UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

November 12, 2015 at 10:30 a.m.

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1. 11-94410-E-7 SAWTANTRA/ARUNA CHOPRA
HSM-41 Robert M. Yaspan

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH SAWTANTRA CHOPRA AND ARNUA CHOPRA
10-22-15 [1399]

Tentative Ruling: The Motion for Approval of Compromise 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 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 holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on October 22, 2015. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(3), 21 day notice.)

The Motion for Approval of Compromise 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 Compromise is granted.

Gary Farrar, the Trustee, ("Movant" of "Trustee")) requests that the court approve a compromise and settle competing claims and defenses with Sawtantra Chopra and Aruna Chopra ("Settlor" or "Debtors"). The claims and disputes to be resolved by the proposed settlement are: the treatment of certain real and personal property for the Estate; the treatment of certain personal property for the Debtor; the withdrawal of certain Motions by Trustee; the release of certain claims by parties or entities related to Settlor-Debtor; the tax treatment of all real and personal property under this agreement; and the abandonment of certain assets by Trustee.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 1404):

1.01 TREATMENT OF THE HARTFORD ANNUITY:

1.01.1 The Debtors represent that the Debtors have been fully liquidated/surrendered/terminated, that the Debtors have no further value other than the Hartford Funds already delivered to the Trustee, and that the Debtors are aware of no claim to additional funds from Hartford in connection with the Debtors. The Debtors shall promptly notify the Trustee if they become aware of any facts inconsistent with the representations contained in this 1.01.1.

1.01.2 The Debtors shall immediately deliver to the Trustee a final accounting of the Debtors, which shall include an accounting of any surrender "bonus" or early surrender benefit received in connection with the liquidation/surrender/termination of the Hartford Annuity.

1.01.3 The Estate shall retain the sum of $440,000.00 from the Debtors, plus one-half (½) of the early surrender "bonus" or early surrender benefit received in connection with the liquidation/surrender/termination of the Debtors ("Estate Portion of Debtors"), in the amount set forth in Exhibit "C" to this Agreement ($24,845.09). The funds received by the Estate in connection with the Estate Portion of Debtors shall remain property of the Estate, available for distribution to the Estate and its creditors. The Estate Portion of Debtors shall accrue entirely to the benefit of the Estate and its creditors. The Debtors expressly waive the ability to exempt any portion of the Estate Portion of Debtors, to seek to compel abandonment of any portion thereof, or to argue that any portion thereof is not Estate property, or is subject to offset against any other sums owed to the Estate.

1.01.4 The remaining proceeds of the Debtors not constituting the Estate Portion of Debtors shall belong to the Debtors free and clear of the claims of the Estate ("Debtors' Portion of Debtors"), and shall immediately be distributed by check payable to the Debtors by the Trustee upon entry of a "final order" approving the Motion delivered c/o the Law Offices of Robert M. Yaspan.

1.01.5 The Debtors shall be responsible for payment of the proportionate share of taxes relating to the Debtors' Portion of Debtors, if any.

1.01.6 The Estate shall be responsible for payment of the proportionate share of taxes relating to the Estate Portion of Debtors, if any.

1.01.7 The parties shall execute such documentation as is necessary to notify third parties of the treatment of the Debtors.

1.02 TREATMENT OF THE PSP:

1.02.1 The Sawtantra Chopra M.D., Inc. Profit Sharing Plan ("PSP") shall remain property that is either; (a) exempt; or (b) deemed to be not property of the Estate created by the Case. In either situation, the PSP shall be the property of the Debtors unaffected by the Case.

1.02.2 The parties shall execute such documentation as is necessary to notify third parties of the treatment of the PSP.

1.02.3 The Debtors, in their individual and/or representative capacities, shall be responsible for any taxes, fees, or other charges associated with the PSP, or transactions related to the PSP, and shall indemnify and hold harmless the Trustee and the Estate from any claims related thereto or arising therefrom. The Trustee and the Estate shall have no responsibility for any taxes, fees, or other charges associated with the PSP, or transactions related to the PSP.

1.02.4 As a condition of this Agreement, the Debtors shall deliver to the Trustee, in the form attached hereto as Exhibit "D," written, notarized agreements from SCMC and the PSP, in which SCMC and the PSP agree to be responsible for any taxes, fees, or other charges associated with the PSP, or transactions related to the PSP, and shall indemnify and hold harmless the Trustee and the Estate from any claims related thereto or arising therefrom.

1.03 TREATMENT OF ASSETS SENT TO ESTATE BY NEW ERA:

1.03.1 The funds received by the Estate in connection with the New Era Check shall remain unrestricted property of the Estate, free and clear of the claims of the Debtors, and shall be available for distribution to the Estate and its creditors. The funds received by the Estate in connection with the New Era Check shall accrue entirely to the benefit of the Estate and its creditors. The Debtors expressly waive the ability to exempt any portion of the funds received by the Estate in connection with the New Era Check, to seek to compel abandonment of any portion thereof, or to argue that any portion thereof is not Estate property, or is subject to offset against any other sums owed to the Estate.

1.03.2 The funds received by the Estate in connection with the New Era Cashiers Check shall remain unrestricted property of the Estate, free and clear of the claims of the Debtors, and shall be available for distribution to the Estate and its creditors. The funds received by the Estate in connection with the New Era Cashiers Check shall accrue entirely to the benefit of the Estate and its creditors. The Debtors expressly waive the ability to exempt any

portion of the funds received by the Estate in connection with the New Era Cashiers Check, to seek to compel abandonment of any portion thereof, or to argue that any portion thereof is not Estate property, or is subject to offset against any other sums owed to the Estate.

1.03.3 The Dale Road Instruments shall remain the property of the Estate free and clear of the claims of the Debtors. The Dale Road Instruments, and any funds received in connection therewith, shall accrue entirely to the benefit of the Estate and its creditors. The Debtors expressly waive the ability to exempt any portion of the Dale Road Instruments, the obligations represented thereby, or funds received in connection therewith, to seek to compel abandonment of any portion thereof} or to argue that any portion thereof is not Estate property. or is subject to offset against any other sums owed to the Estate.

1.03.4 The Oakdale Road Instruments shall remain the property of the Estate free and clear of the claims of the Debtors. The Oakdale Road Instruments, and any funds received in connection therewith, shall accrue entirely to the benefit of the Estate and its creditors. The Debtors expressly waive the ability to exempt any portion of the Oakdale Road Instruments, the obligations represented thereby, or funds received in connection therewith, to seek to compel abandonment of any portion thereof, or to argue that any portion thereof is not Estate property, or is subject to offset against any other sums owed to the Estate.

1.03.5 Whatever taxes are due by the Estate in connection with the delivery of the New Era Check, New Era Cashiers Check, Dale Road Instruments, and Oakdale Road Instruments to the Estate shall be borne by the Estate.

1.03.6 The parties shall execute such documentation as is necessary to notify third parties of the treatment of the assets described in this paragraph 1.03 and its subparts.

1.03.7 This Agreement is conditioned upon the Debtors obtaining an unconditional release, in the form attached hereto as Exhibit “E,” from NEW ERA, and its successors, if any, of any claim to the New Era Check, New Era Cashiers Check, Dale Road Instruments, and Oakdale Road Instruments.

1.03.8 This Agreement is conditioned upon the Debtors obtaining any additional instruments from New Era, and its successors, if any, or any other party, as may be required for the Trustee to administer the New Era Check, New Era Cashiers Check, Dale Road Instruments, and Oakdale Road Instruments as assets of the Estate. This shall be a continuing obligation of the Debtors until the New Era Check, New Era Cashiers Check, Dale Road Instruments, and Oakdale Road Instruments are fully administered by the Trustee.

1.04 TREATMENT OF SCMC STOCK AND SCMC ASSETS:

1.04.1 The Medical Corporation Payment shall remain property of the Estate and shall be available for distribution to the Estate and its creditors. The Medical Corporation Payment shall accrue entirely to the benefit of the Estate and its creditors. The Debtors expressly waive the ability to exempt any portion of the Medical Corporation Payment, to seek to compel abandonment of any portion thereof, or to argue that any portion thereof is not Estate property, or is subject to offset against any other sums owed to the Estate.

1.04.2 The Estate shall abandon any and all interests it has in the ownership of SCMC, the SCMC Bank Account, and the SCMC Assets, if any.

1.04.3 The Debtors shall pay the SCMC Liabilities and, in their individual and/or representative capacities, shall indemnify and hold harmless the Estate and the Trustee from any claims with respect thereto. Notwithstanding the foregoing, the Debtors agree that no SCMC Liabilities have ever been liabilities of the Estate.

1.04.4 The parties shall execute such documentation as is necessary to notify third parties of the treatment of the assets described in this paragraph 1.04 and its subparts.

1.05 TREATMENT OF MEDICARE REFUND

1.05.1 The Medicare Refund shall be paid by the Estate to the Debtors, in the same manner as described above in Paragraph 1.01.4.

1.06 RELEASES

1.06.1 As a condition to this Agreement, the Debtors shall obtain the following releases:

1.06.1.1 Sanjiv and Sheena Chopra ("the Kids") shall deliver a general release of the Estate, the Trustee, and his agents and professionals, and shall agree not to file, and to withdraw, any proofs of claim, applications for compensation, requests for payment, or motions or applications for allowance of administrative or any other claims in connection with the Case. The Kids have executed or will execute a release, in the form attached hereto as Exhibit "F," which, upon valid delivery, the Trustee has agreed will satisfy the requirements of this Paragraph 1.06.1.1.

1.06.1.2 The Fear Firm shall deliver a release of the Estate, the Trustee, and his agents and professionals, and shall agree not to file, and to withdraw, any proofs of claim, applications for compensation, requests for payment, or motions or applications for allowance of administrative or any other claims in connection with the Case with the exception of any administrative claim previously allowed by the COURT.

1.06.1.3 The Yaspan Firm shall deliver a general release of the Estate, the Trustee, and his agents and professionals, and shall agree not to file, and to withdraw, any proofs of claim, applications for compensation, requests for payment, or motions or applications for allowance of administrative or any other claims in connection with the Case.

1.06.1.4 The Yaspan Firm shall deliver a general release of the Estate, the Trustee, and his agents and professionals, and shall agree not to file, and to withdraw, any proofs of claim, applications for compensation, requests for payment, or motions or applications for allowance of administrative or any other claims in connection with the Case.

1.06.1.5 In addition to the release required by 1.03.7 above, NEW ERA, and its successors, if any, shall deliver a general release of the Estate, the Trustee, and his agents and professionals, and shall agree not to file, and to withdraw, any proofs of claim, applications for compensation,

requests for payment, or motions or applications for allowance of administrative or any other claims in correction with the Case.

1.06.1.6 SCMC shall deliver a general release of the Estate, the Trustee, and his agents and professionals, and shall agree not to file, and to withdraw, any proofs of claim, applications for compensation, requests for payment, or motions or applications for allowance of administrative or any other claims in connection with the Case.

1.06.1.7 The Coleman Firm shall deliver a general release of the Estate, the Trustee, and his agents and professionals, and shall agree not to file, and to withdraw, any proofs of claim, applications for compensation, requests for payment, or motions or applications for allowance of administrative or any other claims in connection with the Case.

1.06.1.8 The PSP shall deliver a general release of the Estate, the Trustee, and his agents and professionals, and shall agree not to file, and to withdraw, any proofs of claim, applications for compensation, requests for payment, or motions or applications for allowance of administrative or any other claims in connection with the Case.

1.06.1.9 The Debtors shall deliver a general release of the Estate, the Trustee, and his agents and professionals, and shall agree not to file, and to withdraw, any proofs of claim, applications for compensation, requests for payment, or motions or applications for allowance of administrative or any other claims in connection with the Case.

1.06.l.10 The Clack Firm shall deliver a general release of the Estate, the Trustee, and his agents and professionals, and shall agree not to file, and to withdraw, any proofs of claim, applications for compensation, requests for payment, or motions or applications for allowance of administrative or any other claims in connection with the Case.

1.06.1.11 Dashmesh Kumar Chopra or Dameshmesh Kumar Chopra, as the case may be, shall deliver a general release of the Estate, the Trustee, and his agents and professionals, and shall agree not to file, and to withdraw, any proofs of claim, applications for compensation, requests for payment, or motions or applications for allowance of administrative or any other claims in connection with the Case.

1.06.1.12 Renu Chopra shall deliver a general release of the Estate, the Trustee, and his agents and professionals, and shall agree not to file, and to withdraw, any proofs of claim, applications for compensation, requests for payment, or motions or applications for allowance of administrative or any other claims in correction with the Case.

l.06.1.13 Narindera P. Dhawan, or any representatives of his estate, or his successors or heirs, as the case may be, shall deliver a general release of the Estate, the Trustee, and his agents and professionals, and shall agree not to file, and to withdraw, any proofs of claim, applications for compensation, requests for payment, or motions or applications for allowance of administrative or any other claims in connection with the Case.

1.07 OTHER PROVISIONS

1.07.1 The Trustee shall file stipulations and applications to continue the hearings on the Discharge Motion and the Exemptions Motion until July 23, 2015, with the deadlines to object to exemptions and discharge, if granted, extended until July 27, 2015. The Debtors agree to so stipulate, including prior to finalization of this Agreement.

1.07.2 Upon entry of the "final order" approving the Motion, and receipt by the Trustee of the accounting, indemnifications, releases, and instruments set forth in 1.01.2, 1.02.4, 1.03.7, 1.03.8 and 1.06, the Trustee shall withdraw the Discharge Motion and the Exemptions Motion, and shall not object to the Debtors' discharge, or the Debtors' claims of exemptions covering the Exempt Property, and shall allow such deadlines to lapse, provided, however, that the Trustee shall have the ability to object to any claims of exemptions set forth in subsequent amendments to the Debtors' Schedule C. Until entry of the "final order" approving the Motion, and receipt by the Trustee of the accounting, indemnifications, releases, and instruments set forth in 1.01.2, 1.02.4, 1.03.7, 1.03.8 and 1.06, the Debtors shall stipulate to continue the hearings on Discharge Motion and the Exemptions Motion, with the deadlines, if granted, to be set during the week following each continued hearing date.

1.07.3 Any Exempt Property that is not otherwise provided for in this Agreement shall be exempt upon entry of the "final order" granting the Motion, and lapse of the deadline to object to current claims of exemptions covering the Exempt Property set forth in 1.07.1 above.

1.07.4 Unless otherwise provided for in this Agreement, all funds received by the Trustee in connection with this Case, both in the Trustee'S capacities as Chapter 11 Trustee and Chapter 7 Trustee, and other assets of the Estate, shall remain property of the Estate, available for distribution to the Estate'S creditors. Such funds and other assets of the Estate shall accrue entirely to the benefit of the Estate and its creditors. The Debtors expressly waive the ability to exempt any portion thereof} to seek to compel abandonment of any portion thereof, or to argue that any portion thereof is not Estate property, or is subject to offset against any other sums owed to the Estate.

1.07.5 In accordance with applicable bankruptcy and nonbankruptcy law, all tax attributes of the Debtors at the commencement of this Case, or of the Estate following the commencement of this Case, shall remain the exclusive property of the Estate, to be applied or otherwise used only by the Estate except for: (a) Passive Activity Losses not used by the Estate through the completion of the Estate's 2014 tax returns, associated with property abandoned by the Trustee or the Estate, (b) Exempt Property, (c) property purchased from the Estate by the Debtors; and (d) the equity interests in, and the assets of, SCMC, which shall be the exclusive property of the Debtors. Notwithstanding the foregoing, all Net Operating Loss carryovers, as well as Capital Loss carryovers, of the Debtors at the commencement of this Case, or of the Estate following the commencement of this Case, shall remain the exclusive property of the Estate, including Net Operating Loss and Capital Loss carryovers relating to historical transactional activity on retained and abandoned assets.

1.07.6 Upon entry of the "final order" approving the Motion, the Trustee shall dismiss the adversary action against Hartford.

1.07.7 Nothing in this Agreement shall serve to release any claims of

the Trustee or the Estate against the Debtors, including for revocation of discharge, arising from unscheduled and/or undisclosed assets and liabilities. Further, all unscheduled and/or undisclosed assets shall remain property of the Estate, unaffected by this Agreement.

1.07.8 The Debtors shall indemnify and hold harmless the Trustee and the Estate from any claims against the Estate made by any familial relative of either Debtor, their successors or representatives, or entities in which they have a controlling interest. This shall be a continuing obligation of the Debtors.

1.07.9 Every release, indemnification, or other document which the Debtors are required to deliver under this Agreement shall be notarized, or the equivalent under the applicable law of the jurisdiction in which it is signed, and shall indicate the authority under which it has been signed, if signed in a representative capacity.

1.08 MISCELLANEOUS

1.08.1. The undersigned acknowledge that this Agreement effectuates the settlement of claims which are claimed and contested, and that nothing herein contained shall be construed as an admission of liability of the part of any party hereto, and that all such liability is expressly denied.

1.08.2. Each of the undersigned represents, warrants and agrees:

1.08.2.1. that no one other than the undersigned is entitled to receive the valuable consideration being received; and,

1.08.2.2. that each person executing this Agreement expressly represents that it is, or in the case of the Trustee, will be upon entry of the final order on the Motion, duly authorized to execute this Agreement on behalf of the entity it purports to represent.

1.08.3. This Agreement shall be binding upon the heirs, executors, representatives, successors and assigns of the undersigned and shall inure to the benefit thereof.

1.08.4. This Agreement contains the entire understanding of the parties to it with respect to its subject matter. The terms of this Agreement are contractual and not mere recital. No waiver or amendment of any provision of this Agreement shall be effective unless executed in writing by the parties making the waiver or amendment.

1.08.5. No party to this Agreement has made any written or oral representation other than those set forth in this Agreement, and no party has relied upon or is entering into this Agreement in reliance upon any representation other than those set forth in this Agreement. Each party is represented by counsel of its/his/her own choice and, having conferred with such counsel, is entering into this Agreement deliberately, advisedly and of its/his/her own free will and volition.

1.08.6. This Agreement shall in all respects be interpreted, enforced and governed by and under the applicable provisions of the United States Bankruptcy Code, and, to the extent that the United States Bankruptcy Code does

not apply, by and under the laws of the State of California applicable to instruments, persons and transactions having legal contacts and relationships solely within the State of California. The United States Bankruptcy Court for the Eastern District of California shall retain jurisdiction to enforce and/or interpret the provisions of this Agreement.

1.08.7. Except as set forth in the Agreement, inapplicability or unenforceability for any reason of any provision of this Agreement shall neither limit nor impair the operation or validity of any other provisions of this Agreement.

1.08.8. Except as stated herein, the parties shall bear their own attorney fees and costs incurred prior to the date of this Agreement. If; however, there is litigation of any kind to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover from the defaulting party his/her reasonable attorney fees and costs incurred in connection with such litigation.

1.08.9. This Agreement may be executed in two or more counterparts, each of which shall be considered an original, and all of which shall be considered as one and the same document. Facsimile and email signatures shall constitute original signatures.

1.08.10 The parties will execute such other and further documents as are reasonably-necessary to effectuate this Agreement.

Dckt. 1404 p. 5-14.

ADDENDUM TO TERMS OF COMPROMISE

The parties also provide an Addendum to Agreement as follows:

> The agreement ("Agreement") entered on July 20, 2015, between the bankruptcy estate of "In re Sawtantra and Aruna Chopra," Case No. 11-94410-E-7, pending in the United States Bankruptcy Court for the Eastern District of California, acting by and through Gary Farrar, the duly appointed and acting Chapter 7 Trustee of the bankruptcy estate, on the one hand, and Sawtantra Chopra and Aruna Chopra, husband and wife, Chapter 7 Debtors, on the other hand, is hereby supplemented and amended, effective August 4, 2015, as follows:
>
> 1. 1.06.1.14 is added to the Agreement, as follows:
>
> 1.06.1.14 M. Kathleen Klein, Certified Public Accountant ("Klein") shall deliver a general release of the Estate, the Trustee, and his agents and professionals, and shall agree not to file, and to withdraw, any proofs of claim, applications for compensation, requests for payment, or motions or applications for allowance of administrative or any other claims in connection with the Case.
>
> 2. The Agreement shall in all other respects remain unchanged by this Addendum.

Dckt. 1404 p. 16.

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 of the Estate, including any pre-petition claims of the Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

The Trustee states that while he is confident in the estate's litigation position, the history of the case and the litigation that would be involved, especially in terms of the exemptions, there is a risk that the estate will not prevail.

Difficulties in Collection

The Trustee asserts that there should not be difficulty in collection, namely since the Hartford Funds/Hartford Annuity has already been liquidated and turned over to the Trustee.

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 claims, given the questions of law and fact which would be the subject of a trial, especially the litigation over the claim of exemptions. Formal discovery would be required, with depositions of the Settlor, Settlor's relatives, and document production requests of third parties will be required. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

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

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The court agrees with the Trustee that the instant case has been complex and has been active for nearly four years. While the agreement is complex, it judicially, equitably, and fairly deals with the substantial assets of the Debtors. As to the Hartford Funds/Hartford Annuity, the estate will receive $468,845.09, which is 73% of the liquidated value of the asset. As to the Dale Road and Oakdale Road Property, the agreement requires that the Debtors provide a detailed release from New Era of their lien, which is expedite the sale of the properties. The Trustee estimates that the sale will result in an aggregate amount what will exceed $1,200,000.00. Additionally, the Debtors are required to deliver a release from New Era, or its successor, as to the $95,934.86.

The agreement also contemplates the release which will be conferred on the estate which the Debtors are required to deliver from professionals and family members who have contributed to the funds. These funds will be strictly for the estate and the Debtors have agreed that they shall remain as such.

The agreement also contemplates that the Trustee will not pursue certain scheduled assets, namely the cash and the New England Variable Survivorship Life Insurance Policy. The Trustee asserts, and the court agrees, that there is little to no cash value obtainable for the estate and that the cost of litigating would be substantial and would further diminish any cash benefit. The agreement also provides for the abandonment of any interests in the ownership of SCMC. Given the nature of the medical practice and the severe constraints on liquidating such an asset, the agreement provides for the abandonment of SCMC, the SCMC Bank Account, the SCMC Assets, and the MMOB Asset. The court agrees that the professional nature of the medical practice in light of the agreement and nature of the case as a whole, the abandonment of these assets is in the best interest of the estate.

While the agreement is complicated and contains substantial and detailed terms, the extra-ordinary nature of the case and the substantial assets the estate will receive and the accompanying releases warrant such detail. This settlement and compromise are is the best interest of the estate and the creditors. Therefore, 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 Gary Farrar, the 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 Sawtantra Chopra and Aruna Chopra ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion(Docket Number 1404).

2. 15-90411-E-7 JOHN/MONICA BERGMAN MOTION TO ABANDON
HSM-5 Charles L. Hastings 10-13-15 [57]

Final Ruling: No appearance at the November 12, 2015 hearing is required.

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

Correct Notice Provided. 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 13 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Motion to Abandon Property is granted.

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

The Motion filed by Gary Farrar ("Trustee") requests the court to authorize Trustee to abandon property commonly known as 3112 Highgate Road, Modesto, California (the "Property"). The Property is encumbered by the liens of Nationstar Mortgage, LLC and Bank of America, securing claims of $302,268.06 and $57,259.82, respectively. The Debtor values the Property at $270,000.00 on Schedule A.

The court finds that the Property secures claims which exceed the value of the Property, and are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate, and authorizes the Trustee to abandon the Property.

CHAMBERS PREPARED ORDER

The court shall issue an order (not 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 the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted and that the Property identified as:
>
> 1. 3112 Highgate Road, Modesto, California
>
> is abandoned to John Bergman and Monica Bergman by this order, with no further act of the Trustee required.

3. 15-90814-E-7 ICE-1 — MARKET 49 VENTURES INC, Patrick B. Greenwell — MOTION TO EMPLOY HUISMAN AUCTIONS, INC. AS AUCTIONEER(S), 10-8-15 [23]

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

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, creditors, parties requesting special notice, and Office of the United States Trustee on October 8, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is denied without prejudice.

Chapter 7 Trustee, Irma Edmonds, seeks to employ auctioneer David Huisman of Huisman Auctions, Inc. pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel to assist the Trustee in selling personal property of the estate located at the Debtor's restaurant.

The Trustee argues that Auctioneer's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present assets that the Trustee seeks to liquidate for the benefit of the estate and creditors.

Unfortunately, the Trustee failed to provide a declaration of the Auctioneer to state that he nor Huisman Auctions, Inc. represent or hold any interest adverse to the Debtor or to the estate and that they have no

connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Federal Rule of Bankruptcy Procedure 2014 requires that in an application for an order approving the employment of an auctioneer, that:

> The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Here, the Trustee failed to provide such statement.

Additionally, the Trustee failed to provide a copy of the employment agreement. While the Trustee does provide the scope of employment and the general terms of compensation in the Motion, the Trustee failed to file the actual signed employment agreement. The Trustee's Motion states that the Auctioneer will receive a 15% commission on the Property sold and reimbursement for reasonable expenses up to $2,5000.00 incurred in preparing the sale. Additionally, the Auctioneer would collect 10% buyer's fee directly from the buyers. However, without a copy of the employment agreement, the court cannot determine whether the employment of Mr. Huisman and Huisman Auctions, Inc. is beneficial or in the best interest of the estate.

Therefore, due to the failure to provide a declaration of Mr. Huisman affirming that there is no conflict and the failure to provide a copy of the employment agreement, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is denied without prejudice.

4. 15-90814-E-7 ICE-2 | **MARKET 49 VENTURES INC** **Patrick B. Greenwell** | **MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR HUISMAN AUCTIONS, INC., AUCTIONEER(S) 10-8-15 [27]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on October 8, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is denied without prejudice.

The Bankruptcy Code permits the Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

A. Washing Equipment

B. Dish and hand washing stations

C. Refrigerators, freezer, automatic ice machines, wine coolers

D. Wooden prep tables

E. Stainless steel prep tables

F. Gas grills, smoker, microwaves, toasters, barbecue, warming lights

G. Deli slicer

H. Food processor

I. Saute pans

J. Stock/soup pots

K. Sauce pans

L. Baking sheets, baking pans

M. Metal containers, plastic containers, strainers, funnels, mixing bowls, pitchers

N. Tongs, spatulas, ladles, measuring supplies

O. Chef’s knives

P. Salt and pepper shakers

Q. Entree plates, glass stem ware, glasses, cups, silverware, bowls

R. Rubber floor mats

S. Hand soap dispenser

T. Espresso machine, coffee pots, coffee dispensers, blender, crock pot

U. Tables, chairs, bar, barstools

V. Glass display case

W. Light fixture

X. Fans

Y. Printer, desk, metal cabinet, phones, bulletin boards

Z. Miscellaneous small hand tools and repair kit

AA. Vacuum

BB. Metal shelves, wooden shelves

CC. Wooden barrels

DD. Plastic cups, paper cups, napkins, plastic utensils

EE. Postcards, gift wrap/ribbons

FF. Sealed sodas, waters, non-perishable canned food items

The Movant seeks authority to sell the Property through auction. The Trustee believes that an auction will allow the Property to be exposed to a large number of prospective purchasers which will result in the best possible price.

However, the Trustee's Motion to Employ Huisman Auction, Inc. was denied without prejudice on November 4, 2015 for the failure to provide a copy of the employment agreement and the failure to provide the declaration of Mr. Huisman.

Without the court authorizing the employment of Huisman Auction, Inc., the court cannot grant the instant Motion to Sell.

Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Irma Edmonds, the Chapter 7 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Sell is denied without prejudice.

5. 10-94117-E-7 ELDON/PAMELA HENDERSON — OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
SCB-2 Scott D. Mitchell — 10-9-15 [110]

Tentative Ruling: 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).

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, parties requesting special notice, and Office of the United States Trustee on October 9, 2015. By the court's calculation, 34 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). The defaults of the non-responding parties and other parties in interest are entered.

The objection to debtors' claim of exemptions is sustained as to the exemptions asserted on Amended Schedule C filed on September 10, 2015, (Dckt. 91) described as "Retirment Funs [sic] on Hand/Chashiers Check" in the amount of $19,751.00, without prejudice to the claim of exemption asserted in Amended Schedule C filed on October 29, 2015, (Dckt. 119) in said asset in the amount of $4,642.30. Further, the time for objecting to the claim of exemption asserted in Amended Schedule C is extended through and including December 15, 2015.

Irma Edmonds, the Chapter 7 Trustee, filed the instant Objection to Exemptions on October 9, 2015. Dckt. 110. The Trustee argues that the Debtor has failed to establish by a preponderance of the evidence that the $19,751.00 in the form of a cashier's check is exempt under California Code of Civil Procedure § 703.140(b)(10)(E).

The instant case was converted to a Chapter 7 case on May 22, 2015. Dckt. 77. On September 10, 2015, the Debtor filed an amended Schedule B and C. The amended Schedule B includes: "Retirement Funs [sic] on Hand/Chashiers [sic] Check Location: 7725 Reflecting Waters Ct, Las Vegas, NV 89131." Dckt. 91. On amended Schedule C, the Debtor attempts to exempt the asset pursuant to California Code of Civil Procedure § 703.140(b)(10)(E).

The Trustee objets to the use of this exemption because the Debtor has not established by a preponderance of the evidence that the funds are exempt under California Code of Civil Procedure § 703.140(b)(10)(E). Namely, the Trustee argues that the Debtor failed to provide evidence that the funds are form a "payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service."

DEBTOR'S REPLY

The Debtor filed a reply on October 29, 2015. Dckt. 120. The Debtor states that they filed an amended Schedules B and C.

OCTOBER 29, 2015 AMENDED SCHEDULES

The Debtor filed the amended schedules on October 29, 2015. Dckt. 119. The amended schedules filed by the Debtor renamed the "Retirement Funs [sic] on Hand/Chashiers [sic] Check Location: 7725 Reflecting Waters Ct, Las Vegas, NV 89131" to "Chashiers [sic] Check 19,751.00 Location: 6316 HILL HAVEN AVE, Las Vegas NV 89130." The asset is listed under "Cash on Hand."

On amended Schedule C, the Debtor claims an exemption under California Code of Civil Procedure § 703.140(b)(5) in the amount of $4,642.30.

DISCUSSION

In response to the Trustee's Objection, the Debtor filed an amended Schedule B and C in order to respond to the Trustee's argument that California Code of Civil Procedure § 703.140(b)(10(E) is not applicable.

The Debtor is now claiming the funds are exempt pursuant to California Code of Civil Procedure § 703.140(b)(5), commonly referred to as the "wild card" exemption, in the amount of $4,642.30.

Given that the Schedules are filed under penalty of perjury and subject to Federal Rule of Bankruptcy Procedure 9011, the court believes it is necessary to expressly disallow the original exemption and set a deadline for the amended exemption filed in response to the objection to the original objection. The court now has several objections to claim of exemption in which incorrect amounts were stated or an improper statute cited as the basis for the exemption. While not perceived as the situation in this case, the court wants to make it clear that the schedules are not an opportunity to make whatever

claims one wants, and then when “caught” by the trustee or creditor amend the schedules to be honest or accurate.

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 The Objection to debtors' claim of exemptions is sustained as to the exemptions asserted on Amended Schedule C filed on September 10, 2015, (Dckt. 91) described as "Retirment Funs [sic] on Hand/Chashiers Check" in the amount of $19,751.00, without prejudice to the claim of exemption asserted in Amended Schedule C filed on October 29, 2015, (Dckt. 119) in said asset in the amount of $4,642.30.
>
> **IT IS FURTHER ORDERED** that the time for objecting to the claim of exemptions asserted in Amended Schedule C filed on October 29, 2015, is extended through and including December 15, 2015.

6. 14-91334-E-7 CATHERINE BENDER
15-9003 JB-1
BENDER V. UNITED STATES OF AMERICA ET AL

MOTION FOR ENTRY OF DEFAULT JUDGMENT
10-14-15 [23]

Final Ruling: No appearance at the November 12, 2015 hearing is required.

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 Defendant, Chapter 7 Trustee, and Office of the United States Trustee on October 14, 2015. By the court's calculation, 29 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). The defaults of the non-responding parties 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 Motion for Entry of Default Judgement is granted.

Catherine Bender ("Debtor-Plaintiff") filed the instant Motion for Entry of Default Judgment Against Defendants, United States of America and Internal Revenue Service on October 14, 2015. Dckt. 23.

The instant Adversary Proceeding No. 15-09003 on January 19, 2015. Dckt. 1. The Complaint requests that the court make a determination that the federal income tax, penalties and interest for the 2009 tax year are dischargeable and that the penalties for the 2010, 2011, and 2012 tax returns are dischargeable. The Plaintiff-Debtor further requests that those debts be discharged.

ENTRY OF DEFAULT AND ORDER RE: DEFAULT JUDGMENT PROCEDURES AGAINST IRS

The Clerk of this Court entered the default of the Internal Revenue Service of the United States of America on August 26, 2015. Dckt. 16. The court's Order for entry of default provides:

> It appears from the record that defendant the Internal Revenue Service failed to plead or otherwise defend in this proceeding as required by law.
>
> Therefore, default is entered against defendant the Internal Revenue Service as authorized by Federal Rule of

Civil Procedure 55 as incorporated by Federal Rule of Bankruptcy Procedure 7055.

The validity of service will also be considered by the court in connection with the entry of Default Judgment.

Plaintiff(s) shall apply for a default judgment within 30 days of the date of this order. A "prove-up" hearing shall be scheduled on the court's regular law and motion calendar on notice to the defendant pursuant to Local Rule 9014-1. The request for default judgment may be supported by affidavit in lieu of live testimony. Failure to comply with this order may result in the imposition of sanctions pursuant to Fed.R.Civ.P. 16(f), including, without limitation, dismissal of this adversary proceeding without further notice or hearing.

Plaintiff(s) shall apply for a default judgment within 30 days of the date of this order. The motion need not be set for hearing but shall be filed and served on the defendant. The motion shall be supported by declarations or affidavits or other admissible evidence establishing liability and a right to the relief requested. A proposed "Default Judgment" for the court's signature shall be lodged with the motion. See Bankruptcy Rule 7055(b). Failure to comply with this order may result in the imposition of sanctions pursuant to Federal Rule of Civil Procedure 16(f) and 41(b), including, without limitation, dismissal of this adversary proceeding without further notice or hearing.

Plaintiff(s) shall file supplemental declaration(s) documenting the source of the address(es) used for service of I defendant.

Plaintiff need not seek entry of judgment until resolution of the adversary proceeding as to all other parties. Fed. R. Civ. P. 54(b), incorporated by Fed. R. Bankr. P. 7054.

Dckt. 16.

ENTRY OF DEFAULT AND ORDER RE: DEFAULT JUDGMENT PROCEDURES AGAINST UNITED STATES OF AMERICA

The Clerk of this Court entered the default of the Internal Revenue Service of the United States of America a second time on August 27, 2015. Dckt. 18. The court entered as follows:

It appears from the record that defendant the Internal Revenue Service failed to plead or otherwise defend in this proceeding as required by law.

Therefore, default is entered against defendant the Internal Revenue Service as authorized by Federal Rule of Civil Procedure 55 as incorporated by Federal Rule of Bankruptcy Procedure 7055.

The validity of service will also be considered by the court in connection with the entry of Default Judgment.

Plaintiff(s) shall apply for a default judgment within 30 days of the date of this order. A "prove-up" hearing shall be scheduled on the court's regular law and motion calendar on notice to the defendant pursuant to Local Rule 9014-1. The request for default judgment may be supported by affidavit in lieu of live testimony. Failure to comply with this order may result in the imposition of sanctions pursuant to Fed.R.Civ.P. 16(f), including, without limitation, dismissal of this adversary proceeding without further notice or hearing.

Plaintiff(s) shall apply for a default judgment within 30 days of the date of this order. The motion need not be set for hearing but shall be filed and served on the defendant. The motion shall be supported by declarations or affidavits or other admissible evidence establishing liability and a right to the relief requested. A proposed "Default Judgment" for the court's signature shall be lodged with the motion. See Bankruptcy Rule 7055(b). Failure to comply with this order may result in the imposition of sanctions pursuant to Federal Rule of Civil Procedure 16(f) and 41(b), including, without limitation, dismissal of this adversary proceeding without further notice or hearing.

Plaintiff(s) shall file supplemental declaration(s) documenting the source of the address(es) used for service of I defendant.

Plaintiff need not seek entry of judgment until resolution of the adversary proceeding as to all other parties. Fed. R. Civ. P. 54(b), incorporated by Fed. R. Bankr. P. 7054.

Dckt. 18.

MOTION FOR ENTRY OF DEFAULT JUDGMENT

Plaintiff-Debtor argues that the taxes, penalties, and interest due for the 2009 tax year are “not nondischargeable under 11 U.S.C. § 523(a)(1)(A) and 11 U.S.C. § 507(A)(8).” Dckt. 23 ¶ 14. The 2009 tax returns were filed on June 6, 2011, which was at least 3 years prior to filing the Chapter 7 Bankruptcy Petition. Dckt. 25 ¶ 4.

Similarly, Plaintiff-Debtor asserts the penalties for the 2010, 2011, and 2012 tax years are dischargeable.

In contrast, Plaintiff-Debtor asserts the taxes and interest due for the 2010, 2011, and 2012 tax years are nondischargeable. She filed her 2010 tax return on April 22, 2013, her 2011 tax returns in March of 2013, and her 2012 tax returns in march 2013. Dckt. 25 ¶ 5-7.

Plaintiff-Debtor requests a determination that the 2009 tax year income tax, penalties, and interest are dischargeable. Also, she requests a determination that the penalties for the 2010, 2011, and 2012 tax years are dischargeable. Plaintiff-Debtor also requests that the 2009 income tax and interest, as well as the 2009, 2010, 2011, and 2012 penalties be collectively discharged. Dckt. 23 ¶ 15.

APPLICABLE LAW

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.

Federal Rule of Civil Procedure 55(d), as incorporated by Fed. R. Bankr. P. 7055, includes a specific provision for judgment against the United States. Specifically, the Rule states:

> A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

When the United States is a party in an adversary proceeding, "a

judgment by default cannot automatically be entered; the claimant is required to establish the claim or right to relief at a hearing under Rule 55(b).” 10 COLLIER ON BANKRUPTCY ¶ 7055.05 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.)

REQUIREMENT OF EVIDENCE

This court has required for more than five years that all parties to provide evidence in support of requests for default judgments – creditors and debtors alike. Consistent with the statutory, rule, and case law, this court does not hand out judgments merely based on allegation, speculation, and argument.

DISCUSSION

REVIEW OF EVIDENCE AND CLAIMS ASSERTED IN COMPLAINT

Whether a debt is nondischargeable is addressed in 11 U.S.C. § 523. For purposes of the instant case, § 523 states the following:

> (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt–
>
> (1) for a tax or a customs duty--
>
> (A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;
>
> (B) with respect to which a return, or equivalent report or notice, if required–
>
> (I) was not filed or given; or
>
> (ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or
>
> (C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;

11 U.S.C. § 507 provides the hierarchy of claims that receive priority. In relevant part, § 707 states:

> (a) The following expenses and claims have priority in the following order:
>
> (8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for--

> (A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition--
>
> > (I) for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;
> >
> > (ii) assessed within 240 days before the date of the filing of the petition, exclusive of–
> >
> > > (I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and
> > >
> > > (II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days; or
>
> (iii) other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case;

In determining the scope of § 507(a)(8) priority, the operative date is the date on which the tax return was due. 4 COLLIER ON BANKRUPTCY ¶ 507.11[2][b] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The operative date is not when the return was actually filed.

The priority under § 507(a)(8) does not extend to all obligations owed to governmental entities but rather only to taxes. The Supreme court has noted that "a tax is a pecuniary burden laid upon individuals or property for the purpose of supporting the Government." *United States v. CF&I Fabrications of Utah, Inc.*, 518 U.S. 213, 224 (1996). The Court further distinguished a tax from a penalty by stating "[a] tax is an enforced contribution to provide for the support of government; a penalty. . . is an exaction imposed by statute as punishment for an unlawful act." *Id.*

GROUNDS STATED IN MOTION

As counsel for Plaintiff-Debtor knows, Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007 require that the motion state with particularity the grounds upon which the relief in the motion is based. In the Motion now before the court, the grounds stated with particularity are:

A. Plaintiff-Debtor commenced her Chapter 7 bankruptcy case on September 27, 2014.

B. The default of the Internal Revenue Service of the United States of America has been entered.

C. Plaintiff owes federal income taxes for the following years:

1. 2009 Tax Year

a. Return Filed June 6, 2011.

b. Tax, including interest and penalties, (not specified) total $5,405.47.

2. 2010 Tax Year

a. Return Filed April 22, 2013.

b. Tax Penalties total $418.22, with the amount of taxes and interest not stated.

3. 2011 Tax Year

a. Return Filed March 2013.

b. Tax Penalties total $933.12, with the amount of taxes and interest not stated.

4. 2012 Tax Year

a. Return Filed March 2013.

b. Tax Penalties total $434.52, with the amount of taxes and interest not stated.

D. Plaintiff Debtor requests that the income tax, interest, and penalties for the 2009 tax year (for which the return is alleged to have been filed on June 6, 2011) and the tax penalties for the 2010, 2011, and 2012 tax years (for which returns were filed in April and March 2013) be determined dischargeable.

Motion, ¶¶ 1-13; Dckt. 23. No other grounds are alleged.

The "Motion" then includes a brief two paragraph legal argument, citing to, but not explaining the specific law involved or any of the applicable case law. As counsel for Plaintiff-Debtor knows, Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents require that the motion, points and authorities, each declaration, and the exhibits (which may be combined into one exhibit document) must be filed as separate documents. The grounds stated with particularity cannot be interspersed among the citations, quotations, arguments, speculation, and conjecture of a points and authorities.

Here, the "Legal Arguments" portion of the Motion consists of,

> "14. The taxes, penalties and interest due for the 2009 tax year are not nondischargeable under 11 USC Section 523(a)(I)(A) and 11 USC Section 507(A)(8). The tax returns were due and filed at least three years prior to the filing of the Chapter 7 Bankruptcy Petition. Additionally, The taxes and interest due for the 2010, 2011, and 2012 tax years are non-dischargeable. However. the penalties for the 2010, 2011 and 2012 tax years are dischargeable."

Id. ¶ 14. The court gives the Plaintiff-Debtor the benefit of the doubt and treats this one paragraph not as an improperly conjoined points and authorities, but merely a reference to Bankruptcy Code sections as part of the "grounds" stated with particularity. Presumably, the significance of these Bankruptcy Code sections, upon which Plaintiff-Debtor seeks to rely, and the relevant case law, would be appropriately addressed in a points and authorities. No points and authorities has been filed.

EVIDENCE PRESENTED UPON WHICH THE COURT MAY MAKE THE NECESSARY FINDINGS OF FACT TO SUPPORT THE ALLEGATIONS

The Plaintiff-Debtor has provided her testimony in a declaration in support of the Motion. Declaration, Dckt. 25. The Plaintiff-Debtor testifies:

A. The 2009 Federal Income Tax Return was filed on June 6, 2011. The taxes, interest, and penalties due totaled approximately $5,405.47.

B. The 2010 Federal Tax Return was filed on April 22, 2013.

C. The 2011 Federal Tax Return was filed in March 2013.

D. The 2012 Federal Tax Return was filed in March 2013.

No other evidence is provide din support of the Motion.

RULING

In the instant case, the Plaintiff-Debtor is seeking for the court to determine that the federal income tax, penalties and interest for the 2009 tax year are dischargeable and that the penalties for the 2010, 2011, and 2012 tax returns are dischargeable.

The underlying bankruptcy case was filed on September 27, 2014. Case No. 14-91334. The Debtor received her discharge on January 29, 2015. Case No. 14-91334, Dckt. 16. There is no evidence presented that Debtor was granted any extensions for the filing of the tax returns. Therefore, the court has to rely on basic tax law that tax returns are due by April 15 of the calendar year following December 31 of the tax year (the court further assuming that Debtor has a calendar year tax year). Thus, the Motion and evidence presented show:

Tax Year	**Last Day Return Due Without Penalty**	**Date Tax Return Filed**
2009	April 15, 2010	June 6, 2011

2010	April 15, 2011	April 22, 2013
2011	April 16, 2012 (April 16 falling on a Sunday)	March 2013
2012	April 15, 2013	March 2013

With the exception of the 2012 tax return, all the returns were filed late.

For the 2009 tax year, the return was filed on June 6, 2011. There is no evidence of any stay of the enforcement of the tax or an offer in compromise pending. The tax return was filed on June 6, 2011, which while late, is more than two years prior to the September 27, 2014 commencement of the Plaintiff-Debtor's bankruptcy case. The all tax obligations, including interest and penalties, relating to the 2009 Tax Year are dischargeable in the Plaintiff-Debtor's bankruptcy case (14-91334).

For the 2010, 2011, and 2012 tax years the returns were filed within two years of September 27, 2014 commencement of the Plaintiff-Debtor's bankruptcy case and the returns for 2011 and 2012 have dates for filing of returns which are within three years of the commencement of the Plaintiff-Debtor's bankruptcy case. The Plaintiff-Debtor does not seek a discharge of the tax obligation or the interest thereon.

The penalties, in excess of the taxes and interest due, for the 2010, 2011, and 2012 tax years are not included within a "Tax" which is nondischargeable pursuant to 11 U.S.C. § 523(a)(1). Plaintiff-Debtor has demonstrated that the penalties for the 2010, 2011, and 2012 federal income tax years are dischargeable in the Plaintiff-Debtor's bankruptcy case.

Default judgment is granted for Plaintiff-Debtor determining that the tax obligation for the 2009 Federal Income Tax Year (including all interest and penalties) and the pre-petition penalties for the 2010, 2011, and 2012 Federal Income Tax Years are dischargeable in the Plaintiff-Debtor's Chapter 7 bankruptcy case (14-91334).

Counsel for Plaintiff-Debtor shall prepare and lodge with the court a proposed judgment consistent with this ruling. The judgment shall further provide that any costs, fees, and expenses awarded Plaintiff-Debtor shall be enforced as part of the 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 Catherine Therese Bender, the Plaintiff-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 For Entry of Default is granted and that a default judgment shall be entered against the parties named as the United States of America and the Internal Revenue Service determining that:

A. The Federal Income Tax Obligation for the 2009 Federal Income Tax Year (including all interest and penalties) is dischargeable in the Plaintiff-Debtor's Chapter 7 bankruptcy case, 14-91334; and

B. The Federal Income Tax Obligations to pay penalties (in addition to the tax due and interest thereon) for the 2010, 2011, and 2012 Federal Income Tax Years are dischargeable in the Plaintiff-Debtor's Chapter 7 bankruptcy case, 14-91334.

Counsel for Plaintiff-Debtor shall prepare and lodge a proposed judgment with the court consistent with this Order and ruling as stated in the Court's Civil Minutes for this Contested Matter. The judgment shall provide that all fees, costs, and expenses awarded Plaintiff-Debtor shall be enforced as part of the judgment.

7. 12-90836-E-7 PATRICIA DAY
HSM-3 Pablo A. Tagre

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DONALD ROBERT DAY, JANET LYNN DAY, MARIAN ELAINE DAY, MARGARET ANNE DAY AND AVERIE MCNARY
10-22-15 [58]

Tentative Ruling: The Motion for Approval of Compromise 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 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, settlors, parties requesting special notice, and Office of the United States Trustee on October 22, 2015. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(3), 21 day notice.)

The Motion for Approval of Compromise 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 Compromise is granted.

Gary Farrar, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Donald

Robert Day, Janet Lynn Day, Marian Elaine Day, Margaret Anne Day and Averie McNary ("Settlor"). The claims and disputes to be resolved by the proposed settlement are in connection with the estate of the Debtor's father, Robert George Day, and the disbursement of the estate. The rights and interests at issue were not disclosed on the Schedules and are the subject to an adversary proceeding to deny Debtor her discharge (the Debtor's default and judgment denying the discharge having been entered therein, Adv No. 13-9023). The court denied the Debtor's claim of exemption in these assets.

The maximum recovery estimated by the Trustee is approximately $40,000, but this is subject to asserted offsets asserted by the Siblings against Debtor and Debtor's interests. These include allegations that Debtor misappropriated rents, failed to account for monies relating to the Property, and diverted personal property with a value asserted to be $30,000.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 62):

A. Averie McNary shall pay from the proceeds of the estate of Robert George Day in full and final satisfaction of all claims of the Trustee (including a prior award of costs in the amount of $1,000.00), the sum of $15,000.00 (Cdn).

B. Patricia Jean Day shall receive no funds, assets, or any other benefits from the estate of Robert George Day.

C. The net amount realized in the estate of Robert George Day, after payment of all fees, expenses, taxes and the settlement amount paid to the Trustee shall be divided equally among Donald Robert Day, Janet Lynn Day, Marian Elaine Day, and Margaret Anne Day.

D. All costs and fees of the parties to this agreement will be borne by each party.

E. The agreement is subject to orders being granted approving this settlement in the Court of Queen's Bench of Alberta and the United States Bankruptcy Court, Eastern District of California, Modesto Division, Case 13-09023. Averie McNary will make the necessary application to the Court of Queen's Bench of Alberta within a reasonable time and at the expense of the estate and the Trustee will make the necessary application to the Court in the United States within a reasonable time and at the expense of the Trustee.

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 $15,000.00 in satisfaction of the estate's claim for recovery of the property.

Probability of Success

The Movant asserts that the probability of success in any litigation in connection with the Robert George Day estate is likely to be speculative at best. The Movant does not anticipate cooperation with the Debtor and the fact it is a Canadian estate involving Canadian law makes the likelihood of success unknown.

Difficulties in Collection

While not directly speaking to the difficulties in collection, the Movant asserts that the Debtor has been consistently unhelpful and her cooperation is not anticipated. The Movant highlights that the situs of the litigation is in Canada and would require the hiring of a Canadian attorney.

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. Formal discovery would be required, with depositions and document production requests of third parties in both California and Canada will be required. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount, if not all, of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

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

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The Movant has established that the estate will be receiving $15,000.00 in Canadian dollars in settlement of the estate's claim, which the Movant has stated would be unlikely if litigated. The potential high cost of litigating the estate's interest in the Debtor's father estate substantially outweighs the likelihood of success in a complex legal matter. 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 Gary Farrar, the 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 Donald Robert Day, Janet Lynn Day, Marian Elaine Day, Margaret Anne Day and Averie McNary ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion(Docket Number 62).

8. 14-91441-E-7 MDM-4 GARY/JEAN ROBERTS Christian J. Younger

MOTION FOR COMPENSATION FOR MICHAEL D. MCGRANAHAN, CHAPTER 7 TRUSTEE
10-13-15 [72]

Final Ruling: No appearance at the November 12, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Creditors, parties requesting special notice, and Office of the United States Trustee on October 13, 2015. By the court's calculation, 30 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.

Michael McGranahan ("Applicant"), the Chapter 7 Trustee for the bankruptcy estate of Gary and jean Roberts ("Debtor"), 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 24, 2014, through October 8, 2015. The order of the court appointing applicant as the Interim Chapter 7 Trustee was entered on October 27, 2014. Dckt. 2. Applicant requests fees in the amount of $16,059.25 and costs in the amount of $46.11.

STATUTORY BASIS FOR TRUSTEE 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 filing significant motions. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

The Bankruptcy Code limits the maximum amount of fees which a Chapter 7 or Chapter 11 trustee may be paid in a bankruptcy case. Pursuant to 11 U.S.C. § 326(a),

> In a case under Chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25% on the first $5,00 or less, 10% on any amount in excess of $5,000 but not in excess of $50,000, 5% on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3% of such monies in excess of $1,000,000, upon all moneys disbursed or turned over in the case by th trustee to parties in interest, excluding the debtor, but including holders of secured claims.

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.

Significant Motions and Other Contested Matters: Applicant spent 54.1 hours in this category. Applicant arranged to have an attorney, broker, and accountant employed through court order, negotiated and moved for the sale of non-exempt real property at 2213 McAllister Lane, Riverbank, California, and negotiated and moved for the sale of a Fleetwood trailer. Applicant also negotiated rent with Gary Roberts, who occupied the real property through the close of escrow.

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:

Trustee requests the following fees:

25% of first $5,000.00	$1,250.00
10% of next $45,000.00	$4,500.00
5% of next $47,500.00	$10,309.25

3% of next $0.00	$0.00
Calculated Total Compensation	**$16,105.36**
Plus Adjustment	$0.00
Total Compensation	$16,105.36
Less Previously Paid	$0.00
Total Requested Compensation	**$16,105.36**

The Fees are computed on a distribution of $263,900.00 and net proceeds of $29,872.66 from the sale of the real property by the Chapter 7 Trustee, which excludes any surplus monies which are being distributed to the Debtors.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $46.11 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	$0.10/page	$17.80
Postage		$23.07
Telephone Charges		$1.70
Travel	$0.59/mile	$3.54
Total Costs Requested in Application		$46.11

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. §326(a) and that Applicant effectively used appropriate rates for the services provided. 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.

In this case, the Chapter 7 Trustee has $136,645.15 of unencumbered monies to be administered. The Chapter 7 Trustee investigated and recovered unscheduled assets, which consisted of 100% ownership interest in limited liability companies which owned fractional interests commercial property in New York and Oklahoma. These interests were subject to rights of first refusal, and the normal impediments with someone holding 3.797% and 2.938% fractional interests commercial real property. The Debtors incorrectly stated under penalty of perjury that they had only a fractional interest in “Investment Contracts” on Schedule G and failed to list the 100% ownership of the two

limited liability companies on Schedule B. (Debtors affirmatively states "none" under penalty of perjury on Schedule B. Dckt. 1 at 5.)

After the Trustee discovered the undisclosed assets and was proceeding with the sale, Debtors attempted to reconvert the case. The court denied that motion, finding the Debtors were not proceeding in good faith. Civil Minutes, Dckt. 87.

This case required significant work by the Trustee, with the full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowed as a commission to the Chapter 7 Trustee.

Costs and Expenses

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 telephone charges of $1.70. No information has been provided to the court by Applicant that these cost items were extraordinary expenses that one would expect for Applicant providing professional services to Client to be charged in addition to the professional fees requested as compensation. The court disallows $1.70 of the requested costs.

Therefore, the court will allow $44.41 in costs.

The First and Final Costs in the amount of $44.41 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$16,059.25
Costs and Expenses	$44.41

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 Michael McGranahan ("Applicant"), 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 Michael McGranahan is allowed the following fees and expenses as a professional of the Estate:

Michael McGranahan, Professional Appointed by the court,

Fees in the amount of $16,059.25
Expenses in the amount of $44.41,

IT IS FURTHER ORDERED that the costs of $1.70 are not allowed by the court.

The Fees and Costs pursuant to this Applicant, and Fees in the amount of $16,059.25 and costs of $44.41 pursuant to 11 U.S.C. § 326(a) and 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.

9. 15-90549-E-7 UST-2 — MARCUS BERNAU AND CYNTHIA SMITH — MOTION FOR IMPOSITION OF A FINE AGAINST MARY GUTIERREZ 10-1-15 [33]

Final Ruling: No appearance at the November 12, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, Mary Gutierrez, and parties requesting special notice on October 1, 2015. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Imposition of a Fine Against Mary Gutierrez is continued to 10:30 p.m. on December 3, 2015.

The United States Trustee for the Eastern District of California filed the instant Motion for Imposition of a Fine Against Mary Gutierrez on October 1, 2015. Dckt. 33.

The US Trustee argues that imposition of fine is proper because Ms. Gutierrez violated 11 U.S.C. § 110(b)(1) and (h)(2) by failing to sign or identify herself on any of the documents filed in this case as a bankruptcy petition preparer and failing to file a declaration disclosing her compensation.

Marcus Bernau and Cynthia Smith ("Debtor") filed the instant case on June 2, 2015. The Debtor are pro se and did not prepare the petition, schedules, or Statement of Financial Affairs. The Debtor hired Mary Gutierrez of "At Your Legal Services" to prepare and file their bankruptcy documents. At Ms. Gutierrez's direction, the US Trustee alleges that the Debtor paid $251.25 to Ms. Gutierrez's receptionist.

The US Trustee states that Ms. Gutierrez is not an attorney and is a "bankruptcy petition preparer." 11 U.S.C. § 101(a)(1). As such, the US Trustee argues that Ms. Gutierrez had an obligation to sign the documents which she failed to do and failed to provide a declaration of the compensation she received.

The US Trustee seeks $1,000.00 fine for the two violations.

The US Trustee notes that the bankruptcy documents were signed by someone named Constance Holt. According to the documents, Ms. Holt's address is in Salida in comparison to the Patterson address of Mary Gutierrez and "At Your Legal Services."

While Ms. Holt's signature is on the documents, the Debtor never met or spoke with Ms. Holt nor paid her anything.

MS. GUTIERREZ'S OPPOSITION

On October 30, 2015, Ms. Gutierrez filed an opposition to the instant Motion. Dckt. 42.

Ms. Gutierrez states that she did not prepare the documents in the instant case. At Your Legal Services had hired a sub-contractor paralegal who prepared the bankruptcy filings for the company. The instant case was the first bankruptcy case At Your Legal Services and the company has now refused any bankruptcy filings.

Ms. Gutierrez reiterates that she did not prepare the documents and is the reason why she did not state in the bankruptcy documents that she completed the forms. Ms. Gutierrez claims that she did not have a clear understanding of 11 U.S.C. § 110. As such, she had "Connie" sign the documents as she in fact was the party who prepared the documents. Additionally, Ms. Gutierrez asserts that Connie was in fact paid $125.00 from At York Legal Services, which is the reason that the documents state she was given that amount for preparing the documents. The rest of the monies were allegedly used for copies, filing the documents, mailing, etc. Ms. Gutierrez asserts that there was no profit for At Your Legal services.

Ms. Gutierrez concludes by stating that she did not intentionally mislead the court. She states that At Your Legal Services is no longer accepting bankruptcy filings and that the filings in this instant case were prepared by a subcontractor.

APPLICABLE LAW

Bankruptcy Courts have the jurisdiction to impose sanctions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-49 (9th Cir. 2004). The court also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see also* 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings file 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 situation.

A Bankruptcy Court is also empowered to regulate the practice of law before it. *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 to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.* 501 U.S. 32,43 (1991); *see also Lehtinen*, 564 F.3d at 1058.

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

DISCUSSION

On November 9, 2015, the court issued an order continuing the instant hearing to 10:30 a.m. on December 3, 2015 to allow the court additional time to review the Motion, Ms. Gutierrez’s response, and other documents in this case.

10. 14-91454-E-11 THE CIVIC PLAZA, LLC
CAH-9 C. Anthony Hughes

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HUGHES FINANCIAL LAW FOR C. ANTHONY HUGHES, DEBTOR'S ATTORNEY(S)
10-6-15 [203]

DEBTOR DISMISSED: 09/08/2015

Tentative Ruling: 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).

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 Creditors, parties requesting special notice, and Office of the United States Trustee on October 6, 2015. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

C. Anthony Hughes, the Attorney ("Applicant") for The Civic Plaza, LLC, the Debtor in Possession ("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 22, 2014, through September 11, 2015. The order of the court approving employment of Applicant was entered on November 17, 2014. Dckt. 53. Applicant requests fees in the amount of $32,472.50 and costs in the amount of $176.00.

DEBTOR'S OPPOSITION

John-Pierre Mendoza, the representative for Debtor, filed an objection to the instant Motion on November 4, 2015. Dckt. 209. While Debtor is a corporation and must be represented by counsel, it's counsel is the attorney seeking the fee award. While Mr. Mendoza cannot represent the Debtor or appear in *pro se*, he can be a witness. The court considers his statements as part of the review of the documents in this case.

Mr. Mendoza states that he met with Applicant on October 2014 to discuss Mr. Mendoza's previous bankruptcy case. Mr. Mendoza states that the prior bankruptcy only incurred attorneys' fees of under $22,000.00.

Mr. Mendoza states that the Applicant required $15,000.00 for his services, which Mr. Mendoza says he paid. Mr. Mendoza claims that the hourly rates charged are higher than that discussed. Furthermore, Mr. Mendoza states that he is unhappy with the ways the Applicant handled the case and believes that the fees are unfair and not earned.

Mr. Mendoza attaches copies of two emails to the opposition.

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.

OVERVIEW OF BANKRUPTCY CASE

This bankruptcy case was filed for Civil Plaza, LLC on October 22, 2014. The Petition is signed by John-Pierre Mendoza as the "Managing Member" of the Debtor and Anthony Hughes, as counsel for Debtor. Dckt. 1 at 3. The universe of assets listed under penalty of perjury owned by this Debtor consisted on the real property commonly known as 1727 N Street, Merced, California (Schedule A, *Id.* at 9) and cash on hand (not deposited at any financial institution) of $7,848.00 (Schedule B, *Id.* at 10).

On Schedule D, the only creditors with secured claim are Westamerica Bank ($931,000 secured by the N Street Property) and Merced County Tax Collector ($9,048 secured by the N Street Property). *Id.* at 13. Debtor has no Schedule E priority unsecured claim. On Schedule F Debtor lists $19,721 in general unsecured claims for "2014." *Id.* at 15-16.

On Schedule G, Debtor lists executory contracts, all of which are between another entity owned and controlled by Mr. Mendoza and third-parties. *Id.* at 17.

On the Statement of Financial Affairs Debtor states under penalty of perjury that its income in 2014 YTD was $0.00, 2013 was $0.00, and for 2012 was $0.00. Questions 1 and 1, *Id.* at 21.

Debtor further states under penalty of perjury that the following payments were made to Hughes Financial Law by John-Pierre Mendoza as the total payments made in the year preceding the bankruptcy case relating to bankruptcy:

A. October 13, 2014.....$1,000.00

B. October 17, 2014.....$3,000.00

C. October 21, 2014.....$2,000.00

Statement of Financial Affairs Question 9, *Id.* at 23.

Mr. Mendoza is identified as being the single member and owning 100% interests in the Debtor. Statement of Financial Affairs Question 21, *Id.* at 27.

A disclosure statement and plan were immediately filed in this case. Dckts. 37 and 38. Some of the significant history relating to this Debtor is stated in the Background discussion in the Disclosure Statement:

A. Debtor "manages" a single asset commercial real Property.

B. Debtor has no employees.

C. John-Pierre Mendoza originally held title to the Property.

D. In 2009 Westamerica Bank purchased the notes secured by the Property.

E. Mr. Mendoza was aware that the notes matured in 2014.

F. Mr. Mendoza was unsuccessful in attempting to renegotiate the notes with Westamerica Bank.

G. The Property was set for a non-judicial foreclosure sale.

H. On October 17, 2014 John-Pierre Mendoza transferred title of the Property into the Debtor.

Disclosure Statement, pp. 6:24-27, 7:1-9; Dckt. 37. This bankruptcy case was filed on October 22, 2014.

This is not the first bankruptcy case involving this property. John-Pierre Mendoza commended his own Chapter 11 case on September 16, 2011, in which he was represented by other counsel. Bankr. E.D. Cal. 11-93308. The case was dismissed by order filed on August 2, 2013. 11-93308, Dckt. 263. In deciding to dismiss the case, the court followed the Mr. Mendoza's request that the case be dismissed so that the could sell off his negative cash flowing properties – after having languished for twenty-one months without proposing a plan. Civil Minutes, *Id.* Dckt. 259.

The facts in this case quickly showed that this Debtor was a newly created entity which existed solely for the purpose of taking title to the one piece of real property. It had no books and records. It had no pre-petition bank accounts. It had no pre-petition creditors, other than those of Mr. Mendoza relating to this property which were listed on the Schedules.

While the Debtor in Possession filed a proposed plan and disclosure statement, the real efforts for the Estate were in attempting to negotiating an agreement with the 800 pound gorilla creditor - Westamerica Bank. The bankruptcy, through the automatic stay, worked to delay the foreclosure on the property and allowing the Debtor to engineer a sale of the Property for $1,200,000, which the court filed its order approving the sale on April 20, 2015. Dckt. 151.

The Final Report of Sale filed by the Debtor in Possession has attached to it a Seller’s Escrow Closing Statement. Dckt. 194. It states that deposits totaling $51,687.93 were “red’d from The Civic Plaza, LLC....” However, the Civil Plaza, LLC was the Debtor in Possession selling the property, not purchasing it. Attached to the Final Report of Sale are:

A. Receipt No. 10859 from TransCounty Title for the payment of $43,500.00 by cashier’s check, “Received From: The Civil Plaza, LLC, A California Limited Liability Company.”

B. Copy of Cashier’s Check payable to TransCounty Title Co in the amount of $43,500.00, with the Remitter identified as “The

Civil Plaza, LLA," and the memo line "purchase of Civic Plaza Building."

C. Receipt No. 10860 from TransCounty Title for the payment of $6,972.50 by cashier's check, "Received From: The Civil Plaza, LLC, A California Limited Liability Company."

D. Copy of Cashier's Check payable to TransCounty Title Co in the amount of $6,972.50, with the Remitter identified as "The Civil Plaza, LLA," and the memo line "purchase of Civic Plaza Building."

E. Receipt No. 10874 from TransCounty Title for the payment of $2,115.43 by cashier's check, "Received From: The Civil Plaza, LLC, A California Limited Liability Company."

F. Copy of Cashier's Check payable to TransCounty Title Co in the amount of $43,500.00, with the Remitter identified as "The Civil Plaza, LLA," and the memo line "purchase of Civic Plaza Building."

Dckt. 194 at 21-26.

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 case administration, significant motions and applications, claims administration, closing the case, conversion and dismissal, and preparing and

filing various documents. The court finds the services were beneficial to the Client and bankruptcy estate.

After two bankruptcy cases, the creation of the Debtor, the transfer of the Property into the Debtor to further delay the foreclosure sale, and a court approved sale, the Debtor in Possession and Mr. Mendoza were able to recover $250,000.00 (in the form of a note) of value from the property.

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.

Case Administration: Applicant spent 28.8 hours in this category. Applicant assisted Client with general administration of the Estate, such as coordination and compliance activities, communicating with client, and providing the U.S. Trustee with quarterly payments and status updates on the sale of property.

Automatic Stay Proceedings: Applicant spent 47.3 hours in this category. Applicant assisted Client with opposing WestAmerica Bank's Motion for Relief from the Automatic Stay.

Cash Collateral and Financing: Applicant spent 5.7 hours in this category. Applicant addressed client's questions, negotiated with secured creditor's attorney for approval of cash collateral, reviewed and drafted the stipulation, and represented the Debtor at the hearing.

Claims Administration: Applicant spent 4.6 hours in this category. Applicant reviewed and discussed the claims filed in the case with Debtor.

Closing Case or Discharge: Applicant spent 5.1 hours in this category. Applicant responded, drafted, and prepared Debtor's closing of the case.

Conversion/Dismissal: Applicant spent 2.3 hours in this category. Applicant responded, drafted, and prepared Debtor's dismissal for the case.

Fee and Employment Applications: Applicant spent 8.3 hours in this category. Applicant prepared and drafted and application for employment and appraiser, as well as supporting documents.

IDI and 341 Document Preparation and Hearing: Applicant spent 3.1 hours in this category. Applicant advised and prepared Debtor for the initial Debtor Interview with U.S. Trustee at the § 341 Meeting of Creditors, and attended the meeting.

Monthly Operating Reports and Form 26 Reporting: Applicant spent 2.1 hours in this category. Applicant reviewed and filed Debtor's MORs.

Plan and Disclosure Statement: Applicant spent 11.1 hours in this category. Applicant drafted the Plan and Disclosure Statement, advised Debtor, negotiated with the main creditor, and worked with creditors on developing the Plan.

Sale of Asset: Applicant spent 15 hours in this category. Applicant prepared the motion to sell property and negotiated with secured creditor.

Schedules, Case Administration: Applicant spent 2.1 hours in this category. Applicant prepared and filed the Schedules, Questionnaires, and Statement of Financial Affairs.

Status Report and Conference: Applicant spent 3.9 hours in this category. Applicant reviewed, drafted, and communicated with Debtor on the Status Report and Status Conference. FN.1.

FN.1. These hour totals do not reflect the hours that Applicant did not charge. See *infra*, note 2.

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**
C. Anthony Hughes, Attorney	23.9	$425.00	$10,157.50
Judith Whitman, Associate Attorney	61.8	$250.00	$15,450.00
Gabe Liberman, Associate Attorney (after May 19, 2015)	12.6	$250.00	$3,150.00
Gabe Liberman, Paralegal (prior to May 19, 2015)	13	$150.00	$1,950.00
Lorayne McKelvy-Morris, Legal Assistant	14.7	$150.00	$2,205.00
	0	$0.00	$0.00
Total Fees For Period of Application			$32,472.50

Dckt. 203, . FN.2.

FN.2. Applicant's Motion notes certain billable hours were not charged to Debtor. The following hours were not used in the court's calculation for compensation in the table above:

A. 6.5 hours for C. Anthony Hughes;
B. 0.4 hours for Gabe Liberman (Paralegal);

C. 7.9 hours for Lorayne McKelvy-Morris.

Dckt. 203 pp. 7-14 notes 2-10. Using the hours and hourly rates provided by Applicant's Motion, the court's calculation results in an increase of $440.00.

However, on review of Applicant's Exhibit C "Detailed Billing Summary of Work performed, the court finds the following charges were omitted:

A. 5.4 hours for C. Anthony Hughes;
B. 1.5 hours for Judy Whitman;
C. 0.4 hours for Gabe Liberman (Paralegal);
D. 9 hours for Lorayne McKelvy-Morris.

Dckt. 206 Exh. C. Using these omitted hours, the court calculates a total of $32,840.00, a difference of $367.50 from the total submitted in the Motion.

Finally, the court notes that the hours in the Motion total 140.8, while Exh. C shows a total of 139.8 hours.

The court will use Applicant's total request in the Motion, construing the reduced amount as a voluntary reduction.

Applicant also declares that Debtor paid an initial retainer of $18,000.00: $11,218.00 for pre-petition attorney fees, $1,213.00 for Court Filing Fees, $100.00 for costs of filing, and the balance of $5,469.00 held in trust. Dckt. 205 ¶ 7.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $176.00 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Court filing fees -Motion to Sell		$176.00
		$0.00
Total Costs Requested in Application		$176.00

Dckt. 206, Exh. C, p. 32. FN.3.

FN.3. Applicant asserts that actual costs and expenses for postage total $1,000.00, but has reduced the charges as part of several concessions made by Applicant for Debtor. Dckt. 205 ¶ 8.

FEES AND COSTS & EXPENSES ALLOWED

The court has some concerns with the filing and the prosecution of this bankruptcy case, on the heels of Mr. Mendoza's failure to prosecute his over Chapter 11 case to a successful plan confirmation. Additionally, the Debtor appears to be an entity which was created solely for the purpose of being a title holder to move this single asset into bankruptcy. While a "sale" of the property was conducted and the Debtor in Possession at least nominally receiving a $250,000.00 note to be paid in the future, the court wonders what real legal and economic utility was served. From a review of the Contract and the Sellers' Final Statement, it appears that little was done by the "Buyers" to consummate the sale.

In his opposition, Mr. Mendoza argues that he was experienced at selling property which was subject to WestAmerica Bank liens, and could have negotiated a sale of the property without incurring the costs and expenses of a bankruptcy case. Further, he believed that he had an "extensive equity" in the property.

On this second point, taking Mr. Mendoza at his word under penalty of perjury as set forth on Schedules A and D, the Debtor did not have an "extensive equity" in the Property. The property was valued at $1,250,000.00. The secured claims listed on Schedule D totaled $940,050. This would leave gross sales proceeds of $310,000 after paying the secured claims. Estimating commission and seller costs of escrow totaling 6% for the sale of commercial property ($75,000), that would leave approximately $230,000 in sales proceeds. Not an insignificant amount of money, but not something that the court considers to be "extensive equity" for a $1,250,000 piece of property which Mr. Mendoza had been in default on the payments for a number of years.

Mr. Mendoza further asserts that he believed that Mr. Hughes represented that the bankruptcy case could go "quickly" and for $15,000.00. Mr. Mendoza appears to argue that he believed that a commercial real estate Chapter 11 bankruptcy case, involving effectively one creditor, could be prosecuted, and forced on that creditor for $15,000.00. Part of this belief is purported to be based on Mr. Mendoza's unsuccessful Chapter 11 case (in which no disclosure statement and plan were prosecuted) costing him $22,000.00.

Mr. Mendoza further contends that the attorneys for the Debtor in Possession concentrated on getting Mr. Mendoza and the Debtor in Possession to just to agree to pay WestAmerica Bank in full. He states in the opposition that he paid not only the $919,000.00 the Bank initially demanded, but "$100,000.00 on other dubious charges."

Mr. Mendoza then states that all "he" got out of this is a note for $250,000, for which no payments are due for eighteen months. Further, that "his" creditors are now going after that note.

Scope of Services and Nature of Representation

This case is unusual in that Mr. Mendoza and counsel put together a shell debtor, dumped the property into it, filed a Chapter 11 case to forestall a foreclosure sale, and now Mr. Mendoza complains that all he was able to get was time to sell the property and recover the net equity from the Property. Having wallowed in his own Chapter 11 case, clearly Mr. Mendoza is aware that bankruptcy is not a "fit it all" wonder proceeding in which creditors' rights are trampled and the debtor walks away with a bonus.

The Opposition blends Mr. Mendoza (in referring to "he" and "his") and the Debtor LLC when talking about the property and action to be taken. In what is an email identified by Mr. Mendoza attached to the Opposition, Mr. Mendoza appears to state that during the bankruptcy case he was lending money to the Debtor in Possession (which was not authorized by the court) to pay closing costs and pre-petition debts (which appear to pre-date the existence of the Debtor).

The proceedings in this case and Mr. Mendoza's opposition indicates an equal "naivety" on behalf of counsel. $32,000.00 is sought in fees for a one asset, one creditor case. Going in, everyone (Mr. Mendoza, the "Debtor," and counsel) had in front of them a case in which the deal had to be cut with the one creditor. This wasn't a case in which the creditor could be horsed around as being one of many creditors and a large class of unsecured claims being protected through a reorganization. This Debtor did not have any creditors, other than those secured claims "imported" with the property. These would be WestAmerica Bank and the County property taxes. The unsecured claims appear to be the debts of Mr. Mendoza predating the property being transferred into the Debtor and the bankruptcy filed five days later.

The hourly rates sought to be charged are $425.00 for Mr. Hughes and $250.00 for the associates. Both rates would reflect a high level of Chapter 11 sophistication for Mr. Hughes and a moderate level for the associates. Both Mr. Hughes and the associates would clearly recognize that such rates could not be charged for running fire drills for bankruptcy plans for facade chapter 11 reorganizations. Such fees could be charged for hammering out a deal for the "Debtor" to salvage the recoverable equity out of the property. In light of the years of defaults, while it could be that a long term deal could be worked out, it probably wasn't likely. Additionally, after having fought so long with Mr. Mendoza, WestAmerica Bank discounting the note (for which Mr. Mendoza stated there was significant equity) appeared equally unlikely.

The hourly rates for some of the associates do not appear reasonable. Mr. Liberman became a licensed attorney in May 2015 and zoomed to a billing rate of $250.00. Mr. Liberman's resume states that he obtained his "juris doctrine" in 2014. For some unstated time prior to May 2015, Mr. Liberman was a "community director" for a few large apartment complexes. There is nothing to indicate any special knowledge or experience in commercial real estate bankruptcy cases, finance, or transactions.

The court does not see a resume or CV provided for Judith Whitman, for whom 61.8 hours are billed for this Application. The California State Bar reports that Ms. Whitman was admitted to practice in 1982. FN.4. The State Bar does not list Ms. Whitman at Mr. Hughes firm. She is listed as being a member of the legal team at the Hughes Financial Law website. FN.5.

FN.4. http://members.calbar.ca.gov/fal/Member/Detail/103385.

FN.5. http://www.hughesfinanciallaw.com/meet-the-team/judy-whitman/.

Two areas of immediate concern to the court are: (1) 47.3 hours billed relating to the motion for relief from the stay and (2) 11.1 hours billed for the plan and disclosure statement. Beginning with the opposition to the motion for relief,

a. Though twelve pages in length, the basis of the opposition is that the property has a value of $1,250,000, which provides an equity cushion of just under $300,000 for creditor WestAmerica Bank.

b. The opposition makes a pass at asserting that the property is necessary for an "effective reorganization," but does not address how a one asset entity, with no cash, no personal property, and no leases in its name can reorganize.

c. The opposition asserts that the Debtor in Possession can cram down confirmation of the million dollar obligation based on the pre-petition debts of Mr. Mendoza (which are less than $20,000). As experience Chapter 11 bankruptcy attorneys know, the debts of a principal of the new debtor created to take title so the bankruptcy case can be filed (so to shelter the principal from subjecting himself and his other assets to the jurisdiction of the court) do not present sympathetic creditors – especially when their combined debts are approximately 2% of the secured debt of the creditor in the "out of bankruptcy court principal's" sights.

d. The Declaration of Mr. Mendoza "admits" that the Debtor in Possession cannot make payments to WestAmerica Bank, stating,

> "I am prepared to make adequate protection payments to Westamerica Bank,...I agreed to proposed terms to Movant on November 18, 2014 and again on December 1, 201. [sic]...
>
> I formed The Civic Plaza, LLC, Debtor, in the midst of the foreclosure, as the result of Movant proceeding with foreclosure which would have caused the loss of over $300,000.00 in equity and defaulting on payments to creditors of the Property. Bankruptcy relief was the only option left. In no way was I hindering or delaying the Movant, as the Property generates sufficient rental income of over $16,000 per month and I am prepared to make adequate protection payments during the pendency of this case and the plan provides that Movant will be paid in full. The Plan does not fall on hopes and dreams, rather it is supported with sufficient cash flow from historical figures."

e. The appraiser for the Debtor in Possession testified that the property has a value of $1,650,000. Dckt. 95.

f. In a further declaration, Mr. Mendoza testified as to the rents relating to this property which are subject to the lien of WestAmerica Bank,

> "The court has inquired as to the whereabouts of the rents collected from Civic Plaza prior to

> filing the Chapter 11. As noted above, although I tried to make them, WAB refused to accept monthly loan payments and demanded full payment of the loan balance. Accordingly, I used what rents I received to continue my practice of paying the expenses on the Civic Plaza property and paying the loan payments on the other properties, which loans had been used for the benefit of and to improve the Civic Plaza property...
>
> Prior to this case being filed, Civic Plaza's largest tenant, Approachable Family Agency pre-paid its November and December rents of $7,874.00 per month. The November funds went into the normal business account as described above and, from those funds, WAB received loan payments on loan no. 159-53401 and loan no. 15-15402, both of which were secured on other properties but were used to fund Civic Plaza improvements. The December funds were deposited into the normal business account as no Debtor in Possession account was formed at the time and were used to pay Civic Plaza operating expenses..." Dckt. 110.

The court has difficulty in understanding where there is 47.3 hours work in honestly and candidly opposing a motion for relief based on there being an equity cushion. Especially in light of there being effectively being only one creditor. None of the disclosures made by Mr. Mendoza in the declarations (including getting the rent prepaid and using it to pay other loans to protect other properties he owned) should have been a surprise to counsel.

Fees of $10,297.50 for the 47.3 hours billed (combined effective hourly rate of $217.71) are not reasonable for an equity cushion defense. This is especially true in light of the Debtor being devoid of any other assets and having been admittedly a "new debtor" created solely for the purpose of filing the bankruptcy and staying the foreclosure. The court disallows $7,000.00 of the requested fees.

Turning to the plan and disclosure statement, $3,302.50 is sought for a combined 11.10 hours billed (combined effective billing rate of $297.52). While a "plan" might have value as a window dressing to "facilitate" negotiations, there was little substantive value. The disallows $802.50 in billings for these services.

While Mr. Mendoza may fee that "He" and the "Debtor" did not get value for the services provided, "He" and the "Debtor" did receive value - preserving $250,000.00 of equity that "He" may now use to pay other creditors since Mr. Mendoza was unsuccessful at his own Chapter 11 reorganization. Merely because he had an attorney who billed only $22,000 for two years of Chapter 11 work does not mean that such amount for an unsuccessful Chapter 11 is the benchmark for all other fees. For a Chapter 11 of the complexity that Mr. Mendoza states in his case, the court would be surprised to have a knowledgeable, experience bankruptcy attorney accept such a client with $50,000 to $100,000 in a retainer

– unless the client had agreed to let many of the properties go and a "pre-packaged" plan was already worked out with creditors.

After disallowing $7,802.50 in fees, the court finds that $24,670.00 in total fees are reasonable in this case. While the court could go back and pick at individual charges, adjust hourly rates, and disallow further specific amounts, such is not necessary or productive. Here, with counsel's assistance $250,000 in value has been preserved. The allowed fees are 10% of that recovery. In fact, the recovery is even higher. Mr. Mendoza has been able to divert the rents from this property (taking pre-paid rents) and used it to protect other properties he wanted to retain.

It is clear from the opposition, as well as the prior declarations and pleadings, that the "Debtor" is merely a straw entity, with Mr. Mendoza and his interests being protected. While he had hoped for a more financially advantageous result, there appears little better than could have been obtained with the assistance of counsel. The court's adjustments protect the "Debtor" from what may have been either unrealistic expectations of counsel for the higher billing rates requested or the additional time spent on less than reasonable productive activities.

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $24,670.00 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Debtor in Possession from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case. All requested fees in excess of that amount are disallowed.

Costs and Expenses

The First and Final Costs in the amount of $176.00 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Debtor in Possession from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 1 case.

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

Fees	$24,670.00
Costs and Expenses	$176.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case, with all fees in excess of that amount disallowed.

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 C. Anthony Hughes ("Applicant"), Attorney for the Debtor 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 C. Anthony Hughes is allowed the following fees and expenses as a professional of the Estate:

C. Anthony Hughes, Professional Employed by Debtor in Possession

Fees in the amount of $24,670.00 and
Expenses in the amount of $176.00,

pursuant to 11 U.S.C. § 330 as the final fees and expenses, with all fees in excess of that amount disallowed.

IT IS FURTHER ORDERED that the Debtor in Possession is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case.

11. **15-90459-E-7** **PRAVINKUMAR/MADHUKANTA GANDHI** **STATUS CONFERENCE RE: VOLUNTARY PETITION**
David C. Johnston **5-12-15 [1]**
CASE CLOSED: 10/26/2015

Final Ruling: No appearance at the November 12, 2015 hearing is required.

The bankruptcy case being dismissed on October 7, 2015 (Dckt. 81) and the case having been closed on October 26, 2015, **the Status Conference was concluded, and the matter is removed from the calendar.**

12. **13-90163-E-7** **ZE YANG** **MOTION TO AVOID LIEN OF VALLEY FIRST CREDIT UNION**
JDP-2 **Christian J. Younger** **10-15-15 [21]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the November 12, 2015 hearing is required.

The Debtor having filed a Withdrawal of the Motion to Avoid Lien of Valley First Credit Union on October 29, 2015, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Avoid Lien was dismissed without prejudice, and the matter is removed from the calendar.**

13. 15-90470-E-7 SUSAN FISCOE
HCS-4 David C. Johnston

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-6-15 [26]

Tentative Ruling: The Objection to Debtor's Claim of 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).

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, creditors, parties requesting special notice, and Office of the United States Trustee on October 6, 2015. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Objection to Debtor's Claim of 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). The defaults of the non-responding parties and other parties in interest are entered.

The objection to debtors' claim of exemptions is sustained as to the exemptions asserted on Schedule C filed on March 28, 2015, (Dckt. 13) described as "Pacific Life Insurance Company defined benefit retirement annuity ($539 per month for life)" in the amount of $75,000 pursuant to Fla. Stat. Ann. § 222.11(2)(a) and $75,000 pursuant to Fla. Stat. Ann. § 222.201, without prejudice to the claim of exemption asserted in Amended Schedule C filed on October 29, 2015, (Dckt. 33) in said asset in the amount of $75,000. Further, the time for objecting to the claim of exemption asserted in Amended Schedule C is extended through and including December 15, 2015.

Gary Farrar, the Chapter 7 Trustee, filed the instant Objection to Exemptions on October 6, 2015. Dckt. 26. The Trustee objects to the Debtor's claim of exemptions for the Pacific Life Insurance Company annuity contract under Florida Statutes §§ 222.21(2) and 222.201.

The Trustee objects stating that the annuity contract does not fall within either of the two statutes, namely because it is a non-qualified (not tax exempt) contract and because it is not contingent on illness, disability, death, age, or length of service.

The instant case was filed on May 14, 2015.

DEBTOR'S RESPONSE

The Debtor filed a response to the instant Objection on October 29, 2015. Dckt. 34. The Debtor states that she filed an amended Schedule C and claimed an exemption in the annuity contract under Florida statute § 222.14. Dckt. 33.

APPLICABLE LAW

Pursuant to the Debtor's amended Schedule C, Florida Statute § 222.14 states:

> The cash surrender values of life insurance policies issued upon the lives of citizens or residents of the state and the proceeds of annuity contracts issued to citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or of any creditor of the person who is the beneficiary of such annuity contract, unless the insurance policy or annuity contract was effected for the benefit of such creditor.

DISCUSSION

In response to the Trustee's Objection, the Debtor filed an amended Schedule C in order to respond to the Trustee's argument.

The Debtor is now claiming the annuity is exempt pursuant to Florida Statute § 222.14 in the amount of $75,000.00, which provides,

> "§ 222.14. Exemption of cash surrender value of life insurance policies and annuity contracts from legal process.
>
> The cash surrender values of life insurance policies issued upon the lives of citizens or residents of the state and the proceeds of annuity contracts issued to citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or of any creditor of the person who is the beneficiary of such annuity contract, unless the insurance policy or annuity contract was effected for the benefit of such creditor."

The court has not been presented with an objection to this amended claim of exemption. Though the Trustee may not have an objection to the amended claim, the court sets the deadline for the filing of an objection to the amended objection for on or before December 15, 2015.

Given that the Schedules are filed under penalty of perjury and subject to Federal Rule of Bankruptcy Procedure 9011, the court believes it is necessary to expressly disallow the original exemption and set a deadline for the amended exemption filed in response to the objection to the original objection. The court now has several objections to claim of exemption in which incorrect amounts were stated or an improper statute cited as the basis for the exemption. While not perceived as the situation in this case, the court wants to make it clear that the schedules are not an opportunity to make whatever claims one wants, and then when "caught" by the trustee or creditor amend the schedules to be honest or accurate.

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 Debtor's claim of exemptions is sustained as to the exemptions asserted on Schedule C filed on March 28, 2015, (Dckt. 13) described as "Pacific Life Insurance Company defined benefit retirement annuity ($539 per month for life)" in the amount of $75,000 pursuant to Fla. Stat. Ann. § 222.11(2)(a) and $75,000 pursuant to Fla. Stat. Ann. § 222.201, without prejudice to the claim of exemption asserted in Amended Schedule C filed on October 29, 2015, (Dckt. 33) in said asset in the amount of $75,000. Further, the time for objecting to the claim of exemption asserted in Amended Schedule C is extended through and including December 15, 2015.is overruled as moot.

14. 15-90284-E-7 ANTONIO/LUCILA AMARAL
ADJ-2 Axel B. Gomez

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CARGILL, INC.
9-30-15 [27]

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - 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, creditors, parties requesting special notice, and Office of the United States Trustee on September 30, 2015. By the court's calculation, 43 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). The defaults of the non-responding parties in interest are entered.

The Motion For Approval of Compromise is granted.

Michael McGranahan, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Cargill, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising from an alleged preferential transfer from the Debtor to Settlor in the sum of $28,500.00. Settlor asserts that the payments were made within the ordinary court of business or, alternatively, that the payments were unavoidable under the new value defense.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 30):

A. Settlor agrees to pay to the Trustee the amount of $3,500.00 in full satisfaction of any and all claims the Trustee might have against Settlor with respect to the Trustee. The $3,500.00 payment to the Trustee by Settlor shall be made within 30 days of the entry of an order by the Bankruptcy Court approving this Agreement.

B. This Agreement is conditioned upon approval by the court. The Trustee's counsel shall prepare the motion for its approval.

C. For the set conditions set forth in Section 1.1, above, the Trustee on behalf of the bankruptcy estate hereby releases Settlor and its agents, representative, shareholders, partners, attorneys, past and present employees, affiliates, successors, and assigns, from and any all claims, demands, debts, obligations, liabilities, costs, expenses, rights of action, and causes of action, of any kind or character whatsoever, whether known or unknown, suspected or unsuspected, which may hereafter be claimed to arise from or in connection with the transfers.

The Settlor computes the maximum recoverable preference to be $3,147.90 after application of the ordinary course and new value defenses being asserted. The detailed analysis of these defenses are set forth in the letter from Settlor's counsel which is attached to the Settlement Agreement. Exhibit A, Dckt. A at 7-9. The Trustee has factored in this analysis in coming to the proposed Settlement now before the court.

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 $3,500.00 in satisfaction of the estate's claim for recovery of the property, with an asserted value of $28,500.00, from Settlor. Movant asserts that the property can be recovered for the estate as a preference. This proposed settlement allows Movant to recover for the estate $3,500.00 without further cost or expense and is 12.3% of the maximum amount of the claim identified by Movant.

Probability of Success

The Movant argues that this factor weighs in favor of settlement. The Movant asserts that the defenses asserted by Settlor, namely ordinary course of business transaction and new value defense, that the facts and law around the claim are complicated. The Movant asserts that even if the Movant could overcome the ordinary course of business defense, the likely maximum recovery would be $3,147.90 at trial due to the new value defense.

Difficulties in Collection

The Movant states that enforcement against Settlor would not be difficult, the fact that Settlor is a financially strong company means that it can finance litigation.

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.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The compromise allows the Movant and the estate to recover more funds than what is anticipated in light of the defenses anticipated to be raised by the Settlor. The estate will get $3,500.00 for the benefit of the estate without the need to exhaust administrative costs to litigate the matter. The motion is granted.

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

holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael McGranahan, ("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 Cargill, Inc. ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion(Docket Number 30).

15. 12-91495-E-7 YADI RUBIO — MOTION TO AVOID LIEN OF CACH, LLC
CJY-3 Christian J. Younger — 10-15-15 [27]

Final Ruling: No appearance at the November 12, 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 October 15, 2015. By the court's calculation, 28 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 Yadi Rubio ("Debtor") commonly known as 2129 Canyon Creek Ct., Newman, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $2,798.93. An abstract of judgment was recorded with Stanislaus County on August 30, 2010, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $139,000.00 as of the date of the petition; Debtor has a ½ interest in the subject property. The unavoidable consensual liens total $91,153.82 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 § 704.730 in the amount of $75,000.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Cach LLC, California Superior Court for Stanislaus County Case No. 648316, recorded on August 30, 2010, Doc. # 2010-0076980-00 with the Stanislaus County Recorder, against the real property commonly known as 2129 Canyon Creek Ct., Newman, 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.

16. 15-90697-E-7 ELIZABETH ZYLSTRA **MOTION TO DISMISS CASE**
Pro Se **10-16-15 [54]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on October 22, 2015. By the court's calculation, 21 days' notice was provided.

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

The Motion to Dismiss is continued to 10:30 a.m. on December 3, 2015.

Elizabeth Zylstra ("Debtor") filed the instant Motion for Voluntary Dismissal on October 16, 2015. Dckt. 54. The Debtor failed to set the motion for hearing nor attached any notice or proof of service.

On October 20, 2015, the court issued an order setting the Motion for hearing. Dckt. 57. Specifically, the court ordered the following:

> **IT IS ORDERED** that the Debtor's Motion to Dismiss Bankruptcy Proceedings filed October 16, 2015, Docket Entry No. 54, is set for hearing on November 12, 2015, at 10:30 a.m. in the United States Courthouse, 1200 I Street, Second Floor, Modesto, California.

At the hearing the court will consider whether it is necessary to commence proceedings to determine Debtor's ability to proceed in this case without counsel, or if the appointment of a personal representative for Debtor in this bankruptcy case is required.

BACKGROUND

The Debtor voluntarily commenced this bankruptcy case on July 17, 2015. The Trustee determined that Debtor had an undisclosed asset, consisting of the right to recover $62,500.00 pursuant to a claim the Debtor filed with the USDA Hispanic & Women Farmers and Ranchers. After the Trustee learned of the asset, Debtor filed an ex parte motion to dismiss this Chapter 7 case. Dckt. 14. In the ex parte motion, in the form of a letter written to the court, Debtor fails to disclose the $62,500.00 asset discovered by the Trustee. The court set the ex parte motion for a hearing, and the Trustee filed an Opposition. Dckt. 19.

The court denied the prior ex parte motion without prejudice. Civil Minutes, Dckt. 27. The court addresses in the ruling that a motion seeking dismissal of this case must be by a noticed motion, not done without notice to creditors.

At the hearing the court discussed with the Debtor the need to obtain legal services to protect as much of the $62,500.00 asset as possible, or being able to properly get the case dismissed. The court discussed with the Debtor contacting the County Bar Association, the McGeorge School of Law bankruptcy clinic, and meeting with local bankruptcy attorneys to obtain the necessary professional assistance so that Debtor could best protect her rights.

No attorney has substituted in as counsel for Debtor. On October 16, 2015, Debtor filed another ex parte motion (in letter form) to dismiss the bankruptcy case. This letter, while signed by the Debtor, is written in the third-person. Again, Debtor contends that she made an irrational decision, out of panic, in filing the bankruptcy case. The motion asserts that Debtor will now “negotiate” her debts with creditors.

The motion also makes reference to a therapist, Susan Cowan MFT. A letter from Ms. Cowan is attached to the motion. The letter from Ms. Cowan is addressed to the court. It is not stated under penalty of perjury. In it, Ms. Cowan states: (1) the Debtor has been seeing Ms. Cowan for more than a year; (2) Ms. Cowan states that the Debtor has been dealing with symptoms of anxiety and depression for many years, and (3) that Ms. Cowan believes that the symptoms are in relation to the Debtor’s diagnosis of Post Traumatic Stress Disorder.

Ms. Cowan’s’ letter further states that the Debtor can be “impulsive and excitable.” Further, that the Debtor “tends to make hasty decisions in regard to her circumstances without thinking of [the] consequences.” Dckt. 54 at 3.

TRUSTEE’S OPPOSITION

Irma Edmonds, the Chapter 7 Trustee, filed an opposition to the instant Motion on October 28, 2015. Dckt. 63. The Trustee opposes the Motion on the ground that the Debtor has failed to turnover the $35,275.00 received by the

Debtor through the USDA Hispanic & women Farmers and Ranchers claim. Additionally, the Trustee seeks denial of the motion because there are nonexempt proceeds to administer.

The Trustee argues that she opposes the instant Motion to Dismiss, in her capacity as representative of the estate for all creditors. The Trustee states that she is attempting to marshal and secure the turnover of nonexempt assets in the amount of $35,275.00.

Next, the Trustee argues that dismissal is improper because the Debtor has failed to comply with the order to turnover the funds which is evidence that the Debtor's case is not in good faith. Furthermore, the Trustee states that the Debtor's hasty decision to enter bankruptcy is not sufficient ground to dismiss the case.

The Trustee next asserts that the Debtor has not provided evidence on how the Debtor intends to deal with the multitude of claims, namely the arrears in mortgage payment. The Trustee asserts that the Debtor's schedules shows that there is insufficient funds to deal with the claims.

The Trustee argues that dismissal may cause dissipation of all assets and could adversely impact the unsecured claimants in this case.

The Trustee concludes by stating that the Debtor has not indicated any agreements with creditors to deal with the claims and that there are administrative fees of $5,000.00 that the Debtor did not address in her Motion.

ADDITIONAL RESPONSE OF DEBTOR

On November 6, 2015, Debtor filed a Response. Dckt. 74. In it she requests that the court grant her request and dismiss the case. She states that though she attempted to find pro bono legal services, there are none in Stanislaus County. Debtor also argues that the attorneys who she has met with tell her that she has made so many mistakes that representation will cost her more money than she has available. The court does not find this last statement persuasive.

Debtor further pleads that she has to keep her home, or she will be "homeless." Debtor says that she has one child and two young adults. Further, that Debtor is working with Ms. Cowan and is receiving help.

Debtor now believes that her home is worth $250,000, which is still less than the ($272,986.00) of debt secured by the property.

DISCUSSION

Ms. Cowan's' letter echos the concerns of the court. At the prior hearing, Debtor was stating that she intended to take the money and use it to cure the arrearage on her home (not pay all of her creditors). Given that there is an arrearage, the facts indicate that Debtor cannot make the current monthly payments on her mortgage. If the proceeds are used to cure the arrearage, Debtor may again quickly default and lose the house, and the $62,500.00 in monies for only a short-lived reprieve from foreclosure.

On Schedule A filed by Debtor, she states that her only real property has a value of $200,000.00 and is subject to secured claims of ($272,986.00). Dckt. 1 at 12. The negative equity in the property easily exhausts all of the $62,500.00 in proceeds, leaving Debtor with no ability to sell the property and recover the monies if she again defaults. Even with the now asserted higher value of $250,000, Debtor is still under water with the home.

On Schedule B Debtor lists no personal property assets of any significant value. The combined total value of all Debtor's personal property assets (excluding the previously undisclosed $62,500.00) is only $1,850.00. Id. at 13-25.

On Schedule D, Debtor lists the following secured claims:

a. Wells Fargo Bank, First Mortgage.....$174,128

b. Wells Fargo Bank, Second Mortgage.....$ 75,382

c. Wells Fargo Bank, Past Due.....$ 23,476

Id. at 17.

On Schedule F Debtor lists creditors having a total of $78,033.00 in general unsecured claims. Id. at 20-21. The several largest claims are: (1) $20,398.00 owed to Bank of America, (2) $15,256.00 owed to Bank of America, (3) $17,935.00 owed to Capital One, (4) $14,001.00 owed to Chase Bank, and (5) $5,344.00 owed to Chase Bank. Each of these creditors hold almost $20,000.00 in debt, an amount well worth the efforts of the banks, and their collection agencies, to work to recover from Debtor and the $62,500.00.

Looking at Schedule I, Debtor states she is unemployed and has only $963.00 a month in income ($600.00 income from an undisclosed business and $363.00 in child support). Id. at 25. On Schedule J Debtor states that she has two children, both who live with her. Id. at 26. For Expenses, Debtor states that her monthly mortgage payment is $967.00 and she has no other expenses (such as home maintenance, taxes, insurance, food, housekeeping supplies, clothing, medical or dental, or transportation). From this information, it appears all but inevitable that monies used to "cure" the default will be quickly lost to a new foreclosure.

In her response, Debtor asserts that she will now be able to make the payments because her daughters live with her and have income of $3,713 a month. (It is not clear if this is gross income or net.) Even assuming that the Debtor has access to all of this money for the family of four persons, the reasonableness of the cash flow proposed by the Debtor appears to be as follows:

Debtor Income	$963
Heather Income	$1,250
Andrea Income	$963

Total Income	$3,176
Expenses	
Monthly Mortgage Payments	($1,014)
Taxes and Insurance (Assumed to be in Monthly Payments)	
Home Maintenance (Listed as $0 by Debtor, Estimated by Court)	($75)
Electricity and Gas (Listed at $110 by Debtor, Estimated by Court)	($250)
Water, Sewer, Garbage	($110)
Telephone/Cell/Internet	($130)
Food and Housekeeping Supplies for Family of Three Persons (Listed at $250 by Debtor, Estimated by Court)	($750)
Clothing and Laundry for Family of Three Persons (Listed at $0 by Debtor, Estimated by Court)	($75)
Personal Care Products and Services for Three Persons (Listed at $0 by Debtor, Estimated by Court)	($50)
Medical and Dental Expenses for Three Persons (Listed at $0 by Debtor, Estimated Over the Counter by Court, Assume ACA Coverage for Major Medical)	($25)
Transportation Expenses for Three Persons (Listed at $100 by Debtor, Estimated by Court)	($150)
Entertainment, Recreation, Newspapers for Three Persons (Listed at $0 by Debtor for herself and two children, Estimated by Court)	($125)
Personal Supplies, School Supplies (Estimated by Court)	($100)
	==========
Bare Bones Budget Cushion	$322

The above, assuming that all of the money for the two children and Debtor are used solely by the Debtor, the most bare bones budget is problematic.

The conduct of the Debtor, the inability to obtain counsel, and the additional information provided by Debtor with the second motion to dismiss cause, give the court pause on whether Debtor is legally able to be a party in this action, or whether the court is obligated to appoint a personal representative pursuant to Federal Rule of Civil Procedure 25 and Federal Rules of Bankruptcy Procedure 7025 and 9014.

If the case were dismissed and Debtor used the monies to pay the arrearage on the unsecured claim of Wells Fargo Bank, and then decided to file bankruptcy, additional complications could develop which could put most, if not all, of the $62,500.00 (which Debtor may now be able to claim at least a portion as exempt) at risk.

Though the court has grave reservations about the Debtor's ability to proceed outside of bankruptcy, and having made it clear to Debtor that she may well be flushing away her few remaining resources making a closed minded, financially unwise decision, the court is not Debtor's attorney or counselor.

The court had the order setting this hearing served on Susan Cowan MFT, the therapist whose letter is attached to the Motion to Dismiss. Dckt. 54. The court had the order for the November 12, 2015 hearing served on Ms. Cowan. No information written information has been provided by her. Though Ms. Cowan's letter invites the court to call her, the court does not conduct such out of court "investigations."

What is clear is that this bankruptcy case, and this Debtor, will not proceed except upon the exercise of judicial power through the U.S. Marshal and the possible civil incarceration of the Debtor. That is not how this process is suppose to work.

What is equally clear is that Debtor filed bankruptcy without a clear, deliberate plan. The information provided in the Schedules is incomplete and not financially reasonable. Her decision to dismiss the case appears to be equally impulsive. Though having the concerns of the court pointed out to her, and her therapist, Debtor is bound and determined to dismiss the case and sink what assets she has in the continue "financial plan" which led to this bankruptcy case.

There are no significant creditors who have filed general unsecured claims in this case. Wells Fargo Bank, N.A. has its claim secured, though not in full. Clearly the Bank benefits from getting as much of the settlement monies as possible to bail it out from an undersecured loan. Debtor appears determined to so help out Wells Fargo Bank, N.A., quite possibly to Debtor's and her children's detriment.

Therefore, upon the totality of the circumstances, the court will grant the Debtor's motion subject to the condition that Debtor pay the reasonable trustee's fees and the reasonable attorneys' fees and costs of the trustee's attorney. Debtor has, through her actions and failure to accurately complete the Schedules compelled the Trustee and attorney for the Trustee to waste time and expenses in having to fulfill their fiduciary duties. Of the $62,500.00, Debtor asserts that she could exempt $26,925, leaving $35,575 which the Trustee was compelled to try and recover.

The court does not prejudge the amount of legal and trustee's fees which would be ordered to be paid as a condition of dismissal. The court is confident that both the Trustee and attorney, who are busy working on other files, recognize this is not a case in which they will have a "big payday." But they must be fairly and reasonable compensated for the work that Debtor has compelled them to do.

Therefore, the court sets this motion for further hearing at 10:30 a.m. on December 3, 2015.

On or before November 20, 2015, the Chapter 7 Trustee and Counsel for the Chapter 7 Trustee shall file and serve applications for fees reasonably relating to the services which they were required to perform, which shall be set for hearing at 10:30 a.m. on December 3, 2015. Opposition and request for a briefing schedule may be stated orally at the hearing.

Further, as a condition of the court dismissing the case, Debtor shall on or before November noon on November 19, 2015, turnover to the Trustee $10,000.00, which shall be deemed to be a portion fo the USDA Class Action Lawsuit Proceeds, which the Trustee shall hold and not disburse except upon further order of the court. If the $10,000.00 is not timely turned over to the Trustee, the Motion to Dismiss shall be 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 Dismiss filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to 10:30 a.m. on December 3, 2015.
>
> **IT IS FURTHER ORDERED** that on or before November 20, 2015, Irma Edmonds, the Chapter 7 Trustee, and Steven Altman, counsel for the Chapter 7 Trustee shall file and serve their respective motions for the allowance of fees and costs reasonably relating to the services which they were required to perform in this case relating to the USDA Settlement Asset and interests claimed by the Debtor therein, which motions shall be set for hearing at 10:30 a.m. on December 3, 2015. Opposition and request for a briefing schedule may be stated orally at the hearing.
>
> **IT IS FURTHER ORDERED** that Elizabeth Zylstra, the Chapter 7 Debtors, shall on or before noon on November 19, 2015, turnover to the Chapter 7 Trustee $10,000.00, which shall be deemed to be a portion fo the USDA Class Action Lawsuit Proceeds, which the Trustee shall hold and not disburse except upon further order of the court. The funds shall be paid in the form of a cashier's check, money order,

or other certified funds from a financial institution and delivered to the following address:

Irma Edmonds, Trustee
c/o Steve Altman, Esq.
1127 12th Street Suite 104
Modesto, California 95354

Any monies turned over to the Chapter Trustee pursuant to this court's October 26, 2015 Order (Dckt. 61) shall be applied to the $10,000 required by this Order.

IT IS FURTHER ORDERED that if Elizabeth Zylstra, the Chapter 7 Debtor fails to turnover the $10,000.00 as provided in this Order by noon on November 19, 2015, or that the cashiers' check, money order, or other certified funds are denied payment for any reason, the could shall issue an order denying this Motion to Dismiss. The denying of the Motion to Dismiss shall be with prejudice and a final order adjudicating Debtor's right to have the case dismissed.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve a copy of this Order and the Civil Minutes from the November 12, 2015 hearing on the U.S. Trustee and

Susan Cowan MFT
re: Liz Zylstra
13 112 E. Fairmont Ave, Ste B
Modesto, CA 95354

Ms. Cowan shall provide the court with any additional facts, grounds, or matters which she believes are reasonable and appropriate for the court to consider in connection with the Debtor's request to dismiss the case. Ms. Cowan may provide such information in writing filed with the court and served on the U.S. Trustee, counsel for the Chapter 7 Trustee, and Elizabeth Zylstra, on or before November 20, 2015; or she may present it orally at the 10:30 a.m. hearing to be conducted on December 3, 2015.

17. 15-90697-E-7 ELIZABETH ZYLSTRA
SSA-2 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-13-15 [45]

Final Ruling: No appearance at the November 12, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 12, 2015. By the court's calculation, 31 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). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Objection to Claim of Exemptions is continued to 10:30 a.m. on December 3, 2015.

Irma Edmonds, the Chapter 7 Trustee, filed the instant Objection to Exemptions on October 13, 2015. Dckt. 45. The Trustee objects to the Debtor's use of objections in both the originally filed Schedule C (Dckt. 17) and the amended Schedule C (Dckt. 21).

The Debtor's original Schedule C claimed the following in exemptions:

Property	Exemption Statute	Amount Exempted
Household Good	704.020	$1,500.00
IRA	704.115	$250.00

Dckt. 1.

On September 23, 2015, the Debtor amended her Schedule C and claimed the following:

Property	Exemption Statute	Amount Exempted

Household Good - Residence	703.140(b)(3)	$1,500.00
Interest in IRA-Scottrade	703.140(b)(10)(E)	$250.00
Other contingent, unliquidated claims of every nature - USDA Hispanic & women Farmers and ranchers Class Action Lawsuit Proceeds	703.140(b)(5)	$16,925.00

Dckt. 21.

The Trustee seeks to have both the amended and original Schedule C exemptions be disallowed because the Debtor has not affirmatively chosen which code section she is attempting to claim exemptions under. The Trustee states that, out of an abundance of caution, the court should disallow both sets of exemptions in their entirety and require the Debtor within ten days after the order sustaining the exemption to elect whether she will be claiming either the 703 or 704 series.

The basis of the Trustee's Objection is California Code of Civil Procedure § 703.140(a)(3), which states:

> (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:. . .
>
> (3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

The court continues the hearing to be considered in light of whether the Debtor complies with the order to turnover the $10,000.00, the trustee fees and attorneys authorized to be paid, and the possible dismissal of this 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 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 hearing on the Objection is continued to 10:30 a.m. on December 3, 2015.