

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

December 3, 2015 at 10:30 a.m.

1. [15-90800-E-7](#) ROBERT DOYLE MOTION TO SELL
SCF-1 Ethan A. Turner 10-19-15 [[13](#)]

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, Chapter 7 Trustee, creditors, and Office of the United States Trustee on October 19, 2015. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the 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. 2000 Polaris Quadrunner

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- b. 1988 Jeep Commanche
- c. 2002 Honda Odyssey
- d. 2005 Honda Element
- e. Aluminum Fishing Boat
- f. Small rowboat

The proposed purchaser of the Property is Robert Doyle, the Debtor, and the terms of the sale are:

1. The Debtor agrees to pay the Trustee the total sum of \$4,500.00 for the non-exempt equity in the Property.
2. Notwithstanding the Debtor's assertion of an exemption in the amount of \$2,900.00 pursuant to California Code of Civil Procedure § 704.010 in the Honda Element, the purchase amount shall be non-exempt property of the Debtor's bankruptcy estate. Debtor shall pay Trustee the purchase amount as follows:
 - a. \$1,500.00 on or before November 1, 2015;
 - b. \$1,500.00 on or before December 1, 2015;
 - c. \$1,500.00 on or before January 1, 2016.
3. Upon payment of the purchase amount, the Debtor shall retain possession of the Property and the Property shall cease being property of the bankruptcy estate.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Trustee asserts that if the Property would sell at public auction, the total for the estate would be \$4,660.00, taking into consideration an auctioneer's commission and after the Debtor's exemption. The terms of the purchase agreement provides for the estate to receive nearly as much as it would receive if the Property was sold at public auction, without the administrative cost that the estate would have to incur. The sale as proposed allows the Trustee to collect the funds expeditiously, for the benefit of the estate, creditors, and the Debtor.

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 Stephen Ferlmann, 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 Stephen Ferlmann, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Robert Doyle or nominee ("Buyer"), the Property commonly known as

- a. 2000 Polaris Quadrunner
- b. 1988 Jeep Commanche
- c. 2002 Honda Odyssey
- d. 2005 Honda Element
- e. Aluminum Fishing Boat
- f. Small rowboat

("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$4,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 16, and as further provided in this Order.
2. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

2. 14-91403-E-7 CONCEPCION MAGANA
SSA-2 Pro Se

MOTION TO EMPLOY ALLEGIANCE
DEBT COLLECTORS AS ASSET
LOCATOR
10-28-15 [[32](#)]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, and Office of the United States Trustee on October 28, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Employ has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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.

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.

The Motion to Employ is ~~XXXXXXXXXXXXXX~~.

Chapter 7 Trustee, Irma Edmonds, seeks to employ Israel Carreto of Allegiance Debt Collectors, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Mr. Carreto to assist the Trustee in: (1) actively research for unclaimed funds due to the bankruptcy estate via various nationwide data bases; (2) assist in recovering the unclaimed funds; and (3) generally perform and assist the Trustee in matters which are customarily done and performed by Asset Locators in connection with the search and recovery of unclaimed funds.

The Trustee argues that Mr. Carreto's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present unclaimed assets that the Trustee discovered after the case was reopened on May 7, 2015.

Mr. Carreto, the principal of Allegiance Debt Collectors, testifies that he is representing the Trustee to research and collect assets of the bankruptcy estate. Mr. Carreto testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Review of Contract Between Carreto and Trustee

The Motion is clear that it requests the employment of Mr. Carreto solely for the purpose of locating unclaimed assets of the estate and to assist the trustee in recovering those unclaimed funds. For this locating of assets, the Trustee seeks authorization to pay Mr. Carreto 25% of the monies recovered.

The contract, signed by the Trustee for which court authorization is a condition precedent, states different scope of employment. As the court reads the contract (which consists of three short paragraphs), it states:

- A. Identifies the parties to the contract. (¶ 1)
- B. Description of the Services as (¶ 2):
 - 1. Allegiance Debt Collectors is a "special limited purpose." (The term noun "special limited purpose" is not defined.);
 - 2. Employed under a contingent fee agreement;
 - 3. For Allegiance Debt Collectors to obtain and retrieve funds of the estate;
 - 4. Which funds "belong to debtor Conception Magana (aka Salvador Magana);"
 - 5. For "Excess Funds of the Estate" (which term is not defined) in the amount of \$17,368.43;
 - 6. Of which 25% (\$4,342.10) of collected funds will be paid to Allegiance Debt Collectors.

Retainer Agreement, Exhibit 2; Dckt. 35.

The Trustee's declaration in support of the Motion to Reopen this bankruptcy case provides testimony that the Trustee was contacted by Mr. Carreto and the existence of an unscheduled interest in real property commonly known as 617 Lassen Avenue, Modesto, California disclosed to the Trustee. Mr. Carreto contacted the Trustee with this information as part of his business as an "asset recovery specialist."

It does not appear that the Retainer Agreement or the Motion quite match up to the services to be provided. It appears that the services to be provided are as follows:

- A. Employment of Isreal Carreto and Allegiance Debt Collectors, retroactive to April 22, 2015, to assist the Trustee in

locating assets of the estate consisting of Debtor's interest in real property commonly known as 617 Lassen Avenue, Modesto, California.

B. The services are for locating the asset, identifying it for the Trustee, and assisting the Trustee in recovering the asset described as:

1. The Estate's interest in the real property commonly known as 617 Lassen Avenue, Modesto, California, including the Estate's interest in \$34,736.87 in heretofore unclaimed funds held by Stanislaus County relating to the Lassen Avenue Property.

C. For having located, identified, and assisting the Trustee in recovering the bankruptcy estate's interest in the Lassen Avenue property and the monies held by Stanislaus County, Mr. Carreto and Allegiance Debt Collectors shall be paid a contingent fee of 25% computed on the gross monies recovered by the Trustee relating to said property. At this time, it is projected that the Estate's interest consists of 50% of the \$34,736.87, for which the Estate would recover \$17,368.43, and the 25% contingent fee would be \$4,342.10.

It does not appear that there are any other services to be provided or any other assets to be unearthed pursuant to this Agreement.

The terms of such employment do not appear unreasonable under the facts and circumstances. Allegiance Debt Collectors has provided a valuable service to the Trustee, identifying a theretofore undisclosed asset.

Employment of a Professional

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

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

~~————— Taking into account all of the relevant factors in connection with the employment and compensation of Mr. Carreto, considering the declaration demonstrating that Mr. Carreto does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Israel Carreto of Allegiance~~

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~~Debt Collectors as asset collector for the Chapter 7 estate on the terms and conditions set forth in the Retainer Agreement filed as Exhibit 2, Dckt. 35. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

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

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

~~The Motion to Employ filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion to Employ is granted and the Chapter 7 Trustee is authorized to employ Israel Carreto of Allegiance Debt Collectors for the Chapter 7 Trustee on the terms and conditions as set forth in the Contingency Fee Employment Agreement filed as Exhibit 2, Dckt. 35, and as stated in this Order.~~

~~**IT IS FURTHER ORDERED** that the Employment of Isreal Carreto and Allegiance Debt Collectors, retroactive to April 22, 2015, to assist the Trustee in locating assets of the estate consisting of Debtor's interest in real property commonly known as 617 Lassen Avenue, Modesto, California.~~

~~a. The services are for locating the asset, identifying it for the Trustee, and assisting the Trustee in recovering the asset described as:~~

~~i. The Estate's interest in the real property commonly known as 617 Lassen Avenue, Modesto, California, including the Estate's interest in \$34,736.87 in heretofore unclaimed funds held by Stanislaus County relating to the Lassen Avenue Property.~~

~~b. For having located, identified, and assisting the Trustee in recovering the bankruptcy estate's interest in the Lassen Avenue property and the monies held by Stanislaus County, Mr. Carreto and Allegiance Debt Collectors shall be paid a contingent fee of 25%, which includes all costs and expenses, computed on the gross monies recovered by the Trustee relating to said property.~~

~~**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to~~

~~11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.~~

~~**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.~~

3. [11-94410-E-7](#) SAWTANTRA/ARUNA CHOPRA CONTINUED MOTION TO EXTEND TIME
HSM-31 Robert M. Yaspan 12-12-14 [[1161](#)]

Final Ruling: No appearance at the December 3, 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, 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 January 14, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Extend Time to File Objections to Debtors' Claims of Exemptions is continued to 10:30 a.m. on

Gary Farrar, the Chapter 7 Trustee, filed the instant Motion for Order Extending Time to File Objections to the Debtors' Claims of Exemptions. Dckt. 1161.

The current deadline to file objections to the Debtors' claims of exemptions is presently set for December 15, 2014. Dckt. 1092, Notice of Conversion to Chapter 7, Meeting of Creditors, and Deadlines. The Trustee requests that the deadline for the Trustee to object to the Debtors' claims of exemptions be extended until February 16, 2015. The Motion to Extend the deadline was filed on December 12, 2014.

The Trustee argues that cause exists because, prior to the conversion of the case to Chapter 7, the Debtors filed a number of schedule amendments. The Debtors' most recent Schedule B, filed September 20, 2013, lists the following assets:

<p>Sawtantra Chopra MD, Inc., Profit Sharing Plan Assets in the Profit Sharing Plan including the following:</p> <p>Chase Acct# ending in 7539 - \$463,755</p> <p>Wells Fargo Investment Account - Approximate value of \$1 million</p> <p>Note & Deed of Trust in favor of Sawtantra Chopra MD, Inc., Profit Sharing Plan as Beneficiary, Onkar Inc., as Trustor secured by properties with the following APNs 033-044-099, 033-044-010, 033-044-012, 033-044-013, 033-044-014, and 033-044-019 - The face value of this note is \$350,000, but Debtor is not sure of the actual value of the note due because Debtor is not sure how much equity exists in these properties.</p> <p>Other Notes - See Attached.</p>	<p>H</p>	<p>\$1,813,755.00</p>
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In the Debtors most recent Schedule C, filed September 20, 2013, the Debtors claimed the retirement plans as exempt in their entirety pursuant to 11 U.S.C. § 522(b)(3)(C).

Prior and subsequent to the Meeting of Creditors, the Trustee and his counsel have requested current account statements for the retirement plans and original documentation related to the loans scheduled as assets of this estate, including those purportedly in the retirement plans, but non have been provided. By email dated November 6, 2014, Debtors' counsel informed the Trustee that the Debtors do not have the originals of the promissory notes although they are still looking for them. Dckt. 1165, Exhibit C.

At the Meeting of Creditors, held November 13, 2014, the Trustee requested on the record that the Debtors provide the Trustee with a current account statement for the Debtors' retirement assets. The Debtors have not provided him with the requested statements. The only documents the Trustee states the Debtors have provided in response to the Trustee's request are tax returns for their pension plan for the years 2001-2012.

Additionally at the Meeting of Creditors, the Trustee questioned the Debtors concerning the carious deeds of trust, for which the Debtors and/or the Sawtantra Chopra MD Profit Sharing Plan were scheduled as beneficiaries the Debtors' responses did not satisfy the Trustee's inquiry into the process and reasons by which one or more deeds of trust, of which Joint-Debtor Aruna Chopra, individually, was the original beneficiary, came to be included in the Debtors' retirement plans.

Trustee states that on November 18, 2014, Trustee's counsel reiterated to Debtors' counsel the Trustee's request for current account statement for the Debtors' retirement plans and discussed issues related to the notes/deeds of trust purportedly in the plans. Trustee's counsel followed up the call with an email to Debtors' counsel. By email on November 21, 2014, Trustee's counsel followed up with a more detailed email to Debtors' counsel, reiterating the Trustee's request again. Trustee states that no current account statement has

been provided to the Trustee or Trustee's counsel.

Obtaining a precise accounting of the retirement plans, their balance, and information concerning exactly what assets are currently contained in the plans, and how those assets came to be in the plans, is important to the Trustee's evaluation of the Debtors' claims of exemptions.

DEBTORS' OPPOSITION

The Debtors filed an opposition to the instant Motion on January 29, 2015. Dckt. 1187. The Debtors state that the Motion should be denied because it: (1) it fails to establish cause to grant relief; (2) the Trustee is guilty of laches; and (3) granting the Motion would significantly impair Debtors' Sixth Amendment right to representation. The Debtors make the following arguments:

1. The time frame for objection to Debtors' exemptions has expired under applicable Ninth Circuit law. Under *In re Smith*, 235 F.3d 472 (9th Cir. 2000), 11 U.S.C. § 348 "preserve[s] actions already taken in the case before conversion. . . section 348(a) establishes the general rule that, in a converted case, the dates of filing, the commencement of the case, and the order for relief remain unchanged." *Id.* at 477. In short, the Debtors argue that once the time frame for objecting to an exemption has expired, the exempt property reverts in the debtor and is no longer subject to objection. In this case, the Debtors state that the time to object to Debtors' claim of objection expired in April 2014.
2. The recent changes to Fed. R. Bankr. P. 1019 cannot change the substantive law on the issue. The Debtors argue that 28 U.S.C. § 2075 sets forth the rule making power of the court and the limitations thereon, making the Bankruptcy Court rules procedural and not creating substantive rights. The 2010 amendment to Fed. R. Bankr. P. 1019 that added section (2)(B) cannot affect this case since it attempts to change the substantive law of the Ninth Circuit. The provision purports to create a new time period for filing objections to exemptions after a conversion. However, since the *Smith* court established the law on this issue in the ninth Circuit and ruled that the exempt property vested in the debtor and that there was no provision in the Bankruptcy Code that could bring the exempt property back into an estate after conversion. The Bankruptcy Rules cannot create substantive rights that are not provided under the Bankruptcy Code. As such, the Trustee cannot rely on Fed. R. Bankr. P. 1019 to bring this Motion and the Motion should be denied.
3. The Motion fails to establish cause for the requested relief. Even if the motion were timely, the Trustee has failed to establish the requisite "cause" under Fed. R. Bankr. P. 4003. Although Rule 4003 does not provide any clarification regarding the meaning of cause, it should be presumed that cause means good cause not just any excuse. As the Bankruptcy Court are

courts of equity, the issue of good cause should be determined by balancing the respective benefits and burdens of parties along with other equitable considerations including the principles of laches. The time period to object to the exemptions has been extended at least five times for a total time period of almost three years. The Trustee has been a party to the last four of the extension. The Trustee entirely fails to adequately explain why it has taken almost two years to determine whether to object to the exemptions, why he has not been able to make the decision at this time, and why he should be entitled to more time to do so. The Debtors contend that the Motion fails to provide any specificity regarding the information the Trustee is looking for and what issues, if any, he has with the exemptions. The Debtors argue that an extension of time is extremely prejudicial to Debtors because they are under criminal prosecution and need access to exempt assets to fund their defense. Debtors have been unable to use the funds to pay their criminal attorneys and will soon be deprived of representation in their cases which implicates their Sixth Amendment rights.

4. The motion should be denied because it will significantly impair Debtors' Sixth Amendment Rights. The Trustee has sent letters that have effectively frozen the accounts. Debtors have been unable to use the funds to pay for their criminal attorneys. The trustee is interfering with Debtors' Sixth Amendment right to representation and any extension of time to file the objections will further impair Debtors' constitutional rights. In the present case, the Trustee has sent letters to the investment managers for Debtors' profit sharing plan, effectively freezing the accounts in violation of the Debtors' Sixth Amendment rights. See *United States v. Stein*, 541 F.3d 130, 154 (2d Cir. 2008).

ORDER CONTINUING THE HEARING

On February 9, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1197.

On February 10, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on March 26, 2015.

ORDER CONTINUING THE HEARING

On March 19, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1208.

On March 23, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on May 21, 2015. Dckt. 1222.

ORDER CONTINUING THE HEARING

On May 15, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1295.

On May 18, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on June 11, 2015. Dckt 1302.

ORDER CONTINUING THE HEARING

On June 4, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1318.

On June 5, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on July 23, 2015.

ORDER CONTINUING THE HEARING

On July 16, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1346.

On July 16, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on September 3, 2015.

ORDER CONTINUING THE HEARING

On August 27, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1375.

On August 31, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on October 22, 2015.

ORDER CONTINUING THE HEARING

On October 16, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1390.

On October 20, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on December 3, 2015.

APPLICABLE LAW

Fed. R. Bankr. P. 1019 states in relevant part:

When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:...

(2) New filing periods

....

(B) A new time period for filing an objection to a claim of exemptions shall commence under Rule 4003(b) after conversion of a case to chapter 7 unless:

(I) the case was converted to chapter 7 more than one year after the entry of the first order confirming a plan under chapter 11, 12, or 13; or

(ii) the case was previously pending in chapter 7 and the time to object to a claimed exemption had expired in the original chapter 7 case.

Fed. R. Bankr. P. 1019

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

DISCUSSION

On November 25, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1432.

On November 29, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on December 17, 2015.

4. [11-94410-E-7](#) SAWTANTRA/ARUNA CHOPRA
HSM-32 Robert M. Yaspan

CONTINUED MOTION TO EXTEND
DEADLINE TO FILE A COMPLAINT
OBJECTING TO DISCHARGE OF THE
DEBTOR
12-23-14 [[1167](#)]

Final Ruling: No appearance at the December 3, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on December 23, 2014. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor is continued to 10:30 a.m. on December 17, 2015.

Gary Farrar, the Chapter 7 Trustee, filed the instant Motion to Extend Deadline to File a Complain Objecting to Discharge of the Debtor on December 23, 2014. Dckt. 1167.

The Trustee states that the deadline to file a complaint objecting to the discharge of the Debtors is set for December 29, 2014. The Trustee requests that the deadline for the Trustee to file a complaint objecting to the discharge of the Debtors be extended until February 27, 2015.

The Trustee argues that cause exists because this is an extraordinarily complex case, involving many assets, and intense disputes between the Debtors and creditors regarding allegations of pre-petition criminal wrongdoing. This case was pending for some time in a Chapter 11 to provide the Debtors an opportunity to confirm a plan based around the Dale Road Project. The efforts

to reorganized failed and all the estate's real property assets were abandoned except a single Dale Road Parcel and an office building in Modesto. The case was converted to a Chapter 7 and the Trustee is attempting to administer the estate's remaining assets.

The Trustee states that he has been diligent in his investigation of the Debtors' financial affairs. An undisclosed issue which arose in the Debtors' disclosure statement filed prior to the conversion of the case was a \$310,000.00 loan from the Debtors' adult son and daughter-in-law which was discovered at the Meeting of Creditors. The Trustee requires additional time to consider the responses of the Debtors concerning this loan and whether additional investigation is needed. Furthermore, the Debtors stated that they would file amended schedule of creditors who were not previously listed.

The Trustee is also awaiting records of the current account statement for the Debtors' retirement assets as well as information concerning various notes and deeds of trusts, which the Debtors have not yet provided. The Trustee states that he expects the Debtors will provide this information voluntarily or the Trustee will make additional motions for the production of such information.

ORDER CONTINUING THE HEARING

On February 9, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1200.

On February 10, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on March 26, 2015.

ORDER CONTINUING THE HEARING

On March 19, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1211.

On March 22, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on May 21, 2015. Dckt. 1223.

ORDER CONTINUING THE HEARING

On May 15, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1298.

On May 18, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on June 11, 2015. Dckt. 1303.

ORDER CONTINUING THE HEARING

On June 4, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and

Trustee. Dckt. 1322.

On June 5, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on July 23, 2015.

ORDER CONTINUING THE HEARING

On July 16, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1350.

On July 16, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on September 3, 2015.

ORDER CONTINUING THE HEARING

On August 27, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1378.

On August 31, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on October 22, 2015.

ORDER CONTINUING THE HEARING

On October 16, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1393.

On October 20, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on December 3, 2015.

APPLICABLE LAW

Federal Rule of Bankruptcy Procedure 1017(e)(1) provides that the court may extend for cause the time for filing a motion pursuant to 11 U.S.C. § 707(b). The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 9006(b)(1).

DISCUSSION

On November 25, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1435.

On November 29, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to

10:30 a.m. on December 17, 2015.

5. [15-90411-E-7](#) JOHN/MONICA BERGMAN MOTION TO SELL
HSM-6 Charles L. Hastings 11-5-15 [[65](#)]

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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the 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. 604 S. Rusk Street, Sherman, Texas

The proposed purchaser of the Property is Moises Perez and the terms of the sale are:

1. Purchase price of \$29,900.00.

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

The Motion to Sell Property filed by Gary Farrar, 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 Gary Farrar, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Moises Perez or nominee ("Buyer"), the Property commonly known as 604 South Rusk Street, Sherman, Texas ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$29,900.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 69, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount equal to six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Elena Jackson of Ebby Halliday Real Estate Inc. And Lorena C. de Velasquez of Fathom Realty.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 6004(h), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

6. [15-90814-E-7](#) MARKET 49 VENTURES INC CONTINUED MOTION TO EMPLOY
ICE-1 Patrick B. Greenwell HUISMAN AUCTIONS, INC. AS
AUCTIONEER(S)
10-8-15 [[23](#)]

Final Ruling: No appearance at the December 3, 2015 hearing is required.

The court having previously granted the Motion to Employ Huisman Auctions, Inc. and authorizing Irma Edmonds, the Chapter 7 Trustee, to hire auctioneer David Huisman of Huisman Auctions, Inc. (Dckt. 53), **the Motion to Employ is removed from the calendar.**

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

Final Ruling: No appearance at the December 3, 2015 hearing is required.

The court having previously granted the Motion to Sell and authorizing Irma Edmonds, the Chapter 7 Trustee, to sell assets of the estate (Dckt. 55), **the Motion to Employ is removed from the calendar.**

8. 15-90814-E-7 MARKET 49 VENTURES INC
SSA-2 Patrick B. Greenwell

MOTION IN SUPPORT OF
APPLICATION AND COURT ORDER BY
TRUSTEE RESOLVING STORAGE AND
ADMINISTRATIVE CLAIM OF WELLS
FARGO BANK
11-10-15 [[44](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 10, 2015. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion in Support of Application and Court Order by Trustee Resolving Storage and Administrative Claims of Wells Fargo Bank 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 in Support of Application and Court Order by Trustee Resolving Storage and Administrative Claims of Wells Fargo Bank is granted.

Irma Edmonds, the Chapter 7 Trustee, filed the instant Joint Motion of Chapter 7 Trustee and Creditor Wells Fargo Bank, N.A. in Support of Application and Court Order by Trustee Resolving Storage and Administrative Claim of Wells

Fargo Bank on November 10, 2015. Dckt. 44.

The Trustee asserts that Wells Fargo Bank, N.A. is the agent for creditor Betty Weider. Wells Fargo Bank, N.A. sought and was granted relief from the automatic stay as to the real property 1267 South Main Street, Angeles Camp, California. The Trustee states that among the assets of the estate are various items of equipment and inventory which were left at the real property.

The Trustee has sought and was granted approval to employ Huisman Auctions, Inc. and approval to sell various items of the estate.

The Trustee states that she and Wells Fargo Bank, N.A. have jointly made the instant Motion to allow the estate under 11 U.S.C. § 363(b)(1) to use the premises for the purpose of storing the equipment and inventory and ultimately conducting a sale on the premises.

The Trustee also asserts that the parties have made the following stipulations:

1. Wells Fargo Bank, N.A. shall have an administrative rent claim in this case equal to its contract rate of rent which is \$2,000.00 per month since commencement of this case through date Trustee vacates the premises.
2. Trustee shall provide a key to allow Wells Fargo Bank, N.A., through its agents or employees, to inspect the premises, mark and photograph, but not remove, any property which Wells Fargo Bank, N.A. as agent for the owner is owned by her. The key may be delivered to Wells Fargo Bank, N.A.'s counsel's office: David Rishwain, Esq., 2800 West March Lane, Suite 220, Stockton, California. Wells Fargo Bank, N.A. and/or its counsel will give either the Trustee or her counsel, or both, at least 48 hours notice prior to any inspection. In the event of any dispute between Trustee and Wells Fargo Bank, N.A. concerning the ownership of any personal property sought to be sold by Trustee, the items of personal property in dispute will not be sold without further order of the court.
3. Trustee and her agents, including Huisman Auctions, Inc., expect to conduct the sale of the equipment and inventory and otherwise vacate the premises by or before November 19, 2015. Any further request to extend the time further must be by mutual consent of the parties, through their respective counsel and in writing. Also, the contract rent rate will continue to apply as an administrative expense in this matter.

The proposed stipulated terms between the Trustee and Wells Fargo Bank, N.A. appears to be in the best interest of the Debtor, the estate, and the parties in interest. Under the proposed terms, the Trustee will pay Wells Fargo Bank, N.A. \$2,000.00 a month since the commencement of the case, August 21, 2015, for rent until the Trustee is able to complete the public auction and vacate the premises. The \$2,000.00 is the contracted monthly rent rate. This continued occupancy and storage of the equipment ensures that the property being sought to be sold through auction will be kept in good condition and retain as much value as possible for purposes of the auction. The agreed terms

allows Wells Fargo Bank, N.A. to ensure that the property is being kept well while the Debtor and Trustee continue to occupy the premises as storage.

In light of the foregoing, the court finds that the proposed use of estate cash collateral to make payments to Wells Fargo Bank, N.A. pending the public auction and vacating of premises in the best interest of the estate. 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 in Support of Application and Court Order by Trustee Resolving Storage and Administrative Claims of Wells Fargo Bank filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and that:

1. Wells Fargo Bank, N.A. shall have an administrative rent claim in this case equal to its contract rate of rent which is \$2,000.00 per month since August 21, 2015, the commencement of this bankruptcy case, through date Trustee vacates the premises as provided in Paragraph 7C of the Joint Motion for the Estates use of the real property commonly known as 1267 South Main Street Angles Camp, California, for the storage and auction sale of personal property of the Bankruptcy Estate in this case.
2. Trustee shall provide a key to the to allow Wells Fargo Bank, N.A., through its agents or employees, in inspect the premisses, mark and photograph, but not remove, any property which Wells Fargo Bank, N.A. as agent for the owner is owned by her. The key may be delivered to Wells Fargo Bank, N.A.'s counsel's office: David Rishwain, Esq., 2800 West March Lane, Suite 220, Stockton, California. Wells Fargo Bank, N.A. and/or its counsel will give either the Trustee or her counsel, or both, at least 48 hours notice prior to any inspection. In the event of any dispute between Trustee and Wells Fargo Bank, N.A. concerning the ownership of any personal property sought to be sold by Trustee, the items of personal property in dispute will not be sold without further order of the court.
3. Trustee and her agents, including Huisman

The period for which the fees are requested is for the period August 8, 2013 through September 10, 2013. The order of the court approving employment of Applicant was entered on September 23, 2013. Dckt. 143. Applicant requests fees in the amount of \$742.50.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

Benefit to the Estate

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including various computer-related services. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Computer-Related Services: Applicant spent 5.5 hours in this category. Applicant assisted Client by inspecting the servers, meeting to capture data at Applegate, and removing and destroying all the hard drives at Applegate. Dckt. 510 Exh. A.

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
Ric S. Small	5.5	\$135.00	\$742.50
	0	\$0.00	<u>\$0.00</u>

Total Fees For Period of Application	\$742.50
---------------------------------------------	-----------------

Costs and Expenses

Applicant does not seek compensation for costs or expenses.

FEES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Final Fees in the amount of \$742.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$742.50
------	----------

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 Waypoint Network Solutions, LLC ("Applicant"), Computer Systems Engineer Expert for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Waypoint Network Solutions, LLC is allowed the following fees and expenses as a professional of the Estate:

Waypoint Network Solutions, LLC, Professional Employed by Trustee

Fees in the amount of \$ 742.50

The Fees and Costs pursuant to this Applicant, and Fees in the amount of \$742.50 are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay 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.

10. [13-91315-E-7](#) APPLGATE JOHNSTON, INC. MOTION TO COMPROMISE
WFH-17 George C. Hollister CONTROVERSY/APPROVE SETTLEMENT
 AGREEMENT WITH AMERICAN EXPRESS
 11-5-15 [[512](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Approval of Compromise is granted.

Michael D. McGranahan, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with American Express ("Settlor"). The claims and disputes to be resolved by the proposed settlement are in connection with Adversary Proceeding No. 13-91315 against Settlor seeking to recover \$407,264.00 pursuant to 11 U.S.C. §§ 547 and 550.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 515):

- A. Settlor shall pay the estate the sum of \$60,000.00 within 30 days of execution of a Settlement Agreement.
- B. In exchange, the Trustee agrees to release the Settlor from liability to return the payments subject to the Adversary Proceeding, agrees to dismiss the Adversary Proceeding, and agrees that Settlor will be entitled to file an amended claim pursuant to 11 U.S.C. § 502(h).

DISCUSSION

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

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Under the Settlement Movant shall recover \$60,000.00 in satisfaction of the estate's claim for recovery of the property, with an asserted value of \$407,264.00, from Settlor. Movant asserts that the property can be recovered for the estate as preference. This proposed settlement allows Movant to recover for the estate \$60,000.00 without further cost or expense and is 14.8% of the maximum amount of the claim identified by Movant.

Probability of Success

The Trustee asserts that the proposed settlement is in the best interest of the estate because it allows for the immediate payment to the estate without the need for further litigation and takes into consideration the Settlor's defense. Specifically, the Trustee is seeking the recovery of two payments made to Settlor: (1) \$227,264.14 on April 27, 2013 and (2) \$180,000.00 on May 21, 2013. Settlor asserts that it has a defense under the ordinary course of business defense of 11 U.S.C. § 547(c)(2). Settlor also asserts that Payment 2, the only payment at issue after application of the subsequent new value defense, was made in the ordinary course of business. Trustee asserts that the Debtor made a payment that was in excess of the amount due under the invoice paid and made in a round number not corresponding to the actual amount owed.

In light of the Settlor's defense and the Trustee's argument, the

Trustee asserts that the sentiment results in payment of approximately 40% of the amount at issue after credit is given for the subsequent new value defense of 11 U.S.C. § 547(c)(4).

Difficulties in Collection

The Trustee does not believe there would be any difficulty in collecting against the Settlor.

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 of the Settlor, Settlor's employees, 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 greater recovery for the Estate than if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

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

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The settlement terms properly considers the defenses of the Settlor and the viability of such defenses. The claim, being based on two payments to the Settlor, involve complex legal interactions and applicable defenses. The settlement amount of \$60,000.00 provides the estate a substantial portion of the claim amount without the need for drawn out litigation and discovery. 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 D. McGranahan, 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 American Express("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 515).

11. [13-91315-E-7](#) [15-9052](#) APPLEGATE JOHNSTON, INC. CONTINUED STATUS CONFERENCE RE:
MCGRANAHAN V. LAGUNA GOLD COMPLAINT
MORTGAGE, INC. 7-15-15 [[1](#)]

Plaintiff's Atty: Daniel L. Egan
Defendant's Atty: Patrick Keene

Adv. Filed: 7/15/15
Answer: none

Nature of Action:
Recovery of money/property - preference

Notes:

Continued from 11/12/15 to be conducted in conjunction with the Motion to Dismiss this Adversary Proceeding.

Defendant and two other parties not named herein as defendants (Ahern Rentals, Inc. and Golden State Erectors, Inc.).

- B. This motion is based on the Declaration of Ronald Regan and the accompanying Memorandum of Points and Authorities served and filed herewith.

PLAINTIFF'S OPPOSITION

Michael McGranahan, the Chapter 7 Trustee and Plaintiff, filed an opposition to the instant Motion on November 16, 2015. Dckt. 35. The Plaintiff argues the Motion should be denied because the Defendant has not shown any authority for the proposition that the Plaintiff must name all recipients of a preferential transfer as parties to the same adversary proceeding. The Plaintiff argues that the Defendant did not meet its burden under Fed. R. Civ. P. 12 or 17. Namely, the Plaintiff argues that the Defendant does not provide any support for the proposition that all parties to a joint check are indispensable parties to a preference action.

DISCUSSION

The Motion, by the barest of margins, states grounds with particularity for the relief requested: two other joint payees on the check at issue have not been named as defendants in this Adversary Proceeding. The Complaint does not allege the method of payment, but states that the payment was made to Defendant Laguna Gold Mortgage, Inc., dba LGM Construction.

The Complaint alleges that Defendant Laguna Gold Mortgage, Inc. was paid \$12,857.62 within the preference period of 11 U.S.C. § 547.

The Motion to Dismiss does not allege how or why the method of payment creates a basis for dismissing a complaint to recover payment of the alleged \$12,857.62 within the preference period.

The court reviews the Points and Authorities for the legal authorities which support the grounds stated in the Motion. The Points and Authorities makes reference to the other two payees on the check by which Defendant asserts that the \$12,857.62 alleged payment was made to Defendant.

Though this is a Motion to Dismiss, the Defendant requests that the court consider the testimony of Ronald Regan, the president of Defendant. Dckt. 31. In the Declaration, Mr. Regan testifies that the check was endorsed and all of the monies paid to Ahern Rentals, Inc. Mr. Regan further testifies that Defendant received none of the proceeds of the check.

Defendant has not presented the court with any authority for the proposition that other joint payees on a check are indispensable parties in a preference action by the Trustee to recover monies paid to Defendant. FN.1.

FN.1. The credibility of Mr. Regan's testimony is impaired by his willingness to sign a declaration in which he states his legal conclusions of law that "Ahern is a necessary and indispensable party that must be named as a co-defendant." Declaration, p. 2:10-11. Mr. Regan shows: (1) no basis as to how he has such legal knowledge and (2) why any such opinion as to the law is proper. Rather, it appears to show a willingness to sign whatever is put in

front of him, "if it means we win."

To the extent that Defendant was not paid any or all of the \$12,857.62, it can defend itself. The case cited in Defendant's brief, *Post Bros. Constr. Co. V. Yoder*, 20 Cal.3d 1 (1977), is provided for the proposition that a joint check is issued to a contractor and other parties to insure that the monies represented by the check are properly allocated among the parties. Defendant has not demonstrated that it will be subject to conflicting, double, or multiple liabilities due to the Trustee proceeding in this action to recover monies paid to Defendant.

The Points and Authorities belies such a contention, stating,

"By issuing its joint check to LGM, GSE, and Ahern, it was clear that the Debtor intended to discharge its financial obligations to all such payees."

Dckt. 32, p. 4:4-5. Thus, it appears that Debtor was obligated to all three entities. The very nature of the joint check is that each of the three was a creditor and each of the three had an obligation to be paid by the check. Defendant can defend itself for the monies it was paid on the obligation it was owed.

The Motion is denied. Defendant Laguna Gold Mortgage, Inc., dba LGM Construction, shall file and serve an answer on or before December 24, 2015.

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

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

The Motion to Dismiss Adversary Proceeding filed by Defendant(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

IT IS FURTHER ORDERED that Defendant Laguna Gold Mortgage, Inc., dba LGM Construction, shall file and serve an answer on or before December 24, 2015.

13. [15-90927-E-7](#) CONNIE VALVERDE
Reynaldo C. Pulido MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
9-29-15 [[5](#)]

Final Ruling: No appearance at the December 3, 2015 hearing is required.

The matter having erroneously set for 10:30 a.m. on December 3, 2015, the court having mailed out an Amended Notice of Hearing on November 23, 2015, setting the hearing on the Motion for Waiver of Chapter 7 Filing Fee for 1:30 p.m. on December 17, 2015 (Dckt. 18), **the Motion for Waiver of the Chapter 7 Filing Fee is removed from the calendar.**

14. [09-90828-E-7](#) JOHN/JODENA RAMIREZ
PBG-2 Patrick B. Greenwell NOTICE OF DEATH AND MOTION TO
SUBSTITUTE A REPRESENTATIVE IN
THE BANKRUPTCY CASE
11-2-15 [[52](#)]

Final Ruling: No appearance at the December 3, 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 Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 2, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Substitute 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 Substitute is granted.

Joint Debtor, Jodenna Ramirez, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, John Ramirez. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtor filed for relief under Chapter 7 on March 30, 2009. On July 13, 2009, the Joint and deceased Debtor received discharges. Dckt. 25. The case was closed on August 28, 2009. Dckt. 33. On April 27, 2015, the United States Trustee filed a Motion to Reopen the case in light of their being additional assets. Dckt. 35. The court granted the United States Trustee's Motion on April 28, 2015. Dckt. 38.

On February 15, 2013, Debtor John Ramirez passed away. The Joint Debtor asserts that she is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on November 2, 2015. Dckt. 52. Joint Debtor is the spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

DISCUSSION

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

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

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for

substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...

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

This is not the Joint Debtor's first attempt at substituting in for the deceased Debtor. On October 22, 2015, the court denied the Joint Debtor's prior Motion because the Joint Debtor failed to state with particularity the grounds for the relief. Dckt. 49. Specifically, the court stated:

Before the court appoints a personal representative for the Deceased Debtor, the court must determine that the proposed representative does not have an adverse interest to whomever is the successor to the rights and interest of the Deceased Debtor. The court cannot determine from the grounds state with particularity in the Motion, as they may be properly supported by admissible evidence, whether the surviving spouse qualifies as the representative for whomever is the successor to the Deceased Debtor's interest in this bankruptcy case.

Dckt. 49.

The instant Motion states the following grounds for the relief

requested:

1. There was no probate proceeding in any California Court, or any other state court. No such proceeding is planned.
2. Co-Debtor Jodena Ramirez is not disqualified to act as personal representative by any of the provisions of California Probate Code Section 8402.
3. Under state law, as surviving spouse, she is entitled to the highest priority to serve as personal representative. Probate Code Section 8461 provides, "a person in the following relation to the decedent is entitled to appointment as administrator in the following order or priority: (a) Surviving spouse..."
4. As surviving spouse, she succeeded to all of her late husband's estate. There is no third party with any right or claim to any portion of her deceased husband's states. In the two and on-half years since her husband's death, no one has come forward and asserted any such interest.

Unlike the first attempt, here, Jodena Ramirez has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 52. Based on the evidence provided, the court determines that further administration of this Chapter 7 case is in the best interests of all parties, and that Joint Debtor, Jodena Ramirez, as the spouse of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, John Ramirez. The court grants the Motion to Substitute Party.

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 Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Jodena Ramirez is substituted as the successor-in-interest to John Ramirez and is allowed to continue the administration of this Chapter 7 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

15. [15-91031-E-7](#) RICK/CHARISSA SHARLOW MOTION TO COMPEL ABANDONMENT
 BSH-1 Brian S. Haddix 10-29-15 [9]

Final Ruling: No appearance at the December 3, 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 Chapter 7 Trustee and creditors on October 29, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion for Motion to Abandon Property is granted.

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

The Motion filed by Rick Wayne Sharlow and Charissa Dawn Sharlow ("Debtor") requests the court to order the Trustee to abandon property commonly known as:

<u>ASSET</u>	<u>VALUE</u>	<u>ENCUMBRANCES</u>	<u>EQUITY</u>	<u>EXEMPTION</u>
Real Property - Debtor's Primary Residence - 3308 Coulterville Court, Modesto, California	\$194,000.00	\$172,540.00	\$21,460.00	California Code of Civil Procedure § 703.140(b)(1) - \$24,460.00

Cash on Hand	\$14.00	\$0.00	\$14.00	California Code of Civil Procedure § 703.140(b)(5) - \$14.00
Union Bank Savings (1341)	\$190.00	\$0.00	\$190.00	California Code of Civil Procedure § 703.140(b)(5) - \$190.00
Union Bank Checking (0019)	\$257.23	\$0.00	\$257.23	California Code of Civil Procedure § 703.140(b)(5) - \$257.23
Valley First CU Primary Share (5194-00)	\$1,894.97	\$0.00	\$1,894.97	California Code of Civil Procedure § 703.140(b)(5) - \$1,894.97
Valley First CU Holiday Club	\$0.03	\$0.00	\$0.03	California Code of Civil Procedure § 703.140(b)(5) - \$0.03
Educational Employees CU (0068-0)	\$5.00	\$0.00	\$5.00	California Code of Civil Procedure § 703.140(b)(5) - \$5.00
Household Goods and Furnishings	\$15,045.00	\$0.00	\$15,045.00	California Code of Civil Procedure § 703.140(b)(5) - \$15,045.00
Wearing Apparel	\$1,475.00	\$0.00	\$1,475.00	California Code of Civil Procedure § 703.140(b)(5) - \$1,475.00
Engagement Ring	\$1,100.00	\$0.00	\$1,100.00	California Code of Civil Procedure § 703.140(b)(4) - \$1,100.00
Costume Jewelry	\$250.00	\$0.00	\$250.00	California Code of Civil Procedure § 703.140(b)(4) - \$250.00
Watches	\$25.00	\$0.00	\$25.00	California Code of Civil Procedure § 703.140(b)(4) - \$25.00
Retirement Account (through Container Graphics Corp.)	\$100,446.34	\$0.00	\$100,446.34	California Code of Civil Procedure § 703.140(b)(10)(E) - \$100,446.34

Estimated 2015 Federal Tax Refund	\$400.00	\$0.00	\$400.00	California Code of Civil Procedure § 703.140(b)(5) - \$400.00
Estimated 2015 State Tax Refund	\$13.00	\$0.00	\$13.00	California Code of Civil Procedure § 703.140(b)(5) - \$13.00
2005 Chevy Silverado 1500 LS Crew Cab 2WD	\$5,400.00	\$0.00	\$5,400.00	California Code of Civil Procedure § 703.140(b)(2) - \$5,100.00. California Code of Civil Procedure § 703.140(b)(5) - \$300.00
2002 Nissan Altima V6 SE 4D	\$2,200.00	\$0.00	\$2,200.00	California Code of Civil Procedure § 703.140(b)(5) - \$2,200.00
10% Interest in 1999 Ford Ranger V6 Supercab 2D	\$190.00	\$0.00	\$190.00	California Code of Civil Procedure § 703.140(b)(5) - \$190.00
One Mixed Breed Cat and One Mixed Breed Dog	\$1.00	\$0.00	\$1.00	California Code of Civil Procedure § 703.140(b)(5) - \$1.00

(the "Property"). The Declaration of Debtor has been filed in support of the motion.

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

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

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

The Motion to Abandon Property filed by Rick Wayne Sharlow and Charissa Dawn Sharlow ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is

December 3, 2015 at 10:30 a.m.

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granted and that the Property identified as:

<u>ASSET</u>	<u>STATED VALUE</u>
Real Property - Debtor's Primary Residence - 3308 Coulterville Court, Modesto, California	\$194,000.00
Cash on Hand	\$14.00
Union Bank Savings (1341)	\$190.00 plus any interest thereon
Union Bank Checking (0019)	\$257.23 plus any interest thereon
Valley First CU Primary Share (5194-00)	\$1,894.97 plus any interest thereon
Valley First CU Holiday Club	\$0.03 plus any interest thereon
Educational Employees CU (0068-0)	\$5.00 plus any interest thereon
Household Goods and Furnishings	\$15,045.00
Wearing Apparel	\$1,475.00
Engagement Ring	\$1,100.00
Costume Jewelry	\$250.00
Watches	\$25.00
Retirement Account (through Container Graphics Corp.)	\$100,446.34 plus any interest thereon
Estimated 2015 Federal Tax Refund	\$400.00
Estimated 2015 State Tax Refund	\$13.00
2005 Chevy Silverado 1500 LS Crew Cab 2WD	\$5,400.00
2002 Nissan Altima V6 SE 4D	\$2,200.00
10% Interest in 1999 Ford Ranger V6 Supercab 2D	\$190.00
One Mixed Breed Cat and One Mixed Breed Dog	\$1.00

and listed on Schedule A and B by Debtor is abandoned to Rick Wayne Sharlow and Charissa Dawn Sharlow by this order, with no further act of the Trustee required.

16. [14-91633](#)-E-11 SOUZA PROPANE, INC.
FWP-12 David C. Johnston

MOTION FOR COMPENSATION FOR
DAVID D. FLEMMER, CHAPTER 11
TRUSTEE
10-23-15 [[312](#)]

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 Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, creditors, and Office of the United States Trustee on October 23, 2015. By the court's calculation, 41 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). The defaults of the non-responding parties are entered.

The Motion for First Interim Allowance of Professional Fees is granted.

David D. Flemmer, the Chapter 11 Trustee ("Applicant") for Souza Propane, Inc. the Debtor in Possession ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period January 22, 2015 through September 30, 2015. The order of the court approving employment of Applicant was entered on January 15, 2015. Dckt. 56. Applicant requests a determination that fees in the amount of \$187,125.00 are reasonable, and approval \$125,943.57 in fees, pursuant to the limitations on Trustee's

compensation under 11 U.S.C. § 326, as well as interim costs in the amount of \$2,641.55.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

Benefit to the Estate

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget*

Sound Plywood, Inc. (In re Puget Sound Plywood), 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general case administration, provided oversight for the business, and prepared significant motions and other filings. Specifically, the Applicant has assisted and executed the sale of the business, including the satisfaction of most secured liens, the assumption and rejection of certain leases, and allowed for surplus estate. Additionally, the Applicant has negotiated with various creditors as to the sale and worked with the Debtor, the creditors, and other parties in interest at executing the sale for the benefit of all parties. The estate has \$563,020.00 of monies to be administered as of the filing of the application. Dckt. 309, line 8. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides evidence of spending 499 hours on various projects related to this case, including general case administration, communicating with interested parties, traveling to Turlock at least twenty times to provide oversight of the business operations and financial information, preparing and conducting the 341 meeting, negotiating a sale of the business, preparing Debtor's corporate tax return for 2014, working with escrow to review and approve payoff demands and closing statement information. Applicant provided these services at an hourly rate of \$375.00.

Statutory Limitation on Trustee's Compensation

Trustee's fees are capped by a formula provided by 11 U.S.C. § 326, providing the trustee may not exceed 25% of the first \$5,000.00 or less, 10% on any amount in excess of \$5,000.00 but not in excess of \$50,000.00, 5% on any amount in excess of \$50,000.00 but not in excess of \$1,000,000.00, and

reasonable compensation not to exceed 3% of such moneys in excess of \$1,000,000.00. Trustee distributed a total of \$3,423,119.00. Dckt. 309, line 3(b). Therefore, Trustee is limited to a maximum fee of \$125,943.57.

Distribution	% Allowed	Amount to be paid
\$0-\$5,000	%25	\$1,250.00
\$5,000-\$50,000	%10	\$4,500.00
\$50,000-\$1,000,000	%5	\$47,500.00
\$1,000,000+	%3	\$72,693.57
	Maximum Fees	\$125,943.57

Dckt. 314 ¶ 17.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$2,641.55 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Trustee's Bond		\$200.00
Parking		\$96.00
Travel and Mileage		\$2,041.55
Telephone Court Call		\$50.00
2 Hard Drives for PDC		\$236.00
Meeting		\$18.00
Total Costs Requested in Application		\$2,641.55

Dckt. 315 Exh. A p. 3.

U.S. TRUSTEE'S OPPOSITION

Tracy Davis, the United States Trustee, filed opposition on November 19, 2015. Dckt. 347. U.S. Trustee seeks to clarify the motion language that requests \$187,125.00 in fees, but limits itself to the statutory cap of 11 U.S.C. § 326. In sum, U.S. Trustee does not object to fees up to the statutory cap of \$125,943.57.

APPLICANT'S RESPONSE

Applicant filed a reply on November 23, 2015. Dckt. 349. Applicant seeks to modify the relief requested in the original motion as follows:

- A. Determine that the Trustee's billed fees in the amount of \$187,125.00 based on the Trustee's hourly rate for the period of January 22, 2015, through September 30, 2015, meet the standards of Bankruptcy Code section 330(3) taking into account the nature, extent and value of the Trustee's services;
- B. Approve interim compensation in the amount of \$125,943.57 based on disbursements during the Motion Period;
- C. Authorize the estate to pay the Trustee the amount of \$125,943.57 for fees based on disbursements during the Motion Period, and approve reimbursement of actual, necessary expenses in the amount of \$2,641.55 incurred during the Motion Period, for a total interim payment of \$128,585.12; and
- D. For such other and further relief as the court deems just.

Dckt. 349.

INTERIM FEES IN CHAPTER 11 CASE

It is clear that this case has required substantial effort by the Trustee to wring value out of the assets of the Estate. It may well be that but for the efforts of the Trustee, the assets of the estate would have been lost to creditors holding secured claims. This is not said as a negative comment as to the principals of the Debtor, but recognizes that in many such complex cases such principals have been beaten down by all their pre-petition efforts to save a long established business, one that often has been the center of a multi-generational family enterprise.

The Trustee is requesting that the court approve, and authorize to be paid, the full statutory cap to be allow all trustees in this case. Thus, if this case were converted to one under Chapter 7 and there were no more assets to be distributed, then the Chapter 7 trustee would not have any fee cap room left. This would necessitate a disgorgement motion.

The other motions filed in this case cause the court to believe that conversion of this case to one under Chapter 7 is intended by the Chapter 11 Trustee. The court has denied the Trustee's motion to pay unsecured priority tax claims outside of a confirmed plan. No legal basis was given for making such a disbursement - other than making a passing reference to the Holy Grail of 11 U.S.C. § 105(a). (A cyanic might believe that such a payment was requested solely for the purpose of making a distribution which the Trustee could point to in supporting the request for a higher amount under the fee cap.)

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates, as limited by 11 U.S.C § 326, are reasonable for purposes of the Interim Fee Application. The court approves First Interim Fees in the amount of \$125,943.57 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330. The Trustee is authorized to pay \$90,000.00 of the Interim Approved Fees, in a manner consistent with the order of distribution in a Chapter 11 case.

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 the Telephone Court Call service. No information has been provided to the court by Applicant that these cost items were expenses than 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 \$50.00 of the requested costs. FN.2.

FN.2. As with attorneys, the Court Call Service allows Trustee to more profitably operate over a much larger region in the Eastern District of California. Before Court Call was available, it was necessary for the Trustee to travel to the courthouse, expending hours of time for a relatively short appearance. No additional trustee's fees were allowed. Now, for \$50, the Trustee makes the appearance, and then minutes later is working on another matter.

Otherwise, the First Interim Costs in the amount of \$2,591.55 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan. The court is authorizing that Trustee pay 100% of the fees and costs allowed by the court.

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

Fees	\$125,943.57
Costs and Expenses	\$2,591.55

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

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

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

The Motion for Allowance of Fees and Expenses filed by David D. Flemmer ("Applicant"), Chapter 11 Trustee 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 David D. Flemmer is allowed the following fees and expenses as a professional of the Estate:

David D. Flemmer, Professional Employed by Debtor in Possession

Fees in the amount of \$ 125,943.57
Expenses in the amount of \$2,591.55,

IT IS FURTHER ORDERED that the costs of \$50.00 are not allowed by the court.

The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay \$90,000 of the fees and all of the \$2,591.55 in costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

17. [14-91633](#)-E-11 SOUZA PROPANE, INC.
FWP-13 David C. Johnston

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FELDERSTEIN,
FITZGERALD, WILLOUGHBY AND
PASCUZZI, LLP FOR DONALD W.
FITZGERALD, TRUSTEE'S
ATTORNEY(S)
10-23-15 [[317](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2015. By the court's calculation, 41 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Motion for Allowance of Professional Fees is granted.

Felderstein, Fitzgerald, Willoughby, & Pascuzzi LLP, the Attorney ("Applicant") for David D. Flemmer the Chapter 7 Trustee ("Client"), makes a Second Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period June 1, 2015 through September 30, 2015. The order of the court approving employment of Applicant was entered on January 1, 2015, Dckt. 95. Applicant requests fees in the amount of \$191,525.00 and costs in the amount of \$4,590.57.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general case administration, provided oversight for the business, and prepared significant motions and other filings. Specifically, the Applicant has assisted and executed the sale of the business, including the satisfaction of most secured liens, the assumption and rejection of certain leases, and allowed for surplus estate. Additionally, the Applicant has negotiated with various creditors as to the sale and worked with the Debtor, the creditors, and other parties in interest at executing the sale for the benefit of all parties. The estate has \$563,020.00 of monies to be administered as of the filing of the application. Dckt. 309, line 8. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Administrative Expense Motions: Applicant spent 9.7 hours in this category. Applicant assisted Client with corresponding with Trustee on the 2015 tax report, and drafting and servicing a motion to set an administrative claims bar date.

Asset Analysis and Recover: Applicant spent 5.8 hours in this category. Applicant reviewed and analyzed correspondence on barter credits, participated

in telephone conferences and email exchanges with Trustee, documented barter accounts, analyzed preservation of an estate claim against Debtor's principals, and filed a claim on behalf of Debtor's estate.

Asset Disposition: Applicant spent 86.2 hours in this category. Applicant reviewing documents for and drafting a Motion to Sell Debtor's business free and clear of liens, communicating with interested parties, legal research on UCC financing statements, and preparing accompanying documents for the Motion to Sell.

Asset Marketing and Sales: Applicant spent 97.1 hours in this category. Applicant assisted Client with legal research on rights of first refusal and enforcement procedures, reviewing proposed terms in sale negotiations with numerous potential buyers, negotiating and drafting the Asset Purchase Agreement and accompanying documents, drafting a personal guaranty for the sale of the business, providing notice to Kiva Energy of the right of first refusal, and communicating with Trustee on strategy for the sale.

Business Operations: Applicant spent 2.1 hours in this category. Applicant communicated with Trustee on numerous business operating issues, addressing insurance and credit card issues, and reviewing demand letters to remove the propane tanks of Debtor's business.

Claims Administration and Analysis: Applicant spent 37.1 hours in this category. Applicant communicated with Trustee on various issues related to claims, reviewed and analyzed various claims, drafted a numerous UCC-3 termination statements, negotiated with counsel for creditors on numerous payoff demands, and filing objection to claim of Shasta Gas Propane.

Executory Contracts and Leases: Applicant spent 65.9 hours in this category. Applicant negotiated and drafted stipulations to extend time to assume or reject leases against various parties, reviewed the objections filed by adverse parties, drafting assignments for the executory contracts and leases.

FFWP and Other Professional Fee Applications: Applicant spent 18.5 hours in this category. Applicant assisted Client with drafting the first interim fee motions of FFWP and other professionals.

General Case Administration: Applicant spent 6.6 hours in this category. Applicant performed an online UCC search on other parties, recorded the TAP stipulation with Stanislaus County Recorder, communicated with other parties, and drafted a notice of stay in Shasta County Superior Court.

Miscellaneous Motions: Applicant spent 2.3 hours in this category. Applicant drafted an application to amend the case caption to include the Debtor's former business name.

Petition, Schedules, and Statement of Financial Affairs: Applicant spent 1.2 hours in this category. Applicant drafted the petition, schedules and statement of financial affairs.

Reporting: Applicant spent 2.6 hours in this category. Applicant drafted the Trustee's monthly operating reports and case status reports for the September 3, 2015 hearings.

Special Counsel Coordination: Applicant spent 0.2 hours in this category. Applicant drafted correspondence to proposed special counsel for conflicts check issues.

State Court Litigation: Applicant spent 0.2 hours in this category. Applicant reviewed pleadings in the Shasta Propane Gas state court litigation pending in Shasta County Superior Court.

Tax Matters: Applicant spent 0.7 hours in this category. Applicant drafted correspondence to the Stanislaus County Tax Collector requesting a reduction in the County's personal property tax claims.

Turlock Air Park Lease: Applicant spent 127.4 hours in this category. Applicant reviewed documents from TAP counsel contesting the validity of an extension of the TAP lease and tank ownership, performed legal research, drafted correspondence to TAP responding to legal and factual disputes raised by the TAP lease issues, conducted meeting with Debtor and Trustee, researched service addresses, drafted the TAP landlord estoppel certificate, and drafted various subpoenas.

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
Donald W. Fitzgerald	190	\$495.00	\$94,050.00
Thomas A. Wiloughby	29.1	\$495.00	\$14,404.50
Jason E. Rios	7.3	\$405.00	\$2,956.50
Jennifer E. Niemann	169.3	\$395.00	\$66,873.50
Karen L. Widder	67.9	\$195.00	<u>\$13,240.50</u>
Total Fees For Period of Application			\$191,525.00

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

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$79,245.50	\$72,479.80
	<u>\$0.00</u>	

Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$79,245.50	
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FN.1.

 FN.1. Applicant notes that this court approved payment of 90% of the approved fees in its prior order. Dckt. 226. Trustee's office paid the full 100% to Applicant, who upon realizing the error placed the excess 10%, \$7,924.55, in the client's trust account. Applicant will apply this amount to the total fees approved in this second interim application.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$4,590.57 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Filing/Recording Fees		\$261.00
Delivery/Messenger Services		\$204.30
Document Retrieval		\$191.27
Photocopies	\$0.10 per page	\$2,406.60
Postage		\$1,249.90
Conference calls with Unlimited Conferencing		\$30.76
Outside Printing by Title Record Company		\$15.00
Service Fees for Subpoenas		\$231.74
Total Costs Requested in Application		\$4,590.57

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

Application	Interim Approved Costs	Interim Costs Paid
-------------	------------------------	--------------------

First Interim	\$1,785.80	\$1,785.80
	<u>\$0.00</u>	
Total Interim Costs Approved Pursuant to 11 U.S.C. § 331	\$1,785.80	

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Second Interim Fees in the amount of \$191,525.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved. The Trustee is authorized to pay \$167,000.00 of the Second Interim Approved Fees from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Costs and Expenses

By the Application, Applicant seeks allowance of Second Interim Costs in the amount of \$4,590.57 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are and authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case.

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

Fees	\$191,525.00
Costs and Expenses	\$4,590.57

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

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

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

The Motion for Allowance of Fees and Expenses filed by Felderstein, Fitzgerald, Willoughby, and Pascuzzi LLP ("Applicant"), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Felderstein, Fitzgerald, Willoughby, and Pascuzzi LLP is allowed the following fees and expenses as a professional of the Estate:

Felderstein, Fitzgerald, Willoughby, and Pascuzzi LLP,
Professional Employed by Trustee

Fees in the amount of \$191,55.00
Expenses in the amount of \$4,590.57,

IT IS FURTHER ORDERED that the costs of \$222.03 are not allowed by the court.

The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay \$167,000.00 of the Second Interim Fees and all of the costs and expenses allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

18. [14-91633](#)-E-11 SOUZA PROPANE, INC.
FWP-14 David C. Johnston

MOTION TO VALUE COLLATERAL OF
FINANCIAL PACIFIC LEASING, LLC
11-5-15 [[326](#)]

Final Ruling: No appearance at the December 3, 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 11 Trustee, creditors holding the 20 largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 Value secured claim of Financial Pacific Leasing, Inc. ("Creditor") is granted and Creditor's secured claim is determined to have a value of \$2,400.00.

The Motion to Value filed by Souza Propane, Inc. ("Debtor") to value the secured claim of Financial Pacific Leasing, LLC ("Creditor") is accompanied by Debtor's declaration.

The instant Motion was filed by David Flemmer, the Chapter 11 Trustee. The Trustee states that Debtor sold and rented propane tanks in which the propane is stored pending use. The Trustee states that pre-petition, the Debtor and Creditor entered into a purported lease agreement for approximately 102 used propane tanks. The Trustee believes that the Lease Agreement is a disguised security agreement. On or about December 1, 2010, Creditor filed a UCC lien on the tanks pursuant to a UCC financing statement in the name of Souza Butane-Propane, Inc.

On January 19, 2015, Creditor filed a proof of claim asserting a secured claim in the amount of \$20,184.49 based on the lease agreement and secured by the tanks.

On July 10, 2015, the Trustee entered into an asset purchase agreement with Aasim Propane and Gas Corporation ("Buyer") to sell substantially all of the assets of the Debtor's propane business for \$2,400,000.00 free and clear of the liens. The sale closed on September 8, 2015.

The purchased assets did not include the tanks (except for three tanks leased to customers). The Trustee asserts, having excluded all but three of the tanks from the sale and concluding there was no equity in the remaining tanks, the Trustee moved to reject the purported lease agreement to the extent it was executory. The court granted the Trustee's Motion rejecting the lease agreement on August 17, 2015. On August 27, 2015, the Trustee filed a Notice of Rejection of the Lease Agreement. The Trustee has requested that Creditor pick-up the remaining tanks, but to date it has not done so.

The Trustee asserts that when the sale closed, three of the tanks were being leased to Debtor's customers. Only the leased tanks are included in the purchased assets. The other tanks were not included as part of the purchased assets.

The Trustee argues that the current fair market value of the 120-gallon leased tank is \$600.00 and the current fair market value of the two 250-gallon leased tank is \$900.00 each, for a total of \$2,400.00 for all three. The Debtor provides the declaration of Mark Souza, the general manager of Debtor, to provide evidence of the value. Dckt. 329. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Trustee asserts that pursuant to the sale order, the Creditor's lien attaches to the net proceeds to the extent the Creditor's lien could be asserted against the purchased assets. The only tanks transferred to the Buyer as party of the sale and included in the purchase assets were the three leased tanks. The Trustee therefore concludes that Creditor's interest in the net proceeds is \$2,400.00

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

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 3 filed by Financial Pacific Leasing, Inc. is the claim which may be the subject of the present Motion.

The Proof of Claim states that the claim amount, \$20,184.49, is fully secured by the propane tanks.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

Creditor's claim in the amount of \$20,184.49 is stated to be secured by the propane tanks. Therefore, Creditor's claim secured by the propane tank is partially under-collateralized due to the Debtor having only included three leased tanks in the sale of the business and the rejection of the leases as to the remaining propane tanks. The court draws from the Motion the Trustee's assertion that the tanks which have been abandoned have a value of less than \$17,500.00 as collateral for the Creditor. Thus, the value of these three tanks are necessary to pay the secured portion of the claim. FN.1.

FN.1. The evidence presented by the Trustee is that the smaller 120 gallon tanks have a value of \$600.00. There are 99 tanks which have been surrendered to the creditor. If these are all are the lower value 120 gallon tanks, then they would have a value of \$59,400.00. The Trustee does not present evidence of the value of such tanks.

While the Trustee has not offered any evidence as to the value of the other tanks which secure Creditor's claim, the court accepts the motion and testimony provided in support of the motion as an affirmative statement that the remaining 99 propane tanks have a value of less than \$17,500.00. The court bases that on this representation, and does not make a finding of such actual value in this case.

Creditor's secured claim is determined to be in the amount of \$2,400.00, and therefore payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) 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 for Valuation of Collateral filed by Souza Propane, Inc. ("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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Financial Pacific Leasing, LLC secured by a lien on the "propane tanks" is determined to be a secured claim in the amount of \$2,400.00, and the balance of the claim is a general unsecured claim in this case, to the extent that any amount remains after Creditor has properly applied the value of all other collateral to said claim.

19. [14-91633-E-11](#) SOUZA PROPANE, INC.
FWP-15 David C. Johnston

MOTION FOR AUTHORITY TO
DISBURSE NET SALE PROCEEDS IN
BLOCKED ACCOUNT
11-5-15 [[341](#)]

Final Ruling: No appearance at the December 3, 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 11 Trustee, creditors holding the 20 largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Authority to Disburse Net Sale Proceeds in Blocked Account 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 Authority to Disburse Net Sale Proceeds in
Blocked Account is granted.**

David Flemmer, the Chapter 11 Trustee, filed the instant Motion for Authority to Disburse Net Sale Proceeds in Blocked Account on November 5, 2015. Dckt. 341. The Trustee requests the following:

1. Authorizing the Trustee to disburse \$2,400.00 of the net sale proceeds from the sale of substantially all of the Debtor's assets currently held in Wells Fargo Bank blocked account number XXXX5439 to Financial Pacific Leasing, LLC/Wells Fargo Bank, N.A. in full satisfaction of any lien claim or interest asserted by Financial Pacific against the net proceeds.
2. Determining that all specified liens and surcharge rights that attached to the net proceeds have been satisfied and/or released.
3. Authorizing the Trustee to treat the remaining net proceeds, in the approximate amount of \$244,275.00, as general funds of the

December 3, 2015 at 10:30 a.m.

- Page 63 of 103 -

estate.

4. Unblocking the bank account holding the net proceeds.

The Trustee states that Debtor sold and rented propane tanks in which the propane is stored pending use. The Trustee states that pre-petition, the Debtor and Creditor entered into a purported lease agreement for approximately 102 used propane tanks. The Trustee believes that the Lease Agreement is a disguised security agreement. On or about December 1, 2010, Creditor filed a UCC lien on the tanks pursuant to a UCC financing statement in the name of Souza Butane-Propane, Inc.

On January 19, 2015, Creditor filed a proof of claim asserting a secured claim in the amount of \$20,184.49 based on the lease agreement and secured by the tanks.

On July 10, 2015, the Trustee entered into an asset purchase agreement with Aasim Propane and Gas Corporation ("Buyer") to sell substantially all of the assets of the Debtor's propane business for \$2,400,000.00 free and clear of the liens. The sale closed on September 8, 2015.

The purchased assets did not include the tanks (except for three tanks leased to customers). The Trustee asserts, having excluded all but three of the tanks from the sale and concluding there was no equity in the remaining tanks, the Trustee moved to reject the purported lease agreement to the extent it was executory. The court granted the Trustee's Motion rejecting the lease agreement on August 17, 2015. On August 27, 2015, the Trustee filed a Notice of Rejection of the Lease Agreement. The Trustee has requested that Creditor pick-up the remaining tanks, but to date it has not done so.

The Trustee asserts that when the sale closed, three of the tanks were being leased to Debtor's customers. Only the leased tanks are included in the purchased assets. The other tanks were not included as part of the purchased assets.

The sale agreement provided for the sale free and clear of the liens, encumbrances, interests, claims and security interests of:

1. Tuner Gas Company
2. State of California Board of Equalization
3. Kiva Energy, Inc.
4. Ferrellgas L.P.
5. Town and Country Leasing LLC
6. Financial Pacific
7. Shasta Gas Propane; and
8. All surcharge rights of the Trustee and his professionals.

The Trustee asserts that these liens either did not attach to the net

proceeds or the creditors no longer have secured claims against the net proceeds based on the following:

1. The liens of Turner Gas Company, State of California Board of Equalization, Kiva Energy, Inc., and Ferrellgas L.P. did not attach to the net proceeds because they were paid from the sale proceeds through escrow.
2. The lien of Town & Country was released by a UCC-3 termination statement filed with the California Secretary of State on September 2, 2015.
3. The lien of Financial Pacific Leasing, LLC was valued to be secured as to the net proceeds in the amount of \$2,400.00 pursuant to court order on December 3, 2015. The Trustee is seeking authorization to pay this amount.
4. The court entered an order disallowing the secured claim of Shasta Gas. Dckt. 269.

Pursuant to the order authorizing the sale, the court ordered the following:

10. After funding the Escrow Obligations, all remaining Sale Proceeds (the "Net Proceeds") shall be deposited in a blocked account and shall be subject to disbursement only upon further order of the Court, with all Specified Liens and surcharge right the Purchased Assets are sold free and clear of attaching to the Net Proceeds in the same priority, validity, force and effect, if any, as they now have in or against the Purchased Assets, subject to all claims and defenses the Debtor's estate may possess with respect thereto. Upon payment pursuant to paragraph 9 of this Order to any holder of a Specified Lien, its lien(s) shall no longer attach to the Net Proceeds or the blocked account. . .

Dckt. 276.

The Trustee brings the instant Motion under the language of the order authorizing the sale.

As discussed supra, the Specified Liens and Surcharge Rights that attached to the net proceeds by the court's order have been released or will be released when the court authorizes the payment of the creditor's secured claim (namely, the \$2,400.00 secured claim of Pacific Leasing, LLC). The net proceeds, pursuant to paragraph 9 of the sale order, no longer have any attached liens. The remaining net proceeds in the blocked account totals approximately \$344,275.00.

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 for Authority to Disburse Net Sale Proceeds in Blocked Account filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted.

IT IS FURTHER ORDERED that the Wells Fargo Bank blocked account number xxxx5439 is unblocked.

IT IS FURTHER ORDERED that David Flemmer, the Chapter 11 Trustee is:

1. Authorized to disburse \$2,400.00 of the net sale proceeds from the sale of substantially all of the Debtor's assets currently held in Wells Fargo Bank blocked account number XXXX5439 to Financial Pacific Leasing, LLC/Wells Fargo Bank, N.A. in full satisfaction of any lien claim or interest asserted by Financial Pacific against the net proceeds.
2. Authorized to treat the remaining net proceeds, in the approximate amount of \$344,275.00, as general funds of the estate.

20. [14-91633](#)-E-11 SOUZA PROPANE, INC.
FWP-16 David C. Johnston

MOTION TO ABANDON
11-5-15 [[332](#)]

Final Ruling: No appearance at the December 3, 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 11 Trustee, creditors holding the 20 largest unsecured claims, Creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2015. By the court's calculation, 28 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 David D. Flemmer ("Trustee") requests the court to authorize Trustee to abandon property commonly known as propane tanks, which include all tanks except for the three leased tanks (the "Property"). The Property is encumbered by the liens of Financial Pacific Leasing, LLC. The Declaration of David D. Flemmer has been filed in support of the motion and testifies that since he has sold substantially all of the Debtor's business assets and the sale did not include the propane tanks (minus the three leased) that the propane tanks are burdensome and inconsequential value to the estate.

The Trustee states that Debtor sold and rented propane tanks in which the propane is stored pending use. The Trustee states that pre-petition, the Debtor and Creditor entered into a purported lease agreement for approximately 102 used propane tanks. The Trustee believes that the Lease Agreement is a disguised security agreement. On or about December 1, 2010, Creditor filed a UCC lien on the tanks pursuant to a UCC financing statement in the name of

Souza Butane-Propane, Inc.

On January 19, 2015, Creditor filed a proof of claim asserting a secured claim in the amount of \$20,184.49 based on the lease agreement and secured by the tanks.

On July 10, 2015, the Trustee entered into an asset purchase agreement with Aasim Propane and Gas Corporation ("Buyer") to sell substantially all of the assets of the Debtor's propane business for \$2,400,000.00 free and clear of the liens. The sale closed on September 8, 2015.

The purchased assets did not include the tanks (except for three tanks leased to customers). The Trustee asserts, having excluded all but three of the tanks from the sale and concluding there was no equity in the remaining tanks, the Trustee moved to reject the purported lease agreement to the extent it was executory. The court granted the Trustee's Motion rejecting the lease agreement on August 17, 2015. On August 27, 2015, the Trustee filed a Notice of Rejection of the Lease Agreement. The Trustee has requested that Creditor pick-up the remaining tanks, but to date it has not done so.

The Trustee asserts that when the sale closed, three of the tanks were being leased to Debtor's customers. Only the leased tanks are included in the purchased assets. The other tanks were not included as part of the purchased assets.

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.

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

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

The Motion to Abandon Property filed by the 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. Propane tanks, except for the three leased tanks authorized by the court to sold by the Trustee, which are either the subject of a lease or secure the claim of Financial Pacific Leasing, LLC in this case.

are abandoned to Souza Propane, Inc. by this order, with no further act of the Trustee required. The court's order for abandonment does not alter the obligation of Financial Pacific Leasing, Inc. as either the lessor or creditor with secured

claim to properly account for, dispose of, and provide any value in excess of the secured claim to the Estate. This abandonment order is not a sale or transfer of title to the tanks, but an abandonment of possession.

21. [14-91633](#)-E-11 SOUZA PROPANE, INC. MOTION TO PAY
FWP-17 David C. Johnston 11-5-15 [[336](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Pay 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of

law:

The Motion to Pay Pre-Petition Priority Tax Claims is denied without prejudice.

David Flemmer, the Chapter 11 Trustee, filed the instant Motion for Authority to Pay Pre-Petition Priority Tax Claims on November 5, 2015. Dckt. 336. The Trustee requests that the court enter an order authorizing the Trustee to pay all unpaid pre-petition priority tax claims in full in the following amounts:

<u>Agency</u>	<u>Amount</u>	<u>Proof of Claim</u>
Franchise Tax Board	\$822.02	1
Employment Development Department	\$5,417.41	11
Internal Revenue Service	\$77,877.95	26
Stanislaus County	\$13,003.36	17

In the Motion, the Trustee states that the filed unpaid priority tax claims total \$97,102.74. FN.1. The Trustee states that the Trustee and Trustee's counsel has filed Motions for Compensation as to both set for hearing on December 3, 2015. The unpaid requested administrative claims total \$324,396.69 for fees and expenses through September 30, 2015.

FN.1. The Trustee notes that California State Board of Equalization filed a Proof of Claim No. 6 on February 2, 2015 asserting a priority claim of \$27,108.57 for unpaid sales and use taxes for the period October 1, 2011 through November 30, 2014. On November 30, 2014, the California State Board of Equalization filed an Amended Proof of Claim No. 6 which reduced the priority claim to \$25,331.66. The Trustee asserts this was paid in full through escrow.

The Trustee seeks authorization for payment of pre-petition priority taxes in full pursuant to 11 U.S.C. § 105(a). However, the Motion does not state what grounds exist under 11 U.S.C. § 105(a) for the court to issue an order authorizing the payment at this time. While 11 U.S.C. § 105(a) has been relied on as a "catch-all" provision for the court to make any order it wants, such interpretation of the statute has long been rejected by the Ninth Circuit Court of Appeal and recently by the United States Supreme Court. See *Law v. Siegel*, ___ U.S. ___, 134 S. Ct. 1188, 1194, 188 L. Ed. 2d 146 (2014).

Here, the court reads this as a request to use property of the estate, unencumbered cash, pursuant to 11 U.S.C. § 363(b)(1). The Trustee is seeking authorization by the court to use the recently unblocked funds to pay pre-petition priority claims.

The Motion does not state any reason for the court to authorize the Trustee, in this Chapter 11 case, to pay these creditors outside a confirmed plan. The Trustee admits in the Motion that after paying these pre-petition claims, the secured claims, and the requested professional fees for the Trustee

and Trustee's counsel, only \$100,000 of the \$2,400,000 sale proceeds will remain. While \$100,000 is not an insignificant amount of money, it represents 4% of the sales proceeds.

The only "grounds" stated in the Motion for the court ordering this payment outside of a confirmed plan is:

"The Trustee believes it is in the best interests of Debtor's bankruptcy estate to pay pre-petition priority taxes at this time."

Motion, p.4:8-9; Dckt. 336. This is nothing more than the Trustee stating his personal finding of fact and conclusion of law, which the court is requested to parrot.

The court has also reviewed the Trustee's declaration (which is based on his personal knowledge and what other people have told him). Dckt. 338. The Declaration does not clearly distinguish what is the Trustee's personal knowledge testimony, Fed. R. Evid. 602, and which is hearsay, Fed. R. Evid. 801, 802.

The Trustee does testify that he is "comfortable" in concluding that there will be no income taxes due from the estate for the post-petition tax periods. *Id.*, p. 3:9-11 In his declaration, Trustee repeats that it is his finding of fact and conclusion of law that "[i]t is in the best interests of the Debtor's bankruptcy estate to pay pre-petition priority taxes in full at this time." *Id.*, 3:23-24.

The Motion is denied without prejudice. Movant has not provided the court with grounds to bypass the plan confirmation and distribution provisions of the Bankruptcy Code.

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

The Motion to Pay filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

22. [13-90146-E-7](#) KEVIN/KELLYE SIMPSON MOTION TO SELL
SCF-1 Patrick B. Greenwell 10-19-15 [[16](#)]

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 19, 2015. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the 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. The South 32 acres of the SW 1/4 of Section 35, Township 20 North, Range 9 East, less and except five acres across the East End of said 32 acre block. LESS AND EXCEPT: Grantor, Jean Estelle Pogue, reserved for herself a life estate in the use of the home and one (1) acre located on the South side of Tract 1.

The proposed purchaser of the Property is Kevin Simpson and Kellye Simpson ("Debtor"). The Trustee states that situated on the Property is an improvement inhabited by Debtor's step mother Jean Estelle Pogue. Ms. Pogue owned the Property before conveying it to Debtor. Debtor has assigned a value of

\$30,000.00 to the portion of the Property not subject to the life estate and \$3,000.00 as the value of the remainder interest in the life estate. The Property is not subject to any mortgage liens and is unencumbered. The Debtor has claimed an exemption in the amount of \$5,477.93 in the non-life estate portion of the Property and \$3,00.00 in the remainder interest in the life estate pursuant to California Code of Civil Procedure § 703.140(b)(5). The terms of the sale are:

1. The Debtor shall pay the estate the total cash sum of \$10,000.00 for the non-exempt equity in the Property.
2. Payment of the purchase amount requires the Debtor to pay the sum of \$1,000.00 up front with the balance of the purchase amount to be paid within 120 days of the date the court enters the order approving the sale.
 - a. The Debtor has paid the \$1,000.00 down payment.
3. The purchase amount shall be non-exempt property of the estate.
4. Upon payment of the purchase amount, the Debtor shall be entitled to retain the Property and the Property shall cease being property of the bankruptcy estate.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. As asserted by the Trustee, the value of the Property is reasonable. The court agrees that given the nature of the Property and the life estate interest, there is not a ready market for the Property. The cost to partition or subdivide the Property would result in the estate losing funds from any sale. The proposed sale provides for the estate to release the interest in a burdensome parcel of land with overlaying interests.

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 Sell Property filed by Stephen C. Ferlmann 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 Stephen C. Ferlmann, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Kevin Simpson and Kellye Simpson or nominee ("Buyer"), the Property commonly known as:

The South 32 acres of the SW 1/4 of Section 35, Township 20 North, Range 9 East, less and except five acres across the East End of said 32 acre block. LESS AND EXCEPT: Grantor, Jean Estelle Pogue, reserved for herself a life estate in the use of the home and one (1) acre located on the South side of Tract 1.

("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$10,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 19, and as further provided in this Order.
2. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

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.

ORDER CONTINUING THE HEARING

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.

APPLICABLE LAW

11 U.S.C. § 110 define a "bankruptcy petition preparer" and "document for filing" as:

(1) "bankruptcy petition preparer" means a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing; and

(2) "document for filing" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

For purposes of the instant Motion, 11 U.S.C. § 110 requires the following of bankruptcy petition preparers:

(b)(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address. If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the bankruptcy petition preparer shall be required to-

(A) sign the document for filing; and

(B) print on the document the name and address of that officer, principal, responsible person, or partner.

11 U.S.C. § 110(b)(1). Furthermore, § 110 states:

(h) (1) The Supreme Court may promulgate rules under section 2075 of title 28, or the Judicial Conference of the United States may prescribe guidelines, for setting a maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy petition preparer shall notify the debtor of any such maximum amount before preparing any document for filing for the debtor or accepting any fee from or on behalf of the debtor.

(2) A declaration under penalty of perjury by the bankruptcy petition preparer shall be filed together with the petition, disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor. If rules or guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall include a

certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).

(3)(A) The court shall disallow and order the immediate turnover to the bankruptcy trustee any fee referred to in paragraph (2)--

(I) found to be in excess of the value of any services rendered by the bankruptcy petition preparer during the 12-month period immediately preceding the date of the filing of the petition; or

(ii) found to be in violation of any rule or guideline promulgated or prescribed under paragraph (1).

(B) All fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g).

11 U.S.C. § 110(h).

In determining the extent of fine and penalty, § 110 states:

(1) (1) A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than \$500 for each such failure.

(2) The court shall triple the amount of a fine assessed under paragraph (1) in any case in which the court finds that a bankruptcy petition preparer--

(A) advised the debtor to exclude assets or income that should have been included on applicable schedules;

(B) advised the debtor to use a false Social Security account number;

(C) failed to inform the debtor that the debtor was filing for relief under this title; or

(D) prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer.

(3) A debtor, trustee, creditor, or United States trustee (or the bankruptcy administrator, if any) may file a motion for an order imposing a fine on the bankruptcy petition preparer for any violation of

this section.

(4)(A) Fines imposed under this subsection in judicial districts served by United States trustees shall be paid to the United States trustees, who shall deposit an amount equal to such fines in the United States Trustee Fund.

DISCUSSION

The Trustee is seeking fines for Ms. Gutierrez's violation of 11 U.S.C. § 110(b)(1) for failing to sign or identify herself on any of the documents and 11 U.S.C. § 110(h)(2) for failing to file a declaration disclosing her compensation.

The court is equally concerned with Ms. Gutierrez's conduct as the US Trustee is. The crux of the US Trustee's concern is the representations of bankruptcy petition preparers to debtors and the necessary disclosure of these preparers to the court.

From the Motion and a review of the case, it appears that Ms. Gutierrez attempted to "hide the ball" from the court as to the compensation received by hiring a "subcontractor" to prepare the petition. Through this method, Ms. Gutierrez asserts that she did not believe she needed to disclose her compensation because she was not technically the one to prepare the documents. This answer is not sufficient nor persuasive.

Ms. Gutierrez attempts to claim ignorance of the requirements of the Bankruptcy Code and that if she was aware of such necessary disclosures, she would have appropriately made them. However, the court is not convinced. Ms. Gutierrez is the owner of At Your Legal Service and presumably has provided other "quasi-legal" services to customers. In this capacity, Ms. Gutierrez is most certainly aware of the court's universal underlying policy for full disclosure.

Ms. Gutierrez offers no evidence or declarations to support her allegations that she was unaware of the disclosure requirements or that the signing of the petition by Ms. Holt. In fact, the Debtor states in their declaration that

Neither [Debtor] has ever met or spoke with Ms. Holt. [The Debtor] do not know who she is. [Debtor] never paid her anything. Although Ms. Holt is mentioned in several places on Exhibit 3, [Debtor] don't recall seeing her name on the documents when we signed them.

Dckt. 38. Exhibit 3 is a copy of the Petition, Schedules, and Statements. Dckt. 36, Exhibit 3. The US Trustee also provides authenticated copies of email correspondences between the Debtor and Ms. Gutierrez. First, the court notes that the email "atyourlegalservices@yahoo.com" is registered to the name Luiz Gutierrez. A search of the California State Bar website shows that Luiz Gutierrez is an active attorney admitted to practice in June 2010 and is listed to practice in Los Angeles. However, nowhere in Mrs. Gutierrez's response does she explain who Luiz Gutierrez is. Each of the emails from this address is signed by "Mary."

Second, the court concurs with the US Trustee that the reading of bankruptcy petition preparer should not be read so narrowly to only include the persons who physically prepare the documents. See, e.g. *In re Reynoso*, 477 F.3d 1117 (9th Cir. 2007). Otherwise, any preparer would be able to avoid liability by subcontracting out the work to third parties, in an effort to have any violations flow through the entity to the third party. This is not what Congress envisioned. Instead, Debtor here employed At Your Legal Service and dealt directly with Mrs. Gutierrez who had direct communication with the Debtor in person and via email. The Legal Document Assistant Contract for Self-Help Services is signed by Mrs. Gutierrez. Dckt. 36, Exhibit 2. In sum, Mrs. Gutierrez is the bankruptcy petition preparer for purposes of 11 U.S.C. § 110 and is therefore required to make all necessary disclosures - namely signing the petition and scheduled (§ 110(b)(1)) and filing a declaration on compensation received (§ 110(h)(2)).

Concluding that Mrs. Gutierrez is the bankruptcy petition preparer, it is self-evident that she failed to comply with the disclosure requirements of 11 U.S.C. § 110. Mrs. Gutierrez does not list herself as the preparer and has not provided any declaration under penalty of perjury of the compensation received.

Under 11 U.S.C. § 110, the court fines Mrs. Gutierrez \$1,000.00 for each violation. Mrs. Gutierrez has not provided any evidence or argument that this was not an intentional avoidance of properly complying with the requirements of the Bankruptcy Code. The US Trustee has provided convincing evidence that Mrs. Gutierrez was the bankruptcy petition preparer and that she failed to comply with the disclosure requirements.

This fine is a reasonable amount, which is necessary to deter both Ms. Gutierrez, her legal document business, and other similarly situated businesses from just "venturing out" and promising to provide bankruptcy petition preparer services on the premise that they will just "contract out the work" and pocket some of the money paid by the desperate debtors.

Therefore, the Motion is granted. Mary Gutierrez shall be fined \$350.00 for each of her two violations of 11 U.S.C. § 110(b)(1) and (h)(2), for a total fine of \$700.00. Mrs. Gutierrez shall pay Tracy Hope Davis, United States Trustee, 501 I Street, Suite 7-500, Sacramento, California \$1,000.00 in the form of cashier's check on or before January 7, 2015. 11 U.S.C. § 110(l)(4)(A). FN.1.

FN.1. In considering the facts and circumstances of this case, the response, and the fees originally changed, a total fine of \$700.00 is appropriate. It is approximately three times the monies paid by Debtor. Thus, the "game" in setting up a subcontracting bankruptcy petition preparer service in which the person contracting with the debtor is not doing the work, but just skimming a fee off the top, is not worth the cost of the candle. The \$700.00 amount is not unreasonable or burdensome for someone engaged in this business.

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 Imposition of a Fine Against Mary Gutierrez filed by US Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted. Mary Gutierrez is fined \$700.00 for violation of 11 U.S.C. § 110(b)(1) and (h)(2) (\$350.00 each for the two violations). Mrs. Gutierrez shall pay Tracy Hope Davis, United States Trustee, 501 I Street, Suite 7-500, Sacramento, California \$700.00 in the form of cashier's check on or before January 7, 2015.

24. [15-90358-E-11](#) LAWRENCE/JUDITH SOUZA MOTION TO USE CASH COLLATERAL
MHK-8 David M. Meegan 11-2-15 [[165](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the 20 largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 2, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Use Cash Collateral 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 Use Cash Collateral is granted.

Lawrence and Judith Souza, the Debtor-in-Possession, filed the instant Motion to Use Cash Collateral on November 2, 2015, 2015. Dckt. 165.

The Debtors-in-Possession holds fee title to the following properties:

PROPERTY LOCATION	TYPE OF RENTAL
121 W. Syracuse Ave.	Single Family Residential
235 W. Syracuse Ave.	Single Family Residential
87 W. Canal Drive	Single Family Residential
97 W. Canal Drive	Single Family Residential

The Debtors-in-Possession states that each of the properties are encumbered. The following chart describes the encumbrances:

RENTAL	CREDITOR	RECORDATION DATE	ASSIGNMENT OF RENTS?
121 Syracuse	Maiman Revocable Trust A/Deed of Trust	3/8/11	yes
	Internal Revenue Service	4/26/11; 3/26/12	No
235 Syracuse	Seterus/Deed of Trust	4/25/05	No
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax liens	4/26/11; 3/26/12	No
87 Canal	Provident Credit Union/Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes

	Internal Revenue Service/ Tax liens	4/26/11;3/26/12	No
97 Canal	Provident Credit Union/ Deed of Trust	10/16/02	Yes
	Curtis Fam. Trust/ Deed of Trust	8/25/10	Yes
	Internal Revenue Service/ Tax Liens	4/26/11;3/26/12	No

The Debtors-in-Possession have opened a segregated bank account of the purpose of holding all rents and for paying necessary expenses. Only rents from the properties are deposited into this account.

The Debtors-in-Possession state that the following amounts are currently deposited in the rental account, as proceeds of rent or insurance as the case may be:

<u>Property/Source</u>	<u>Amount</u>
121 W. Syracuse/insurance proceeds	\$10,772.58
235 W. Syracuse/ rents	\$3,292.05
87 W. Canal/rents	\$2,659.31
97 W. Canal/rents	\$924.00

The Debtors-in-Possession state that, in order to avoid additional charges and penalties, the following amounts are to be paid to Stanislaus County, as first installments of real property tax on the Properties for tax year 2015-2016, no later than December 10, 2015:

<u>Property</u>	<u>Amount</u>
121 W. Syracuse	\$388.65
235 W. Syracuse	\$159.14
87 W. Canal	\$674.56
97 W. Canal	\$619.43

The Debtors-in-Possession state that the use of cash collateral to pay

ongoing tax installments will help assure that the interest of the secured creditors is protected, that the value of each relevant property is maintained, and will prevent the accrual of additional and interest.

PROVIDENT CREDIT UNION'S OPPOSITION

Provident Credit Union ("Creditor") filed an opposition on November 19, 2015. Dckt. 192. The Creditor has no opposition to the Debtors-in-Possession using the cash collateral for payment of utilities, taxes, management fees or to set up a reserve for miscellaneous maintenance. Instead, the Creditor requests that any lender, due to its security interest in the cash collateral generated by the 87 Canal and 97 Canal properties, is given a replacement lien in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expanded, to the extent that the use of the cash collateral resulted in a reduction of Creditor's claim.

In reading the opposition, the court cannot identify what "post-petition proceeds" in which Creditor believes that it should be granted a "replacement lien." Creditor's lien already encompasses the post-petition rents generated by its collateral. 11 U.S.C. § 552(b). The Opposition does not identify any other "proceeds."

Further, the cash collateral is being used to pay the senior in priority tax obligation encumbering Creditor's collateral. Dollar for dollar, paying this senior in priority tax claim benefits Creditor and works to preserve the value of Creditor's collateral.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a Debtor-in-Possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a Debtor-in-Possession, the Debtor-in-Possession can use, sell, or sell property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless--

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease--

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

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

(b)(2) Hearing

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

DISCUSSION

Debtors-in-Possession have shown that the use of cash collateral as proposed is in the best interest of estate and is in the ordinary course of business. The monies are being used to pay the senior in priority property tax claims for the property which generated the cash collateral to be used. The Debtors-in-Possession have created a separate rental income account in which the Debtors-in-Possession are depositing the rental income from the properties and the expenses are deducted from that account.

While the Debtors-in-Possession have received authorization to use cash collateral for the properties, the order authorizing such did not expressly permit the payment of real property tax installments in December 2015.

As to the Creditor's objection, Creditor is directly benefitting from the cash collateral being used - the senior tax lien obligation is paid and there will be no interest accruing thereon. No other "proceeds" have been identified for the court to grant a replacement lien, if a replacement lien was warranted.

Therefore, the court authorizes the use of cash collateral to pay the property tax installments from the rental account.

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 Authority to Use Cash Collateral filed by 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 the Motion is granted and the cash collateral may be used to pay the following real property tax

December 3, 2015 at 10:30 a.m.

installment expenses:

<u>Property</u>	<u>Amount</u>
121 W. Syracuse	\$388.65
235 W. Syracuse	\$159.14
87 W. Canal	\$674.56
97 W. Canal	\$619.43

25. [09-94269-E-7](#) SUSHIL/SUSEA PRASAD
MF-2 James D. Pitner

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SUSHIL PRASAD
AND SUSEA S. PRASAD
11-12-15 [[139](#)]

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, parties requesting special notice, and Office of the United States Trustee on November 12, 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.

Stephen C. Ferlmann, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Sushil Prasad and Susea S. Prasad ("Settlor"), the Debtors. The claims and disputes to be resolved by the proposed settlement are in connection with Adversary Proceeding No. 15-09018 for relief under 11 U.S.C. §§ 362, 542, and 549. The Movant states that the underlying arbitration agreement and resulting settlement proceeds between Settlor, Transamerica and Meyer Wilson were

property of the estate because they arose from the Settlor's pre-petition investment induced by Vincent Thankur Singh.

In the Adversary Proceeding, the Settlor filed an answer, admitting that the arbitration claim and the settlement proceeds are property of the estate. Furthermore, the Answer admits that the Settlor received approximately \$60,000.00 in settlement proceeds.

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 C in support of the Motion, Dckt. 143):

- A. Settlor shall pay to the Trustee the sum of \$26,000.00 in full and complete settlement of the claims asserted against the Settlor in the Adversary Proceeding. Receipt of said payment is acknowledged.
- B. The Settlor shall cooperate with the Trustee and Trustee's counsel in testifying to the facts of the Adversary Proceeding, the arbitration claim, and Meyer Wilson's representations of the Settlor, including but not limited to:
 - 1. Providing to the Trustee and Trustee's counsel all documents including but not limited to writings, memoranda, notes, correspondence, statements, expert reports, pleadings, financial records, checks, and agreements in their possession relating to the arbitration claim, the Adversary Proceeding, and Meyer Wilson's representation to the Settlor.
 - 2. Cooperating with the Trustee and Trustee's counsel in obtaining all papers and property (client file), including but not limited to writings, memoranda, notes, correspondence, statements, expert reports, pleadings, financial records, checks, and agreements held with Meyer Wilson with respect to their representation of the Settlor.
- C. The Settlor waive confidentiality and privileges pursuant to the attorney-client relationship with Meyer Wilson, and consent to the disclosure of information to the Trustee and Trustee's counsel which are confidential and privileged. The Settlor waives the attorney-work product privilege in all respects.
- D. The Settlor and Trustee will grant each other a general release, but not a California Civil Code § 1542 waiver.
- E. The obligations of the Settlor and the Trustee will be effective only upon an order from this court approving the settlement.

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 Trustee shall recover \$26,000.00 in satisfaction of the estate's claim for recovery of the property. Trustee asserts that the property can be recovered for the estate and that the settlement provides the cooperation of the Settlor against the remaining defendants in the Adversary Proceeding.

Probability of Success

The Trustee asserts that with the settlement agreement, the Trustee will be able to succeed in the litigation in the Adversary Proceeding against Meyer Wilson and Transamerica. With the release of the Settlor's privilege, the Trustee will be able to gain the facts necessary to pursue the claims while collecting from the Settlor.

Difficulties in Collection

The Trustee asserts that collecting the \$26,000.00 from Settlor is not difficult. The Settlor has already paid the settlement amount. Furthermore, the Trustee asserts that this is the only remaining amount from the settlement proceeds the Settlor initially received (\$60,000.00). Given the employment status of the Settlor and the cooperation of the Settlor, the Trustee asserts that the settlement is in the best interest of the estate.

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 Trustee asserts that the settlement allows the Trustee to avoid the need to depose the Settlor or otherwise propound discovery upon them. The Settlor will likely provide declarations to support motions, keeping expenses low.

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 proposed settlement allows the Trustee to settle the claims against Settlor, receiving the remaining settlement funds for the estate, and the cooperation of the Settlor in prosecuting the Adversary Proceeding against the remaining defendants. The estate is receiving as much as it can conceivably receive if judgment was entered against the Settlor without the need of litigation expenses to further diminish the estate's interest.

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 Stephen C. Ferlmann, 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 Sushil Prasad and Susea S. Prasad ("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 C in support of the Motion(Docket Number 143).

26. [11-91778-E-7](#) ODISHO HOSEP AND LARA MOTION TO AVOID LIEN OF
MSN-1 YOUNAN DATA-CENTRAL COLLECTION BUREAU,
Mark S. Nelson LLC
10-15-15 [[24](#)]

Final Ruling: No appearance at the December 3, 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, Chapter 7 Trustee,, parties requesting special notice, and Office of the United States Trustee on October 15, 2015. By the court's calculation, 49 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 Data-Central Collection Bureau, LLC ("Creditor") against property of Odisho Hosep and Lara Sardroud Younan ("Debtor") commonly known as 4664 Whisper Place, Turlock, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$1,896.44. An abstract of judgment was recorded with Stanislaus County on October 23, 2009, which encumbers the Property.

The Debtor's case was filed on May 17, 2015. The Debtor received their discharge on August 29, 2011.

At the time of filing, the Debtor asserts that they were not aware of any debt owing to Creditor or knowledge of the lien. The Debtor states that it was not until the Debtor attempted to obtain a secured loan that they learned of the lien. On October 15, 2015, the Debtor moved to reopen the bankruptcy case and filed an amended Schedule F to include Debtor.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$207,000.00 as of the date of the petition. The unavoidable consensual liens total \$301,562.00 as of the commencement of this

case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1,000.00 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 Data-Central Collection Bureau, LLC, California Superior Court for Fresno County Case No. 08CECL14034, recorded on October 23, 2009, [Document No. 2009-0103273-00 with the Stanislaus County Recorder, against the real property commonly known as 4664 Whisper Place, Turlock, 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.

27. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE
RMY-14 Robert M. Yaspan

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

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

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

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

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

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

The Motion for Approval of Stipulation to Extend Order on Motion to Authorize Use of Cash Collateral Through March 31, 2016 was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Motion to Authorize Use of Cash Collateral Through March 31, 2016 is granted.

Debtors-in-Possession Michael House and Judy House ("Debtors-in-Possession") request an interim order authorizing Debtor-in-Possession to continue to use the cash collateral through March 31, 2016, (b) granting adequate protection to certain pre-petition secured parties for the use of

their cash collateral, (c) prescribing the form and manner of notice and setting the time for further hearings regarding the continued use of cash collateral.

PRIOR ORDERS

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

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

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

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

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

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

On October 1, 2015, the court authorized the use of cash collateral through and including December 31, 2015. Dckt. 341. The court also continued the hearing to 10:30 a.m. on December 3, 2015 to allow further request.

Current Motion

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

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

The accompanying Memorandum of Points and Authorities states that Debtors-in-Possession own the subject properties that generate rental income. The

amounts claimed pursuant to the deeds of trust against each of the Properties are as follows:

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

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

The Creditors claiming an assignment of rents are:

- A. Arthur and Karen House Trust by virtue of its first position deed on Smith Ranch.
- B. Oak Valley Community Bank by virtue of its second position deed of trust on the Smith Ranch.
- C. American AG Credit by virtue of its first position deed of trust on the Triumph Ranch.
- D. Arthur and Karen House Trust by virtue of its second position deed of trust on the Triumph Ranch.
- E. Petaluma Acquisition by virtue of its third position deed of trust on the Smith Ranch and its third position deed of trust on the Triumph Ranch.

It is anticipated that all secured parties will consent to the use of the cash collateral subject to Debtor-in-Possession continuing to pay all of the

contractually due payments and subject to the following budget (with a 20% line by line potential variance):

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

	Attorneys' Fees Carve Out (to be paid only after court approval)	(1,000.00)
	Monthly Cash Flow Profit	480.68

DISCUSSION

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

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

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

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

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

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

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

IT IS ORDERED that the Motion to Use Cash Collateral is granted, pursuant to this order, for the period December 3, 2015, through March 31, 2016, and the cash collateral may be used, through and including March 31, 2016, to pay the following monthly expenses:

Expense	Amount
Payment to Petaluma	(6,275.72)
Payment to AG Credit	(4,223.98)
Payment to Oak Valley Community Bank	(1,704.76)
Payment to Arthur and Karen House Trust (Triumph Ranch)	(5,500.00)
Fund for Emanuel O. Amaral Settlement	(\$1,200.00)
Expenses for Ranches	(1,370.00)
Rent	(1,500.00)
Utilities	(1,500.00)
Home Maintenance	(25.00)
Food	(500.00)
Clothing	(100.00)
Medical and Dental	(50.00)
Transportation	(250.00)
Recreation	(50.00)
Charitable Contributions	(30.00)
Life Insurance	(920.00)
Health Insurance	(1,100.00)
Insurance for Ranch, Auto and House	(2,500.00)
Income Tax	(500.00)
Photography Expenses	(200.00)
Trustee's Fees	(325.00)
Payments for Additional Dependents not living at home	(200.00)
Attorneys' Fees Carve Out (to be paid only after court approval)	(1,000.00)

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

IT IS FURTHER ORDERED the hearing on the Motion is continued to 10:30 a.m. on March 17, 2016, to consider a supplemental to the Motion to extend the authorization to use cash collateral. On or before February 25, 2016, the Debtors in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the March 31, 2016 hearing. Any opposition to the requested use of cash collateral shall be filed and served on or before March 10, 2016.

28. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE MOTION TO USE CASH COLLATERAL,
RMY-14 Robert M. Yaspan MOTION FOR ADEQUATE PROTECTION,
MOTION TO SCHEDULE FURTHER
HEARINGS
11-12-15 [[363](#)]

Final Ruling: No appearance at the December 3, 2015 hearing is required.

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

29. [15-90697-E-7](#) ELIZABETH ZYLSTRA CONTINUED MOTION TO DISMISS
Pro Se CASE
10-16-15 [[54](#)]

Final Ruling: No appearance at the December 3, 2015 hearing is required.

The court having previously continued the Motion to Dismiss to 10:30 a.m. on December 17, 2015 (Dckt. 102), **the Motion to Dismiss is removed from the calendar.**

30. [15-90697-E-7](#) ELIZABETH ZYLSTRA CONTINUED OBJECTION TO DEBTOR'S
SSA-2 Pro Se CLAIM OF EXEMPTIONS
10-13-15 [[45](#)]

Final Ruling: No appearance at the December 3, 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 17, 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 continued 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 on November 12, 2015. Dckt. 85. The court continued the hearing to 10:30 a.m. on December 3, 2015 to be heard in conjunction with these motions.

On November 20, 2015, due to a technical difficulty, the court issued a subsequent order continuing the Motion to Dismiss and any compensation motions to 10:30 a.m. on December 17, 2015. Dckt. 102.

In light of the interrelated nature of the motions, the court continues the instant Motion to 10:30 a.m. on December 17, 2015 to be heard in conjunction with the Motion to Dismiss and the compensation motions.

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 17, 2015.

31.	15-90697-E-7 SSA-3	ELIZABETH ZYLSTRA Pro Se	MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR 11-6-15 [75]
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Final Ruling: No appearance at the December 3, 2015 hearing is required.

The court having previously continued the Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor to 10:30 a.m. on December 17, 2015 (Dckt. 97), **the Motion to Extend Deadline is removed from the calendar.**

32. [15-90697-E-7](#) ELIZABETH ZYLSTRA MOTION FOR COMPENSATION FOR
SSA-5 Pro Se STEVEN S. ALTMAN, TRUSTEES
ATTORNEY(S)
11-20-15 [[86](#)]

Final Ruling: No appearance at the December 3, 2015 hearing is required.

The court having previously ordered that any Motion for Compensation for Irma Edmonds, the Chapter 7 Trustee, and Steven Altman, counsel for the Chapter 7 Trustee, shall be set for hearing at 10:30 a.m. on December 17, 2015 (Dckt. 102), the Trustee having filed a Motion for Compensation for Steven S. Altman, Trustee's Attorney, on November 20, 2015 and filed an amended Notice of Hearing setting the Motion for hearing at 10:30 a.m. on December 17, 2015, **the Motion for Compensation is removed from the calendar.**

33. [15-90697-E-7](#) ELIZABETH ZYLSTRA MOTION FOR COMPENSATION FOR
SSA-6 Pro Se IRMA EDMONDS, CHAPTER 7
TRUSTEE(S)
11-20-15 [[92](#)]

Final Ruling: No appearance at the December 3, 2015 hearing is required.

The court having previously ordered that any Motion for Compensation for Irma Edmonds, the Chapter 7 Trustee, and Steven Altman, counsel for the Chapter 7 Trustee, shall be set for hearing at 10:30 a.m. on December 17, 2015 (Dckt. 102), the Trustee having filed a Motion for Compensation for Irma Edmonds, on November 20, 2015 and filed an amended Notice of Hearing setting the Motion for hearing at 10:30 a.m. on December 17, 2015, **the Motion for Compensation is removed from the calendar.**