UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 26, 2019 at 10:30 a.m.

1.	15-29103-A-7 DNL-8 **1 thru 2**	**ROCK RIDGE PROPERTIES, INC. Dennis Hill**	**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ANDREW E. BAKOS, TOM L. HALL, HARLEY R. ALLEN AND KAYE A. ALLEN, DAVID J. FREEMAN, IRA SERVICES TRUST COMPANY, MARY LOU TARTER TRUST, BERNADETTE MARSH, THE F. JOYCE BREEN REVOCABLE TRUST, LEE W. SALO AND DONNA J. SALO, HILTON CORMIER, HOWARD ELLIOT, RODNEY**

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

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

Sufficient 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 30, 2019. By the court's calculation, 30 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a

party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Approval of Compromise is granted.

Susan Smith, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with several parties collectively identified in the Motion (Dckt. 113) as lenders and Andrew Bakos (collectively "Settlor"). The claims and disputes to be resolved by the proposed settlement are alleged in Adversary Proceeding, No. 19-02063, and relate to a dispute over which party has the superior right to proceeds generated from selling real property of the Estate.

As part of the Settlement, Trustee's counsel has voluntarily reduced its fee.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 117):

A. Movant shall pay Lenders $450,000.00; Bakos $114,000.00; and the Trustee shall retain $114,000.00 of the proceeds.

B. Bakos shall also have a $300,000.00 unsecured claim subordinated to other allowed unsecured claims.

C. Adversary Proceeding, No. 19-02063, shall be dismissed.

D. The parties will exchange mutual waivers.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their

reasonable views.

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

Movant argues that the four factors have been met.

Probability of Success

Movant argues success is uncertain due to the factually intensive dispute of the matter.

Movant argues both Movant is confident in its position and that the outcome is difficult to predict. Therefore, this factor appears neutral at best.

Difficulties in Collection

Movant argues this factor is neutral because Movant is in a defensive position.

Movant's argument is well-taken. If successful at trial, Movant would not be collecting anything.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues this factor weighs in favor of settlement because attorney's fees will be significantly reduced, and because the outcome after trial is uncertain.

Movant's argument is well-taken. While Movant does not discuss the potential inconvenience and delay of pursuing Movant's claims on their merits, settling will save the Estate significant costs from attorney's fees.

Paramount Interest of Creditors

Movant argues this factor weighs in favor of settlement because Bakos' claim will be subordinated, allowing some recovery for unsecured claims where they otherwise would likely receive nothing.

Movant's argument here is also well-taken. By reducing the costs of litigation and subordinating Bakos' claim, the settlement here allows unsecured creditors to recover on their claims where they otherwise would not.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that

the compromise is in the best interest of the creditors and the Estate because the settlement reduces the cost of litigation and subordinates Bakos' claim, allowing unsecured creditors to recover on their claims where they otherwise would not.. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Susan Smith, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and several parties collectively identified in the Motion (Dckt. 113) as lenders and Andrew Bakos (collectively "Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 117).

2.	**15-29103-A-7** **DNL-9**	**ROCK RIDGE PROPERTIES, INC.** **Dennis Hill**	**MOTION TO EMPLOY BACHECKI, CROM & CO., LLP AS ACCOUNTANTS** **8-30-19 [108]**

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

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient 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 30, 2019. By the court's calculation, 30 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). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion to Employ is granted.

Susan Smith ("Trustee") seeks to employ BACHECKI, CROM & CO., LLP ("Accountant") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Accountant to perform tax related accounting and income tax preparation.

Kimberly Lam, a Certified Public Accountant of Accountant, testifies as to Accountant's experience with the services being provided. Lam testifies further Accountant does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of 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 Kimberly Lam as Accountant for the Chapter 7 Estate on the terms and conditions set forth in the Flat Fee Agreement filed as Exhibit A, Dckt. 111. Approval of the flat fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Susan Smith ("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 Trustee is authorized to employ BACHECKI, CROM & CO., LLP as Accountant for Trustee on the terms and conditions as set forth in the Flat Fee Agreement filed as Exhibit A, Dckt. 111, which provides for a $2,500.00 flat fee for the 2019 tax returns and analysis, and, if required, $900.00 for the 2020 tax returns and analysis.
>
> **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.

3. **19-24644-E-7** **HARJIT KAUR**
Rajdep Chima

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
8-22-19 [23]

Tentative Ruling: The Motion Dismiss 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— Opposition Filed, Dckt. 38..

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 1, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxxxxxxxxx.

The Chapter 7 Trustee, Susan Smith ("Trustee"), seeks dismissal of the case on the grounds that Harjit Kaur ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 3:30 p.m. on October 2, 2019. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that

the case be dismissed without further hearing.

DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

Debtor filed an Opposition (Dckt. 38) stating she is seeking to have this case jointly administered with that of her husband, Amarjit Singh. Bankr. E.D. Cal. No. 19-23605.

At the hearing, xxxxxxxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by the Chapter 7 Trustee, Susan Smith ("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 Dismiss is **xxxxxxxxxx**.

4. **19-24644-E-7** **HARJIT KAUR** **AMENDED MOTION FOR JOINT ADMINISTRATION.**
Rajdep Chima
5 thru 6 **8-23-19 [33]**

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Not Provided. The Notice of Motion that written opposition must be filed five (5) days prior to the hearing. As discussed below, that is not correct.

The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on August 24, 2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion For Joint Administration is denied without prejudice.

The debtor, Harjit Kaur ("Debtor"), filed this Motion for Joint Administration seeking, pursuant to Federal Rule of Bankruptcy Procedure 1015, to have this case joined with Debtor's husband's case, No. 19-23605.

The court notes that the caption on this pleading is for a non-existent bankruptcy case, with it titled,

> "In re Amarjit Singh
> In Re: Harjit Kaur"

with dual case numbers stated:

> Case No. 2019-23605;
> 2019-24644."

Motion, Dckt. 17. By the Caption, Debtor makes it appear that she has unilaterally combined the two cases.

The grounds stated with particularity in the Motion (Fed. R. Bankr. P. 9013) for the relief requested, consists of:

A. Amarjit Singh, Debtor's spouse, filed bankruptcy on June 4, 2019.

B. By the time of the First Meeting of Creditors in Amarjit Singh's case, the Debtor and Mr. Singh concluded that the Debtor should file a bankruptcy case.

C. No local or federal rule allows for amending a bankruptcy petition to add a party or debtor once it has been filed.

D. The Debtor requests that the two cases be jointly administered.

Id.

No basis is given for why joint administration is proper or appropriate.

The Debtor has not sought a substantive consolidation of the two cases, but merely "joint administration." That leave the two bankruptcy estates battling with each other over the assets to be administered in that case to pay the creditors in that case over the creditors in the other case.

Debtor cites the court to Federal Rule of Bankruptcy Procedure 1015(b) as the basis for ordering joint administration. That rule, in its entirety states:

> (b) Cases involving two or more related debtors. If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. **Prior to entering an order** the court shall give **consideration to protecting creditors of different estates against potential conflicts of interest.** An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under § 522(b)(2) of the Code and the other has elected the exemptions under § 522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same

> exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(2).

Fed. R. Bankr. P. 1015(b). No information is provided and no analysis is made by the Debtor of the specific determinations that must be made of potential conflicts between the two bankruptcy estates.

In the body of the Notice of Motion, the following is stated:

> Any party wishing to oppose this motion must file an opposition with the court five court days before the hearing and serve a copy both on the Debtor's attorney and the Trustees listed above.

Notice, Dckt. 34.

The above does not meet the standard of Local Bankruptcy Rules 9014-1(d)(3)(B) for contents of the notice of hearing. Substantially here, parties were informed they could wait until just a few days prior to the hearing to file their response–however, where written opposition is required, it is required 14 days prior to the hearing. LOCAL BANKR. R. 9014–1(f)(1).

Failure to comply with the Local Bankruptcy Rules is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l). This is necessary here where insufficient notice was provided.

The court also notes that while joint administration of two cases is sought here, the Trustee has filed a dismissal motion in Debtor's case. Dckt. 23. Written opposition to that motion was required, and none was filed, resulting in the dismissal of the case.

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Amended Motion For Joint Administration filed by the debtor, Harjit Kaur ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

5. **19-23605-E-7** **AMARJIT SINGH** **AMENDED MOTION FOR JOINT ADMINISTRATION**
Rajdep Chima **8-23-19 [37]**

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Not Provided. The Notice of Motion that written opposition must be filed five (5) days prior to the hearing. As discussed below, that is not correct.

The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter7 Trustee, creditors, and Office of the United States Trustee on August 24,2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion For Joint Administration is denied without prejudice.

The debtor, Amarjit Singh ("Debtor"), filed this Motion for Joint Administration seeking, pursuant to Federal Rule of Bankruptcy Procedure 1015, to have this case joined with Debtor's wife's case, No. 19-24644.

The grounds stated with particularity in the Motion (Fed. R. Bankr. P. 9013) for the relief requested, consists of:

A. Harjit Kaur, Debtor's spouse, filed bankruptcy on July 24, 2019.

B. By the time of the First Meeting of Creditors in Amarjit Singh's case, the Debtor and Mr. Singh concluded that the Debtor should file a bankruptcy case.

C. No local or federal rule allows for amending a bankruptcy petition to add a party or debtor once it has been filed.

D. The Debtor requests that the two cases be jointly administered.

Dckt. 37.

No basis is given for why joint administration is proper or appropriate.

The Debtor has not sought a substantive consolidation of the two cases, but merely "joint administration." That leave the two bankruptcy estates battling with each other over the assets to be administered in that case to pay the creditors in that case over the creditors in the other case.

Debtor cites the court to Federal Rule of Bankruptcy Procedure 1015(b) as the basis for ordering joint administration. That rule, in its entirety states:

> (b) Cases involving two or more related debtors. If a joint petition or two or more petitions are pending in the same court by or against (1) spouses, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. **Prior to entering an order** the court shall give **consideration to protecting creditors of different estates against potential conflicts of interest.** An order directing joint administration of individual cases of spouses shall, if one spouse has elected the exemptions under § 522(b)(2) of the Code and the other has elected the exemptions under § 522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(2).

Fed. R. Bankr. P. 1015(b). No information is provided and no analysis is made by the Debtor of the specific determinations that must be made of potential conflicts between the two bankruptcy estates.

In the body of the Notice of Motion, the following is stated:

> Any party wishing to oppose this motion must file an opposition with the court five court days before the hearing and serve a copy both on the Debtor's attorney and the Trustees listed above.

Notice, Dckt. 38.

The above does not meet the standard of Local Bankruptcy Rules 9014-1(d)(3)(B) for

contents of the notice of hearing. Substantially here, parties were informed they could wait until just a few days prior to the hearing to file their response–however, where written opposition is required, it is required 14 days prior to the hearing. LOCAL BANKR. R. 9014–1(f)(1).

Failure to comply with the Local Bankruptcy Rules is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l). This is necessary here where insufficient notice was provided.

The court also notes that while joint administration of two cases is sought here, the Trustee has filed a dismissal motion in Debtor's wife's case. 19-24644, Dckt. 23. Written opposition to that motion was required, and none was filed, resulting in the dismissal of that case.

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Amended Motion For Joint Administration filed by the debtor, Amarjit Singh ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

6. **19-23519-A-7 MF-1** **MAIRA PINTO CHAVEZ DE GRIMA AND JOSE GRIMA** **OBJECTION TO HOMESTEAD EXEMPTION**

Seth Hanson **7-25-19 [18]**

6 thru 7

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 25, 2019. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Claimed Exemptions is XXXXX.

Creditors Leo Chan and Sylvia M. Chan ("Creditor") filed this Objection to the debtors', Maira Pinto Chavez De Grima and Jose Carlos Grim Hernandez's ("Debtor"), claimed homestead exemption.

Creditor argues Creditor was fraudulently induced into releasing its lien on Debtor's home, allowing Debtor to obtain refinancing, under the premise Creditor would receive a replacement lien. However, no subsequent deed of trust was ever recorded in favor of Creditor.

Creditor asserts that because of Debtor's misconduct, the claimed homestead exemption should be disallowed.

CHAPTER 7 TRUSTEE'S RESPONSE

Michael D. McGranahan, the Chapter 7 Trustee ("Trustee") filed a Response on September 9, 2019. Dckt. 40. Trustee asserts that after negotiations, Debtor has agreed to reduce Debtor's claimed exemption from $100,000.00 to $10,000.00 and agreed to cooperate with the sale of the Property.

Trustee argues a motion to approve compromise is pending.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 9, 2019. Dckt. 44. Debtor opposes this Objection on the grounds that Schedule C was already amended consistent with a settlement entered with the Trustee.

DISCUSSION

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

Debtor filed Amended Schedule C on September 10, 2019. Dckt. 45. Amended Schedule C reduces Debtor's claimed exemption to $10,000.00 pursuant to California Code of Civil Procedure 703.140(b)(5).

However, the Objection seeks disallowance of any homestead exemption.

At the hearing, xxxxxxxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by creditors Leo Chan and Sylvia M. Chan ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is XXXXXXX.

7. **19-23519-A-7 MF-2** | **MAIRA PINTO CHAVEZ DE GRIMA AND JOSE GRIMA** **Seth Hanson** | **MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT 8-20-19 [35]**

Final Ruling: No appearance at the September 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 20, 2019. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion to Extend Deadline to File a Complaint Objecting to Discharge is denied as moot, the time for filing a complaint already having been extended.

Creditors Leo Chan and Sylvia M. Chan ("Movant") moves to extend the deadline to file a complaint objecting to Maira Pinto Chavez De Grima and Jose Carlos Grima Hernandez's ("Debtor") discharge to allow sufficient time to prepare and file a complaint.

The Motion requests the deadline be extended to October 25, 2019. On September 20, 2019, the court, after hearing on the Chapter 7 Trustee's motion, already extended the deadline to October 25, 2019. Dckt. 54.

Therefore, the present Motion is denied as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend Deadline to File a Complaint Objecting to

Discharge filed by creditors Leo Chan and Sylvia M. Chan ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot, the time for filing a complaint already having been extended by prior order of the court after the Chapter 7 Trustee's motion.

8. **17-20220-E-7** **WILLIAM/FAYE THOMAS** **MOTION TO SELL**
DNL-3 **Kristy Hernandez** **8-21-19 [219]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 21, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Hank Spacone, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell to the debtors, William Carter Thomas, Jr. and Faye Wales Thomas ("Debtor"), all assets listed on Amended Schedule A/B (the "Property"). Dckt. 155.

Movant argues the Property includes the following IRA, pension, and life insurance accounts which have been fully exempted:

Asset	Scheduled Value
Allianz Vision IRA	$82,308.00
Metlife/Morgan Stanley IRA	$142,688.00
Foothill Securities IRA	$9,153.00
Foothill Securities Roth IRA	$13,625.00
APS-Charles Schwab Pension Plan	$213,458.00
Transamerica IRA	$154,984.00
Social Security Benefits	$3,881.00
CSAA Whole Life Insurance	$16,876.00
TOTAL	$636,973.00

Movant also asserts the Property includes cash, vehicles, and other household items, for which after accounting for claimed exemptions and secured claims, there is *de minimis* value left for the Estate.

Movant asserts further the Property includes claims asserted in an El Dorado County Superior Court Case, No. PC20120541, which after accounting secured claims leaves *de minimis* value left for the Estate.

The Motion is supported by Movant's Declaration. Dckt. 221.

The sale proposes selling the Property to the Debtor for the sum of $35,000.00.

CREDITOR'S DECLARATION

Creditor Robert Putnam ("Creditor") filed a Declaration objection to this Motion on August 26, 2019. Dckt. 224. The Declaration seeks to preserve Creditor's ability to collect on a successful judgement in the event he is able to prevail in Adversary Proceeding, No. 18-02090 against Debtor.

Creditor requests the court set aside or preserve one of Debtor's IRA accounts for the purpose of satisfying his judgement.

MOVANT'S REPLY

Movant filed a Reply on September 3, 2019. Dckt. 226. Movant argues that Creditor has not asserted any basis for objecting to the sale.

CREDITOR'S SUPPLEMENTAL DECLARATION

Creditor filed a Supplemental Declaration on September 9, 2019. Dckt. 228. In the Supplemental Declaration Creditor argues he objects to the Motion on the basis that Debtor has the capacity to earn significantly more income than what he has disclosed, previously having been negotiating for a $300,000.00 1-year contract.

DISCUSSION

While Creditor has objected seeking to preserve assets to collect against, the primary message of the Motion was missed: that nearly all value of Debtor's assets are either exempt or encumbered, and that *de minimis* value would be achieved by liquidating the assets.

Creditor has not argued that the assets have been undervalued, and has not offered a more substantial sum. Rather, Creditor seeks to disallow certain IRA accounts from being sold so that he may later collect his judgement against those assets (even though those assets have been claimed exempt).

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Estate recovers $35,000.00 on assets that are *de minimis* in value when considering claimed exemptions and secured 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 to Sell Property filed by Hank Spacone, the Chapter 7 Trustee ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Movant, is authorized to sell pursuant to 11 U.S.C. § 363(b) to the debtors, William Carter Thomas, Jr. and Faye Wales Thomas ("Debtor"), all assets listed on Amended Schedule A/B (Dckt. 155) for $35,000.00 on the terms provided in the Sale Agreement. Exhibit A, Dckt. 222.

9. **19-22126-E-7** **DAVID/HARMONY WOOD** **MOTION TO AVOID LIEN OF TRI COUNTIES BANK**
LBG-3 **Lucas Garcia** **8-12-19 [33]**

9 thru 10

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on August 12, 2019. By the court's calculation, 45 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is set for an Pre-Evidentiary Hearing Scheduling Conference to be conducted at xxxxxxxxxxxxxxx.

This Motion requests an order avoiding the judicial lien of Tri Counties Bank ("Creditor") against property of the debtor, David Holden Wood and Harmony Ann Wood ("Debtor") commonly known as 17409 Lawrence Way, Grass Valley, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $26,488.91. Exhibit 2, Dckt. 36. An abstract of judgment was recorded with Nevada County on January 14, 2019, that encumbers the Property. *Id.*

CREDITOR'S OPPOSITION

Creditor filed an Opposition on August 29, 2019. Dckt. 44. Creditor argues the value of the Property is $402,000.00, leaving equity for its lien. Creditor argues alternatively that an evidentiary hearing should be allowed for the purpose of determining the Property's value.

The Opposition is supported by the Declaration of Keith Scoles and Exhibits, all filed as one

13-page document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

The Declaration of Scoles presents testimony that he is a licensed residential appraiser, and that he generated a clear capital automated valuation model report on August 20, 2019, which resulted in an estimated value of $402,000.00 for the Property.

DEBTOR'S REPLY

Debtor filed a Reply on September 12, 2019. Dckt. 45. Debtor argues that the testimony of Scoles is nothing more than he inputted data into a program, which program then generated its opinion of value. Debtor argues that Creditor misrepresents to the court that this is Scoles' opinion of value, where it is actual the opinion of the program. Debtor argues further that Scoles has not seen the Property.

DISCUSSION

Debtor's arguments are well-taken. Very little is offered in the Scoles Declaration to support Creditor's opinion of valuation. It appears Creditor's expert merely punched data into a program which generates estimated values based on recent comparables. However, that report appears to take in consideration almost no specifics about the actual Property other than its location, age, acreage, and square footage.

While Debtor argues the clear capital automated valuation model report is inadmissable hearsay, an expert may rely on inadmissable facts and data in coming to their opinion. FED. R. EVID. 703.

Debtor's evidence of value is the Debtor's opinion as the owner of the Property. Dckt. 40. While evidence of value, it is the most ephemeral possible, with the Debtor just stating a conclusion - very much like the computer program spitting out a calculation.

In addition to providing its own valuation, Creditor has made a request for an evidentiary hearing to allow further evaluation.

It is necessary, in light of the ephemeral, HAL 9000 computer generated conclusions of value, an evidentiary hearing is necessary.

The court shall issue its Pre-Evidentiary Hearing Scheduling Order.

10. 19-22126-E-7 DAVID/HARMONY WOOD MOTION TO AVOID LIEN OF CAPITAL

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee,, Creditor, and Office of the United States Trustee on August 12, 2019. By the court's calculation, 45 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 denied without prejudice.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of the debtor, David Holden Wood and Harmony Ann Wood ("Debtor") commonly known as 17409 Lawrence Way, Grass Valley, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $6,797.93. Exhibit 2, Dckt. 41.

However, the filed Abstract of Judgement as an exhibit does not contain any recording information. Therefore, it is unclear how the court identifies the judgment lien in any decision.

DISCUSSION

Without a recorded Abstract of Judgement filed, the court cannot determine whether it is actually avoiding any lien. This is a very common and simple practice, necessary for the court to issue proper orders correctly avoiding liens. Here, Debtor has elected to not provide that necessary

information and document.

The Motion is denied without prejudice.

An 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 David Holden Wood and Harmony Ann Wood ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

11. **10-27435-E-7** **THOMAS GASSNER** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH GEORGENE GASSNER**
DNL-10 **Richard Chan** **9-5-19 [161]**

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

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney], Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on September 5, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice)

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion for Approval of Compromise is granted.

Kimberly Husted, the Chapter 7 Trustee ("CH 7 Trustee") requests that the court approve a compromise and settle competing claims and defenses with Georgene Gassner ("Settlor Georgene"). The claims and disputes to be resolved by the proposed settlement center around the debtor, Thomas A. Gassner's ("Debtor"), disputed status as the sole beneficiary of the Thomas A. Gassner Trust (the "Trust").

When Debtor filed this case, he did not disclose his interest in the Trust. Debtor subsequently reopened his case and disclosed the asset. Debtor has since passed away, and Settlor Georgene is Debtor's surviving spouse and successor in interest to Debtor's rights under the Trust. Additionally, Debtor's Trust interest resulted in an interest in certain MEPCO Stock.

In Adversary Proceeding, No. 19-02038, claims are asserted by Settlor Georgene against Laura Strombom, Carol Gassner, and Alfred Gassner for violation of the automatic stay and discharge injunction, breach of fiduciary duty, declaratory relief, and injunctive relief.

Through the settlement, the parties have come to an agreement about competing interests in the MEPCO stock and prosecution of claims relating thereto.

CH 7 Trustee and Settlor Georgene have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 164):

A. Settlor Georgene's rights to the MEPCO stock, including the right to seek dissolution of MEPCO, are assigned to CH 7 Trustee, with Settlor Georgene retaining a right to object to any proposed liquidation, and with the liquidation net proceeds being divided in 25% to Settlor Georgene and 75% to CH 7 Trustee.

B. CH 7 Trustee's rights to seek damages for violation of the automatic stay are assigned to Settlor Georgene, with resolution of those claims subject to CH 7 Trustee's advice and consent, and with the liquidation resulting in 25% to CH 7 Trustee and 75% to Settlor Georgene.

ADVERSARY DEFENDANTS' OPPOSITION

Carol Gassner and Alfred Gassner, Defendants in Adversary Proceeding, No. 19-02038 ("Adversary Defendants") filed an Opposition on September 19, 2019. Dckt. 168. The Opposition is 22 pages, and includes the following arguments:

1. The settlement does not resolve any dispute, but rather sets up a joint venture (as defined by California law) between CH 7 Trustee and Settlor Georgene.

2. The settlement makes it impossible to determine which party has authority to pursue which claims.

3. The settlement creates a conflict of interest between the Estate and creditors because the CH 7 Trustee is taking duties, responsibilities, and expenses which would not otherwise be part of duties as a Trustee, and Settlor Georgene is being assigned rights to stay violation claims which belong to the CH 7 Trustee.

4. The settlement makes CH 7 Trustee a litigant in state court proceedings over assets which are not property of the Estate because the Estate is limited to only a 25% interest in Debtor's trust.

DISCUSSION

The proposed settlement clearly resolves the ownership disputes between the bankruptcy estate and Settlor Georgene. It clearly delineates who has what rights and interests (to the extent they exist) to be enforced. The Adversary Defendants' "confusion" is not well placed.

All rights and interests in the MEPCO Stock and rights relating thereto are assigned to the CH 7 Trustee. To the extent that the Adversary Defendants dispute the rights and interests asserted by the CH 7 Trustee, that is with whom they will do battle. Settlor Georgene is out of that fight, having transferred any and all interests therein she asserts to the CH 7 Trustee. When the CH 7 Trustee is able to enforce those rights and interests (to the extent they exist) and liquidates those into dollars, 25% will be disbursed by the CH 7 Trustee to Settlor Georgene and 75% will be administered through the bankruptcy estate. There is no "joint venture," no joint control, and no interest of Settlor Georgene in these assets. While Georgene has the right to object, as would any party in interest, to a proposed sale and liquidation sought by the CH 7 Trustee from this court, it is the court which rules on the CH 7 Trustee's motion, not Settlor Georgene.

Adversary Defendant's stated "confusion" over who has the right to enforce any claims of the bankruptcy estate for violation of the automatic stay are on equally unsound footing. All of those rights are assigned to Settlor Georgene. She has the sole right to enforce and recover on the alleged violation, having acquired those rights through the settlement. When, and if, Settlor Georgene enforces those rights (if any) and recovers damages relating thereto, the proceeds shall be distributed 75% to Settlor Georgene and 25% to the CH 7 Trustee for the bankruptcy estate.

Adversary Defendants work to confuse the issue, morphing the simple settlement of a two party dispute and assignment of asserted rights, to instead arguing the validity, extent, and enforceability of the rights and interests between definitively assigned by the settlement.

The Adversary Defendants assertions that the CH 7 Trustee has become the fiduciary to Settlor Georgene is without merit. The CH 7 Trustee is the fiduciary to the bankruptcy estate, and only the bankruptcy estate. The CH 7 Trustee will enforce the rights and interests of the bankruptcy estate to recover and liquidate all such rights and interests. If claims exist against some creditors and not against others, the CH 7 Trustee will prosecute such rights and interests against such creditors.

As to Settlor Georgene being an alleged "agent of the CH 7 Trustee," the CH 7 Trustee has sold the rights and interests of the estate for the stay violations. The CH 7 Trustee has chosen to liquidate and recover those amount by selling such rights. The bankruptcy estate has a contractual right to a percentage of the monies recovered.

Finally, to the extent that Adversary Defendants dispute the rights and interests the Ch 7 Trustee seeks to assert, they may counter and defendant and affirmatively assert their rights, interests, and defenses. To the extent that Adversary Defendants dispute any of the asserted rights for alleged violations of the stay, they can defend themselves against the person who has all such rights and interests, Settlor Georgene.

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the

settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

CH 7 Trustee argues that the four factors have been met.

Probability of Success

CH 7 Trustee argues that the settlement herein predicts the respective interests of the settling parties, resulting in what they believe they would achieve after a disputing the rights on the merits.

CH 7 Trustee has presented evidence that the settlement proposed confers the respective interest of the parties they would achieve after a trial on the merits. Therefore, this factor weighs in favor of settlement.

Difficulties in Collection

CH 7 Trustee argues this factor is neutral because the settlement does not affect collection.

The settlement here pertains to the respective rights of the parties to pursue claims, and would not result in collection on a judgment. Therefore, this factor is neutral.

Expense, Inconvenience, and Delay of Continued Litigation

CH 7 Trustee argues that if that matter is not settled professionals would need to be hired to litigate the disputes.

While CH 7 Trustee does not offer much specific information as to how much expense, inconvenience, and delay would ensue from the litigation here, it is clear that some delay and cost would be inherent. Therefore, this factor weighs in favor of settlement.

Paramount Interest of Creditors

CH 7 Trustee argues that this factor weighs in favor of settlement because administrative

expenses are avoided and more efficient prosecution of clams is facilitated.

This argument is well-taken. The settlement here makes clear what parties are pursuing what claims, avoids the expense and delay over disputed rights, and allows creditors to be paid more timely.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to CH 7 Trustee to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the settlement here makes clear what parties are pursuing what claims, avoids the expense and delay over disputed rights, and allows creditors to be paid more timely.

The Adversary Defendants make several arguments in opposition of the settlement, including that the settlement is not clear, is a joint-venture making the trustee an interested party, and results in the trustee pursuing claims which are not property of the Estate.

The settlement here is not confusing. CH 7 Trustee gets to pursue the claims for the Debtor's interest in MEPCO Stock, which resulted from Debtor's interest in the Trust. Settlor Georgene gets to pursue claims for violation of the automatic stay.

Additionally, the characterization of this settlement as a joint-venture is not compelling. The Adversary Defendants do not argue the Settlor Georgene and Trustee are carrying out a business, and clearly they are not. The settlement here resolves a dispute over which party may assert which rights. For the purpose of resolving that dispute, the parties have foregone whatever arguments they have and have assigned their rights to the extent they have them.

That claims have been assigned here does not result in any conflicts. CH 7 Trustee is representing the Estate, which due to the proposed settlement holds certain claims. CH 7 Trustee is pursuing those claims to seek recovery for the Estate. CH 7 Trustee has no separate pecuniary interest in this matter beyond the normal duties of a trustee.

Furthermore, the Adversary Defendant's regularly refer to Settlor Georgene as a "creditor." The Bankruptcy Code defines a "creditor" as follows:

(10)The term "creditor" means—

> (A)entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
>
> (B)entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

> (C)entity that has a community claim.

11 U.S.C. § 101(10). A "claim" is defined as a:

> (A)right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B)right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5).

Settlor Georgene does not have a right to payment or equitable remedy against the debtor–Settlor Georgene is the purchasers of rights of the estate.

The settlement is in the best interest of the Estate. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Kimberly Husted, the Chapter 7 Trustee ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Georgene Gassner ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 164).

12. **19-24369-A-7** **DUANE MAGORIAN** **MOTION TO AND WAIVE APPEARANCE AT MEETING OF CREDITORS AS TO DEBTOR**
LBG-1 **Lucas Garcia** **8-21-19 [17]**

Tentative Ruling: No appearance at the September 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on August 21, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion To Waive Appearance at Meeting of Creditors has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Waive Appearance at Meeting of Creditors is denied.

Debtor's counsel Luke Garcia ("Debtor's Counsel") filed this Motion seeking to waive the requirement for the debtor, Duane Leon Magorian ("Debtor") to attend the 11 U.S.C. § 341 Meeting of Creditors. Debtor's Counsel argues this relief is warranted because the Debtor is now deceased.

Debtor's counsel relies on *In re Thomas* in support of the court's authority to waive the requirement to appear at the 341 Meeting. *In re Thomas*, No. 07-00097, 2008 WL 4835911 at p. 1 (Bankr. D.D.C. Nov. 6, 2008). This reliance is misplaced.

In that case, the court waived the requirement to complete a course in financial management.

Id. In doing so, the court relied on 11 U.S.C. § 109 (h)(4)(emphasis added), which states the following:

> **The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines**, after notice and hearing, **is unable to complete those requirements because of incapacity**, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

Id. In the present case, the operative Bankruptcy Code section is 11 U.S.C. § 343, which states:

> The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.

There is no provision for waiver of this requirement like 11 U.S.C. § 109.

Furthermore, it is unclear why waiver of this requirement would be necessary. Federal Rule of Bankruptcy Procedure 1016 states the following:

> Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. **In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred**. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

Administering the case in the same manner so far as possible requires attendance at the 341 Meeting if possible. Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party . . ."

Debtor's Counsel has not addressed why there is no representative here. Substitution is not a complex process, and would allow the case to proceed in the same manner as before Debtor's death.

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 Waive Appearance at Meeting of Creditors filed by debtor's counsel, Luke Garcia ("Debtor's Counsel") 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.

13. **16-27672-A-7** **DAVID LIND** **MOTION TO ABANDON**
DNL-31 **Pro Se** **8-26-19 [795]**

15 thru 18

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, and Office of the United States Trustee on August 26, 2019. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Abandon has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Abandon is granted.

After notice and hearing, the court may order a 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(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by the Chapter 7 Trustee, Hank Spacone ("Trustee") requests that the court authorize him to abandon Estate funds of $300,000.00 ("Estate Funds"), with $150,000.00 disbursed to the debtor, David Kenneth Lind ("Debtor"), and $150,000.00 disbursed to Debtor's non-filing spouse, Denielle Lind ("Debtor's Spouse").

Trustee argues that all claims have been paid in full in this case, and that abandoning the Estate Funds would leave sufficient remaining Estate funds to pay remaining administrative expenses.

The court determines that the Property is of inconsequential value and benefit to the Estate, all claims having been paid in full, and authorizes the Chapter 7 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 Chapter 7 Trustee, David Kenneth Lind ("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 the Trustee is authorized to abandon Estate funds of $300,000.00 ("Estate Funds"), with $150,000.00 disbursed to the debtor, David Kenneth Lind ("Debtor"), and $150,000.00 disbursed to Debtor's non-filing spouse, Denielle Lind ("Debtor's Spouse").

14. **16-27672-A-7** **DAVID LIND**
DNL-32 **Pro Se**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J RUSSELL CUNNINGAM, TRUSTEES ATTORNEY(S)
8-26-19 [784]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, and Office of the United States Trustee on August 26, 2019. By the court's calculation, 31 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is xxxxx.

DESMOND, NOLAN, LIVAICH & CUNNINGHAM, the Attorney ("Applicant") for Hank Spacone, the Chapter 7 Trustee ("Client"), makes a Supplemental Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 3, 2109, through August 23, 2019. The order of the court approving employment of Applicant was entered on March 20, 2018. Applicant requests fees in the amount of $9,652.50 and costs in the amount of $140.71.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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 demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505

B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to 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?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include prosecution of an appeal and negotiation of a settlement. The court finds the services were beneficial to Client and the Estate and were 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.

General Case Administration: Applicant spent 4.1 hours in this category.

Appeal: Applicant spent 49.9 hours in this category.

Settlement: Applicant spent 10.3 hours in this category.

Tax Issues: Applicant spent 3.6 hours in this category.

Fee and Employment Applications: Applicant spent 5.6 hours in this category.

The Application contains the following summary of services rendered:

> (a) Communicating with the Trustee regarding considerations for a settlement with Panella;
>
> (b) Communicating with Panella' s counsel regarding settlement terms and considerations;
>
> (c)Preparing the settlement agreement for the settlement with Panella;

(d)Preparing the motion to approve the settlement with Panella;

(e)Preparing for, and appearing at, the hearing on the motion to approve the settlement with Panella;

(f)Preparing for, and appearing at, the hearing on the motion for allowance of administrative tax claims;

(g)Preparing the motion for authority to pay delinquent property taxes for the 4258 Property;

(h)Reviewing documents filed by the Debtor and the BAP in the 18-1271 Appeal;

(i)Preparing the Trustee's responsive brief in the 18-1271 Appeal;

(j)Preparing for, and appearing at, oral argument in the 18-1271 Appeal;

(k)Reviewing documents filed by the Debtor and the 9th Circuit in the 9th Circuit Appeal;

(1)Completing DNLC's second interim fee application, and preparing for, and appearing at, the hearing regarding the same;

(m) Communicating extensively with the Trustee regarding the above-referenced

(n) matters; and Preparing this fee application.

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

Time	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
73.5	$267.00 [FN.1.]	$19,652.50
Total Fees Requested:		$9,652.50

FN.1. The Application does not break down the hours billed by individual, and therefore a blended rate is necessary. The responsible personnel identified in the Application are J. Rusel Cunningham ($420/hr); Kristen Renfro ($275/hr); Nicholas Kohlmeyer ($275/hr and previously $225/hr); and Ryan Ivanusich ($175/hr).

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of

$140.71 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Cost**
Copies	$28.00
Postage	$51.74
Advances	$60.97
Total Costs Requested in Application	$140.71

DISCUSSION

The present Application is "supplemental." On February 13, 2019, the court issued an Order granting approval of final compensation for Applicant in the amount of $85,851.16, and authorizing "an additional $10,000.00 for any services required in defending any appeal brought by the Debtor and completing a settlement with Panella Properties, Ltd.

Applicant does not state in the Application any grounds for a supplemental award of fees after final compensation has been awarded. This is not a situation where substantial and unanticipated services became necessary. Applicant knew what services remained, and estimated $10,000.00 would be sufficient cover the cost over the remaining services.

At the hearing, xxxxxxxxxxxxxx.

~~**Fees and Costs Allowed**~~

~~Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:~~

~~Fees $19,652.50~~
~~Costs and Expenses $140.71~~

~~pursuant to this Application as supplemental fees and costs 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 DESMOND, NOLAN, LIVAICH & CUNNINGHAM ("Applicant"), Attorney for Hank Spacone, the Chapter 7 Trustee ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause~~

appearing,

IT IS ORDERED that DESMOND, NOLAN, LIVAICH & CUNNINGHAM is allowed the following fees and expenses as a professional of the Estate:

DESMOND, NOLAN, LIVAICH & CUNNINGHAM, Professional employed by the Chapter 7 Trustee

Fees in the amount of $19,652.50
Expenses in the amount of $140.71,

as a supplemental allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

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

15. **16-27672-A-7** **DAVID LIND** **MOTION TO PAY**
DNL-33 **Pro Se** **8-26-19 [790]**

Final Ruling: No appearance at the September 26, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, Chapter 7 trustee, and Office of the United States Trustee on August 26, 2019. By the court's calculation, 31 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Pay is granted.

The Chapter 7 Trustee, Hank Spacone ("Trustee") filed this Motion seeking (1) authority to use Estate funds to pay premiums for general liability coverage on Estate real property in an amount up to $3,000.00; and (2) reimbursement of $1,301.61 in costs advanced by the Trustee to pay premiums for general liability coverage on Estate real property.

The Chapter 7 Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. 11 U.S.C. § 363. The proposed use of Estate funds here is in the best interest the Estate.

The court shall issue an order authorizing the Trustee to use Estate funds to pay the above described expenses of the 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 Pay filed by Chapter 7 Trustee, Hank Spacone ("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 use Estate funds to pay (1) up to $3,000.00 general liability coverage premiums on Estate real property; and (2) $1,301.61 to reimburse costs advanced by the Trustee.

16. **16-27672-A-7** **DAVID LIND** **MOTION TO PAY**
DNL-34 **Pro Se** **8-26-19 [800]**

Final Ruling: No appearance at the September 26, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, Chapter 7 trustee, and Office of the United States Trustee on August 26, 2019. By the court's calculation, 31 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Pay is granted.

The Chapter 7 Trustee, Hank Spacone ("Trustee") filed this Motion seeking authority to use Estate funds to pay $20,437.34 for the Estate's delinquent property taxes due and owing through August 31, 2019.

The Chapter 7 Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. 11 U.S.C. § 363. The proposed use of Estate funds here is in the best interest the Estate.

The court shall issue an order authorizing the Trustee to use Estate funds to pay the above described expenses of the 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 Pay filed by Chapter 7 Trustee, Hank Spacone ("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 use Estate funds to pay $20,437.34 for the Estate's delinquent property taxes due and owing through August 31, 2019.

17. **19-21976-E-7** **CONQUIP, INC.** **MOTION TO PAY**
DNL-8 **Eric Nyberg** **8-20-19 [83]**

20 thru 21

Final Ruling: No appearance at the September 26, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on August 20, 2019. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

The Chapter 7 Trustee, J. Michael Hopper ("Trustee") filed this Motion seeking authority to reimburse $6,020.69 in expenses incurred by Tranzon Asset Strategies, a professional employed by the Estate to auction certain Estate property ("Auctioneer").

The court issued an Order approving the employment of Auctioneer on May 13, 2019. Order, Dckt. 62. The Order further authorized a 10 percent commission, 5 percent buyer's fee, and expenses of $18,500.00 for marketing and auction labor; $5,000.00 for post-auction clean-up; and $5,000.00 for disposal of hazardous materials.

After the auction, Auctioneer's efforts to market property of the Estate resulted in gross proceeds of $131,796.50, and a net of $95,324.25 to the Estate. Declaration, Dckt. 85.

The Motion states that actual expenses for marketing and auction labor total $23,470.69, exceeding the previously approved amount by $4,970.00. The Application also requests $1,050.00 incurred in posting a bond as required by the United States Trustee.

DISCUSSION

11 U.S.C. § 330 allows the court to authorize, after notice and a hearing, the reimbursement for actual, necessary expenses of Estate professionals.

The expenses sought here were advanced for labor and marketing, as well as for a bond required by the U.S. Trustee. Because of Auctioneer's services, the Estate generated $95,324.25 in net proceeds.

The court finds that the expenses requested in the Application were reasonable. Expenses of $6,020.69 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court shall issue an order authorizing the Trustee to use Estate funds to pay the above described expenses of the 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 for Allowance of Professional Fees filed by Chapter 7 Trustee, J. Michael Hopper ("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 Tranzon Asset Strategies, a professional employed by the Estate to auction certain Estate property, is allowed $6,020.69 in additional expenses pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the approved expenses from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

18. **19-21976-E-7** **CONQUIP, INC.** **MOTION TO SELL**
DNL-9 **Eric Nyberg** **8-20-19 [90]**

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on August 20, 2019. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is granted.

The Bankruptcy Code permits J. Michael Hopper, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell certain business property used by the debtor, ConQuip, Inc.'s ("Debtor"), identified as follows: Debtor's website domain(http://www.conquipinc.com), trademarks, service marks, trade names, dba designations, and goodwill related to the Debtor's business (the "Property").

Allied Machining and Engineering, Inc., a Maryland corporation is the proposed buyer ("Buyer"), and has offered a purchase price of $10,000.00.

Movant believes that this sale is in the best interest of the Estate because the potential market for the Property is limited. Declaration, Dckt. 92.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the potential market for the Property is limited and the sale results in a recovery of $10,000.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by J. Michael Hopper, the Chapter 7 Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Movant is authorized to sell pursuant to 11 U.S.C. § 363(b) to Allied Machining and Engineering, Inc., a Maryland corporation or nominee ("Buyer"), certain business property used by the debtor, ConQuip, Inc.'s ("Debtor"), identified as Debtor's website domain (http://www.conquipinc.com), trademarks, service marks, trade names, dba designations, and goodwill related to the Debtor's business (the "Property"), for the sum of for $10,000.00.

19. **19-22393-A-7** **GARY TEIXEIRA** **MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS**
MHK-2 **Richard Hall** **9-3-19 [38]**

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

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 3, 2019. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion for Sanctions for Violation of the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion for Sanctions for Violation of the Automatic Stay is granted.

The present Motion for Sanctions for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by the Chapter 7 Trustee, Eric J. Nims ("Movant"). The claims are asserted against Susan Teixeira ("Respondent").

LEGAL STANDARD

A request for an order of contempt by a debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. FED. R. BANKR. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to willful violations of the stay, and then typically to actual

damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (a Congressionally-created injunction) pursuant to its inherent power as a federal court. *Sternberg v. Johnston*, 595 F.3d 937, 946 (9th Cir. 2009). FN.1.

FN.1. Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see In re Lehtinen*, 564 F.3d at 1058.

The automatic stay imposes an affirmative duty of compliance on the non-debtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151–52 (9th Cir. 1996). A party who acts in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191–92 (9th Cir. 2003).

In addition, Congress provides in 11 U.S.C § 362(a) & (k) additional relief for violation of the automatic stay, which may be requested by an individual debtor.

REVIEW OF MOTION

In asserting this claim pursuant to 11 U.S.C. § 362(a) & (k), Movant states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

A. The debtor, Gary Arthur Teixeira ("Debtor"), holds title to the real property commonly known as 12095 Mont Vista Drive, Auburn, California ("Property"). Motion, Dckt. 38 at 2:5-7.

B. Movant learned that Respondent is a real estate broker or salesperson and has listed the Property for $899,000.00, which listing has prevented Movant from listing the Property. *Id*. at p. 2:15-18.

C. Respondent has refused to terminate her listing of the Property despite Movant's requests. *Id*. at p. 2:18.-21.

D. 11 U.S.C. § 362(a)(3) stays any act to exercise control over property of the estate, including listing the Property. 11 U.S.C. § 362(a)(6) stays any attempt Respondent has to sell the Property and pay any pre-petition obligation. *Id*. at p. 2:22-26.

The Motion is supported by the Declaration of Anthony Asebedo. Dckt. 42. The Asebedo Declaration provides testimony that Debtor holds title to the Property, that he attempted to contact Respondent by phone unsuccessfully, and that after contacting Respondent by email he received two

replies. *Id.*

The email chain between Asebedo and Respondent is attached as Exhibit E. Dckt. 43. The two emails sent by Respondent are both dated August 23, 2019. *Id*. In the correspondence, Asebedo informs Respondent that she needs to terminate her listing of the Property. *Id*. In reply, Respondent inquires about the process for seeking approval of her ability to sell the Property to recovery her interest in the Property as provided by a divorce settlement. *Id*. Respondent in her second email reaffirms that she has a court order authorizing her to list the Property.

DISCUSSION

Based on the evidence presented, Respondent is exercising control over the Property by listing the Property in an attempt to sell it. Respondent seeks to sell the Property to get what she alleges is her portion of the equity in the Property.

Movant has contacted Respondent to inform her of the stay violation. Despite Movant's efforts, Respondent has retained control over the Property, relying at least in part on a state family court order. Respondent's conduct here has clearly been willful.

No evidence was presented as to Movant's potential damages suffered by not being able to timely market the Property in the two months Respondent had knowledge of the stay violation.

Based on the aforementioned, the Motion is granted. Movant is awarded damages of $2,000.00. This is for damages for wasted time and resources in the amount of $500.00 and punitive damages of $1,500.00 in light of Respondents continuing, knowing violation of the automatic stay.

The court shall also issue a corrective sanction providing that Respondent terminate her listing for the Property on or before October 15, 2019, and that if Respondent fails to terminate the listing, corrective sanctions in the amount of $5,000.00 shall be entered against Defendant for failure to comply with this Order.

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 Sanctions for Violation of the Automatic Stay by Chapter 7 Trustee, Eric J. Nims ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted.
>
> **IT IS FURTHER ORDERED** that the court finds that Susan Teixeira has willfully violated the automatic stay provisions of 11 U.S.C. § 362(a) by exercising control over the Estate's real property commonly known as 12095 Mont Vista Drive, Auburn, California (the "Property").

IT IS FURTHER ORDERED that Movant is awarded and shall recover from Susan Teixeira $2,000.00 in damages. The damages consist of $500.00 in compensatory damages, and $1,500.00 in corrective punitive damages.

IT IS FURTHER ORDERED that Respondent shall terminate her listing for the Property on or before October 3, 2019.

IT IS FURTHER ORDERED that if Respondent fails to terminate her listing for the Property by October 15 2019, corrective sanctions in the amount of $5,000.00 shall be entered against Defendant for failure to comply with this Order.

This Order constitutes a judgment (Federal Rule of Civil Procedure 54(a) and Federal Rules of Bankruptcy Procedure 7054 and 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure (including Federal Rule of Civil Procedure 69 and Federal Rules of Bankruptcy Procedure 7069 and 9014).

20. **19-22996-E-7 DNL-3** **ACACIA CREMATION AND BURIAL SOCIETY, INC.** **Reno Fernandez** **MOTION TO APPROVE STIPULATION 9-3-19 [31]**

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

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7Trustee, creditors, and Office of the United States Trustee on September 3, 2019. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion for Approval of Compromise is granted.

The Chapter 7 Trustee, J. Michael Hopper ("Movant") requests that the court approve a compromise and settle competing claims and defenses with U.S. Bank, N.A. dba U.S. Bank Equipment Finance ("Settlor").

The settlement here is for the release of Settlor's secured interest in property identified as a Facultative Technologies FT III Double Ender Human Cremator, including Thimble and Roof Plate, Serial No. C2225 (the "Property"). In Proof of Claim, No. 5, filed by Settlor, Settlor's claim is asserted to be secured in the amount of $70,800.00.

Movant and Settlor entered into an agreement regarding the sale of the Property free and clear of Settlor's lien, subject to approval by the court on the following terms and conditions summarized by

the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit B in support of the Motion, Dckt. 34):

A. Settlor consents to the sale of the Property free and clear of its lien so long as Settlor receives at least $51,000.00 of the sale proceeds.

B. Settlor shall be allowed up to $60,000.00 plus a pro rata share of the difference between the closing overbid and proposed purchase price.

C. Movant shall be allowed a 15 percent surcharge against the secured portion of Settlor's claim.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

Probability of Success

Movant argues this factor weighs in favor of settlement because there no viable argument that Settlor does not have a secured claim of $70,800.00.

Movant's argument is well-taken. Movant's likelihood of succeeding on an objection to Settlor's secured claim is very slim.

Difficulties in Collection

Movant argues this factor is neutral because Movant is in the defensive position.

Movant's argument is well-taken. Whether Movant is successful or unsuccessful after litigation, there is nothing for Movant to collect.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues this factor weighs in favor of settlement because Movant has no basis to oppose Settlor's claim, and because the settlement resolves the matter without further expense and delay.

Here, no evidence was presented as to the potential cost and delay of disputing Settlor's claim. Therefore, this factor is neutral at best.

Paramount Interest of Creditors

Movant argues this factor supports settlement because the settlement provides for a greater return than they would otherwise receive.

Movant's argument is well-taken. The proposed settlement reduces Settlor's secured claim where there is otherwise no basis to do so, allowing recovery for the Estate and avoiding any further delay and expense.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the settlement reduces Settlor's secured claim where there is otherwise no basis to do so, allowing recovery for the Estate and avoiding any further delay and expense. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Chapter 7 Trustee, J. Michael Hopper, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and U.S. Bank, N.A. dba U.S. Bank Equipment Finance ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit B in support of the Motion (Dckt. 34).

FINAL RULINGS

21. **16-22482-E-7** **TIMOTHY MUNSON**
HCS-6 **Charles Hastings**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM, CRABTREE, SUNTAG FOR DANA A. SUNTAG, TRUSTEES ATTORNEY(S)
8-22-19 [86]

Final Ruling: No appearance at the September 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 22, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Herum/Crabtree/Suntag, 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.

Fees are requested for the period May 16, 2016, through June 13, 2019. The order of the court approving employment of Applicant was entered on May 24, 2019. Dckt. 13. Applicant requests fees in the reduced amount of $30,000.00 and costs in the amount of $636.71.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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 demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney o work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to 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?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include General case administration, and the investigation of and ultimate compromise settling the Estate's interest in two properties. The Estate has $41,324.73 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were 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.

General Case Administration: Applicant spent 11.60 hours in this category. Applicant's services included preparing employment applications, conferring with Client and the estate's largest creditor regarding recovery of property of the estate, and preparing the instant application for compensation and appearing at the hearing.

Lexington Real Property; Relief From Stay; Compromise: Applicant spent 122.60 hours in this category. Applicant's services included asset investigation, research regarding the avoidability of a transferred property interest, and negotiation of a compromise.

Poppy Drive Investigation; Adversary Proceedings; Compromise: Applicant spent 222.20 hours in this category. Applicant's services included asset investigation, research regarding the avoidability of a transferred property interest, commencement of an adversary proceeding, propounding and reviewing of discovery, and negotiation of a compromise.

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	Hourly Rate	Time	Total Fees Computed Based on Time and Hourly Rate
Dana Suntag	$325/ $345 /$375		
Joshua Stevens	$295.00		
Benjamin Codog	$175/ $200		
Audrey Dutra	$90.00		
	$0.00		
Blended Rate	$209.90	$356. 40	$74,826.00
Total Fees for Period of Application			$74,826.00
Total Fees Requested			$30,000.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $636.71 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
Copies	$204.79
Postage	$192.65
Certified Copy of Voluntary Petition	$14.50
Travel Mileage	$55.77
Recording Fees	$169.00
Total Costs Requested in Application	$636.71

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single, reduced sum of $30,000.00 for its fees incurred for Client. First and Final Fees and Costs in the amount of $30,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $636.71 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay the fees and costs allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$30,000.00
Costs and Expenses	$636.71

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Herum/Crabtree/Suntag ("Applicant"), Attorney for Gary Farrar, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Herum/Crabtree/Suntag is allowed the following fees and expenses as a professional of the Estate:
>
> Herum/Crabtree/Suntag, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $30,000.00
> Expenses in the amount of $636.71,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees and costs allowed by this Order from the available funds of the

Estate in a manner consistent with the order of distribution in a Chapter 7 case.

22.	18-27501-E-7 DMW-5	**VAN NORTWICK INVESTMENTS, INC.** **Seth Hanson**	**MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY, ACCOUNTANT(S)** **8-29-19 [28]**

Final Ruling: No appearance at the September 26, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 28, 2019. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Gabrielson & Company, the Accountant ("Applicant") for Douglas M. Whatley, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 19, 2019, through August 28, 2019. The order of the court approving employment of Applicant was entered on June 25, 2019. Dckt. 25. Applicant requests fees in the amount of $2,646.50 and costs in the amount of $96.70.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the professional exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional] must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to 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?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include preparation of income tax returns and case administration. The court finds the services were beneficial to Client and the Estate and were 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.

Employment and Fee Applications: Applicant spent 1.6 hours in this category.

Preparation of 2018 and 2019 Federal and California Income Tax Returns: Applicant spent 5.1 hours in this category.

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**
Michael Gabrielson	6.7	$375.00	$2,646.50
Total Fees for Period of Application			$2,646.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $96.70 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
Copies	$63.80
Postage	$32.90
Total Costs Requested in Application	$96.70

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 $2,646.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $96.70 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay the fees and costs allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$2,646.50
Costs and Expenses	$96.70

pursuant to this Application as final fees and costs 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 ("Applicant"), Accountant for Douglas M. Whatley, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:

Gabrielson & Company, Professional employed by the Chapter 7 Trustee

Fees in the amount of $2,646.50
Expenses in the amount of $96.70,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees and costs 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.

23. 19-22653-E-11 DNL-4 | **REECE/RODINA VENTURA** **Peter Macaluso** | **MOTION TO EMPLOY NICHOLAS L. KOHLMEYER AS SPECIAL COUNSEL 8-21-19 [182]**

Final Ruling: No appearance at the September 26, 2019 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 21, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

The Chapter 7 Trustee, Geoffrey Richards ("Trustee ") seeks to employ MS&B ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel to pursue the Estate's potential rights to the debtor, Rodina Cordero Ventura's inheritance.

Anthony Sodono, a licensed New Jersey attorney with Counsel, testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow

compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ MS&B as Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Retainer Agreement for Legal Services filed as Exhibit A, Dckt. 185. Approval of any fees is subject to the provisions of 11 U.S.C. § 328 at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Chapter 7 Trustee, Geoffrey Richards ("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 Trustee is authorized to employ MS&B as Counsel for Trustee on the terms and conditions as set forth in the Retainer Agreement for Legal Services filed as Exhibit A, Dckt. 185.
>
> **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.

24. **19-24673-A-7** **BLG-1** | **RICHARD/CHARLENE** **Chad Johnson** | **MOTION TO CONVERT CASE FROM SCARBROUGHCHAPTER 7 TO CHAPTER 13** **8-26-19 [24]**

Final Ruling: No appearance at the September 26, 2019, hearing is required.

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

Sufficient 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 27, 2019. By the court's calculation, 30 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

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

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

The debtors, Richard Thomas Scarbrough and Charlene Kay Scarbrough ("Debtor") seek 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 they do not qualify for Chapter 7 relief due to their income.

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

The court 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 the debtors, Richard Thomas Scarbrough and Charlene Kay Scarbrough ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert is granted, and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code.