UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

September 8, 2016, at 10:30 a.m.

1.	**16-90401-E-11** **WFH-1**	**NATIONAL EMERGENCY MEDICAL SERVICES** **Pro Se**	**MOTION TO EMPLOY BURR PILGER MAYER, INC. AS ACCOUNTANT(S)** **8-25-16 [69]**

Tentative Ruling: The Motion to Employ 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 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 25, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Employ 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 Employ is granted.

Chapter 11 Trustee, Russell K. Burbank, seeks to employ Accountant Burr Pilger Mayer, Inc., pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code § 327(a). Trustee seeks the

employment of Accountant to assist the Trustee in accounting, bookkeeping, and tax assistance to administer the estate's assets. Trustee states that National Emergency Medical Services Association, Inc. ("Debtor") is a California corporation doing business as a non-profit labor organization that represents medical technicians employed by private ambulance operators.

Debtor's first bankruptcy case was dismissed when Debtor failed to file a plan by the deadline. At that point, National Association of Government Employees, Inc. ("Creditor") sought to enforce a $260,000.00 judgment against Debtor, which led to Debtor filing a second bankruptcy case. Trustee believes that there is only one creditor with a secured claim (against Debtor's copy machine) and that there are unsecured claims for legal and arbitration services in the dispute with Creditor, Creditor's judgment claim, a former landlord's claim for future rent under a lease, and the Debtor CEO's claim for unpaid salary. Trustee believes that those unsecured claims total $818,000.00.

The Trustee discloses that he is a principal in, and a Senior Managing Director of, Burr Pilger Mayer, Inc.

The Trustee argues that Accountant's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present accounting, bookkeeping, and tax assistance to administer the estate's assets.

Russell K. Burbank, a Senior Managing Director of Burr Pilger Mayer, Inc., testifies that Burr Pilger Mayer, Inc., has extensive experience providing tax, accounting, bookkeeping, and administrative services to estate fiduciaries in Chapter 11 cases. Russell K. Burbank 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 Debtor, creditors, any party in interest, or their respective attorneys.

DISCUSSION

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including accountants, 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 must be a disinterested person.

Taking into account all of the relevant factors in connection with the employment and compensation of Accountant, considering the declaration demonstrating that Accountant 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 Burr Pilger Mayer, Inc. as accountant for the Chapter 11 Trustee. The estate shall be billed for the services provided based on the time expended and expenses incurred.

The court authorizes the employment of the Account for the Chapter 11 Trustee.

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

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

The Motion to Employ filed by the Chapter 11 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted and the Chapter 11 Trustee is authorized to employ Burr Pilger Mayer, Inc. as accountant for the Chapter 11 Trustee.

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.	**16-90401-E-11 WFH-3**	**NATIONAL EMERGENCY MEDICAL SERVICES Pro Se**	**MOTION TO EMPLOY DANIEL L. EGAN AS ATTORNEY(S) AND/OR MOTION TO EMPLOY STEVEN J, WILLIAMSON AS ATTORNEY(S) 8-25-16 [75]**

Tentative Ruling: The Motion to Employ 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 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 25, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Employ 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 Employ is granted.

Chapter 11 Trustee, Russell K. Burbank, seeks to employ Counsel Daniel L. Egan and Steven J. Williamson, pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code § 327(a). Trustee seeks the employment of Counsel to assist the Trustee in:

A. Investigating National Emergency Medical Services Association, Inc.'s ("Debtor"), financial affairs, assets, and liabilities;

B. Seeking turnover of personal and real property, if necessary;

C. Employing other professionals as needed to administer Debtor's estate;

D. Claims analysis and objections, if necessary;

E. Preference, fraudulent transfers, and avoidance actions, if necessary;

F. Disposition of assets, negotiations of transactions to generate funds for the estate, and to propose and obtain confirmation of a plan of reorganization; and

G. Any other issues that arise during administration of the 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 legal rights in the above-referenced matters and in the administration of the estate.

Daniel L. Egan, a partner of Wilke, Fleury, Hoffelt, Gould & Birney, LLP, testifies that he and Steven J. Williamson are experienced in the areas of bankruptcy, debtor and creditor matters, business sales transactions, and general business litigation, and the firm has been retained by bankruptcy trustees in other cases. Daniel L. Egan 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 Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Mr. Egan notes that the firm has represented or is representing clients in matters adverse to the following creditors:

A. G.E. Capital;

B. Employment Development Department;

C. Internal Revenue Service;

D. California Franchise Tax Board; and

E. Wells Fargo Bank.

Dckt. 77. Mr. Egan notes, however, that the firms representation of clients in those matters is not related to the Debtor or to the matters upon which the Trustee has requested representation. Mr. Egan notes that the firm represented Wells Fargo Bank in the past but does not represent it currently. Additionally, the firm acted as co-counsel with creditor McCormick Barstow in representing a creditor in the related Eastern District of California bankruptcy cases of Stephen DeGuire (Case No. 15-27614) and Cory DeGuire (Case No. 15-27615). Finally, Mr. Egan notes that the firm uses creditors Crowe Horwath, Caltronics Business Systems, and Californsics as vendors or as vendors for other clients.

DISCUSSION

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 Daniel L. Egan and Steven J. Williamson as counsel for the Chapter 11 estate.

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 11 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted and the Chapter 11 Trustee is authorized to employ Daniel L. Egan and Steven J. Williamson, of Wilke, Fleury, Hoffelt, Gould & Birney, LLP, as counsel for the Chapter 11 Trustee.
>
> **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.

3. 16-90103-E-7 JOSE MERCADO **MOTION TO ABANDON**
MDM-1 Nelson F. Gomez **8-11-16 [65]**
CONVERTED: 3/17/16

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Property is granted.

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

The Motion filed by Michael D. McGranahan ("Trustee") requests the court to authorize Trustee to abandon property commonly known as 775-777 South Orange Street, Turlock, California ("Property"). Trustee's Declaration has been filed in support of the motion and states that the Property is encumbered by the lien of Wells Fargo Bank, N.A., securing a claim of $263,765.42. Dckt. 67. FN.1. Trustee's Declaration states that the value of the Property is $185,000.00.

FN.1. Wells Fargo Bank, N.A., has not filed a proof of claim, but the court notes that it has filed exhibits in connection with a Motion for Relief from Automatic Stay. Dckt. 58. Within those exhibits is a signed copy of Debtor's Mortgage Note Agreement that lists $210,000.00 as the principal amount secured by the Property. Exhibit A, Dckt. 58.

The court finds that the Property secures a claim that exceeds the value of the Property, and there 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. 775–777 South Orange Street, Turlock, California (the "Property")

is abandoned to Jose Cruz Mercado by this order, with no further act of the Trustee required.

4. **14-91408-E-7** **ALEJANDRA LOPEZ AND JOSE GUTIERREZ** **MOTION TO AVOID LIEN OF DISCOVER BANK**
ARL-1 **Pro Se** **7-29-16 [46]**
DISCHARGED: 2/11/15

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors (*pro se*), Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on July 28, 2016. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of Alejandra Lopez and Jose Gutierrez ("Debtors") commonly known as 4124 Woodwind Court, Modesto, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $9,441.10. An abstract of judgment was recorded with Stanislaus County on September 5, 2014, which encumbers the Property.

A review of the Proof of Service shows that Creditor was not served correctly. The Proof of Service does not indicate to whom notice was served. Creditor is a federally-insured bank and must be served by certified mail according to Federal Rules of Bankruptcy Procedure 7004(h) and 9014. For a corporation, service must be upon "an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process . . . ." Fed. R. Bankr. P. 7014(b)(3). Creditor was

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

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

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

IT IS ORDERED that the Motion to Avoid Judicial Lien of Discover Bank is denied without prejudice.

5. **13-91315-E-7** **APPLEGATE JOHNSTON, INC.** **MOTION TO EXTEND DEADLINES AND/OR MOTION TO CONTINUE PRE-TRIAL CONFERENCE**
15-9038
EDC-2
MCGRANAHAN V. ELECTRICAL DISTRIBUTORS, CO.
8-22-16 [41]

No Tentative Ruling: The Motion to Extend Deadlines and Motion to Continue Pre-Trial Conference 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.

The Order Setting Hearing on *Ex Parte* Motion was served by the Clerk of the Court on Debtor, Debtor's Attorney, Chapter 7 Trustee, Plaintiff's Attorney, Defendant's Attorney, and other parties in interest on August 26, 2016. The court computes that 13 days' notice has been provided.

The Motion to Extend Deadlines and Motion to Continue Pre-Trial Conference 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 Deadlines and Motion to Continue Pre-Trial Conference is xxxxxxxxxxxxxxx.

Chester C. Lehmann, Inc. doing business as Electrical Distributors, Co., Defendant, filed the instant *Ex Parte* Motion to Extend Deadlines and Continue Pre-Trial Conference on August 22, 2016. Dckt. 41. Defendant requests that the court extend all deadlines and the pre-trial conference by five (5) months.

ORDER SETTING HEARING ON *EX PARTE* MOTION

The court issued an Order Setting Hearing on *Ex Parte* Motion on August 24, 2016. Dckt. 49. The court noted that

> [t]he *Ex Parte* Motion, as supplemented by the "grounds" stated in the Points and Authorities, raises some very serious issues concerning the prosecution of the case – issues that a mere extension of discovery deadlines will not solve. With respect to the court *instructing* that relief be sought by *ex parte* motion, the court can envision commenting that if further time was required and the parties in good faith agreed that it was appropriate, such an extension could be sought *ex parte*. However, if there was not a good faith agreement which could be presented to the court, merely granting additional time on an *ex parte* basis at the request of one party would be inappropriate.

The court mined through Defendant's Memorandum of Points and Authorities and found several grounds that were not stated in the Motion. Those grounds include:

A. "Commencing in late June 2015, Trustee commenced 30 adversary proceedings seeking recovery of alleged preferential transfers under § 547 of the bankruptcy code. The case against Defendant was by far the largest and most complex case of all the adversary actions initiated by Plaintiff in relation to the Debtor."

B. "On April 7, 2016, this Court heard Plaintiff's Motion to Extend Deadlines and Continue Pretrial Conference. During that hearing, Plaintiff sought a three-month extension, while Defendant sought a ten-month extension."

C. "The Court granted a five-month extension with the understanding that more time would be granted if the need arose and the Court instruct Defendant to proceed via ex parte application if further extensions became necessary."

D. "It has now been more than four months after that hearing, virtually no progress has been made in this case as far as Defendant obtaining critical documents from Plaintiff needed by Defendant to adequately prepare its defense."

E. "A further extension is now necessary to avoid immediate prejudice to Defendant. Defendant and Granite Electrical Supply, Inc. ("GES"), which is a defendant in related adversary proceeding #15-09044, are affiliated entities and are represented by the same counsel."

F. "The parties have met and conferred several times regarding the possibilities of narrowing the issues, but have made no progress thus far."

G. "Plaintiff still has not adequately responded to Defendant's request for production of documents from November 2015 and Defendant is not preparing to file a motion to compel."

H. "Instead of producing the requested documents from their electronically stored sources, on or about July 8, 2016 Plaintiff gave Defendant a copy of Debtor's server. The server consisted of over one terabyte of data, which had corrupted files, security protocols that made it difficult to navigate the data, and archived backup files that were not readily navigable even by Defendant's information technology department."

I. "Defendant spent a considerable amount of time reviewing all the subfolders of said server and concluded that the documents that Defendant was seeking (i.e. Defendant's accounting records, financial statements, tax returns, and emails) did not appear to be on the hard drives that were provided."

J. "On August 9, 2016, Plaintiff provided with two more of Debtor's hard drives. (*Id.*, at ¶ 9) Plaintiff reviewed these hard drives and found them to be devoid of any accessible document files. (*Id.*) Plaintiff's production is now approximately eight months late."

Points and Authorities, Dckt. 42.

The court ordered a hearing set for September 8, 2016, at 10:30 a.m.

TRUSTEE'S OPPOSITION

Michael McGranahan, Chapter 7 Trustee, filed an Opposition to *Ex Parte* Application to Extend Deadlines and Continue Pretrial Conference on September 1, 2016. Dckt. 56. The Trustee states that there are twelve (12) adversary proceedings related to preference actions remaining. Trustee asserts that not one of the thirty-four (34) defendants in the various adversary proceedings from the past fourteen (14) months has filed a motion to compel discovery against the Trustee. Trustee says that has not happened because the Trustee has cooperated in discovery in each case, including the present one.

The Trustee provides a lengthy history of the discovery process between the parties. Trustee asserts that it has been an ongoing process since November 30, 2015, involving several requests, meetings, and deadline extensions. Trustee states that he has produced all of the Debtor's hard copy documents in the Trustee's possession and has produced all electronic information available to the Trustee in such a way that Defendant has the same access to all of the information that the Trustee has. Trustee claims that Defendant was not satisfied with the disclosure and requested more, specifically asking for additional forensic services that would cost the estate a minimum of $1,850.00 in setup costs and $18,000.00 per month to host data for Defendant.

The Trustee opposes Defendant's *Ex Parte* Motion on two grounds: (1) that Defendant has not demonstrated that it cannot complete discovery in the two-and-a-half months remaining before the discovery cutoff and (2) that Defendant has not shown diligence.

First, Trustee asserts that Defendant has not identified any issue that will require additional time for discovery. Trustee asserts that Defendant has neglected to depose parties despite issuing subpoenas to seventeen (17) third parties. Trustee states that Defendant's claim for additional time because of an expert

witness who requires five (5) months to prepare an opinion as to whether Debtor was insolvent during the preference period is insufficient and unexplained. Defendant has not described what documents are needed for the expert witness or why those documents are believed to be on Debtor's server. Trustee asserts that the information needed to verify Debtor's insolvency has been available to Defendant since before the current adversary proceeding began and is in fact available still.

Second, Trustee asserts that Defendant has not been diligent in complying with the scheduling order even though it did participate in one deposition and issued subpoenas. Trustee states that based upon Defendant expert witness's declaration, over nine (9) months passed before Defendant sought the opinion of the expert witness, and there is no other evidence of Defendant's efforts to conduct a solvency analysis before or after that time. Additionally, the Trustee notes that Defendant does not seem to have employed an outside consultant to retrieve information from Debtor's server after Defendant's own information technology administrator complained of not being able to navigate Debtor's server so as to identify what files would be helpful for Defendant's case.

REVIEW OF DEFENDANT'S MOTION TO COMPEL

The Defendant has stated that it is "preparing" a motion to compel the production of records. This Adversary Proceeding has been pending since July 13, 2015 and the court has already extended discovery in this Adversary Proceeding. As of the court's September 5, 2016 review of the Docket for this Adversary Proceeding, no motion to compel has been filed by Defendant.

DISCUSSION

At the hearing, Defendant clarified for the court the scope of the documents and information, stating **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**.

Counsel for the Plaintiff-Trustee explained, xxxxxxxxxxxxxxxxxxxxxxxxx.

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 *Ex Parte* Motion to Extend Deadlines and Motion to Continue Pre-Trial Conference filed by Defendant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **xxxxxxxxxxxxxx**.

6. **13-91315-E-7** **APPLEGATE JOHNSTON, INC.** **MOTION FOR LEAVE TO FILE SECOND AMENDED ANSWER TO PLAINTIFF'S COMPLAINT**
15-9048
DNA-1
MCGRANAHAN V. WPCS INTERNATIONAL
8-4-16 [24]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney on August 4, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Leave to File Second Amended Answer to Plaintiff's Complaint 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 Leave to File Second Amended Answer to Plaintiff's Complaint is denied.

WPCS International, Defendant, filed a Motion for Leave to File Second Amended Answer to Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 15(a)(1) on August 4, 2016. Defendant asserts that the purpose of the Second Amended Answer is to conform the anticipated proof and expected defenses. No trial date has been set on the matter; Pre-Trial Conference is set for December 1, 2016. (Defendant does not address that the discovery cut off, which includes the hearing of all discovery motion, was August 31, 2016, a date which has already past. The scheduling for discovery in this Adversary Proceeding was set by an order of the court, after the status conference in which the parties participated, filed February 5, 2016).

Review of Motion

The "Motion" filed by Defendant is nothing more than a notice of hearing. It fails to state with particularity the grounds upon which the requested relief is based. Fed. R. Civ. P. 7(c) and Fed. R. Bankr. P. 7007. Rather than stating the grounds, Defendant instructs the court to canvas the following in order to assemble for Defendant the grounds which the court thinks best support the requested relief:

A. The Notice of Motion,
B. The Memorandum of Points and Authorities,
C. The Declaration of Douglas N. Akay,
D. The Proposed Second Amended Answer,
E. All of the Files in this Action,
F. All of the Records in this Action, and
G. Whatever else Defendant chooses to present to the court at the hearing.

This fails to comply with Federal Rule of Civil Procedure 7(c), Federal Rule of Bankruptcy Procedure 7007, Local Bankruptcy Rule 9004-1, and the Revised Guidelines for the Preparation of Documents in this court. The motion is a separate pleading from the points and authorities, which is separate from each declaration, which is separate from the exhibits (which exhibits may be filed as one documents). The grounds in the motion and evidence presented in the declarations and exhibits form the basis for the relief, not whatever other unidentified files, records, and anything else that is presented at the hearing.

Points and Authorities

Not surprisingly, buried between the citations, quotations, arguments, speculation, and conjecture in the Points and Authorities (Dckt. 25) may be the grounds upon which the requested relief is based. Defendant asserts that Plaintiff will not be prejudiced by the filing of a Second Amended Answer because Plaintiff has had a copy of the Proposed Second Amended Answer since July 20, 2016, and has promulgated discovery regarding it. Further, that the trial setting conference in this Adversary Proceeding is not until December 1, 2016 (approximately 90 days from the hearing date on the present motion).

Defendant states three grounds upon which it requests the court to grant the Motion for Leave: (1) federal policy favors granting leave to amend; (2) the Motion was sought timely and has not been brought in bad faith or with a dilatory motive; (3) Defendant's review of the anticipated evidence at trial and its affirmative defenses to Plaintiff's Complaint necessitates filing a Second Amended Answer.

Defendant fails to state in the Motion what amendments to the Answer are proposed. Defendant does direct the court to review the proposed amended answer (redline version) which is provided as an exhibit. The proposed amended answer is tacked onto the Declaration of Douglas Akay (rather than filed as part of the separate exhibit document as required by L.B.R. 9004-1 and the Revised Guidelines for the Preparation of Documents). Dckt. 26.

First Proposed Amendment:

Defendant proposes amending its response to the allegations in Paragraph 8 of the Complaint as follows:

> "8. Defendant admits receiving $78,091.94, but specifically denies that Debtor made any transfers to Defendant that "constituted transfer of Debtor's property." Specifically, any and all alleged transfers made by Debtor to Defendant were from funds provided by a third party for the explicit and express purpose of paying Defendant so that Defendant would release a lien on said third party's property. In addition, any and all transfers were made in reference to Defendant's unavoidable statutory lien rights and were made in a contemporaneous exchange for new value."

The allegations in Paragraph 8 of the Complaint are that within 90 days of the filing of the bankruptcy case the Debtor made transfers to Defendant. Dckt. 1. The allegation make reference to Exhibit A to the Complaint.

The proposed amendment does not appear to admit or deny the allegations in Paragraph 8, but make reference to what may be affirmative defenses, for which Defendant has the burden of proof, to the claim that there is a recoverable preference.

Second Proposed Amendment:

The second proposed amendment is to paragraph 20 and appears to be to correct a typographic error.

Third Proposed Amendment:

Defendant proposes to renumber the affirmative defense of payment in the ordinary course of business as paragraph 22, and state the following as an affirmative defense in paragraph 21 of the proposed amended answer:

> "21. The aforesaid payments are not avoidable as the payments were made in the ordinary course of business under 11 a contemporaneous exchange for new value under 11 U.S.C. §547(c)(21)."

Fourth Proposed Amendment:

> Defendant proposes a new paragraph 23 to assert a new value affirmative defense as follows:
>
> "23. The aforesaid payments are not avoidable as the payments were for the benefit of a creditor, to the extent that, after such payments, Defendant gave new value to or for the benefit of the Debtor under 11 U.S.C. § 547(c)(4)."

Fifth Proposed Amendment:

Defendant inserts a new paragraph 28 to assert in the proposed amendment answer another affirmative defense based on an asserted statutory lien right as follows:

"28. Defendant alleges that Debtor may not avoid any funds transferred which are payments were made to Defendant who had unavoidable statutory lien rights pursuant to 11 U.S.C. §547(c)(6)."

PLAINTIFF'S OPPOSITION

Michael McGranahan, Chapter 7 Trustee and Plaintiff, filed opposition on August 23, 2016. Dckt. 28. Plaintiff asserts that Defendant has not been diligent in prosecuting the action, constituting lack of good faith. Plaintiff points to Defendant seeking to file a second amended answer that adds an affirmative defense less than one month before the discovery cutoff date. Plaintiff also opposes the answer on the ground that it is defective because it asks for a jury trial and attorney's fees and costs in a preference action. Plaintiff also takes issue with the form of the proposed answer, stating that it does not follow the court's document guidelines.

If the court grants the Motion, Plaintiff has requested that the court continue the pre-trial conference to January 6, 2017, and extend the discovery cutoff date and deadlines contained in the scheduling order.

DEFENDANT'S REPLY

Defendant filed a Reply to Plaintiff's Opposition on August 31, 2016. Dckt. 30. Defendant states that Plaintiff has failed to demonstrate undue prejudice, bad faith, or dilatory motive on Plaintiff's part. Defendant reasserts that Plaintiff received a copy of the Proposed Second Amended Answer and has completed discovery regarding it already.

Defendant responds to Plaintiff's complaint about a request for a jury trial by stating that the court has determined already that the adversary proceeding is a core proceeding, and the parties agreed to the same. Finally, Defendant states that it followed the court's guidelines for preparing documents.

DISCUSSION

Federal Rule of Civil Procedure 15(a)(2) states that "a party may amend its pleading only with the opposing party's written consent or the court's leave" and directs the court to "freely give leave when justice so requires." Leave to amend pleadings is freely given unless the opposing party makes a showing of undue prejudice, bad faith, or dilatory motive on the part of the moving party; *Sonoma County Ass'n of Retired Employees v. Sonoma County*, 708 F.3d 1109 (9th Cir. 2013).

The Ninth Circuit noted that amendment was proper when there was a change in controlling precedents during the litigation. *Sonoma County Ass'n of Retired Employees v. Sonoma County,* 708 at 1117. That panel considered the various factors stated by the Supreme Court in *Foman*, which are as follows:

> "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure

> deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be "freely given." Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules."

Foman v. Davis, 371 U.S. 178, 182 (1962).

Moore's Federal Practice provides insight as to how this 1962 cornerstone of federal pleading practice is to be applied:

> "In determining whether justice requires granting leave to amend, a court should balance the factors set forth by the Supreme Court in *Foman v. Davis*, especially **prejudice to the non-moving party (see [2], below), against any harm to the movant if leave is not granted**. Prejudice to the moving party if leave is denied should be considered, even if there is substantial reason to deny leave based on the other factors.
>
> A court should also consider judicial economy and its ability to manage the case. In determining the impact of granting leave on judicial economy, **a court should consider how the amendment would affect the use of judicial resources and the impact on the judicial system.** The court should also temper the favoring freely granting leave to amend with consideration of the ability of the district court to manage the case adequately if amendment is allowed. **Another factor occasionally considered by a court is whether a party previously amended or had the opportunity to amend the pleading**."

Moore's Federal Practice, Civil § 15.15[1] (emphasis added).

> "2] Court Will Deny Leave If Amendment Will Result in Prejudice
>
> One of the key factors considered by a court in ruling on a motion for leave to amend is whether permitting the amendment would result in undue prejudice to the non-moving party. Prejudice may result from delay by the movant in requesting leave to amend, but the passage of time alone is usually not enough to deny leave to amend; in most cases, a court will deny leave to amend only if the non-moving party is in fact prejudiced by the delay. **Prejudice is especially likely to exist if the amendment involves new theories of recovery or would require additional discovery.** Whether a defendant would be prejudiced by a "new" theory of recovery does not depend on whether the earlier pleading formally pleaded the theory, but on whether the earlier pleading put defendant on sufficient notice of the potential claim. **If delay is unduly excessive, however, the court may deny leave based on that factor alone**.

> **If the delay is particularly egregious, some decisions shift the burden to the moving party to show that its delay was due to oversight, inadvertence, or excusable neglect before the court will allow the amendment.** These decisions do not explicitly explain the initial allocation of a burden of production in amendment cases. Presumably, the liberal ethos of amendment means that the party opposing amendment bears a burden of production to come forward with reasons or evidence to deny leave to amend. These decisions would then shift the burden to the movant to come forward with reasons justifying an especially lengthy delay in moving to amend.

Moore's Federal Practice, Civil § 15.15[2] (emphasis added).

In the post-*Twombly* era of pleading, a number of district court have held that something more than merely stating the title of an affirmative defense is necessary to state an affirmative defense.

> "The court finds the reasoning of the courts that have applied the heightened pleading standard persuasive. *Iqbal's* extension of the *Twombly* pleading standard beyond claims arising under the Sherman Act was premised on *Twombly's* holding that the purpose of Rule 8 was to give the opposing party notice of the basis for the claim sought. See *Iqbal*, 129 S. Ct. at 1950-51. Rule 8's requirements with respect to pleading defenses in an answer parallels the Rule's requirements for pleading claims in a complaint. Compare (a)(2) 'a short and plain statement of the claim showing that the pleader is entitled to relief', with (b)(1) 'state in short and plain terms its defenses to each claim asserted against it'. Rule 8(b)(2) further provides with respect to 'denials' that they 'must fairly respond to the substance of the allegations' The court can see no reason why the same principles applied to pleading claims should not apply to the pleading of affirmative defenses which are also governed by Rule 8. 'Applying the standard for heightened pleading to affirmative defenses serves a valid purpose in requiring at least some valid factual basis for pleading an affirmative defense and not adding it to the case simply upon some conjecture that it may somehow apply.' *Hayne*, 263 F.R.D. at 650; see also CTF Dev., Inc., 2009 U.S. Dist. LEXIS 99538, 2009 WL 3517617, at *7-8. Applying the same standard will also serve to weed out the boilerplate listing of affirmative defenses which is commonplace in most defendants' pleadings where many of the defenses alleged are irrelevant to the claims asserted."

Barnes v. AT&T Pension Benefit Plan, 718 F. Supp. 2d 1167, 1172 (N.D. Cal. 2010).

Whether the *Barnes* and other court "got it right" in what is required for an affirmative defense when stated in an answer at the start of the case is not at issue, but whether the adding of the stated affirmative defenses (devoid of any inkling of the basis) when discovery has closed does raise issues as to whether such proposed amendment is in good faith or intended to prejudice the Plaintiff-Trustee.

As addressed above, the "Motion" itself provides no explanation as to how or why these fundamental affirmative defenses are showing up in a motion to amend the Answer a second time in this

Adversary Proceeding, thirteen months after the Complaint was filed and 27 days before discovery (including hearing all discovery motions) closes.

From the Points and Authorities, the court culls the following "grounds" stated for why this Motion is being brought in August 2016 and when such affirmative defenses were "discovered:"

A. "On July 20, 2016, Defendant's counsel requested Plaintiff's counsel to stipulate to the filing of the Defendant's Proposed Second Amended Answer, but Plaintiff's counsel refused, thereby necessitating this motion. Akay Decl. ¶5." P&A, p. 2:25-27; Dckt. 25.

B. "In effect, the burden is on the opposing party. The party seeking leave to amend may only establish the reason why amendment is required ("justice" so requires). The burden is then on the party opposing the motion to convince the court that "justice" requires denial- i.e. because of undue delay, bad faith, prejudice, etc. *Shipner v. Eastern Air Lines, Inc.* 868 F2d 401, 406-407 (11th Cir. 1989)." *Id.*, p. 4:3-7.

Points and Authorities, Dckt. 25.

In the Declaration of Douglas Akay, counsel for Defendant provides a little more insight into the motives behind the requested amendment on the eve of discovery closing:

A. "4. The purpose of the Second Amended Answer is to conform to proof expected to be presented at trial, and to assert the affirmative defenses expected to be raised by Defendant." Dec. ¶ 4.

B. "Defendant should not be prejudiced by the Defendant's filing of the Second Amended Answer because none of the new affirmative defenses require any additional discovery other than what Plaintiff is already seeking in its promulgated discovery and in its noticed deposition of Defendant, scheduled for August 29, 2016." *Id.*

C. "Plaintiff promulgated discovery shortly after receiving the Defendant's Proposed Second Amended Answer in the form of Requests for Production of Documents, Special Interrogatories, Requests for Admission. Plaintiff also noticed the deposition of Defendant." Dec. ¶ 5.

Declaration, Dckt. 26.

These grounds, as far as the court can tell, are basically that Defendant did not seek to assert these affirmative defenses until the eve of discovery closing, but intended to try and present the evidence at trial and then amend the pleadings to conform to the proof. Devoid from the Motion, Points and Authorities, and evidence is any allegation or information as to how Defendant discovered these possible defenses and diligently moved to protect its interests. Rather, it appears that Defendant sat on these possible defenses until the last moment, springing them on the Plaintiff-Trustee as discovery was closing.

Defendant provides a vague assurance to the court that the Plaintiff-Trustee has conducted discovery on these matters, so there is no prejudice. The court cannot rely on one-party to make the determination that there is no prejudice on the other party.

What is hanging over the present Motion is the basic nature of these affirmative defenses. A creditor knows when served with a compliant to avoid preferences that the first defense out of the blocks is that the payments were made in the ordinary course of business. That defense was asserted. Coming in right behind them are the "new value given" defense and when a sophisticated creditor has the benefit of the Legislature having given it a statutory lien, that defense as well.

No explanation is give for how the Defendant did not know it had and did not attempt to assert these new affirmative defenses. Rather, it appears that if good grounds exist for such defense, the defense was hidden from the Trustee.

Presumably, if such new affirmative defenses are asserted in good faith, the Defendant has a detailed chart of the new value given and already made the calculations. Defendant offers none of this in the twelfth and one-half hour (discovery having already expired) seeking to assert this affirmative defense. The proposed amendments offer no inkling of there being any good faith basis for asserting these defenses.

While Defendant may assert that it really isn't a burden on a federal court to, in this one case, reset the schedule for the diligent prosecution of this Adversary Proceeding, allow Defendant to state the title of an affirmative defense but not state any grounds from such a defense, re-open discovery, have the Plaintiff-Trustee extend the bankruptcy case, and have the court give special rules consideration to Defendant, such is true if Defendant was the only party to federal court litigation. But to accept this contention that Defendant should be liberally allowed to amend the First Amended Answer at this late date means that every defendant, for any or no reason, can delay indefinitely trial by just shouting a legal principle.

Defendant has engaged in undue delay, offering no explanation for why these fundamental affirmative defenses (Congress went so far as to place them in 11 U.S.C. § 547(c) for defendants) arise at this late date. The court concludes that the requested amendments are made in bad faith, there being no reason for the delay in presenting them. This request smacks of dilatory conduct, seeking to delay a trial on the merits of the Trustee's claim and the affirmative defenses stated in the First Amended Answer.

Allowing the amendment will result in prejudice to the Trustee and creditors of the bankruptcy estate. Defendant yo-yo-ing this case from schedule, off schedule, creating new issues and new discovery after discovery has closed, and causing otherwise unnecessary cost and expense is prejudice to the Plaintiff-Trustee, and ultimately the creditors in the bankruptcy case. This also causes prejudice to the federal judicial process, creating a "rule" that no discovery and pretrial schedules are effective, as any party, at any time after discovery has closed, for no reason amend their pleading at will and force the court to reset discovery and delay the trial.

The Motion is denied.

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

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

The Motion for Leave to File Second Amended Answer to Plaintiff's Complaint filed by Defendant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

7.	**16-90420-E-7**	**MAY MILLER**	**MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.**
	BSH-1	**Brian S. Haddix**	**8-9-16 [15]**

Final Ruling: No appearance at the September 8, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Wells Fargo Bank, N.A. on August 9, 2016. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Wells Fargo Bank, N.A. ("Creditor") against property of May Lee Miller ("Debtor") commonly known as 505 Ribier Avenue, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,228.04. An abstract of judgment was recorded with Stanislaus County on December 2, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $233,000.00 as of the date of the petition. The unavoidable consensual liens that total $199,561.13 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Civil Procedure Code § 704.730 in the amount of $100,000.00 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 subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Wells Fargo Bank, N.A., California Superior Court for Stanislaus County Case No. 676633, recorded on December 2, 2013, Document No. 2013-0099664-00 with the Stanislaus County Recorder, against the real property commonly known as 505 Ribier Avenue, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

8. **16-90420-E-7** **MAY MILLER** **MOTION TO AVOID LIEN OF**
BSH-2 **Brian S. Haddix** **DISCOVER BANK**
8-11-16 [21]

Final Ruling: No appearance at the September 8, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Discover Bank on August 9, 2016. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of May Lee Miller ("Debtor") commonly known as 505 Ribier Avenue, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $11,679.33. An abstract of judgment was recorded with Stanislaus County on November 20, 2014, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $233,000.00 as of the date of the petition. The unavoidable consensual liens total $199,561.13 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Civil Procedure Code § 704.730 in the amount of $100,000.00 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 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 Discover Bank, California Superior Court for Stanislaus County Case No. 2007007, recorded on November 20, 2014, Document No. 2014-0077038-00 with the Stanislaus County Recorder, against the real property commonly known as 505 Ribier Avenue, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

9. **14-91231-E-7** **MALUK/RANJIT DHAMI** **MOTION TO EMPLOY RYAN, CHRISTIE, QUINN & HORN AS ACCOUNTANT(S) AND/OR MOTION FOR COMPENSATION FOR RYAN, CHRISTIE, QUINN & HORN, ACCOUNTANT(S)**
HSM-5 **Nelson F. Gomez** **8-18-16 [81]**

Tentative Ruling: The Motion to Employ and 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, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Employ and 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 to Employ is granted, and the Motion for Allowance of Professional Fees is granted.

Chapter 7 Trustee, Gary Farrar, seeks to employ Accountant Ryan, Christie, Quinn & Horn, pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code §§ 327(a), 328, and 330. Trustee seeks the employment of Accountant to assist the Trustee in tax matters affecting the estate.

The Trustee argues that Accountant's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present tax matters affecting the estate.

Paul E. Quinn, an associate of Ryan, Christie, Quinn & Horn, testifies that he has been employed by the Trustee in unrelated bankruptcy cases. Dckt. 83. Paul E. Quinn 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.

Paul E. Quinn and the Trustee each state that Ryan, Christie, Quinn & Horn is to receive a flat fee of $1,500.00 for accounting services rendered in aid of the Trustee. Dckt. 83 and 84. Trustee requests that the court authorize the Trustee to pay $1,500.00 to Ryan, Christie, Quinn & Horn as first and final compensation for services rendered.

DISCUSSION

Motion to Employ

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 Accountant, considering the declaration demonstrating that Accountant 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 Ryan, Christie, Quinn & Horn as accountant for the Chapter 7 estate on the terms and conditions set forth in the Fixed Fee Employment Agreement filed as Exhibit A, Dckt. 86.

Motion for Allowance of Professional Fees

First, the court notes that approval of a fixed fee is subject to the provisions of 11 U.S.C. § 328 and to review of the fee at the time of final allowance of fees for the professional. 11 U.S.C. § 328(c) states that

> Except as provided in section 327(c), 327(e), or 1107(b) of this title, the court may deny allowance of compensation for services and reimbursement of expenses of a professional person employed under section 327 or 1103 of this title if, at any time during such professional person's employment under section 327 or 1103 of this title,

> such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed.

The court recognizes that Paul E. Quinn has declared that 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 at this time in the case. Dckt. 83.

Set Dollar Amount Fee Arrangement

The Motion also requests that the court approve the payment of a set fee of $1,500.00 to be paid Accountant for the following services:

A. 2014 Return For Each Debtor
B. 2015 Return For Each Debtor
C. 2016 Return For Each Debtor

Motion, ¶ 6. This bankruptcy case was filed on September 4, 2014, so presumably the Accountant for the Trustee will prepare and file for the Trustee the bankruptcy estate's returns for 2014, 2015, and 2016, for each of the two estates in this joint case.

The $1,500.00 fee, including costs, is reasonable compensation, on the evidence presented, for doing three years of returns for the estate with these two Debtors. The award of such fees remains subject to 11 U.S.C. § 328.

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 Employ and Motion for Allowance of Professional Fees 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 Ryan, Christie, Quinn & Horn as accountant for the Chapter 7 Trustee on the terms and conditions as set forth in the Fixed Fee Employment Agreement filed as Exhibit A, Dckt. 86.
>
> **IT IS FURTHER ORDERED** that compensation of up to $1,500.00 total, inclusive of costs and expenses, is allowed for the Accountant pursuant to 11 U.S.C. § 330, which is subject to the provisions of 11 U.S.C. § 328, and the Chapter 7

Trustee is authorized to pay such administrative expense as permitted under the distribution hierarchy under Chapter 7 of the Bankruptcy Code.

10.	**14-91231-E-7** **HSM-6**	**MALUK/RANJIT DHAMI** **Nelson F. Gomez**	**MOTION FOR COMPENSATION FOR PMZ REAL ESTATE, CONSULTANT(S)** **8-18-16 [87]**

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 Debtors, Debtors' Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2016. By the court's calculation, 21 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 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 for Allowance of Professional Fees is granted.

Bob Brazeal, the Real Estate Broker ("Applicant") for Gary Farrar the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period October 25, 2014, through September 8, 2016. The order of the court approving employment of Applicant was entered on November 24, 2014 (Dckt. 42). Applicant requests fees in the amount of $192.50.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney 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 valuing the estate's interest in a property at 1986 Bridget Marie Drive, Modesto, California, and related title issues. The court finds that the services were beneficial to the Client and bankruptcy estate and are reasonable.

FEES REQUESTED

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

Efforts to Assess and Recover Property of the Estate: Applicant spent 2.25 hours in this category. Applicant researched public records to establish possible equity for the Property, inspected the property, and reviewed comparable sales and updated projected equity.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Bob Brazeal	2.25 hrs.	$110.00	$247.50
Total Fees For Period of Application			$247.50

Only $192.50 is requested to be allowed for fees.

FEES ALLOWED

Applicant seeks to be paid a single sum of $192.50 for its fees incurred for the Client. First and Final Fees in the amount of $192.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $192.50

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Bob Brazeal ("Applicant"), Real Estate Broker having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Bob Brazeal is allowed the following fees and expenses as a professional of the Estate:
>
> Bob Brazeal, Professional Employed by Trustee
>
> Fees in the amount of $192.50
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

11. **14-91231-E-7** **MALUK/RANJIT DHAMI** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK & MAROIS, LLP FOR AARON A. AVERY, TRUSTEES ATTORNEY(S)**
HSM-7 **Nelson F. Gomez** **8-18-16 [93]**

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 Debtors, Debtors' Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2016. By the court's calculation, 21 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 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 for Allowance of Professional Fees is granted.

Hefner, Stark & Marois, LLP, the Attorney ("Applicant") for Gary Farrar the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period November 13, 2014, through September 8, 2016. The order of the court approving employment of Applicant was entered on November 24, 2014 (Dckt. 41). Applicant requests fees in the amount of $34,385.00 and costs in the amount of $388.50.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work

in a bankruptcy case does not give that [attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preventing the dismissal of the case, determining the estate's ownership of property, researching the insider disputed Deed of Trust, drafting and filing a complaint to avoid the disputed Deed of Trust, leading to a $65,000.00 settlement recovery on the estate's interests at issue in the adversary proceeding, as well as advising and representing the Trustee in connection with general and miscellaneous administrative legal matters. The court finds the services were beneficial to the Client and bankruptcy estate and are reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Investigation: Applicant spent 9.6 hours in this category. Applicant assisted Client with reviewing notes, title report, 341 audio, schedules, attorney creditor claim, the disputed deed of trust and note; telephone conferences with the Trustee; and researching regarding assets, proof of claim referencing abstract of judgment in connection with Stanislaus County real property, and issues in connection with avoidance and automatic preservation of avoidable liens on real property.

Asset Disposition: Applicant spent 23.6 hours in this category. Applicant communicated with Trustee and Debtor's attorney regarding legal issues and possible settlement, engaged in various settlement negotiations, drafted motion to approve compromise and declarations, and analyzed issues with overbidding aspect of compromise motion.

Litigation: Applicant spent 52.2 hours in this category. Applicant researched legal issues in connection with action to avoid Deed of Trust on residence and avoidable transfers, finalized and sent settlement proposal, drafted and revised discovery plan and stays report, and finalized stipulation and order for dismissal of adversary proceeding.

General Case Administration: Applicant spent 27.3 hours in this category. Applicant reviewed the docket, communicated with the Trustee and Debtor's counsel, drafted Motion to Extend Discharge Deadline, and researched legal issues regarding Debtor's Motion to Dismiss and avoidance of the Deed of Trust.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
A. Avery	44.1	$300.00	$13,230.00
A. Avery	54.5	$310.00	$16,895.00
H. Nevins	6.9	$400.00	$2,760.00
H. Nevins.	2.1	$390.00	$819.00
T. Griffin.	.9	$325.00	$292.50
Total Fees For Period of Application			$33,996.50

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $388.50 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Adversary Proceeding Filing Fee		$350.00
Stanislaus County Recording Fee		$26.00
Fee to Obtain a Certified Copy of Debtor's Bankruptcy Petition		$12.50
Total Costs Requested in Application		$388.50

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $33,996.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs and Expenses

The First and Final Costs in the amount of $388.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$33,996.50
Costs and Expenses	$388.50

pursuant to this Application for First and Final Fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Hefner, Stark & Marois, LLP ("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 Hefner, Stark & Marois, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Hefner, Stark & Marois, LLP, Professional Employed by Trustee
>
> Fees in the amount of $33,996.50
> Expenses in the amount of $388.50,
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

12. **14-91231-E-7** **MALUK/RANJIT DHAMI** **MOTION FOR ADMINISTRATIVE EXPENSES**
HSM-8 **Nelson F. Gomez** **8-18-16 [99]**

Tentative Ruling: The Motion for Administrative Expenses 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 Debtors, Debtor' Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Administrative Expenses 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 for Administrative Expenses is granted.

Gary Farrar, the Chapter 7 Trustee, filed the instant Motion for Allowance and Authorization to Pay Administrative Income Tax Claims on August 18, 2016. The Trustee requests authorization to pay $616.00 to the Internal Revenue Service for the 2016 tax return year pursuant to 11 U.S.C. § 503(b)(1)(B) and authorization to file the tax returns with the payments pursuant to 11 U.S.C. § 505(b)(2).

DISCUSSION

11 U.S.C. § 503(b)(1)(B)(I) states

> After notice and a hearing, there shall be allowed, administrative expenses, other than claims allowed under section 502(f) of this title, including any tax incurred by the estate whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title.

11 U.S.C. § 505(b)(2) allows a trustee to submit a tax return and a request for a determination of any unpaid liability.

The court's decision is to grant the Motion and authorize the Trustee to pay the administrative income tax claims.

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 Administrative Expenses filed by 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 is granted, and the Trustee is authorized to pay the administrative income tax claims for 2016 in the amount of $616.00 to the Internal Revenue Service.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to file Debtors' tax returns with the payments to the Internal Revenue Service for a determination of any unpaid liability.

13. **15-90358-E-11** **LAWRENCE/JUDITH SOUZA** **CONTINUED MOTION TO USE CASH COLLATERAL**
MHK-1 **Anthony Asebedo**
CONTINUED: 5/12/16 **4-30-15 [32]**

Tentative Ruling: L.B.R. 9014-1(f)(2) Final Hearing. 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:

Local Rule 9014-1(f)(2) Motion – Final Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 30, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Use Cash Collateral 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 Defaults of the non-responding parties are entered by the court.

The Motion to Use Cash Collateral is granted.

Lawrence and Judith Souza, the Debtor-in-Possession, filed the instant Motion to Use Cash Collateral on April 30, 2015. Dckt. 32.

The Debtors-in-Possession holds fee title to the following properties:

PROPERTY LOCATION	TYPE OF RENTAL
121 W. Syracuse Ave.	Single Family Residential
200 W. Syracuse Ave./842 N. Golden State Blvd.	Single Family Residential
201 W. Syracuse Ave.	Single Family Residential
223 W. Syracuse Ave.	Single Family Residential
235 W. Syracuse Ave.	Single Family Residential
87 W. Canal Drive	Single Family Residential
97 W. Canal Drive	Single Family Residential

830 N. Golden State Blvd.	Commercial

The Debtors-in-Possession states that each of the properties are encumbered. The Curtis Family Trust Dated May 27, 1994 ("Creditor") holds three different deeds of trust that secure three separate obligations, and two of those deeds encumber more than one of the properties. The Internal Revenue Service has also recorded two Notices of Tax Lien on all the properties. The following chart describes the encumbrances:

RENTAL	**CREDITOR**	**RECORDATION DATE**	**ASSIGNMENT OF RENTS?**
121 Syracuse	Maiman Revocable Trust A/Deed of Trust	3/8/11	yes
	Internal Revenue Service	4/26/11; 3/26/12	No
200 Syracuse	Stanislaus County/unpaid property taxes	n/a	No
	Curtis Family Trust/ Deed of Trust	9/21/05	Yes
	Internal Revenue Service	4/26/11; 3/26/12	No
235 Syracuse	Seterus/Deed of Trust	4/25/05	No
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11; 3/26/12	No
830 Golden State	Stanislaus County/ Unpaid Property Taxes	n/a	No
	Curtis Fam. Trust/Deed of Trust	9/30/05	Yes
	Internal Revenue Service/Tax lien	4/26/11;3/26/12	No

87 Canal	Provident Credit Union/Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11;3/26/12	No
97 Canal	Provident Credit Union/ Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax Liens	4/26/11;3/26/12	No

The Debtors-in-Possession have opened a segregated bank account of the purpose of holding all rents and for paying necessary expenses. Only rents from the properties are deposited into this account.

The court has previously authorized the used of cash collateral, and the Debtors-in-Possession Supplemental Request for further use is before the court pursuant to this Motion.

MAY 12, 2016 HEARING

At the hearing, the court authorized the use of cash collateral for the period of June 1, 2016, through September 30, 2016. Dckt. 324. Additionally, the court continued the hearing to September 8, 2016, at 10:30 a.m. for the court to continue authorizing the further use of cash collateral. On or before August 18, 2016, the Debtors in Possession were ordered to file Supplemental Pleadings, in any, in support of authorization for the further use of cash collateral. Opposition to such further use, if any, was ordered to be filed and served on or before September 1, 2016.

FOURTH SUPPLEMENTAL MOTION TO USE CASH COLLATERAL

The Debtors in Possession filed a Fourth Supplemental Motion to Use Cash Collateral on August 15, 2016. Dckt. 385. The Debtors in Possession hold fee title to the following properties:

PROPERTY LOCATION	**TYPE OF RENTAL**
121 W. Syracuse Ave.	Single Family Residential
223 W. Syracuse Ave.	Single Family Residential
235 W. Syracuse Ave.	Single Family Residential

97 W. Canal Drive	Single Family Residential

The following chart describes the encumbrances:

RENTAL	CREDITOR	RECORDATION DATE	ASSIGNMENT OF RENTS?
121 W. Syracuse	Maiman Trust/Deed of Trust	3/8/11	Yes
	Internal Revenue Service/Tax liens	4/26/11; 3/26/12	No
223 W. Syracuse	Seterus/Deed of Trust	4/25/05	No
	Curtis Fam. Trust/Deed of Trust	8/25/10	Yes
235 W. Syracuse	Seterus/Deed of Trust	4/25/05	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11; 3/26/12	No
97 W. Canal	Provident Credit Union/Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11;3/26/12	No
	Internal Revenue Service/Tax liens	4/26/11; 3/26/12	No

The Debtors in Possession state that the use of cash collateral to pay ongoing expenses of the properties will ensure that the properties remain occupied and that there will be continued collection of rent from October 1, 2016 through January 31, 2017. The Debtors in Possession propose that the use of cash collateral be restricted to those expenses described below within a 20% variance for each category of expense and that the cash remaining after the payment of the same be retained by the Debtors in Possession in the rental bank account.

121 W. Syracuse Ave.

	October	**November**	**December**	**January**
Revenue				
Rent	$100.00	$100.00	$100.00	$100.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Management fees	$8.00	$8.00	$8.00	$8.00
Reserve for misc. maintenance exp.	$50.00	$50.00	$50.00	$50.00
Property Taxes	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$42.00	$42.00	$42.00	$42.00

223 W. Syracuse Ave.

	October	**November**	**December**	**January**
Revenue				
Rent	$100.00	$100.00	$100.00	$100.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Management fees	$8.00	$8.00	$8.00	$8.00
Reserve for misc. maintenance exp.	$50.00	$50.00	$50.00	$50.00
Property taxes	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$42.00	$42.00	$42.00	$42.00

235 W. Syracuse Ave.

	October	**November**	**December**	**January**
Revenue				
Rent	$850.00	$850.00	$850.00	$850.00

Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Management fees	$68.00	$68.00	$68.00	$68.00
Reserve for misc. maintenance exp.	$100.00	$100.00	$100.00	$100.00
Property taxes	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$828.00	$828.00	$828.00	$828.00

97 W. Canal Drive

	October	**November**	**December**	**January**
Revenue				
Rent	$1,000.00	$1,000.00	$1,000.00	$1,000.00
Expenses				
Insurance Premium	$418.00	$0.00	$0.00	$0.00
Management fees	$80.00	$80.00	$80.00	$80.00
Reserve for misc. maintenance exp.	$100.00	$100.00	$100.00	$100.00
Property taxes	$0.00	$0.00	$620.00	$0.00
Projected Surplus	$402.00	$820.00	$200.00	$820.00

PROVIDENT CREDIT UNION'S OPPOSITION

Provident Credit Union ("Creditor") filed an opposition on September 1, 2016. Dckt. 401. Creditor states it has no opposition to the Debtors in Possession using the cash collateral for payment of utilities, taxes, management fees, or to set up a reserve for miscellaneous maintenance.

Creditor requests, however, that any creditor, due to its security interest in the cash collateral generated by the 97 Canal property, is given a replacement lien in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of the cash collateral resulted in a reduction of the Creditor's claim.

Creditor also requests that the Debtors in Possession provide a copy of the lease and information regarding the tenants of the 97 Canal property.

Lastly, Creditor requests funds to be paid to it to protect its claim because the 97 Canal property is producing $402.00 in monthly surplus.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a Debtor in Possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a Debtor in Possession, the Debtor in Possession can use, sell, or sell property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless--
>
> > (A) such sale or such lease is consistent with such policy; or
> >
> > (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease--
> >
> > > (I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
> > >
> > > (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Fed. R. Bankr. P. 4001(b) provides the procedures in which a trustee or Debtor in Possession may move the court for authorization to use cash collateral. In relevant part, Fed. R. Bankr. P. 4001(b) states:

> (b)(2) Hearing
>
> The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

Debtors in Possession have shown that the use of cash collateral as proposed is in the best interest of estate and is in the ordinary course of business. The proposed budgets provide for the continued

upkeep of the Debtors in Possession's rental properties to ensure that the properties can continue to attract and retain tenants for the continued income to the estate. The Debtors in Possession have created a separate rental income account in which the Debtors in Possession are depositing the rental income from the properties and the expenses are deducted from that account.

For purposes of this Motion, the use of cash collateral is authorized as to the four properties discussed.

Therefore, the court authorizes the use of cash collateral for the period of October 1, 2016, through January 31, 2017.

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 Authority to Use Cash Collateral 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 Motion is granted and the cash collateral may be used to pay the following expenses, granting the Debtors in Possession a variance of 20% in any individual line item expense, plus the amount in maintenance reserve, as long as the total amount used does not exceed the total amount allowed:

121 W. Syracuse Ave.

	October	**November**	**December**	**January**
Revenue				
Rent	$100.00	$100.00	$100.00	$100.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Management fees	$8.00	$8.00	$8.00	$8.00
Reserve for misc. maintenance exp.	$50.00	$50.00	$50.00	$50.00
Property Taxes	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$42.00	$42.00	$42.00	$42.00

223 W. Syracuse Ave.

	October	**November**	**December**	**January**
Revenue				
Rent	$100.00	$100.00	$100.00	$100.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Management fees	$8.00	$8.00	$8.00	$8.00
Reserve for misc. maintenance exp.	$50.00	$50.00	$50.00	$50.00
Property taxes	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$42.00	$42.00	$42.00	$42.00

235 W. Syracuse Ave.

	October	**November**	**December**	**January**
Revenue				
Rent	$850.00	$850.00	$850.00	$850.00
Expenses				
Insurance Premium	$0.00	$0.00	$0.00	$0.00
Management fees	$68.00	$68.00	$68.00	$68.00
Reserve for misc. maintenance exp.	$100.00	$100.00	$100.00	$100.00
Property taxes	$0.00	$0.00	$0.00	$0.00
Projected Surplus	$828.00	$828.00	$828.00	$828.00

97 W. Canal Drive

	October	**November**	**December**	**January**
Revenue				
Rent	$1,000.00	$1,000.00	$1,000.00	$1,000.00

Expenses				
Insurance Premium	$418.00	$0.00	$0.00	$0.00
Management fees	$80.00	$80.00	$80.00	$80.00
Reserve for misc. maintenance exp.	$100.00	$100.00	$100.00	$100.00
Property taxes	$0.00	$0.00	$620.00	$0.00
Projected Surplus	$402.00	$820.00	$200.00	$820.00

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds of their collateral in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

IT IS FURTHER ORDERED that the hearing is continued to January 26, 2017, at 10:30 a.m. for the court to continue authorizing the further use of cash collateral. On or before January 5, 2017, the Debtors in Possession shall file Supplemental Pleadings, if any, in support of authorization for the further used of cash collateral. Opposition to such further use, if any, shall be filed and served on or before January 19, 2017.

14. **15-90470-E-7** **SUSAN FISCOE** **MOTION TO CONVERT CASE FROM**
DCJ-3 **David C. Johnston** **CHAPTER 7 TO CHAPTER 13**
8-11-16 [107]

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

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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 11, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is denied.

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

Debtor asserts that the case should be converted because she is eligible under 11 U.S.C. § 109(d) and meets all of the requirements of 11 U.S.C. § 706(a), (c), and (d) for conversion. Debtor asserts that she has acted in good faith and has fully disclosed all of her assets.

The Motion states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which the requested relief is based:

A. Debtor commenced this case as one under Chapter 7 on May 15, 2015.

B. The case has not been previously converted.

C. Debtor is eligible as a debtor in a Chapter 13 case, having monthly income from Social Security and part-time employment at Home Depot.

D. Debtor has acted in good faith and fully disclosed all of her assets.

E. Debtor has vacated her home and turned over $5,025.81 in monies of the estate (as ordered by the court).

F. Debtor is not attempting to thwart the administration of the estate by this conversion, but maximize the dividend to be paid creditors.

G. Debtor consents to the Chapter 7 Trustee turning over all of the monies he is now holding, to the Chapter 13 Trustee, and acknowledges that she must pay both the Chapter 13 Trustee fees (which will be approximately 7% of the distributions) and the reasonable Chapter 7 Trustee fees.

Motion, Dckt. 107.

Debtor provides her Declaration in support of the Motion, in which her testimony includes the following:

A. She has performed her duties as a Chapter 7 Debtor.

B. She has paid the Chapter 7 Trustee the $5,925.81 in post-petition payments she received on an annuity which is property of the bankruptcy estate.

C. She has acted in good faith, and has not concealed assets.

D. The court suggested, in denying her motion to convert the case to one under Chapter 11, that converting to Chapter 13 might be a possibility.

Declaration, Dckt. 109.

In her Motion and Declaration, Debtor offers no inkling of what Chapter 13 Plan she would intend to propose that will provide at least as much for creditors as they would receive through this Chapter 7 case.

OPPOSITION OF THE TRUSTEE

Not surprisingly, in light of the prior litigation in this case, the Chapter 7 Trustee has filed an Opposition to this Motion. Dckt. 112. The Trustee argues that he has been fighting with the Debtor for more than a year in his efforts to administer property of the estate. The Trustee points to Debtor's repeated attempts to assert exemptions, all of which were denied, as demonstrating her bad faith. Further, Debtor (who is represented by experienced bankruptcy counsel) failed to comply with the Bankruptcy Code and turnover property of the estate to the Trustee, necessitating a motion and order compelling the Debtor to comply with the Bankruptcy Code. The Trustee reviews the events in detail in his Opposition.

The Trustee argues that now, after having fought more than a year with the Debtor, he is holding $46,000 in cash and is preparing to sell the real property in Florida.

DISCUSSION

Law Relating to Conversion to Chapter 13

A "bankruptcy judge may override a Chapter 7 debtor's right to convert a Chapter 7 case to one under Chapter 13 case based on a finding of bad faith." *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 379 (2007). The authority to convert is left to the discretion of the bankruptcy court. *Id.* at 377. In determining whether the debtor's conversion involved bad faith, "a bankruptcy judge must review the totality of the circumstances." *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994). Under the "totality of the circumstances" test, the court examines whether the debtor misrepresented facts in her petition or plan, unfairly manipulated the Bankruptcy Code, or filed his Chapter 13 petition or plan in an inequitable manner. *Id.*

The Ninth Circuit Court of Appeals has concluded that the principles of Marrama also apply to a debtor attempting to dismiss a Chapter 13 case. *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008). For both conversion to and dismissal of Chapter 13 cases, there is an implied exception for bad-faith conduct or abuse of the bankruptcy process by the debtor.

Denial of Motion

Debtor, for all her protestations, has not demonstrated herself to be acting in good faith with respect to the rights of the bankruptcy estate. While a debtor may claim exemptions, here the Debtor has repeatedly claimed invalid exemptions. The court gave her additional opportunities to come forward with valid exemptions, but none were forth coming. Her conduct has demonstrated that her goal has been to prevent creditors from obtaining the non-exempt property consisting of an annuity and the Florida property.

In denying the prior motion to convert the case to one under Chapter 11, the court reviewed the conduct of the Debtor in detail. Civil Minutes, Dckt. 104. The court incorporates those Minutes into this Ruling by this reference. With respect to Debtor's contention that she has acted in good faith, as the court has already determined in connection with the prior motion:

> "The court does not concur with counsel's arguments that Debtor has been truthful in this case and has acted in good faith. To the contrary, she has failed to

follow orders of the court, diverted assets from the Trustee, and refused to turn over property of the estate to the Trustee. She has demonstrated that she cannot fulfill the fiduciary duties of a Chapter 11 debtor in possession.

The Debtor's lack of good faith is further demonstrated by her attempts to provide legal opinions and analysis in her layperson declaration. She cites to and provides her "legal analysis" of Florida statutes, a fifteen year old 11th Circuit Court of Appeals ruling, and the *Marrama* decision from the United States Supreme Court. A debtor, acting in good faith, has his or her attorney provide the legal arguments and analysis.

Debtor commenced this bankruptcy case on May 14, 2015. On October 6, 2015 the Trustee filed an objection to the claim of exemption in the Pacific Life Insurance Company Annuity. Dckt. 26. The Debtor's response was to file an Amended Schedule C, Dckt. 33, changing the Florida Statute under which she asserted the exemption - contending that this rendered the Trustee's Objection Moot. Response, Dckt. 34. The court sustained the objection of the Trustee, and allowing the Debtor to file the Amended Schedule C, setting a deadline for the Trustee to file an objection, if any, to the Amended Schedule C. Order, Dckt. 38.

On November 19, 2015, the Trustee filed an objection to the Amended Exemptions, which objected to the use of Florida exemptions by this Debtor. Dckt. 39. After considering the Debtor's arguments and testimony asserting the right to use Florida exemptions, the court sustained the objection. Order, filed January 19, 2016; Dckt. 56. The court also expressly granted the Debtor leave to file, on or before February 16, 2016, a Second Amended Schedule C. Id.

On February 15, 2016, Debtor filed the Third Amended Schedule C. Dckt. 59. The Trustee filed his objection to the exemption for the Annuity and her increased homestead exemption from $75,000.00 to $150,000.00. Dckt. 61. The court sustained the objection, again disallowing the exemption claimed in the Annuity and all homestead amounts in excess of $75,000.00.

Though a final order disallowing the asserted exemptions, on May 19, 2016 (more than a month after entry of the order disallowing the exemptions), the Chapter 7 Trustee filed a motion for an order compelling the Debtor to turnover to the Trustee property of the bankruptcy estate. Dckt. 75. The Trustee sought turnover of the 421 S.W. Fairway Landing Property, in which Debtor holds only a $75,000.00 exemption and Annuity proceeds received by the Debtor post-petition and not delivered to the Trustee.

Rather then fulfilling her obligation to deliver property of the bankruptcy estate to the Trustee, Debtor continued to withhold that property from the Trustee. She proceeded with filing an opposition on June 3, 2016, asserting that notwithstanding the court having disallowed the homestead exemption for all amounts in excess of $75,000.00 (Order, filed April 13, 2016; Dckt. 68).

> Notwithstanding there being a final order disallowing the homestead exemption for all amount in excess of $175,000.00, Debtor demanded that she be allowed a $175,000.00 homestead exemption. Additionally, notwithstanding the court having filed its order on April 13, 2016, disallowing an exemption in the Annuity, Debtor asserted that the Annuity monies she received post-petition were exempt. Opposition, Dckt. 84.
>
> The court addresses the fallacy of Debtor's arguments in the findings of facts and conclusions of law in granting the Motion to Compel Turnover Property of the Estate to the Trustee. Civil Minutes, Dckt. 87. As the court referenced, and Debtor now attempts to trumpet, she is represented by experienced counsel. Debtor, nor counsel, can contend that asserting baseless claims of exemption were mere error or mistake. Rather, they demonstrate that this Debtor is not proceeding in good faith, cannot be trusted to fulfill the duties of a Chapter 11 debtor in possession, and that an independent fiduciary in the form of a Chapter 7 Trustee is necessary.
>
> While Debtor, and her experienced counsel, now tries to hide behind a contention that, "well, when you really ordered me to turn over a couple dollars to the Trustee I did, so now order the Trustee to turn it back over to me and don't make me turn over the Florida real property by making me a debtor in possession," she demonstrates her bad faith."

Civil Minutes, Dckt. 104.

As with the prior motion, Debtor once again only makes vague reference to providing for paying creditors. No explanation is provided as to how she will proceed with a confirmable plan in a Chapter 13 case. If the Debtor were proceeding in good faith, the court would expect to see a concrete proposal of what the plan would be, how it would be funded, and a draft of the proposed plan filed as an exhibit. From the Debtor nothing, with the silence deafening.

While Debtor has filed multiple amended Schedules C, no supplemental Schedules I and J have been filed, and Debtor has not provided any information how she will fund any Chapter 13 Plan. The only financial information provided to the court is on Schedule I, filed on May 28, 2015. For Income, Debtor states under penalty of perjury the following:

A.	Home Depot Gross Income	$1,205.00
B.	Tax/SS Deductions	($ 203.00)
C.	Insurance Deduction	($ 25.00)
D.	Social Security Benefit	$1,766.00
E.	Pension	$ 593.00
F.	Monthly Take-Home Income	$3,282.00

Dckt. 13 at 20-21. This includes the non-exempt annuity which is property of the bankruptcy estate and for which the Trustee has received a lump-sum distribution. That $593.00 in "income" no longer exists.

Debtor states that her monthly expenses are ($2,495.00). This leaves $194.00 in Monthly Net Income, after deducting the $593.00 non-exempt annuity monies which are already available for payment to creditors.

Debtor states under penalty of perjury that the Florida Property has a value of $150,000.00. Schedule A, Dckt. 13 at 3. While the Trustee's real estate broker testifies that he has listed the Florida Property on the MLS and has sixteen showings, he does not state the listing price. He does testify that, based on his experience and the interest shown in the Property, he anticipates having an offer in hand by November 30, 2016.

For the Florida Property, the court has allowed Debtor a $75,000.00 homestead exemption in the Florida Property and denying any exemption in the annuity. Order, Dckt. 68. Notwithstanding that final order, on June 3, 2016, Debtor filed another amended Schedule C attempting to assert a $175,000 homestead exemption in the Florida Property and a $75,000 exemption in the annuity. Dckt. 83. On June 20, 2016, Debtor filed a "Withdrawal" of the further amended Schedule C. Dckt. 90. Quite possibly the "Withdrawal" was prompted by the court's ruling on the Motion to Compel the turnover property of the estate, including the Florida Property and the annuity. Civil Minutes for June 16, 2016 hearing, Dckt. 87.

Assuming a value of $150,000 and allowing for 8% for costs of sale, the net recovery for the bankruptcy estate would be:

A. Sales Price.....$150,000
B. Costs of Sale, Commission (8% of sales price).....($ 12,000)
C. Debtor's Homestead Exemption.....($ 75,000)

D. Net Recovery for Bankruptcy Estate.....$ 63,000

Clearly, Debtor cannot fund $63,000 of monies from her monthly income (including Social Security) to give creditors the present value of $63,000 over the life of a Chapter 13 Plan.

Claims Filed In The Chapter 7 Case

The Claims filed in the Chapter 7 case consist of the following:

Creditor	Type of Claim	Amount of Claim	
California Employment Development Department	Priority		($4,510)
	General Unsecured	($1,546)	
Wells Fargo Bank, N.A.	General Unsecured	($114,037)	
Taylor Made Gold Co., Inc	General Unsecured	($1,625)	
Callaway Golf	General Unsecured	($4,865)	

Wells Fargo Bank, N.A. (Card Services, Acct. -3019)	General Unsecured	($4,696)	
Wells Fargo Bank, N.A. (Card Services, Acct. -3510)	General Unsecured	($12,919)	
PNC Equipment Finance, LLC	General Unsecured	($233,358)	
		_____	_____
	Total Priority		($4,510)
	Total Unsecured	($373,046)	

In connection with the prior motion to convert, Debtor mentioned that she would intend to seek a reverse mortgage to fund her plan. No specific, or even general, information is provided in connection with the current motion to convert the case to one under Chapter 13. Debtor first began attempting to try and convert this case to one under anything other than a Chapter 7 with a motion on June 27, 2016. If the Debtor were proceeding in good faith at that time, she would already have a working knowledge of how she could fund the plan and be in the process of lining up a reverse mortgage.

Now, more than two months later, nothing about how the plan will be funded. It continues to be clear that Debtor's only intention in converting the case is to get the Chapter 7 Trustee, and creditors, out of her life. She is convinced that the Florida Property is hers, and she will not have it sold. While stating that the non-exempt annuity monies may be turned over to the Chapter 13 Trustee, she is careful not to say that it is to be paid to creditors.

Debtor offers no explanation as to how she can fund a Chapter 13 Plan that, after paying the Chapter 7 Trustee fees and an additional 7% to the Chapter 13 Trustee (estimated to be 7% x $105,000 of non-exempt monies = $7,350), she will better provide for Creditor then if the Trustee proceeds with the liquidation (or the Debtor comes up with a reverse mortgage to fund the liquidation value of the Florida Property) value for creditors in the next six months.

If the Debtor is proceeding in good faith, then she can do so in the Chapter 7 case. She has nothing to offer income-wise to fund a plan that is of benefit to the estate or creditors. In fact, converting the case works to Debtor's economic disadvantage – if she intends to proceed in good faith and promptly obtain the liquidation value for creditors. She has to pay additional attorneys' fees for her counsel. She has to pay the Chapter 13 Trustee's fees. She has to pay the Chapter 7 Trustee's fees. By all objective economic factors, the Debtor is better off in the Chapter 7 case.

By obtaining the reverse mortgage, Debtor can keep the Florida Property. If she cannot qualify for a reverse mortgage, then she would, like the Chapter 7 Trustee, have to promptly liquidate the property.

The Debtor has not sought to convert this case to one under Chapter 13 in good faith. The Debtor continues to act in bad faith, fails to give any showing how she can prosecute any Chapter 13 Plan, and by all objective factors presented to the court, conversion to Chapter 13 is economically

disadvantageous to the Debtor. The court concludes that the sought after conversion is just another in the Debtor's ongoing strategy of delay, hold, take, and deprive the bankruptcy estate of assets.

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert filed by Susan J. Fiscoe having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is denied.

15. **13-90382-E-7** **MICHAEL CARSON**
13-9016
RDR-5
TAIPE V. CARSON

MOTION TO RECALL WRIT OF EXECUTION, MOTION TO QUASH, MOTION TO VACATE AND/OR MOTION/APPLICATION FOR COMPENSATION FOR ROBERT D. RODRIGUEZ, DEFENDANT'S ATTORNEY
7-25-16 [136]

No Tentative Ruling: The Motion to Recall Writ of Execution, Motion to Quash Notice of Levy, Motion to Vacate Wage Garnishment, and Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 25, 2016. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

The Motion to Recall Writ of Execution, Motion to Quash Notice of Levy, Motion to Vacate Wage Garnishment, and Motion for Allowance of Professional Fees is --------.

Michael Carson, Defendant, filed the instant Motion on July 25, 2016. He requests that the court recall a writ of execution, quash the notice of levy/vacate wage garnishment, grant his request for attorney's fees and costs, and award him sanctions.

Defendant and Graciela Taipe ("Plaintiff") obtained a status judgment for dissolution of marriage on September 14, 2011. Plaintiff was awarded attorney's fees against Defendant on January 24, 2013; July 31, 2014; December 15, 2014; and August 15, 2015, totaling $22,300.00. In the present action, Plaintiff was awarded $10,562.00 on May 7, 2014.

Attorney Paula Grohs obtained a writ of execution in the present matter on February 26, 2016. She sought a wage garnishment on April 24, 2016, and served the U.S. Marshall's Office. Defendant served a claim of exemptions on May 3, 2016. Attorney Grohs filed an objection to the claim of exemptions on May 11, 2016, and the court denied the objection. On June 24, 2016, Attorney Grohs filed an application to reopen the matter, and the court granted it.

Defendant asserts that he has paid the state court and attorney's fees in this matter fully and has satisfied the judgments. He claims that the writ of execution and judgment enforcement proceedings are erroneous on the following grounds:

A. The writ of execution is void because of the automatic stay in Plaintiff's open bankruptcy case (Northern District of California, Case No. 15-40157).

B. Attorney Grohs does not have standing because she has not complied with California law regarding becoming an assignee of record.

C. The assignment is void because it was not perfected.

D. Plaintiff omitted the awards of attorney's fees from her bankruptcy schedules.

E. Defendant has the affirmative defense of judicial estoppel.

F. Plaintiff and Defendant entered into a settlement agreement and mutual release of claims waiving attorney's fees and costs.

G. The awards of attorney's fees represent improper avoidance actions.

PLAINTIFF'S OPPOSITION

Plaintiff filed an Opposition on August 26, 2016. Dckt. 147. Plaintiff asserts the following:

A. Defendant does not have standing to complain about any duty between Plaintiff and her legal counsel.

B. Any procedural defect in perfecting the Assignment of Attorney Fees is being corrected through the filing of a Notice and Acknowledgment of Assignment.

C. Allegations that Plaintiff did not include awards of attorney's fees in her bankruptcy schedules should be argued in the Northern District of California, and Defendant lacks standing.

D. Defendant owes money on the State Court Writ of Execution and the Federal Court Writ of Execution.

E. Defendant does not have standing to complain about an alleged violation of the automatic stay in Plaintiff's bankruptcy case in the Northern District of California.

F. Defendant does not have standing to assert that Plaintiff has engaged in fraudulent conduct with improper avoidance claims.

G. Defendant does not have standing and is incorrect to assert that the mutual release of attorney's fees in the family law action applies in the present action.

Plaintiff requests that the court award her attorney's fees and sanctions.

DISCUSSION

The court foreshadowed this ruling in denying the Motion filed by Ms. Grohs to shorten time so that the court would hear her motion for sanctions on four working days notice. Order, Dckt. 162. As the court noted in that order, the dysfunctional family law process between the Defendant and Plaintiff, in which Defendant was sanctioned, has spilled over to this bankruptcy case. The award of attorneys' fees in this Adversary Proceedings were sanctions based on the California Family Code. Order, Dckt. 118; Memorandum Opinion and Decision, Dckt. 116.

The first ground stated by Defendant is that the automatic stay in the Plaintiff's bankruptcy case filed in the Northern District of California (in which Defendant is not a debtor) reaches out and makes any action against the Defendant void. No explanation is provided for how or why the automatic stay reaches out and protects Defendant.

Rather, Defendant argues that Grohs is taking action to collect a debt against Plaintiff, and therefore the automatic stay protects Plaintiff from her own attorney, Grohs. In effect, Defendant (Plaintiff's ex-husband in these dysfunctional family law and now bankruptcy proceedings) is attempting to "help" protect Plaintiff from her own attorney.

This contention is without merit and for which Defendant offers no legal basis.

The second contention is that demand may well be made from the wrong party, Plaintiff could have a contention with merit – the obligation owing to Plaintiff is property of the bankruptcy estate in Plaintiff's case. 11 U.S.C. § 541. While making this contention, Defendant makes no mention of having addressed this with the Trustee in Plaintiff's bankruptcy case.

While calling Grohs bad for acting while Defendant contends that there may be a bankruptcy trustee who should be enforcing this obligation, Defendant also asserts that he has settled this obligation

with Plaintiff on December 21, 2015. This settlement is in connection with an adversary proceeding in the Plaintiff's bankruptcy case, one in which the Chapter 7 trustee is not a party. By his very argument, Defendant is attempting to claim to have violated the automatic stay in the Plaintiff's bankruptcy case by purporting to have negatively effected rights of the bankruptcy estate - the right to be paid attorneys' fees for Defendant's conduct in this Adversary Proceeding.

Additionally, the purported settlement is in connection with the issues in the Adversary Proceeding in Plaintiff's bankruptcy case. Defendant offers no explanation of what is the subject of that adversary proceeding and to which issues the settlement relates. Rather, he merely states "Settlement, I win."

Fortunately, PACER works for the courts as well as diligent litigants. This court has reviewed the motion to approve settlement and dismiss the adversary proceeding in Plaintiff's bankruptcy case. Bankr. N.D. Cal. Adv. No. 15-04038 ("N.D. Adversary"). The motion states with particularity (Fed. R. Civ. P. 7(c) , Fed. R. Bankr. P. 7007) the following grounds:

A. Defendant filed the N.D. Adversary (as the plaintiff in that action) relating to property issues and Plaintiff's (Taipe) income.

B. Defendant and Plaintiff entered into a settlement agreement and mutual release of claims.

C. No payments are due either party.

D. Mutual of attorneys' fees and costs.

E. Defendant contended that Plaintiff stole assets of the community in which Defendant had a 50% interest.

F. Defendant contended that the obligation owed to him by Plaintiff was non-dischargeable.

No copy of any settlement agreement was filed with the bankruptcy court.

Ms. Grohs appeared in the N.D. Adversary, asserting in February 2016 that she was the assignee of the attorneys' fees awarded in the state court dissolution proceeding. N.D. Adversary, Dckt. 37. In his Opposition, Defendant makes it clear that only an award of attorneys' fees in the state court dissolution action is at issue, with nothing said about the attorneys' fees ordered as sanctions in this court. *Id.*, Dckt. 40.

What is clear from the Settlement Agreement, Exhibit G (Dckt. 142), is that it does not purport to release the obligation owing for the attorneys' fees awarded Plaintiff by this court. At best for Defendant, it relates to rights and obligations in the state court action, but not this court.

No Assignment of Judgment Filed.

Defendant argues that Ms. Grohs has no standing as there has not been an assignment of the judgment in this Adversary Proceeding to Ms. Grohs. That is correct. It appears that even though this issue of whether Ms. Grohs has or was assigned the judgment in this Adversary Proceeding or the right to attorneys' fees in the state court dissolution action. None is on file in this Adversary Proceeding.

While saying that one has not been filed, Defendant makes no effort to cite the court to the proper statute or rule for what is required. Rather, as with Defendant's other arguments, allegations are stated and a ruling in favor of Defendant demanded.

Other Adversary Proceeding

Defendant also pounds the table stating that Plaintiff was sued in her bankruptcy case by her former landlord seeking to have Plaintiff denied her discharge. Therefore, apparently, Defendant asserts that he is not obligated to pay the attorneys' fees ordered as sanctions in this Adversary Proceeding.

Satisfaction of Judgment

Defendant next advances an argument that Plaintiff paid Grohs the attorneys' fees, in lien of child support, and therefore he is entitled to an offset of $10,172.00. But if Plaintiff never paid Grohs, then Defendant is still entitled to an offset. In substance, Defendant argues that if somebody paid Grohs for her attorneys' fees, then he is off the hook, his obligation to pay the attorneys' fees ordered by this court evaporate.

Defendant also contends that since Plaintiff has filed a Chapter 7 bankruptcy case in the Northern District of California, and thereby would be discharging the obligation to pay her attorney, then that works as a special discharge for Defendant, absolving him of having to pay the attorneys' fees ordered by this court. As with all of Defendant's other arguments, this contention is devoid of any legal authority or basis.

Defendant has taken a "heads I win, tails I win, if the coin stands on an edge I win, if you drop the coin I win" approach to his arguments. No matter what permutation of the facts, without any legal basis or authority, Defendant wins and doesn't have to pay the attorneys' fees ordered as sanctions by this court.

Opposition by Grohs

Defendant and his counsel are not alone in presenting unsupported arguments and contentions. Ms. Grohs states that a Notice and Acknowledgment of Assignment is being filed with the Opposition. However, no assignment has been filed with this court for this judgment and award of attorneys' fees.

As with Defendant's liberal contentions and creative use of the law, Ms. Grohs combines pleadings, mixes matters, and files documents such as the one titled "Notice of Intent to Seek Family Code § 271 Sanctions and Sanctions Against Robert D. Rodriguez, Personally as Well as Judgment Debtor For Conduct in Violation of Federal Rules of Civil Procedure Rule 11." Dckt. 150. Ms. Grohs and Defendant feed off of each other in making matters unnecessarily complicated and confusing.

Ruling

Of the various contentions and arguments expounded by Defendant, the only one which causes pause is whether the obligation to pay the attorneys' fees ordered by the court is an asset of the Plaintiff and Ms. Grohs or of the bankruptcy estate in Plaintiff's Norther District Bankruptcy Case. From the review of the docket in the Northern District Bankruptcy Case and the N.D. Adversary, it is clear that the issue of attorneys' fees having been awarded Plaintiff by the state court was disclosed. Thus, it appears that the existence of attorneys' fees having been awarded by other court under the California Family Code were disclosed to the Chapter 7 Trustee.

This court has ordered the Clerk of this Court to serve the Chapter 7 Trustee and her attorney in the Northern District Bankruptcy Case with a copy of the order denying Ms. Grohs' request to shorten time. That ruling clearly discloses that there is an attorneys' fee award from this court and if that Trustee believes that she has property of the estate in this case to administer, she will step forward. However, if the Trustee believes that it is the same as other attorneys' fees awards for Defendant's conduct that the Trustee is allowing the Plaintiff and her representatives to enforce, then this court will not hear from that Trustee.

With the exception of the assignment of the judgment, the court denies all of the relief requested by Defendant. The court does so without prejudice to any of the grounds based on Defendant having paid the obligation. The state of the pleadings and evidence are so unclear, while the court cannot find that Defendant has paid the obligation, the court will not make a finding that Defendant has not paid the obligation. At this point in time, it is just that Defendant has not provided the court with sufficient, credible evidence that the attorneys' fees ordered by this court have been paid.

Finally, there is the issue of whether Ms. Grohs is a party in interest who may enforce the judgment for attorneys' fees. The copy of the Writ of Execution filed as Exhibit A is partially filled out, with the name of the judgment creditor and name of the judgment debtor left blank. Dckt. 142. Exhibit B appears to be an Earnings Withholding Order for a Contra Costa Superior Court matter for the same amount due as stated on the writ of execution issued by this court. *Id.* However, the Earnings Withholding Order appears to have been issued by the U.S. Marshal for the Eastern District of California.

From these documents it is not clear that Ms. Grohs is acting as the assignee of the judgment or as the attorney for Plaintiff. In her Opposition, Ms. Grohs states that she is the assignee, but also purports to be appearing as counsel for Plaintiff.

The court can easily address this issue based on Ms. Grohs' pleading stating that she is appearing as counsel for Plaintiff and herself, as the assignee. As part of the order on this Motion, the court requires that Plaintiff and Ms. Grohs, and each of them, have the Marshal deposit all monies received from the wage garnishment with the Clerk of this Court, with the monies to be disbursed only upon further order of this court. Until there is an assignment properly filed in this Adversary Proceeding, Ms. Grohs is co-attorney of record for Plaintiff and all actions taken are to enforce this judgment for attorneys' fees as counsel for Plaintiff.

ADDITIONAL ARGUMENT AT SEPTEMBER 8, 2016 HEARING

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

The court next addresses the issue of whether

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 Recall Writ of Execution, Motion to Quash Notice of Levy, Motion to Vacate Wage Garnishment, and Motion for Allowance of Professional Fees filed by Defendant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **XXXXXXXXXXX.**

16.	**16-90083-E-7 SSA-10**	**VALLEY DISTRIBUTORS, INC. Iain A. MacDonald**	**MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEES ATTORNEY(S) 8-17-16 [204]**

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, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 17, 2016. 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.

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

The period for which the fees are requested is for the period February 4, 2016, through July 31, 2016. The order of the court approving employment of Applicant was entered on February 18, 2016, Dckt. 30. Applicant requests fees in the amount of $28,050.00 and costs in the amount of $1,862.10.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and

expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including asset analysis and recovery ($60.00), asset disposition ($3,420.00), business operations ($8,220.00), case administration ($9,840.00), claims administration and objection ($3,390.00), fee/employment applications ($1,350.00), litigation ($60.00), meeting of creditors ($690.00), relief from stay proceeding ($810.00), schedules ($150.00). The estate has $411,871.05 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 are reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Efforts to Assess and Recover Property of the Estate: Applicant spent 0.20 hours in this category. Applicant assisted Client with identification and review of potential assets including causes of action and non-litigation recoveries, and correspondence with CPA Salven and staff to review Debtor's possible fraudulent conveyances or preferences.

Asset Disposition: Applicant spent 11.40 hours in this category. Applicant assisted Client with sales, leases, abandonment, and related transaction work.

Business Operation: Applicant spent 27.40 hours in this category. Applicant assisted Client with issues related to debtor-in-possession operating in Chapter 11 such as employee, vendor, tenant issues, and other similar problems.

Case Administration: Applicant spent 32.8 hours in this category. Applicant assisted Client with coordination and compliance activities such as preparation of the statement of financial affairs and other schedules, correspondence with the U.S. Trustee, and general creditor inquiries.

Claims Administration & Objection: Applicant spent 11.3 hours in this category. Applicant assisted client with specific claim inquiries, bar date motions, analysis, objections, and allowances of claims.

Fee/Employment Applications: Applicant spent 4.5 hours in this category. Applicant assisted client with preparations of employment applications for self or others and motions to establish interim procedures.

Litigation: Applicant spent 0.20 hours in this category. Applicant corresponded with CPA Salven and the Trustee canceling further accounting investigation to review any potential preferences or fraudulent conveyances.

Meeting of Creditors: Applicant spent 2.3 hours in this category. Applicant prepared for and attended the meeting of creditors and other creditor meetings.

Relief from Stay Proceeding: Applicant spent 2.7 hours in this category. Applicant reviewed correspondence from creditors involving product liability lawsuits that Debtor is involved in and requested stipulations to allow the relief from the stay so that the creditors could pursue their claims.

Schedules: Applicant spent 0.50 hours in this category. Applicant reviewed debtor's schedules for general application to be employed as counsel for the trustee and conflict checks.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Steven S. Altman, Attorney	93.50	$300.00	$28,050.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$28,050.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $1,862.10 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Parking & Travel Costs	$6.00 to $150.00	$456.00
Filing Fees & Court Call	$37.00 to $176.00	$389.00
Copying Charges	$0.10 to $32.00 (copies from UCC Connect)	$346.50
Postage	$0.48 to $1.86	$670.60
Total Costs Requested in Application		$1,862.10

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $28,050.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs and Expenses

The First Interim Costs in the amount of $1,862.10 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$28,050.00
Costs and Expenses	$1,862.10

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

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

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

The Motion for Allowance of Fees and Expenses filed by 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 $28,050.00
Expenses in the amount of $1,862.10,

The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.

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

17. 16-90083-E-7 SSA-9 | **VALLEY DISTRIBUTORS, INC.** Iain A. MacDonald | **MOTION TO PAY** 8-15-16 [199]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Pay 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 Pay Jensen-Byrd Co. pursuant to the terms of a Stipulation is granted.

Irma Edmonds, the Chapter 7 Trustee, filed the instant Motion on August 15, 2016. The Trustee requests authorization to pay $10,603.57 to claimant Jensen-Byrd Co. pursuant to a stipulated agreement to retire the claim in full. Such agreement was executed by the parties on March 15, 2016, and was approved by the court on April 18, 2016 (Dckt. 88).

The Trustee states that Debtor's assets have been liquidated, an auction has been conducted, and there are sufficient funds in the Estate to pay Jensen-Byrd Co.'s stipulated claim.

DISCUSSION

The court having previously approved the stipulated agreement between the parties, the Motion is granted, and the Trustee is authorized to pay $10,603.57 to Jensen-Byrd Co. in full satisfaction of its claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Pay filed by 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 is granted, and the Trustee is authorized to pay $10,603.57 to Jensen-Byrd Co. in satisfaction of its claim.

18. **13-90893-E-7** **LYNN MORGAN** **MOTION TO EMPLOY KATHERINE R. BOYD AS SPECIAL COUNSEL**
SSA-2 **Martha Lynn Passalaqua**
REOPENED: 5/19/16 **8-12-16 [34]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, party requesting special notice, and Office of the United States Trustee on August 12, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Employ 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 Employ is granted.

Chapter 7 Trustee, Michael D. McGranahan, seeks to employ Special Counsel Katherine R. Boyd, *Nunc Pro Tunc*, pursuant to Local Bankruptcy Rule 9014-1(f)(2), Bankruptcy Code §§ 328(a) and 330, and Federal Rule of Bankruptcy Procedure 2014. Trustee seeks the employment of Special Counsel to assist the Trustee in prosecuting employment claims litigation. Trustee states that Debtor's Chapter 7 bankruptcy case was closed as a "no asset" case on August 16, 2013 (Dckt. 15), but Trustee learned later that Debtor was litigating employment claims in the named case *Lynn Morgan v. Healthcare Cost Containment United Association, Inc. Ican Benefit Group, LLC et al.*, Case No. 2010750, in Stanislaus County, commenced on August 11, 2014. Debtor's various claims include:

A. Wrongful termination;

B. Nonpayment of wages;

C. Failure to pay all wages due upon discharge;

D. Unfair competition;

E. Invasion of privacy; and

F. Intentional infliction of emotional distress.

Debtor executed an hourly fee agreement with the Curtis Legal Group on October 24, 2012, and Katherine R. Boyd was assigned to the case as Debtor's chief legal counsel. In light of the litigation, Debtor's bankruptcy case was re-opened on May 19, 2016. Dckt. 25.

The Trustee argues that Special Counsel's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding the employment claims litigation.

Katherine R. Boyd, of Katherine R. Boyd, Inc., a Professional Law Corporation, testifies that she is experienced in labor and employment claims and is familiar with Debtor's employment claims. Dckt. 36. Katherine R. Boyd testifies she 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.

DISCUSSION

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 Special 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 Katherine R. Boyd as special counsel for the Chapter 7 estate on the terms and conditions set forth in the Attorney-Client Fee Agreement filed as Exhibit 2, Dckt. 39.

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 Katherine R. Boyd as special counsel for the Chapter 7 Trustee, effective October 24, 2012, on the terms and conditions as set forth in the Attorney-Client Fee Agreement filed as Exhibit 2, Dckt. 39.

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.