UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 29, 2015 at 10:30 a.m.

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1. 13-20051-E-7 HSM-9 | **TYRONE BARBER**
Cory A. Birnberg | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK & MARIOS, LLP FOR AARON A. AVERY, TRUSTEE'S ATTORNEY(S)**
9-25-15 [356]

Final Ruling: No appearance at the October 29, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on September 25, 2015. By the court's calculation, 34 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.

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

The period for which the fees are requested is for the period December 17, 2013 through October 29, 2015. The order of the court approving employment of Applicant was entered on December 17, 2015, Dckt. 206. Applicant requests fees in the reduced amount of $15,000.00. The Motion states that counsel is limiting request for compensation to the amount of $15,000.00, with no

reimbursement for costs, as an accommodation to the 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 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, among other things, conducting and analyzing legal research with regards to issues such as accounts receivable assets and Debtor's most significant asset, preparing and filing various motions, and providing advise to the Trustee in negotiation agreements with the Debtor and other issues arising from the bankruptcy case. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Investigation: Applicant spent 10.00 hours in this category. Applicant assisted Client with conducting research in connection with Debtor's most significant asset, allegations of hidden assets, and various accounts receivable assets. Applicant also provided general review of assets and related background material.

Asset Disposition: Applicant spent 42.50 hours in this category. Applicant analyzed legal issues in connection with accounts receivable assets, advised and represented the Trustee in negotiations with the Debtor concerning an asset purchase agreement, drafted asset purchase agreement, and drafted motion to approve the agreement.

Claims: Applicant spent 6.70 hours in this category. Applicant conducted analysis of legal and factual issues in connection with disputed claims, and advised the Trustee in connection with Debtor's prosecution of claims objections.

Litigation: Applicant spent 7.45 hours in this category. Applicant

advised and represented Trustee in connection with motion for relief from stay, and provided analysis of litigation commenced to remove mechanics' lien recorded by Debtor.

General: Applicant spent 37.30 hours in this category. Applicant assisted Client with providing advise pertaining to general case matters, conducting initial review of issues in connection with converted former Chapter 11 case, preparing and filing various Motions (e.g., Employment Application, Compensation Application, Extension of exemptions and discharge of deadlines), and in advising and representing Trustee in connection with repeated communications from an active creditor.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Aaron A. Avery	96.6	$144.30	$13,939.38
Howard S. Nevins	7.35	$144.30	$1,060.61
Total Fees For Period of Application			$14,999.99 FN.1

FN.1. According to the Applicant's time sheets, the Applicant has incurred a total of $26,085.50 in fees and $534.88 in costs. However, the Applicant is limiting the request for compensation to a total of $15,000.00. To reach this total, the Applicant averaged the total hourly rate to $144.30 per attorney. While this equates to $14,999.99, the Applicant rounded up for administrative ease.

Additionally, the court notes that there appears to be a slight discrepancy in the total number hours reported in the Motion and those reflected in the time sheets. However, in light of the requested reduced rate, the de minimis hourly discrepancy is waived.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $534.88 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies		$389.00

Mileage to Modesto Bankruptcy Court		$85.88
Telephonic Court Appearance(s)		$60.00
Total Costs Requested in Application		$534.88

FEES AND COSTS & EXPENSES ALLOWED

Fees

Reduced Rate

Applicant seeks to be paid a single sum of $15,000.00 for its fees incurred for the Client. First and Final Fees in the amount of $15,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $ 15,000.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Hefner, Stark & Marois, LLP (“Applicant”), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Hefner, Stark & Marois, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Hefner, Stark & Marois, LLP, Professional Employed by Trustee
>
> Fees in the amount of $ 15,000.00,
>
> The Fees and Costs pursuant to this Applicant, and Fees in the single sum of $15,000.00 are approved as final fees pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of

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

2. 14-29361-E-7 WALTER SCHAEFER
DNL-12 Douglas B. Jacobs

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ROBERT B. STEWART
10-1-15 [216]

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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

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

The Motion For Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The settlement recovers for the estate 100% of the monies which are the subject to the asserted rights of the estate.

The Motion for Approval of Compromise is granted.

Kimberly Husted, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Robert Stewart ("Settlor"). The claims and disputes to be resolved by the proposed settlement are the turnover of $59,000.00 transferred to Settlor, which the Movant asserts is property of the estate.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit I in support of the Motion, Dckt. 219):

A. Within 7 calendar days of execution of the Agreement, Settlor shall turnover the $59,000.00 to the Movant.

B. Within 7 calendar days of receipt of the $59,000.00, the Movant shall cause a motion for approval of the Agreement to be filed with the court.

C. Any proof of claim by Settlor before the hearing on the Trustee's approval motion shall be deemed timely.

D. The Movant, in consideration of the above, releases Settlor with respect to any losses, debts, charges, damages, demands, obligations, causes of action, claims, lawsuits, liabilities, breaches of duty, misfeasance, malfeasance, promises, controversies, contracts, judgments, awards, penalties, costs, and expenses, of whatever, nature, type, kinds, description, or character, arising solely from Settlor's receipt of the $59,000.00. The Movant's release only applies to Settlor's receipt of the $59,000.00 and the $59,000.00 check.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Under the Settlement Movant shall recover $59,000.00 in satisfaction of the estate's claim for recovery of the property, with an asserted value of $59,000.00, from Settlor.

Probability of Success

The Movant asserts that this factor is neutral. The Movant is not aware of any difficulties in collection.

Difficulties in Collection

The Movant asserts that this favor weighs in favor of the Agreement

because it avoids the cost and expense of litigation because the turnover is in the full amount alleged rather than a reduction.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, which are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The Agreement allows for the full recovery of the $59,000.00 that the Movant asserts is property of the estate. It provides the release of the Settlor for any liability as to those monies. Additionally, the Agreement avoids the need to litigate the underlying payment. The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Kimberly Husted, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Compromise between Movant and Robert Stewart ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit I in support of the Motion(Docket Number 219).
>
> **IT IS FURTHER ORDERED** that the Proof of Claim filed by Robert B Stewart, Proof of Claim No. 13, and any other proof of claim filed on or before October 28, 2015, are deemed timely. This is without prejudice to an other objections which may be filed thereto.

3. 14-29361-E-7 WALTER SCHAEFER MOTION TO USE ESTATE FUNDS
DNL-14 Douglas B. Jacobs 10-1-15 [213]

Final Ruling: No appearance at the October 29, 2015 hearing is required.

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

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

The Motion to Use Estate Funds 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 Use Estate Funds is granted.

Kimberly Husted, the Chapter 7 Trustee, filed the instant Motion to Use Estate Funds on October 1, 2015. Dckt. 213. The Trustee seeks an order authorizing the Trustee to use estate funds to pay insurance, PG&E bills, and any other necessary expenses to maintain the estate's interest in the real property commonly known as 763 Main Street, Chester, California (the "Property"), in an aggregate amount not to exceed $12,000.00. The Trustee also requests authority to reimburse herself in the amount of $3,469.74 for expenses paid for a locksmith and PG&E bills, on account of the Property.

In support the Trustee states that, prior to the public auction of assets of the estate, the Trustee learned that there were outstanding charges amounting to $3,035.74 from PG&E that would affect the Property's service. The charges were incurred after the conversion of the case to a Chapter 7. In order to keep the power on, which would allow the auction to proceed which was to take place at the Property, the Trustee paid the PG&E bill. In addition, to preserve the value and maintain the estate's interest in the Property, the Trustee paid an additional $434.00 to a locksmith to change the Property's locks. The Trustee also anticipates that there will be additional expenses

necessary to maintain the Property until it is sold, including continued PG&E costs and the cost to insure the Property. The Trustee estimates that the continued PG&E costs and the cost to insure the Property will be approximately $900.00 per month.

Additionally, the Trustee states that Bank of the West, Ryan Bauer, and Ashman Company Auctioneers and Appraiser, Inc., all of which assert a lien against the equipment and funds of the estate, consent to the instant Motion. Dckt. 222, Exhibit B.

APPLICABLE LAW

As a Trustee, the Trustee can use, sell, or sell property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

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

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

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

DISCUSSION

A review of the unique facts of the instant case, namely the unauthorized sale of the Debtor's equipment to Ashman and the transfer of monies to the Debtor in contemplation of such sale, the Trustee's actions in paying the PG&E bill to ensure the auction could proceed was reasonable and necessary. Such payments allowed for the Property to maintain electricity on the premises during the Property and the continued payment will ensure that the value of the Property remains relatively consistent. As to the change of locks, the Trustee's business judgment as to replacing the locks falls within the purview of the cash collateral use under 11 U.S.C. § 363(b). The locksmith also provided for the continued security of an asset of the estate.

As to the authorization for the continued payment of the PG&E electricity and insurance, the court finds that these expected expenses are necessary and reasonable to secure the value of the Property prior to the sale of the Property. The continued payments for the electricity and insurance will ensure that the Property is maintained during the pendency of the case and will ensure that the estate receives that most value for the Property when the Property is sold.

The parties in interest who have asserted an interest in these proceeds have consented in writing to the use of the proceeds as requested. Stipulation Re: Use of Estate Fund; Exhibit B, Dckt. 222.

Therefore, the Motion is granted and the Trustee is authorized the use estate funds to pay insurance, PG&E bills, and any other necessary expenses to maintain the estate's interest in the Property in an aggregate amount not to exceed $12,000.00. The Trustee is also authorized to reimburse herself in the amount of $3,469.74 for expenses paid for a locksmith and PG&E bills on 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 Use Estate Funds filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, the Stipulation of the creditors asserting liens against the monies having been filed with the court, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the Trustee is authorized to use cash collateral of the estate to pay insurance, PG&E bills, and any other necessary expenses to maintain the estate's interest in the real property commonly known as 763 Main Street, Chester, California (the "Property") in an aggregate amount not to exceed $12,000.00.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to reimburse herself in the amount of $3,469.74 for expenses paid for a locksmith and PG&E bills on the Property.

4. 10-23577-E-11 GLORIA FREEMAN
WFH-50 Reno F.R. Fernandez

MOTION FOR APPROVAL OF FINAL DISTRIBUTION
10-5-15 [1667]

Tentative Ruling: The Motion for Approval of Final Distribution 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, Plan Administrator, creditors, parties requesting special notice, and Office of the United States Trustee on October 5, 2015. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion for Approval of Final Distribution 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 Final Distribution is granted.

David Flemmer, Plan Administrator, filed the instant Motion for Approval of Final Distribution on October 5, 2015. Dckt. 1667.

The Plan Administrator states that the court approved the Plan Administrator's Plan of Reorganization on September 17, 2013. The Plan provided for the full payment of administrative claims. The Plan Administrator states that because he had sold the estate's real property during the case, no distributions were to be made to secured creditors but instead they retained their liens on the collateral securing such claims. Class 3.01 consisted of a convenience class of claims less than or equal to $7,000.00, or voluntarily reduced to $7,000.00 by the creditor. Class 3.012 consisted of general unsecured claims. Class 3.03 consisted of subordinated claims, which were

primarily tax penalties. Class 3.04 consisted of claims that had previously satisfied in the case. Class 4 consisted of the equity interest of the Debtor. The plan also provided for certain assets to be abandoned to the Debtor.

The effective date of the plan occurred on October 1, 2013. The Plan Administrator distributed $31,607.60 to Class 3.01 in 2013. On November 3, 2014, the Plan Administrator made an interim distribution of $213,215.20 to Class 3.02 general unsecured creditors. Dckt. 1670, Exhibit A.

In January 2015, the Plan Administrator filed objections to the claims of the Internal Revenue Service and Franchise Tax Board. The objections were sustained in March 2015. Dckts. 1657 and 1658.

The Plan Administrator states that he has liquidated all assets of the estate not otherwise abandoned to the Debtor. The Plan Administrator estimates that $35,287.31 will be the amount of the distribution.

The Plan Administrator is holding $47,362.31 in cash on hand. The Plan Administrator is receiving a refund of $2,925.00 from the U.S. Trustee's office. Out of these funds, the Plan Administrator estimates $10,000.00 in fees for Flemmer Associates and $5,000.00 in fees for Wilke Fleury, counsel for the Trustee and Plan Administrator) leaving $35,287.31 for distribution. Given that there are no outstanding disputes over the allowance of the claims and the court's own review of the proposed distribution schedule, the Motion is granted and the court approves the payment of the creditors in accordance with the final distribution attached as Exhibit A, Dckt. 1670. Distributions may be made in accordance with the terms of the plan.

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 Approval of final Distribution filed by Plan Administrator having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the court approves the payment of the creditors in accordance with the final distribution attached as Exhibit A, Dckt. 1670. Distributions may be made in accordance with the terms of the plan.

5. 10-23577-E-11 GLORIA FREEMAN
WFH-51 Reno F.R. Fernandez

MOTION FOR FINAL DECREE AND ORDER CLOSING CASE
10-5-15 [1672]

Tentative Ruling: The Motion for Entry of Final Decree and Order Closing Case 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, Plan Administrator, creditors, parties requesting special notice, and Office of the United States Trustee on October 5, 2015. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion for Entry of Final Decree and Order Closing Case 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 Entry of Final Decree and Order Closing Case is granted.

David Flemmer, Plan Administrator, filed the instant Motion for Entry of Final Decree and Order Closing Case on October 5, 2015. Dckt. 1672.

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) additionally states that the court is required to close a case after an estate is fully administered and the court has discharged the trustee." The fact that the estate has been fully administered merely means that all available property has been collected and

all required payments made. *In re Menk* (9th Cir. BAP 1999) 241 BR 896, 911.

To determine whether a Chapter 11 case has been "fully administered," the court considers whether:

- the plan confirmation order is final;
- deposits required by the plan have been distributed;
- property to be transferred under the plan has been transferred;
- the debtor (or the debtor's successor under the plan) has taken control of the business or of the property dealt with by the plan;
- plan payments have commenced; and
- all motions, contested matters and adversary proceedings have been finally resolved.

FRBP 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. See FRBP 3022, Adv. Comm. Note (1991); *see In re John G. Berg Assocs., Inc*. (BC ED PA 1992) 138 BR 782, 786.

The Plan Administrator states that the court approved the Plan Administrator's Plan of Reorganization on September 17, 2013. The Plan provided for the full payment of administrative claims. The Plan Administrator states that because he had sold the estate's real property during the case, no distributions were to be made to secured creditors but instead they retained their liens on the collateral securing such claims. Class 3.01 consisted of a convenience class of claims less than or equal to $7,000.00, or voluntarily reduced to $7,000.00 by the creditor. Class 3.012 consisted of general unsecured claims. Class 3.03 consisted of subordinated claims, which were primarily tax penalties. Class 3.04 consisted of claims that had previously satisfied in the case. Class 4 consisted of the equity interest of the Debtor. The plan also provided for certain assets to be abandoned to the Debtor.

The Plan Administrator asserts that all assets of the estate not abandoned to the Debtor have been liquidated and all litigation has been resolved. While the proposed final distribution to Class 3.02 will occur after the closing of the case, the Plan Administrator believes the pendency of the final distribution does not prevent the estate from being fully administered.

Thus, the court finds that Debtors have satisfactorily met the above-listed factors, determining whether the Chapter 11 bankruptcy estate has been fully administered within the meaning of 11 U.S.C. § 350(a). The court will enter a final decree closing Debtors' case.

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 Final Decree and Order Closing Case filed by the Plan Administrator having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Debtors' Chapter 11 Bankruptcy Case is closed pursuant to 11 U.S.C. § 350(a) and Fed. R. Bankr. P. 3022.

6. 15-20081-E-7 DNL-6 JANET ROBINSON Jared A. Day MOTION FOR TURNOVER OF PROPERTY 10-1-15 [96]

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

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

Below is the court's tentative ruling.

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

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

The Motion for Turnover 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.

The Motion for Turnover is granted.

J. Michael Hopper, Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the property

of the estate, as follows:

1. All post-petition rents collected by the Debtor on account of certain real property located at 681 8th Street, Richmond, California;

2. Rent in the sum of $8,925.00 collected from February 2015 to August 2015, on account of the 8th Street Property;

3. Certain real property located at 725 Acacia Avenue, Richmond, California; and

4. Any post-petition rents collected on account of the Acacia Property.

(the "Property").

Movant alleges that Debtor's Amended Schedule B, filed April 8, 2015, disclosed for the first time the Debtor's one-sixth interest in the probate estate of her father. At that time, Debtor represented the 8th Street Property as the sole asset of the probate estate, and never disclosed the Debtor's interest in the Acacia Property.

At the second meeting of creditors, the Debtor confirmed that she had an interest in the 8th Street Property, and stated that the Subject Property was generating $1,275.00 in rental income, and monthly mortgage payments approximated in the amount of $268.00. At the fourth, and final, meeting of Creditors, the Debtor failed to provide any of the requested documentation and information related to the other purported owners of the 8th Street Property.

Movant asserts that as part of its investigation, a public record search was caused to be performed. The public record reflected that, on the petition date, the 8th Street Property was solely in the Debtor's name. The same day the Grant Deed for the 8th Street Property was recorded, a Grand Deed was recorded that reflects that Julietta C. Robinson conveyed to Debtor and five other individuals the Acacia Property. Public records reflect that the title to this property remains in the Debtor's name.

Movant notes that on September 3, 2015, this court entered an order granting the Trustee's motion to sell the 8th Street Property. Dckt. 90.

Movant alleges that to date, Debtor has not provided any documentation or information related to the 8th Street Property, the post-petition rents collected, the Acacia Property, and the owners of the Acacia Property from the Debtor's counsel.

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

> (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the

trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Trustee has initiated this proceeding to compel Debtors deliver property to the Trustee. Federal Rule of Bankruptcy Procedure permits the trustee to obtain turnover from the Debtor without filing an adversary proceeding. This Motion for the injunctive relief, in the form of a court order requiring that Debtors turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *In re Hernandez*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *See also* 11 U.S.C.A. §§ 541(a), 542(a). Section 542(a) requires one in possession of property of the estate to deliver such property to the Trustee. Pursuant to 11 U.S.C. § 542, a Trustee is entitled to turnover of all property of estate from Debtors. Most notably, pursuant to 11 U.S.C. § 521(a)(4), the Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

No opposition has been filed to this motion by the Debtors or other parties in interest.

Here, the Trustee has provided sufficient evidence that the property requested is, in fact, property of the estate. The Trustee has diligently attempted to discover assets of the estate which the Debtor has not been forthright in disclosing. The property sought by the Trustee was not disclosed by the Debtor but instead had to be discovered through public search and the repeated Meeting of Creditors.

Therefore, the Motion is granted and the Debtor is ordered to turnover the Property to the Trustee on or before noon on November 20, 2015.

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

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

IT IS FURTHER ORDERED that Janet L. Robinson ("Debtor"), shall deliver on or before noon on November 20, 2015, possession of the property, including:

1. All post-petition rents collected by the Debtor on account of certain real property located at 681 8th Street, Richmond, California;

2. Rent in the sum of $8,925.00 collected from February 2015 to August 2015, on account of the 8th Street Property;

3. Certain real property located at 725 Acacia Avenue, Richmond, California; and

4. Any post-petition rents collected on account of the Acacia Property.

(the "Property") with all of their personal property, personal property of any other persons which Debtors, and each of them, allowed access to the Property; and any other person or persons that Debtors, and each of them, allowed access to the Property removed from the Property.

IT IS FURTHER ORDERED that the monies turned over shall be in the form of a cashier's check or other certified funds issued by a bank or credit union with physical branches in California or a money order issued by an entity with has physical locations in California. The cashier's check, certified funds, or money order, and any documents relating to the possession or control of other property to be turned over, shall be delivered to the Trustee at the following address: J. Michael Hopper, Trustee, **xxxxxxxxxxx, xxxxxxxxxxxxx.**

7. 15-20081-E-7 JANET ROBINSON
DNL-7 Jared A. Day

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
10-9-15 [102]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 9, 2015. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor 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 Deadline to File a Complaint Objecting to Discharge of the Debtor is granted.

J. Michael Hopper, the Chapter 7 Trustee, filed the instant Motion to Extend Deadline to File a Complain Objecting to Discharge of the Debtor on October 9, 2015. Dckt. 1167.

The Trustee states that the deadline to file a complaint objecting to the discharge of the Debtors was initially set for May 11, 2015. The court approved a stipulation extending the time to object through June 30, 2015.

Dckt. 65.

The Trustee requests that the deadline for the Trustee to file a complaint objecting to the discharge of the Debtors be extended until some unspecified date due to new information being discovered after the passage of the deadline.

The Trustee states that, prior to the deadline passing, Mercedes-Benz Financial Services USA LLC commenced Adversary Proceeding No. 15-02086 against the Debtor seeking a determination of the debt owed by the Debtor be deemed nondischargeable and objecting to Debtor's discharge. On August 18, 2015, the court entered a judgment in favor of Mercedes and against the Debtor determining the debt owed to Mercedes nondischargeable, denying the objection to the Debtor's discharge, and staying further proceedings on the causes of action relating to the Debtor's discharge.

The Trustee argues that pursuant to Fed. R. Bankr. P. 4004(b)(2) an extension is proper because there were grounds for objection to discharge under 11 U.S.C. § 727(d) which the Trustee did not know of until after the passage of the deadline. The Trustee states that the Trustee has held four Meeting of Creditors to obtain facts pertaining to the Debtor's schedules, assets, and finances. The Trustee researched the disclosed assets in that he obtained a property report for the 8th Street Property and grant deed prior to the running of the deadline. The Trustee states the Debtor failed to cooperated in getting this information. At the time the deadline passed, the Trustee did not believe he had any ground to object to the discharge.

However, the Trustee now states it appears that the Debtor intentionally misrepresented her assets and liabilities in her schedules and when under oath when she told the Trustee she had no other interest in property. The deed for the Acacia Property was recorded the same day as the 8th Street Property. The Acacia Property was conveyed by the Debtor's mother, and the Debtor apparently knew she had a one-sixth interest in some property. The Trustee argues that it is impossible that the Debtor would have known about the 8th Street Property but not the Acacia Property.

Additionally, the Trustee argues that revocation of discharge pursuant to 11 U.S.C. § 727(d) would have been proper since the Debtor received rents on account of the 8th Street Property, and the Debtor has knowingly and fraudulently failed to deliver the collected rents to the Trustee.

Federal Rule of Bankruptcy Procedure 1017(e)(1) provides that the court may extend for cause the time for filing a motion pursuant to 11 U.S.C. § 707(b). The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b). When the deadline has passed, the court is allowed to extend the deadline if there was later discovered information that would provide a basis for revocation of discharge under 11 U.S.C. § 727(d). Specifically, Fed. R. Bankr. P. 4004(b)(2) states:

> A motion to extend the time to object to discharge may be filed after the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant

> did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.

Here, the Trustee has performed diligently and thoroughly to obtain information as to assets of the estate and the accuracy of the Debtor's schedules. Based on the Motion and supporting documents, the court is convinced that the Trustee did not learn of the Debtor's interest in the Acacia Property and the rents until after the passage of the continued deadline. The newly discovered information are sufficient grounds, at least facially, for a revocation of discharge pursuant to 11 U.S.C. § 727(d).

Seeing as no objections and for cause, the court grants the Motion and extends the deadline to file a complaint objecting to discharge of the Debtor to **January 29, 2016**.

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 to extend the Deadline to File a Complaint Objecting to the Discharge of the Debtor filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the deadline to file a complain objecting to discharge of the Debtors is extended to and including **January 29, 2016**.

8. 12-34690-E-7 FAUSTO VILLALOBOS
DNL-8 Scott J. Sagaria

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH THE COUNTY OF SACRAMENTO
10-1-15 [152]

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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

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

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

Thomas Aceituno, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with County of Sacramento ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising from the eminent domain proceeding in Sacramento County Superior Court Case No. 34-2012-00135789.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit B in support of the Motion, Dckt. 156):

A. The Settlor shall pay $18,500.00 as the principal amount of just compensation for the taking plus $167.00 for interest, for a total compensation of $18,667.00.

B. The Settlor shall pay the cost associated with code enforcement fees related to a 2014 junk and rubbish nuisance violation case involving the subject property in the total amount of

$2,164.22.

C. Upon payment, the Settlor shall prepare to the state court for approval of a final order of condemnation that resolves the state court case.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Under the terms the Settlement all claims arising from the eminent domain state court case are fully and completely settled, with all such claims released and the estate receiving compensation for the taking.

Probability of Success

The Movant asserts that this factor weighs in favor of the Agreement because it settles the remaining issue of compensation in the eminent domain proceeding. Since the compensation amount is based upon the appraisal done by the Settlor, the Movant states that it would be difficult to succeed in obtaining a higher award when the Settlor's appraisal and the Movant's appraisal does not significantly differ.

Difficulties in Collection

The Movant states that this factor is neutral and that he is unaware of any difficulty.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, given the questions of law and fact which would be the subject of a trial. Additional fees would be incurred to the appraiser. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case

proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The proposed settlement fairly and equitably provides the estate compensation for the taking of the estate's property. The settlement allows the party from litigating further when the valuation of the property has come in significantly the same as the Settlor's own appraisal. The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Thomas Aceituno, the Chapter 7 trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Compromise between Movant and County of Sacramento ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit B in support of the Motion(Docket Number 156).

9. 15-21393-E-11 RICKIE WALKER ORDER TO SHOW CAUSE
RHS-1 Pro Se 9-16-15 [73]

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on September 23, 2015. By the court's calculation, 36 days' notice was provided.

The Order to Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were required to file responses on or before October 2, 2015. Other than the Debtor's statement of non-opposition, no responses were filed.

Debtor filed a Statement of Non-Opposition to the Order to Show Cause and the dismissal of the case. Dckt. 79.

The Order to Show Cause is sustained and the case is dismissed.

On September 16, 2015, the court issued an Order to Show Cause. Dckt. 73. The court specifically ordered:

> **IT IS ORDERED** that at 10:30 a.m. on October 29, 2015, Rickie Walker, the Debtor and Debtor in Possession, shall appear and show cause why the court should not dismiss this Chapter 11 case for the grounds, findings, and conclusion which are preliminarily stated in this Order to Show Cause.
>
> **IT IS FURTHER ORDERED** that written responses, including the presentation of competent, credible, admissible evidence, to this Order to Show Cause by Rickie Walker shall be filed and served on all parties in interest, including the U.S. Trustee, on or before October 2, 2015
>
> **IT IS FURTHER ORDERED** that Responses by any parties in interest to the Order to Show Cause or the Response filed by Debtor Rickie Walker, shall be filed and served on or before October 16, 2015.
>
> **IT IS FURTHER ORDERED** that Replies, if any, by Rickie Walker to the Responses filed by any party in interest shall be filed and served on or before October 23, 2015.

BACKGROUND

Richie Walker, the Chapter 11 Debtor and Debtor in Possession, commenced this bankruptcy case on February 24, 2015. At the most recent Status Conference, the court noted as follows:

SEPTEMBER 9, 2015 STATUS CONFERENCE

> This voluntary Chapter 11 case was filed on February 24, 2015. The Debtor has served as the Debtor in Possession since the commencement of this case. No proposed Chapter 11 Plan and Disclosure statement has been filed in this case. This case has been pending for two hundred days. No substantive motions have been filed in the case.
>
> The court has determined this case to be a "small business case" as defined by 11 U.S.C. § 101(51C). Order, Dckt. 36.
>
> The [then] latest Monthly Operating Report, which is for July 2015, (Dckt. 65) provides the following information:

STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS		
Item	**July 2015**	**Cumulative for Five Months of the Bankruptcy Case**
Cash Receipts		
Cash Received From Sales	$825	$7,625
Total Cash Receipts	$825	$7,625
Cash Disbursement		
No Line Items Listed		
Total Cash Disbursements	($1,275)	($7,794)
ASSETS AND LIABILITIES - BALANCE SHEET		
Assets		
Cash	$81	
Real Property	$850,000	
Furniture, Fixtures, Equipment	$5,000	

> A review of the Monthly Operating Reports reflects that Debtor is not generating income from which a Chapter 11 Plan can be funded. Further, the cash disbursement information is incomplete and appears to be facially false.

On Schedule I Debtor states that he has $17,000.00 a month in gross income from his business. Dckt. 1 at 34. On Schedule J Debtor lists having only $1,360.00 a month in expenses. *Id.* at 38. The Net Monthly Income listed on Schedule J which the estate should be receiving for the months of March through July 2015, is $16,440.00. Using the financial information provided on Schedules I and J under penalty of perjury, the Estate should have cash and cash equivalents (such as bank accounts) totaling at least $82,200.00. ($16,440.00 per month x 5 months). The estate has only $81.00.

On the Chapter 11 Statement of Your Current Monthly Income, Form 22B, Debtor states under penalty of perjury that the combined income of Debtor and Debtor's non-filing spouse is only $2,700.00 a month. Dckt. 20.

Debtor amended Schedule J on March 26, 2015. Dckt. 29 at 37-39. For two adults, Debtor states under penalty of perjury that the monthly expenses (excluding a mortgage or rent payment) is $1,886.00. By Debtor's calculations, those expenses yield Monthly Net Income of $1,764.00. However, Debtor's statement of expenses under penalty of perjury is suspect, including the following specific items:

I. Electricity, Heat, Natural Gas.....$ 50 a month

Based on the thousands of cases filed in this court, electricity and natural gas usage in the Sacramento Area well exceeds an average of $50.00 per month.

II. Telephone, Cell Phone, Internet.....$ 40 a month

III. Food and Housekeeping Supplies.....$250 a month

This expense for two adults appears to be grossly understated. Assuming only $50.00 a month for housekeeping supplies, that leaves $100.00 a month for food per person. Over a thirty day month, with three meals a day, that is only $1.11 per meal.

IV. Clothing Expense.....$0.00 a month

V. Medical and Dental Expense.....$0.00 a month

VI. Transportation.....$150 a month

On Schedule B Debtor states under penalty of perjury that he has no vehicles.

VII. Life Insurance.....$0.00 a month

VIII. Health Insurance.....$0.00 a month

IX. Vehicle Insurance.....$0.00 a month

X. Taxes.....$0.00 a month

Taken at face value, the Debtor is destitute and financially incapable of prosecuting any Chapter 11 case. Conversely, the Schedules and other information provided under penalty of perjury is grossly inaccurate, with Debtor and his non-debtor spouse hiding assets and income from the creditors and court.

Civil Minutes, Dckt. 71.

On Schedule A Debtor states that he owns one piece of residential real property with a value of $804,000.00, which is not subject to any secured claims. Dckt. 1 at 20. On Schedule B Debtor states that as of the commencement of the case he (and the bankruptcy estate) had $20,000.00 cash on hand. *Id.* at 21.

On Schedule D Debtor lists Specialize Loan Servicing, LLC (which the court recognizes as a loan servicer and not a creditor) as having a claim in the amount of $0.00, for which the collateral is the piece of residential property listed on Schedule A. *Id.* at 25. On Schedule E Debtor lists the following creditors having priority unsecured claims: (1) Specialized Loan Servicing, LLC for $1,704,706.00; (2) Realty Mortgage Comp for $52,000.00; (3) Wachovia Dealer Services for $28,600.00; and (4) Fresno Collections for $3,988.00. *Id.* at 28. On Schedule F Debtor lists Specialized Loan Servicing, LLC as having a disputed general unsecured claim of $1,704,706.60 and an undisputed claim of $250,000.00. *Id.* at 30-31.

On March 26, 2015, Debtor filed Amended Schedules B, C, D, E, F, and J, and Statement of Financial Affairs. Dckt. 29. On the Amended Statement of Financial Affairs Debtor states that his 2015 gross income was $4,000.00 and his 2015 gross income was $20,000.00. Question 1, *id.* at 7. He further states that he had no income in 2013.

On Amended Schedule B Debtor states that the cash on hand at the commencement of the bankruptcy case was $200.00. *Id.* at 22. Debtor further states that he has no accounts receivable, no interests in unincorporated associations, no customer lists, no vehicles, no office equipment or supplies, and no equipment used in business. *Id.*

On Amended Schedule D Debtor states that Specialized Loan Servicing, LLC has two undisputed secured claims of $1,076,000.00 and $255,000.00, which is secured by the residential property valued at $850,000.00 and listed on Schedule A. *Id.* at 26. Amended Schedule E lists no creditors which priority unsecured claims *(id.* at 30) and Amended Schedule F lists no creditors with general unsecured claims *(id.* at 31).

On Amended Schedule I Debtor lists $0.00 in income for himself. *Id.* at 35.

On March 26, 2015, Debtor filed a second Amended Schedule D. Dckt. 31. On this second Amended Schedule D, Debtor lists the Specialized Loan Servicing, LLC claims as disputed.

On September 4, 2015, Debtor filed a second Amended Schedule F. Dckt. 70. On the second Amended Schedule F Debtor lists two creditors having general unsecured claims, which total $2,031.00.

PRIOR BANKRUPTCY CASES

Debtor has filed two prior bankruptcy cases.

Case 08-33310

The first was a Chapter 11 case filed on September 18, 2008. 08-33310. The Debtor was in *pro se* in that case. On December 31, 2008, the court ordered the case converted to one under Chapter 7. The U.S. Trustee's report filed on November 20, 2008, states that the Debtor had failed to attend the first meeting of creditor, had not filed monthly operating reports, had not filed the required quarterly fees, and had not provided proof of insurance for three of the four residential properties in the estate. *Id.*, Dckt. 30. The Chapter 7 case was then dismissed by order filed on August 7, 2008. Dckt. 101. Though not stated in the Civil Minutes, it appears that the case was dismissed due to the failure of Debtor (who was represented by counsel for the Chapter 7 portion of the case) to attend the Chapter 7 First Meeting of Creditors. July 28, 2009 Trustee's Docket Entry Report of First Meeting.

In connection with the 2008 bankruptcy case, Debtor filed an adversary proceeding against Citibank, N.A. and other defendants. Adv. Pro. 09-2246. In this adversary proceeding Debtor was represented by counsel. The dispute related to the real property (3830 Whitney Oaks Dr., Rocklin, California) which is listed on Schedule A of the current Chapter 11 case. The adversary proceeding was dismissed for the lack of prosecution by Debtor. *Id.*, 13.

Case 10-21656

Debtor commenced his second Chapter 11 case on January 25, 2010. 10-21656. In the second Chapter 11 case he was represented by the same attorney who represented him in the Chapter 7 case and in the prior adversary proceeding. On Schedule B Debtor stated under penalty of perjury (with the assistance of counsel) that he owned no personal property (including any cash on hand, bank accounts, clothing, household goods, businesses, equipment). *Id.*, Dckt. 1 at 9-11. Debtor filed an amended Schedule B on February 22, 2010, which listed some personal property assets (but no business or business assets). *Id.*, Dckt. 21 at 13-15.

On Schedule I Debtor stated that he had income of $1,198.00 from real property. *Id.* at 23. On Schedule J Debtor stated he had expenses of $1,175.00 a month (with nothing provided for taxes, insurance, vehicles, or rental property expenses). *Id.* at 24. On the Statement of Financial Affairs Debtor confirmed that he had no other income in 2015, 2014, or 2013. Questions 1 and 2, *Id.* at 26. Debtor filed a series of amended Schedules and Statement of Financial Affairs, altering the prior information provided under penalty of perjury. Debtor confirmed that in 2010, 2009, and 2008 he had no income from employment or operation of business. Question 1, Amended Statement of Financial Affairs, Dckt. 42 at 1.

The second Chapter 11 case was converted to one under Chapter 7 by order filed on July 5, 2011. Dckt. 204. In determining that cause existed to

dismiss or convert the second Chapter 11 case, the court stated:

> Debtor opposes the motion on the basis that the estate does not in fact face a continuing loss. Debtor contends that his current average monthly income is larger than that alleged by Trustee, and in fact he is able to afford the plan payments. This argument is unsupported by any evidence. The monthly operating reports disclose that the tenant at the Michael Drive property is not paying the agreed rent of $1,196.00. Debtor has taken no steps Debtor and conflicts with the operating reports Debtor has filed with the court. Further, Debtor does not address the three other allegations which Trustee raised to show cause.
>
> Even if the estate were not facing a continuing loss, Trustee's evidence of Debtor's disregard for his fiduciary duty, failure to timely file requisite reports, and failure to provide accurate information requested by the United States Trustee are each sufficient to show cause as required by 11 U.S.C. Section 1112(b)(1).
>
> As was made clear during oral argument, the Debtor in Possession in this case has not been fulfilling is fiduciary duties to the estate. He has not maintained a debtor in possession account. A debtor in possession account the Debtor set up was closed due to overdrafts. The Debtor obtained numerous cash withdrawals from identified accounts of the Estate with no accounting for the disbursement of the monies. This cash withdrawals included multiple ones made at the Thunder Valley Casino. Grounds clearly exist to convert or dismiss this case.
> ...
>
> In this case, the U.S. Trustee argues the case should be converted so a Chapter 7 Trustee can investigate Debtor's financial transactions. Based on this investigation, the Chapter 7 Trustee may be able to administer assets for the benefit of unsecured creditors. It would be highly improper for this court, when presented with a clear failure of a debtor in possession to fulfill his fiduciary obligations, to allow the case to be dismiss and the potentially diverted monies of the Estate going unaddressed. The court agrees that given Debtors record of mismanagement of the Estate, a Chapter 7 Trustee should be permitted to determine if there are any assets which may be administered for the benefit of creditors.

Civil Minutes; *Id.*, Dckt. 203. The Debtor ultimately received his discharge in the second case which had been converted to Chapter 7.

During the second Chapter 11 case Debtor and his counsel filed a second adversary proceeding against Citibank, N.A. relating to the Whitney Oaks property (identified as the Debtor's residence). Adv. Pro. 10-2581. The court granted the defendant's motion to dismiss the second adversary proceeding. *Id.*, Dckt. 28. The Debtor and defendant stipulated to the dismissal of the second adversary proceeding.

DEBTOR'S NON-OPPOSITION

On October 1, 2015, the Debtor filed a non-opposition to the instant Order. Dckt. 79. The Debtor states that he does not oppose the dismissal of the case.

DISCUSSION

A Chapter 11 case will be dismissed or converted to a Chapter 7 case, whichever is in the best interest of the creditors, for cause. 11 U.S.C. § 1112(b)(1). Cause for dismissal includes continuing loss to the estate and the absence of a reasonable likelihood of rehabilitation, id. at § 1112(b)(4)(A), gross mismanagement of the estate, id. at § 1112(b)(4)(B), unexcused failure to timely satisfy filing and reporting requirements, id. at § 1112(b)(4)(F), and failure to timely provide information requested by the United States Trustee, id. at § 1112(b)(4)(H). However, the list of examples of cause for dismissal included in Section 1112(b) is not exhaustive. 7 Collier on Bankruptcy 1112.04[6] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.); see also Hall v. Vance, 887 F.2d 1041 (10th Cir. 1989); H.R. Rep. No. 95-595, at 405-06 (1977). Even in the absence of a motion, the court has the sua sponte power to dismiss or convert a Chapter 11 case. 11 U.S.C. § 105(a); 1112(b); 7 Collier on Bankruptcy P 1112.04[9][b] at 1112-62 - 64.1 (15th ed. rev. 2006) see also Marrama v. Citizens Bank of Mass., 549 U.S. 365 (2007) (discussing the court's "broad authority" under § 105 (a) to prevent an abuse of process).

Questions of conversion or dismissal must be dealt with through a two-step analysis: First, 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 (9th Cir. B.A.P. 2006) (citing Ho v. Dowell (In re Ho), 274 B.R. 867, 877 (9th Cir. B.A.P. 2002)).

Debtor is now in his third Chapter 11 case. The only apparently real creditor is the creditor who has the obligation secured by the Whitney Oaks property. Debtor, having obtained a Chapter 7 discharge, lists two de minimis unsecured claims on Amended Schedule F (one of which may have been discharged in the Chapter 7 case).

Debtor has no income with which to prosecute a Chapter 11 plan. Debtor's financial information is conflicting. The only affirmative action taken in this Adversary Proceeding is to conduct a 2004 examination of Wilmington Trust, the successor trustee to Citibank, N.A., Trustee. Motion, Dckt. 57. On July 31, 2015, Wilmington Trust amended its proof of claim stating that its claim of $1,692,111.72 (for which it is alleged there is an $871,949.81 arrearage) is secured by the Whitney Oaks property. Amended Proof of Claim 10-1.

While on September 4, 2015, Debtor filed an Amended Schedule F listing two de minimis general unsecured claims, the court's Claims Register reflects six creditors filing general unsecured claims totaling in excess of $5,450.00. The Internal Revenue Service has filed a priority claim for $4,128.20. Proof of Claim No. 3. This is for taxes for the 2009-2014 tax years. The attachment to Proof of Claim No. 3 states that no tax returns have been filed by Debtor for 2009, 2010, 2011, 2012, 2013, and 2014.

Whitney Oaks Community Association has filed a secured claim in the amount of $12,573.35. Proof of Claim No. 1. The assessments upon which this claim is based are stated to be for the 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015 assessment years. Attachment to Proof of Claim no. 1.

U.S. Bank, N.A., Trustee, has filed a Proof of Claim No. 9, asserting a secured claim in the amount of $505,085.67. The collateral for this claim is stated to be the Whitney Oaks property. The arrearage on this claim is stated to be $232,319.45.

The August 2015 Monthly Operating Report was filed on September 14, 2015. Dckt. 72. The information provided by that Report includes the following:

Income and Expense Detail	**Month of August 2015**	**Cumulative From Commencement of Case Through August 2015**
Beginning Cash Balance	$81	Not Provided
Cash Inflow	$1,800	Not Provided
Business Expenses	($200)	Not Provided
Personal Expenses		
Property Ins	($160)	Not Provided
Utilities	($325)	Not Provided
Food	($300)	Not Provided
Bankruptcy Quarterly Fee	($75)	Not Provided
Ending Cash Balance	$720	Not Provided

The detailed information provided on the Monthly Operating Report is not consistent with the Summary page of the Monthly Operating Report (page 1). On the Summary page, Debtor states under penalty of perjury:

A. Receipts
   1. August 2015.....$1,800
   2. Cumulative.....$9,425
B. Disbursements
   1. August 2015.....($900)
   2. Cumulative.....($9,690)
C. Cash Balance
   1. Beginning August 1, 2015.....$81
   2. Ending Aug 31, 2015.....$706.

The August 31, 2015 ending cash balance figure is not the same on the detail sheet provided as part of the Monthly Operating Report. No bank statements for a fiduciary debtor in possession account are attached to the August 2015 Monthly Operating Report. None are attached to the prior Monthly Operating Reports. The court and parties in interest are denied the bank account information. In the prior Chapter 11 case it disclosed that Debtor was withdrawing monies of the estate at a casino.

From the lack of productive prosecution of this bankruptcy case, the court concludes that there is no effective reorganization which can be prosecuted by the Debtor. The Monthly Operating Reports reflect little if any income. Schedules and the Monthly Operating Reports show unreasonable expenses for the Debtor, not providing for the most basic of survival necessities (such as clothing, medical, insurance, and taxes for the self employed). The food and household supplies are unreasonably stated at $250.00 a month.

The proofs of claim also show that Debtor is not making payments on another most basic expense - the home owners association dues for his residence. Though on Proof of Claim No. 1 they are listed at being only from $59 to $69 per year, Debtor has been financially unable (or unwilling) to pay these amount for 2008, 2009, 2010, 2012, 2013, 2014, and 2015. Debtor has not stated any objection to this, or any other proof of claim filed in this case (other than listing the "Specialized Loan Servicing, LLC" secured claims as disputed on Amended Schedule D).

Debtor has a history of not fulfilling the fiduciary duties of a debtor in possession (even when represented by counsel). That has continued in this case with the incomplete Monthly Operating Reports.

The lack of good faith is further shown by the multiple amendments to schedules and statements of financial affairs in which Debtor states conflicting information under penalty of perjury. While a person may make a mistake and corrections are readily accepted (and explainable), the Debtor repeatedly files incomplete and inaccurate schedules and statements of financial affairs.

The Debtor has repeatedly stated on his schedules that he has no business or business assets (not listing them on the various Schedules B filed in his multiple cases). Debtor repeatedly confirms that he has no income with which to fund a Chapter 11 plan. The best he argues now is that in the future there will be some income from his janitorial business (which is not, and has not been, listed on Schedule B).

Rather than a bona fide, good faith reorganization, it appears that the Debtor is only continuing in his fight with Specialized Loan Servicing, LLC; Citibank, N.A., Trustee; Wilmington Trust; and possibly U.S. Bank, N.A., Trustee. Even with proofs of claims filed, on September 4, 2015, Debtor filed an Amended Schedule F listing only two de minimis general unsecured debts.

The Internal Revenue Service proof of claim states that Debtor has not filed a federal tax return from 2009 through 2014. Taken at the most benign, if accurate, Debtor has had no income sufficient to warrant a tax return, or even the payment of self employment taxes, for the past six years.

Based on all of the information presented in this bankruptcy case, and in light of the Debtor's two prior failed Chapter 11 cases, the court concludes that the Debtor is not prosecuting this case as required by Chapter 11; has not attempted to prosecute this case in good faith; has not truthfully and accurate completed the Schedules and Statement of Financial Affairs, and the various amendments thereto, in this case; does not have the ability to prosecute a Chapter 11 case, propose a Chapter 11 plan, or confirm a Chapter 11 plan; and that the filing and continuing of this case is an abuse of the Bankruptcy Code.

Furthermore, the Debtor does not oppose the court dismissing the bankruptcy case. Dckt. 79.

Cause exists to dismiss this Chapter 11 case. The Debtor having recently concluded a Chapter 7 case and obtaining his discharge, and there being no disclosed unencumbered assets to liquidate, dismissal of this Chapter 11 case is in the best interests of creditors.

Therefore, the Order is sustained, and the case is dismissed.

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 is sustained and the case is dismissed.

10. 14-30265-E-7 FRANK/MARINA YAVROM
Timothy Walsh

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
9-16-15 [106]

Final Ruling: No appearance at the October 27, 2015 hearing is required.

The Chapter 7 Trustee having filed a Notice of Withdrawal of the Motion to Dismiss on October 26, 2015, Dckt. 121, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the ex parte motion is granted, the Trustee's motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by Sheri L. Carello, the Chapter 7 Trustee, having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 121, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Trustee's Motion to Dismiss the Chapter 7 case is dismissed without prejudice, and the bankruptcy case shall proceed.