UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

October 1, 2015 at 10:30 a.m.

1.	**15-90459-E-7 RAC-5**	**PRAVINKUMAR/MADHUKANTA GANDHI David C. Johnston**	**MOTION TO DISMISS CASE, MOTION TO COMPEL AND/OR MOTION FOR SANCTIONS 9-1-15 [51]**

Final Ruling: No appearance at the October 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 1, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss Case is dismissed without prejudice.

The Patel Law Firm, P.C. ("Creditor") filed the instant Motion to Dismiss Case, or, in the Alternative, to Compel Debtors to Comply with Order Pursuant to Fed. R. Bankr. P. 2004 Directing Debtors to Appear for Examinations and Produce Documents; and Request for Monetary Sanctions on September 1, 2015. Dckt. 51. FN.1.

FN.1. The Creditor improperly seeks multiple forms of relief in a single Motion. The Motion itself states "The Creditor is requesting that this case be dismissed for reasons discussed *infra*. Only if the Court is unwilling to

dismiss the case is the Creditor requesting compliance with the 2004 Examination Order." This is facially improper. The law and motion practice in bankruptcy did not incorporate Fed. R. Civ. P. 18 to allow multiple forms of relief to be requested in a single Motion.

This Motion exemplifies the unnecessary problems created when parties "slop" various claims for relief into one motion that is set for hearing on a 28 day notice.

Therefore, the court shall *sua sponte* view this as a Motion to Dismiss, with the other request being deemed as dismissed without prejudice for improperly pleading for multiple forms of relief in a single Motion.

The Creditor states that Pravinkumar Gandhi and Madhukanta Gandhi ("Debtor") filed the instant Chapter 7 bankruptcy on May 12, 2015.

The Creditor asserts that it was granted an Order Granting Application for Order of Examination under Federal Rule of Bankruptcy Procedure 2004(a). Dckt. 19. The Creditor states that the Order required that the Debtor provide documents to Creditor's counsel on or before July 22, 2015 and appear for an examination in Modesto on August 12, 2015.

The Creditor asserts that its counsel spoke with Debtor's counsel on July 22, 2015 to which the Debtor's counsel confirmed that the Debtor would produce the requested documents by July 24, 2015 and that August 12, 2015 was an acceptable date for the examination. The Creditor states that the documents were not received by the July 24, 2015 date.

On August 13, 2015, the Creditor states that the Debtor's counsel forwarded the 2010, 2011, 2012, 2013, and 2014 federal and state income tax returns for the Debtor and financial statement for 2011 and 2012. The Creditor states that this was deficient and requested all the documents to be produced by August 28, 2015. The Creditor states that it has not received any further documentation.

APPLICABLE LAW

11 U.S.C. § 707 provides the court the authority to dismiss a case after notice and a hearing and only for cause, which includes:

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

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to

act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992).

DISCUSSION

This is not Debtor's first bankruptcy case. On March 3, 2015, Debtor commenced Chapter 7 bankruptcy case No. 15-90219. That case was dismissed on March 16, 2015. It was dismissed due to Debtor's failure to file:

A. Attorney Disclosure Statement;

B. Form 22A - Statement of Monthly Income;

C. Schedules A - J;

D. Statement of Financial Affairs; and

E. Statistical Summary and Summary of Schedules.

15-90219; Notice of Incomplete Filing and Order Dismissing, Dckts. 3 and 11.

The current bankruptcy case was filed on May 12, 2015. Debtor has filed the basic initial documents, which the court summarizes as follows:

1. Schedule A, Real Property –

   a. No assets listed.

2. Schedule B, Personal Property –

   a. $50,000 of value (which includes $14,000 value in two vehicles, $10,000 IRA, and $22,000 cash value in life insurance).

3. Schedule D, Secured Claims –

   a. None.

4. Schedule E, Priority Unsecured Claims –

   a. Internal Revenue Service claim for $4,700.

5. Schedule F, General Unsecured Claims –

   a. Total Claims of $3,459,203.

      i. $1,152,658 liability to Liberty Bank.

ii. $896,065 liability to U.S. Small Business Administration.

iii. $464,358 liability to Heritage Bank of Commerce for "note formerly secured by debtor's property."

iv. $319,955 liability to Mid-Missouri Bank.

v. $296,897 liability to Super 8 Worldwide, Inc.

vi. $145,000 liability to Jognider Dahaliwal, subject to set off.

vii. $119,852 liability to Patel Law Firm (foreclosed out junior lien secured debt).

viii. $48,533 liability to JPMorgan Chase Bank, N.A. for "deficiency" following foreclosure of Gagos Drive Property.

6. Schedule I, Income –

a. $1,400 a month, since August 2015.

7. Schedule J, Expenses –

a. $1,400 a month, which:

i. Do not include a Housing Expense,

ii. Do not include Utility Expense,

iii. $400 Food Expense,

iv. $454 Life Insurance Expense, and

v. $200 Transportation Expense.

8. Statement of Financial Affairs -

a. Gross Income, Question 1.

i. 2015.....$6,152 (wages)

ii. 2014.....$24,517 (net business income prior to foreclosure)

iii. 2013.....$31,767 (net business income)

b. Foreclosures, Question 5.

i. Siesta Motel foreclosed on my holder of second deed of trust at nonjudicial foreclosure sale.

Schedules and Statement of Financial Affairs, Dckt. 14.

The Creditor asserts that under the totality of the circumstances, the

case should be dismissed. Specifically, the Creditor argues that the Debtor's repeated failure to comply with the Order for the production of documents and for an examination pursuant to Fed. R. Bankr. P. 2004. The Creditor argues that its repeated attempts to contact the Debtor through counsel and provide extension to properly provide for the documentation is cause to dismiss the case.

On July 7, 2015, the court issued the Order Granting Application for Order of Examination Under Federal Rule of Bankruptcy Procedure 2004(a) as to the Debtor. Dckt. 19.

Failure to Comply with Rule 2004 Subpoena

The Creditor is cutting the corner and using a possible discovery dispute as a basis for tossing the Chapter 7 case out. It may be that the court could get to that point, but the court enforcement of a subpoena does not go from nothing to dismissal.

Creditor has not provided the court with a copy of the Rule 2004 subpoena which is at issue. Creditor has attached a copy of the court's order authorizing a 2004 Examination of Debtor, which provides,

A. Attendance at the examination and production of documents shall be compelled as provided in Federal Rule of Bankruptcy Procedure 9016, in the same manner as compelling attendance at a trial (use of a subpoena as provided in Fed. R. Civ. P. 45).

B. The 2004 Examination shall not be scheduled earlier than 30 days after service of the subpoena.

Exhibit 1, Dckt. 54.

In his declaration under penalty of perjury, Counsel for Creditor states under penalty of perjury:

A. On July 7, 2015, the court entered its order authorizing the 2004 Examination (which, the court notes, could not be conducted less than 30 days after service of the subpoena).

B. Notice of the motion to authorize the 2004 Examination was not served by Creditor, but "provided" via email and ECF notice. The "notice" was sent by email on July 6, 2015.

C. A copy of the order authorizing the 2004 Examination was emailed by Counsel for Creditor to counsel for Debtor. (See Exhibit 4, Dckt. 54.) This email is dated July 20, 2015 – which is thirteen (13) days after the court issue the order authorizing the 2004 Examination (for which a subpoena is required to compel attendance and production of documents).

1. In the email, Counsel for Creditor states that he must receive the documents by the week's end.

D. Counsel for Creditor states that a 2004 Examination was scheduled for "next week" in an email dated August 4, 2015.

(See Exhibit 5, Dckt. 54)

E. The Declaration does not provide any testimony that a subpoena has been issued compelling the production of documents or attendance at a 2004 Examination.

Declaration, Dckt. 53. No copy of a subpoena is provided as an exhibit in support of the present Motion. No allegation of a subpoena having been issue or served is alleged in the Motion. Dckt. 51.

While it appears that Counsel for Creditor has communicated with counsel for Debtor, the Motion makes it clear that no subpoena has been issued.

For the court to consider issuing sanctions for the failure to comply with a subpoena, the predicate facts are that: (1) the subpoena must be issued and (2) the subpoena must be served. Alternatively, for the examination of the Debtor, as an alternative the court may issue an order setting a specific state and time for such order. Fed R. Bank. 2004(d). All that was communicated (with there being no evidence of service) was a copy of the court authorizing the 2004 Examination, which expressly states that attendance and production must be compelled by a subpoena. See *Stasz v. Gonzales (In re Stasz)*, 387 BR. 271 (B.A.P. 9th Cir. 2008). (Debtor's conduct failure to comply with 2004 Examination order which set specific date and time was the basis for sanctions.)

With a debtor, there is an additional step, and possible negative consequences, for failure to comply with such a subpoena. Federal Rule of Bankruptcy Procedure 2005 provides that if a debtor fails to comply with a subpoena to appear, avoided the service of a subpoena to appear, or is at imminent risk of fleeing to avoid service of a subpoena, the court may order the U.S. Marshal to take the debtor into custody and produce the debtor at the court ordered date and time for the 2004 Examination.

Unfortunately, the usual smooth operation of Rule 2004 and debtor examinations has failed in this case as between Creditor and Debtor. The court did not set a specific date, time and location, so there is no order for Debtor to appear. Creditor did not issue a subpoena to make Debtor appear.

The order form used, presupposes that either the parties will agree to a date and time, and then follow through, or it will be compelled by subpoena. When the subpoena, or agreement for the examination is presented, the debtor is provided an opportunity to file objections to the documents to be produced and examination.

The court recalls that when the authorization to conduct a 2004 Examination was requested, there was a long, extensive list of documents. In light of the court not ordering the examination and production of document at a specific time and place, the court left the determination of what would be ordered to be produced to a later date, if there was any bona fide dispute by Debtor.

Dismissal of Case Versus Compelling Production

Debtors, with the assistance of counsel, have now filed two bankruptcy cases. A further case would not be surprising. Taking Debtor's Schedules as

true, substantial liabilities exist for which Debtor would be expected to seek relief under the Bankruptcy Code.

The substance of this Motion can be restated as follows:

a. Debtor voluntarily commenced this bankruptcy case.

b. Debtor has obtained the benefits which flow with the commencement of the bankruptcy case, including the automatic stay.

c. Creditors have had their rights impinged upon by operation of the Bankruptcy Code.

d. One of the fundamental requirements of a debtor is to provide the information required on the Schedules, Statement of Financial Affairs, and in response to the subpoena for a 2004 examination.

e. While receiving the benefits from voluntarily filing the bankruptcy case, Debtor is failing in good faith to fulfill the minimum obligations of a debtor.

Debtor has chosen not to respond to the present motion. The Chapter 7 Trustee has not opposed the Motion. This lack of response by the Trustee speaks volumes about the case – indicating that the Chapter 7 Trustee sees little value in the case proceeding.

The court finds that causes exists to dismiss this Chapter 7 case pursuant to 11 U.S.C. § 707(a). The information on Debtor's Schedules concerning debts appears to be inconsistent with the income information on the Statement of Financial Affairs. While Debtor has produced some tax information, Debtor has not produced documents or purported to state that no such documents exist for a number of items.

While it is true that Creditor has not taken the steps necessary to compel the production, if Debtor was prosecuting the case then such would have been set forth in an opposition to the present motion. Debtor does not oppose, apparently believing that dismissal is more favorable than having a monetary award of sanctions and being ordered to appear at a specific date and time.

The Motion is granted and the case is dismissed. No sanctions are ordered.

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 Case, Motion to Compel, and Motion for Sanctions filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the bankruptcy case is dismissed. The request for sanctions is denied.

2.	**15-90459-E-7 RAC-6**	**PRAVINKUMAR/MADHUKANTA GANDHI David C. Johnston**	**MOTION TO COMPEL AND/OR MOTION FOR SANCTIONS 9-1-15 [56]**

NO APPEARANCE OF RONALD CLIFFORD, COUNSEL FOR MOVANT, REQUIRED IF HE CONCURS WITH DENIAL OF MOTION WITHOUT PREJUDICE

Tentative Ruling: The Motion to Compel and Motion for Sanctions 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 1, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Compel and Motion for Sanctions is denied without prejudice.

Patel Law Firm, P.C. ("Creditor") filed the Motion to Compel and Request for Sanctions on September 1, 2015. Dckt. 56. On July 24, 2015, this court granted Creditor's *ex parte* request for examination and production of documents from Prakash Patel ("Patel"). Dckt. 34, 35. Creditor moves to compel Patel to appear for examination and to produce documents. Creditor also requests $1,675.00 in attorney's fees in relation to Debtor's alleged failure to comply with the prior order. *Id.* at ¶ 14-16. Finally, Creditor requests this court hold Patel in contempt and impose a daily fine until Patel produces the documents and appears for the examination. *Id.* at ¶ 23.

Creditor asserts that Patel failed to produce the documents or to schedule the 2004 examination. Creditor provides evidence that, on at least three separate occasions, Patel to produce documents to Creditor unless the location of the deposition was moved to a place in or near San Jose, CA. Dckt. 58 ¶ 4, 5, 6. Creditor tried to schedule the court ordered examination through telephone, e-mail, and mail, each time reminding Patel of the subpoena and court Order requiring Debtor's compliance. Each time, Patel stated he would produce the documents only if the examination took place in or near San Jose. *Id.*

In addition, Creditor requests monetary sanctions against Patel because Patel was "deliberately disobedient." The monetary sanctions requested are for hours spent preparing the instant motion and the anticipated hours for attending the hearing and preparing the draft order. Dckt. 56 ¶ 22.

RESPONSE FILED BY PATEL

On September 29, 2015, without obtaining leave to file a late opposition, counsel for Patel filed an Opposition. Dckt. 66. The Opposition argues:

A. The Subpoena requires attendance outside the 100 mile radius provided in Rule 45 because one route by which Patel could travel to Modesto is 112 miles in length, while another route is 93 miles in length.

B. For Patel to travel from San Jose to a deposition in Modesto, California causes an unnecessarily difficult commute.

C. The Subpoena required production of documents by August 7, 2015, and was served on Patel on August 6, 2015.

D. Creditor's counsel failed to meet and confer with Patel.

E. No 2004 Examination was actually set with the court reporter.

Opposition, Dckt. 66.

In the Opposition, Patel also request that the court waive the late filing because "Counsel for Mr. Patel did not receive this file until mid-September. *Id.* at 4:26-27. It does not allege why more than a month passed after receiving a subpoena that Mr. Patel "gave" the file to an attorney.

APPLICABLE LAW

Pursuant to Fed. R. Bankr. P. 2004:

> (c) Compelling attendance and production of documents
>
> The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

Bankruptcy Courts have the jurisdiction to impose sanctions. *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 court 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 also* 11 U.S.C. § 105(a).

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience to a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemptor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Lehtinen*, 564 F.3d at 1058. However, the court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

DISCUSSION

Looking just at the Motion and supporting pleadings, the court begins with the Subpoena issued by Counsel for Creditor. It is dated July 27, 2015. Exhibit 2, Dckt. 59. Counsel for Creditor confirms that Patel was served with it on August 6, 2015 (further stating that multiple attempts at service were required). Declaration, p. 2:8-9.; Dckt. 58. Counsel further testifies that Patel stated that he has the documents, but would produce then and appear for a 2004 Examination only if it were conducted in San Jose.

Counsel for Creditor also testifies to conversations with Patel concerning the 2004 Examination and sending a "meet and confer" letter on August 27, 2015 (Exhibit 5, Dckt. 59). In the letter Counsel for Creditor posits that Modesto is a reasonable location for taking the 2004 Examination

in large part due to Debtor and Debtor's counsel being located there. Of all the persons involved, the ones least likely to have the resources to travel even reasonable distances for discovery would be Debtor and Debtor's counsel.

Discovery in Federal Court usually works smoothly, with all parties cooperating as appropriate to at least produce documents, file objections, and conduct depositions (objecting as proper). When the process does not unfold that way, then setting document productions and deposition with hard and firm dates are required (at least one of the parties choosing to do it the "harder rather than easier way"). Unfortunately, that does not appear to be the court in connection with this discovery. Possibly Creditor's Counsel was "too nice" in trying to work with Patel. Whatever the reason, the dates set in the Subpoena came and went, with the parties still talking.

Unfortunately, such a tight deadline was set when Counsel for Creditors was not certain of being able to immediately serve the Subpoena, by the time was served, Creditor was having to "negotiate" a new time. The Subpoena was rendered impossible to comply with by Patel.

While the court has denied the Motion based upon the Motion and supporting documents, the court has considered Patel's "Opposition." A significant party of it is that he opposes having to travel to Modesto because it is inconvenient (or would be more convenient if he could do so at the place of his choice). Unfortunately for Mr. Patel, it is not his examination. He does not choose the time and place. While Mr. Patel can gin up a route outside the 100 mile radius, there is a route to take between San Jose and Modesto which does not exceed the 100 mile radius.

Further, Mr. Patel asserts that it is better for the Debtor and Debtor's counsel to make the trip he desires not to, rather than him making the trip. Such is not a reasonable, good faith contention.

The Motion to Compel and For Sanctions is denied without prejudice. The court makes no determination as to what damages in connection with these proceedings, if any, have been suffered by Creditor and whether such damages may be recovered by Creditor in some other proceeding. The court leaves that determination to non-bankruptcy court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel and Request for Sanctions filed by Creditor having been presented to the court, the court having ordered that this Chapter 7 case be dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Prakash Patel to Appear for a 2004 Examination is denied without prejudice. The court makes no determination as to what damages in connection with these proceedings, if any, have been suffered by Creditor and whether such damages may be recovered by

Creditor in some other proceeding. The court leaves that determination to non-bankruptcy court.

3. 15-90459-E-7 RAC-4 | **PRAVINKUMAR/MADHUKANTA GANDHI**
David C. Johnston | **CONTINUED MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR**
7-23-15 [30]

Tentative Ruling: The Motion to Extend Deadline 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 Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 23, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion and Notice were served on counsel for Debtors, but not on Debtors. Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 2002(f)(4) provides that service of the notice of a motion to extend time to object to discharge must be served on the Debtor. Bankruptcy Rule 9014(b) requires that the motion itself be served on the effected parties in the sam manner as a summons and complaint in an adversary proceeding. Here, Debtor was not served with either the notice or the motion,.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of Debtor has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no

disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Hearing on the Motion to Extend Deadline to File a Complaint Objecting to Discharge of Debtor is denied without prejudice as moot, the case having been dismissed.

The Patel Law Firm, P.C. ("Creditor") filed the instant Motion to Extend Deadline to Object to Discharge on July 23, 2015. Dckt. 30. Pravinkumar and Madhukanta Gandhi ("Debtor") filed the instant case under Chapter 7 on May 12, 2015.

AUGUST 20, 2015 HEARING

At the hearing, the court continued the hearing to 10:30 a.m. on October 1, 2015 to allow the Creditor the opportunity to properly serve the Motion on all necessary parties. Dckt. 41.

On August 24, 2015, the Creditor served on Debtor the Motion and supporting pleadings, and notice of continued hearing on the Debtor, Debtor's counsel, the Chapter 7 Trustee, creditors, and the U.S. Trustee. Dckt. 46, 47, and 48.

DISCUSSION

The deadline to file a complain objecting to the discharge of the Debtor is set for September 8, 2015. Creditor requests that the deadline for the Creditor to file a complain objecting to the discharge of Debtor until November 8, 2015. The instant Motion was filed before the expiration of the deadline for filing objections to discharge.

The Creditor seeks the extension because, after the Debtor filed the instant case, the Creditor moved the court for 2004 examinations which will not take place until the late part of August. The current deadline is set just seven days after the last of the Creditor's 2004 examinations. The Creditor argues that it has acted quickly and diligently to schedule the 2004 examinations in order to get sufficient information to determine if such an objection is proper.

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b)(1). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 4004(b)(1).

Here, the Creditor has provided sufficient evidence and cause to justify extending the deadline to file a complaint objecting to discharge of the Debtor. The Creditor has shown that it has acted diligently in seeking 2004 examinations and requests for documents and that the short time line without the extension would be prejudicial to the Creditor. Furthermore, the extension of the deadline would not prejudice the Debtor, estate, nor other creditors because the Creditor is seeking information as to potential assets of the

estate.

However, on October 1, 2015, the court dismissed the case without prejudice based on the Creditor's Motion to Dismiss. Therefore, the case having been previously dismissed, the instant Motion is denied without prejudice as moot.

In the event that the Order dismissing the case is vacated, the Creditor may file an *ex parte* motion to restore the instant Motion to Extend the Time to File an Objection to Discharge to calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Time to File an Objection to Discharge filed by The Patel Law Firm, P.C. ("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 the Motion is denied without prejudice as moot, the case having been dismissed.
>
> **IT IS FURTHER ORDERED** that in the event that the Order dismissing the case is vacated, the Creditor may file an *ex parte* motion to restore the instant Motion to Extend the Time to File an Objection to Discharge to calendar.

4. 15-90301-E-7 ROBERT ERWIN
SCB-5 Martha Lynn Passalaqua

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHNEWEIS-COE & BAKKEN FOR LORIS L. BAKKEN, TRUSTEE'S ATTORNEY(S)
9-3-15 [80]

Final Ruling: No appearance at the October 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on September 3, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

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

The period for which the fees are requested is for the period April 22, 2015, through October 1, 2015. The order of the court approving employment of Applicant was entered on April 22, 2015. Dckt. 19. Applicant requests fees in the amount of $8,085.00 and costs in the amount of $313.23.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general case administration and strategies, legal advice on how to employ a realtor and sell property of the estate, preparing motions to employ the realtor and sell the real property, and preparing the motion for application for the realtor's compensation. Dckt. 80 p. 2. The estate has $37,269.75 of unencumbered monies to be administered as of the filing of the application. Dckt. 83 ¶ 3. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 3.6 hours in this category. Applicant assisted Client with preparing SCB's fee agreement, employment application, and preparing the instant application for compensation. Dckt. 80 p. 2.

Employment and Compensation of Realtor and Sale of Real Property: Applicant spent 24.2 hours in this category. Applicant reviewed the listing agreement and prepared the application to employ Margeley Bernal of Trifecta Real Estate, Inc., d/b/a RE/MAX Executive; Ms. Bernal handled real property at 1119 Maple Drive, Oakdale CA. Applicant also prepared the motion to sell the Oakdale property. SCB prepared two motions for compensation for Ms. Bernal: the first was denied by this court on June 14, 2015; the second was approved by separate motion on July 26 2015. Dckt. 49, 50, 71.

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**
Loris L. Bakken	26.1	$300.00	$7,830.00
Loris L. Bakken (Half rate on 6/11/2015)	1.7	$150.00	$255.00
	0	$0.00	$0.00

Total Fees For Period of Application	$8,085.00

Dckt. 84, Ex. A.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $313.23 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	$0.10 per page	$147.60
Postage		$165.63
Total Costs Requested in Application		$313.23

Dckt. 84, Ex. A.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $8,085.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs and Expenses

The First and Final Costs in the amount of $313.23 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $8,085.00
Costs and Expenses $313.23

pursuant to this Application 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

Schneweis-Coe & Bakken, LLP (“Applicant”), Attorney for the Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Schneweis-Coe & Bakken, LLP is allowed the following fees and expenses as a professional of the Estate:

Schneweis-Coe & Bakken, LLP , Professional Employed by Trustee

Fees in the amount of $8,085.00
Expenses in the amount of $313.23.

The fees and costs are allowed pursuant to 11 U.S.C. § 330.

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

5. 10-94411-E-7 CAROLE CAMERON
CWC-5 David C. Johnston

MOTION FOR COMPENSATION FOR PAUL E. QUINN, ACCOUNTANT
8-25-15 [78]

Final Ruling: No appearance at the October 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on August 25, 2015. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Carl W. Collins, the Attorney ("Trustee's Attorney") for Stephen Ferlmann the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. Collins moves for fees to be paid by Trustee to Ryan, Christie, Quinn & Horn, Certified Public Accountants ("Applicant"). Dckt. 78.

The period for which the fees are requested is for the period April 1, 2015 through July 15, 2015. The order of the court approving employment of Applicant was entered on April 4, 2015. Dckt. 63. Applicant requests fees and costs in the amount of $5,185.00. Trustee filed an Approval of Fee Application dated August 17, 2015. Dckt. 70.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

all relevant factors, including–

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general case administration, tax return preparation and related services, and correspondence with federal and state tax authorities. Dckt. 78. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 2.2 hours in this category. Applicant assisted Client by communicating with Trustee, reviewing and executing employment applications, and compiling daily time records.

Tax Return Preparation and Related Services: Applicant spent 18.9 hours in this category. Applicant compiled financial data, prepared federal and state tax returns fr 2010, 2011, 2012, 2013, 2014, and 2015, and determined the tax basis for assets held in the bankruptcy estate by reviewing settlement agreements.

Correspondence with Federal and State Tax Authorities: Applicant spent 3.6 hours in this category. Applicant communicated with federal and state tax authorities related to the filing of estate tax returns for 2010, 2011, 2012, 2013, 2014, and 2015.

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**
Paul E. Quinn, CPA	11.5	$250.00	$2,875.00
Deborah A. Monis, CPA	13.2	$175.00	$2,310.00
	0	$0.00	$0.00

Total Fees For Period of Application	$5,185.00

Dckt. 68, 69.

Costs and Expenses

Applicant does not seek reimbursement for costs and expenses. Dckt. 68, 69.

FEES AND COSTS & EXPENSES ALLOWED

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $5,185.00 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees and Costs & Expenses $5,185.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Ryan, Christie, Quinn & Horn, Certified Public Accountants ("Applicant"), Accountant for the Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Ryan, Christie, Quinn & Horn, Certified Public Accountants is allowed the following fees and expenses as a professional of the Estate:
>
> Ryan, Christie, Quinn & Horn, Certified Public Accountants , Professional Employed by Stephen Ferlmann, the Chapter 7 Trustee,
>
> Fees in the amount of $5,185.00,
>
> The fees are allowed pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

6. 10-94411-E-7 CAROLE CAMERON
CWC-6 David C. Johnston

MOTION FOR COMPENSATION FOR CARL W. COLLINS, TRUSTEE'S ATTORNEY
9-1-15 [72]

Final Ruling: No appearance at the October 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on August 25, 2015. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Carl W. Collins, the Attorney ("Applicant") for Stephen Ferlmann the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period January 14, 2011 through August 26, 2015. The order of the court approving employment of Applicant was entered on February 2, 2011. Dckt. 26. Applicant requests fees in the amount of $15,958.50 and costs in the amount of $88.31. Trustee filed an Approval of Fee Application dated September 1, 2015. Dckt. 74.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including asset disposition, fee and employment applications for self and others by direction of Trustee, and both preparation and representation for two adversary proceedings. The estate has $49,349.94 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Disposition: Applicant spent 12.2 hours in this category. Applicant assisted Client with sales, leases, abandonment, and related transaction work. Applicant communicated with Trustee on, and addressed, legal issues identifying and reviewing assets of the bankruptcy estate, including interests real property in Leisure World at Seal Beach CA, and interests in stock certificates for Golden Rain Foundation and Seal Beach Mutual No. 9. Dckt. 76, Ex. 1. Applicant also submitted and reviewed subpoena documents and conducted legal research on the effect of filing a petition for bankruptcy on joint tenancy interests. Dckt. 76, Ex. 1.

Applications for Fees and Employment: Applicant spent 12 hours in this category. Applicant prepared the application for Trustee to employ Applicant as counsel, and prepared separate Motions for Compensation to Trustee's Accountant and to Applicant. *Id.*

Adversary Proceedings: Applicant spent 47.2 hours in this category. Applicant drafted motions regarding Adversary Proceeding No. 14-9005 to recover avoidable transfers, including a related motion to extend, discovery, court appearances, reviewing documents, and drafting a revised Settlement & Mutual Release Agreement with Motion to Approve Compromise. Applicant also drafted motions regarding Adversary Proceeding No. 14-9006 to authorize the sale of co-owned real property, including negotiating with opposing counsel, reviewing documents and responding to defendant's Motion to Dismiss, and drafted a settlement with opposing counsel. *Id.*

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**
Carl W. Collins, Attorney	46.5	$295.00	$13,717.50
Claudia Alarcon, Paralegal	23.4	$90.00	$2,106.00
Melissa Morena, Paralegal	1.5	$90.00	$135.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$15,958.50

Dckt. 76, Ex. 1.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $88.31 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$57.81
Copying	$0.10 per page	$30.50
		$0.00
		$0.00
Total Costs Requested in Application		$88.31

Dckt. 76, Ex. 1.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $15,958.50 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs and Expenses

The First and Final Costs in the amount of $88.31 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$15,958.50
Costs and Expenses	$88.31

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 Carl W. Collins ("Applicant"), Attorney for the Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Carl W. Collins is allowed the following fees and expenses as a professional of the Estate:
>
> Carl W. Collins, Professional Employed by Trustee
>
> Fees in the amount of $15,958.50
> Expenses in the amount of $88.31.
>
> The fees and costs are allowed pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

7. 15-90411-E-7 JOHN/MONICA BERGMAN MOTION TO EXTEND TIME
HSM-2 Charles L. Hastings 8-21-15 [26]

Final Ruling: No appearance at the October 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 21, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor is granted, with the deadline extended to October 23, 2015.

Gary Farrar, the Chapter 7 Trustee, ("Trustee") filed the instant Motion for Extension of Time to File Objection to Discharge of Debtor on August 21, 2015. Dckt. 26.

The Trustee states that on April 27, 2015, John and Monica Diane Bergman ("Debtor") filed a voluntary petition. Case No. 15-90411.

The Trustee states that the deadline for filing a complaint objecting to discharge is not later than 60 days after the first set of meeting of creditors under 11 U.S.C. § 341(a), which translates to a deadline of August 24, 2015.

The Motion requests that the deadline to object to the Debtor's discharge be extended to October 23, 2015.

It is argued by the Trustee argues that cause exists for the extension because the Trustee has only recently concluded the Meeting of Creditors on July 23, 2015. The Trustee has obtained counsel and is investigating Debtor's

interest in assets, including real property in Texas. The Trustee states that he has only recently received the keys to the property to evaluate the value of the Texas property.

The Trustee requests that the deadline to file an objection to discharge of the Debtor be extended to October 23, 2015.

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b)(1). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 4004(b)(1).

The instant Motion was filed on August 21, 2015, three days prior to the expiration of the deadline to object to the discharge of the Debtor.

The court finds that in the interest of the Trustee to complete its investigation, namely concerning the Texas property, is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted and the deadline for the Trustee to object to Debtor's discharge is extended to October 23, 2015.

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 Motion for Extension of Time to File an Objection to Discharge filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the deadline for the Chapter 7 Trustee to object to Debtor's discharge is extended to October 23, 2015.

8. 15-90411-E-7 JOHN/MONICA BERGMAN MOTION TO EXTEND TIME
HSM-3 Charles L. Hastings 8-21-15 [30]

Final Ruling: No appearance at the October 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 21, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File an Objection to the Debtor's Claims of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 an Objection to Debtor's Claims of Exemptions is granted, with the deadline extended to October 23, 2015.

Gary Farrar, the Chapter 7 Trustee, ("Trustee") filed the instant Motion for Extension of Time to File an Objection to Debtor's Claims of Exemptions on August 21, 2015. Dckt. 26.

The Trustee states that on April 27, 2015, John and Monica Diane Bergman ("Debtor") filed a voluntary petition. Case No. 15-90411.

The Trustee states that the deadline for filing a complaint objecting to discharge is not later than 60 days after the first set of meeting of creditors under 11 U.S.C. § 341(a), which translates to a deadline of August 24, 2015.

The Motion requests that the deadline to object to the Debtor's discharge be extended to October 23, 2015.

It is argued by the Trustee argues that cause exists for the extension because the Trustee has only recently concluded the Meeting of Creditors on July 23, 2015. The Trustee has obtained counsel and is investigating Debtor's

interest in assets, including real property in Texas. The Trustee states that he has only recently received the keys to the property to evaluate the value of the Texas property. Additionally, as to the exemptions, the Trustee intends to seek additional information to evaluate certain retirement account assets scheduled by the Debtor and claims of exemptions covering those assets pursuant to California Code of Civil Procedure § 703.140(b)(10)(E).

The Trustee requests that the deadline to file an objection to Debtor's claims of exemptions be extended to October 23, 2015.

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b)(1). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 4004(b)(1).

The instant Motion was filed on August 21, 2015, three days prior to the expiration of the deadline to object to the discharge of the Debtor.

The court finds that in the interest of the Trustee to complete its investigation, namely concerning the Texas property and the exemptions claimed in the retirement accounts, is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted and the deadline for the Trustee to object to Debtor's claims of exemptions is extended to October 23, 2015.

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 Motion for Extension of Time to File an Objection to Debtor's Claims of Exemptions filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the deadline for the Chapter 7 Trustee to object to Debtor's discharge is extended to October 23, 2015.

9. **14-91614-E-7** **TRENT JORDAN** **MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION**
SJS-2 **Scott J. Sagaria** **8-5-15 [31]**

Final Ruling: No appearance at the October 1, 2015 hearing is required.

The Debtor having filed a Withdrawal of the Motion for Sanctions for Violation of the Discharge Injunction, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion was dismissed without prejudice, and the matter is removed from the calendar.**

10. **13-91315-E-7** **APPLEGATE JOHNSTON, INC.** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE, FLEURY, HOFFELT, GOULD & BIRNEY, LLP FOR DANIEL L. EGAN, TRUSTEE'S ATTORNEY(S)**
WFH-13 **George C. Hollister** **9-8-15 [490]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United

States Trustee on September 9, 2015. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

The Motion for Allowance of Professional Fees is granted.

Wilke, Fleury, Hoffelt, Gould & Birney, LLP ("Applicant"), the Attorney ("Applicant") for Michael McGranahan the Chapter 7 Trustee ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period July 18, 2013, through July 31, 2015. The order of the court approving employment of Applicant was entered on August 29, 2013. Dckt. 92. Applicant requests interim fees in the amount of $190,198.00 and costs in the amount of $15,538.52. Dckt. 493.

DISCUSSION

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including . The estate has approximately $344,638.91 of unencumbered monies to be administered as of the filing of the application. Dckt. 493, Ex. E p. 91. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 39.1 hours in this category. Applicant assisted Client by responding to inquiries from Debtor's counsel and creditors, represented Trustee with the Department of Labor in connection with Debtor's terminated pension plan, conducted investigations, helped prepare Trustee for the § 341 meeting, conducted bank account transfers, assisted with insurance issues on equipment Debtor owned, and identified litigation pending on the filing date. Dckt. 493, Ex. C.

Asset Analysis and Recovery: Applicant spent 113.5 hours in this category. Applicant assessed Debtor's funds in bank accounts, tax refunds, and accounts receivable, then assessed claims and liens against the funds. Westamerica Bank took over the collection efforts on the accounts receivable. *Id.*

Asset Disposition: Applicant spent 107.9 hours in this category. Applicant prepared Motions to Employ and Compensate an Auctioneer, and Motions for Sale of property. Applicant also responded to objections to the sale. *Id.*

Assumption/Rejection of Leases and Contracts: Applicant spent 0.9 hours in this category. Applicant filed a Motion to Reject a Real Property Lease and communicated with the landlord. *Id.*

Avoidance Action Analysis: Applicant spent 161.6 hours in this category. Applicant wrote demand letters to preference targets and evaluated responses. Applicant also represented Client in commencing 31 adversary proceedings against 35 defendants, then engaged in settlement conferences. *Id.*

Claims Administration and Objections: Applicant spent 71.7 hours in this category. Applicant analyzed secured claims of Westamerica Bank, negotiated or obtained approval of a final settlement with Westamerica Bank, and asserted secured and administrative claims of AFCO. *Id.*

Fee and Employment Applications and Objections: Applicant spent 38.9 hours in this category. Applicant filed Motions to Employ Applicant and Huisman Auction. Applicant also prosecuted an application to expand the scope of Huisman's employment. Finally, Applicant also responded to objections to these motions. *Id.*

Financing and Cash Collections: Applicant spent 0.9 hours in this category. Applicant filed a Motion to Reject a Real Property Lease and communicated with the landlord. *Id.*

Other Contested Matters: Applicant spent 15.3 hours in this category. Applicant communicated with Debtor's prepetition counsel on state court litigation matters and analyzed the impact of those cases on the estate. *Id.*

Real Estate: Applicant spent 1.1 hours in this category. Applicant communicated with the landlord of Debtor's office space regarding rejection of the lease and turn over of the property. *Id.*

Relief from Stay; Adequate Protection: Applicant spent 40.6 hours in this category. Applicant reviewed Motions for Relief from 8 petitioners, and responded to one. *Id.*

Tax issues: Applicant spent 0.2 hours in this category. Applicant had one conversation with Trustee's CPA on information to prepare tax returns. *Id.*

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**
Daniel L. Egan	3.4	$0.00	$0.00
Daniel L. Egan	122.2	$390.00	$47,658.00
Daniel L. Egan	173.4	$395.00	$68,493.00
Megan A. Lewis	0.6	$0.00	$0.00
Megan A. Lewis	58.4	$330.00	$19,272.00
Megan A. Lewis	0.7	$340.00	$238.00
Anthony R. Eaton	1.5	$0.00	$0.00
Joyce A. Hume	1.3	$0.00	$0.00
Steven J. Williamson	0.8	$0.00	$0.00
Steven J. Williamson	196.8	$280.00	$55,104.00
Steven J. Williamson	0.3	$300.00	$90.00
Steven J. Williamson	10.2	$320.00	$3,264.00
Rickaye Harris	3.3	$125.00	$412.50
Branden Clary	6.3	$225.00	$1,417.50
Laquae R. Felix	0.8	$0.00	$0.00
Laquae R. Felix	0.6	$170.00	$102.00
Katheryne E. Baldwin	2.9	$0.00	$0.00
Katheryne E. Baldwin	11.3	$190.00	$2,147.00

Total Fees For Period of Application	$198,198.00

Dckt. 493 Ex. B p. 52.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $15,538.52 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$7,737.86
Copies	$0.10 per page, FN1.	$7,537.50
Travel		$180.80
Conference Call		$43.40
Lunch Meeting with M. Lewis		$38.96
Total Costs Requested in Application		$15,538.52

Id. at p. 50-51.

FN.1. This court notes that “Copies” includes two categories provided by Applicant: photocopies at $0.10 per page, and digital copies at approximately $0.08 per page, after the discount provided by Applicant.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $198,198.00, pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330, are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs and Expenses

The First Interim Costs in the amount of $15,538.52, pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330, are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is allowed, and the Trustee is authorized to pay 80% of the

fees and 100% of the costs, the following amounts as compensation to this professional in this case:

Fees	$198,198.00
Costs and Expenses	$15,538.52

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Wilke, Fleury, Hoffelt, Gould & Birney, LLP ("Applicant"), Attorney for the Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Wilke, Fleury, Hoffelt, Gould & Birney, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Wilke, Fleury, Hoffelt, Gould & Birney, LLP, Professional Employed by Trustee
>
> Fees in the amount of $198,198.00
> Expenses in the amount of $15,538.52,
>
> The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay 80% of the above allowed fees and 100% of the above allowed expenses from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

11. 13-91315-E-7 APPLEGATE JOHNSTON, INC.
WFH-14 George C. Hollister

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH AHERN RENTALS, INC.
9-3-15 [485]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 3, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Approval of Compromise is granted.

Michael McGranahan, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Ahern Rentals, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are over avoidance and recovery of certain prepetition transfers under 11 U.S.C. § 547 and 550.

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

Agreement filed as Exhibit A in support of the Motion, Dckt. 488):

A. Settlor will pay the estate the sum of $18,446.82, or 50% of the amount in controversy, within 10 days of entry of execution of a Settlement Agreement. FN.1.

B. In exchange, Movant agrees to release Settlor from liability to return the payments subject to Adversary Proceeding No. 15-09020, agrees to dismiss Settlor from the adversary proceeding, and agrees that Settlor will be entitled to file an amended claim pursuant to 11 U.S.C. § 502(h).

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Under the Settlement Movant shall recover $18,446.82 in satisfaction of the estate's claim for recovery of the property from Settlor. Movant asserts that the property can be recovered for the estate 11 U.S.C. § 547 and 550. This proposed settlement allows Movant to recover for the estate $18,446.82 without further cost or expense and is 50% of the maximum amount of the claim identified by Movant.

Probability of Success

The Movant states that the probability of success is unknown because the Settlor is asserting that the payment was proper under the ordinary court of business defense. The Movant argues that this is a fact intensive defense and would require discovery to determine the validity of such defense.

Difficulties in Collection

The Movant does not discuss this factor.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, given the questions of law and fact which would be the subject of a trial, namely the ordinary court of business defense. Formal discovery would be required, with depositions of the Settlor, and document production requests of third parties will be required. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

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

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The settlement provides for 50% of the claim amount in the Adversary Proceeding and allows the Movant from incurring substantial expenses in litigating the underlying avoidance claim. The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael McGranahan, 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 to Approve Compromise between Movant and Ahern Rentals, Inc. ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion(Docket Number 488).

12. 13-91315-E-7 APPLEGATE JOHNSTON, INC. MOTION TO DISMISS ADVERSARY
15-9052 RR-1 PROCEEDING
MCGRANAHAN V. LAGUNA GOLD MORTGAGE, INC. 8-10-15 [7]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that supporting pleadings were served on Debtor's Attorney, Plaintiff's Attorney, Defendant's Attorney, and Office of the United States Trustee on August 24, 2015. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss Adversary Proceeding is denied without prejudice..

Debtor Applegate Johnston, Inc. filed a petition for Chapter 7 relief on July 16, 2013. E.D. Cal. Bankr. Case No. 13-91315-E-7, Dckt. 1. Michael McGranahan, as the Chapter 7 Trustee ("Trustee"), filed the instant Adversary Proceeding No. 15-9052 on July 15, 2015, against Laguna Gold Mortgage, Inc. d/b/a LGM Construction, a California Corporation ("Defendant-Creditor"). Dckt. 1.

MOTION TO DISMISS BY RONALD REGAN

Ronald Regan, J.D., filed a Motion to Dismiss on Fed. R. Civ. Proc. 12(b)(7) grounds on August 10, 2015. Dckt. 7. He filed this motion "in pro se," on behalf of Defendant-Creditor Laguna Gold Mortgage, Inc. Ronald Regan,

JD does not purport to be a defendant, but states that he is the owner, sole shareholder, president, and operating officer for Laguna Gold Mortgage, Inc. Declaration, p. 2:2-1; Dckt. 9.

TRUSTEE'S OPPOSITION

Trustee filed opposition on September 17, 2015. Dckt. 19. Trustee offers two procedural grounds and two substantive grounds for denying the instant motion.

The two procedural grounds asserted are (1) Ronald Regan, the person who filed the Motion to Dismiss, is not an attorney, and corporations may only be represented in court by attorneys; and (2) the motion is styled as a motion to dismiss, but relies only on extrinsic evidence, making a motion for summary judgment more appropriate. Dckt. 19. The substantive grounds for denying the motion are (1) defendant offers no authority to support the argument that all parties to a joint check are indispensable parties to a preference action, making the Rule 19 assertion inapplicable; and (2) that the motion fails to provide evidence rebutting Plaintiff-Trustee's argument that the preferential transfer was "to or for the benefit of a creditor." *Id.*

DISCUSSION

Plaintiff-Trustee's arguments are well-taken.

Defendant-Creditor is Not Represented by an Attorney

Corporations, partnerships, and other non-individual entities must be represented by a licensed attorney and cannot purport to participate in federal court proceeding in pro se or through a non-attorney officer, partner, or other representative. *Rowland v. California Men's Colony*, 506 U.S. 194, 201-202 (1993); *In re America West Airlines*, 40 F3d 1058, 1059 (9th Cir 1994) ("Corporations and other unincorporated associations must appear in court through an attorney."); *Church of the New Testament v United States*, 783 F2d 771, 773 (9th Cir 1986); and *Multi Denominational Ministry of Cannabis and Rastafari, Inc., et al v. Gonzales*, 474 F.Supp. 1133 (N.D. Cal. 2007), affrm. 2010 U.S. App. LEXIS 2976 (9th Cir. 2010).

Consistent with the above law, Local Bankruptcy Rule 1001-1(c) incorporates the Local Rules of Practice of the United States District Court for the Eastern District of California Local Rule 183(a) states, in relevant part, "[a] corporation or other entity may appear only by *an attorney*" (emphasis added). Local Rule 180(b) states "[e]xcept as otherwise provided herein, only members of the Bar of this Court shall practice in this Court." The listed exceptions do not apply, and having a juris doctorate is not sufficient for bar membership. Thus, Ronald Regan may not bring this Motion on behalf of Defendant-Creditor.

Failure to State with Particularity

Even outside the fact that Mr. Regan does not have standing to bring the instant Motion, the Motion itself fails to comply with Federal Rule of Civil Procedure as incorporated by Federal Rule of Bankruptcy Procedure.

The Motion states the following grounds with particularity pursuant to

Federal Rule of Bankruptcy Procedure 7007, upon which the request for relief is based:

> A. Defendant Laguna Gold Mortgage, Inc., respectfully submit this motion seeking an Order dismissing Plaintiff's claims for relief for the "Avoidance of Preferential Transfer" of Debtor's payment to Defendant and the second claim of relief for judgment recovering the in the aggregate amount of $12,857.62 pursuant to Rule 12(b)(7) of the Federal Rules of Procedures. The basis for this motion is set forth in the accompanying [sic]

No text follows the word "accompanying" in the Motion. At best, Mr. Regan is instructing the court to ignore the basic rule of law and motion pleading, and instead assemble from various other (unidentified) documents what grounds the court would state for a party to be a basis for the motion. The court does not prepare pleadings for parties.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 7007 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that "Rule 12(b)(7) of the Federal Rules of Procedures" applies. This is not sufficient.

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

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

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

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in

this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

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

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

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

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

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

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

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

evidentiary support exists for such “postulations.”

Here, Defendant-Creditor’s motion, filed by a non-attorney, broadly cites Fed R. Civ. Proc. 12(b)(7), fails to provide a prayer for relief, and fails to incorporate the extrinsic evidence provided. Dckt. 8. This violates the requirements to state with particularity in the Motion as required by Fed. R. Bankr. P. 7007. FN.1.

FN.1. On August 24, 2015, a “Substitution of Attorney” was filed, in which Patrick Keene (Cal. SBN 084828) states that Laguna Gold Mortgage, Inc. And Ronald Regan, JD in pro se, consent to substituting Mr. Keene as counsel in this Adversary Proceeding. Mr. Keene appears to be treating Mr. Regan has having been a party in this Adversary Proceeding and somehow representing Laguna Gold Mortgage, Inc. No order authorizing such “substitution” has bene presented to the court. None has been submitted, likely due to the fact that no appearance has been made in this Adversary Proceeding by or for Laguna Gold Mortgage, Inc.

If Mr. Keene has been retained to represent Laguna Gold Mortgage, Inc., he has not filed any pleadings for such client. He has not filed any notice that the prior improper documents filed by Mr. Regan are not adopted by Laguna Gold Mortgage, Inc. and that the estate does not have to incur any costs and expenses in having to respond to such improper documents. It could appear that Mr. Keene is seeking to use documents filed by Mr. Regan in the unlicensed practice of law.

Therefore, the Motion is denied without prejudice.

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 Dismiss filed by Ronald Regan, on behalf of Laguna Gold Mortgage, Inc. d/b/a LGM Construction, a California Corporation (“Defendant-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 the Motion is denied without prejudice.
>
> **IT IS FURTHER ORDERED** that Laguna Gold Mortgage, Inc. shall file and answer or other proper responsive pleading to the complaint on or before October 16, 2015.
>
> No further or additional relief is granted.

13. 15-90717-E-11 MRG-2 PLASMA ENERGY PROCESSES, INC. Michael R. Germain

MOTION TO INCUR DEBT 9-3-15 [25]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on September 3, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Incur Debt is denied without prejudice.

Plasma Energy Processes, Inc. ("Debtor-in-Possession") filed the instant Motion to Incur Debt on September 3, 2015. Dckt. 25.

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

A. Plasma Energy Processes, Inc., Debtor and Debtor-in-Possession in the above-captioned case, respectfully asks the Court, pursuant to 11 U.S.C. § 364(d)(1), for authorization to incur secured debt through a loan brokered through Stockton Mortgage.

B. The requested loan would be in the amount of $75,000.00, would be secured by property of the Estate, namely, the real property commonly known as 1041 Mark Twain Road, Angels Camp, California ("the Property"), and would pay in-full, through escrow, the

existing first and second deeds of trust against the Property.

C. For specific information about the proposed loan, and why its authorization is in the best interest of creditors and the Estate, the Court is respectfully referred to the supporting Memorandum of Points and Authorities, as well as the supporting Declarations of Brian Wilmot and Gary Hanna, all filed herewith and incorporated herein by reference.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that "go review the Points and Authorities." This is not sufficient. FN.1.

FN.1 There are twenty-three pages of these additional documents (Points and Authorities, and two declarations). To the extent that a party contends that, "it would be so easy for the court to read the twenty-three pages of documents and state for Movant the relevant grounds," the court notes that it is even easier for Movant and counsel to clearly state such grounds upon which Movant seeks relief in the Motion.

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

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

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

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion

process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

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

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

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

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

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

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

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent

on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Furthermore, the Motion facially fails to comply with Local Bankruptcy Rule 9014-1(d)(1). Specifically, Local Bankr. R. 9014-1(d)(1) states, in relevant part, "[w]ithout incorporation by reference to any other document, exhibit or supporting pleading, the motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." The Motion explicitly attempts to incorporate a separate pleading, namely the Points and Authorities, as the grounds for the relief sought.

The court will not mine through the document to piecemeal the grounds for the relief sought.

Therefore, for failing to state with particularity the grounds in which the relief sought is based, 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 Motion to Incur Debt filed by 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.

14. 15-90628-E-7 RICARDO/MARIA BALDERAS MOTION TO COMPEL ABANDONMENT
MSN-1 Mark S. Nelson 8-25-15 [18]

Final Ruling: No appearance at the October 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 25, 2015. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion for Motion to Abandon Property is granted.

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

The Motion filed by Ricardo and Maria Elena Balderas ("Debtor") requests the court to order the Trustee to abandon property commonly known as 2842 Don Rafael Avenue, Riverbank, California (the "Property"). This Property is encumbered by the liens of Wells Fargo Home Mortgage, securing claims of $65,068.00 and $59,655.00, respectively. The Declaration of Debtor has been filed in support of the motion and values the Property to be $173,000.00.

The Debtor also provides the declaration of Mark Verschelden, certified real estate appraiser, who states that the value of the Property, based on his own appraisal, is $173,000.00.

The Debtor claimed an exemption in the Property in the amount of $48,277.00 pursuant to California Code of Civil Procedure § 704.730.

No opposition has been filed in connection with the instant Motion.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by Ricardo and Maria Elena Balderas ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted and that the Property identified as:
>
> 1. 2842 Don Rafael Avenue, Riverbank, California
>
> and listed on Schedule A by Debtor is abandoned to Ricardo and Maria Elena Balderas by this order, with no further act of the Trustee required.

15. 14-91633-E-11 SOUZA PROPANE, INC.
FWP-10 David C. Johnston

OBJECTION TO CLAIM OF SHASTA GAS PROPANE, INC., CLAIM NUMBER 8 AND CLAIM OF SHASTA GAS PROPANE, INC., CLAIM NUMBER 9
8-17-15 [269]

Final Ruling: No appearance at the October 1, 2015 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor's Attorney, Chapter 11 Trustee, parties requesting special notice, and Office of the United States Trustee on August 17, 2015. By the court's calculation, 45 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Objection to Proof of Claim Number 8 and 9 of Shasta Gas Propane, Inc. is sustained.

David D. Flemmer, the Trustee ("Objector") requests that the court disallow the claim of Shasta Gas Propane, Inc. ("Creditor"), Proof of Claim No. 8 and 9 ("Claim"), Official Registry of Claims in this case. FN.1.

FN.1. While typically a party cannot request multiple forms of relief in a single motion since the Fed. R. Bankr. P. did not incorporate Fed. R. Civ. P. 18 to motion practice, Fed. R. Bankr. P. 3007(d) allows for an objection to more than one claim if "all the claims were filed by the same entity."

As to Proof of Claim No. 8, the Creditor asserts a secured claim of $37,500.00, based on a security interest in "propane tanks."

As to Proof of Claim No. 8, the Creditor asserts an unsecured claim in the amount of $24,725.00 and an unsecured priority claim in the amount of

$2,775.00 pursuant to 11 U.S.C. § 507(a)(7).

Objector asserts that, for Proof of Claim No. 9, the Creditor fails to provide evidence of perfection of a security interest, such as a UCC-1 statement, and did not assert any right of setoff.

Objector asserts that, for Proof of Claim No. 9, the Creditor improperly sought a priority claim for deposits in the amount of $2,775.00 pursuant to 11 U.S.C. § 507(a)(7) and that the Creditor failed to provide any evidence of priority treatment. The Creditor is not entitled to priority treatment under § 507(a)(7) and the Proof of Claim No. 9 appears to be a duplicate of Proof of Claim No. 8.

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

Here, the Objector's objections are well-taken. For Proof of Claim No. 8, while there is a prima facie validity to proofs of claim filed by creditors, the Creditor here has provided no actual evidence that the claim is, in fact, secured. There is no attachments which show a perfection or financing statement. Instead, the only attachments to Proof of Claim No. 8 is a Rabobank deposit slip in the amount of $37,500.00 dated October 16, 2014 and an unauthenticated email from Mark Souza to "Brandy" with an email address from Creditor's domain, confirming the sale. There is no evidence in these attachments of a security claim.

The Proof of Claim No. 8 facially fails to provide any evidence that there is a security interest in what the court only assumes is the 100 propane tanks and accompanying propane.

Based on the evidence before the court, the creditor's Proof of Claim No. 9 is disallowed as a secured claim. The Objection to the Proof of Claim No. 8 is sustained and the claim amount is disallowed as a secured claim.

As to Proof of Claim No. 9., this appears to be a duplicate of Proof of Claim No. 8. The attachments to the Proof of Claim are identical and the amount claimed is identical. The only difference is that the Creditor claims an unsecured portion in the amount of $34,267.00 and a priority unsecured potion of $2,775.00.

11 U.S.C. § 507(a)(7) provides for an:

> allowed unsecured claims of individuals, to the extent of $2,775 for each such individual, arising from the deposit , before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household

of such individuals, that were not delivered or provided.

The Creditor has not shown that the purchase of the tanks and gas were for “personal, family, or household” purposes nor that a corporation is an “individual” for purposes of the priority treatment.

Furthermore, Proof of Claim No. 9 is clearly a duplicate of Proof of Claim No. 8 for the same claim, just under a different theory.

Based on the evidence before the court, the creditor’s Proof of Claim No. 9 is disallowed in its entirety. The Objection to the Proof of Claim No. 9 is sustained.

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 Claim of Shasta Gas Propane, Inc., Creditor filed in this case by David D. Flemmer, Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 8 of Shasta Gas Propane, Inc. is sustained and the claim is disallowed as a secured claim, and claim deemed filed as a general unsecured.
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 9 of Shasta Gas Propane, Inc. is sustained and the claim is disallowed in its entirety (without prejudice to Proof of Claim No. 8 as provided for in this Order).

16. 15-90535-E-7 SCOTT/SHERRY HODGES — MOTION TO EMPLOY FIRST CAPITOL AUCTION, INC. AS AUCTIONEER(S)
GRF-1 Mark S. Nelson — 8-28-15 [40]

Final Ruling: No appearance at the October 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

Chapter 7 Trustee, Gary Farrar, seeks to employ Auctioneer, First Capitol Auction, Inc., pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Auctioneer to assist the Trustee in auctioning a 1999 Chevrolet Crew Cab Truck with 106,400 miles ("Vehicle").

The Trustee argues that Auctioneer's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present assets in the estate, namely the Vehicle.

Eric Smith, president of Auctioneer, testifies that he and the Auctioneer will be employed to auction the Vehicle. Mr. Smith testifies he and the Auctioneer do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

the estate and be a disinterested person.

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

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer 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 First Capitol Auction, Inc., as auctioneer for the Chapter 7 estate. The Trustee failed to provide a copy of the actual agreement of employment. However, the Motion sets forth the following terms, explicitly:

> The Trustee proposes that First Capitol's compensation be a commission of five percent (5%) of the gross sales price of the truck sold at auction plus reimbursement of reasonable expenses up to $500.00 incurred in preparing the Chevrolet truck for sale, including out of pocket expenses for transportation and storage of the subject vehicle.

Dckt. 40. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional. FN.1.

FN.1. It surprises the court that a licensed auctioneer would not have a standard contract to use with clients. Additionally, it surprises the court that the Chapter 7 Trustee, a fiduciary of the estate, does not require a written contract with an auctioneer, rather than apparently working on a "handshake."

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted and the Chapter 7 Trustee is authorized to employ First Capitol Auctioneer, Inc. as the auctioneer for the Chapter 7 Trustee to sell by public auction the 1999 Chevrolet Crew Cab Truck described in the Motion. Dckt. 40.

IT IS FURTHER ORDERED that the fees for First Capitol for the services provided as auctioneer shall be computed as a commission of five percent (5%) of the gross sales price of the truck sold at auction plus reimbursement of reasonable expenses up to $500.00 incurred in preparing the Chevrolet truck for sale, including out of pocket expenses for transportation and storage of the subject vehicle. First Capital shall not require the payment of any "buyer's premium" or other amount from any purchaser of the truck, and any additional amounts paid by purchaser, however identified, shall be paid to the Trustee as part of the sales price.

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.

17. 15-90535-E-7 SCOTT/SHERRY HODGES
GRF-2 Mark S. Nelson

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR FIRST CAPITOL AUCTION, INC., AUCTIONEER(S)
8-28-15 [44]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, and Office of the United States Trustee on August 28, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Gary Farrar, 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 the "Property" described as follows:

a. 1999 Chevrolet Crew Crab truck

The Trustee seeks court approval to sell the Property through the auction process. The Trustee seeks approval to have First Capitol Auction, Inc. hold a public auction to sell the Property. The Trustee states that, if approved by the court, First Capitol will sell the Property at an online/live auction to be conducted at First Capitol's premises. The truck will be sold on an "as is" basis without any warranty, and subject to any and all licences or encumbrances. The auction is currently scheduled for October 23 and 24, 2015.

The Trustee is also seeking court approval for the authorization to pay First Capitol's compensation in the amount of a commission of 5% of the gross sales price of the Property sold at auction, plus reimbursement of reasonable expenses up to $500.00 incurred in preparing the Property for sale, including out of pocket expenses for transportation and storage of the truck.

The Trustee states that, if allowed, following the sale, First Capitol will pay the gross sale proceeds to the Trustee, the Trustee will then file a report of sale with the court, and pay First Capitol 5% of the sales price of the Property sold at auction plus reimbursement of reasonable expenses up to $500.00.

At the time of the hearing the court announced the proposed sale an 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: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The use of public auction to sell the Property appears to be the most efficient means to sell the Property and to retain the most value for the benefit of the estate, creditors, and Debtor.

As to the request of authorization to pay First Capitol's compensation, the court finds that, given the nature of public auction and the scope of employment, such authorization is proper. Therefore, the court approves the compensation and reimbursement of expenses of First Capitol Auction, Inc. of 5% of the gross sale of the Property and reimbursement of reasonable expenses up to $500.00, as authorized in the order approving the employment of First Capitol by the Trustee.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Gary Farrar the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Gary Farrar, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) through public auction conducted by First Capitol Auction, Inc., the Property commonly known as 1999 Chevrolet Crew Crab truck, on the following terms:
>
> 1. The Property shall be sold by online/live auction conducted by First Capitol Auction, Inc. On October 23 and 24, 2015.
>
> 2. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

3. The court allows, pursuant to 11 U.S.C. § 330, and the Trustee is authorized to pay an auctioneer's commission in an amount equal to five percent (5%) of the actual gross price upon consummation of the sale and up to $500.00 in reimbursement for reasonable expenses, as provided in the order authorizing the Trustee to employ Fist Capitol.

18. 12-91736-E-12 ANTONIO GOMES **MOTION TO DISMISS CASE**
MNE-3 Thomas O. Gillis **8-13-15 [233]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, Creditors, and Office of the United States Trustee on September 13, 2015. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss the Bankruptcy Case is denied without prejudice.

M. Nelson Enmark was appointed the Chapter 12 Trustee ("Trustee") for Antonio F. Gomes on June 21, 2015. Trustee filed the instant motion to dismiss

on August 13, 2015. Dckt. 233. FN1.

FN.1. The court notes that the Certificate of Service is dated September 13, 2015, but filed with the court on August 13, 2015. Dckt. 236. The Motion to Dismiss and Notice of Hearing are dated August 13, 2015. Dckt. 234, 235. The court will waive the defect on the Certificate of Service as a clerical error.

TRUSTEE'S MOTION TO DISMISS

Trustee filed the instant motion for failure to make plan payments. Trustee asserts "Debtor has failed to make payment to the Trustee as provided in the Plan," and cites to Bankr. Code § 1208. *Id.* Trustee's motion then asserts the procedure for opposing this motion.

DEBTOR'S RESPONSE

Debtor filed a response on September 11, 2015. Debtor briefly asserts "Trustee is correct. Debtor will be current prior to the hearing." Dckt. 239.

DISCUSSION

Failure to State with Particularity

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

> A. YOU AND EACH OF YOU are hereby notified that the Trustee for the above will move for an ORDER DISMISSING the debtor(s) proceeding under Section 1208 of the Bankruptcy Code for the following reason(s):
>
> 1. Debtor has failed to make payment to the Trustee as provided in the Plan
>
> B. A more complete description of which is contained in the Declaration attached hereto of M. NELSON ENMARK.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the Debtor has failed to make payments and to look among other papers to find the specific grounds for relief. This is not sufficient.

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

court.

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

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

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

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

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

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being

a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.,* 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

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

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

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

Therefore, for the Trustee's failure to state with particularity the grounds for relief as required by Fed. R. Bankr. P. 9013, 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 Motion to Dismiss, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

19. 14-91136-E-7 MARTHA JIMENEZ
ADJ-5 C. Anthony Hughes

MOTION FOR COMPENSATION FOR ANTHONY D. JOHNSTON, TRUSTEE'S ATTORNEY
9-9-15 [87]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on September 9, 2015. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

The Motion for Allowance of Professional Fees is granted.

Anthony D. Johnston ("Applicant"), the Attorney ("Applicant") for Michael McGranahan the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period of October 30, 2014, through September 3, 2015. The order of the court approving employment of Applicant was entered on November 7, 2014. Dckt. 49. Applicant requests First and Final Fees in the amount of $4,200.00.

DISCUSSION

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits include pursuit of and recovery of Martha Elena Jimenez's ("Debtor's") Savings Account funds. Dckt. 90 ¶¶ 3-4. The estate has $6,250.37 of unencumbered monies to be administered as of the filing of the application. *Id.* at ¶ 5. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 4.3 hours in this category. Applicant assisted Client with applications for Trustee's Motion to Employ Applicant and the motion for compensation with supporting documents. Dckt. 89.

Efforts to Assess and Recover Property of the Estate: Applicant spent 15.8 hours in this category. Applicant prepared the objection to exemption in the Savings Account, prepared the Motion for Turn Over of the Savings Account funds, prepared a motion to hold Debtor in contempt for not complying with the order to turn over the funds, prepared the objection to Debtor's motion to convert the case to Chapter 13, and negotiated the recovery of funds from Debtor. *Id.*

Litigation Applicant spent 0.5 hours in this category. Applicant assisted Client with preparing and obtaining a stipulation to extend time for Trustee or U.S. Trustee to file an objection to Debtor's discharge. *Id.*

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
Anthony D. Johnston, Attorney	20.6	$250.00	$5,150.00
	0	$0.00	$0.00
Total Fees For Period of Application			$5,150.00

Dckt. 91 Exhs. A, B. Applicant has agreed to reduce his fees to $4,200.00, as discussed below. Dckt. 89 ¶ 6.

Costs and Expenses

Applicant has agreed to waive costs, and thus provided no evidence of costs to the court. Dckt. 89 ¶ 6.

FEES AND COSTS & EXPENSES ALLOWED

Applicant seeks to be paid a single sum of $4,200.00 for its fees and expenses incurred for the Client. Fist and Final Fees and Costs in the amount of $4,200.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

This one of the very rare cases in which the attorneys' fees and trustee's fees may well exhaust most of the monies recovered by the Trustee. Unfortunately, the Trustee and counsel were required to expend significant time to recover modest undisclosed assets of the Debtor and then an attempt to improperly claim the assets as exempt. This included the Trustee seeking to have the Debtor held in contempt for failing to comply with the court's order to turn over the previously undisclosed monies.

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

Fees $4,200.00
Costs and Expenses $0.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by

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

IT IS ORDERED that Anthony D. Johnston is allowed the following fees and expenses as a professional of the Estate:

Anthony D. Johnston, Professional Employed by Trustee

Fees in the amount of $4,200.00
Expenses in the amount of $0.00,

The fees and costs are allowed pursuant to 11 U.S.C. § 330.

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

20. 14-91441-E-7 GARY/JEAN ROBERTS
ADJ-3 Christian J. Younger

MOTION FOR COMPENSATION FOR ATHERTON AND ASSOCIATES, LLP, ACCOUNTANT(S)
9-2-15 [48]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2015. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

The Motion for Allowance of Professional Fees is granted.

Atherton & Associates, LLP, the Accountant ("Applicant") for Michael D. McGranahan the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period February 3, 2015, through August 10, 2015. The order of the court approving employment of Applicant was entered on February 19, 2015. Dckt. 39. Applicant requests fees and costs in the amount of $1,404.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including projecting taxes related to the sale of real property, preparing federal and state tax returns, and preparing time records for the instant motion. The estate has $27,200.00 of unencumbered monies to be administered as of the filing of the application. Dckt. 51 ¶ 5. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 0.7 hours in this category. Applicant discussed the tax consequences for the sale of real property with Client, and prepared documents for the fee application. Dckt. 52 Ex. A.

Tax Planning: Applicant spent 0.8 hours in this category. Applicant prepared tax projections for the sale of real property. *Id.*

Tax Preparation: Applicant spent 6.9 hours in this category. Applicant summarized data for, reviewed, then completed the final tax returns for the year ended in 7/31/15. *Id.*

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**

Maria Stokman, Partner	3.3	$230.00	$759.00
Jakie Howell, CPA, Supervisor	3.1	$150.00	$465.00
Tyler Wookey, Associate	2.0	$90.00	$180.00
	0	$0.00	$0.00
Total Fees For Period of Application			$1,404.00

Dckt. 52 Ex. A.

Costs and Expenses

Applicant does not seek recovery for any costs, and thus provided no evidence in support.

FEES AND COSTS & EXPENSES ALLOWED

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $1,404.00 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $1,404.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Atherton & Associates, LLP (“Applicant”), Accountant for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Atherton & Associates, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Atherton & Associates, LLP, Professional Employed by Trustee
>
> Fees in the amount of $1,404.00.

The fees are allowed pursuant to 11 U.S.C. § 330.

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

21. 14-91441-E-7 GARY/JEAN ROBERTS
ADJ-4 Christian J. Younger

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES AND MACKO FOR ANTHONY D. JOHNSTON, TRUSTEE'S ATTORNEY(S)
9-2-15 [55]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on September 2, 2015. By the court's calculation, 29 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

The Motion for Allowance of Professional Fees is granted.

Anthony D. Johnston, the Attorney ("Applicant") for Michael D. McGranahan the Chapter 7 ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period between January 23, 2015, through September 2, 2015. The order of the court approving employment of Applicant was entered on January 30, 2015. Dckt. 22. Applicant requests fees in the amount of $2,525.00 and costs in the amount of $95.40.

Internal Revenue Service Defect in Service of Notice

Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

LOCAL RULE 2002-1
Notice Requirements

(a) Listing the United States as a Creditor; Notice to the United States. When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

For Cases filed in the Sacramento Division:
United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

For Cases filed in the Modesto and Fresno Divisions:
United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721-1318

. . .

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

(1) United States Department of Justice

Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044

(2) United States Attorney as specified in LBR 2002-1(a) above; and,

(3) Internal Revenue Service at the addresses specified on the roster of governmental agencies maintained by the Clerk.

The proof of service lists only the following addresses as those used for service on the Internal Revenue Service:

Post Office Box 7346
Philadelphia PA 19101-7346

The proof of service states that the addresses used for service are the preferred addresses for the Internal Revenue Service specified in a Notice of Address filed by that governmental entity.

A motion is a contested matter. *See* Fed. R. Bankr. P. 9014. The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate.

However, because this is a Motion for Compensation and because the Debtor received their discharge on February 25, 2015, the court will waive the defect on this one occasion.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

and experience in the bankruptcy field; and

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general case administration and efforts to dispose real property from the estate. The estate has approximately $27,200.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 5.4 hours in this category. Applicant assisted Client with preparing the application and supporting documents for Applicant's Motion to Employ, the application and supporting documents for Applicant's Motion to Compensate the Trustee's Accountant, and the application and supporting documents for the instant Motion for Compensation. Dckt. 57 ¶ 11.

Efforts to Dispose of Real Property: Applicant spent 4.7 hours in this category. Applicant prepared and filed the Motion to Approve Sale of Real Property from the Estate, located at 2213 McAllister Lane, Riverbank CA. *Id.*

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**
Anthony D. Johnston, Attorney	10.1	$250.00	$2,525.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$2,525.00

Dckt. 57 ¶ 11; Dckt. 59 Exhs. A, B.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $95.40 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost

Postage		$59.90
Copies		$35.50
		$0.00
		$0.00
Total Costs Requested in Application		$95.40

Dckt. 59 Exh. C.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided First and Final Fees in the amount of $2,525.00 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs and Expenses

The First and Final Costs in the amount of $95.40 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$2,525.00
Costs and Expenses	$95.40

pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Anthony D. Johnston ("Applicant"), Attorney for the Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Anthony D. Johnston is allowed the following fees and expenses as a professional of the Estate:
>
> Anthony D. Johnston, Professional Employed by Trustee
>
> Fees in the amount of $2,525.00

Expenses in the amount of $95.40,

The fees and costs are allowed pursuant to 11 U.S.C. § 330.

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

22. 15-90554-E-7 HOLLY TOBIN MOTION TO COMPEL ABANDONMENT
SSA-4 Christian J. Younger 9-4-15 [27]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 4, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Property is xxxxxxxxxxxxxxxxxxxxx

Bergman Landscaping, Inc. ("Creditor") filed the instant Motion for Approval of Stipulation for Abandonment of Real Property and Allowance to Pursue Federal and State Law Remedies from Bankruptcy Estate on September 4, 2015. Dckt. 27.

The Creditor states that the Chapter 7 Trustee, Debtor, and Creditor have stipulated to the abandonment of the real property commonly known as 1717 Hawkeye Avenue, Turlock, California ("Property").

The attached stipulation states that:

> Pursuant to a Federal Court Judgment arising in the Eastern District of California, [Creditor] is the holder of a secured claim, second deed of trust, against Debtor's real property commonly known as 1717 Hawkeye Avenue, Turlock, California 95380, APN 073-021-023. . . .

Dckt. 29.

In the Motion, the Creditor asserts that the Chapter 7 Trustee has determined that the Property is worth approximately $620,000. If not less. The Creditor asserts there are "liens and/or encumbrances" against the Property in excess of $700,000.00.

The Motion states, apparently conclusively, that "[t]he property interest is of inconsequential value and/or burdensome to the bankruptcy estate as set forth under 11 U.S.C. Section 554 of the Bankruptcy Code."

The Stipulation states that the parties agreed to the following:

> Based upon the foregoing facts and circumstances, and as a result of negotiations between the parties, through their respective counsel, as applicable, the parties stipulate that the subject property at 1717 Hawkeye Avenue, Turlock, California 95380, APN 073-021-023, may be abandoned from the Bankruptcy estate forthwith, and returned to creditor and moving party, Bergman, for the purpose of allowing said creditor and moving party to exercise his remedies according to applicable California state law, and/or Federal Court remedies and for the Bankruptcy Court to enter any orders necessary or convenient to implement the terms and conditions set forth in this Stipulation. . .

APPLICABLE LAW

Requests for abandoning property of the estate is governed by 11 U.S.C. § 554, which provides the following:

> (a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.
>
> (b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.
>
> (c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.
>
> (d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

Courts have analyzed the purpose behind § 554 and have found:

> The legislative history of § 554(a) explains that this section authorizes abandonment to "any party with a possessory interest in the property abandoned." S.Rep. No. 95–989, 95th Cong., 2d Sess. (1978) reprinted in Collier on Bankruptcy, (Lawrence P. King ed.) Appendix vol. 3, V. at 92 (15th ed. 1992); H.R.Rep. No. 95–595, 95th Cong., 515 1st Sess. (1977) reprinted in Collier on Bankruptcy, (Lawrence P. King ed.) Appendix vol. 2, V. at 377 (15th ed. 1992).

In re Serv., 155 B.R. 512, 514-15 (Bankr. E.D. Mo. 1993)

DISCUSSION

The Motion and accompanying stipulation leaves much to be desired, namely on what grounds the Creditor is actually asserting that it has any cognizable and recognizable right under the Bankruptcy Code to have the Property abandoned to it.

Neither the Trustee nor the Creditor provide any evidence that the Creditor, in fact, has had any possessory interest in the Property. All that the Motion and stipulation appear to confirm is that the Creditor has a judgment against the Debtor which determines that Creditor's claim is secured by a second deed of trust. However, the Creditor does not state that at any point in time the Creditor was in possession of the Property or had title to the Property. As stated in the legislative history, abandonment under § 554 was for the when the party had a possessory interest in the asset. Here, no such interest has been shown.

Further, the court cannot determine whether Creditor seeks to have the Trustee merely turn over possession, or by "abandonment" the Trustee and Creditor intend that title to the property be transferred from the Trustee to Creditor. Then, by the doctrine of merger of title, Creditor will give up the second deed of trust and take title to the property subject to all junior liens. FN.1.

FN.1. See WITKIN SUMMARY OF CALIFORNIA LAW, TENTH EDITION, SECURED TRANSACTIONS IN REAL PROPERTY § 120.

The Motion merely states that "the subject motion be approved," and "the court approve the Stipulation and grant relief pursuant to application of 11 U.S.C. § 554(b) and (c) of the Bankruptcy Code." Motion, p.2:20-22 (prayer for relief); Dckt. 27. First, 11 U.S.C. § 554(c) addresses abandonment of property back to the Debtor upon the closing of a bankruptcy case. No "relief" is required to be entered by the court for the property to be abandoned back to the Debtor. As stated in Collier on Bankruptcy ¶ 554.02[3],

> "Upon abandonment under section 554, the trustee is divested of control of the property because it is no longer part of the estate. Thus, abandonment constitutes a divesture of all of the estate's interests in the property. Property abandoned under section 554 reverts to the debtor, and the debtor's

> rights to the property are treated as if no bankruptcy petition was filed. 22 Although section 554 does not specify to whom property is abandoned, property may be abandoned by the trustee to any party with a possessory interest in it. 23 Normally, the debtor is the party with a possessory interest. However, in some cases, it may be some other party, such as a secured creditor who has possession of the property when the trustee abandons the estate's interest. In any event, property abandoned under subsection (c) (scheduled but not administered property) is deemed abandoned to the debtor."

The Motion makes no reference to Creditor's possession interest. The Stipulation states that the Property is to be "abandoned" and "returned to Creditor." However, the Stipulation never states the Creditor was in possession of the Property or that the filing of the bankruptcy case caused the property to be transferred from Creditor to the bankruptcy estate.

At the hearing, xxxxxxxxxxxxxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by Bergman Landscaping, Inc. ("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 the Motion to Compel Abandonment is xxxxxx

23. 11-93765-E-7 JACK BIDDLE — MOTION FOR TURNOVER OF PROPERTY
SSA-6 Jakrun Sodhi — 9-8-15 [52]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 8, 2015. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

The Motion for Turnover is denied without prejudice.

Irma C. Edmonds, Chapter 7 Trustee, filed the instant Motion for Authority to Turnover for Administrative Expense Funds Held by Bankruptcy Estate to Biddle Probate Estate Public Administrator Tabitha Barnes on September 8, 2015. Dckt. 52.

The Trustee states that she and her counsel, Steve Altman, have been involved in legal proceedings involving Jack Biddle, Jr. ("Debtor") and his sister, Sandra Biddle, previous co-administrators and heirs to the money and property of the probate estate involved their father, Jack Williams Biddle, Sr.

The Trustee asserts that during the administration of the probate estate, an action was brought by Petitioner Perkins, joined by the Trustee, to

remove Debtor and his sister as co-administrators of their father's estate due to alleged breach of fiduciary duties and mismanagement. In a state court action, the judge, in addition to removing the Debtor and Ms. Biddle as co-administrators, ordered that Ms. Biddle be surcharged $13,457.80 for misallocated funds, reduced by the amount turned over. The state court judge required that Mr. Altman hold the returned funds pending further order.

The Trustee asserts that she is currently holding the sum of $4,443.41 arising from the probate estate.

The Trustee asserts that she received an e-mail from the probate administrator, Tabitha Barnes, requesting that the funds be turned over to her for administration in the probate estate.

The Trustee requests that the court authorize the payment to the probate estate administrator, Tabitha Barnes of Stanislaus County, the funds held in trust in the amount of $4,443.41, as an administrative expense pursuant to 11 U.S.C. § 503(a) of the Bankruptcy Code.

DISCUSSION

The instant Motion contains logical gaps as to how or why the funds being held by the Trustee are an administrative expense under 11 U.S.C. § 503 in which the court can authorize payment of after a hearing.

In the Trustee's Points and Authorities, the Trustee appears to attempt to construct this legal fiction to contort the probate funds into an administrative expense in which the court can authorize payment of pursuant to 11 U.S.C. § 503. Dckt. 55. The Trustee makes that argument that the administrator of the probate, Ms. Barnes, has a claim as defined by § 101(5). The Trustee argues that Ms. Barnes, as an employee of the Stanislaus County Administrator, works for a "governmental unit," as defined by 11 U.S.C. § 101(27).

It is at this point that the Trustee appears to make a legal and logical leap which the court does not find persuasive. The Trustee argues, because Ms. Barnes can arguably be considered working for a "governmental unit," that turning over the probate funds is an administrative expense. Nowhere in the Motion nor the Points and Authorities does that Trustee actually assert a ground for which the held probate funds are, in fact, an administrative expense.

What the Trustee appears to be asserting is that under 11 U.S.C. § 503(b)(1)(D) "a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of it being an allowed administrative expense." Subparagraphs (B) and (C) provide:

> (B) any tax--
>
> > (I) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or

> (ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case;
>
> (C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph.

The Trustee does not assert that the held probate funds are any sort of tax or penalty for such. Instead, it appears that the Trustee presumed that, once the Trustee defined the probate administrator as a governmental unit, the funds suddenly became classified as an administrative expense. This is not proper.

Furthermore, outside of the logical gap in the request, the Motion does not provide evidence as how the turnover of the probate funds are "actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1). The Trustee does not provide any argument as to how the turnover these funds are necessary in order for the continued administration of the estate and preserving such.

Therefore, because the Trustee has failed to prove that the probate funds are an "administrative expense" pursuant to 11 U.S.C. § 503, 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 Motion for Turnover of Property filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

24. 09-94269-E-7 SUSHIL/SUSEA PRASAD **CONTINUED STATUS CONFERENCE RE:**
15-9018 **AMENDED COMPLAINT**
FERLMANN V. PRASAD ET AL **6-19-15 [7]**

Plaintiff's Atty: Matthew J. Olson; Roxanne Bahadurji
Defendant's Atty:
William A. Munoz; James Murphy [Meyer Wilson Co., LPA]
Steve Altman [Sushil Prasad; Susea S. Prasad]
Hilly Estioko; Jason S. Haselkorn [Transamerica Financial Advisors, Inc.]

Adv. Filed: 5/29/15
Answer: none

First Amd. Cmplt. Filed: 6/19/15
Answer: 7/31/15 [Meyer Wilson Co., LPA]

Counterclaim Filed: 7/31/15 [demand for jury]
Answer: none

Nature of Action:
Recovery of money/property - other
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

Continued from 8/20/15 to be heard in conjunction with motion for leave to file second amended complaint.

25. 09-94269-E-7 SUSHIL/SUSEA PRASAD **MOTION FOR LEAVE TO FILE SECOND**
15-9018 MF-1 **AMENDED COMPLAINT**
FERLMANN V. PRASAD ET AL **8-12-15 [19]**

Final Ruling: No appearance at the October 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Defendants, Defendant's Attorney for Meyer Wilson Co., LPA on August 12, 1015. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

Stephen Ferlmann, the Chapter 7 Trustee, filed the instant Motion for Leave to File Second Amended Complaint on August 12, 2015. Dckt. 19. The Trustee states that the request for leave is so the Trustee can add a cause of action against Meyer Wilson Co., LPA ("Defendant") for legal malpractice.

The Trustee states that it was not until May 13, 2015 that the Trustee learned that Defendant, on behalf of Sushil and Susea Prasad ("Debtor"), filed a claim with the Financial Industry Regulatory Authority which alleged that Vincent Thakur Singh, a broker for World Group Securities Inc., now known as Transamerica Financial Advisors, Inc., took advantage of his World Group Securities, Inc., connections to operate a Ponzi scheme. The claim states that the Debtor initially invested approximately $108,000.00 from the sale of one of their homes and subsequently took a home equity loan of $50,000.00 and $40,000.00 to invest further with Singh.

The Trustee asserts that Defendant settled the claim with Transamerica on behalf of the Debtor for the sum of $105,000.00. Defendant retained the sum

of $44,677.97 for attorney's fees and expenses and $500.00 for fees advanced to an unidentified "bankruptcy counsel." The remaining $59,822.03 was disbursed to the Debtor.

The Trustee commenced the instant Adversary Proceeding on May 29, 2015 for avoidance of the post-petition transfers and violations of the automatic stay. The Trustee amended the initial complaint on June 19, 2015 to add claim against Defendant and Debtor for turnover and accounting.

The Trustee is seeking leave to amend to add a claim for legal malpractice against the Defendant.

DEFENDANT'S NON-OPPOSITION

The Defendant filed a non-opposition to the instant Motion on September 17, 2015. Dckt. 35. The Defendant states it does not oppose the allowance of the amended complaint as long as the Defendant can still respond to the amended complaint. The Defendant does, however, point to the Trustee's failure to provide a redline copy of the proposed amended pleading, required by Local Bankr. R. 7015-1.

TRUSTEE'S RESPONSE

The Trustee filed a response to the non-opposition on September 24, 2015. Dckt. 37. The Trustee acknowledges the failure to provide the red-lined copy of the proposed amended complaint. The Trustee has provided such copy. Exhibit C, Dckt. 38.

APPLICABLE LAW

"A party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. § 15(a)(2), as incorporated by Fed. R. Bankr. P. 7015. There is a strong policy of liberal authorization to amend pleadings in the Federal Courts. *In re Kashami*, 190 B.A.P. 875 (9th Cir. 1995). In situations where Plaintiff's causes of actions have been dismissed without leave to amend, the Plaintiff bears the burden of proving there is a reasonable possibility of amendment. *Blank v. Kirwan*, 39 Cal.3d 311 (1985).

While there is a strong policy of liberal authorization to amend pleadings in the Federal Courts, the court is correct to deny leave where there is undue delay, bad faith, repeated failure to cure deficiencies by amendments previously allowed, or undue prejudice to the opposing party. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Moore v. Kayport Package Exp., Inc.* 885 F.2d 531 (9th Cir. 1989). Furthermore, an amendment that would serve no useful purpose, i.e. be subject to a motion to dismiss, should not be allowed. *Foman v. Davis* 371 U.S. at 182.

Local Bankr. R. 7015-1 provides the following:

> A motion for leave to amend or supplement a pleading before trial must include as exhibits: (1) a copy of the proposed amendment, amended or supplemental pleading, which must be serially numbered to differentiate it from previous pleadings or amendments; and (2) either a redline copy, which compares

> the proposed pleading to the most recent applicable pleading, or a table that specifies the location by citation to the page, paragraph and recites verbatim each addition or deletion.

DISCUSSION

A review of the red-lined proposed complaint adds a Seventh Claim for Relief for Legal Malpractice Against Meyer Wilson. Exhibit C, Dckt. 38.

Outside of the addition of the Seventh Cause of Action, no substantive amendments were made.

Therefore, in light of the Defendant's non-opposition and for cause, the court grants the instant Motion and the Trustee is permitted to file a Second Amended Complaint in the form of Exhibit C, Dckt. 38 pursuant to Fed. R. Bankr. P. 7015 and Fed. R. Civ. P. 15(a)(2).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Leave to File Second Amended Complaint filed by Plaintiff-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 can file a Second Amended Complaint in the form of Exhibit C, Dckt. 38.
>
> **IT IS FURTHER ORDERED** that Defendant shall file any further answer to address the allegations in the Second Amended Complaint, or other response as permitted by the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure on or before October 22, 2015.

26. 13-91189-E-11 MICHAEL/JUDY HOUSE
RMY-14 Robert M. Yaspan

CONTINUED MOTION FOR APPROVAL OF STIPULATION TO EXTEND ORDER ON MOTION TO AUTHORIZE USE OF CASH COLLATERAL
9-18-14 [200]

Tentative Ruling: The Motion for Approval of Stipulation to Extend Order on Motion to Authorize Use of Cash Collateral Through December 31, 2014 was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the 20 largest unsecured claims, parties requesting special notice, creditors and Office of the United States Trustee on February 19, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Approval of Stipulation to Extend Order on Motion to Authorize Use of Cash Collateral Through December 31, 2014 was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

No opposition was presented at the hearing. The Defaults of the non-responding parties are entered by the court.

The Motion to Authorize Use of Cash Collateral Through December 31, 2015 is granted.

Debtors-in-Possession Michael House and Judy House ("Debtors-in-

Possession") request an interim order authorizing Debtor-in-Possession to continue to use the cash collateral through December 31, 2015, (b) granting adequate protection to certain pre-petition secured parties for the use of their cash collateral, (c) prescribing the form and manner of notice and setting the time for further hearings regarding the continued use of cash collateral.

PRIOR ORDERS

Through the Amended Order entered on September 9, 2013, the court authorized the use of cash collateral through February 28, 2014, including the required adequate protection payments. The court granted the payment of expenses, and provided that the cash collateral may be used monthly, commencing July 1, 2013, through and including February 28, 2014.

The court set a further hearing on the Motion for 10:30 a.m. on February 13, 2014. The Debtors in Possession were ordered to file and serve any new proposed budget and supplemental pleadings for any further use of cash collateral on or before January 13, 2014.

On October 6, 2014, the court authorized the use of cash collateral through December 31, 2014. Dckt 231.

On January 7, 2015, the court authorized the use of cash collateral through and including March 31, 2015. Dckt. 251. The court also continued the hearing to March 5, 2015 to allow for further request.

On March 5, 2015, the court authorized the use of cash collateral through and including February 19, 2015. Dckt. 269. The court also continued the hearing to June 11, 2015 to allow for further request.

On June 15, 2015, the court authorized the use of cash collateral through and including October 31, 2015. Dckt. 300. The court also continued the hearing to 10:30 a.m. on October 1, 2015 to allow for further request.

Current Motion

Debtor-in-Possession states that the approval of the use of cash collateral will enable Debtor-in-Possession to pay expenses necessary to personal and business related expenses. Debtor-in-Possession alleges that without the use of cash collateral, Debtor-in-Possession's property may be lost, utilities can be discontinued, and Debtor-in-Possession will not be able to pay for certain personal expenses.

Debtor-in-Possession has pledged the rental income as collateral on the farm-rental properties located at 6231 Smith Road, Oakdale, California ("Smith Ranch"), and 2107 South Stearns Road, Oakdale, California ("Triumph Ranch")(collectively the "Properties"). Debtor-in-Possession will be setting up cash collateral accounts for each of the Properties, and the income for each property will be allocated to the cash collateral account.

The accompanying Memorandum of Points and Authorities states that Debtors-in-Possession own the subject properties that generate rental income. The amounts claimed pursuant to the deeds of trust against each of the Properties are as follows:

Property Description	Position	Lienholder	Amount Claimed Due as of June 25, 2013	Assignment of Rents	Exhibit
Smith Ranch	1st	Oak Valley Community Bank	$103,690.98	Yes	A
Smith Ranch	2nd	Arthur and Karen House Trust	$5,500.00	Yes	B
Triumph Ranch	1st	American AG Creditor	$383,618.93	Yes	C
Triumph Ranch	2nd	Arthur and Karen House Trust	$5,500.00	Yes	D
Smith Ranch/Triumph Ranch (lien amounts against both properties)	3rd on Smith Ranch; 3rd on Triumph Ranch	Petaluma Acquisition	$851,497.31	Yes	E and F, respectively

Debtors-in-Possession Michael and Judy House ("Debtors-in-Possession") move the court for entry of an interim order and final order (a) authorizing Debtors-in-Possession to use cash collateral, (b) granting adequate protection to certain pre-petition secured parties for the use of their cash collateral and (c) prescribing the form and manner of notice and setting the time for the final hearing on the Motion.

The Creditors claiming an assignment of rents are:

A. Arthur and Karen House Trust by virtue of its first position deed on Smith Ranch.

B. Oak Valley Community Bank by virtue of its second position deed of trust on the Smith Ranch.

C. American AG Credit by virtue of its first position deed of trust on the Triumph Ranch.

D. Arthur and Karen House Trust by virtue of its second position deed of trust on the Triumph Ranch.

E. Petaluma Acquisition by virtue of its third position deed of trust on the Smith Ranch and its third position deed of trust on the Triumph Ranch.

It is anticipated that all secured parties will consent to the use of the cash collateral subject to Debtor-in-Possession continuing to pay all of the contractually due payments and subject to the following budget (with a 20% line by line potential variance):

Income	Expense	Amount
Rental income from Smith and Triumph Properties		26,210.00
Other Income (not subject to cash collateral) including, but not limited to real estate commissions, Valk Care, pasture rent, Disney Store income and School Board stipend		4,300.00
	Payment to Petaluma	(6,275.72)
	Payment to AG Credit	(4,223.98)
	Payment to Oak Valley Community Bank	(1,704.76)
	Payment to Arthur and Karen House Trust (Triumph Ranch)	(5,500.00)
	Fund for Emanuel O. Amaral Settlement	($1,200.00)
	Expenses for Ranches	(1,370.00)
	Rent	(1,500.00)
	Utilities	**(1500.00) FN.1.**
	Home Maintenance	(25.00)
	Food	(500.00)
	Clothing	(100.00)
	Medical and Dental	(50.00)
	Transportation	(250.00)
	Recreation	(50.00)
	Charitable Contributions	(30.00)
	Life Insurance	(920.00)
	Health Insurance	(1,100.00)
	Insurance for Ranch, Auto and House	(2,500.00)
	Income Tax	(500.00)
	Photography Expenses	(200.00)
	Trustee's Fees	(325.00)
	Payments for Additional Dependents not living at home	(200.00)
	Attorneys' Fees Carve Out (to be paid only after court approval)	(1,000.00)

	Monthly Cash Flow Profit	**480.62**

FN.1. Reviewing the previous requests, it appears that the Debtors-in-Possession inadvertently altered the Utilities expense from $1,500.00 to $500.00, especially in light of the monthly cash flow profit remaining the same, even with the $1,000.00 reduction in expenses. The court sua sponte corrects this apparent scrivener's error.

DISCUSSION

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). The Debtors-in-Possession have the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor's interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

Debtors-in-Possession state that they are current on the payments under the current order authorizing their use of cash collateral, and are current on their compliance obligations with the United States Trustee.

Debtor-in-Possession seeks authorization to use cash collateral to pay personal expenses post petition taxes, utilities, insurance and maintenance on the rental properties pursuant to the above-referenced budget. Debtor-in-Possession will pay the contractual amounts due on the secured loans for the institutional lenders and payments to the Arthur and Karen House Trust as set forth in the Budget, except as to the Smith Property. Pursuant to the tentative settlement agreement with the Karen House Trust, there will no longer be any adequate protection payments for the Smith Ranch Property but instead the sum of $1,200.00 per month shall be paid to a fund that will be used to settle the boundary dispute with Emanuel O. Amaral. The adequate protection payment will be held in Mr. Altman's trust account subject to further court order.

The court authorizes the use of cash collateral, pursuant to the order of the court, for the period October 1, 2015 through December 31, 2015, including the required adequate protection payments. Only expenses relating to the property from which the cash collateral is generated may be paid with cash collateral for that property. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by the Debtor in Possession. All surplus Cash Collateral from each property shall be held in a cash collateral account and separately accounted for by the Debtor in Possession. The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). Here, the existence of a substantial equity cushion and the adequate protection payment protect the creditors' (namely the Arthur and Karen House Trust by virtue of their second position deed of trust on the Smith Ranch, the Oak Valley Community Bank, American AG Credit, and Petaluma Acquisition) interests.

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 Authorize Use of Cash Collateral filed by the Debtors-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Use Cash Collateral is granted, pursuant to this order, for the period September 10, 2015, through December 31, 2015, and the cash collateral may be used, through an including December 31, 2015, to pay the following monthly expenses:

Expense	**Amount**
Payment to Petaluma	(6,275.72)
Payment to AG Credit	(4,223.98)
Payment to Oak Valley Community Bank	(1,704.76)
Payment to Arthur and Karen House Trust (Triumph Ranch)	(5,500.00)
Fund for Emanuel O. Amaral Settlement	($1,200.00)
Expenses for Ranches	(1,370.00)
Rent	(1,500.00)
Utilities	(1,500.00)
Home Maintenance	(25.00)
Food	(500.00)
Clothing	(100.00)
Medical and Dental	(50.00)
Transportation	(250.00)
Recreation	(50.00)
Charitable Contributions	(30.00)
Life Insurance	(920.00)
Health Insurance	(1,100.00)
Insurance for Ranch, Auto and House	(2,500.00)
Income Tax	(500.00)
Photography Expenses	(200.00)
Trustee's Fees	(325.00)
Payments for Additional Dependents not living at home	(200.00)

Attorneys' Fees Carve Out (to be paid only after court approval)	(1,000.00)

IT IS FURTHER ORDERED that only expenses relating to the property from which the cash collateral is generated may be paid with cash collateral for that property. No use of cash collateral is authorized for any other purposes, including plan payments or use of any "profit" by the Debtors in Possession. All surplus Cash Collateral from each property shall be held in a cash collateral account and accounted for by the Debtors in Possession.

IT IS FURTHER ORDERED the hearing on the Motion is continued to 10:30 a.m. on December 3, 2015, to consider a supplemental to the Motion to extend the authorization to use cash collateral. On or before November 12, 2015, the Debtors in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the December 3, 2015 hearing. Any opposition to the requested use of cash collateral shall be filed and served on or before November 19, 2015.

27. 13-91189-E-11 MICHAEL/JUDY HOUSE
RMY-14 Robert M. Yaspan

MOTION TO USE CASH COLLATERAL, MOTION FOR ADEQUATE PROTECTION AND/OR MOTION TO SCHEDULE FURTHER HEARINGS
9-10-15 [325]

Final Ruling: No appearance at the October 1, 2015 hearing is required.

The motion appearing to be an erroneous duplicate calendar entry, this duplicate calendar entry is removed from calendar.

28. 14-90895-E-7 GARY/LYNEL CASTILLO MOTION TO COMPEL ABANDONMENT
TLC-1 Tamie L. Cummins 9-3-15 [30]

Final Ruling: No appearance at the October 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 3, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Motion to Abandon Property is granted.

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

The Motion filed by Gary Castillo, Sr. and Lynel Castillo ("Debtor") requests the court to order the Trustee to abandon property commonly known as 5520 Vineyard Point Court, Salida, California (the "Property"). This Property is encumbered by the lien of Wells Fargo Bank, N.A., securing claim of $250,743.00. The Declaration of Debtor has been filed in support of the motion and values the Property to be $344,000.00.

The Debtor has claimed an exemption in the amount of $93,257.00 pursuant to California Code of Civil Procedure § 740.730.

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

inconsequential value and benefit to the Estate, and orders the Trustee to abandon the property.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by Gary Castillo, Sr. and Lynel Castillo ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted and that the Property identified as:
>
> 1. 5520 Vineyard Point Court, Salida, California
>
> and listed on Schedule A by Debtor is abandoned to Gary Castillo, Sr. and Lynel Castillo by this order, with no further act of the Trustee required.

29. 15-90697-E-7 ELIZABETH ZYLSTRA **MOTION TO DISMISS CASE**
Pro se **9-15-15 [14]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on September 18, 2015. By the court's calculation, 13 days' notice was provided.

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

The Motion to Dismiss the Chapter 7 Bankruptcy Case is denied.

This Motion has been filed by Elizabeth Zylstra ("Debtor") to dismiss the instant Chapter 7 case. Dckt. 14.

The Debtor states that she filed the instant case on July 17, 2015 due to her residence being scheduled to be sold on July 19, 2015. The Debtor states that she is a divorced woman with three children. The Debtor states that she has suffered from health issues and having problems with her ex-husband.

Due to the pending foreclosure, the Debtor states that she filled out the forms and filed the instant petition, without the help of a lawyer. The Debtor states that she attended the Meeting of Creditors. The Debtor asserts that at

the Meeting of Creditors, the Chapter 7 Trustee, Irma Edmonds, explained the effect of filing the instant case. The Debtor alleges that she requested the case to be dismissed but the Trustee said no.

The Debtor requests that the case is dismissed so that she can start a business, pay her bills, and work with her creditors to form a repayment plan.

TRUSTEE'S OPPOSITION

The Trustee filed an opposition to the instant Motion on September 21, 2015. Dckt. 19. The Trustee states that, after the Meeting of Creditors, the Trustee was advised that the Debtor had filed a claim with the USDA Hispanic & Women Farmers and Ranchers and had been approved for a credit claim in the sum of $62,500.00. The Trustee states that the Debtor did not disclose this asset in her petition.

The Trustee states that on September 21, 2015, the USDA Hispanic & Women Farmers and Ranchers informed Trustee through e-mail that an award check was issued and sent to Debtor prior to receiving the Trustee's request.

The Trustee asserts that the Debtor has not amended her schedules to show the amount of the funds to be received nor has the Debtor amended her schedule to claim exemptions for funds received from USDA Hispanic & Women Farmers and Ranchers.

The Trustee concludes by stating that the estate has formed the belief that the Debtor has asserts which should be administered for the benefit of the creditor and dismissal of the case may cause detriment to the creditors.

DISCUSSION

A dismissal of a Chapter 7 case is governed by 11 U.S.C. § 707, which states in relevant part:

> (a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including--
>
> > (1) unreasonable delay by the debtor that is prejudicial to creditors;
> >
> > (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
> >
> > (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.
>
> (b)(1) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, trustee (or bankruptcy administrator, if any), or any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts,

> or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter. In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

When determining "cause" under § 707(a), courts will typically look at the totality of the circumstances. *See Sherman v. SEC* (*In re Sherman*), 491 F.3d 948, 970 (9th Cir.2007) (setting forth the two-step analysis for determining "cause" under § 707(a)); Hickman v. Hana (In re Hickman), 384 B.R. 832, 840 (9th Cir. BAP 2008).

The court in *In re Kaur* provided the following guidelines on what considerations a court should give when a debtor seeks the voluntary dismissal of their own case:

> The debtor may have the right to voluntarily dismiss her chapter 7 case under § 707(a), but that right is not absolute. *Bartee v. Ainsworth (In re Bartee)*, 317 B.R. 362, 366 (9th Cir. BAP 2004). Instead, the "debtor must [still] establish cause to obtain dismissal." Id. On this issue of cause, "[t]he law in the Ninth Circuit is clear: a voluntary Chapter 7 debtor is entitled to dismissal of his [or her] case so long as such dismissal will cause no 'legal prejudice' to interested parties." *Leach v. United States (In re Leach)*, 130 B.R. 855, 857 (9th Cir. BAP 1991) (citing *Schroeder v. Int'l Airport Inn P'ship (In re Int'l Airport Inn P'ship)*, 517 F.2d 510, 512 (9th Cir.1975) (per curiam) (Bankruptcy Act case); *Gill v. Hall (In re Hall)*, 15 B.R. 913, 917 (9th Cir. BAP 1981)). Legal prejudice means "prejudice to some legal interest, some legal claim, some legal argument," *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir.1996), but the issue of prejudice "may be evaluated using both legal and equitable considerations," *Hickman*, 384 B.R. at 840.

In re Kaur, 510 B.R. 281, 285 86 (Bankr. E.D. Cal. 2014).

Here, it appears that the dismissal of the case, at this juncture, may in fact cause prejudice to some interested party. As stated by the Trustee in her opposition, the Debtor failed to disclose an asset on her schedules that may be utilized for the repayment of the Debtor's creditors. With the potential of asset distribution to creditors, dismissal at this time would appear to cause "legal prejudice."

The Debtor only "cause" appears to be the filing of the instant case to stop a foreclosure sale without fully understanding the ramifications of filing the case. While the court is sympathetic to the Debtor and Debtor's family, as stated by the Trustee, there are potential undisclosed assets, namely the USDA Hispanic & Women Farmers and Ranchers award, that are part of the estate which could be used for the benefit of the creditors, especially in light of the

Debtor not claiming any exemptions in such.

It is significant that when Debtor filed the present Ex Parte Motion, no mention is made of the $62,500 asset which had not been disclosed. Rather, it is postured as the Debtor having innocently “panicked” and filed the bankruptcy to stop a foreclosure sale.

Therefore, because the Debtor has not shown “cause” to justify the dismissal of the case and because the dismissal will result in prejudice to the creditors, the Motion to Dismiss 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 Motion to Convert filed by Elizabeth Zylstra having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

30. 14-90698-E-7 LYLE ROBBINS
HCS-4 Vi K. Tran

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM\CRABTREE\SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S)
9-3-15 [37]

Final Ruling: No appearance at the October 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on September 3, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

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.

The period for which the fees are requested is for the period of September 9, 2015, through October 1, 2015. The order of the court approving employment of Applicant was entered on October 14, 2014. Dckt. 23. Applicant requests fees in the amount of $4,000.00 and costs in the amount of $0.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or

professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

(a) Is the burden of the probable cost of legal [or other

professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general case administration, turn over of vehicles to estate, and the sale of vehicles from the estate. The estate has approximately $8,000.00 of unencumbered monies to be administered as of the filing of the application. Dckt. 39 ¶ 3. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 6.7 hours in this category. Applicant assisted Client communicating with Client, reviewing documents related to various motions, and preparing Motions to Employ and for Compensation. Dckt. 41, Ex. A.

Motion to Compel Turnover of Vehicle: Applicant spent 5.3 hours in this category. Applicant communicated with Client, drafted a Motion to Compel Turnover three Vehicles, and reviewed the tentative ruling on the motion. *Id.*

Significant Motions and Other Contested Matters: Applicant spent 6.2 hours in this category. Applicant communicated with Client, discussed selling the vehicles with Debtor's counsel, drafted a Notice of Intent to Sell Vehicles, and communicated with Trustee and Debtor's counsel on the status of the sale. *Id.*

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**
Dana A. Suntag, Esq	2.1	$325.00	$682.50

Loris L. Bakken, Esq	1.6	$295.00	$472.00
Ricardo Aranda, Esq	1.1	$250.00	$275.00
Wendy A. Locke, Esq	10.9	$225.00	$2,452.50
Audrey A. Dutra, Paralegal	2.3	$90.00	$207.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$4,089.00

Id. at p. 1. FN1.

FN.1. The court notes a discrepancy for the hourly rate of Dana A. Suntag. In Exhibit A, under the subheading "PROFESSIONAL PERSONNEL," the rate is $315.00 per hour, while the accompanying tables use the rate of $325.00 per hour. There is also a difference of $3.00 between the court's calculation of total fees and the fees provided by Applicant, using the $325.00 provided in the tables. Because these two errors result in a maximum difference of $24.00, and Applicant has moved to reduce their fees and costs by $149.08, this court waives the error as de minimis and moot.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $63.08 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$34.08
Copying	$0.10 per page	$29.00
		$0.00
Total Costs Requested in Application		$63.08

Dckt. 41 Ex. A, p.4.

FEES AND COSTS & EXPENSES ALLOWED

Fees and Costs

Applicant seeks to be paid a single sum of $4,000.00 for its fees [and expenses] incurred for the Client. First and Final Fees and Costs in the amount of $4,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid

by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees, Costs, and Expenses $4,000.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Herum\Crabtree\Suntag (“Applicant”), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:
>
> Herum\Crabtree\Suntag, Professional Employed by Trustee
>
> Fees in the amount of $4,000.00
> Expenses in the amount of $0.00,
>
> The fees and costs are allowed pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.