UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

October 2, 2014 at 10:30 a.m.

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1. 11-94410-E-11 SAWTANTRA/ARUNA CHOPRA — MOTION TO CONVERT CASE TO CHAPTER 7
HSM-25 Robert M. Yaspan — 8-14-14 [967]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 14, 2014. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion to Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is granted and the case is converted to one under Chapter 7.

This Motion to Convert the Chapter 11 to a Chapter 7 bankruptcy case of

Sawtantra Chopra and Aruna Chopra ("Debtors") has been filed by Gary Farrar, the Chapter 11 Trustee. The Trustee asserts that the case should be dismissed or converted based on the following grounds.

A. The estate may now be administered more cost-effectively in a Chapter 7 than in a Chapter 11 because the depletion of the estate through accruing administrative expenses, and the absence of a reasonable likelihood of rehabilitation through plan confirmation, constitute cause for conversion

B. There is little prospect for confirmation of a Chapter 11 plan centered upon the Debtors' core real property assets and the few remaining assets of value can now be more effectively administered in a chapter 7 proceedings, with reduced administrative expense.

C. Creditors will be well-served by immediate conversion of the case.

D. The Trustee has received no formal offers to purchase the Dale Road Project at the estate's list price, or at any price.

E. Because development or sale of the entire Dale Road Project is no longer advocated by any party to this case, the Trustee has concluded that the estate's two remaining property assets (th 025 Parcel and the Oakdale Road Property) can be administered more cost effectively through a Chapter 7 liquidation.

F. Continuing this case in Chapter 11 does nothing to enhance the estate's ability to administer the estate's limited remaining intangible personal property assets.

G. Managing the overall exposure to alleged post-petition claims will likely be more successful if the case is converted to one under Chapter 7.

H. If the case is converted, the Trustee would likely be appointed as the Chapter 7 Trustee in this case and the Trustee already possesses the knowledge about the case and its assets, making administration that much more cost-effective.

BLEDSOE FISCHER CREDITORS, THE $550,000 LOT C MID VALLEY ASSIGNEES, AND THE $1.25 MILLION LOT B MID VALLEY ASSIGNEES NONOPPOSSITION AND SUPPORT

The Bledsoe Fischer Creditors, the $550,00 Lot C Mid Valley Assignees, and the $1.25 Million Lot B Mid Valley Assignees (the "Supporters") filed a Statement of Nonopposition to and Support for the Trustee's Motion to Convert the Case to Chapter 7 on September 18, 2014.

In support for conversion, the Supporters state that following Trustee's instant motion, relief from stay has been granted to the Supporters with regard to APNs 029 and 030 of the Dale Road Property and those properties have been abandoned. Dckts. 914, 915, 1027. The Supporters state that the court has also authorized abandonment of APN 007 of the Dale Road Property and the

1907 F Street, Oakdale, California property. Dckt. 1029. The $700,000.00 Lot B Mid Valley Assignees have obtained relief from stay with regard to the 1907 East F Street, Oakdale, California property and APN 007 of the Dale Road Property. Dckt. 1026. Don Mosco has obtained relief from stay with regard to 313 Banner Court Road, Modesto, California and APN 007 of the Dale Road Property. Dckt 1044. Abandonment has been authorized concerning 313 Banner Court Road, Modesto, California. Dckt. 1031.

The Supporters state that the estate retains APN 025 of the Dale Road Property and the Oakdale Road property and the Trustee seeks to sell them. The Supporters argue that "the creditors should not be further inconvenienced and compelled to incur more expense in defending against additional Chapter 11 maneuvers by the Debtors." Dckt. 1054, pg. 3.

The Supporters request that, if the court does convert the case, that the court to order that the orders entered in the Chapter 11 remain effective post-conversion. The Supporter specifically request, without limiting, the following orders remain in effect:

1. Relief from Stay re State Court Action: Supporters and the $700,000 Lot B Mid Valley Assignees have received orders modifying the automatic stay to allow prosecution of the State Court Action to judgment, provided the judgment may not be enforced except in the bankruptcy case. Dckt. 227 and 437.

2. Extension of Time for Nondischargability Complaints: Supports and the $700,000 Lot B Mid Valley Assignees have also obtained extensions of the time to object to discharge of their claims under § 523 until 30 days after final judgment in the State Court Action. Dckt. 423 and 433.

DEBTORS' OPPOSITION

Debtors filed an opposition to the instant motion on September 18, 2014. Dckt. 1058. Debtors oppose the Motion, asserting that Debtors have received a signed Letter of Intent for a purchase and a joint venture regarding the 9.53 acre property (APN 078-015-007) (the "007 Property"). The 007 Property was abandoned to Debtors by the Trustee. The investors, First City Capital and Windsor Business Solutions, Ltd. (The "Investors") are run by experienced real estate investors and developers of commercial real estate. Debtors allege that the investment will be structured as a sale of 007 Property as a joint venture owned 25% by Debtors (or a company owned by Debtors) and 75% by a company owned by the Investor called First City-Windsor. Debtors allege that their plan will be amended to incorporate the sale and joint venture.

According to the Debtors, the Investors have represented to Debtor Sawtantra Chopra that a wire is being sent from an East Coast bank to the trust account of Debtors' attorney for a good faith deposit in the sum of $250,000.00 to be held for the Investors' benefit for the use in completing the purchase. However, no confirmation of said wire has been filed or reported.

Debtors allege that the proposed purchase has contingencies regarding title and acquisition of adjacent property, among other things. The purchase process for the 007 Property, subject to possible adjustments, is approximately

$2,000,000.00. It is anticipated that the purchase documents can be completed, and the Plan amended within 30-45 days from the hearing.

Debtors argue that the conversion at this time would not be in the best interest of the creditors because once the purchase and joint venture are completed, Debtors will have increased the value of their properties, which should increase the creditors' recovery. Debtors argue that they will be bringing the 007 Property back into the estate as part of their amended Plan. Debtors allege that a Chapter 7 Trustee would not have access to any recovery from the 007 Property since it already has been abandoned. Debtors are confident that they will be able to confirm an Amended Plan based upon the proposed sale and joint venture and other income available to them during the plan period.

Debtors are requesting that the Court deny the Motion or, alternatively, continue the hearing for about 45 days to allow Debtors to complete the documentation and file their amended plan incorporating the terms of the purchase agreement.

Debtors further state that in the event that the court grants the instant motion, Debtors request the court to appoint a Chapter 7 Trustee other than the Current Chapter 11 Trustee because the current Chapter 11 Trustee has managed the estate for almost two years and it would be more appropriate for the appointment of a new Trustee to preserve any potential claims regarding the management of the estate, if any exist.

TRUSTEE'S REPLY

The Trustee filed a reply to Debtors' opposition on September 25, 2014. Dckt. 1065.

The Trustee begins by reiterating the Supporters' nonopposition and stating that three motions of abandon all real property assets other than the Dale Road 025 parcel and the Oakdale Road, Modesto office building. The Trustee argues that the case has always been premised upon the successful sale or development of the Dale Road Project. Three out of the four parcels comprising that project have now been abandoned which, according to the Trustee, further supports the contention that this case is not viable in Chapter 11 because there is no business to reorganize. Furthermore, Trustee argues that it would be more cost-effective to sell the two remaining properties through a Chapter 7 liquidation, without the added burden of reporting and administrative expenses associated with Chapter 11.

The Trustee addresses the Debtors' opposition concerning the sale of the 007 Property. Namely, the Trustee points out that:

1. The 007 Property is no longer an asset of the estate, having been abandoned by order entered August 29, 2014. Dckt. 1024.

2. The Letter of Intent was not filed with the court in connection with the opposition.

3. At the time that the Opposition was filed, no good faith deposit had been given to the Debtors in connection with the

proposed sale.

4. The Debtors do not need to confirm a plan of reorganization to sell the 007 Property because it is not an asset of the estate. The Opposition makes absolutely no reference to the property remaining in the estate, and what role, if any, they might play in a reorganization.

5. The Trustee has been in separate communications with the First City Capital/Windsor Business Solutions group concerning a possible sale of the Dale Road 025 parcel but, to date, no formal offer has been received.

The Trustee points out that the proposed sale to the First City Capital/Windsor Business Solutions group is the third possible buyer that Debtors have advanced in the last sixty days. Trustee states that the second proposed buyer, who was to wire a good faith deposit to Mr. Yaspan's trust account, is not mentioned in the Opposition. Instead, the Opposition just states that the 007 Property will be sold to First City Capital/Windsor Business Solutions group, and that another good faith deposit is on the way. The Trustee states that "[t]he constantly shifting nature of the Debtors' sale efforts strongly supports the Trustee's contention that there is no plan of reorganization *in prospect*." Dckt. 1065, pg. 3, lines 12-13 (emphasis original).

The Trustee continues by arguing that the Debtors have had ample opportunity to file a revised Disclosure Statement or further amended Plan during that time, but have not done so. The Trustee alleges that the Debtors have been given multiple opportunities to confirm a plan and that the few remaining assets of value can now be more effectively administered in a Chapter 7 proceeding, with reduced administrative expense.

As to Debtors' request for a new Chapter 7 Trustee if the motion is granted, Trustee states that neither creditors nor the United States Trustee have expressed dissatisfaction with the Trustee's efforts as a Chapter 11 Trustee, and a tremendous amount of institutional knowledge concerning this case, the estate, and the remaining assets, will be lost if the Trustee does not continue as Chapter 7 Trustee. The Trustee states that it is actually the United States Trustee who is responsible for the selection of a Chapter 7 Trustee.

RULING

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 Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a

> hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

Cause most certainly exists to convert this case pursuant to 11 U.S.C. § 1112(b). This case has been problematic from its inception. This case has been dragging on for nearly three years with no plan confirmed and constant problems with false promises of sale of the real property. The case has been moving towards conversion or dismissal, with the court granting abandonment of certain parcels of land in the estate that were fundamental to Debtors' Chapter 11. Since these essential parcels are no longer part of the estate, it is apparent that Chapter 11 is no longer in the best interest of the creditors nor the estate.

This bankruptcy case was filed as a voluntary Chapter 11 by the Debtors on December 30, 2011. It was filed in conjunction with a voluntary Chapter 11 case filed by the Debtors' son and daughter-in-law, Sanjiv and Sheena Chopra (11-93441). In the Sanjiva nd Sheena Chopra case a plan was confirmed in February 2014 and that case closed in August 2014.

The numbered docket entries in the Current Bankruptcy Case number 1072. To put that in context, the City of Stockton bankruptcy case (one of the largest Chapter 9 cases in the country) has 1716 docket entries as of September 19, 2014. Case No. 12-32118.

The motion to appoint a trustee in the Current Bankruptcy Case was filed on April 24, 2012. Dckt. 119. The court did not order the appointment of a trustee, affording the then Debtors in Possession nine full months of "maneuvering room" from the commencement of the case, until October 9, 2012. Order, Dckt. 344. In granting the motion, the court made extensive findings of fact and conclusions of law. Civil Minutes, Dckt. 338. The court concluded that the mismanagement of the estate by the then Debtors in Possession rose to the level of "cause" to warrant the appointment of a trustee or conversion of the case to one under Chapter 7.

The conduct, or misconduct, of the then Debtors in Possession included failing to provide information to the court and creditors concerning transfers of assets of the estate (transfer of Dale Road Properties form Chopra Development Properties to Mrs. Chopra, and then back to Chopra Development Properties. "This not only shows mismanagement by the Debtors, but could also be a violation of their fiduciary duties as debtors in possession. Further, the Court ordered the Debtors to explain what consideration was paid and what agreements exist between such entities. This information was not provided to the court." *Id.* at pg. 7. The court further found that Debtors' in Possession accounting for Mr. Chopra's income from his medical practice and failure to file 2011 tax returns (without explanation)_to further demonstrate cause. *Id.*

The court also found a number of discrepancies regarding vehicles

leased by the Debtors, and maintained by the Debtors in Possession, through various entities the estate controlled, weighed in favor of determining that cause existed to appoint a trustee or convert the case to one under Chapter 7. In addition to the accounting issues concerning the lease of a 2011 Mercedez benz E350W and a 2012 Mercedes Benz CLS550C, on Schedule B Debtors list owning five vehicles for the two Debtors. *Id.*

The court's findings continue, stating,

> "The cavalier attitude regarding keeping records of business transactions is furthered by Mr. Chopra's statements regarding the cash holdings in his corporation, or the shareholder loan he states he is owed from the corporation. These transactions are not documented or reported on Schedule B. The Court fears the Debtors are creating series of legal entities and transactions in order to benefit themselves, without regard to the law or in respect of their fiduciary obligations to their creditors and to the estate.
> Another troubling fact for the court (but not for the Debtors) is Mr. Chopra's statement under penalty of perjury that his net worth is $100,000, that he owns an office building in Modesto which is not listed on Schedule A, and agreed to make available as a bond for his wife's criminal matter. He made these statements under penalty of perjury, having sworn those statements to the Deputy Clerk of the District Court.
>
> Mr Chopra attempts to explain that he misunderstood what the representative of the US Attorney was asking of him when he signed the document under penalty of perjury. Mr. Chopra testifies that he did not intend to state he owned the interest in the building individually ro that his net worth was only 100,000. However, as stated above, Mr. Chopra is a well educated, sophisticated debtor, represented by knowledgeable, experienced attorneys throughout these proceedings. It seems unlikely to the court that Mr. Chopra misunderstood the document he signed in the criminal court, but rather that he applied the same cavalier attitude and proceeded to do what was necessary without regard to the law or his fiduciary duties. To the extent that he would sign such documents without seeking the advice of counsel demonstrates such a lack of basic skills as a fiduciary that he clearly could not continue to serve in that capacity. These actions lead the court to the same conclusion that Debtors are not equipped to manage the bankruptcy estate."

Id. at 7-8. The above is not a complete, exhaustive recitation of all the grounds which the court concluded weighed in favor of determining cause existed, but provides a representative sampling of the conduct which was at issue.

The reference to the grounds for conversion of this case is not made as "revisiting those sins on the Debtors," but reflects that notwithstanding the misconduct of the Debtors the court determined that appointment of a trustee so that the case could proceed in Chapter 11, and the assets of the

estate preserved, rather than immediately converting to Chapter 7 and proceeding with a liquidating dismembering of the estate.

In appointing the trustee, the court stated orally at the hearing and in the Civil Minutes, "The standing of an independent fiduciary in the form of a Chapter 11 trustee can also work to assist the Debtors in advancing a bona fide good faith plan. Merely because a trustee is appointed does not prevent the Debtors from advancing a plan. Again, the credibility of the Chapter 11 trustee either supporting or advancing a joint plan with the Debtors can assuage concerns of skeptical creditors." *Id.* at 9. To the extent that the Debtors were seduced by the power of being Debtors in Possession and ignored the fiduciary duties and their rights and obligations under the Bankruptcy Code, the court insured that the Debtors would have a reasonable opportunity to advance a good faith Chapter 11 Plan which complied with the Bankruptcy Code.

Interestingly, the Debtors argued against the appointment of a trustee or conversion of the case in October 2012, that they have a "deal" for the development of the property,

> "[Debtors] have negotiated deals for the development of property of the estate. These deals require that the properties be transferred into other joint ventures. The Motion relating to the joint ventures was filed on September 28, 2012, DCN. PLF-8. Dckts. 317 - 324. That Motion states with particularity the following grounds (as required by Federal Rule of Bankruptcy Procedure) seeking relief from the court to allow Aruna Chopra to use property of the estate to enter into three joint ventures. As drafted, the Motion seeks to allow her to personally obtain 35% joint venture interests, receive a distribution on her capital accounts of up to 50% of the value of the estate property transferred into the joint ventures, a $50,000.00 consulting fee, and a 4% commission. (This may just be a typographical error since it is the estate which owns the properties to be transferred, not the Debtors individually, or it may be that the Debtors believe that the estate property can be used for their personal ventures.) The pleadings indicate that Aruna Chopra intends to use monies from the joint ventures to fund her plan of reorganization."

Id. at 9. No such development of the property materialized and no plan was advanced by the Debtors for such development.

The court, having previously heard of three "offers" for the 007 Property, the Debtors are not credibly advising the court that there is now a bona fide, good faith real offer. The Trustee's point concerning the second letter of intent is well taken and the court also wonders what happened to the promised good-faith deposit that the Debtors claimed was going to be transferred into their Counsel's trust account. The Debtors appear to once again be attempting to delay the inevitable by offering a highly contingent sale offer with another false promise of good-faith deposit in hopes of pushing off a conversion of their case. Debtors do not offer as evidence the letter of intent for the court to determine the viability of the deal. The court is feeling a bit of *deja vu*.

The Debtors have been afforded a multi-year, multi-counsel (the Debtors having changed attorneys several times) opportunity to prosecute in good faith a bona fide Chapter 11 plan in this case. The Chapter 11 Trustee in this case and his counsel took seriously the comments of the court and afforded the Debtors the opportunity to develop a Chapter 11 plan. Not withstanding two full years of opportunity, the Debtors are unable to prosecute such a Chapter 11 plan.

Chapter 11 administrative fees do diminish the estate, especially when a case has been dragging on for nearly three years with no confirmed plans. As the creditors who filed nonopposition and support for conversion note, the essential elements of an effective reorganization, namely three out of the four Dale Road Property, for these Debtors have already been abandoned by this court. Continuing in a Chapter 11 will just result in the creditors expending further expenses and the estate hemorrhaging unnecessary fund due to the Chapter 11 administrative expenses that would be better spent towards the benefit of the creditors.

The likelihood of the Debtors successfully filing a Plan at this point in the case, with the foundational parcels of the case being abandoned to creditors, is minimal and, in and of itself, is cause for conversion.

Debtors response does not offer any convincing arguments to show that keeping this case as a Chapter 11 would result in a benefit to the creditors. Once again, contingent offers for the purchase of property in which the court has no evidence of except for Debtors' words does not translate to a benefit for the creditors that the court finds prevents conversion. The court is, frankly, done holding its breath for sales that the Debtors have continually promised but have yet to consummate.

Furthermore, the Trustee's argument that conversion to Chapter 7 may limit the liability of the estate for any post-petition creditors that may come out of the woodwork is well taken, especially in light of Debtors' past acts on this issue.

The court finds that there is cause to convert the case from a Chapter 11 to a Chapter 7 because the excessive administrative expenses being expended is depleting the estate, the viability of an effective reorganization under a Chapter 11 is minimal to nonexistent, and the remaining assets of the estate would be better handled under a chapter 7 liquidation for the benefit of the creditors. The best interests of the creditors would be better served if the case is converted to a Chapter 7.

The motion is granted and the case is converted to a case under Chapter 7.

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 the Chapter 11 to a Chapter 7 Case filed by the Chapter 11 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert the Chapter 11 to a Chapter 7 Case is granted and the case is converted to a under Chapter 7 of Title 11, United States Code.

2. 11-94410-E-11 SAWTANTRA/ARUNA CHOPRA
HSM-26 Robert M. Yaspan

MOTION FOR COMPENSATION FOR RYAN, CHRISTIE, QUINN & HORN, ACCOUNTANT(S)
9-9-14 [1045]

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, creditors holding the 20 largest unsecured claims, parties requesting special notice, creditors and Office of the United States Trustee on September 9, 2014. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Gary Farrar, the Chapter 11 Trustee, ("Client"), for Ryan, Christie, Quinn & Horn, the Accountant ("Applicant") makes a Third Interim and Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period November 7, 2013 through September 8, 2014. The order of the court approving employment of Applicant was entered on October 24, 2012, Dckt. 382.

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

Administration: Applicant spent 9.7 hours in this category. Applicant had discussions with the Trustee regarding ongoing inconsistencies of financial information prepared by the Debtors' and provided through their accountant. Further discussions were held regarding required reconciliations and analysis to ascertain the propriety of the information provided by the Debtors as well as questions on whether the Chapter 11 remained viable. Included in Administrative fees is 3.4 hours relating to driving time to and from Modesto from Fresno, billed at one-half of my hourly rate ($125). It also included the preparation of the instant fee application..

Administration: Applicant spent 113.1 hours in this category. Applicant prepared Monthly Operating Reports for November 30, 2013 through August 31, 2014 inclusive. Applicant additionally spent time attempting to correlate the Debtors' historical records with personal and separate entity financial statements provided by the Debtors', requiring multiple discussions between the Debtors' CPA, as well as the Trustee.

Tax Return Preparation and Tax Related Issues: Applicant spent 43.6 hours in this category. Applicant prepared the 2013 federal and state tax returns for both estates. Applicant spent time attempting to establish the Debtors' tax basis in the Dale Road property, relative to the potential sale of the property, and reconciling the tax basis claimed by the Debtors. Applicant spent time identifying existing tax attributes; attempting to determine tax basis for each property; analyzing preliminary title reports to determine whether recorded encumbrances were incurred before or after the original acquisition of the property; determine whether the original acquisition of the property was subject to existing debt; all in an attempt to determine potential tax consequences. Applicant spent time in discussions with the Trustee regarding concerns over the accuracy of the Debtors' historical personal tax returns relative to the ability to ascertain the Debtors' tax basis in specific assets held, and the propriety of depreciation methods used by the Debtors' as it applied to these specific properties

Correspondence: Applicant spent 4.1 hours in this category. These expenses related to letters written, emails sent and telephone conferences held with Trustee and Aaron Avery regarding various issues generally involving the ongoing attempts to reconcile specific information provided by the Debtors.

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 filed tax returns, research concerning tax attributes, and organization of estate's accounting. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Paul E. Quinn, CPA, CFF	75.5	$250.00	$18,875.00
Paul E. Quinn, CPA, CFF (Travel)	3.4	$125.00	$425.00
Deborah A. Monis	91.6	$175.00	$16,030.00
Total Fees For Period of Application			$35,330.00

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	$31,925.00	$27,136.25
Second Interim	$38,985.00	$38,985.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$70,910.00	

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Third Interim Fees in the amount of $35,330.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and prior Interim Fees in the amount of $70,910.00 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 11 case.

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

Fees $40,118.75 FN.1.

pursuant to this Application the Third and Final request for $35,330.00 in fees and the prior Interim Approved Fees, all of which are given final approval pursuant to 11 U.S.C. § 330 by the order on this Motion.

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 ("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 is allowed the following fees and expenses as a professional of the Estate:
>
> Ryan, Christie, Quinn & Horn, Professional Employed by Trustee
>
> Fees in the amount of $35,330.00,
>
> The prior Interim Approved Fees and the Third Application for Fees are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay all of the Final Approved Fees from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 bankruptcy case (the court having ordered this case converted to one under Chapter 7).

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

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

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

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

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

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

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

The Motion to Value secured claim of Triunfo One Acquisition LLC ("Creditor") is denied without prejudice.

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

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

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

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

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

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

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

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

OPPOSITION

Creditor presented an opposition at the September 4, 2014 hearing.

SEPTEMBER 4, 2014 HEARING

The hearing on the Motion to Value secured claim of Triunfo One Acquisition LLC was continued to 10:30 a.m. on October 2, 2014 to allow the parties to address the Creditor's opposition and determine if a counter appraisal of the property is necessary. Counsel for the Movant Debtors in Possession was ordered to provide a copy of the complete appraisal to counsel for the Creditor.

DEBTORS' REPLY

On September 24, 2014, Debtors filed a Reply to Opposition. Dckt. 1061. The Debtors in the opposition simply states:

> The Opposition fails to provide any evidence disputing Debtors' value of the property located at 6978 Hillcrest Drive, Modesto, California ("Property"). As such, the only evidence before the Court is that the value of the Property is $943,500.00. Therefore the Court should grant the relief requested in the Motion.

DISCUSSION

The case having been converted to Chapter 7, the Motion is denied as moot, there not being a Chapter 11 Plan being prosecuted for which a valuation of the secured portion of the claim pursuant to 11 U.S.C. § 506(a) being relevant.

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 Value having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice, the case having been converted to a Chapter 7.

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

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

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

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

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

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

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

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

The Motion to Value secured claim of Triunfo One Acquisition LLC ("Creditor") is denied without prejudice.

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

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

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

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

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

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

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

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

OPPOSITION

Creditor stated an opposition at the hearing.

SEPTEMBER 4, 2014 HEARING

The hearing on the Motion to Value secured claim of Triunfo One Acquisition LLC was continued to 10:30 a.m. on October 2, 2014 to allow the parties to address the Creditor's opposition and determine if a counter appraisal of the property is necessary. Counsel for the Movant Debtors in Possession was ordered to provide a copy of the complete appraisal to counsel for the Creditor.

DEBTORS' REPLY

On September 24, 2014, Debtors filed a Reply to Opposition. Dckt. 1061. The Debtors in the opposition simply states:

> The Opposition fails to provide any evidence disputing Debtors' value of the property located at 1317 Oakdale Road, Modesto, California ("Property"). As such, the only evidence before the Court is that the value of the Property is $336,000.00. Therefore the Court should grant the relief requested in the Motion.

DISCUSSION

The case having been converted to Chapter 7, the Motion is denied as moot, there not being a Chapter 11 Plan being prosecuted for which a valuation of the secured portion of the claim pursuant to 11 U.S.C. § 506(a) being relevant.

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 Value having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice, the case having been converted to a Chapter 7.

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

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

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

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

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

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

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

The Motion to Value secured claim of Michael LaPlante and Elizabeth LaPlante, Trustees of the LaPlante Family Trust; Larry Cleveland, Trustee of the Larry Cleveland 401(k) Profit Sharing Plan; Gregory Smith and Amanda Smith, Trustees of the Gregory and Amanda Smith Family Trust dated 19 March 2007; Ted Smith and Joyce Smith, Trustees of the Ted and Joyce Smith Trust; John A. Miller Retirement Account; Vida B. Harris, Trustee of the Vida B. Harris Revocable Living Trust dated April 1, 1992; John A. And Jeanie Miller, Trustees of the Miller Family Trust dated November 1, 2000; and George H. Lehman, Trustee of the George H. Lehman Family Trust ("Creditor") is denied without prejudice.

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

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

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

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

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

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

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

OPPOSITION

On August 29, 2014, Creditor filed an opposition to Debtors' instant motion. Creditor argues that Debtors are seeking to value the Creditor's secured claim based on the value of the Property and then to require that Creditor take that property back in full satisfaction of Creditor's debt, with a balance of Creditor's claim to be unsecured for all purposes including confirmation of Debtors' plan. Creditor argues that in light of Creditor's election to remain fully secured under 11 U.S.C. §1111(b), the lack of any serious prospect for reorganization, and the lack of any other basis the challenge Creditor's claim, there is no basis to grant the relief sought by Debtors. Creditor also notes that the Debtors have improperly classified the Creditor's claim on the Property as a first and a second lien in Debtors' motion when Creditor has a first position lien. Creditor breaks its objection into parts.

First, Creditor makes procedural objections. Creditor argues that Debtors are seeking to not only value Creditor's claim on the Property, but is also seeking to remove Creditor's liens on the remaining two properties given as security for its loan. According to Creditor, if Debtors had any basis to do this, they would be required to file an adversary proceeding to determine the validity, priority, or to extent of a lien or other interest in property pursuant to Federal Rules of Bankruptcy Procedure 7001.

Second, Creditor argues that the Motion to Value is moot and likely improper because Debtors have not obtained approval of a Disclosure Statement and there is a pending motion to convert the bankruptcy to Chapter 7. Additionally, Creditor notes that the Trustee has also sought to abandon any interest in the properties subject to Creditor's lien and this Motion.

Lastly the Creditor argues that because of its 11 U.S.C. § 1111(b)(2) election to be fully secured, Creditor has the right to remain fully secured on all collateral given on its loan. Pursuant to the Debtors' own valuations filed, Creditor argues that there is substantial equity in the Parcel 7, Modesto Property to protect creditor's lien and its election to remain secured. Creditor states that Debtors have provided that Creditor's claim on the Parcel 08 Modesto Property is under secured and accordingly, Creditor is entitled to retain its collateral on all other properties.

SEPTEMBER 4, 2014 HEARING

The September 4, 2014 hearing was continued to 10:30 a.m. on October 2, 2014.

DISCUSSION

The case having been converted to Chapter 7, the Motion is denied as moot, there not being a Chapter 11 Plan being prosecuted for which a valuation of the secured portion of the claim pursuant to 11 U.S.C. § 506(a) being relevant.

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 Value having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice, the case having been converted to a Chapter 7.

6. 13-91016-E-7 MIGUEL/JOANN VALENCIA
THA-3 Peter Koulouris

MOTION TO APPROVE STIPULATION PROVIDING FOR "CARVE-OUT" AGREEMENT WITH THE INTERNAL REVENUE SERVICE
8-8-14 [113]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Internal Revenue Service, parties requesting special notice, and Office of the United States Trustee on August 8, 2014. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Stipulation Providing for "Carve-Out" Agreement with the Internal Revenue Service is granted.

Michael McGranahan, the Chapter 7 Trustee, filed the instant Motion to Approve a Stipulation for a Carve Out Agreement from the Internal Revenue Service on August 8, 2014. Dckt. 113. The motion seeks court approval for a stipulation for payment of administrative expenses, priority claims, and general unsecured claims.

MOTION

In support, the Trustee states that among the assets of the estate is the Debtors' real property residence commonly known as 2709 Torrey Pines Way,

Modesto, California (APN 077-043-049).

On June 26, 2014, the court granted Trustee's Motion for Turnover of the Property, ordering that the Debtors deliver and vacate the Property on or before August 15, 2014. Dckt. 112. The court further ordered that the Chapter 7 Trustee and Internal Revenue Service file and serve a motion to approve a Stipulation providing for the "carve-out" of the estate's interest, free and clear of all liens and interest, with a copy of the executed Stipulation attached on or before August 15, 2014.

The Trustee notes that the instant motion is brought to comply with the court's order from the Motion for Turnover of the Property.

The Trustee, however, notes that there have been new developments in the case since the issuance of the order. Since that time, Trustee alleges that the Debtors have garnered funds together that will allow for a distribution to creditors greater than would be achieved under the "carve-out" between the estate and the IRS as contemplated under *In re Bolden*, 327 B.R. 657 (C.D. Ca. 2005). According to the Trustee, Debtors have obtained $100,000.00 in funds from family members, friends, and other sources, and delivered the same to Mr. McGranahan so they may retain the Property. The Trustee states that he is bringing a Motion to Sell the non-exempt equity to that the Debtors may receive the house. However, no such motion has been filed as of the court's review of the instant motion on September 30, 2014. FN.1.

FN.1. As to this possible Motion to Sell, Trustee states that after conversation with Mr. Rohall on behalf of the IRS and the United States, the IRS is amenable to having a sale of the non-exempt equity to the Debtors free and clear of its interest pursuant to 11 U.S.C. § 363(f)(2), if necessary. Trustee argues that if the court approves the sale of the non-exempt equity in the Property to the Debtors, then the IRS will release its lien, if necessary, in exchange for a sum as stated in the Sale Motion.

However, as stated above, there is no such motion on the docket for the court to consider. Therefore, the court will continue the analysis on the instant motion.

STIPULATION

Attached to the Declaration of Thomas Armstrong as Exhibit A is a copy of the proposed Stipulation Providing for "Carve-Out" Agreement with Internal Revenue Service. Dckt. 115, Exhibit A. The Stipulation, after reciting the history of the case through the order granting the Motion to Turnover, states the following stipulations:

1. The United States of America and its agency, the Internal Revenue Service hereby stipulate to a "carve-out" as contemplated under *In re Bolden*, 327 B.R. 657 (C.D. CA 2005) of the penalties and interest on the penalties as set forth in the *Bolden* decision;

2. It is further agreed and stipulated the IRS will consent to the

> sale of the non-exempt equity in the Property to the Debtors free and clear of its interest pursuant to 11 U.S.C. § 363(f)(2) and should said sale be approved by the Court, that upon entry of any such Order, the IRS will release its lien, if necessary, as to the Debtors' Property.

Dckt. 115, Exhibit A.

The stipulation was signed by Thomas Rohall, Special Assistant United States Attorneys, and Thomas H. Armstrong, General Counsel for Michael D. McGranahan, Chapter 7 Trustee on August 8, 2014.

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). The Trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interest of the estate. *In re Walsh Construction*, 669 F.2d at 1328. The reasonableness of a compromise is determined by the particular circumstances of each case. *Id.*

Here, grounds exist to approve the Stipulation as it appears necessary to maximize the estate's interest by providing a carve-out of the estate's interest, free and clear of all liens and interest.

Though the Debtors and Trustee purport to having a settlement by which the sale of the Property can be avoided, this Motion has not been withdrawn. The court's approval of this agreement with the Internal Revenue Service does not mandate that the Trustee sell the Property. However, it insures that if the proposed settlement with the Debtors falls apart, the Estate has this deal "locked up."

The court finds the terms agreed to by the parties reasonable and that the business judgment used by the Trustee is sound. Based on the foregoing, 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 a Stipulation for a Carve Out Agreement from the Internal Revenue Service 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 granted and the court approves the Stipulation Providing for "Carve-Out" Agreement

with Internal Revenue Service, filed as Exhibit A, Dckt. 115, between Michael D. McGranahan, Chapter 7 Trustee, and the Internal Revenue Service.

—

7. 14-90521-E-7 DAVID RICE
14-9019 Pro Se
TURLOCK IRRIGATION DISTRICT V. RICE

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-22-14 [1]

***Continued from 7-24-14**
***Answer filed by Defendant on 8-6-14 Doc #21 and 9-8-14 Doc #36**

Plaintiff's Atty: Ken R. Whittall-Scherfee
Defendant's Atty: unknown

Adv. Filed: 5/22/14
Answer: none

Nature of Action:
Dischargeability - fraud as fiduciary, embezzlement, larceny

Xxxxxxxxxxxxxxx

Notes:

Entry of Default and Order re Default Judgment Procedures filed 7/17/14 [Dckt 11]

8. 14-90521-E-7 DAVID RICE **MOTION TO SET ASIDE**
14-9019 Pro Se **8-6-14 [36]**
TURLOCK IRRIGATION DISTRICT V. RICE

Tentative Ruling: The Motion to Set Aside has been properly set for hearing on the notice required by the Local Bankruptcy Rules. Consequently, the 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.

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.

The Order for Hearing on Motion to Vacate Dismissal was served by the Clerk of the Court on David Roy Rice ("Debtor"), Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on September 16, 2014. The court computes that 16 day's notice has been provided.

The court's tentative decision to the Motion to Set Aside Entry of Default is denied without prejudice.

David Rice ("Debtor") filed the instant motion on September 8, 2014. Dckt. 36.

In Adversary Proceedings Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007 govern law and motion practice. Rule 7(b) states,

> (b) Motions and Other Papers.
>
> > (1) In General. A request for a court order must be made by motion. The motion must:
> >
> > > (A) be in writing unless made during a hearing or trial;
> > >
> > > (B) state with particularity the grounds for seeking the order; and
> > >
> > > (C) state the relief sought.

(2) Form. The rules governing captions and other matters of form in pleadings apply to motions and other papers.

For the present motion, the sum total of attempting to state with particularity pursuant to Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007, is

> "I filed a bankruptcy Chapter 7 and didn't hear anything about a hearing until I got out of the Hospital, July 14 to 22nd, and due to my not having power at my house, stayed with my son for two weeks. Papers had already been filed and a hearing before I had time to do anything about it. Scott Mitchel was kind enough to file a motion for me but was denied. I am disable and on Social Security and can't afford to hire anyone to help me.
>
> I have never been in trouble in my life, I haven't done anything wrong and yet being accused of it. I have tried to find out what and who is responsible being I bought the house in a foreclosure and have never and would never do anything like this.
>
> I have tried to talk to T.I.D. and keep getting told I own the house now its my responsibility being the owner whether I did it or not."

Dckt. 36.

Defendant fails to state with particularity in the Motion, the grounds in which he is seeking relief to set aside the entry of default judgment.

The procedural defects of this Motion notwithstanding, the Movant has not made a showing that meets the standard of Federal Rule of Civil Procedure 60(b), as made applicable in the bankruptcy context by Federal Rule of Bankruptcy Procedure 9024, that the default order obtained by the Plaintiff, Turlock Irrigation District, should be set aside.

Answer Sought to be Filed

The court (and Federal Rule of Civil Procedure and Federal Rule of Bankruptcy Procedure) does not permit attorneys to avoid the simple pleading requirements of Federal Rule of Civil Procedure 7(b) and hide allegations in various declarations, exhibits, documents, pleadings, and because Defendant purports to be appearing in pro se, the court has reviewed the declaration. In it Defendant states under penalty of perjury:

A. I am not an attorney.

B. I did not nor do I fully comprehend the procedures after receiving the summons.

C. I thought I could just appear at the hearing and defend myself, and I did not realize that I had to file a formal response with the court.

D. I am a cancer patient and I have been in and out of the hospital while the bankruptcy was pending and while this adversarial action was pending.

E. Unfortunately I was not in a financial situation where I could afford to hire an attorney to defend me in this matter.

F. I am requesting to have the opportunity to file my response and defend my case.

Declaration, Dckt. 17.

Though the Defendant's default has been entered, an "answer" has been filed. Dckt. 21. The "answer" does not admit and deny the allegations stated in the complaint, but merely asserts,

A. Defendant did not authorize any person to alter or damage TID property at the premises.

B. During the period January 3, 2011 and January 3, 2011, Defendant did not consent to diversion of electrical services.

C. Between January 3, 2011 and January 3, 2014, power was not diverted from TID Equipment on the premises, through the use of a splice into TID's power line located on the premises.

D. Defendant did not divert any electrical power at the premises without the consent of TID.

E. There was no power theft on the premises.

F. I deny any and all allegations.

G. All allegations are incorrect.

Response, Dckt. 21. Even giving this a liberal reading, it is little more than "I didn't do it." The Defendant cannot, in good faith, being denying all of the allegations, which include allegations of jurisdiction, venue, the bankruptcy filing, and the Defendant residing on the premises. See Fed. R. Civ. P. 8(b), Fed. R. Bankr. P. 7008(a). In effect, the "Response" merely states that "everything, irrespective of whether it is true or not, is denied, don't enter a judgment against me." To make this worse, Debtor has signed the Response under penalty of perjury - misstating true allegations are false.

Denial of Requested Relief

Defendant's stated grounds for relief do not meet any of the factors enumerated by Federal Rules of Civil Procedure Rule 60(b). Federal Rule of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

However, entry of a default judgment (which would be the next step if the default is not set aside) is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, as the judicial process prefers determining cases on their merits whenever reasonably possible. Id. at 1472. Factors which the court may consider in exercising its discretion in granting a default judgment include:

(1) the possibility of prejudice to the plaintiff,

(2) the merits of plaintiff's substantive claim,

(3) the sufficiency of the complaint,

(4) the sum of money at stake in the action,

(5) the possibility of a dispute concerning material facts,

(6) whether the default was due to excusable neglect, and

(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471-72 (citing 6 Moore's Federal Practice - Civil ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.)).; *In re Kubick*, 171 B.R. at 661-662.

Defendant has failed to properly plead grounds for vacating the default.

The Motion is denied.

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

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

The Motion to Set Aside the Default filed by Defendant David Roy Rice 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.

9. 14-90521-E-7 DAVID RICE
14-9019
TURLOCK IRRIGATION DISTRICT V. RICE

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-22-14 [1]

DUPLICATE OF ITEM NO. 7

10. 14-90521-E-7 DAVID RICE
14-9019 KWS-1
TURLOCK IRRIGATION DISTRICT V. RICE

MOTION FOR ENTRY OF DEFAULT JUDGMENT
8-14-14 [25]

Final Ruling: No appearance at the October 2, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 14, 2014. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Default Judgment 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 Entry of Default Judgment is continued to xxxxx.

The Turlock Irrigation District ("TID") filed the instant Application for Entry of Default Judgment on August 14, 2014.

MOTION

TID states that the submit the instant motion to comply with the court's Entry of Default and Order Re: Default Judgment Procedures entered July 17, 2014. Dckt. 11.

TID argues that it has provided David Rice ("Debtor") ample opportunity to provide a timely response to the complaint filed and served in this proceeding. TID argues that on June 2, 2014, counsel for TID served Debtor and his attorney of record with a summons and complaint. Debtor was served at his address of record. After receiving no timely response to the complaint, on June 30, 2014, TID sent Debtor and Debtor's bankruptcy attorney, Scott Mitchell, a letter explaining that TID intended to file a Request for Entry of Default if an answer to the complaint was not served on or before July 7, 2014.

Counsel for TID received no response from Debtor or Mr. Mitchell which led to TID filing its Request for Entry of Default on July 8, 2014. TID alleges

that at no time did Debtor request an extension of time to respond t the complain and at no time did TID agree to extend the time for an answer.

COMPLAINT

The complaint requests damages against Debtor for power theft. TID requests that the court enter default judgment against Debtor as follows:

1. For damages in the total amount of $91,416.75;

2. For attorney's fees incurred in an amount of $2,470.00;

3. For TID's costs of suit in the amount of $293.00

4. The foregoing damages are awarded to TID and against Debtor; and

5. Those amounts are not dischargable pursuant to 11 U.S.C. § 523(a)(4).

ANSWER

Though the Defendant's default has been entered, an "answer" has been filed. Dckt. 21. The "answer" does not admit and deny the allegations stated in the complaint, but merely asserts,

A. Defendant did not authorize any person to alter or damage TID property at the premises.

B. During the period January 3, 2011 and January 3, 2011, Defendant did not consent to diversion of electrical services.

C. Between January 3, 2011 and January 3, 2014, power was not diverted from TID Equipment on the premises, through the use of a splice into TID's power line located on the premises.

D. Defendant did not divert any electrical power at the premises without the consent of TID.

E. There was no power theft on the premises.

F. I deny any and all allegations.

G. All allegations are incorrect.

Response, Dckt. 21.

The Debtor attempted a second time to file an answer, over a month after the first bare-bones answer submitted. Dckt. 36. This "answer" is even more sparse than the first, with the Defendant just merely checking off a box stating "denies each and every other allegation of the complaint other than the procedural facts regarding the filing of the bankruptcy petition herein." Dckt. 36. The Debtor supplements this "answer" with a hand-written note with excuses on why Defendant has failed to follow any of the procedural requirements.

Even giving this a liberal reading, it is little more than "I didn't do it." The Defendant cannot, in good faith, being denying all of the allegations, which include allegations of jurisdiction, venue, the bankruptcy filing, and the Defendant residing on the premises. See Fed. R. Civ. P. 8(b), Fed. R. Bankr. P. 7008(a). In effect, the "Response" merely states that "everything, irrespective of whether it is true or not, is denied, don't enter a judgment against me." To make this worse, Debtor has signed the Response under penalty of perjury - misstating true allegations are false.

EVIDENCE IN SUPPORT OF MOTION

The Complaint filed by Turlock Irrigation District ("Plaintiff") states the following as claims for relief against the Debtor (Dckt. 1),

A. Jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. § 1334, with the claims arising under the Bankruptcy Code, 11 U.S.C. § 523. Further that this is a core proceeding, citing 28 U.S.C. § 157(b)(2)(I).

B. David Rice ("Defendant-Debtor") resided in real property commonly known as 613 Danube Court, Modesto, California "Premises") during the period January 3, 2011 and January 3, 2014.

C. Defendant-Debtor was in control of the Premises during the period January 3, 2011 and January 3, 2014.

D. Prior to January 3, 2011, Defendant-Debtor requested that Plaintiff provide electrical service to the Premises in the name of Defendant-Debtor.

E. Plaintiff established electrical service to the Premises in the name of Defendant-Debtor as requested.

F. During the period of January 3, 2011 through January 3, 2014, Defendant-Debtor was the only customer of record for electrical service provided by Plaintiff to the Premises.

G. During the period of January 3, 2011 through January 3, 2014, Defendant-Debtor owned the Premises.

H. During the period of January 3, 2011 through January 3, 2014, Defendant-Debtor controlled the Premises.

I. During the period of January 3, 2011 through January 3, 2014, Defendant-Debtor received the benefit of electrical service from Plaintiff with knowledge that a bypass of the Plaintiff's meter existed.

J. Plaintiff did not authorize any person to alter or damage any of Plaintiff's property on the Premises.

K. During the period of January 3, 2011 through January 3, 2014,

power was diverted from Plaintiff's equipment on the Premises through the use of a splice into Plaintiff's power line located on the Premises.

1. The splice into Plaintiff's equipment at the Premises bypassed Plaintiff's meter for the Premises.

2. Plaintiff did not authorize any splice into Plaintiff's equipment.

L. The diversion of electrical power at the Premises by Defendant-Debtor without the consent of Plaintiff constitutes larceny under applicable non-bankruptcy law.

M. Plaintiff first learned of the most recent power theft at the Premises on or about January 3, 2014.

N. Plaintiff has made a reasonable estimate of the unauthorized use of electric service at the premises for the substantiated period of use.

1. Plaintiff's reasonable estimate of electric power consumed at the Premises that bypassed Plaintiff's meter is $30,472.25.

2. California Civil Code § 1882.2 provides that Plaintiff may recover three times the actual amount of damages, plus costs of suit and attorneys' fees.

O. Plaintiff computes the treble damages to be $91,416.75 and the attorneys fees to be not less than $2,470.00.

P. Plaintiff requests that,

1. It be awarded actual damages of $30,472.23;

2. That the damages be trebles to $91,416.75 pursuant to California Civil Code § 1882.2;

3. It be awarded attorneys' fees in the amount of $2,470.00, or more, according to proof;

4. That an amount not less than $93,886.75 be determined nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

Complaint, Dckt. 1.

The Declaration of Tracy Jones has been filed in support of the Motion for Entry of Default Judgment (Dckt. 27). Ms. Jones testifies,

A. She is employed as a Customer Service Division Manager by Plaintiff.

B. Her responsibilities include the Plaintiff-Debtor's account for

Plaintiff providing electric service at the Premises.

C. She has personal knowledge of how Plaintiff maintains its books and records regarding electric service it provided to the Premises. These books and records are maintained in the ordinary course of business by Plaintiff.

D. Prior to January 3, 2011, Defendant-Debtor requested that Plaintiff provide electric service to the Premises.

E. Prior to January 3, 2011, in response to Defendant-Debtor's request, Plaintiff provided electric service to the Premises.

F. During the Period January 3, 2011 through January 3, 2014, Defendant-Debtor was the only customer of record with Plaintiff for electric service provided to the Premises.

G. During the period January 3, 2011 through January 3, 2014, Defendant-Debtor controlled the Premises.

H. During the period January 3, 2011 through January 3, 2014, Defendant-Debtor received the direct benefit of electric service provided by Plaintiff to the Premises.

I. During the period January 3, 2011 through January 3, 2014, electric power at the Premises was diverted through the use of a splice to bypass Plaintiff's electric meter for the premises.

J. Plaintiff did not authorize any person to alter or modify Plaintiff's electric meter at the Premises.

K. Plaintiff first learned of the diversion of electric power at the Premises on January 3, 2014.

L. Plaintiff has compared the consumption of electricity at the Premises to determine what amount of electric power was not registered by the electric meter.

1. Plaintiff has determined that Defendant-Debtor used 163.4 kilowatt hours per day of electric power that was not registered on the meter.

2. Plaintiff has made a reasonable estimate of the unauthorized use of electric service at the Premises for the period between January 3, 2011 and January 3, 2014.

3. Plaintiff estimates that electric power consumed at the Premises that bypassed Plaintiff's meter resulted in $30,472.25 in "electric power theft."

M. Plaintiff has incurred not less than $2,470.00 in attorneys' fees in connection with this Adversary Proceeding.

N. Plaintiff seeks treble damages pursuant to California Civil Code § 1882.2.

In addition to Ms. Jones' Declaration, Plaintiff's counsel has provided his declaration. Dckt. 28. His declaration recounts efforts of counsel to communicate with Defendant-Debtor's counsel and the Defendant-Debtor concerning this litigation. He also testifies that attorneys' fees of $2,470.00 were billed as of the August 14, 2014 declaration, and that he anticipates an additional $600.00 relating to this Motion. In addition, he testifies that Plaintiff has incurred $293.00 of costs in connection with this litigation.

APPLICABLE LAW

A. Default Judgments

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.* at 770.

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 Moore's Federal Practice - Civil ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, as the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors which the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471-72 (citing 6 Moore's Federal Practice - Civil ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.)).; *In re Kubick*, 171 B.R. at 661-662.

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee,* 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff did not offer evidence in support of the allegations. *See id.* at 775.

B. 11 U.S.C. § 523(a)(4)

Under 11 U.S.C. § 523(a)(4), a debt may be nondischargable "for fraud

or defalcation while acting in a fiduciary capacity, embezzlement, or larceny" 11 U.S.C. § 523(a)(4).For purposes of 11 U.S.C. § 523(a)(4), the term "while acting in a fiduciary capacity" does not qualify the words "embezzlement" or "larceny," so any debt resulting from larceny falls within the exception of clause (4). *Transamerica Commercial Finance v. Littleton and Moore (In re Littleton)*, 942 F.2d 551 (9th Cir. 1991).

Larceny is defined under federal common law as a taking of another's property with fraudulent intent to deprive him of it permanently. *In re Stern*, 403 B.R. 58, 68 (Bankr. C.D. Cal. 2009) (citing *State v. Sokol* (*In re Sokol*), 170 B.R. 556, 560 (Bankr.S.D.N.Y.1994). "Larceny differs from embezzlement in the fact that the original taking of property was unlawful, and without the consent of the injured person." *In re Lough*, 422 B.R. 727, 735-36 (Bankr. D. Idaho 2010) (citing *Custer v. Dobbs* (*In re Dobbs*), 115 B.R. 258, 265 (Bankr. Id. 1990)) (internal quotations omitted).

To succeed under § 523(a)(4) for larceny, a creditor must prove that "the debtor has wrongfully and with fraudulent intent taken property from its owner." *In re Lough*, 422 B.R. 727, 735-36 (Bankr. D. Idaho 2010) (citing *In re Mirth*, 99.4 I.B.C.R. at 151.) To sustain a cause of action for larceny under § 523(a)(4) an objecting creditor must show that the initial possession of the property was wrongful. *In re Woodman*, 451 B.R. 31, 38 (Bankr. D. Idaho 2011).

C. California Code of Civil Procedure § 1882.1

Under California Civil Code § 1882.1:

> A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts any of the following acts:
>
> a. Diverts, or causes to be diverted, utility services by any means whatsoever.
>
> b. Makes, or causes to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility.
>
> c. Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function by tampering or by any other means.
>
> d. Tampers with any property owned or used by the utility to provide utility services.
>
> e. Uses or receives the direct benefit of all, or a portion, of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use, or that the use or receipt, was without the authorization or consent of the utility.

If a utility is successful in any civil action brought pursuant to § 1882.1, "the utility may recover as damages three times the amount of actual damages, if any, plus the cost of the suit and reasonable attorney's fees." Cal. Civ. Code § 1882.2.

DISCUSSION

Reviewing the factors in determining whether the court should grant default judgment, the court is unable to make a determination based on the evidence provided to the court at this time.

The Plaintiff provides what appears to be conclusory testimony concerning the Defendant's control over the Property and a generalized conclusion on how the power was diverted and a determination on how much wattage was used without providing any evidence proving such conclusions. Even in the default judgment setting, mere allegations without any evidentiary backing does not make those statements dispositive for the court to grant a default judgment. The witness does not demonstrate a basis for having personal knowledge of such contention, how such a "fact" is in the Plaintiff's business records, or how the value of the electricity is computed (unaccounted for usage on the line, guesstimate, coin flip). Fed. R. Evid. 601, 602.

The court, having to consider the evidence presented, is unable at this time to determine whether the Plaintiff has sufficiently proven the elements under 11 U.S.C. § 523(a)(4) and whether it is entitled to treble and attorney's fees under Cal. Civ. Code § 1882.2. The amount sought by Plaintiff in the instant action is $93,886.75 which is a substantial sum, especially in light of the Defendant's bankruptcy and apparently minimum assets. The court will not haphazardly grant the Plaintiff's nearly $100,000.00 in damages and fees without properly proving the elements of the causes of actions it alleges.

While the Defendant has been given sufficient opportunity to file a proper answer or motion to set aside, neither in which has been done. While the court recognizes that Debtor is defending the Complaint in *pro se*, the court cannot abdicate simple, basic pleading and evidentiary requirements.

Therefore, the court continues the hearing to xxxxxx to allow the Plaintiff file supplemental exhibits with evidence to prove the elements of 11 U.S.C. § 523(a)(4) and why treble damages and attorney's fees are appropriate under Cal. Civ. Code § 1882.2. The Plaintiff shall file with the court by xxxxxxx any supplemental exhibits and declarations in support of the motion for default judgment.

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 Entry of Default Judgment filed by the Turlock Irrigation District having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Entry of Default Judgment is continued to xxxxxxx.

IT IS FURTHER ORDERED that the Plaintiff shall file on or before xxxxxx supplemental exhibits and/or declarations in support of its Motion for Entry of Default.

11. 14-90931-E-7 JEFFREY TRUESDAIL **MOTION TO COMPEL ABANDONMENT**
BSH-1 Brian S. Haddix **8-28-14 [17]**

Tentative Ruling: 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).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, and parties requesting special notice on August 28, 2014. By the court's calculation, 35 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). 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 to Abandon Property is granted for the requested assets, with the exception of (1) the mineral rights in Van Buren County, Arkansas and Cleburn County, Arkansas, properties and (2) as well as the potential tax refunds for the 2012 and 2013 tax yearsm, which portion of the motion is denied without prejudice.

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 Jeff Truesdail ("Debtor") requests the court to order the Trustee to abandon the following property:

Asset	**Value**	**Encumbrance**
Undivided one-third interest in oil, gas, and minerals in part of the northwest quarter of the northeast quarter, section 25, township 10 north, range 13 west, more or less, in Van Buren County, Arkansas. There are approximately six (6) wells located on this parcel.	$12,000.00	None
Undivided one-third interest in oil, gas, and mineral rights in another parcel located in Cleburn County, Arkansas. There are no wells located on this parcel. Debtor is not in possession of a deed.	$1,200.00	None
Cash in Wallet	$119.00	None
Citibank Checking Account (ending in 1175)	$803.11	None
Operating Engineers F.C.U. Regular Share Account (3041-1)	$267.00	None
Operating Engineers F.C.U. Regular Share Account (3041-2)	$20.00	None
Residential Security Deposit for Case Leon	$500.00	None
Household goods and furnishings, including audio, video and computer equipment.	$4,900.00	None
Personal clothing	$500.00	None
Bicycle	$50.00	None
Fishing gear and tackle	$50.00	None
Camping equipment	$20.00	None
Replica cap and ball pistol	$50.00	None
IRA Account through Valic	$126,453.29	None
Potential tax refunds for 2012 and 2013. Debtor has not yet filed returns for these years.	Unknown	None
2007 Toyota Rav 4 with 225,000 miles in good condition	$9,000.00	None

1980 Ford F250 with $85,000 miles in poor condition (not running)	$3,000.00	None

The Debtor has claimed the preceding properties as exempt. This indicates that there us no value left for the estate.

OPPOSITION

Eric Nims, the Chapter 7 Trustee, opposes three of the items Debtor is seeking to compel the Trustee to abandon. Specifically, the Trustee opposes the abandonment of the mineral rights in Van Buren County, Arkansas and Cleburn County, Arkansas, as well as the potential tax refunds for the 2012 and 2013 tax years. The Trustee has not yet had time to fully review these assets and determine their value to the estate. Additionally, the Debtor has not claimed the potential tax refunds as exempt in Schedule C.

The Trustee does not oppose the abandonment of the other listed assets.

DISCUSSION

In order for the court to determine whether property is of inconsequential value and benefit to the estate, the Trustee must have the opportunity to investigate the value of the property. Because abandonment of an asset is difficult to revoke, the Trustee must be fairly certain of his valuation of that asset. *See Cusano v. Klein*, 264 F.3d 936, 949 (9th Cir. 2001).

Given the importance of the Trustee having accurate valuation of the assets in question to determine whether there would be any benefit to the estate, the motion to compel abandonment is denied as to the mineral estates and the potential tax refunds for tax years 2012 and 2013.

The court determines that the remaining Property is of inconsequential value and benefit to the Estate, and orders the Trustee to abandon the property. The motion to compel abandonment is granted as to the remaining property items listed by Debtor in his motion.

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 Jeffrey Truesdail ("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 in part and that the Property identified as:
>
> 1. Cash in Wallet
>
> 2. Citibank Checking Account ending in 1175

3. Operating Engineers F.C.U. Regular Share Account (3041-1)

4. Operating Engineers F.C.U. Regular Share Account (3041-2)

5. Residential Security Deposit for Case Leon

6. Household goods and furnishings, including audio, video and computer equipment.

7. Personal Clothing

8. Bicycle

9. Fishing gear and tackle

10. Camping equipment

11. Replica cap and ball pistol

12. IRA Account through Valic

13. 2007 Toyota Rav 4 with 225,000 miles in good condition

14. 1980 Ford F250 with 85,000 miles in poor condition

and listed on Schedule B by Debtor is abandoned to Jeffrey Truesdail by this order, with no further act of the Trustee required. All other relief requested in the Motion is denied without prejudice.

12.	09-90032-E-7 CWC-19	GOLDEN EAGLE ESTATES, LLC Michael R Germain	MOTION FOR COMPENSATION FOR PAUL E. QUINN, ACCOUNTANT(S) 8-19-14 [621]

Final Ruling: No appearance at the October 2, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 18, 2014. By the court's calculation, 45 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.

FEES REQUESTED

Ryan, Christie, Quinn & Horn, Certified Public Accountants ("Applicant"), the Accountant 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 October 1, 2011 through June 30, 2014. The order of the court approving employment of Applicant was entered on February 24, 2012, Dckt. 452.

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 19.6 hours in this category. Applicant assisted Client with inventory sales and harvesting concerns, securing copies of the limited Monthly Operating Reports filed by Debtor-in-Possession during the chapter 11 portion of the case, and reviewing

and executing of fee application and supporting declaration.

Tax Return Preparation and Tax Related Matters: Applicant spent 85.4 hours in this category. Applicant analyzed Debtor's prior corporate federal and state tax returns to determine Debtor's tax attributes, Compiled financial data and preparation of bankruptcy estate federal and state LLC tax returns for 2009, 2010, 2011, 2013, and 2014. Applicant additionally confirmed assessed payroll taxes, sales taxes, LLC fees, and LLC taxes and communicated with tax agencies to determine the validity of various assessments, as they were divided between pre- and post-petition, Chapter 11 period and Chapter 7 period, and by tax and penalty assessments.

Trustee filed a statement of approval of the fee applicaiton on August 19, 2014. Dckt. 623.

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 several tax services and case administration. Though the Trustee files a statement saying that he does not oppose the fees, he offers no testimony as to why or how the services for which payment is sought have been of benefit to the Estate.

The Motion merely states that Applicant should be paid $20,450.00 in fees for providing accounting services. From the face of the Motion and Trustee's statement, the Applicant may have billed $20,450.00 to the estate which had $20,000.00 in assets and insignificant accounting or tax issues.

In the Declaration of Paul Quinn, a partner of Applicant, he states that the Debtor, while serving as Debtor in Possession, failed to file the annual tax returns with the State of California required for a limited liability company. In addition, Applicant had to unwind pre-petition, Chapter 11 period, and Chapter 7 period tax issues involving several governmental entities relating to payroll taxes, sales taxes, limited liability company fees, and limited liability company taxes. Accounting and financial issues addressed by Applicant relating to the Alcoholic Beverage Control, harvesting expenses for crops, sale of inventory (bulk wine and equipment), and tax returns had to be prepared for 2009, 2010, 2011, 2012, 2013, and 2014.

The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Paul E. Quinn, CPA	30	$250.00	$7,500.00
Deborah Monis, CPA (2011 rate)	0.6	$150.00	$90.00
Deborah Monis, CPA	71.2	$175.00	$12,460.00
Total Fees For Period of Application			$20,050.00

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 $20,050.00 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.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $400.00 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Travel expenses (Paul Quinn, at 3.2 hours)	$125.00 per hour	$400.00
Total Costs Requested in Application		$400.00

The First and Final Costs in the amount of $400.00 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 $20,050.00

Costs and Expenses $ 400.00

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 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 Trustee
>
> Fees in the amount of $ 20,050.00
> Expenses in the amount of $ 400.00,
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

13.	09-90032-E-7 CWC-20	GOLDEN EAGLE ESTATES, LLC Michael R. Germain	MOTION FOR COMPENSATION FOR CARL W. COLLINS, TRUSTEE'S ATTORNEY(S) 8-19-14 [627]

Final Ruling: No appearance at the October 2, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 19, 2014. By the court's calculation, 44 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.

FEES REQUESTED

Carl W. Collins ("Applicant"), the Attorney for Stephen C. 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 August 15, 2011 through August 11, 2014. The order of the court approving employment of Applicant was entered on August 27, 2011, Dckt. 348.

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 1.3 hours in this category. Applicant assisted Client with coordination and compliance. Applicant prepared statement of financial affairs, schedules, lists of contracts, United States Trustee interim statements and operating reports, and corresponded with the United States Trustee and general creditors.

Efforts to Assess and Recover Property of the Estate: Applicant spent 161.8 hours in this category. Applicant identified and reviewed potential assets, including potential recoveries and causes of action. Applicant then prepared sales and leases for some assets (including sales free and clear of liens) and handled asset abandonment and similar transactions. Additionally, Applicant handled issues related to the Debtor-in-Possession operating the business in Chapter 11, such as vendor, employee, and tenant issues.

Adversary Proceedings: Applicant spent 11.7 hours in this category. Applicant drafted and filed a Complaint to Determine Nature, Extent, and Validity of Lien against L. Brazil (Adversary Proceeding 12-09014) and ultimately negotiated a settlement with opposing counsel to resolve the adversary proceeding.

Significant Motions and Other Contested Matters: Applicant spent 47.3 hours in this category. Applicant provided legal services to the Trustee relating to relief from stay proceedings, fee and employment applications and associated objections, and administration of claims and objections to claims.

Trustee filed a statement of approval of the fee applicaiton on August 19, 2014. Dckt. 630.

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 selling assets and abandoning burdensome assets, resolving adversary proceedings, and responding to claims, motions, and objections. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Carl W. Collins (Attorney, 31 years)	195.9	$295.00	$57,790.50
Claudia Alarcon (Paralegal)	22.2	$90.00	$1,998.00
Melissa Morena (Paralegal)	0.2	$90.00	$18.00
Total Fees For Period of Application			$59,806.50 FN.1.

FN.1. The List of Exhibits in Support of Application of Attorney for Trustee for Final Compensation lists the above hours and rates for the three professionals. However, the total shown on page 2, line 23 of Exh. 1 (Dckt. 631) appears to include a mathematical error. The court's calculation for total fees based on the hours billed is shown above and will be used as the basis for calculating the total fees and costs due to the Applicant.

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 $59,806.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $3,064.37 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Mail/Postage		$1,183.17
Copying	$0.10	$603.05
Appraisal Fees		$275.91
Courtcall	$30.00	$30.00
LexisNexis (Oct. 2011)		$194.61
Filing Fees		$313.00
Travel/Meals	2.8 hours travel at $147.50 per hour, one meal	$464.63
Total Costs Requested in Application		$3,064.37 FN.2.

FN.2. The cost billing exhibits filed in support of this Motion for Compensation was a laundry list of every individual cost item incurred by the Applicant over the three year duration of this case, with a grand total at the end. It is not the court's responsibility to comb through seven pages of expense items and aggregate the total postage, copying, and other costs incurred. Today, the court was feeling generous and added these figures for the Applicant, as seen in the above table. Next time, the court may not be so forgiving. It would behoove Applicant to classify costs and provide subtotals in future fee applications.

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as on-line access to bankruptcy and state law and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include LexisNexis legal research services as well as Courtcall costs. No information has been provided to the court by Applicant that these cost items were extraordinary expenses than one would expect for Applicant providing professional services to Client to be changed in additional to the professional fees requested as compensation. The court disallows $224.61 of the requested costs.

The First and Final Costs in the amount of **$2,839.76** 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	$59,806.50
Costs and Expenses	$ 2,839.76

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 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 $ 59,806.50
Expenses in the amount of $ 2,839.76,

IT IS FURTHER ORDERED that the costs of $224.61 are not allowed by the court.

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.

14. 14-90633-E-7 LONALD/MARY MILLER — MOTION TO AVOID LIEN OF CAP ONE BANK (USA), N.A.
SDM-3 Scott D. Mitchell — 8-26-14 [48]

Final Ruling: No appearance at the October 2, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Capital One Bank (USA), N.A., Bank of America, N.A., Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 26, 2014. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of Lonald and Mary Miller ("Debtor") commonly known as 1624 Shirley Court, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,543.87. An abstract of judgment was recorded with Stanislaus

County on April 22, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $157,217.00 as of the date of the petition. The unavoidable consensual liens total $249,560.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Capital One Bank (USA), N.A., California Superior Court for Stanislaus County Case No. 678281, recorded on April 22, 2013, Document No. DOC-2013-0034075-00 with the Stanislaus County Recorder, against the real property commonly known as 1624 Shirley Court, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

15. 12-91736-E-12 ANTONIO GOMES — **MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS**
MNE-3 Thomas O. Gillis — **8-27-14 [220]**

Final Ruling: No appearance at the October 2, 2014 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

16. 14-90249-E-7 SCOTT MYERS **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
JY-2 Thomas J. Polis
8-22-14 [38]

Final Ruling: No appearance at the October 2, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 22, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The objection to claimed exemptions is overruled without prejudice.

IMH Financial Corporation ("IMH") objects to the Debtor claiming more in exemptions than is permitted under California Code of Civil Procedure § 704.140(b). The Objection states with particularity the following grounds upon which the Objection is based,

A. IMH seeks an order denying Debtor's claim of exemption,

B. With respect to Debtor's $10,000.00 interest,

C. In some (unidentified) trust,

D. That the court require the liquidation of non-exempt assets,

E. And any such other relief as IMH (or possibly) the court may determine just and proper, but have not been stated in the Objection.

F. The exemption is based on the Debtor having claim [an unstated amount] more in exemptions then is permitted [for some unstated amount] under California Code of Civil Procedure § 704.140(b) [not identifying which of the sixteen separate exemptions in that paragraph is asserted as grounds for the objection].

Objection, Dckt. 38. The Objection goes further, stating that the Objection stated above is "supported" by the notice of hearing (though the court cannot fathom what evidence or legal authority objecting creditor has placed in a notice of hearing), points and authorities, request for judicial notice, and "**all other pleadings on file**d [sic.]." Apparently, the Objecting Creditor supports the Objection with every other and all documents filed in this case, known and unknown to the Objecting Creditor, which Objecting Creditor is unable (or does not find it to be worth the time, effort, and expense) to identify.

As pleaded, this "objection" fails to state grounds upon which the court can deny a claimed exemption. At best, the "objection" is treated merely as a perfunctory, non-consequential document which "just gets in the way" processing this file. This type of "objection," as with such perfunctory "motions," is little more than an instruction to the court to provide associate attorney and law clerk services to canvas all of the other documents filed, and every document filed in the case, select what the court determines would be the proper grounds for requesting the relief (if the Objecting Creditor had prepared such objection), state those grounds, then rule on the grounds, and then sustain the objection as stated by the court for this Creditor.

The Creditor may respond, directing the court to review the seven page points and authorities and tease from the citations, quotations, arguments, and speculation what grounds that Objecting Creditor would seek to rely (subject to Fed. R. Bankr. P. 9013) if it had actually stated them in the objection. The court does not find such a contention appealing, or consistent with federal court pleading practice. The points and authorities should be just that - the legal points and statutory or case law authorities which are the foundation upon which the grounds (stated in the objection) warrant the requested relief. The points and authorities often include argument and speculation by the objecting or moving party as to why and how (1) the debtor or creditor did bad things, (2) the debtor or creditor is a bad person, and (3) the debtor or creditor should have the relief visited upon them.

The court is also concerned when a party seeks relief and bases it, "on whatever else is in the file that I haven't identified, I spring on everyone at the hearing, or I don't identify but rely upon you, the court, to do my work for me." FN.1.

FN.1. IMH may want to review its "motion" to dismiss, Dckt. 44, which is directly governed by Federal Rule of Bankruptcy Procedure 9013 (grounds must be stated with particularity in the motion) and determine whether it is necessary to file an amended motion and set a new hearing date after re-reviewing the requirements of Federal Rule of Bankruptcy Procedure 9013, Local Bankruptcy Rule 9004-1, and the Revised Guidelines for Preparation of Documents in the Eastern District of California.

"POINTS AND AUTHORITIES"

If the court were to slog through the "Points and Authorities," Dckt. 41, after reading about this creditor making substantial real estate loans that were guaranteed by the Debtor; the Debtor residing in Germany; the Debtor being a real estate developer; the Debtor's wife being a German citizen; the real

estate market collapsing in the late 2000's; IMH filing suit on the debt; the multiple loan transactions between IMH and the Debtor's business entities; IMH foreclosing on property securing the obligations; IMH getting a judgment against the Debtor; a chart of all exemptions claimed by Debtor pursuant to California Code of Civil Procedure § 703.140(b)(3), § 703.140(b)(4), § 703.140(b)(5); an explanation that California exemptions are periodically updated in amount; and a second table stating exemptions as Objecting Creditor believes they should be asserted under California Code of Civil Procedure § 703.140(b)(3), § 703.140(b)(4), § 703.140(b)(5); the Objecting Creditor states "The total wildcard exemptions claimed: $500 (cash)_+ $26,225 (art) +$200 (camera) + $10,000 (family trust) = $36,925 (exceeds maximum wild card of $26,925 by $10,000)." This one sentence consumes two lines of the seven page "points and authorities."

The "points and authorities" concludes, without citing any authority, that the court order the excess exemption amount be liquidated (which sounds in injunctive relief for which an adversary proceeding is required, Fed. R. Bankr. P. 7001). Additionally, Federal Rule of Civil Procedure 18, which allows for multiple claims to be pleaded in one complaint, is not incorporated into the Contested Matter practice under Federal Rule of Bankruptcy Procedure 9014(b).

If the Objection is as simple as listing four exemptions claimed on Schedule C, dollar amount of those exemptions, and the amounts permitted, then those simple four exemptions could be stated in the Objection. Instead, the court is given exemptions under California Code of Civil Procedure § 703.140(b)(3), § 703.140(b)(4), § 703.140(b)(5), multiple charts and many factual allegations for which no evidence has been provided to the court.

The Objection to Claim of Exemption, as stated Objection is overruled 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 Objection to Exemptions 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 Objection is overruled without prejudice.

17. 14-90358-E-7 RAMON/MARIA LOMELI — CONTINUED MOTION TO COMPEL
MHK-3 Thomas O. Gillis — 8-20-14 [28]

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

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

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

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

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

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

The Motion to Compel the Turnover of Property is granted.

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

On March 14, 2014, the Debtors filed a joint voluntary petition for Chapter 7 relief. As stated in their bankruptcy schedules, Debtors hold title to the Residence, and have not claimed the residence as exempt. On July 23,

2014, this court authorized the employment of broker Bob Brazeal of PMZ Real Estate to serve as the real estate broker for the Trustee in regard to the sale of the property.

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

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

RESPONSE BY DEBTORS

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

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

Third, the Response argues that the Motion should be denied, because the only timely unsecured claim filed is for $487.01; a notice of assets was filed on April 23, 2014. A notice to file claims was filed on April 24, 2014, Dckt. No. 13, and served on April 24, 2014. The last day to file a claim was July 25, 2014. The claims registry shows that Capital One filed a claim for $487.01, while the other claim is a secured status claim for $99,870.87.

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

TRUSTEE'S REPLY TO DEBTOR'S RESPONSE

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

1. The Debtor's counsel claims that he was not served with the Motion, because he "is not registered with the Court for electronic service."

However, Counsel is on the Roster of Users Consenting to Electronic Service. Exhibit 1, Dckt. No. 38 (Roster, search result for "gillis, t."). The Trustee's counsel served Debtors' counsel at the email address listed on the Roster.

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

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

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

SEPTEMBER 4, 2014 HEARING

At the September 4, 2014 hearing, the court granted the Motion to Compel Turnover of the Property and the Debtor was ordered to provide access to the real property located at 4203 Tapestry Way, Turlock, California, to the Chapter 7 Trustee and the representatives and professionals designated by the Chapter 7 Trustee, at September 8, 9, or 11, 2014 at 2:00 p.m., and such other reasonable times thereafter as requested by the Trustee.

Furthermore, the court continued the hearing to 10:30 a.m. on October 2, 2014, for the issuance of such further orders or conduct additional hearings as necessary.

TRUSTEE'S STATUS REPORT

On September 23, 2014, The Trustee filed a Status Report for Motion to Compel Turnover of Property. As an update, the Trustee reports that the Broker communicated on September 10, 2014 and September 11, 2014 with, respectively, Mr. Lomeli and staff with the office of the Debtors' counsel, but was unable to obtain timely access to the property on September 11, 2014 at 2:00 p.m., as ordered by the court. Since then, he has continued to communicate with the office of the Debtors' counsel, but no arrangement has been reached to date. Supplemental Declaration of Bob Brazeal, Dckt. 45.

The Trustee reports that the Debtors' counsel and the Trustee's counsel communicated by telephone on September 11 and have exchanged certain documents and correspondence. The Debtors, however, have not offered the Trustee's counsel any dates or times for the Broker's acces to the property for the purpose of showing it to prospective buyers. Supplemental Declaration of Anthony Asebedo, Dckt. 47.

The Trustee continues to investigate claims against the Debtors' bankruptcy estate, and has communicated with a representative of creditor JP Morgan Chase in regard to amendment of its secured claim to an unsecured claim. The Trustee has also communicated with this creditor regarding possible late-filing of further unsecured claims based on credit-card debt owed by the Debtors. At the time of Trustee's Status Report, Debtors had not filed any amended proofs of claim or additional proofs of claim.

DEBTORS' SUPPLEMENTAL SCHEDULES

On September 25, 2014, Debtors filed supplemental Schedules A, C, and D and Statement of Financial Affairs. Dckt. 51. Specifically, Debtors changed the amount of the secured claim held by PNC Mortgage on 4203 Tapestry Way, Turlock, California to $187,332. Debtors supplemented Schedule C in the following manner:

Description of Property	CCP Section	Value of Claimed Exemption
Single Family Home	704.730(a)(2)	$100,000.00
1999 Lexus S300 (185K miles/fair)	704.010	$2,550.00
Checking Account	704.070	$150.00
Savings Account	704.070	$20.00
401K	704.110	$34,000.00
Furniture & Household Goods	704.020	$3,000.00
Clothing	704.020	$500.00

Debtors' also supplemented their Statement of Financial Affairs listing Wells Fargo Home Mortgage under "5. Repossessions, foreclosures and returns." Debtors list the Wells Fargo Home Mortgage was secured by the property commonly known as 3836 Portofino Street, Turlock, Califnoria and that the foreclosure on the property took place in 2010.

SUPPLEMENTAL PLEADINGS BY TRUSTEE

On September 23, 2014, the Trustee filed supplemental pleadings in support of this Motion. These supplemental pleadings are summarized as follows.

Supplemental Declaration of Bob Brazeal, Dckt. 45.

Bob Brazeal, the Trustee real estate agent, provides the following testimony:

A. He states that on September 10, 2014, he contacted Ramon Nomeli to obtain access to the property on September 11, 2014. Mr. Nomeli stated that which he was "familiar" with the court's Order, Mr. Nomeli and his wife believed that the property would not be sold.

B. Mr. Brazeal contacted the Trustee's counsel about Mr. Nomeli not confirming providing access to the property on September 11, 2014. The Trustee's counsel advised Mr. Brazeal to expect a call from Debtors' counsel confirming that the property would be available for inspection at 2:00 p.m. on September 11, 2014, as specified in the prior court order.

C. At about 2:45 p.m. on September 11, 2014, (45 minutes after the time specified in the court order for the property to be made available to the Trustee's representatives), Mr. Brazeal received a phone call from a person identifying herself as "Cathy" at Debtors' Counsel's office. He states that Cathy told Mr. Brazeal that the Debtors would not be selling the home.

D. Mr. Brazeal further testifies that Cathy told him that "the Property would not be fore sale and the [Debtors] would not cooperate."

E. He states that on September 18, 2014, he received a phone message from Cathy at Tom Gillis' office saying that Cathy would like to set up an appointment for Mr. Brazeal to inspect the Property. When Mr. Brazeal called back for Cathy on September 19, 2014, he was told that she would not be available until Monday September 22, 2014. When Mr. Brazeal asked if Thomas Gillis, the Debtors' attorney, was available to speak with him, Mr. Brazeal was told that Thomas Gillis was also unavailable until Monday September 22, 2014.

F. On September 22, 2014, Mr. Brazeal called for Mr. Gillis at his office, leaving a message for Mr. Gillis to return the call concerning this Property. MR. Brazeal testifies that he had not, as of the September 23, 2014 declaration, received a return call from Mr. Gillis.

Declaration of Eric Nims, Trustee, Dckt. 46.

Eric J. Nims, the Chapter 7 Trustee provides his declaration in support of the Motion, which is summarized as follows:

A. He testifies that JPMorgan Chase Bank, N.A. has not responded to his inquiry as to whether it would be amending its proof of claim to state an unsecured claim, or wither additional proofs of claim would be filed.

Declaration of Anthony Asebedo, Attorney, Dckt. 47.

Anthony Asebedo, counsel for the Trustee provides his Supplemental Declaration in support of the Motion, which is summarized as follows:

A. Mr. Asebedo testifies that he contacted Debtors' Counsel, Thomas Gillis on September 11, 2014, concerning the comments of the Debtors saying that Mr. Brazeal would not have access to the Property. Mr. Gillis was unavailable to take the call, and Mr. Asebedo left a message.

B. Mr. Asebedo did not hear back from Mr. Gillis on September 10, 2014, and faxed to him a letter and an email at approximately 4:30 p.m. on September 10, 2014. A copy of the letter is provided as Exhibit 1, Dckt. 48.

C. On September 11, 2014, Mr. Asebedo again called Mr. Gillis, but was available to discuss this matter. The conversation concluded with Mr. Gillis stating that he would contact the Debtor about providing access to the Property to Mr. Brazeal.

Trustee's Status Report - Motion to Turnover Property, Dckt. 49.

The Trustee's Status Report filed on September 23, 2014, is summarized as follows.

A. The Trustee reports the events consistent with the Supplemental Declarations.

B. The Debtors have not provided the Trustee's representatives with access to the Property.

OCTOBER 2, 2014 HEARING

The Court's order filed on September 8, 2014, is clear and precise – The Debtors shall provide the Trustee access to the real property commonly known as 4203 Tapestry Way, Turlock, California at 2:00 p.m. on September 8, 9, or 11, 2014. These alternative dates were arranged with the participation of Debtors' counsel for the convenience of the parties. The Debtors have now chosen to violate the court's order.

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposes under Rule 9011, the bankruptcy court may impose sanctions,

whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of 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 federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

At this juncture, the Debtors have made it clear that they are not complying with the order of this court. Though the court will not *sua sponte* issue an Order to Show Cause re contempt, at this time, the Trustee may file a motion seeking appropriate non-monetary and monetary compensatory and corrective sanctions. Non-monetary sanctions may include incarceration of either or both Debtors until they choose to comply with the order, detention of the Debtors while the Trustee's representative is given access to the property with law enforcement escort (with Debtors being financially responsible for the cost and expense of the law enforcement escort), or increasing monetary fines for which liens are imposed on the Debtors' property.

The court will, in light of the failure to comply with the prior order, certify this matter to the United States District Court for review and issuance of an order to show cause why the United States District Court should not issue punitive sanctions, non-monetary and monetary sanctions, against the Debtors.

At the hearing, ----

18. 14-90863-E-7 MIROSLAWA RYBAK **MOTION TO AVOID LIEN OF MIDLAND**
CRG-1 Carl R. Gustafson **FUNDING, LLC**
9-3-14 [14]

Final Ruling: No appearance at the October 2, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Midland Funding, LLC, and Chapter 7 Trustee on September 3, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Midland Funding, LLC ("Creditor") against property of Miroslawa Rybak ("Debtor") commonly known as 6609 Seedling Circle, Hughson, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,653.54. An abstract of judgment was recorded with Stanislaus County on September 17, 2012, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $253,000.00 as of the date of the petition. The unavoidable consensual liens total $309,268.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Midland Funding, LLC, California Superior Court for Stanislaus County Case No. 676251, recorded on September 17, 2012, Document No. DOC-2012-0082501-00 with the Stanislaus County Recorder, against the real property commonly known as 6609 Seedling Circle, Hughson, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

19. 14-90863-E-7 MIROSLAWA RYBAK
CRG-2 Carl R. Gustafson

MOTION TO AVOID LIEN OF UNIFUND CCR, LLC
9-3-14 [25]

Final Ruling: No appearance at the October 2, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Unifund CCR, LLC, and Chapter 7 Trustee on September 3, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Unifund CCR, LLC ("Creditor") against property of Miroslawa Rybak ("Debtor") commonly known as 6609 Seedling Circle, Hughson, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $16,236.42. An abstract of judgment was recorded with Stanislaus County on December 12, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $253,000.00 as of the date of the petition. The unavoidable consensual liens total $309,268.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Unifund CCR, LLC, California Superior Court for Stanislaus County Case No. 678476, recorded on December 12, 2013, Document No. DOC-2013-0102402-00 with the Stanislaus County Recorder, against the real property commonly known as 6609 Seedling Circle, Hughson, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

20. 13-91964-E-7 JEFFREY RAMOS AND ALIDA MANAOIS - RAMOS
HCS-4 Steele Lanphier

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM\CRABTREE\SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY(S)
8-28-14 [61]

Final Ruling: No appearance at the October 2, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 28, 2014. By the court's calculation, 35 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.

FEES REQUESTED

Herum\Crabtree\Suntag ("Applicant"), the Attorney for Gary R. 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 December 2, 2014 through September 30, 2014. The order of the court approving employment of Applicant was entered on February 27, 2014, Dckt. 40. FN.1.

FN.1. Mr. Farrar initially applied for authorization to employ The Suntag Law Firm, which the court approved on December 18, 2013 with an effective date of December 2, 2013. Dckt. 18. In February 2014, the Suntag Law Firm merged with Herum\Crabtree to create Herum\Crabtree\Suntag. This request for fees and

expenses includes services rendered and costs incurred by both Applicant and the Suntag Law Firm, pre-merger.

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

General Case Administration: Applicant spent 11.70 hours in this category. Applicant assisted Client with employment applications for both accountant services and legal services, although only time for preparing The Suntag Law Firm's application was billed. Applicant also prepared the instant application for compensation as well as one for the Chapter 7 Trustee's certified public accountant.

Efforts to Assess and Recover Property of the Estate: Applicant spent 29.50 hours in this category. Applicant prepared and filed an application to employ a realtor for the Trustee, reviewed an offer to purchase the Property in question (2308 Ustick Road, Modesto, California) and prepared a motion to sell the Property. In connection with this, Applicant met with JPMorgan Chase Bank, N.A. and Cavalry SPV I, LLC, lienholders on the property, to negotiate a release of their liens on the property. Applicant also worked with a title company to assist in closing the sale of the Property.

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 a sale of a real property asset in the estate. The estate has $39,492.27 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Dana Suntag (shareholder)	3.4	$315.00	$1,071.00
Loris Bakken (associate)	28.6	$295.00	$8,437.00
Ricardo Aranda (associate)	7.3	$250.00	$1,825.00
Audrey Dutra (support staff)	1.9	$90.00	$171.00
Total Fees For Period of Application			$11,504.00

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. The First and Final Request for Fees in the amount of $11,504.00 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.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $268.48 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$53.48
Copying	$0.10	$39.00
Filing Fee for Motion to Sell	$176.00	$176.00
Total Costs Requested in Application		$268.48

The First and Final Request for Costs in the amount of $268.48 is 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.

However, Applicant is requesting a reduced fee amount. Though Applicant's task billing shows that they have provided $11,504.00 in services to the Trustee in this case and incurred $268.48 in costs, Applicant requests only $9,500.00 in this application. Because the benefit to the estate has already been established, the court approves this reduced fee and expense total.

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

Fees and Expenses $9,500.00

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 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 and Expenses in the reduced amount of $ 9,500.00,
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

21.	**13-91964-E-7** **PEQ-1**	**JEFFREY RAMOS AND ALIDA MANAOIS - RAMOS** **Steele Lanphier**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF RYAN, CHRISTIE, QUINN & HORN ACCOUNTANT(S)** **8-28-14 [66]**

Final Ruling: No appearance at the October 2, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 28, 2014. By the court's calculation, 35 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.

FEES REQUESTED

Paul E. Quinn ("Applicant"), the Accountant for Gary R. 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 March 24, 2014 through August 8, 2014. The order of the court approving employment of Applicant was entered on April 4, 2014, Dckt. 58.

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 2.5 hours in this category. Applicant assisted Client with reviewing creditors list to ensure that there are no conflicts of interest and preparing this application for compensation.

Tax Preparation and Other Tax-Related Matters: Applicant spent 9.1 hours in this category. Applicant reviewed Debtors' 2012 personal federal and state tax returns, prepared the 2013 and 2014 federal and state banruptcy estate tax returns for each debtor's estate, totaling four federal tax returns and four state tax returns.

Correspondence: Applicant spent 1.9 hours in this category. Applicant prepared and sent letters to tax authorities requesting prompt audit determinations for the estate for each year and letters of instruction to the Trustee for each tax year and each estate.

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 tax preparation for the bankruptcy estates of both Debtors. The estate has $39,492.27 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Deborah A. Monis (CPA)	6.6	$175.00	$1,155.00
Paul E. Quinn (CPA, CFF)	6.9	$250.00	$1,725.00
Total Fees For Period of Application			$2,880.00

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. The First and

Final Request for Fees in the amount of $2,880.00 is 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 does not seek the allowance and recovery of costs and expenses in this application.

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

Fees	$2,880.00
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 Paul E. Quinn ("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 Paul E. Quinn is allowed the following fees and expenses as a professional of the Estate:
>
> Paul E. Quinn, Professional Employed by Trustee
>
> Fees in the amount of $ 2,880.00
> Expenses in the amount of $ 0.00,
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

22. 00-90665-E-7 JAY/MARGARET HARP **MOTION TO AVOID LIEN OF CBSJ**
GMW-2 G. Michael Williams **FINANCIAL CORP.**
9-17-14 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 7 Trustee, respondent Creditor, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of CBSJ Financial Corporation ("Creditor") against property of Jay Harp and Margaret Harp ("Debtor") commonly known as 312 Adrienne Street, Stockton, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $13,071.84. An abstract of judgment was recorded with San Joaquin County on February 2, 2000, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $35,000 as of the date of the petition. As part of the motion, Debtors' successors have submitted an appraisal prepared by Greg Reiner, evidencing that the value of the property as of the petition date was

$37,000. A copy of the Uniform Residential Appraisal Report, filed in support of Mr. Reiner's Declaration, is designated as Dckt. No. 24.

The Motion also states that Joint Debtor Jay Harp passed away on August 10, 2002, and Joint Debtor Margaret Harp passed away on October 29, 2004. Debtors' Successors, Steven, Jay Edward, and Ronnie Harp succeeded to the Debtors' interest in the Property by virtue of an order issued by the San Joaquin County Superior Court, and recorded in the San Joaquin County Official Records on August 7, 2014 as Document No. 2014-078095.

DISCUSSION

Section 552(f) allows debtors to avoid the fixing of a lien on an interest held by the debtor in property, to the extent that the lien impairs an exemption to which the debtor would have been entitled to under 11 U.S.C. § 522(b). If there is no equity to support the judicial lien after the application of the arithmetical formula established by 11 U.S.C. § 522(f)(2)(A), the fixing of the lien would impair the Debtor's exemption of the real property. This would allow the debtor to avoid the fixing of the lien subject to 11 U.S.C. § 349(b)(1)(B).

Here, the Movants in this matter are Steven Harp, Jay Edward, and Ronnie Harp, who are not the Debtors in this bankruptcy case. Rather, the Movants are Debtors' children and successors in interest to the real property known as 312 Adrienne Avenue, Stockton, California. The Debtors in this case are Jay Harp and Margaret Harp, who passed away on August 10, 2002, and October 29, 2004 respectively. FN.1.

FN.1. The situation is even murkier. The California Secretary of State website lists CBSJ Financial Corporation as having been "merged out." A Lexis-Nexis search uncovers a reported merger of CBSJ Financial Corporation into Golden State Collections, LTD based on a June 14, 2004 filing. The California Secretary of State reports that an entity named Golden State Collections, LLC has an active registration. Possibly the Movants will start with Therese Harris, the attorney for "CBSJ Financial Corp" to ascertain what entity obtained a renewal of the judgment in 2009.

The Movants have offered, as proof of their interest in the property, an Order Determining Succession to Real Property in support of this Motion, filed as Exhibit "7" in support of the Motion, Dckt. No. 25, which shows that Movants Steven Harp, Jay Edward Harp, and Ronnie Harp were each granted a 1/3 interest in the property as a result of the intestate distribution of Joint Debtor Margaret F. Harp. The Order indicates that San Joaquin County Superior court determined that the Movants succeeded to the property under Probate Code Sections 6401 and 6402 after a hearing held on July 25, 2014. The order was recorded on August 7, 2014 by the San Joaquin County Recorder. Exhibit 7, Dckt. No. 25 at 9.

Section 522(f)(1)(A) allows the debtor to "avoid the fixing of a [judicial] lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled...." The court must determine whether the lien in this case fixed on an interest of the debtors' property in such a way as to impair the debtor's

exemption. However, the Movants are not Debtor in this bankruptcy case. Although they now appear to hold an interest in the subject property, the Movants themselves are not attempting to avoid a lien in their bankruptcy case.

To avoid a judicial lien, a debtor must have interest in the property to which the lien attaches, before the lien "fixes," or fastens a liability on that interest. 11 U.S.C. § 522(f)(1)(A). *In re Pederson*, 230 B.R. 158 (B.A.P. 9th Cir. 1999). Here, the Movants, who are successors in interest to the property by virtue of the Succession Order issued by the San Joaquin County Court following Debtor Margaret Harp's death, did not hold an interest in the property at the time the lien was recorded by CBSJ Financial Corp. on the subject property, on February 2, 2002. Exhibit 5, Dckt. No. 25. Thus, Movants cannot avoid the judgment lien recorded by CBSJ Financial Corp. Pursuant to 11 U.S.C. § 522(f)(1)(A).

Substitution of Parties

More fundamentally, the Movants attempt to avoid a judgment lien that does not impair an exemption of which they are legally entitled. The Movants are not requesting that the lien be avoided in their own bankruptcy case, where they would be entitled to elect certain bankruptcy exemptions to protect their assets from sale for payments to unsecured claim holders. Rather, Movants are attempting to avoid a judicial lien in the bankruptcy case filed by Debtors Jay Harp and Margaret Harp, who according to Movant's representations passed away in 2002 and 2004. The Debtors have not filed a Motion for Substitution to obtain the consent of the court to act on behalf of the deceased parties, which is required before Movants are permitted to proceed with on behalf of the Debtors in the present case.

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under chapter 11, chapter 12, or chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id*.

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, §7025.02, which states [emphasis added],

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for**

> **substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

See also, *Hawkins v. Eads*, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, the Movants, Steven Harp, Jay Edward Harp, and Ronnie Harp, have not filed a Suggestion of Death and a Motion for Substitution, and have not provided sufficient evidence showing that the continued administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtors pursuant to Federal Rules of Bankruptcy Procedure 1016 and 7025. Movants have not shown that they are representatives who have the authority to administer the case on behalf of the deceased parties pursuant to Federal Rule of Bankruptcy Procedure 1016.

The Movants being the transferees of the subject real property who did not have an interest in the property before the lien fastened liability on the Movants' interest, and the Movants not having filed a Motion for Substitution to substitute in the case for the Debtors in accordance Federal Rule of Bankruptcy Procedure 1016, the Movants do not have standing to bring this motion, and the Motion to Avoid the Judicial Lien of CBSJ Financial Corp. is denied.

ISSUANCE OF A MINUTE ORDER

The court shall issue a Minute Order in substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Movants Steven Harp, Jay Edward Harp, and Ronnie Harp having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Avoid Judicial Lien is denied without prejudice.

23. 13-90465-E-7 KIMBERLY VEGA
14-9004 SSA-2
MCGRANAHAN V. VEGA ET AL

MOTION TO COMPEL, MOTION FOR PRODUCTION OF DOCUMENTS, MOTION FOR EXCLUSION OF EVIDENCE BY DEFENDANTS AND APPLICATION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY(S) 9-9-14 [112]

Tentative Ruling: The Motion to Compel, Motion for Production of Documents, Motion for Exclusion of Evidence by Defendants and Application for Compensation 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, Defendants (pro se), Defendant's Attorney and Office of the United States Trustee on September 9, 2014. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Compel, Motion for Production of Documents, Motion for Exclusion of Evidence by Defendants and Application for Compensation 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 Compel, Motion for Production of Documents, Motion for Exclusion of Evidence by Defendants and Application for Compensation is granted.

The Chapter 7 Trustee Michael D. McGranahan and the Plaintiff in this Adversary Proceeding ("Plaintiff") files a Motion to Compel Answers to Requests for Admissions and for Requests for Production of Documents, other relief, and sanctions and fees and costs against the Defendants in this case, Victor Vega and Maria Rangel ("Defendants").

The Plaintiff served his Requests for Admissions and Requests for Production of Documents on Defendants by first class mail at their designated address on July 9, 2014. More than thirty days have elapsed from the date responses were due. Despite demanding responses from both defendants by letter on August 14, 2014, the Plaintiff states that no discovery or response has been forthcoming by either party defendant. In addition, neither party defendant Victor Vega, Maria Rangel, or Kimberly Vega, has prepared, served, and filed with Plaintiff's counsel the required Initial Disclosures pursuant to Federal Rule of Civil Procedure 26(a).

Plaintiff requests, pursuant to Federal Rule of Bankruptcy Procedure 7037, which also applies Federal Rule of Civil Procedure 37 to these proceedings, the following orders and relief:

> a) the subject Requests for Admissions be admitted in the current adversary proceedings against all party defendants;
>
> b) Defendants Victor Vega and Maria Rangel not be allowed to offer any conflicting or disputed evidence on these issues (admitted in the Request for Admissions);
>
> c) reimbursement of the Trustee's counsel's reasonable fees and costs incurred in propounding discovery, preparing, and enforcing relief as a result of this motion;
>
> d) such other relief the Court deems just;
>
> e) in addition, as to the Requests for Production, Plaintiff requests Defendants Rangel and Victor Vega, be precluded from introducing any contrary or opposing evidence, together with the reimbursement of the Trustee's counsel's reasonable fees and costs incurred in propounding discovery, and enforcing relief as set forth in this motion.

The motion is also filed pursuant to Local Bankruptcy Rule 9014-1(f)(2). This court's initial Scheduling Order provided the following:

> **DISCOVERY DISPUTES:** Ordered, that if a party files a motion with reference to a discovery dispute, the times specified in Local Rule 9014-1 are hereby shortened, so that unless otherwise ordered, any hearing on a discovery dispute may be set for not less than ten (10) calendar days from the date of filing or service of the notice and supporting papers, whichever is later, except...If a motion regarding discovery dispute is set on less than 28 days' notice, the responding party need not file opposition, but may appear at the hearing and oppose the motion. In this event, the court may allow

> further time for the responding party to file written opposition.

Scheduling Order, Dckt. No. 24, filed April 4, 2014.

DISCUSSION

Federal Rule of Civil Procedure 37(a)(1), made applicable in bankruptcy adversary proceedings by Federal Rule of Bankruptcy Procedure 7037, requires that a motion to compel discovery "include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make . . . discovery in an effort to obtain it without court action." Federal Rule of Civil Procedure 37 Civil Rule 37(c) sanctions the failure to supplement discovery responses.

The certification requirement of Federal Rule of Civil Procedure 37(a)(1) was described in *Shuffle Master v. Progressive Games*, 170 F.R.D. 166 (D. Nev. 1996) as comprising two elements:

> [T]wo components are necessary to constitute a facially valid motion to compel. First is the actual certification document. The certification must accurately and specifically convey to the court who, where, how, and when the respective parties attempted to personally resolve the discovery dispute. Second is the performance, which also has two elements. The moving party performs, according to the federal rule, by certifying that he or she has (1) in good faith (2)conferred or attempted to confer. Each of these two sub components must be manifested by the facts of a particular case in order for a certification to have efficacy and for the discovery motion to be considered.

Shuffle Master, 170 F.R.D. at 170. The court went further, stating that "[A] moving party must include more than a cursory recitation that counsel have been 'unable to resolve the matter.'" 170 F.R.D. at 171.

Initial Disclosures

The Federal Rules of Civil Procedure relating to discovery during litigation, Rules 26 and 28 to 37, apply in bankruptcy cases, in both contested matters and adversary proceedings, by virtue of incorporation by reference. Fed. R. Bankr. P. 7026 to 7037 and 9014.

Subdivision (a)(1) of Civil Rule 26 narrows the required disclosures to that information that the disclosing party intends to use to support its position. The use may include support of a claim or a defense. It includes any stage of the litigation from discovery, to motion, to trial. Although the required disclosures are narrowed, the court retains the authority to order the discovery of matters relevant to the subject of the action. F. R. Civ. P. 26(b). The initial disclosures must be made within 14 days after the parties have conferred pursuant to Rule 26(f). F. R. Civ. P. 26(a)(1).

Matters Deemed Admitted

Federal Rules of Bankruptcy Procedure 7036 and 7056 provide that requests for admissions are deemed admitted unless they are denied within 30 days after service of the request. Any matter admitted under Federal Rule of Civil Procedure 36 is "conclusively established unless the court on motion permits withdrawal or amendment of the admission."

In this case, the Trustee states that prior to bringing this motion, the Trustee's counsel served defendants Rangel and Vega a letter to "meet and confer" regarding Defendant's lack of responses to Plaintiff's Request for Admissions and Production Requests.

In addition, as a courtesy, Plaintiff's counsel also directed Defendants' attention to the court's amended scheduling order, which required Initial Disclosures to be prepared and filed and be served no later than July 16, 2014. Exhibits 1-5, Dckt. No. 115. The Trustee states that the Request for Admissions and Production Requests were relevant in this action in that the Plaintiff, Trustee McGranahan, seeks to sell Debtor Vega's one-third interest in property that is located at 1441 103rd Street, Oakland, California for the benefit of case administration and creditors of this estate. Each of the Defendants dispute the Debtors' legal and equitable ownership to the property.

In this action, Plaintiff served the Defendants, Victor Vega and Maria Rangel, by first class mail at their designated address on July 9, 2014, Requests for Admissions and Requests for Production of Documents. More than thirty days have elapsed from the date the responses were due. To date, the Defendants have not sent the Trustee any responses to Trustee's propounded discovery requests.

The Declaration of Steven S. Altman, the Attorney for Plaintiff in this case (Michael McGranahan, who serves as the Trustee in Defendant/Debtor's Kimberly Vega's bankruptcy case), has offered a declaration, Dckt. No. 114, certifying that good faith attempts have been made to reach out to the Defendants and to engage in a meaningful meet and confer process regarding the propounded discovery requests. Thus, the Plaintiff has provided the certification of good faith attempts to resolve the matter as required by Federal Rule of Civil Procedure 37(a)(1).

The Requests for Admissions that were served to Maria Rangel and Victor Vega, request admissions that the Defendant/Debtor Kimberly Vega is on the title on the property as having a one-third interest with Defendants Maria Rangel and Victor Vega, as well as related questions about whether the Debtor's credit was used to purchase the property, whether her name was taken off the deed of trust, whether the Debtor is a co-signer on the deed and to apply for a loan on the property, and other questions regarding the Debtor's and Defendants' residence and ownership of the property. Exhibits 1 and 2, Dckt. No. 115 at pages 2 and 9.

The Defendants have not provided responses to the Plaintiff's Requests for Admissions or Request for Production of Documents to date. More than 30 days have passed since the service of Plaintiff's Requests on July 9, 2014. Since Defendants Victor Vega and Maria Rangel have not provided responses to these requests, and denials of these requests for admission do not appear forthcoming, the matters in Trustee's Requests for Admissions, Exhibits 1 and

2, Dckt. No. 115 are deemed admitted under Federal Rules of Bankruptcy Procedure 7036 and 7056. The matters will be conclusively deemed admitted for the purposes of the adversary case. Moreover, Defendants Victor Vega and Maria Rangel, having failed to comply with the court's scheduling order and not providing timely responses to the Plaintiff, will be barred from offering opposing evidence at the time of trial.

REQUEST FOR ATTORNEY FEES

For a party seeking reasonable payment of expenses in bringing a motion for an order to compel discovery, Federal Rule of Civil Procedure Rule 37(a)(5) states "If the motion is granted-or if the disclosure or requested discovery is provided after the motion was filed-the Court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movement's reasonable expenses incurred in making the motion, including attorney's fees".

The Invoice included by Plaintiff, dated August 29, 2014, and designated as Exhibit 6 filed in support of this motion (Dckt. No. 115), states that the Plaintiff incurred $1,561.80 in attorneys fees and $1.48 in costs in pursuing the Motion to Compel. The billing statement attached by Plaintiff reflects that, in preparing the Motion and in attempting to obtain responses for Plaintiff's discovery requests from Defendants, Plaintiff sent meet and confer letters, discovery demand letters, and drafted this Motion to Compel (which included writing the Notice of Hearing, Memorandum of Points and Authorities, and preparing a declaration) during the time period of August 14 through August 29, 2014. Dckt. No. 115. The Plaintiff charged at a rate of $300 for the services performed.

These court finds these fees and expenses to be reasonable and necessary in bringing the Motion to Compel for the Production of Documents, Exclusion of Evidence by Defendants, and Compensation.

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel filed by the Plaintiff 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 Plaintiff Motion to Compel Discovery pursuant to Federal Rule of Bankruptcy 7037 is granted, and,
>
> a) the Plaintiff's Requests for Admissions against Defendants Victor Vega and Maria Rangel, dated July 7, 2014, be admitted in the current

adversary proceedings against all party defendants;

b) Defendants Victor Vega and Maria Rangel not be allowed to offer any conflicting or disputed evidence on these issues (admitted in the Request for Admissions); and

c) Defendants Victor Vega and Maria Rangel be precluded from introducing any contrary or opposing evidence.

IT IS FURTHER ORDERED THAT Defendants Victor Vega and Maria Rangel pay, jointly and severally, $1,563.28 to Plaintiff Michael D. McGranahan, representing Plaintiff's reasonable and necessary expenses in bringing the instant Motion to Compel for the Production of Documents, Exclusion of Evidence by Defendants, and Compensation, on or before October 31, 2014.

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

24. 10-91466-E-7 ISRAEL/MARY FLORES **MOTION TO AVOID LIEN OF CACH, LLC**
SDM-2 Scott D. Mitchell **8-26-14 [30]**

Final Ruling: No appearance at the October 2, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 26, 2014. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Cach, LLC ("Creditor") against property of Israel Ruiz Flores and Mary Louise Flores ("Debtors") commonly known as 725 Musick Avenue, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $6,999.84. An abstract of judgment was recorded with Stanislaus County on January 2, 2010, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $106,000.00 as of the date of the petition. The unavoidable consensual liens total $293,545.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140 in the amount of $1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore,

the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of CACH, LLC, California Superior Court for Stanislaus County Case No. 643373, recorded on January 2, 2010, [Document No. 2010-0002330-00] with the Stanislaus County Recorder, against the real property commonly known as 725 Musick Avenue, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

25. 12-92570-E-12 COELHO DAIRY **MOTION TO DISGORGE FEES**
TOG-45 Thomas O. Gillis **9-18-14 [522]**

Tentative Ruling: The Motion to Disgorge 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.

Defective Service Waived. The Proof of Service states that the Motion and supporting pleadings were served on respondent creditor, the Chapter 12 Trustee, and Office of the United States Trustee on September 18, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Disgorge 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 The Motion to Disgorge Fees is denied without prejudice to the Chapter 12 Trustee prosecuting such Contested Matter or Adversary Proceeding as necessary and appropriate to recover from Westamerica Bank made by the Trustee under the confirmed Chapter 12 Plan.

DEFECTIVE SERVICE

Service has not been effected as required by Fed. R. Bankr. P. 7004(h). Federal Rule of Bankruptcy Procedure 7004(h) and 9014 require that service be made on federally insured financial institutions by certified mail. Even if certified mail is not required, corporations, partnerships, and other fictitious entities need to be served on officers, partners, managing members,

and other designated agents for service of process. Fed. R. Bank. P. 7004(b)(3), 9014; Fed. R. Civ. P. 4(h).

The respondent creditor in this matter, Westamerica Bank (which appears to have been erroneously identified as "West America Bank" in the Motion of Debtor), is listed as an active corporation doing business in California, and registered with the California Secretary of State., Business Entity Detail, Westamerica Bank, (September 26, 2014, 1:14 PM), http://kepler.sos.ca.gov/. Westamerica Bank is also insured by the Federal Deposit Insurance Corporation (Institution Directory, Westamerica Bank, (September 29, 2014, 4:10 PM), https://www2.fdic.gov/idasp/main.asp). Thus, the service requirements of Federal Rule of Bankruptcy Procedure 7004(h) regarding federally insured financial institutions applies.

The certificate of service for this motion, Dckt. No. 26 does not indicate that the Motion was sent to Creditor Westamerica Bank by certified mail pursuant to Federal Rule of Bankruptcy Procedure 7004(h). Certificate of Service, Dckt. No. 526. However, the respondent Creditor, Westamerica Bank having already responded to the merits of the Debtor's Motion without raising the issue of defective service by the Debtor, the court presumes that the defect in the service of process is waived.

REVIEW OF MOTION

Debtor Coelho Dairy ("Debtor") moves the court for an order to disgorge a certain sum of money already disbursed to Creditor Westamerica Bank in this case.

On April 10, 2014, the Court confirmed the reorganization plan of the Debtor. The order was signed on May 22, 2014. As part of the plan provided that upon confirmation, Debtor states that the Trustee is to pay post petition arrearages to Westamerica Bank, Dckt. No. 507 at page 5; line 22-25.

After confirmation of the Chapter 12 plan, the Motion states that the Trustee paid Westbank about $107,804.60, representing perceived post petition arrearages. Actually, "the partnership" (the Motion does not disclose who the "partnership" is and what entity is being referenced) had paid the bank, as adequate protection payments, the sum of $46,200 to the Creditor bank. Debtor states that these payments were made post petition. The Motion characterizes Exhibit A as a "business record of the partnership made contemporaneously with said payments." The court is uncertain about what this description means.

The Motion then goes on to state that Thomas O. Gillis, the attorney of record for Debtor, requested a disgorgement orally and by letter on two occasions, but "the bank" (presumably this refers to the Creditor Westamerica Bank in this Motion, which has been imprecise in his references to the creditor and the claim in this case) has not returned the overpayment to the Chapter 12 Trustee.

Debtor claims that the Creditor bank has been overpaid by the Trustee, and requests that Westamerica Bank be ordered to disgorge the sum of $61,604 to the Trustee. Additionally, the Debtor requests the Trustee credit his account with the Trustee fee collected on the $61,604.

Though the court has summarized the Motion and Declaration above, in these types of disputes (see Creditor's response below), the court believes it is beneficial to state the particular grounds (Fed. R. Bankr. P. 9013) in the motion and the actual testimony under penalty of perjury in the declaration.

The Motion states with particularity the following grounds and requested relief:

A. The court confirmed a Chapter 12 Plan in this case on April 10, 2014.

B. The Plan requires that the Trustee would pay the "post-petition arrearages" to Westamerica Bank ("Creditor").

C. After confirmation the Chapter 12 Trustee disbursed "about" $107,804.60 for the post-petition arrearage.

D. The partnership (presumably Movant means the Debtor in Possession) make an "adequate protection payment" of $46,200.00 to Creditor.

E. The court is directed to review Exhibit A, identified as "Debtor in Possession Records, which are asserted to be "business records." FN.1.

FN.1. Frank Coelho, a general partner of the Debtor, Debtor in Possession, and Debtor now as Plan Administrator, testifies that Exhibit A is a "business record." While stating this evidentiary conclusion, Mr. Coelho does not provide any personal knowledge testimony as to what Exhibit A is, how it was prepared, and how it was maintained. Exhibit A is titled "Coelho Dairy Account Quick Report, All Transactions." It appears to list a series of checks for the period from August 31, 2012 through July 2, 2014. The bankruptcy case was filed by the Debtor on September 28, 2012, with seven of the checks pre-date the filing of this bankruptcy case.

F. Thomas Gillis, the attorney for the Debtor in Possession and now Plan Administrator, requested a "disgorgement" orally and by letter on two occasions. (No exhibits are referenced for the letter demands for "disgorgement.")

G. Movant seeks that Creditor be ordered to disgorge the sum of $61,604.00 to the Trustee. (The demand for $61,604.00 is inconsistent with the statement that the "partnership" paid $46,200. $61,604.00 is the alleged $107,804.60 stated arrearage payment by the Trustee – but no grounds are stated as to why such amount should be "disgorged.")

Motion, Dckt. 522.

The Motion is supported by the Declaration of Frank Coelho, a general partner of the Debtor, former Debtor in Possession, and Debtor as Plan Administrator. Mr. Coelho testifies under penalty of perjury to the following:

A. The court confirmed the Chapter 12 Plan on April 10, 2014, with the order signed on May 22, 2014.

B. Part of the Plan is that the Chapter 12 Trustee would pay the post-petition arrearages to Creditor. (The court taking the "post-petition arrearages" being the Debtor in Possession defaults in payments.)

C. After confirmation the Trustee, assuming that no post petition payments had been made (Mr. Coelho providing no testimony as to how he has personal knowledge as to the Trustee's intention in making the payments) paid Creditor $107,804.60 for the "perceived" (Mr. Coelho does not provide any testimony as to what he means by "perceived," as to actual) arrearage.

D. That the "partnership" made adequate protection payments of $46,200 to Creditor, citing the court to Exhibit A, which Mr. Coelho concludes is a "business record." (Mr. Coelho does not provide testimony as to what Exhibit A is or facts by which the court can determine that it is a "business record.")

E. He further testifies that Mr. Coelho's attorney, Thomas Gillis, orally requested a "disgorgement" from Creditor. Mr. Coelho does not testify how he knows that such an oral demand was made, whether he was a percipient witness or if he is choosing to disclose attorney-client communications. (Also, the court infers that when Mr. Coelho references "my attorney, Thomas Gillis," he means the Debtor/Debtor in Possession/Plan Administrator's attorney. Such an inference is generous, in that Mr. Gillis has attempted to represent the general partners personally in connection with this very case on previous occasions.)

F. That demand has also been made by letter. Mr. Coelho does not provide testimony as to how he knows written demand was made, does not authenticate copies of any letters, or provide evidence, other than saying that written communication was made by another person.

G. Mr. Coelho then "testifies" that he is making a "PRAYER FOR RELIEF."

Declaration, Dckt. 524. In reviewing the "Declaration," it is almost exactly the same document (which could be referenced as a "carbon copy," using a term from a bygone era) as the Motion, with the words "I declare under penalty of perjury that the foregoing statements are true and correct" and the signature block being changed from Thomas Gillis to Frank Coelho.

No declaration is provided by Thomas Gillis, the person whose conduct in making the "demands" appears to be a significant basis for the Motion.

CREDITOR'S RESPONSE

Westamerica Bank ("Creditor") "frustratingly submits" an opposition to the Motion. The Creditor states that the motion is "inarticulate and has not been filed in good faith." No evidence has been provided in Opposition to the Motion, however this Motion being filed pursuant to Local Bankruptcy Rule 9014-1(f)(2) opposition may be presented orally at the hearing. The court considers the written opposition in the same manner as if stated orally at the hearing, not accepting as true (or untrue) the factual statements made therein.

The Creditor maintains that it has no problem complying with the terms of any confirmed plan, and that the Debtor chose not to disclose to the Court certain facts, notwithstanding the false testimony set forth in the "oblique declarations" filed in support of the motion. The Creditor states that on July 23, 2014, Thomas O. Gillis, the attorney of record for the Debtor, contacted the Creditor's counsel and stated that he thought that the Chapter 12 Trustee had made an overpayment to Westamerica Bank. According to the Creditor, Mr. Gillis did not quantify the amount of the alleged overpayment. Counsel for the Creditor stated that the Chapter 12 Trustee should communicate with Westamerica Bank on topic and provide the relevant accounting information.

Mr. Gillis agreed and stated that he would have the Chapter 12 Trustee contact the Bank in writing. Counsel for Westamerica Bank confirmed the conversation in writing. The response states that a copy of the July 25, 2014 letter is "attached to the declaration," but Creditor has not filed a declaration in support of its Response, and no copy of the confirmation letter has been filed on the court docket.

The Response states that until the Debtor filed its motion on September 18, 2014, the Debtor had made no contact with the Creditor about the alleged overpayment following the July 23 call and July 25 confirming letter. The Chapter 12 Trustee made no contact with the Bank. Creditor states that the Debtor has not provided competent evidence that the Trustee paid improperly some imprecise amount to the Westamerica Bank. The Trustee has not submitted any evidence to support the Debtor's motion. The Creditor argues that the Debtor instead claims without any evidence and falsely that "Thomas O. Gillis requested a disgorgement orally and by letter on two occasions, but the Bank has not returned the overpayment to the Chapter 12 Trustee."

The Creditor states that Mr. Gillis never responded as he agreed to do. The Chapter 12 Trustee never communicated with Creditor on topic. The Debtor through Mr. Coelho does not even provide a copy of a check that supposedly constitutes the "overpayment."

DISCUSSION

Exhibit A, the sole exhibit filed in support of this Motion, is titled the "Coelho Dairy Account by Transaction Report" and appears to be an Account Statement showing all payments made to Westamerica Bank, from the dates of August 31, 2012 through July 2, 2014. Exhibit A, Dckt. No. 525. The Exhibit does not shed any light, however, on the identity of the individual, principals of the Debtor, or the entity making allegedly making payments to satisfy the Creditor's claim.

The Declaration of Frank Coelho, the managing partner of the Debtor, Dckt. No. 524, merely repeats the factual contentions stated in the Motion to

Disgorge, and provides no clarification on who made the payments, whether the "Transaction Report" is authentic and correctly reflects payments that were made to the Creditor, and whether the payments were going toward curing the post-petition arrearages owed to Westamerica Bank.

Simple evidence, such as cancelled checks and a ledger sheet showing the computation of what was due, the defaulted post-petition payments by the Debtor in Possession, the payments made by the Debtor in Possession, the payment(s) made by the Trustee, and the asserted proper computation of the arrearage to be cured under the confirmed Chapter 12 Plan have not been provided. The "evidence," Mr. Coelho's testimony is less than credible, and it appears that he merely affixed (or had affixed) his signature to a document put in front of him. Absent from his testimony are the actual, personal knowledge facts from which the court can determine that testimony is credible.

The Motion satisfies the court that if there has been an overpayment, the Chapter 12 Trustee is the proper party to demand and recover such monies, and if Westamerica Bank fails to voluntarily repay the overpayment, to then "sue the Bank." The Plan Administrator and its counsel can provide the Trustee with documentation of the payments made, what it asserts is the overpayment which the Trustee should recover. FN. 2.

FN.2. Such contested matter or adversary proceeding should be highly unlikely, and the Plan Administrator computing the overpayment, if any, unnecessary. Westamerica Bank should have already computed the amount which it should have properly been paid under the contract (Note + Confirmed Chapter 12 Plan), determined if there has been an overpayment, and have a "check cut" to pay the Trustee the erroneous over-disbursement, if any. As senior counsel for one of the Nation's largest bank commented to this judge many years ago, "we realize that we (the bank) appear before these bankruptcy judges much more than any debtor, and as such, cannot afford to play fast and loose in bankruptcy proceeding."

The present Motion has also convinced the court that it is not the Plan Administrator who is able to prosecute the recovery of an over disbursement, if any. The court denies the Motion as to the Plan Administrator. The Motion is denied without prejudice to the Chapter 12 Trustee.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Disgorge Fees 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 Disgorge Fees is denied.
>
> **IT IS FURTHER ORDERED** that the denial of this Motion is without prejudice to the rights and obligations of Jan

Johnson, the Chapter 12 Trustee to seek recovery of any overpayment made under the Chapter 12 Plan, for any grounds, including those asserted in this Motion.

26. 14-90972-E-7 MICHAEL/DEBORAH MCCLELLAN MOTION TO COMPEL ABANDONMENT
BSH-2 Brian S. Haddix 9-12-14 [30]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 12, 2014. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Property is granted.

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the

Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Michael Lee McClellan and Deborah Sue McClellan ("Debtors") requests the court to order the Trustee to abandon, pursuant to 11 U.S.C. § 554(b), the estate's interest in the following assets:

Asset	**Value**	**Encumbrance(s)**	**Equity**	**Exemption**
Real Property known as 1205 Athens Ave., Modesto	$175,000	1st Deed of Trust, $100,501; Judicial Lien, $5,565.80	$68,933.20	CCP 704.730, $74,499
Cash in Wallet	$2.00	None	$2.00	CCP 704.070, $1.50
Chase Checking Acct (9057)	$624.21	None	$624.21	CCP 704.070, $468.16
Wells Fargo Checking Acct (2238)	$2.31	None	$2.31	CCP 704.070, $1.73
Chase Checking Acct (6515)	$449.63	None	$449.63	CCP 704.070, $337.22
Chase Savings Acct (1362)	$25.00	None	$25.00	CCP 704.070, $18.75
Chase Savings Acct (6528)	$3.06	None	$3.06	CCP 704.070, $2.30
Wells Fargo Savings Acct (3946)	$26.00	None	$26.00	CCP 704.070, $19.50
Household Goods & Furnishings	$4,050	None	$4,050	CCP 704.020, $4,050
Figurines	$50	None	$50	CCP 704.040, $50
Personal Clothing	$200	None	$200	CCP 704.020, $200
Wedding Ring, Rings, Watches, Necklaces, Bracelets	$1,200	None	$1,200	CCP 704.040, $1,200

Group Term Life Ins. Policy ($100,000)	$0	None	$0	CCP 704.100, $0
Group Term Life Ins. Policy ($50,000)	$0	None	$0	CCP 704.100, $0
Roth IRA	$100	None	$100	CCP 704.115(a)(1) & (2), (b) $100
2006 Honda Civic SE	$5,900	None	$5,900	CCP 704.010, $2,900

The Declaration of Joint Debtor Deborah Sue McClellan has been filed in support of the motion and values indicated for the above-listed properties. Dckt. No. 32.

The Debtors aver that they have claimed in equity in the property listed as above exempt. The first date set for the 11 U.S.C. § 341 creditors' meeting was held on August 7, 2014. The Trustee concluded the meeting, and Debtors state that the Trustee has had a reasonable amount of time to evaluate the asset's value. Debtors assert that the property is of inconsequential value or benefit to the estate.

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 to Michael Lee McClellan and Deborah Sue McClellan ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted and that the Property identified as:

Asset	Value	Encumbrance(s)	Equity	Exemption
Real Property known as 1205 Athens Ave., Modesto	$175,000	1st Deed of Trust, $100,501; Judicial Lien, $5,565.80	$68,933.20	CCP 704.730, $74,499
Cash in Wallet	$2.00	None	$2.00	CCP 704.070, $1.50
Chase Checking Acct (9057)	$624.21	None	$624.21	CCP 704.070, $468.16
Wells Fargo Checking Acct (2238)	$2.31	None	$2.31	CCP 704.070, $1.73
Chase Checking Acct (6515)	$449.63	None	$449.63	CCP 704.070, $337.22
Chase Savings Acct (1362)	$25.00	None	$25.00	CCP 704.070, $18.75
Chase Savings Acct (6528)	$3.06	None	$3.06	CCP 704.070, $2.30
Wells Fargo Savings Acct (3946)	$26.00	None	$26.00	CCP 704.070, $19.50
Household Goods & Furnishings	$4,050	None	$4,050	CCP 704.020, $4,050
Figurines	$50	None	$50	CCP 704.040, $50
Personal Clothing	$200	None	$200	CCP 704.020, $200
Wedding Ring, Rings, Watches, Necklaces, Bracelets	$1,200	None	$1,200	CCP 704.040, $1,200
Group Term Life Ins. Policy ($100,000)	$0	None	$0	CCP 704.100, $0

Group Term Life Ins. Policy ($50,000)	$0	None	$0	CCP 704.100, $0
Roth IRA	$100	None	$100	CCP 704.115(a)(1) & (2), (b) $100
2006 Honda Civic SE	$5,900	None	$5,900	CCP 704.010, $2,900

and listed on Schedule B by Debtor is abandoned to Michael Lee McClellan and Deborah Sue McClellan by this order, with no further act of the Trustee required.

27. 14-91279-E-7 VICTOR MARTELL **MOTION TO COMPEL ABANDONMENT**
CJY-1 James D. Pitner **9-16-14 [6]**

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, the Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 16, 2014. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Property is granted.

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 Victor Manuel Martell ("Debtor") requests the court to order the Trustee to abandon Debtor's business and certain assets and equipment of the business. Debtor seeks an order authorizing the Trustee to abandon Martell's Automative Service, which is described by Debtor as a small

automotive services business owned and operated by Debtor. Debtor states that this business has no marketable value outside of Debtor's own efforts.

The Debtor states that this business is Debtor's main occupation, and Debtor has invested substantial resources, time, and energy into this business. Because of the investment, Debtor wishes to keep operating at the present time; Debtor states that if he ceases operation of the business, even for a brief time, that Debtor "will surely lose clientele" and that it would be impossible to reopen the business and maintain is required expenses.

Accordingly, Debtor requests that the following assets be abandoned: the business name, "Martell's Automotive Service," the three business checking accounts with Bank of America with an approximate balance of $2,500.00, and business equipment (including two lifts, one vehicle scanner, and miscellaneous hand and power tools worth a total approximately $10,000). Debtor states that the business has no inventory and account receivables.

The Motion further states that the automotive service, the three business checking accounts, and business equipment have a total value of approximately $12,500.00, which is fully exempt under various sections of the California Code of Civil Procedure. The equity in the Property is exempted pursuant to California Civil Code of Procedure § 703.140(b)(5) and 703.140(b)(6) as set forth in Debtor's Schedule C. Although not specified in the Motion, Debtors' Schedule D, Dckt. No. 1, indicates that none of the property that Debtor requests to be abandoned are encumbered by liens and that Debtors' business assets are not subject to claims by any of the creditors in Debtor's case.

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 Victor Manuel Martell ("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. The business name, "Martell's Automotive Service";
>
> 2. Three business checking accounts with Bank of America, N.A., Modesto California Branch,

with an aggregate amount of of $2,500.00 abandoned.

3. Business equipment, including two lifts, one vehicle scanner, and miscellaneous hand and power tools worth a total of not more than $10,000.

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

28. 13-91189-E-11 MICHAEL/JUDY HOUSE — ORDER TO SHOW CAUSE WHY COUNSEL
RHS-1 Robert M Yaspan — ARE NOT SANCTIONED $500.00
9-17-14 [197]

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Michael House and Judy House, Debtors-in-Possession's Attorney, Office of the United States Trustee and other parties in interest on September 17, 2014. The court computes that 15 day's notice has been provided.

The Order to Show Cause was issued

The court's tentative decision is to xxxxxx the Order to Show Cause and xxxx.

On September 17, 2014 the court issued an Order for the Parties to File a Motion for Approval of Stipulation to Use Cash Collateral, and to Show Cause Why Counsel Should Not Be Sanctioned $500.

The court issued the Order on the basis that the Debtors-in-Possession did not file a motion, either *ex parte* seeking emergency interim relief or setting a regularly scheduled hearing, to approve a stipulation filed by the Debtors in Possession and their creditors regarding the use of cash collateral.

On September 2, 2014, the Debtors in Possession filed a pleading titled "STIPULATION TO EXTEND ORDER ON MOTION TO AUTHORIZE USE OF CASH COLLATERAL THROUGH DECEMBER 31, 2014." Dckt. 176. The Stipulation was filed by counsel for Debtor in Possession and signed by the Debtors (the signature

block identifies Michael House and Judy House expressly as "Debtors" and not "Debtors in Possession").

On September 3, 2014, counsel for the Debtors in Possession lodged with the court a proposed order titled "ORDER ON STIPULATION TO EXTEND ORDER ON MOTION TO AUTHORIZE USE OF CASH COLLATERAL THROUGH DECEMBER 31, 2014." Debtors in Possession used the Docket Control Number from the Second Motion to Use Cash Collateral (RMY-5), for which the final order was filed on February 20, 2014 (Dckt. 96). The order did not provide for a further hearing on that Motion or extending the order by a stipulation among the parties. *See* Civil Minutes, Dckt. 93, and Order, Dckt. 96.

Neither the Stipulation nor the proposed Order indicate any reason why the court would issue an order based on a mere stipulation of these parties. Federal Rule of Bankruptcy Procedure 4001(d) expressly addresses how a stipulation for use of cash collateral is presented to the court and an order obtained.

> (d) **Agreement relating to** relief from the automatic stay, prohibiting or conditioning the use, sale, or lease of property, providing adequate protection, **use of cash collateral**, and obtaining credit.
>
> (1) Motion; service.
>
> (A) Motion. **A motion for approval of** any of the following shall be accompanied by a copy of the agreement and a proposed form of order:
>
> (I) an agreement to provide adequate protection;
>
> (ii) an agreement to prohibit or condition the use, sale, or lease of property;
>
> (iii) an agreement to modify or terminate the stay provided for in § 362;
>
> (iv) **an agreement to use cash collateral**; or
>
> (v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property.
>
> (B) Contents. **The motion** shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the agreement. In addition, the concise statement shall briefly list or summarize, and identify the specific location of, each provision in the proposed form of order, agreement, or other document of the type listed in subdivision (c)(1)(B). The

motion shall also describe the nature and extent of each such provision.

(C) Service. **The motion shall be served** on: (1) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity the court directs.

(2) Objection. **Notice of the motion** and the time within which objections may be filed and served on the debtor in possession or trustee shall be mailed to the parties on whom service is required by paragraph (1) of this subdivision and to such other entities as the court may direct. Unless the court fixes a different time, objections may be filed within 14 days of the mailing of the notice.

(3) Disposition; hearing. If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than seven days' notice to the objector, the movant, the parties on whom service is required by paragraph (1) of this subdivision and such other entities as the court may direct.

(4) Agreement in settlement of motion. The court may direct that the procedures prescribed in paragraphs (1), (2), and (3) of this subdivision shall not apply and the agreement may be approved without further notice if the court determines that a motion made pursuant to subdivisions (a), (b), or (c) of this rule was sufficient to afford reasonable notice of the material provisions of the agreement and opportunity for a hearing.

Fed. R. Bankr. P. 4001(d) [emphasis added].

The Federal Rule of Bankruptcy Procedure also address how an order is obtained from the court.

Rule 9013. Motions: Form and Service

A request for an order, except when an application is authorized by the rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered *ex parte*, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on: (a) the trustee or debtor in possession and on those entities specified by these

rules; or (b) the entities the court directs if these rules do not require service or specify the entities to be served.

Fed. R. Bankr. 9013.

Nothing in the Stipulation and Proposed Order lodged with the court show a basis for the parties being exempted from these Federal Rules of Bankruptcy Procedure.

ORDER TO SHOW CAUSE WHY COUNSEL SHOULD NOT BE SANCTIONED

In it's Order to Show Cause, the court noted that bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposes under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of 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 federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

The court in its order expressed uncertainty as to why Robert Yaspan (counsel for Debtors in Possession), Steven Altman (counsel for Arthur C. House & Karen D. House 1998 Living Trust, UDT), Eric Capron (counsel for American AgCredit), and Laura Bouyea (counsel for Petaluma Acquisition, LLC) failed to comply with the above rules for obtaining an order authorizing the use of cash collateral. The court concluded that the attorneys, and each of them, must show cause why corrective sanctions of $500.00 for each of the attorneys is not

appropriate to ensure that the attorneys will comply with these basic pleading, notice, and procedural rules for obtaining orders from the court.

Accordingly, the court ordered Robert Yaspan (counsel for Debtors in Possession), Steven Altman (counsel for Arthur C. House & Karen D. House 1998 Living Trust, UDT), Eric Capron (counsel for American AgCredit), and Laura Bouyea (counsel for Petaluma Acquisition, LLC), and each of them to show cause why the court should not order them to pay $500.00 in corrective sanctions for failure to comply with Federal Rule of Bankruptcy Procedure 9013 and 4001(d) in attempting to obtain from the court an order authorizing the use of cash collateral pursuant to a Stipulation between their clients (Dckt. 176).

RESPONSE BY LAW OFFICES OF ROBERT M. YASPAN, ATTORNEYS FOR DEBTORS IN POSSESSION

The Law Offices of Robert M. Yaspan, attorneys for Debtors in Possession, responds by stating that the present Order to Show Cause arises out of an inadvertent error by Debtors-in-Possession's counsel in filing a Stipulation to Extend Order on Motion to Authorize Use of Cash Collateral through December 31, 2014 ("Stipulation"), without filing the requisite motion for approval of the stipulation. Counsel for Debtors in Possession states that he worked with the four alleged secured creditors with purported assignment of rents provisions in their deeds of trusts (Karen D. House, as Trustee of the Arthur C. House & Karen D. House 1998 Living Trust, UDT; Oak Valley Community Bank; American AgCredit; and Petaluma Acquisition, LLC (collectively "Creditors") to reach a stipulation to extend the order regarding the use of cash collateral.

The document that was prepared titled Stipulation to Extend Order on Motion to Authorize Use of Cash Collateral Through December 31, 2014 ("Stipulation") modified the court's order dated February 20, 2014, to extend the duration of cash collateral to December 31, 2014; and changed the payee for the Smith Ranch payment from the Trust to the trust account of attorney for the Trust.

The counsel for Debtors in Possession prepared and circulated the Stipulation; the attorney for Creditors and Oak Valley returned the Stipulation to the counsel for Debtors in Possession so that the court could enter an order. As such, the Response states, none of the Creditors were responsible for filing the Stipulation, and in fact, there were no discussions with the Creditors regarding the filing of the Stipulation.

The counsel for Debtors in Possession states that he erroneously believed that since there were no substantive changes to the prior cash collateral order, and was only extending the duration of the order (as the payee was to Karen House's attorney rather than Karen House, pending the outcome of the adversary) that it was not necessary to file a separate motion regarding the use of cash collateral, and the filing of the Stipulation would be adequate. The counsel for Debtors in Possession states that many of the **other courts which Counsel practices in "do not require strict adherence to the rules on a stipulation for extending the use of cash collateral," and that now he is aware that this court "requires strict compliance with the Rules."** The Response states that this error was not caught before the stipulation was filed.

Counsel for Debtors in Possession maintains that he never intended to deprive any part of due process rights, and that the Stipulation and proposed order was served on the estate's 20 largest creditors, the United States Trustee, the Creditors, and parties requesting special notice. As soon as the error was brought to its attention on September 17, 2014, the following day Counsel prepared and filed the motion for approval of the stipulation for the Debtors in Possession. The Response states that Counsel never intended to cause the court to perform additional work, and that Counsel will make efforts to clarify the definitions and identify the parties with an understanding of the Debtor-in-Possession and Debtor distinction. Counsel for Debtors in Possession requests that the court refrain from sanctioning counsel for the creditors, and from sanctioning the counsel for Debtors in Possession for this inadvertent error.

RESPONSE BY COUNSEL FOR THE HOUSE TRUST

Counsel for the House Trust, Steven S. Altman, responds by stating that he is one of two attorneys, with John Resso, for the House Trust in this matter. During the last two weeks in August, Mr. Altman was negotiating with counsel for Debtors in Possession through his associate, Debbie Brand, to continue the use of cash collateral Orders.

Mr. Altman states that the parties were and still are engaged in multiple disputes in this case including but not limited to the Objections to Proof of Claims advanced by the Debtors in Possession (to House Trust Claim Nos. 11 and 12) and also an adversary proceeding filed in the underlying case, House v. House Trust, Adversary No. 14-09024. The focus of counsel's attention was to craft the terms of a stipulation going forward. Counsel's client, Mrs. House is elderly in her mid 70s and relies on funds being paid to her in this case for her living expenses.

Mr. Altman was asked by the Debtors in Possession if the continued Stipulation could be achieved in connection with the underlying use of cash collateral orders in the case. Mr. Altman states that he was also informed that the Debtors in Possession were attempting to resolve the Stipulations for use of cash collateral with other parties during the period of August 18, 2014 through August 26, 2014. The Response states that Mr. Altman reviewed and signed the Stipulation for cash collateral and returned the executed stipulation to the Law Offices of Robert Yaspan, who did not discuss the need for calendaring the matter for hearing and noticing pursuant to Federal Rule of Bankruptcy Procedure 4001.

Mr. Altman states that he expected Mr. Yaspan to undertake appropriate steps to notice the matter for hearing. Mr. Altman assures that on behalf of the House Trust, there was never any intent by counsel in executing the Stipulation to circumvent the rules prescribed by Federal Rules of Civil Procedure 4001(d) or 9013.

RESPONSE BY COUNSEL FOR AMERICAN AGCREDIT

Eric D. Capron, counsel for American AgCredit filed a responsive declaration to the Order to Show Cause. Declaration, Dckt. 212. In the Declaration he testifies that he communicated with Debra Brand, counsel for the Debtors in Possession, concerning a stipulation for extending the use of cash collateral in this bankruptcy case. The discussions focused on the terms of

the Stipulation, which were to extend the existing use previously authorized pursuant to order of the court.

Counsel for AgCredit states that while he reviewed and had signed by his client, no proposed order pertaining to the Stipulation was provided to him for his review. He does testify that in having the Stipulation executed, he anticipated that (1) it would be filed with the court and (2) an order would be entered thereon. Further, that he (1) did not consider the rights of parties in interest who are not parties to the Stipulation and (2) did not research and confirm the statutory and rule requirements for obtaining an order from the court.

RESPONSE BY COUNSEL FOR PETALUMA ACQUISITION, LLC

Laura Bouyea, counsel for Petaluma Acquisition, LLC did not file a response to the Order to Show Cause.

DISCUSSION

The responses by all of the attorneys responding are basically, "we didn't think through what was being done." They are also clear that Robert Yaspan, counsel for the Debtors in Possession, and the other attorneys in this office, were the one responsible for effectuation of the stipulation and obtaining a proper court order.

It is disconcerting for the court to hear from attorneys who regularly practice in this court (the attorneys other than Laura Bouyea) that they did not think through how they would be obtaining an order from this court. Putting aside for a moment the contention that "other judges don't follow the rules" explanation, all three of these attorneys know that the Rules and Law are equally and fairly applied to all parties and attorneys in this court. Debtors' in Possession counsel has appeared regularly in this court, before this judge, for four years (first appearing when he filed the Sanjiv and Sheena Chopra Chapter 11 case, no. 11-93411. It should be no surprise that this court does not "hand out orders" in the Chapter 11 case merely because a couple parties ask for one.

In an era of modern communications, judges are not as isolated as they once were. In contending that "other judges don't apply the Rules," no specific cases, judges, orders, or local rules are identified. When this court surveyed five judges in the Central District of California, none pointed this court to situations where cash collateral orders were entered on ex parte stipulations.

Xxxxxxxxxxxxxxxxxxxxxxxxxxx

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

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

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is [discharged, no sanctions ordered, and the case shall proceed in this court] / [sustained, and the following monetary sanctions are ordered to be paid to the Clerk of the Bankruptcy Court, to be deposited into the United States Treasury on or before October 31, 2013: (1) xxxxxxxxxx, (2) xxxxxxxxxxx, (3) xxxxxxxxxx, and (4) xxxxxxxxx..

29. 13-91189-E-11 MICHAEL/JUDY HOUSE
RMY-13 Robert M Yaspan

MOTION TO EXTEND TIME TO FILE AMENDED PLAN OF REORGANIZATION AND AMENDED DISCLOSURE STATEMENT, TO EXTEND TIME TO RESPOND TO THE AMENDMENTS AND TO CONTINUE THE MOTION FOR ADEQUACY OF THE DISCLOSURE STATEMENT
9-12-14 [189]

Tentative Ruling: The Motion to Extend Time to File 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 September 12, 2014. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend Time to File is denied.

Movants Michael House and Judy House, the Debtors-in-Possession in this case (Debtors-in-Possession), seek an order extending the time within which they have to file their Amended Plan of Reorganization and Amended Disclosure

Statement, and to extend the time for Interested Parties to respond to the amendments pursuant to 11 U.S.C. § 105.

The Debtors-in-Possession state that the basis of the Motion is that the court previously extended to September 12, 2014 the deadline for filing of the Amended Plan of Reorganization and the Amended Disclosure Statement (Amendments) pursuant to the Order of and August 29, 2014, for any responses to the proposed amendments. However, the Motion states that Petaluma Acquisition still needs additional time to accept the concepts discussed, and the Debtors-in-Possession require the additional time for the filing of the Amendments since the Petaluma Acquisition, LLC extension is vital to the Plan.

Previous Request

Debtors-in-Possession acknowledge that this is the second request for an extension. The hearing on the adequacy of the disclosure statement is currently scheduled for October 30, 2014. The court had previously extended the August 15, 2014 deadline for the filing of the Amended Plan of Reorganization and the Amended Disclosure Statement, and August 29, 2014, for any responses to the proposed amendments. The court granted Debtors-in-Possession's previous request on the basis that the Debtors-in-Possession needed additional time to resolve issues related to the Plan negotiation of lease options related to a property securing a claim by creditor Petaluma Acquisition, LLC.

Debtors-in-Possession also indicated that they were awaiting amendments to proofs of claim filed by Karen House, as Trustee of the Arthur C. House and Karen D. House 1998 Living Trust, UDT, which the Debtors contend will affect the treatment of the claims in the Amended Plan and Disclosure Statement. Debtors-in-Possession filed both an objection to the original proofs of claim, as well as an adversary proceeding against the Trust. Debtors-in-Possession also requested additional time to allow them to reach an agreement concerning the treatment of the House claim.

Debtors-in-Possession had previously stated that, depending on the position of the Trust in its filings in the bankruptcy case and the adversary proceeding, the Debtors-in-Possession will have an opportunity to negotiate consensual treatment of the claim House Living Trust. Debtors-in-Possession raised the possibility of the additional time precluding the necessity of filing additional amendments to address the position of the Trust.

DISCUSSION

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

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

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

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

Debtors-in-Possession state that in the late afternoon of September 11, 2014, Counsel for Debtors-in-Possession spoke on the telephone to Petaluma's counsel, who indicated that Petaluma still needed additional time to "accept the concepts discussed," and that Petaluma wanted to be cooperative with the efforts of the Debtors-in-Possession. As such, the Debtors-in-Possession argue that they require additional time for filing of the Amendments, since the Petaluma extension is vital to the Reorganization Plan. As a result, Debtors-in-Possession are requesting an approximately six weeks to October 23, 2014 to file the Amended Plan of Reorganization and the Amended Disclosure Statement, so that these issues will be resolved.

Additionally, the Motion states that Lead Counsel for Debtors-in-Possession will be on a pre-planned vacation commencing September 15, 2014, and he will be returning to the office on or about October 2, 2014. Thereafter, the second week of October, the counsel for Debtors-in-Possession will be engaged in complex arbitration in front of JAMS for another client. The remaining attorneys in the office will be working on the arbitration; thus, the Debtors-in-Possession are requesting that the court continue the hearing on the Adequacy of the Disclosure Statement to November 20, 2014 (the only date in November on the court's Modesto Calendar), to allow Debtors-in-Possession until October 23, 2014 to file their Amendments.

The prosecution of this case will not be unduly deterred by the Debtors in Possession preparing the plan they wish to propose and an accurate disclosure statement, filing that plan and proposed disclosure statement, provide creditors with notice that such a proposed plan and disclosure statement have been filed, and a noticed hearing on a motion to approve that disclosure statement.

Debtors in Possession filed the initial proposed plan and disclosure statement on May 22, 2014. Plan, Dckt. 115; Disclosure Statement, Dckt. 116;

Notice of Hearing on Disclosure Statement, Dckt. 118. The hearing on the disclosure statement was set for July 24, 2014.

On July 17, 2014, the Debtors in Possession filed the First Amended Disclosure Statement. Dckt. 156. The court continued the hearing on the Disclosure Statement to October 30, 2014. Civil Minutes, Dckt. 163. The court required Debtors in Possession to file the final amended proposed disclosure statement by August 15, 2014, and serving in on parties in interest requesting a copy. Opposition to the final proposed disclosure statement was required to be filed on or before August 29, 2014.

On August 14, 2014, one day before the amended disclosure statement was due, Debtors in Possession filed a motion requesting that the court extend the time for filing the document. Motion, Dckt. 169. Debtors in Possession argued that a continuance was proper because they were still negotiating terms with several creditors and a tenant for their commercial property. The court granted the request, giving the Debtors in Possession an additional month, until September 12, 2014, to file the further amended disclosure statement. Responses to the proposed amended disclosure statement are required to be filed on or before October 3, 2014. Order, Dckt. 181, filed on September 8, 2014.

Debtors in Possession state in the present Motion that they still need more time to negotiate commercial lease terms. Now Debtors in Possession want the time to file documents for this continued motion extended to October 23, 2014, one week before the continued hearing. In addition, Debtor in Possession request that the court continue the hearing to November 20, 2014.

At this point, the court concludes that not approving the existing disclosure statement and affording Debtors in Possession, creditors, and possible lessors whatever reasonable time they need for the good faith, diligent prosecution of this case proper. Continuing the hearing further runs counter to proper notice and prosecution of the case. Rather, it is beginning to take on the nature of a strategy to delay prosecution and the Debtors in Possession advancing a Plan to a confirmation hearing. This bankruptcy case is entering into its sixteenth month, without a proposed plan moving toward confirmation.

The Motion is denied.

The court shall issue a Minute Order in substantially in the following form:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Time to File filed by the Debtors-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Extend the Time is denied. The court does not impose any deadline for Debtors in Possession to file a disclosure statement and proposed plan in this case.

30. 13-91189-E-11 MICHAEL/JUDY HOUSE
RMY-14 Robert M Yaspan

MOTION FOR APPROVAL OF STIPULATION TO EXTEND ORDER ON MOTION TO AUTHORIZE USE OF CASH COLLATERAL THROUGH DECEMBER 31, 2014
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 September 18, 2014. 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. At the hearing ----------.

The Motion for Approval of Stipulation to Extend Order on Motion to Authorize Use of Cash Collateral Through December 31, 2014 is granted, with the use of cash collateral, pursuant to the order, authorized for the period of October 2, 2014, through December 31, 2014.

Debtors-in-Possession Michael House and Judy House ("Debtors-in-Possession") request an order approving the Stipulation to Extend Order on

Motion to Authorize Use of Cash Collateral Through December 31, 2014 ("Stipulation"), with the creditors alleging secured claims against the cash collateral for properties located at 6231 Smith Road, Oakdale, California ("Smith Ranch"), and 2107 South Stearns Road, Oakdale, California ("Triumph Ranch")(collectively the "Properties"). The creditors are Karen D. House, as Trustee of the Arthur C. House & Karen D. House 1998 Living Trust, UDT (the "Trust"); Oak Valley Community Bank ("Oak Valley"); American AgCredit ("AAC"); and Petaluma Acquisition, LLC ("Petaluma") (collectively, the "Creditors").

Prior Hearings

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.

Current Motion

This Motion requests the approval of the stipulation to extend the February 20, 2014 order issued by this court, that approved the use of cash collateral by the Debtors-in-Possession though and including August 31, 2014 to December 31, 2014. Other than extending the time for the usage of cash collateral through December 31, 2014, the only provision changed from the February Order was (a) the payment to the Trust on the Smith Property to the attorney for the Trust, instead of Karen House; and (b) confirming that none of the payments to Creditors will be deemed a waiver, or prejudice the rights and defenses of Debtors-in-Possession against Creditors.

The Motion states that Debtors-in-Possession own the subject properties that generate rental income. Debtors-in-Possession claim that they rely on the income of the property for their personal living expenses and to pay the expenses of the Properties. On September 9, 2013, the court entered an order authorizing Debtors-in-Possession to use cash collateral through February 28, 2014. On January 13, 2014, Debtors-in-Possession filed a second motion for use of cash collateral with an updated budget. The amounts claimed pursuant to the deeds of trust against each of the Properties as of June 13, 2013, are as follows:

Property Description	Position	Lienholder	Amount Claimed Due as of June 25, 2013	Assignment of Rents	Exhibit
Smith Ranch	1st	Arthur and Karen House Trust	$101,481.71	Yes	A
Smith Ranch	2nd	Oak Valley Community Bank	$103,690.98	Yes	B

Triumph Ranch	1st	American AG Creditor	$383,618.94	Yes	C
Triumph Ranch	2nd	Arthur and Karen House Trust	$588,942.86	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.

Debtors-in-Possession state that the approval of Debtors'-in-Possession use of cash collateral, on an interim and final basis, will enable Debtors-in-Possession to pay their personal and business-related expenses. Without the use of cash collateral, Debtors-in-Possession assert estate properties may be lost, utilities can be discontinued, and Debtors will not be able to pay for certain personal expenses.

Debtors-in-Possession state the rental income has been pledged as collateral for the farm-rental properties located at 6231 Smith Road, Oakdale, California and 2107 South Stearns Road, Oakdale, California. The primary income for the bankruptcy estate is the rent received from Petaluma Acquisition which is not only a lender, but a tenant for the estate properties, the Smith Ranch and Triumph Ranch. The rental income for both properties is paid as one payment, and is the primary income for the estate. Debtors-in-Possession need the income to continue operating the properties and for personal expenses.

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.

The budget that was submitted to Court in the Second Motion is as follows (subject to a 20% line by line variance potential variance):

Income	Expense	Amount
Rental income from Smith and Triumph Properties		26,210.00
Other Income (no 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	(1,692.88)
	Payment to Arthur and Karen House Trust (Triumph Ranch)	(5,516.74)
	Payment to Arthur and Karen House Trust (Smith Ranch)	(1,200.00)
	Expenses for Ranches	(1,370.00)
	Rent	(1,500.00)
	Utilities	(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)
	Monthly Cash Flow Profit	**480.68**

February Order granted the Second Motion and allowed the Debtors-in-Possession to use the cash collateral through August 31, 2014. Subsequent to the filing of the Second Motion, Debtors have been informed that the Trust has agreed that Oak Valley Bank is in first position on the Smith Ranch. Also, Debtors have filed an adversary proceeding against the Trust with regard to the extent, validity, and amount of the Trust's liens against the Properties, despite the amounts claimed due.

The Motion states that at the end of August 20, 2014, the Debtors-in-Possession and the Creditors entered into the Stipulation that agreed to consensually extend the right for the Debtors-in-Possession to continue to use the cash collateral for properties through December 31, 2014, pursuant to the terms of the February Order, with the only change in the February Order being the payment to the Trust was being made to the attorney trust account for the Trust's attorney, and that none of the parties were waiving their rights or defenses. No other provision was changed in the February Order, Exhibit 2, Dckt. No.

The Motion states that Debtors-in-Possession are current, on payments to lenders through September 2014 and on their obligation with the United States Trustee. The Debtors-in-Possession acknowledge that the Stipulation was incorrectly filed by Debtors' counsel, as the Debtors-in-Possession did not file a Motion to request court approval of the Stipulation. The court issued an Order to Show Cause and ordered the Debtors-in-Possession to file this Motion no later than October 15, 2014.

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. Debtors request the approval of a stipulation entered between the Debtors-in-Possession and their creditors to extend the February 20, 2014 order issued by this court, that approved the use of cash collateral by the Debtors-in-Possession though and including August 31, 2014, to December 31, 2014.

Other than extending the time for the usage of cash collateral through December 31, 2014, the only provision changed from the February Order was (a)

the payment to the Trust on the Smith Property to the attorney for the Trust, instead of Karen House; and (b) confirming that none of the payments to Creditors will be deemed a waiver, or prejudice the rights and defenses of Debtors-in-Possession against Creditors.

Debtors-in-Possession seek authorization to use cash collateral to pay personal expenses post-petition taxes, utilities, insurance and maintenance on the rental property pursuant to the above-referenced monthly budget. Debtors-in-Possession argue that the lender is adequately protected by the continued operations of the businesses and are also protected by a replacement lien against the estate's. Debtors-in-Possession state that they 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.

The court authorizes the use of cash collateral, pursuant to the order of the court, for the period October 2, 2014, through December 31, 2014, 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 first 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 the terms of the Stipulation to Extend Order on Motion to Authorize Use of Cash Collateral, pursuant to this order, for the period October 2, 2014, through December 31, 2014 (Exhibit 2, Dckt. No. 204), and the cash collateral may be used, through an including December 31, 2014, 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	(1,692.88)

Payment to Arthur and Karen House Trust (Triumph Ranch)	(5,516.74)
Payment to Arthur and Karen House Trust (Smith Ranch)	(1,200.00)
Expenses for Ranches	(1,370.00)
Rent	(1,500.00)
Utilities	(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.

The authorization to use cash collateral pursuant to this order is without prejudice of the parties in interest to consent to the use of cash collateral for the period September 1, 2014, through October 1, 2014.

31. 14-91091-E-7 **DOCTOR'S MEDICAL CENTER**
Steven S. Altman

CONTINUED ORDER TO APPEAR AND FOUNDATIONSHOW CAUSE WHY A PATIENT CARE OMBUDSMAN SHOULD NOT BE APPOINTED
8-1-14 [4]

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

The court's decision is to xxxxxxxxxxxxx.

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

RESPONSE BY DEBTOR

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

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

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

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

DISCUSSION

11 U.S.C. § 333 (a)(1) states that,

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

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

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

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

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

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

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

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

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

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

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

CONTINUANCE

The court continued the hearing on this matter from September 4, 2014 to this hearing date to afford the officers and directors of the Debtor, and the doctors who have medical records for their patients in the possession of the Debtor, to identify one or more persons who shall be personally responsible for the care, security, access to, and destruction of the confidential records. Civil Minutes, Dckt. No. 10.

NO RESPONSE FILED BY DEBTOR OR RESPONSIBLE PRINCIPALS OF DEBTOR

The Debtor's Schedules list the following persons as Officers of the Debtor:

Gary Boudreaux	President
Patrick Dodd	Vice President
Anthony Johnston	Secretary
Nick Blom	Treasurer
Victor Montes	Acting Executive Director
Louis Casolari	Service League President, Terminated March 2013
Clare Walker	Service League President-Elect, Terminated March 2013

xxxxxxxxxxxxxxxxxxxxxxx

Nothing further on this matter, however, has been filed on the court docket.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Order to Show Cause is sustained and ----------.

32. 10-92299-E-7 JOHN MARQUEZ
IAM-4 Michael W. Malter

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MACDONALD FERNANDEZ, LLP FOR IAIN A. MACDONALD, CHAPTER 7 TRUSTEE(S)
9-4-14 [148]

Final Ruling: No appearance at the October 2, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2014. By the court's calculation, 29 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.

FEES REQUESTED

Macdonald Fernandez, LLP (formerly Macdonald & Associates, or "Macdonald"), the Attorneys ("Applicant") for Stephen C. Ferlmann, Chapter 7 Trustee the ("Client" or "Trustee"), 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 May 1, 2012 through September 4, 2014. The order of the court approving employment of Applicant was entered on May 7, 2012, Dckt. 93.

Background of Case

The Application describes the bankruptcy case as highly contingent. There was no property in the estate. Applicant was charged with the task of prosecuting an objection to the debtor's discharge. The litigation was hard fought by the debtor and resulted in a $53,000 settlement.

Objection to Discharge: Applicant incurred $3,990.00 in fees in performing services connected to this category. The Trustee requested Macdonald to represent him for the sole purpose of filing an objection to the debtor's discharge. The Application states that Macdonald prepared and filed a complaint, to which the debtor demurred. Macdonald prepared and filed a first amended complaint to deny debtor's discharge.

The litigation was sharply contested. The Debtor's counsel, Binder & Malter, claimed responsibility for the errors in the schedules. During the course of the proceeding, the Applicant received several lengthy letters written by debtor's counsel chronicling the errors and attributing the errors to problems in its office. The Application claims that there were interrogatories exchanged, status conferences attended, and ultimately a mediation. The resolution advocate, Michael J. Isaacs, is an attorney who serves on the Bankruptcy Dispute Resolution Panel of the Northern District. Mediation was conducted in San Francisco and took one-half day. The Trustee agreed that the blame should fall on the shoulders of debtor's counsel and agreed to settle the case by accepting a payment of $53,000 and dismissing the adversary proceeding. The Trustee ultimately received the sum of $53,000 from the litigation.

Case Administration: The Applicant incurred $965.00 in fees in relation to this category. The Applicant advised the Trustee with respect to his duties and, among other things, coordinated with the Trustee with respect to the administration of the estate.

Claims Analysis and Objections: Applicant states that it incurred $1,225.00 in fees for tasks under this category in this case. The Motion states that Applicant reviewed and analyzed claims filed by Gold's Gym Oakland (Claim No. 10) and Law Offices of Carl E. Combs (Claim No. 8) as priority claims. These Claims were not entitled to priority.

The Applicant prepared and filed claim objections and served notice of opportunity for hearing. The court disallowed them as priority claims. In addition, applicant communicated with counsel for Rabobank, which had filed claims in the amount of $2,241,678.25 (Claim No. 2), and $2,362,817.95 (Claim No. 3). It appeared to the Trustee that the claim should be disallowed because Rabobank had foreclosed on its collateral. The Applicant obtained agreement from Rabobank's counsel to withdraw the claims.

Relief from Stay Matters: The Motion states that Applicant reviewed and analyzed a motion for relief from stay filed by Chase, and incurred $385.00 in fees in connection with this category.

Fee Application: The Applicant incurred $2,680.00 in fees in filing two applications for compensation. The first, in May 2014, was superseded by the within application, occasioned by the Trustee's request for additional services with respect to claims review and objections.

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 obtaining a settlement payment of $53,000 for the Trustee, following the dismissal of an adversary proceeding against Debtor, in addition to the withdrawal of two claims (Proof of Claim No. 2 in the amount of $2,241,678.25, and Proof of Claim No. 3 for $2,362,817.95) by Creditor Rabobank, which had already foreclosed on the Debtor's collateral. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Iain A. Macdonald	20.70	$350.00	$7,245.00
Ning Yu	6.80	$250.00	$1,700.00
Kathleen Miller	2.70	$150.00	$405.00
	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			$9,350.00

FN.1. The court notes that, in computing the hours provided by Applicant in its Motion and reported in Applicant's time sheets, the total amount incurred in legal fees for services performed by Iain Macdonald, Ning Yu, and Kathleen Miller should be $9,350.00, and not the $9,345.00 listed by Applicant in the motion.

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. The First and Final Application for Fees in the amount of $9,350.00 pursuant to 11 U.S.C. § 330 is 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 also seeks the allowance and recovery of costs and expenses in the amount of $648.63 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Facsimile	24 pages @ $0.20	$4.80
Postage		$157.83
Photocopying	2,120 copies @ $0.20	$424.00
PACER		$19.40
Scanner	7 pages @ $0.20	$1.40
Telephonic Appearances		$41.20
Total Costs Requested in Application		$648.63

Costs in the amount of $648.63 pursuant to 11 U.S.C. § 330 are authorized to be paid by the Trustee 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 $ 9,350.00
Costs and Expenses $ 648.63

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 Macdonald Fernandez, LLP ("Applicant"), Attorney for 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 Macdonald Fernandez, LLP is allowed the following fees and expenses as a professional of the Estate:

Macdonald Fernandez, LLP, Professional Employed by Trustee

Fees in the amount of $ 9,350.00
Expenses in the amount of $ 648.63

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.

33. 12-92570-E-12 COELHO DAIRY
JPJ-1 Thomas O. Gillis

CONTINUED OBJECTION TO CLAIM OF STATE FUND, CLAIM NUMBER 28
7-29-14 [515]

Final Ruling: No appearance at the October 2, 2014 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, Debtor's Attorney, and Office of the United States Trustee on July 29, 2014. By the court's calculation, 55 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 28 of State Fund is overruled without prejudice.

Jan Johnson, the Trustee, ("Objector") requests that the court disallow the claim of State Fund ("Creditor"), Proof of Claim No. 28 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $2,749.38. Objector asserts that the Claim has not been timely not timely filed. *See* Fed. R. Bankr. P. 3002(c).

SEPTEMBER 25, 2014 HEARING

At the September 25, 2014 hearing, the court continued the Objection to Proof of Claim to October 2, 2014 at 10:30 a.m. in Department E of the United States Bankruptcy Court, 1200 I Street, Suite 4, Modesto, California to allow the parties to file and serve any supplemental pleadings. Dckt. 530.

A review of the docket shows that nothing has been filed by any party.

DISCUSSION

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

However, after review of the proof of service for the instant motion, the court cannot determine that process has been effectively served by mail to meet the minimum constitutional due process requirements. It appears that State Fund was served with the instant motion to a P.O. Box. See Proof of Service, Dckt. 518. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously."). Based on the P.O. Box, the court cannot determine if there is anyone at the P.O. Box who can accept service or if the P.O. Box is merely a payment drop box where checks are imaged for presentment to banks for payment.

Additionally, State Fund is a "public enterprise fund." Cal. Ins. Code §§ 11773 & 11770. The State Fund website lists Vernon Steiner as President and CEO of State Fund. http://www.statefundca.com. However, reviewing the 2013 Statutory Annual Report on the website, Carol R. Newman is listed as the Acting President and CEO and Peter A. Guastamachio as Acting CFO. Additionally, in State Fund's 2013 Annual Statement, State Fund's statutory home office is listed at 333 Bush St., 8th Floor, San Francisco, California. A cursory search of State Fund's website revealed an actual address and actual individuals in which service could properly be served.

While an objection to claim is not a motion for purposes of Federal Rule of Bankruptcy Procedure 9013, proper service and Due Process are still necessary components for the court to hear the objection. Due process requires that notice be served in such a way that it is "reasonably calculated, under all the circumstances, to apprise interested parties... of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Even under this low reasonableness threshold, it does not appear that the State Fund was properly served with notice of this objection. The fact that a cursory search of State Fund provides the names of at least two officers and a street address in San Francisco indicates that service on a P.O. Box, an address that, incidentally, does not show up on a quick search, is not "reasonably calculated" to reach

those involved at the State Fund and provide notice of the Debtor's objection to claim.

Based on the evidence before the court and the failure to properly serve a necessary party, the Objection to the Proof of Claim is overruled 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 Objection to Claim of State Fund, Creditor filed in this case by Jan Johnson, 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 28 of State Fund is overruled without prejudice.