration of

Eric Nims has been filed in support of the motion and testifies that the value of the Property is $140,000.00.

The court finds that the Property secures claims which exceed the value of the Property, and are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate, and authorizes the Trustee to abandon the Property.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted and that the Property identified as:
>
> 1. 500 Goats
>
> is abandoned to Catalino Landa and Ana Tapia by this order, with no further act of the Trustee required.

9. 12-93025-E-7 ICE-1 | SOKHOEUM KHUON
Tamie L. Cummins
AGREEMENT WITH KHOEUN KHUNON
7-28-14 [22] | MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT

APPEARANCE OF MOVANT TRUSTEE, IRMA EDMONDS REQUIRED FOR HEARING (TELEPHONIC APPEARANCE PERMITTED)

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, parties requesting special notice, and Office of the United States Trustee on July 28, 2014. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion For Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

The Motion for Approval of Compromise is granted.

Irma C. Edmonds, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Khoeun Khuon ("Settlor"). The claims and disputes to be resolved by the proposed settlement arise from an alleged preferential payment or fraudulent conveyance by the Debtor to Settlor within one year preceding the bankruptcy case.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court. The Movant has not submitted a copy of the proposed settlement agreement. However, Movant does state the terms and conditions as:

A. Approval of a gross settlement of the claim of the bankruptcy estate for a settlement payment of $1,500.00 by Settlor.

B. Release by the estate of the claims against Settlor in their entirety.

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 $6,000.00 in satisfaction of the estate's claim for recovery of a preferential payment or fraudulent conveyance from Settlor.

Probability of Success

While the Movant notes in the motion that she believes there is a high likelihood of success, the Movant contends that the proposed settlement provides as much that the estate would be able to recover if litigation continued.

Difficulties in Collection

Movant contends that collection will not be an issue and the proposed settlement will save the estate litigation costs.

Expense, Inconvenience and Delay of Continued Litigation

The Movant states that the litigation would consists a mix of law and facts. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Irma C. Edmonds, the 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 Khoeun Khuon ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the motion (Dckt. 22), which are:
>
> 1. Settlor shall pay to the Trustee $1,500.00, in the form of cash or certified funds on a check issued by a bank or credit union with physical branches in California, on or before September 21, 2014.
>
> 2. The Trustee, upon timely payment of the above settlement amount, shall release claims of the estate against Settlor for the subject transfer in their entirety.
>
> 3. If the $1,500.00 settlement amount is not timely paid by Settlor, the authorization for the Trustee to settle these claims terminates without further order of the court.

10. 14-90728-E-7 RONALD/ELVIRA LEATHERMAN MOTION TO COMPEL ABANDONMENT
BSH-1 Brian S. Haddix 8-12-14 [23]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee on August 12, 2014. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Property is granted.

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

The Motion filed by Ronald Kirt Leatherman and Elvira Leatherman ("Debtors") requests the court to order the Trustee to abandon the following property:

Property	Value	Encumbrances	Equity	Exemption
Cash in Wallet	$20.00	None	$20.00	CCP § 703.140(b)(5) - $20.00
Community Trust Bank Checking Acct (8487-75)	$1,350.34	None	$1,340.34	CCP § 703.140(b)(5) - $1,340.34
Community Trust Bank Savings Acct (8487-01)	$126.00	None	$126.00	CCP § 703.140(b)(5) - $126.00
Household Goods & Furnishings	$1,850.00	None	$1,850.00	CCP § 703.140(b)(3) - $1,850.00
Term Life Insurance Policy (through Protective Life Ins. Co.) ($200,000.00)	None	None	None	CCP § 703.140(b)(5) - $0.00
IRA (through State Farm Life Ins. Co.)	$28,216.63	None	$28,216.63	CCP §703.140(b)(10)(E) - $28,216.63
401(k) (through Fidelity Investments)	$1,106.24	None	$1,106.24	CCP § 703.140(b)(10)(E) - $1,106.24
Pre-petition levied wages from EWO. Held by LA County Sheriff Civil Div.	$566.12	None	$566.12	CCP § 703.140(b)(5) - $566.12
2010 Kia Rio XL	$9,000.00	None	$9,000.00	1) CCP § 703.140(b)(2) - $5,100.00 2) CCP § 703.140(b)(5) - $3,900.00
2014 Subaru XV Crosstrek	$25,000.00	Purchase Money Security Interest; $31,559.00	None	N/A
2005 Scion XB	$2,500.00	Purchase Money Security Interest; $10,448.00	None	N/A

(the "Property"). The 2014 Subaru XV Crosstrek is encumbered by the lien of Chase Auto, securing claim of $31,559.00. The 2005 Scion XB is encumbered by the lien of California Republic Bank, securing claim of $10,448.00. The Declaration of Ronald Kirt Leatherman has been filed in support of the motion and values the Property to be as listed above. Dckt. 30

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

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

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

The Motion to Abandon Property filed by Ronald Kirt Leatherman and Elvira Leatherman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted and that the Property identified as:

Property	**Value**	**Encumbrances**	**Equity**	**Exemption**
Cash in Wallet	$20.00	None	$20.00	CCP § 703.140(b)(5) - $20.00
Community Trust Bank Checking Acct (8487-75)	$1,350.34	None	$1,340.34	CCP § 703.140(b)(5) - $1,340.34
Community Trust Bank Savings Acct (8487-01)	$126.00	None	$126.00	CCP § 703.140(b)(5) - $126.00
Household Goods & Furnishings	$1,850.00	None	$1,850.00	CCP § 703.140(b)(3) - $1,850.00
Term Life Insurance Policy (through Protective Life Ins. Co.) ($200,000.00)	None	None	None	CCP § 703.140(b)(5) - $0.00
IRA (through State Farm Life Ins. Co.)	$28,216.63	None	$28,216.63	CCP §703.140(b)(10)(E) - $28,216.63
401(k) (through Fidelity Investments)	$1,106.24	None	$1,106.24	CCP § 703.140(b)(10)(E) - $1,106.24

Pre-petition levied wages from EWO. Held by LA County Sheriff Civil Div.	$566.12	None	$566.12	CCP § 703.140(b)(5) - $566.12
2010 Kia Rio XL	$9,000.00	None	$9,000.00	1) CCP § 703.140(b)(2) - $5,100.00 2) CCP § 703.140(b)(5) - $3,900.00
2014 Subaru XV Crosstrek	$25,000.00	Purchase Money Security Interest; $31,559.00	None	N/A
2005 Scion XB	$2,500.00	Purchase Money Security Interest; $10,448.00	None	N/A

and listed on Schedule B by Debtors is abandoned to Debtors Ronald Kirt Leatherman and Elvira Leatherman by this order, with no further act of the Trustee required.

11. 14-90728-E-7 RONALD/ELVIRA LEATHERMAN MOTION TO COMPEL ABANDONMENT
BSH-1 Brian S. Haddix 8-13-14 [28]
DUPLICATE FILING

Final Ruling: No appearance at the September 4, 2014 hearing is required.

This item, being a duplicate of item 10, is removed from the calendar.

12. 09-92630-E-12 CWC-8 | DANIEL/JANEY BAXTER
Carl W. Collins | CONTINUED MOTION TO MAINTAIN CHAPTER 12 CASE OPEN PENDING RESOLUTION OF POST-DISCHARGE MATTERS
5-1-14 [100]

Final Ruling: No appearance at the September 4, 2014 hearing is required.

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, Chapter 12 Trustee, parties requesting special notice, and Office of the United States Trustee on May 1, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Maintain Chapter 12 Case Open Pending Resolution of Post-Discharge Matters has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Maintain Chapter 12 Case Open Pending Resolution of Post-Discharge Matters is continued to 10:30 a.m. on November 20, 2014.

Debtors-in-Possession Daniel and Janey Baxter ("Movant") request that their Chapter 12 case remain open pending the resolution of certain post-discharge matters. Movant states that the Chapter 12 plan was confirmed on December 8, 2009 and that they have made all payments and moved for a discharge. Movant states that until they receive their discharge in this case, they will be unable to request that the California State Board of Equalization to release its tax lien on the real property located at 11802 Sawyer Avenue, Oakdale, California, which was valued at zero by the court.

Movant also alleges that "Bank of America" has erroneously impounded property taxes and property insurance under its Note secured by a Deed of Trust which was modified by the Chapter 12 plan in violation of the Order Confirming Plan. Movant seeks to leave the case open pending either Movant's successful resolution of these issues, or for sufficient time to file contested matters or adversary proceedings.

The court continued the hearing on the Motion, in part to prevent the closing of the case, and because continuing the matter would allow the Debtors to engage in the post-plan completion documentation and determine whether the case should remain open, an adversary proceeding is required (and the case can

be closed), or that everything has been resolved and they can dismiss this motion pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041.

SUPPLEMENTAL DECLARATION IN SUPPORT OF THE MOTION

Debtors' Attorney, Carl W. Collins, files a supplemental declaration in continued support of the Motion to Maintain Chapter 12 Case Open. Dckt. No. 112.

The declaration acknowledges that the court continued the hearing in the matter to monitor the Debtors' progress in resolving certain post-discharge matters, namely the release the tax lien of the State of California, Board of Equalization, encumbering the Debtors' residence located at 11802 Sawyer Avenue, Oakdale, California, and the allegedly erroneous impounding of property taxes and property insurance by the Bank of America under its Modified Note secured by a deed of trust, in violation of the Order Confirming Plan, and the Real Estate Settlement Procedures Act (RESPA).

At the request of the Debtors, on or about July 14, 2014, the State of California, Board of Equalization, voluntarily issued a release of lien to be recorded with the Stanislaus County Recorder resolving the dispute over the tax lien.

Debtors and Bank of America, however, have not reached a consensus in resolving the dispute over the Bank's impounding of taxes and insurance. While significant progress has been made in reducing the outstanding bank charges and the payment of the Debtors' attorney's fees and expenses in this matter, additional charges remain assessed against the Debtors on their monthly loan statements, which need to be removed. Debtors' Attorney believes that this issue with Bank of America will be resolved in the next 60 days.

Accordingly, the Debtors request that the hearing on this matter be further continued for approximately 60 days, or a future date selected by the court, to allow the parties to consummate a resolution of this post-discharge dispute.

The Debtors and Bank of America needing additional time to resolve the controversy over the impounding of property taxes and insurance under Debtors' modified promissory note, secured by a Deed of Trust valued by the court at $0.00, in alleged violation of the RESPA and the order confirming the Debtors' Chapter 12 Plan, the court continues the Motion to November 20, 2014.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Maintain Chapter 12 Case Open Pending Resolution of Post-Discharge Matters filed by Debtors-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Maintain Chapter 12 Case Open Pending Resolution of Post-Discharge Matters is continued to 10:30 a.m. on November 20, 2014. The court ordering the hearing continued is without prejudice to the Debtors exercising their right to dismiss the motion pursuant to Federal Rule of Civil Procedure 41(a) and Federal Rules of Bankruptcy Procedure 7041 and 9014.

13. 14-90633-E-7 ASW-1 | **LONALD/MARY MILLER** Scott D. Mitchell | **MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT** 7-30-14 [42]

Final Ruling: No appearance at the September 4, 2014 hearing is required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, the Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee, and the creditor on July 30, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Creditor the Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2007-13 ("Creditor") seeks court approval for Debtors Lonald Dwiete Miller and Mary Miller ("Debtors") to incur post-petition credit.

On July 5, 2007, the Debtors executed a promissory note in favor of Countrywide Home Loans, Inc., dba America's Wholesale Lender in the principal sum of $275,000.00. The Note is secured by a recorded deed of trust encumbering the subject property. The Motion states that the original lender's interest in the Deed of Trust was subsequently assigned to the moving Creditor; the Creditor offers a Corporation Assignment of Deed of Trust, recorded with the Stanislaus County Recorder's office on October 7, 2011, to evidence the assignment and transfer of the Deed of Trust to the Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2007-13.

The Creditor requests that the court grant consent to Debtors and Creditor to enter into and finalize a loan modification with respect to the first deed of trust on the real property located at 1624 Shirley Court, Modesto, California. The Loan Modification Agreement provides for recapitalization of past due arrears, a lower interest rate and monthly payment amount, and a total of $104,437.12 of the Principal Balance to be permanently forgiven. A copy of the Loan Modification Agreement is filed in support of the Motion as Exhibit "1," pursuant to the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), Dckt. No. 44. The new monthly payment on the modified loan will be $946.01, with a maturity date of August 1, 2037, and an interest rate of 3.275%.

Typically, in cases where the executing creditor on a loan modification agreement brings a motion to request approval of the modification agreement, Counsel must either bring the motion jointly with the Debtor, countersign the motion evidencing these Debtors, attorneys' concurrence and Debtors support, submit declaration for the Debtors prepared by Debtors' counsel, or file a separate statement of support for the motion. Only then can the court determine that the Debtors, who are represented by counsel, have with the knowledge and support of such fiduciary, entered into this agreement. Otherwise it will appear that counsel representation has been circumvented or that counsel has failed to fulfill his or her duties to the Debtors.

Here, the Motion is supported by a "Joinder" entered by the Debtors, which states that Debtors have received and reviewed the Motion, and all attendant exhibits filed by the Creditor, Dckt. No. 47. The "Joinder" further affirms that Debtors' counsel joins in the Motion for Court Consent to Enter into the Loan Modification Agreement, and is signed by Debtors' attorney and dated on July 31, 2014. (Though the term "joinder" has a specific legal meaning of the Federal Rule of Civil Procedure by which a plaintiff/movant voluntarily adds parties or claims to a matter, Fed. R. Civ. P. 18 and 19, the court accepts the "Joinder" as a concurrence or statement of support for the relief requested in the motion.)

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, the Debtors having filed a Joinder in Support of the Motion for Court Consent, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 the Loan Modification filed by the Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2007-13 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 court authorizes the Bank of New York Mellon FKA The Bank of New York, as Trustee for the Certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2007-13 ("Creditor") to amend the terms of the loan with Debtors Lonald Dwiete Miller and Mary Miller ("Debtors"), which is secured by the real property commonly known as 1624 Shirley Court, Modesto, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion, Dckt. 44.

14. 11-92055-E-7 TOG-3 | **RACHEL EVERETT** **Thomas O. Gillis** **7-31-14 [25]** | **MOTION TO AVOID LIEN OF CHASE BANK USA, N.A.**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Office of the United States Trustee, and respondent creditors on August 1, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied.

DEFECTIVE SERVICE

Service of this Motion has not been effected as required by Federal Rule of Bankruptcy Procedure 7004(h). Federal Rule of Bankruptcy Procedure 7004(h) and 9014 require that service be made on federally insured financial institutions by certified mail. Even if certified mail is not required, corporations, partnerships, and other fictitious entities need to be served on officers, partners, managing members, and other designated agents for service of process. Fed. R. Bank. P. 7004(b)(3), 9014; Fed. R. Civ. P. 4(h).

The respondent creditor in this case, Chase Bank USA, N.A. is insured by the Federal Deposit Insurance Corporation. Thus, the service requirements of Federal Rule of Bankruptcy Procedure 7004(h) regarding federally insured financial institutions applies. The certificate of service for this motion, Dckt. No. 30, does not indicate that service the Motion was served to the respondent Creditor by certified mail (listed at various addresses and sent to entities Chase Bank USA, N.A. and JPMorgan Chase Bank and different locations in Westlake Village and Los Angeles in California, Wilmington, Delaware, and Columbus, Ohio).

REVIEW OF MOTION

This Motion requests an order avoiding the judicial lien of Chase Bank USA, N.A. ("Creditor") against property of Rachel Everett ("Debtor") commonly known as 1105 Pipit Drive, Patterson, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $18,898.63. An abstract of judgment was recorded with Stanislaus County on May 10, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $140,000.00 as of the date of the petition. The unavoidable consensual liens total $160,643.00 as of the commencement of this case are stated on Debtor's Schedule D.

Debtor argues in her Motion that by applying the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien of Chase Bank USA, N.A. However, the judicial lien can only be avoided under 11 U.S.C. § 522 11 U.S.C. § 522 (f)(1) if property on which the lien is now attached is claimed as exempt. The Debtor must be entitled to claim an exemption in the subject asset, in order for the lien to be considered as impairing some exemption that is claimed in the exempt equity.

Here, Debtor does not allege in the Motion (nor as disclosed from a review of Debtor's original and Amended Schedules C, Dckt. Nos. 1 and 11 at page 5, do not claim) any exemptions under the California Civil Code of Procedure in the real property located at 1105 Pipit Drive, Patterson, California. Thus, the fixing of this judicial lien impairs an exemption of the real property because no exemption has been claimed, and the fixing of the lien cannot be avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Avoid the Judicial Lien of Chase Bank USA, N.A., is denied.

15.	**14-90358-E-7**	**RAMON/MARIA LOMELI**	**MOTION TO COMPEL**
	MHK-3	**Thomas O. Gillis**	**8-20-14 [28]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Office of the United States Trustee, Debtors, Debtors' Attorney, parties requesting special notice, and Office of the United States Trustee on August 20, 2914. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Compel the Turnover of Property is granted. The hearing is continued to 10:30 a.m. on October 2, 2014, for further proceedings as necessary.

Eric J Nims, as the Trustee ("Trustee") for the Chapter 7 case of Debtors Ramon and Maria Lomeli, requests an order compelling the Debtors to turn over to the Trustee the real property commonly known as 4203 Tapestry Way, Turlock, California. Specifically, Trustee requests an order giving him and his broker reasonable and prompt access to the Property, including the viewing of the Property by prospective buyers, for purposes of marketing and the sale of the Property.

On March 14, 2014, the Debtors filed a joint voluntary petition for Chapter 7 relief. As stated in their bankruptcy schedules, Debtors hold title to the Residence, and have not claimed the residence as exempt. On July 23, 2014, this court authorized the employment of broker Bob Brazeal of PMZ Real Estate to serve as the real estate broker for the Trustee in regard to the sale of the property.

The Trustee states that he has determined that a purported second deed of trust against the property either does not exist, or was unrecorded as of the petition date. As such, the property has equity to benefit unsecured creditors, notwithstanding the valuation and liens assigned by the Debtors in their bankruptcy schedules.

On two occasions, Debtor Ramon Lomeli has refused to permit the Trustee's broker reasonable access to the Property. Trustee states that this refusal has delayed the Trustee in his plans to list the property for sale. The Motion also states that Debtors' counsel has failed to respond to written and telephone communications from the Trustee's counsel, notifying him of Mr. Lomeli's refusal to permit the broker access to the Property. The Trustee has also requested a conference to resolve the dispute between the Debtors and Trustee. Trustee states that he requires constructive possession of the Property, in the form of prompt and reasonable access to the Property for the purpose of marketing and selling it, and that Debtors have refused to give the Trustee such possession.

RESPONSE BY DEBTORS

Debtors' Attorney, Thomas O. Gillis, responds by stating first that the Proof of Service for this Motion, Dckt. No. 32, indicates that the Debtors' Attorney was served by email. Mr. Gillis states in his response that he receives "from 300 to 600 emails a day and prefer to receive paper copies for important cases like this," and further asserts that he is not registered with the court for electronic service.

Second, Mr. Gillis argues that the local rules and the court requiring a separate filing of Points and Authorities, which "becomes more important because of the debtors' third and fourth objection."

Third, the Response argues that the Motion should be denied, because the only timely unsecured claim filed is for $487.01; a notice of assets was filed on April 23, 2014. A notice to file claims was filed on April 24, 2014,

Dckt. No. 13, and served on April 24, 2014. The last day to file a claim was July 25, 2014. The claims registry shows that Capital One filed a claim for $487.01, while the other claim is a secured status claim for $99,870.87.

Fourth, Mr. Gillis argues that the Motion does not demonstrate how the estate would benefit from the sale of the house to pay $487.01 to Capital One. Mr. Gillis states that the Trustee has "not yet approached the debtors to see if they are willing to pay the estate $487.01 so the unsecured creditor can be paid in full."

TRUSTEE'S REPLY TO DEBTOR'S RESPONSE

The Chapter 7 Trustee replies to Debtors' Response with the following:

1. The Debtor's counsel claims that he was not served with the Motion, because he "is not registered with the Court for electronic service." However, Counsel is on the Roster of Users Consenting to Electronic Service. Exhibit 1, Dckt. No. 38 (Roster, search result for "gillis, t."). The Trustee's counsel served Debtors' counsel at the email address listed on the Roster.

2. The Debtors also fault the Trustee because no Memorandum of Points and Authorities was filed. As required by Local Bankruptcy Rule 9014-1(d)(5), the Motion merely states the statutory provisions on which relief is requested. The Trustee correctly points out that the Memorandum of Points and Authorities is not necessary where there is no discussion of legal authorities.

3. Debtors claim that the Residence cannot be sold because, they allege, there is only one unsecured claim in the case. What the Debtors do not mention is that they scheduled the claim of JPMorgan Chase Bank as an unsecured claim, apparently based on an equity loan and foreclosure by Washington Mutual, which was also disclosed by the Debtors in their Statement of Financial Affairs. Exhibit 2, Dckt. No. 38 (copies of pages from Debtors' Schedule F and Statement of Financial Affairs); *id.* at Exhibit 3. The Trustee states that he is prepared to investigate further, but JPMorgan Chase Bank's Claim No. 1-1 may, so long as there remains any personal liability by the Debtors, need merely to be amended to reflect that it is unsecured.

4. In their response, the Debtors have provided no evidence to contravene the Trustee's evidence, that the Debtors' have openly refused to provide access to the Residence, and that their counsel have ignored calls and letters of the Trustee's counsel. The Trustee asserts that the Response is simply an attempt to misdirect the Trustee and the court.

DISCUSSION

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *In re Hernandez*, 483 B.R. 713 (B.A.P. 9th Cir. 2012). *See also* 11 U.S.C.A. §§ 541(a), 542(a). Section 542(a) requires one in possession of property of the estate to deliver such property to the Trustee. Pursuant to 11

U.S.C. § 542, a Trustee is entitled to turnover of all property of estate from Debtors. Most importantly, pursuant to 11 U.S.C. § 521(a)(4), the Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee. Federal Rule of Bankruptcy Procedure 7001 allows a trustee to obtain turnover from the Debtor without filing an adversary proceeding.

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case."

Here, the Trustee Debtors listed real property located at 4203 Tapestry Way, Turlock, California, that the Debtors have not claimed as exempt. Debtors held an interest in the property when the case commenced upon the filing of Debtors' case, and the property is currently the Debtors' residence. This property is the type under 11 U.S.C. § 363, that the Trustee may use, sell, or lease. On July 23, 2014, the court authorized the employment of a broker to serve as the Trustee's real estate broker in regard to the sale of the property. Mr. Brazeal states that Debtors have refused entry and inspection of the subject property multiple times.

The Declaration of Bob Brazeal states that Mr. Brazeal contacted Debtor by telephone to introduce himself, explain his role as the Trustee's broker, and to solicit Debtors' cooperation by giving Mr. Brazeal access to the residence so that he could become familiar with its features and ultimately show it to prospective buyers. Mr. Nomeli told Mr. Brazeal that he was unwilling to talk to him until he had the chance to talk to his attorney the following Monday. Mr. Brazeal later contacted Debtor Mr. Nomeli again by telephone, who told Mr. Brazeal that his attorney would be filing papers with the court to request some sort of relief to prevent the sale of the residence. Mr. Nomeli informed Mr. Brazeal that he was unwilling to deal with him. Mr. Brazeal states that because of Mr. Lomeli's refusal to go forward, Mr. Brazeal has had to delay the listing of the residence for sale. Dckt. No. 30.

The subject property is property of the estate under 11 U.S.C. § 541(a)(1), as an interest held by Debtors as of the beginning of their Chapter 7 case. The Debtors held an interest in the property when the case commenced upon the filing of Debtors' case, and the property, as Debtors' residence, is currently under the possession and control of Debtors. This property is the type under 11 U.S.C. § 363, that the Trustee may use, sell, or lease.

Debtors' response to the Trustee's Motion to Compel the Turnover of Property is not convincing in refuting the Trustee's contentions in this matter. Debtors' Counsel, Thomas O. Gillis, is listed on the Roster of Users Consenting to Electronic Service. Exhibit 1, Dckt. No. 38 (Roster, search result for "gillis, t."). The Trustee's counsel served Debtors' counsel at the email address listed on the Roster, thereby properly effecting service according to the choice made by Mr. Gillis in opting to receive electronic service.

Mr. Gillis states in his response that he receives a high volume of emails each day and "prefer" to receive paper copies for "important cases" like

this (the court does not understand what this statement means and this type of assertion is particularly troubling to the court--does Mr. Gillis intend to imply that some of his clients' cases are more significant than others?). In choosing to be included in the Roster of Users in this district consenting to electronic service however, Debtors' counsel has himself selected and indicated to the Trustee and others that Debtors' counsel finds emails an acceptable method of service of pleadings and supporting documentation.

Debtors argue that there is only one unsecured claim in the case, but do not mention the claim of JPMorgan Chase Bank, which appears to be based on an equity loan and foreclosure conducted by Washington Mutual, disclosed by Debtors on their schedules and Statement of Financial Affairs. Dckt. No. 38.

Further, the court does not ignore the Debtors' statements under penalty of perjury on Schedule F that they have $638,195.00 of general unsecured debt they owe. In Debtors' prior Chapter 13 case (09-93568, dismissed August 16, 2012), unsecured claims in the amount of approximately $184,000.00 were filed. In reviewing the mailing matrix in this case, the court cannot easily determine if notice has been properly provided to creditors, as it appears unlikely that creditors who have such substantial claims (as stated by the Debtors) would ignore filing them if notice of assets was provided.

Additionally, the Trustee has determined in this case that a purported second deed of trust against the subject property either doesn't exist, or was unrecorded as of the Petition Date. The Trustee states that he reviewed a preliminary title report and a LEXIS report for the residence, which both indicated that there is only one record deed of trust against the residence in favor of PNC Mortgage or its predecessor, rather than two deeds of trust as alleged by the Debtors in their bankruptcy schedules. As such, the Trustee asserts that the property has equity to benefit unsecured claim holders. Debtors are required to deliver all of the property and documentation related to the property to the Chapter 7 Trustee under 11 U.S.C. § 521(a)(4).

As the subject property is property of the estate, and Trustee has also determined that the property may generate equity for the benefit of the bankruptcy estate, the Trustee is entitled to turnover of the property from Debtors, as well as reasonable access to the property for the purposes of selling and marketing the property. 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 Compel Turnover filed by the Chapter 7 Trustee, Eric J. Nims ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Turnover of the Property is granted, and the Debtor shall provide access to the real property located at 4203 Tapestry Way, Turlock, California, to the Chapter 7 Trustee and the representatives

and professionals designated by the Chapter 7 Trustee, at ----, on ------, 2014, and such reasonable times thereafter as requested by the Trustee

IT IS FURTHER ORDERED that the hearing is continued to 10:30 a.m. on October 2, 2014, for the issuance of such further orders or conduct additional hearings as necessary.

16. 07-90770-E-7 08-9107
FARRAR V. WARDA AND YONANO, A LIMITED LIABILITY PARTNERSHIP
ADV. CASE CLOSED 6/30/14

BELLA VISTA BY PARAMONT, LLC

ORDER TO SHOW CAUSE FOR CORRECTION OF CLERICAL ERROR IN JUDGMENT
8-11-14 [75]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Bella Vista By Paramont, LLC, "Debtor," Debtor's Attorney, Trustee, Plaintiff's Attorney, Office of the United States Trustee, and other parties in interest on August 12, 2014. The court computes that 23 day's notice has been provided.

The Order to Show Cause was issued for correction of clerical error in judgment.

The court's tentative decision is to sustain the Order to Show Cause and order the issuance of a corrected judgment to state the judgment amount to be $60,395.17.

ORDER TO SHOW CAUSE FOR CORRECTION OF CLERICAL ERROR IN JUDGMENT

Upon review of the Supplemental Finding After Remand Amount of Fraudulent Conveyance filed June 11, 2014 (Dckt. 69) and the Corrected Judgment After Remand filed June 11, 2014 (Dckt. 71); the court has identified a Clerical Error (Fed. R. Civ. P. 60(a) and Fed. R. Bankr. P. 9024) in the dollar amount of the judgment listed on the last page of the Supplemental Finding and in the Corrected Judgment. The Clerical Error misstates the judgment amount to be $69,395.17. Judgment, Dckt. 71; Supplemental Finding, Dckt. 69, pg. 8:9-11. The correct amount of the judgment is computed to be $60,395.17 ($100,000.00 transfer minus $39,604.83 for prior and future legal services provided the Debtor). Supplemental Finding, pg. 8:3-5. It appears that the misstated amount

occurred from the court misstriking the keyboard and inadvertently hitting the "9" key rather than the "0" key.

Federal Rule of Civil Procedure 60(a) and Federal Rule of Bankruptcy Procedure 9024 permit the court to *sua sponte* correct Clerical Mistakes arising from such inadvertence, oversight, or omission.

PLAINTIFF'S RESPONSE

Plaintiff has no objection to the issuance of an amended corrected judgment to state the judgment amount to be $60,395.17.

DISCUSSION

When a court acts properly in correcting a judgment under Fed. R. Civ. P. 60(a), the correction does not trigger a new time period in which to appeal. *Harman v. Harper*, 7 F.3d 1455, 1457 (9th Cir. 1993).

Based on the foregoing, the court sustains the Order to Show Cause and order the issuance of a corrected judgment to state the judgment amount to be $60,395.17.

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 hearing on the Order to Show Cause issued by the court to correct a clerical error in the Corrected Judgment After Remand filed June 11, 2014 (Dckt. 71) having conducted by the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is sustained and the court shall issue an amended judgment correcting the typographic clerical error and correctly state the amount of the judgment to be $60,395.17, as set forth in this court's Supplemental Finding, Dckt. 69.

17. 14-90772-E-7 AIRELL/GRETCHEN NYGAARD MOTION TO COMPEL ABANDONMENT
MRG-1 Michael R. Germain 8-19-14 [14]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 7 Trustee, the respondent creditor, and Office of the United States Trustee on August 19, 2014. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Property is granted.

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

A. Debtors, Airell and Gretchen Nygaard, request that the court enter an order allowing and compelling the Chapter 7 Trustee, Eric Nims, to abandon property of the estate — 51 Alpaca animals listed in Item 31 of the Schedule B filed in this case.

B. This Motion is made pursuant to 11 U.S.C. § 554(b), on the basis that the subject property of the estate is burdensome to and/or of inconsequential value and benefit to the estate.

C. The Motion refers the court to the Memorandum of Points and Authorities to determine the factual and procedural background of the Motion, as well as the legal authorities in support of the Motion.

D. The Debtors also instruct the court to review the supporting declaration of Airell Nygaard.

The Motion to Compel Abandonment does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. In this instance, the Debtors have not established that the subject property, 51 Alpaca animals listed on Item 31 of Debtors' Schedule B, is burdensome or of inconsequential value and benefit to the estate in seeking an order compelling the abandonment of property of the estate.

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

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

Here, Debtors' Motion makes no mention of whether the subject property are encumbered by any liens, estimated price points for the alpacas. The Motion makes no mention of the value of the Alpacas and whether the repayment of certain debts are secured by the property, making it impossible for the court to determine whether the alpacas is actually of inconsequential value and benefit to the estate pursuant to 11 U.S.C. § 544(b). The Motion instructs the court to review the accompanying Memorandum of Points and Authorities to determine the factual basis of the motion. However, it is not the court's responsibility to sift through Debtor's pleadings and evidence to determine why Debtor is seeking the relief requested. From the face of the motion, the court cannot determine whether the property is burdensome or of inconsequential value and benefit to the estate and should be ordered abandoned.

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

(2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

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

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

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

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

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

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a

mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

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

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

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

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

MEMORANDUM OF POINTS AND AUTHORITIES

In their Memorandum of Points and Authorities, the Debtors more precisely set forth the factual contentions on which their request for an order compelling the Chapter 7 Trustee to abandon the subject property is based. The Debtors listed, on Item 31 of Schedule B, "51 Alpacas with potential market/slaughter value ($6100) at debtors' residence." The Alpacas were listed as exempt on the Schedule C which the Nygaards filed in this case. The Alpacas are cared for on the Debtors' real property in Tuolumne County, California.

The Memorandum asserts that the market for Alpaca animals in California is very weak. The Debtors explain that there is a scarcity of water in Tuolumne County, and the cost of feed for the Alpacas is extremely high, both of which increase the cost of caring for the Alpacas until they can be butchered or sold. The Debtors state that they have had the Alpacas for sale on a regular basis for the past three years, and despite earnest marketing efforts, have only sold one female for $250.

Debtors assert they have offered free alpacas to local 4H teenagers, and free pet alpacas to local ranchers, but no one has been interested in the animals. This is due to the depressed local ranching economy, related to the current high cost of feed and scarcity of irrigation water, coupled with the high cost of hay (at least $20.00 per bale), ongoing veterinary expenses, mineral supplements, transportation costs for breedings, and transportation and registration costs for Alpaca shows.

The Debtors have been forced to start butchering the alpacas and donating the meat to local food banks; out of necessity, fifteen animals have been disposed of in this manner in the past 4 months, and another 20 animals are necessarily planned for this fate over the next 2 months. Costs for butchering fees amount to $30 per animal, and processing, vacuum packing, freezing, and storage and transportation of the meat to the food bank fees are $110-$140. Currently, there are over 1300 alpacas for sale on the state Alpaca Association website (www.calpaca.org), on which the Nygaards have tried, unsuccessfully, to sell the Alpacas on numerous occasions.

Based on these issues with selling and marketing the alpacas, the Debtors contend that the actual fair market value of the Alpacas is $50 or less per animal. The Declaration of Airell Nygaard attests to the fact that the alpacas have been reduced to basic meat value for donation to food banks, because there is little or no commercial market for alpaca meat and produces. The Debtors assert that if the Trustee were to take possession of the Alpacas, then he would have to deal with the high ongoing cost of caring for and attempting to market these animals, probably resulting in a net loss to the Estate.

Therefore, the Debtors argue that the Alpacas are burdensome to and/or of inconsequential value and benefit to the estate. If the Trustee were to assume possession of the alpacas, the Trustee would shoulder the burden and costs of caring for and attempting to market these animals.

Notwithstanding the shortcomings of the Motion, in light of the assets being living animals which have to be taken care of, the court will grant the motion. Counsel should not be lulled into a false sense of security that a motion merely needs to be a demand for relief with one or two legal conclusions. Motion such as this will be denied in the future – quite possibly with prejudice, leaving counsel to address with his clients why they cannot obtain the relief requested and how they intend to fund the cost of an appeal if they believe the court’s ruling is in error.

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

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

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

The Motion to Abandon Property filed by Airell and Gretchen Nygaard ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted and that the Property identified as: "51 Alpacas with potential market/slaughter value ($6100) at debtors' residence" and listed on Schedule B by Debtors is abandoned as to Airell and Gretchen Nygaard by this order, with no further act of the Trustee required. The court orders the abandonment of only the 51 Alpacas, with a value of $6,100.00, in existence as of the commencement of this bankruptcy case.

18. 10-94580-E-7 SSA-2 | **INDER/KANCHAN WALIA** **David C. Johnston** | **MOTION FOR TURNOVER OF PROPERTY** **8-7-14 [69]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 7, 2014. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

The Motion for Turnover of Property is granted.

The Chapter 7 Trustee in this case, Irma Edmonds, files this Motion to compel the turnover or records and property under the custody and control of the Debtors, Inder S. Walia and Kanchan Walia. Debtors filed their original Chapter 13 bankruptcy proceedings on November 22, 2010.

Debtors' case was converted on October 9, 2012. The Trustee has made numerous demands on Debtors through their counsel for the following;

a) unexempt tax refunds;

b) share information on Coca Cola stocks, as well as the turnover of unexempt stocks;

c) life insurance information (including but not limited to the current policy amount, insurance administrator, copy of the policy contract);

d) copies of Debtors' most current tax returns (federal and state).

Neither Debtors nor their counsel have cooperated with the Trustee's requests. The Motion states that the requested information and turnover of property is necessary for the effective administration of the estate. The Trustee submits that the Debtors have obligations under 11 U.S.C. § 521 to cooperate with her office, provide and surrender their books and records when requested, and if they are holding property (which is otherwise not exempt) turnover to her the property as well as for administration.

DISCUSSION

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *In re Hernandez*, 483 B.R. 713 (B.A.P. 9th Cir. 2012). *See also* 11 U.S.C.A. §§ 541(a), 542(a). Section 542(a) requires one in possession of property of the estate to deliver such property to the Trustee. Pursuant to 11 U.S.C. § 542, a Trustee is entitled to turnover of all property of estate from Debtors. Most importantly, pursuant to 11 U.S.C. § 521(a)(4), the Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee. Federal Rule of Bankruptcy Procedure 7001 allows a trustee to obtain turnover from the Debtor without filing an adversary proceeding.

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case."

Here, Debtors' unexempt tax refunds; share information on Coca Cola stocks and unexempt stocks; life insurance information (including but not limited to the current policy amount, insurance administrator, copy of the policy contract); and copies of Debtors' most current tax returns (federal and state), were partially scheduled on Debtors' Schedule B, Dckt. No. 9, and all held by the Debtors at the inception of Debtors' case. The property demanded by Trustee constitute property of the estate under 11 U.S.C. § 541(a). As

such, the Trustee is entitled to turnover of the property under 11 U.S.C. § 542. 11 U.S.C. § 521(a)(4) also mandates that the Debtors deliver all of the property of the estate and documentation related to the property of the estate to the Trustee.

Specifically, 11 U.S.C. § 521(a)(4) requires that if a trustee is serving in the case, surrender of all property of the estate, including any recorded information--books, documents, records, and papers relating to the property of the estate, be made to the trustee serving in the case. 11 U.S.C. § 541(a)(2) provides that all interests of the debtor and debtor's spouse in community property, as of the commencement of the case (that is, under the sole, equal, or joint management and control of the debtor) is considered a part of the bankruptcy estate.

The Trustee states that efforts on the Trustee's counsel's part to secure the above listed information have been futile. The initial Meeting of Creditors of Debtors was held on October 19, 2012, following their Chapter 13 case conversion. Subsequent 11 U.S.C. § 341 meetings were conducted on December 3, 2012, January 7, 2013, and January 28, 2013. As part of the investigation into their case, the Trustee requested from the Debtors the subject property. The Trustee called, emailed, and attempted to communicate with Debtors' attorney regarding the property. Neither Debtors nor their counsel have cooperated with the Trustee and complied with the Trustee's requests. Dckt. No. 71.

Because the subject property is property of the estate, the Debtors must provide and surrender information on the subject property to the trustee. If they are holding the property (which is otherwise not exempt), the Trustee is entitled to turnover the property to the Trustee for administration in this case under 11 U.S.C. § 541. 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 Compel Turnover filed by the Chapter 7 Trustee, Irma Edmonds ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Turnover of the Property is granted, and the Debtors are ordered to provide information on the following property:
>
> a) unexempt tax refunds for tax years ----------;
>
> b) information on all shares of stock of "Coca Cola" (including any shares claimed as exempt), and turnover of all shares of "Coca Cola" no claimed as exempt stocks;

c) life insurance information (including but not limited to the current policy amount, insurance administrator, copy of the policy contract) for the period ---------- through ----------; and

d) copies of Debtors' most current tax returns (federal and state).

to Steven Altman, counsel for the Chapter 7 Trustee, Irma Edmonds, during regular business hours at his office, on or before XXXX, 2014.

19. 13-91189-E-11 RMY-11

MICHAEL/JUDY HOUSE
Robert M. Yaspan
REQUEST FOR APPLICATION OF ADVERSARY RULES AND FOR HOLDING OF A STATUS CONFERENCE
7-14-14 [142]

OBJECTION TO CLAIM OF KAREN D. HOUSE, CLAIM NUMBER 11 AND 12 ,

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on all creditors, parties requesting special notice, and Office of the United States Trustee on July 14, 2014. By the court's calculation, 52 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 11 and Proof of Claim Number 12 filed by Karen House, as Trustee of the Arthur C. House and Karen D. House 1998 Living Trust, UDT is set for a Status Conference at 2:30 p.m. on October 2, 2014, for the parties to address what amendments, if any, are required for the Objection to Claim, when an opposition is due, and the effect of the amended proofs of claim.

Debtors in Possession Michael House and Judy House ("Debtors in Possession") FN.1. submit an objection to Proofs of Claim Nos. 11 and 12 (on the Official Registry of Claims in this case) filed by Karen House, as Trustee of the Arthur C. House and Karen D. House 1998 Living Trust, UDT (the "Trust"). Debtors seek an order disallowing both Proofs of Claim pursuant to Federal Rule of Bankruptcy Procedure 3007.

FN.1. While the introduction to the Objection states that it is only the "Debtors" who are bringing the Objection, it is filed by counsel identified at the top of the pleadings as "General Counsel for Debtors-in-Possession." The court construes the shorthand reference to "Debtors" in the body of the pleading to be a shorthand reference to the "Debtors in Possession," the parties and fiduciaries of the bankruptcy estate, which Debtors in Possession were authorized to employ counsel.

The Estate includes two poultry-farm properties located at 6231 Smith Road, Oakdale, California (the "Smith Property") and 2107 South Stearns Road, Oakdale, California ("Triumph Property"). On October 10, 2013, the Trust filed Proof of Claim No. 11, which asserts a secured claim against "Smith Road (6243)" in the sum of $113,700.06 plus attorney fees and costs; in addition, the Trustee contends that it is entitled to a 7.5% interest on the alleged claim ("Claim 11"). On October 10, 2013, the Trust filed Proof of Claim No. 12, which asserts a secured claim against "Stearn Rd - Triumph Ranch" in the sum of $571,713.65, plus attorneys fees and costs ("Claim 12."). The alleged bases for Claim 11 and Claim 12 are for "Note and Deed of Trust."

No opposition to the objection to these two Proofs of Claim was filed by the House Trust. The lack of response is foreshadowed in the motion to extend time to file an amended plan and amended disclosures statement by the Debtors in Possession. Motion, Dckt. 169.

> "In addition, Debtors [Debtors in Possession] are still awaiting the amendments to proof of claims of Karen D House, as Trustee of the Arthur C. House & Karen D. House 1998 Living Trust, UDT (the 'Trust'), which [Debtors in Possession] contend will affect the treatment of her under the Amendments. [Debtors in Possession] have filed both an objection to the original proofs of claim and an Adversary against the Trust. [Debtors' in Possession] counsel has also been in communications with the Trust's counsel and understands that the amendments to the proofs of claim should be forthcoming,

> but understand that they will not be filed by August 15, 2014 when the Amendments [to the Chapter 11 Plan and Disclosure Statement] are currently due. Depending on the position of the Trust in its filings, [Debtors in Possession] will have an opportunity to negotiate a potentially consensual treatment (unless the parties are too far apart)...."

Id., pg.2:17-27.

It appears that the Debtors in Possession, their counsel, the House Trust, and the Trust's counsel are doing exactly what they are suppose to be doing - constructively addressing issues relating to the claims, correcting documentation, and identifying what real legal and financial issues exist and warrant the expenditure of litigation time and capital.

SMITH PROPERTY

Secured Interest of Trust

With respect to the Smith Property claim, the Debtors-in-Possession argue that the claim is not allowable because the claim is unenforceable against the debtor and property of the debtor, as the Trustee has not attached documents that support its contention that it has a secured interest in the Smith property. The document attached by the Trust to Claim 11 purports to be a deed of trust against the Smith Property. However, the attached document was entered into between Debtors and the Oak Valley Community Bank, and there is no evidence that the Oak Valley Deed was assigned to the Trust.

The Debtors-in-Possession assert that the lack of assignment of interest or documentation showing that Oak Valley Community's security interest was assigned to the Trust means that the Oak Valley Deed of Trust cannot secure any purported loan between the Debtors and the Trust.

Different Deed of Trust

The Objection argues that even if the Trust alleged that a different deed of trust, namely the "Short Form Deed of Trust and Assignment or Rents (Individual) recorded on January 11, 1984 ("Alleged DOT") serves as the basis for the claim, the claim would still not be secured.

The Debtors-in-Possession acknowledge in 1984 that they executed the Alleged DOT, but that the language of the Alleged DOT states that the record owner of the property may further borrow from the beneficiary, when the payment of sums is evidenced by another note stating that it is secured.

Additional Advances

The Objection additionally asserts that there is no note relating to additional advances. As set forth in the first attachment of Proof of Claim 1, the Trust claims that additional advances made over the years "(uncertain how much or when, but balance owed is based on partial amortization schedules showing $149,781.00 owed as of 1/1/05)."

The Debtors-in-Possession take this to mean that the Trust is admitting that there is no promissory note reciting that any alleged advances are so secured, as required by the Alleged DOT. The Trust appears to be acknowledging that it does not know the dates or amounts of the alleged advances, and that the Trust cannot rely on an unattached and alleged partial amortization schedule in lieu of the note. The Debtors-in-Possession argue that since there is no deed of trust or promissory note stating that alleged advances are secured, the only secured portion of the Alleged Trust would be the original $115,000 advance described in the Note Secured by Deed of Trust dated on January 8, 1994, attached as Exhibit D to Claim 11. Exhibit 1, page 19, "Smith Note." The Trust admits that since January 8, 1984, all payments have been made under the Smith note--$4,800 of which were made as of the filing date.

The Debtors-in-Possession state that they were current until February 2013, and four payments were missing prior to the filing of the bankruptcy. Attachment 1 to Proof of Claim 11 (refer to the last payments made and the amount of arrearage). Debtors-in-Possession admit that they did not pay a $1,200 payment for March to June of 2013. The Objection states that the Trust has not sent a bill or accounting to Debtor, and that the Smith Note has been paid off in the amount of $115,000, and a reconveyance of the Alleged DOT should have been recorded.

Debtors-in-Possession again assert that because additional advances were not included in the deed of trust, that the advances are not secured. By this logic, since there is no additional note, then by the terms of the Alleged DOT the Trust is not secured for any sums beyond the original $115,000 Smith Note, and any alleged advances would be a general unsecured loan. Debtors-in-Possession claim that the amortization schedule attached as Exhibit 4, pages 57-60 of the Exhibits, the Smith Note at 9 percent was paid off on March 1998.; thus, there is no existing secured claim by the Trust on the Smith Property.

Debtors-in-Possession state that the alleged advances did not exceed $112,000. The Trust is relying on a "partial amortization schedule" that fails to state what the alleged advances were, when they occurred, and for how much. On this basis, the Debtors-in-Possession assert that there are no verifiable and competent pieces of evidence regarding the alleged advances. Debtors-in-Possession do however, acknowledge oral loans of $112,000 borrowed for the Smith Property from the Trust for the purpose of building one of the chicken facilities. The Debtors-in-Possession state that the funds were loaned to them in installments from the Trust, as the construction bills became due.

Attorney Fees for Loan

The Trust contends that it was charging 7.5 percent interest on the loan. Debtors-in-Possession assert that pursuant to California's usury statute, an oral loan of 7.5 percent is usurious. Article XV of the California Constitution states that the rate of interest upon the loan or forbearance of any money, goods, or things in action, or on accounts after demand shall be 7 percent annum, If the note is in writing, interest rates can be up to 10 percent.

California's usury law, set forth in Article XV Section 1 of the California Constitution and codified in 10 different code sections, limits the amount of interest which can be charged on any loan, or forbearance, of money.

A "forbearance" is the refraining from taking legal action to enforce a debt, right, or obligation. Oftentimes, a forbearance would describe the lender's agreement to extend the due date on an existing loan in return for an increased interest rate. When a loan is usurious, the creditor is entitled to repayment of the principal sum only, and is not entitled to interest. *Winnet v. Roberts*, 179 Cal. App. 3d, 909, 921 (1986).

On this basis, the Debtors-in-Possession argue that they are only required to re-pay the principal on the loan of $112,000. As such, the loan was paid off in January 2006, since the Debtors-in-Possession paid pre-petition amounts of $1,200 per month through and including February 2013. Debtors-in-Possession then argue that they overpaid the loan pre-petition by $103,077.23 at the time of the filing of bankruptcy, and pursuant to the cash collateral order in this case, Debtors-in-Possession have paid an additional 12 months of payments to the Trust for a total overpayment of $117,477.23. Any additional payments, Debtors-in-Possession assert, made pursuant to the cash collateral order after June 30, 2014 will need to be reimbursed, as Debtors-in-Possession are entitled to recover all overpayments from the Trust.

Debtors also argue that they are entitled to recover treble damages for the Trust's charging of a usurious interest rate, at the treble of the amount of money so paid or value delivered in violation of California Code Section 1916-3. Debtors-in-Possession assert that the treble damages in this case would be $43,200,00. Debtors-in-Possession also assert that, since the Trust has not reconveyed the Alleged DOT to the Smith property pursuant to California Civil Code Section 2941, that they are entitled to $500.00 for the statutory violation.

TRIUMPH PROPERTY

Debtors-in-Possession contend that the amount of the allegedly secured claim on the Triumph Property loan is excessive, as Debtors-in-Possession are entitled to payments that have not been correctly calculated.

The Trust's Amortization Schedule

The sale of the Triumph Property to the Debtors-in-Possession occurred on December 14, 2005, with payments on the Note to commence in the amount of $5,516.74 on January 16, 2006, with interest accruing from December 15, 2005, to the date of purchase.

Prior to that date, Debtors occupied the property and paid rent of $10,000 per month starting on February 1, 2003. Exhibit 7, Paragraph 1, page 68, Dckt. No. 144. Debtors-in-Possession argue that a portion of the rental payment starting on February 1, 2003, was to be credited to the $1,400,000 purchase price for the property. Declaration of Eric Allan, Dckt. No. 148. Paragraph 22 of page 70, in Exhibit 7, Dckt. No. 144 (the Lease with Purchase Option dated November 29, 2002), states that

> It is agreed that Lessee shall have the option to purchase real estate known as Triumph Turkey Ranch for the purchase price of $1,400,000, with a down payment of Zero Dollars...All rent over six percent (6%) of the outstanding balance shall be applied to the purchase price.

Debtors-in-Possession argue that the only relevant obligation is the note secured by the first deed of trust against the rented property--Loan No. 426853500 with American Ag Credit, or its predecessor. That loan is described in the Agreement for Purchase and Sale of Real Estate between the parties attached as Exhibit "A" to Exhibit 2, page 26 of the Exhibits, Dckt. No. 144. The outstanding balance of that obligation was $560,000 at that time.

Debtors-in-Possession maintain that rent was paid by Debtors-in-Possession for 34.5 months (February 1, 2003 to December 15, 2005), which would have been a full rental payment of $345,000 during that period of time, but not the amount of purchase credit. Debtors-in-Possession compute the 6% of the principal balance of the American Ag Credit Note as $33,600 per annum, or $2,800 per month. Multiplying the monthly amount over 34,5 months, means that the "deductible" or non-creditable rent, would be $96,600.

Subtracting the non-creditable rent of $96,600 from the full rent paid of $345,00 leaves $248,400 Debtors-in-Possession assert in rent paid that should have been credited to the purchase price. Only a credit of $66,630 can be seen as credited, which is taken from the starting amount of the Karen House note. The Debtors-in-Possession argue that the agreement should have provided for an opening balance of $181,770 less the $776,000 listed amount, for a total of $591,600. Debtors-in-Possession also offer what they term to be a corrected amortization schedule from January 2005 to the Petition as Exhibit 6, Dckt. No. 144. The Debtors-in-Possession desire to treat the overpayment of the Smith Property note to the Triumph note. Debtors-in-Possession assert that they overpaid $103,077.23 in the Smith Property loan through the Petition date, which should be credited to the principal payments of the Triumph Note.

Credit for Stout-Assigned Rent

Debtors-in-Possession also assert that they are entitled to additional payment credit for rent paid by Kristen and Ozzie Stout, who appear to be have been subsequent occupants of the Triumph property.

Debtors-in-Possession Computation of Claim

Debtors-in-Possession file their own analysis of how much is currently due and payable on the Triumph Note, making deductions for the total owed based on the principal paid, credits given for the overpayment on the Smith Note, and the Stout Rent. Debtors-in-Possession also state that they are entitled to additional creditors for treble and statutory damages, which need to be determined the court.

Debtors-in-Possession also make the argument that the Stout rental provision in the Assignment of Rents violates the California statute regarding Rule against Perpetuities, as codified in California Probate Code Section 21205. Debtors-in-Possession argue that, since the alleged tenancies were not recorded, the Debtors-in-Possession would be bona fide purchasers, and that any right to reside at the Triumph Property would only be a month-to-month tenancy.

Debtors-in-Possession argue that as long as tenants reside at the property, and the Trust collects the rent, this would be a credit until the loan is paid off and any alleged assignment of rent should revert back to Debtors. Debtors-in-Possession also maintain that there was no consideration

for any alleged interest granted to the Trust, Stout, or Krause since the Trust was already contractually bound to sell the Triumph Property to Debtors without the alleged grant of interest.

Based on the foregoing, the Debtors-in-Possession argue that the secured claim based on the Triumph note only totals $56,981.03 as the total amount due. Debtors-in-Possession argue that since the petition date, Debtors-in-Possession have made payments pursuant to the cash collateral agreement, and as of June 30, 2014, Debtors-in-Possession have overpaid the Triumph Note by $37,161.94--exclusive of treble and statutory damages. Thus, Debtors-in-Possession explain that the Triumph Note has been paid off, the Trust is not entitled to any secured claim against the property, and the Trust should reimburse Debtors-in-Possession for overpayments and cease collecting rent at the Triumph property as well.

DISCUSSION

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

Not all Proof of Claims are deserving of this presumption of prima facie validity, however; only a properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. FRBP 3001(f). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f), but a lack of prima facie validity is not, by itself, a basis to disallow a claim. The court must look to 11 U.S.C. § 502(b) for the exclusive grounds to disallow a claim. *In re Heath*, 331 B.R. 424, 426 (B.A.P. 9th Cir. 2005).

Amended Claim for the Smith Property

On August 28, 2014, Karen D. House, as the Trustee for the Arthur C. House and Karen D. House Living Trust, UDT, filed an amended Proof of Claim No. 11. In the Amended Proof of Claim, the Claimant has attached an Amortization Schedule, dated July 18, 2014, and payments owed to Karen House, the Noteholder for Smith Ranch.

The Proof of Claim form is amended to state that the amount of the secured claim is $118,187.66, an increase from the original amount of the secured claim listed on the Proof of Claim filed on October 10, 2013. Whereas the original Proof of Claim listed the amount of arrearage owed as $4,800 at the time that the case was filed, the arrearage amount is left blank in the Amended Proof of Claim Form. The Amended Claim does not demand attorney fees and costs for the amount of claim, and the annual interest rate is still indicated to be a fixed rate of 7.500%. The claim no longer appears to be

demanding the payment for attorney fees and the costs of the claim, resolving this part of the Objection filed by the Debtors-in-Possession.

Additional Advances

The Debtors-in-Possession in their Objection argued that no note exists relating to additional advances demanded by the Claimant. Note #2 attached to the Original Proof of Claim stated that:

> Additional advances were made over the years (uncertain how much or when, but balance owed is based on partial amortization schedule showing $149,781.00 owed as of 1/1/05). The note does not provide for late fees, but it does provide for attorney's fees. It is unknown whether taxes and property insurance are paid current.

The Debtors-in-Possession argued that the Trust was acknowledging that it does not know the dates or amounts of the alleged advances, and that the Trust cannot rely on an unattached and alleged partial amortization schedule in lieu of the note. The Debtors-in-Possession further argued that since there is no deed of trust or promissory note stating that alleged advances are secured, the only secured portion of the Alleged Trust would be the original $115,000 advance described in the Note Secured by Deed of Trust dated on January 8, 1994, attached as Exhibit D to Claim 11. Exhibit 1, page 19, "Smith Note."

The Amended Proof of Claim includes an Amortization Schedule for the term period of January 1, 2005 to February 1, 2013, showing regular installments of $1,200 paid during that time. There are a total of 97 payments calculated, with grand totals of $116,400.00 made in total payments; $81,410.10 made in interest payments, and $34,989.90 in principal for this time period. Page 4 of the Amortization Schedule states that an "open balance of $114,791.00 still remains.

An copy of an email dated July 18, 2014, and labeled as Exhibit "1" in the Amended Proof of Claim appears to be from Meredith Hamilton. The top of the email page lists the name of John Resso, Attorney for the Claimant Karen House. The face of the email indicates that the amortization schedule is for the note secured by the Smith Ranch Property, payable by Debtors Mike and Judy House to Karen House. The email states that the schedule reflects payment activity and a beginning note balance provided by Karen House, taking into consideration "amounts due on each payment reflected, a breakdown of the interest and principal applied to the note, arriving at an outstanding balance due as of June 24, 2013."

The email states that the last payment on the note, prior to the pre-petition date of June 24, 2013, was received during the month of February, 2013, thus creating accrued interest at the pre-petition date. Mr. Resso appears to state in the email that based on the information provided, the calculation of the outstanding note balance and accrued interest on June 24, 2013 are: 1.) a note balance of $114,791.10, and 2.) Accrued interest of $3,396.56 for "February 1, 2013/June 24, 2013 @ 7.5%." The email also states that the senders have been informed that an additional cash advance have been

made under the secured note, subsequent to the origination of the original note at the time of the property sale to Mike House.

Although the attached amortization schedule provides an accounting of payments, the computation of payments, interest, and principal due on the Smith Ranch Note, and the balance on the note (which may address some of the objections raised by the Debtors-in-Possession in their Objection to the Claim) regarding the billing and accounting of payments made by the Debtors-in-Possession, the Claimant has not produced additional evidence Oak Valley Community Bank assigned the Deed of Trust to the Claimant Trust.

The Debtors-in-Possession assert that the lack of assignment of interest or documentation showing that Oak Valley Community's security interest was assigned to the Trust means that the Oak Valley Deed of Trust cannot secure any purported loan between the Debtors and the Trust. Exhibit 4 to Amended Proof of Claim No. 11, pgs 10-11, appears to be a copy of a Short Form Deed of Trust for which Michael and Judy House are Trustors, Central State Title Company is the Trustee, and Arthur House is the Beneficiary. Most of the text is illegible, but the monetary obligation typed in the paragraph in which the obligation secured it commonly placed in a short form deed of trust in California is $115,000.00. This is consistent with the $115,000.00 stated in the Note attached as Exhibit 3 to Amended Proof of Claim 11, for which Michael and Judy House are the Payors and Arthur House is the Payee.

Amended Claim for the Triumph Property

The Claimant also filed an Amended Proof of Claim No. 12 on August 28, 2014. The Amended Proof of Claim asserts an increased amount of the secured claim as $604,317.27 (previously $571,713.65 in the original Proof of Claim No. 12 filed on October 10, 2013), without a demand for attorneys fees and costs. The Amended Proof of Claim no longer lists an arrearage owed on the claim (whereas the original proof of claim asserted an arrearage amount of $22,066.96).

The Amended Proof of Claim includes an Amortization Schedule for the term period of January 16, 2006 to February 16, 2013, showing regular installments of $5,516.74 paid during that time. There are a total of 86 payments calculated, with grand totals of $474,439.640 made in total payments; $296,272.82 made in interest payments, and $178.166.82 in principal for this time period. Page 4 of the Amortization Schedule states that an "open balance of $591,863.81 still remains.

An copy of an email dated July 18, 2014, and labeled as Exhibit "1" in the Amended Proof of Claim appears to be from Meredith Hamilton. The top of the email page lists the name of John Resso, Attorney for the Claimant Karen House. The face of the email indicates that the amortization schedule is for the note secured by the Triumph Ranch Property, payable by Debtors Mike and Judy House to Karen House. The email states that the schedule reflects payment activity and a beginning note balance provided by Karen House, taking into consideration "amounts due on each payment reflected, a breakdown of the interest and principal applied to the note, arriving at an outstanding balance due as of June 24, 2013."

The email states that the last payment on the note, prior to the pre-petition date of June 24, 2013, was received during the month of February, 2013, thus creating accrued interest at the pre-petition date. The email states that based on the information provided, the calculation of the outstanding note balance and accrued interest on June 24, 2013 are: 1.) a note balance of $591,863.81 and 2.) Accrued interest of $12,453.46 for "February 1, 2013/June 24, 2013 @ 6.0%."

The amortization schedule is simply a statement showing regular payments over a specified period of time, showing the gradual elimination of liability on the note and monthly loan payments on the Note. The schedule does not appear to include the actual payments made by Debtors-in-Possession. The statements do not provide an accounting for the payments made, and the rental payments paid by Debtors-in-Possession for rent when Debtors-in-Possession rented the Triumph Property (rent was paid by Debtors-in-Possession for 34.5 months, which Debtors-in-Possession state would have been a full rental payment of $345,000).

Debtors-in-Possession compute the 6% of the principal balance of the American Ag Credit Note as $33,600 per annum, or $2,800 per month. Multiplying the monthly amount over 34.5 months, means that the "deductible" or non-creditable rent, would be $96,600, which they argue should be factored into the computation of the balance owed on the Triumph Property Note.

The Proof of Claim does not include any billing and accounting for the deductions of the rental payments made on the property, and credits for the assigned rental payments made by Kristen and Ozzie Stout, nor is the Proof of Claim Amended to address the arguments of Debtors-in-Possession asserting that the Short Form Deed of Trust and Assignment of Rents violates California Probate Code Section 21205. Nothing in the Amended Proof of Claim aligns with the analysis of Debtors-in-Possession in their contention that only $56,981.03 is owed on the claim, and that Debtors-in-Possession have overpaid the Triumph Note by $37,161.94, and that the Triumph Note has been paid off. The Debtors-in-Possession also argue that the Claimant Trust is not entitled to any secured claim against the property, and the Trust should reimburse Debtors-in-Possession for overpayments and cease collecting rent. These issues are not addressed in the Claimant's Amended Proof of Claim No. 12.

In light of the parties discussions and the anticipated filing of amended proofs of claim, the court sets a Status Conference in this Contested Matter for 2:20 p.m. on October 2, 2014, to address whether an amended objection is to be filed, the opposition to the objection, and to set a discovery schedule if the Objection has not been resolved.

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 Claims filed by Karen House, as Trustee of the Arthur C. House and Karen D. House 1998 Living Trust, UDT ("Trust"), Proofs of Claim No. 11 and 12, by Michael and Judy House, Debtors in Possession, having been

presented to the court, amended proofs of claim having been filed by the Trust, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that a Status Conference on the Objection to Proofs of Claim Numbers 11 and 12 of the Trust shall be conducted at 2:20 p.m. on October 2, 2014. The Debtors in Possession and the Trust shall file Status Conference Statements at least seven days prior to the Status Conference identifying for the court whether an amended objection is to be filed, whether an opposition is to be filed to the present objection, and the issues, if any, which remain to be litigated in connection with this objection to claims.

IT IS FURTHER ORDERED that no further amended proofs of claim relating to the obligations asserted in Amended Proof of Claim No. 11 and Amended Proof of Claim No. 12 shall be filed without leave of court. Such leave may be obtained by noticed motion or a joint *ex parte* motion by the Trust and the Debtors in Possession for cause shown.

20. 13-91189-E-11 MICHAEL/JUDY HOUSE MOTION TO EXTEND TIME
RMY-12 Robert Yaspan 8-14-14 [169]

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

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

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

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

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

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

The Motion to Extend Time is granted.

Debtors-in-Possession, Michael House and Judy House, move the court for an order extending the time to file their Amended Plan or Reorganization and Amended Disclosure Statement, and to extend the time for interested parties to respond to the amendments. The Motion is brought pursuant to the court's inherent powers under 11 U.S.C. § 105.

The court has set August 15, 2014, as the deadline for the filing of the Amended Plan of Reorganization and the Amended Disclosure Statement, and August 29, 2014, for any responses to the proposed amendments. Debtors-in-

Possession state that they still need additional time to resolve issues that were raised by the court.

Specifically, the Debtors-in-Possession state that they are still in active negotiations with the tenant at the property in Petaluma regarding the exercise of a five year options and other related terms. Petaluma and Debtors-in-Possession tentatively have an agreement that Petaluma will exercise the initial lease option, which would extend the leases at the real properties for give years (until 2023). However, over the past few days, Petaluma has indicated that it is interested in extending the lease through 2028, and wants to negotiate the terms for an additional five years of time. The terms of the extension through 2028 are presently being negotiated, the Debtors state that they need more time for the filing of the Amendments to encompass any of these negotiations.

In addition, the Debtors-in-Possession are awaiting the amendments to the proofs of claim of Karen House, as Trustee of the Arthur C. House and Karen D. House 1998 Living Trust, UDT, which the Debtors contend will affect the treatment of her under the amendments. Debtors-in-Possession have filed both an objection to the original proofs of claim, and an adversary proceeding against the Trust. Debtors-in-Possession's counsel has also been in communications with the Trust's counsel, and understands that the amendments to the proofs of claim should be forthcoming, but understand that they will not be filed by August 15, 2014, when the amendments are currently due.

Depending on the position of the Trust in its filings, the Debtors-in-Possession will have an opportunity to negotiate consensual treatment of the claim. However, the additional time may preclude the necessity of filing additional amendments to address the position of the Trust. Debtors are requesting an additional three weeks, until September 5, 2014, to file the Amended Plan of Reorganization and the Amended Disclosure Statement, so that these issues will likely be resoled. Debtors-in-Possession are also requesting that the court to extend the time to respond to the Amendments, so that no party will be prejudiced by the extension.

The hearing date is currently scheduled for October 30, 2014, and the Debtors are not requesting that the continued hearing date on the Adequacy of the Disclosure be continued. Debtors-in-Possession state that the court has inherent powers under 11 U.S.C. § 105 "regarding its calendar and the hearing dates," so that Debtors-in-Possession are requesting that the court exercise its inherent powers to adjust the dates so that these issues can be likely resolved.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1007(c) states that an extension of time to file schedules, statements, and other documents required under this rule may be granted only on motion for cause shown and on notice to the United States trustee, any committee elected under §705 or appointed under §1102 of the Code, trustee, examiner, or other party as the court may direct. Federal Rule of Bankruptcy Procedure 9006(b)(1) also allows the court for cause may at any time enlarge the time for taking action 1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2)

on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

11 U.S.C. § 1121(d)(1) also provides that, on the request of a party in interest made within the respective periods specified in subsections (b) and (c) of 11 U.S.C. § 1121, and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period for a debtor or any party in interest including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, to file a plan.

The court set August 15, 2014, as the deadline for the filing of the Amended Plan of Reorganization and the Amended Disclosure Statement, and August 29, 2014, for any responses to the proposed amendments. Debtors-in-Possession state that they still need additional time to resolve issues related to the Plan negotiation of lease options related to a property located in Petaluma. Debtors indicate that they are also awaiting amendments to proofs of claim filed by Karen House, as Trustee of the Arthur C. House and Karen D. House 1998 Living Trust, UDT, which the Debtors contend will affect the treatment of the claims in the Amended Plan and Disclosure Statement. Debtors-in-Possession have filed both an objection to the original proofs of claim, as well as an adversary proceeding against the Trust. Debtors-in-Possession also state that additional time may allow the Debtors-in-Possession to reach an agreement concerning the treatment of the House claim.

The Debtors-in-Possession still actively engaging in negotiations involving the status of their tenant at their property located in Petaluma regarding the exercise of a five year options and other related terms, and the status of the Proof of Clam filed by Karen House, as Trustee of the Arthur C. House and Karen D. House 1998 Living Trust, UDT, the court grants the extension of the deadline to file the Amended Plan of Reorganization and the Amended Disclosure Statement to September 5, 2014, and the time for interested parties to file their responses to the Amended Plan of Reorganization and the Amended Disclosure Statement to September 19, 2014.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Time to File filed by the Debtors-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Extend the Time to File is granted, and the deadline for Debtors-in-Possession, Michael House and Judy House, to file the Amended Plan of Reorganization and the Amended Disclosure Statement is extended to September 12, 2014, and the time for interested parties to file their responses to the Amended Plan of Reorganization and the Amended Disclosure Statement of Debtors-in-Possession is extended until October 3, 2014.

21. 14-90889-E-7 **RICHARD/CONNIE BARGAS** **MOTION TO AVOID LIEN OF**
BSH-1 **Brian S. Haddix** **CITIBANK, N.A.**
8-11-14 [13]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor on August 11, 2014. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against property of Richard & Connie Bargas ("Debtors") commonly known as **132 High Street, Modesto, California** (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,102.27. An abstract of judgment was recorded with Stanislaus County on May 19, 2014, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $137,500.00 as of the date of the petition. The unavoidable consensual liens total $119,701.84 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $17,798.16 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Citibank, N.A., California Superior Court for Stanislaus County Case No. 2002231, recorded on May 19, 2014, Document No. 2014-0031856, with the Stanislaus County Recorder, against the real property commonly known as 132 High Street, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

22. 14-91091-E-7 | DOCTOR'S MEDICAL CENTER FOUNDATION
Steven S. Altman | ORDER TO APPEAR AND SHOW CAUSE WHY A PATIENT CARE OMBUDSMAN SHOULD NOT BE APPOINTED
8-1-14 [4]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Doctor's Medical Center Foundation, "Debtor," Trustee, and other parties in interest on August 1, 2014. The court computes that 34 days' notice has been provided.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Court docket and file indicate that the Debtor is a health care business. The court issued this order to show cause as to why the Court should not order the appointment of a patient care ombudsman, on that basis that 11 U.S.C. § 333(a)(1) requires that the Court shall order, not later than 30 days after the commencement of the case, the appointment of a patient care ombudsman. The court must enter such an order, unless the Court finds that such appointment is not necessary for the protection of the patients under the specific facts of the case. 11 U.S.C. § 333(a).

RESPONSE BY DEBTOR

Debtor responds by stating that Debtor was a functioning nonprofit agency, that assisted in the needs of elderly Stanislaus County Residents concerning their medical, social, and psychological health issues and adult care during the period of March 1975 through mid-April of 2013.

Due to a pending foreclosure and financial difficulties, Debtor sold its actual business facility at 730 McHenry Avenue, Modesto, California on May 24, 2013. The proceeds were used towards paying off a Bank of Stockton secured loan obligation.

The Response states that the Debtor is not currently engaged in patient services of treatment or any other ancillary services involving adult elderly patient care. At the advice of counsel and to assist with HIPAA requirements, Debtor's officers and/or directors have rented a storage facility at Pacific Storage in Modesto, California, for a period of seven (7) years, to retain patient files for storage. Debtor, through its counsel, has communicated the foregoing facts with the acting Trustee in this case, Irma Edmonds, as well as Edmund Gee, attorney for the United States Trustee. Debtor submits that the

need to appoint a patient care ombudsman pursuant to 11 U.S.C. § 333(a)(1) is not necessary.

DISCUSSION

11 U.S.C. § 333 (a)(1) states that,

> If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.

11 U.S.C. § 333(a)(2) specifies that a disinterested person must be appointed to serve as such an ombudsman, and provides that if a debtor is a health care business providing long term care, that the United States Trustee may appoint the State Long-Term Care Ombudsman appointed under the Older Americans Act of 1964 for the state in which the case is pending.

The remaining provisions of 11 U.S.C. § 333 state the responsibilities of a patient care ombudsman, including the ombudsman's duty to monitor the quality of patient care, file with the court a motion or written report if it has been determined that the quality of patient care is being materially compromised or "declining significantly," and that the ombudsman shall maintain information and shall have access to patient records consistent with the authority of such an ombudsman under the Older Americans Act.

In the case of *In re Valley Health Sys.*, 381 B.R. 756 (Bankr. C.D. Cal. 2008), the court determined that in a bankruptcy case filed by health care business, in deciding whether appointment of patient care ombudsman is necessary for protection of patients, the court must examine debtor's operations in light of the following nine non-exclusive factors:

> (1) cause of debtor's bankruptcy;
>
> (2) presence and role of licensing or supervising entities;
>
> (3) debtor's past history of patient care;
>
> (4) ability of patients to protect their rights;
>
> (5) level of dependency of patients on debtor's facility;
>
> (6) likelihood of tension between interests of patients and debtor;
>
> (7) potential injury to patients if debtor drastically reduces its level of patient care,
>
> (8) presence and sufficiency of internal safeguards to ensure appropriate level of care; and

(9) impact of cost of ombudsman on likelihood of successful reorganization.

In re Valley Health System, 381 B.R. 756 (Bankr. C.D. Cal. 2008).

In applying the factors enumerated by *In re Valley Health* to this case, the appointment of a patient care ombudsman does not seem to be necessary in protecting the rights and provision of care to Debtors' former clientele. Debtor's response states that Debtor was a functioning nonprofit agency, that served elderly patients in the Stanislaus County area from the 1970s to mid-April of 2013. The Debtor actually sold its business facility located in Modesto, however, in May, 2013. The proceeds were applied towards fulfilling a secured loan obligation with the Bank of Stockton.

Debtor asserts that it is not currently engaged in patient services of treatment or any other ancillary services involving adult elderly patient care. However, Debtor does have medical records which contain confidential, personally identifiable patient information. One of the ombudsman's duties is to "represent the interests of patients of the health care business...." 11 U.S.C. § 333(a)(a).

Though patient care is no longer rendered by Debtor, and the potential compromise of the quality of care provided by Debtor in the administration of Debtor's bankruptcy case is no longer of concern, there are confidential patient records at issue. Though at the advice of counsel and to assist with HIPAA requirements, Debtor's officers and/or directors have rented a storage facility at Pacific Storage in Modesto, California, for a period of seven (7) years, no person or persons are identified as responsible to maintain the confidentiality of the records, provide patient access to the records, and to insure proper destruction of the records after the end of the seven year period.

This lack of a specific responsible person or viable, existing entity for maintenance, access to, and destruction of the medical records mitigates in favor of appointing a patient care ombudsman pursuant to 11 U.S.C. § 333(a)(1). The Order is discharged.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is sustained, and a Patient Care Ombudsman shall be appointed by the U.S. Trustee pursuant to 11 U.S.C. § 333.

23. 14-90773-E-7 PAUL MACLIN
DFH-2 Drew Henwood

MOTION FOR ORDER COMPELLING TRUSTEE TO ABANDON PROPERTY OF THE ESTATE O.S.T.
8-22-14 [24]

ALTERNATIVE RULING PROVIDED IN EVENT CONSENT OF THE TRUSTEE IS GIVEN IN WRITING OR AT THE HEARING FOR THE MOTION TO ABANDON PROPERTY

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

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

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

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

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on miscellaneous parties on August 25, 2014 and August 27, 2014.

The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Abandon Property is denied without prejudice.

The Debtor and Debtor's attorney did not serve the Chapter 7 Trustee the Motion for Order Compelling Trustee to Abandon Property of the Estate as required by Federal Rule of Bankruptcy Procedure 9014(a).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Order Compelling Trustee to Abandon Property of the Estate filed by Paul Maclin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is denied without prejudice.

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

ALTERNATIVE RULING

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

The Motion filed by Paul Maclin ("Debtor") requests the court to order the Trustee to abandon the following property:

1. Website address www.techstone.com;
2. 2005 Toyota Prius;
3. 1998 GMC Savana cargo van;
4. Resin pads;
5. Sanding pads; and
6. Sanding paper

(the "Property").

The Declaration of Debtor has been filed in support of the motion and states that Debtor at this time wishes to compel the abandonment of the Property because it "will mitigate any possible future liability associated with such business name and [Debtor's] business." Dckt. 27. Debtor states that the 1998 GMC Savana cargo van is used to transport supplies for Debtor's business. *Id.* Debtor also states that the Property is of inconsequential value and benefit and even possibly burdensome to the estate. *Id.*

Debtor, in his Schedule B and Schedule C, list the Property at the following values and takes the following exemptions:

Property	Value	Exemptions
Website address ww.techstone.com	$0.00	$0.00
2005 Toyota Prius	$5,000.00	1. C.C.P. § 703.140(b)(2) - $3,525.00 2. C.C.P. § 703.140(b)(2) - $7,568.00
1998 GMC Savana cargo van	$2,510.00	C.C.P. § 703.140(b)(5) - $1,557.00
General Machinery, which includes the resin pads, sanding pads, and sanding paper	$8,000.00	1. C.C.P. § 703.140(b)(6) - $2,200.00 2. C.C.P. § 703.140(b)(5) - $5,800.00

It appears that the Debtor has under exempted the 1998 GMC Savana cargo van by $957.00. However, given the mileage, age, and use of the vehicle being for business purposes and the *de minimus* value unexpempted by Debtor, the vehicle appears to have inconsequential value and benefit to the estate.

The resin pads, sanding pads, and sanding paper, which are listed under "General Machinery," are fully exempt. The court on August 28, 2014 granted Debtor's Motion to Abandon Property which included the other assets listed under the "General Machinery" heading. Dckt. 41. Because the total value of the "General Machinery" heading is exempted and the court has previously granted the abandonment of the remaining property under "General Machinery," the resin pads, sanding pads, and sanding paper appear to have inconsequential value and benefit to the estate.

The court finds that the website address, 2005 Toyota Prius, 1998 GMC Sacana cargo van, resin pads, sanding pads, and sanding paper are exempted on Schedule C, and that there are negative financial consequences to the estate retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate, and orders the Trustee to abandon the property.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by Paul Maclin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted and that the Property identified as:
>
> 1. Website address www.techstone.com;
>
> 2. 2005 Toyota Prius;
>
> 3. 1998 GMC Savana cargo van;
>
> 4. Resin pads;

5. Sanding pads; and

6. Sanding paper

and listed on Schedule B by Debtor is abandoned to Paul Maclin by this order, with no further act of the Trustee required.