UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

December 14, 2017, at 10:30 a.m.

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1. **16-90500-E-11** **ELENA DELGADILLO** **MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO PAY**
HSM-17 **Len ReidReynoso** **11-14-17 [251]**

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—Hearing Required.

Sufficient 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 twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2017. By the court's calculation, 30 days' notice was provided. The court required service by November 15, 2017. Dckt. 266.

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is xxxxx.

The Bankruptcy Code permits Irma Edmonds, the Chapter 11 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 4121 E 17th Street, Oakland, California ("Property").

The proposed purchaser of the Property is Ryan Vanderpol and Amy Theirfelders, and the terms of the sale are:

A. Purchase price of $425,000.00;

B. Deposit of $12,000.00, which shall be nonrefundable if Buyer fails to close;

C. Escrow to close within fifteen days of court approval;

D. Seller to pay prorated share of real property taxes (not to exceed $91,000.00);

E. Buyer to purchase the Property with tenants in place;

F. Buyer shall assume EBMUD sewer lateral compliance fees;

G. Buyer shall have ten days from acceptance to complete all investigations;

H. Property sold as is, where is, with all faults;

I. Broker's commission of 6.00% to Stephanie Davis of Coldwell Banker Residential Brokerage; and

J. From the sale proceeds, Movant intends to pay the claim of Creditor Sacramento Lopez.

The Motion seeks to sell the Property free and clear of the lien of Sacramento Lopez ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> "(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established that Creditor consents to the sale free and clear of its lien. Dckt. 251 at 6:17–26. Additionally, Creditor filed a Statement of Consent on November 17, 2017. Dckt. 269.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 30, 2017. Dckt. 273. Debtor argues that she has acquired sufficient funds to satisfy the remaining balance of claims. Debtor states that her daughter received a loan against the daughter's property and then gave $240,000.00 to Debtor. *Id.* at 3. Now, Debtor wants to use those funds to pay the claims in this case and retain the remaining real property assets.

MOVANT'S REPLY

Movant filed a Reply on December 7, 2017. Dckt. 279. Movant argues that Debtor has claimed before to have sufficient funds to fully resolve this case, but Movant does not believe Debtor. First, Debtor's contentions are not supported by any admissible evidence. Second, Movant states that Debtor is incorrect that approximately one million dollars has been distributed to Creditor; the actual sum is $684,988.04. Creditor is owed $423,454.50 still. Movant asserts that there are not sufficient funds on hand to pay Creditor.

DISCUSSION

Debtor opposes the present Motion, having her attorney argue that Debtor tells him that she has obtained $240,000.00 from her daughter that she will pay to Movant to fund the final distribution to all creditors in this case. Opposition ¶ 15, Dckt. 273. Those arguments are unsupported by any evidence—either in the form of a declaration or proof of such funds being available. Further, nothing is presented to the court to show that Debtor, acting through her counsel, has tendered the $240,000.00 to Movant.

In response to the Opposition, Movant has provided her declaration. Dckt. 281. Movant's testimony addresses the status of the prior approved sales of property of the estate, advising the court, Debtor, and parties in interest that two sales have closed. However, the sale of the Bancroft Property (as referenced by Debtor) did not close and that property continues to be property of the bankruptcy estate.

In her declaration, Movant also points out several concerns she has with respect to the unauthenticated loan documents by which the purported loan was obtained by Debtor's daughter.

Appointment of Movant

Debtor's eleventh and one-half hour opposition argued by her counsel is considered in light of Debtor's performance of her fiduciary duties as the debtor in possession and her prosecution of this case prior to the appointment of Movant. The court addressed this in its ruling on the Motion to Appoint a Trustee or Convert the Case. Civil Minutes, Dckt. 76.

The findings and conclusions of the court stated in the Civil Minutes for the hearing on the Motion to Appoint a Trustee or Convert the Case include the following:

> Here, both a party in interest (Creditor) and the U.S. Trustee have requested the appointment of a trustee, and they have established both cause for appointment of a trustee and that such appointment is in the best interest of creditors. **Debtor in Possession was to administer the Estate according to a stipulation, but has failed to do so. Debtor in Possession transferred eleven properties**, then expressed intention to sell them, **but has since not reconveyed all of the properties** and has not filed a motion to employ a realtor. Debtor in Possession also has not filed a disclosure statement, a plan, or the required monthly operating reports. **Debtor in Possession's conduct is evidence of gross mismanagement**, and there is cause for the court to appoint a trustee in this case.
>
> . . .
>
> A Status Conference was conducted on November 22, 2016, with counsel for the Debtor in Possession appearing. As stated in the U.S. Trustee's pleading, the **Debtor in Possession has not been filing monthly operating reports (being in default for the months of July 2016 and each month thereafter through November 2016)** and has **not taken steps to engage a real estate** broker to market the property or advance a Chapter 11 Plan. Counsel for the Debtor in Possession reports that the Debtor in Possession has limited English language skills and everything is translated through her son. However, **no explanation is provided for why an accountant or other professional has not been hired to assist in the preparation of the necessary reports**, why the son or other family member is not working with the Debtor in Possession to prosecute this case, or why or how the Debtor can fulfill the duties of a debtor in possession given her conduct to date.
>
> Cause has been shown for the appointment of a Chapter 11 trustee in this case. **Debtor has not fulfilled her basic duties as a debtor in possession and has not advanced a plan in this case**. Though some properties have been recovered from the family members to which they were transferred, nothing further is developing.

Civil Minutes, Dckt. 76 (emphasis added).

While "promising" there is money, it appears that the opposition is being prosecuted solely for the sake of delay and in an attempt to derail the administration of this case.

Reported Status of Properties, Sales, and Claims

Movant testifies that Debtor's arguments about the sales proceeds is inaccurate as one of the sales has fallen through. Movant also provides her testimony of the monies on hand, payment of secured claims to date, projected monies necessary to pay administrative expenses, and the amount necessary to pay the claims in this case.

Movant argues that Debtor has claimed before to have sufficient funds to fully resolve this case, but Movant does concur in Debtor's projection. First, Debtor's contentions are not supported by any admissible evidence. Second, Movant states that Debtor is incorrect that approximately one million dollars has been distributed to Creditor; the actual sum is $684,988.04. Creditor is owed $423,454.50 still. Movant asserts that there are not sufficient funds on hand to pay Creditor.

Movant argues that Debtor has assumed incorrectly that all of the property sales in this case have closed. The sales of real property at Orchard Road, Vernalis, California, and at 1920 82nd Avenue, Oakland, California, have closed, but a proposed sale for real property at 5319 Bancroft Avenue, Oakland, California, did not close. Dckt. 281. From the two completed sales, Movant has distributed $684,988.04 to Creditor, leaving $423,454.50 to be paid.

Movant has retained $347,748.00 in this case to cover all administrative expenses for the case, including Movant's commission, compensation for professionals, and post-petition taxes due by the Estate. Movant does not know if that amount will be sufficient to pay all administrative expenses, which total approximately $374,900.00 at this time. Movant estimates the administrative expenses as follows:

A. Movant's commission—not less than $65,000.00;

B. Movant's attorneys' fees and costs—$28,000.00;

C. Movant's CPA's fees and costs—$47,000.00;

D. Federal and state taxes—$217,400.00; and

E. Quarterly U.S. Trustee fees—$17,500.00.

Movant estimates that at least $815,669.62 will be required to pay all claims in this case. With the Estate retaining $353,785.20, there is a shortage of $461,884.42. Even with $240,000.00 purportedly being given to Debtor, Movant argues that there would still not be enough funds to pay all claims in this case.

Reported Status of Chapter 11 Plan or Conversion to Chapter 7 If Claims to be Paid Through Liquidation of Properties Outside of a Chapter 11 Plan

At the hearing, Movant reported that the status of prosecuting a Chapter 11 Plan in this case is xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

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: xxxxxxxxxxxxxxx.

The court has approved prior sales of property in this case, but now Debtor requests that the court not allow more sales because Debtor has acquired funds that are sufficient to pay the claims in this case. Based on the evidence before the court, the Motion is xxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Irma Edmonds, the Chapter 11 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 Movant ~~is authorized to sell pursuant to 11 U.S.C. § 363(f) to Ryan Vanderpol and Amy Theirfelder or nominee ("Buyer"), the Property commonly known as 4121 E 17th Street, Oakland, California ("Property"), on the following terms:~~
>
> ~~A. The Property shall be sold to Buyer for $425,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 255, and as further provided in this Order.~~
>
> ~~B. 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.~~
>
> ~~C. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~
>
> ~~D. Movant is authorized to pay a real estate broker's commission in an amount not to exceed six percent of the actual purchase price upon consummation of the sale. The commission shall be paid to Movant's broker, Coldwell Banker Residential Brokerage, Stephanie Davis, agent, and Buyer's broker as provided in the Purchase Agreement.~~
>
> ~~E. The sale of the property is made pursuant to 11 U.S.C. § 363(f)(2) (consent of Sacramento Lopez having been given (Dckt. 269)) free and clear of the lien of Sacramento Lopez, which lien shall attach to all remaining proceeds from the sale of the Property, except for the first $91,000.00 [plus 30% of any overbid] of the net proceeds after payment of the above expenses, which $91,000.00 shall be disbursed to Movant as monies free and clear of the lien securing the claim of Sacramento Lopez.~~
>
> ~~F. The remaining proceeds after payment of the costs and expenses of sale, and disbursement of the $91,000.00 of unencumbered monies to Movant, shall be disbursed directly from escrow to Sacramento Lopez in an amount not to exceed Mr. Lopez's secured claim in this case and shall be applied to Mr. Lopez's secured claim in this~~

~~bankruptcy case. Movant shall provide her consent to the disbursement directly from escrow for the amount to be disbursed to Mr. Lopez, and in the event of a disagreement as to the total amount, Movant shall provide her consent to the undisputed portion, with any disputes as to the amount of Mr. Lopez's secured claim to be subsequently determined by this court.~~

~~**IT IS FURTHER ORDERED** that xxxxxxxxxxx (or nominee), the proposed purchaser in the Motion, is approved as the backup buyer in the amount of $xxxxxxxxx and on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 255, as amended by this Order, and as further provided in this Order in the event that Ryan Vanderpol and Amy Theirfelder did not close escrow and complete the purchase within xxx days after the entry of the order approving the sale of the property. In the event that Ryan Vanderpol and Amy Theirfelder do not timely close the purchase and the xxx-day contingency occurs, xxxxxx (or nominee) shall complete the purchase with the period not more than xxx days after the entry of this order.~~

2. **16-90500-E-11** **ELENA DELGADILLO** **MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO PAY**
HSM-18 **Len ReidReynoso** **11-14-17 [260]**

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—Hearing Required.

Sufficient 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 twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2017. By the court's calculation, 30 days' notice was provided. The court required service by November 15, 2017. Dckt. 267.

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is xxxxx.

The Bankruptcy Code permits Irma Edmonds, the Chapter 11 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 9115 International Boulevard, Oakland, California ("Property").

The proposed purchaser of the Property is Mohsen Mohamed, and the terms of the sale are:

A. Purchase price of $275,000.00;

B. Deposit of $9,000.00, which shall be nonrefundable if Buyer fails to close;

C. Escrow to close within fifteen days of court approval;

D. Seller to pay prorated share of real property taxes;

E. Buyer to purchase the Property with tenants in place;

F. Buyer shall assume EBMUD sewer lateral compliance fees;

G. Property sold as is, where is, with all faults;

H. Broker's commission of 6.00% to Coldwell Banker Residential Brokerage; and

I. From the sale proceeds, Movant intends to pay the claim of Creditor Sacramento Lopez.

The Motion seeks to sell the Property free and clear of the lien of Sacramento Lopez ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> "(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established that Creditor consents to the sale free and clear of its lien. Dckt. 260 at 6–7. Additionally, Creditor filed a Statement of Consent on November 17, 2017. Dckt. 270.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 30, 2017. Dckt. 276. Debtor argues that she has acquired sufficient funds to satisfy the remaining balance of claims. Debtor states that her daughter received a loan against the daughter's property and then gave $240,000.00 to Debtor. *Id.* at 3. Now, Debtor wants to use those funds to pay the claims in this case and retain the remaining real property assets.

MOVANT'S REPLY

Movant filed a Reply on December 7, 2017. Dckt. 283. Movant argues that Debtor has claimed before to have sufficient funds to fully resolve this case, but Movant does not believe Debtor. First, Debtor's contentions are not supported by any admissible evidence. Second, Movant states that Debtor is incorrect that approximately one million dollars has been distributed to Creditor; the actual sum is $684,988.04. Creditor is owed $423,454.50 still. Movant asserts that there are not sufficient funds on hand to pay Creditor.

DISCUSSION

Debtor opposes the present Motion, having her attorney argue that Debtor tells him that she has obtained $240,000.00 from her daughter that she will pay to Movant to fund the final distribution to all creditors in this case. Opposition ¶ 15, Dckt. 276. These arguments are unsupported by any evidence—either in the form of a declaration or proof of such funds being available. Further, nothing is presented to the court to show that Debtor, acting through her counsel, has tendered the $240,000.00 to Movant.

In response to the Opposition, Movant has provided her declaration. Dckt. 281. Movant's testimony addresses the status of the prior approved sales of property of the estate, advising the court, Debtor, and parties in interest that two sales have closed. However, the sale of the Bancroft Property (as referenced by Debtor) did not close and that property continues to be property of the bankruptcy estate.

In her declaration, Movant also points out several concerns she has with respect to the unauthenticated loan documents by which the purported loan was obtained by Debtor's daughter.

Appointment of Movant

Debtor's eleventh and one-half hour opposition argued by her counsel is considered in light of Debtor's performance of her fiduciary duties as the debtor in possession and her prosecution of this case prior to the appointment of Movant. The court addressed this in its ruling on the Motion to Appoint a Trustee or Convert the Case. Civil Minutes, Dckt. 76.

The findings and conclusions of the court stated in the Civil Minutes for the hearing on the Motion to Appoint a Trustee or Convert the Case include the following:

> Here, both a party in interest (Creditor) and the U.S. Trustee have requested the appointment of a trustee, and they have established both cause for appointment of a trustee and that such appointment is in the best interest of creditors. **Debtor in Possession was to administer the Estate according to a stipulation, but has failed to do so. Debtor in Possession transferred eleven properties**, then expressed intention to sell them, **but has since not reconveyed all of the properties** and has not filed a motion to employ a realtor. Debtor in Possession also has not filed a disclosure statement, a plan, or the required monthly operating reports. **Debtor in Possession's conduct is evidence of gross mismanagement**, and there is cause for the court to appoint a trustee in this case.
>
> . . .
>
> A Status Conference was conducted on November 22, 2016, with counsel for the Debtor in Possession appearing. As stated in the U.S. Trustee's pleading, the **Debtor in Possession has not been filing monthly operating reports (being in default for the months of July 2016 and each month thereafter through November 2016)** and has **not taken steps to engage a real estate** broker to market the property or advance a Chapter 11 Plan. Counsel for the Debtor in Possession reports that the Debtor in Possession has limited English language skills and everything is translated through her son. However, **no explanation is provided for why an accountant or other professional has not been hired to assist in the preparation of the necessary reports**, why the son or other family member is not working with the Debtor in Possession to prosecute this case, or why or how the Debtor can fulfill the duties of a debtor in possession given her conduct to date.
>
> Cause has been shown for the appointment of a Chapter 11 trustee in this case. **Debtor has not fulfilled her basic duties as a debtor in possession and has not advanced a plan in this case**. Though some properties have been recovered from the family members to which they were transferred, nothing further is developing.

Civil Minutes, Dckt. 76 (emphasis added).

While "promising" there is money, it appears that the opposition is being prosecuted solely for the sake of delay and in an attempt to derail the administration of this case.

Reported Status of Properties, Sales, and Claims

Movant testifies that Debtor's arguments about the sales proceeds is inaccurate as one of the sales has fallen through. Movant also provides her testimony of the monies on hand, payment of secured claims to date, projected monies necessary to pay administrative expenses, and the amount necessary to pay the claims in this case.

Movant argues that Debtor has claimed before to have sufficient funds to fully resolve this case, but Movant does concur in Debtor's projection. First, Debtor's contentions are not supported by any admissible evidence. Second, Movant states that Debtor is incorrect that approximately one million dollars has been distributed to Creditor; the actual sum is $684,988.04. Creditor is owed $423,454.50 still. Movant asserts that there are not sufficient funds on hand to pay Creditor.

Movant argues that Debtor has assumed incorrectly that all of the property sales in this case have closed. The sales of real property at Orchard Road, Vernalis, California, and at 1920 82nd Avenue, Oakland, California, have closed, but a proposed sale for real property at 5319 Bancroft Avenue, Oakland, California, did not close. Dckt. 281. From the two completed sales, Movant has distributed $684,988.04 to Creditor, leaving $423,454.50 to be paid.

Movant has retained $347,748.00 in this case to cover all administrative expenses for the case, including Movant's commission, compensation for professionals, and post-petition taxes due by the Estate. Movant does not know if that amount will be sufficient to pay all administrative expenses, which total approximately $374,900.00 at this time. Movant estimates the administrative expenses as follows:

A. Movant's commission—not less than $65,000.00;

B. Movant's attorneys' fees and costs—$28,000.00;

C. Movant's CPA's fees and costs—$47,000.00;

D. Federal and state taxes—$217,400.00; and

E. Quarterly U.S. Trustee fees—$17,500.00.

Movant estimates that at least $815,669.62 will be required to pay all claims in this case. With the Estate retaining $353,785.20, there is a shortage of $461,884.42. Even with $240,000.00 purportedly being given to Debtor, Movant argues that there would still not be enough funds to pay all claims in this case.

Reported Status of Chapter 11 Plan or Conversion to Chapter 7 If Claims to be Paid Through Liquidation of Properties Outside of a Chapter 11 Plan

At the hearing, Movant reported that the status of prosecuting a Chapter 11 Plan in this case is xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

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: xxxxxxxxxxxxxxx.

The court has approved prior sales of property in this case, but now Debtor requests that the court not allow more sales because Debtor has acquired funds that are sufficient to pay the claims in this case. Based on the evidence before the court, the Motion is xxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Irma Edmonds, the Chapter 11 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 Movant ~~is authorized to sell pursuant to 11 U.S.C. § 363(f) to Mohsen Mohamed or nominee ("Buyer"), the Property commonly known as 9115 International Blvd., Oakland, California ("Property"), on the following terms:~~
>
> ~~A. The Property shall be sold to Buyer for $275,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 264, and as further provided in this Order.~~
>
> ~~B. 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.~~
>
> ~~C. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~
>
> ~~D. Movant is authorized to pay a real estate broker's commission in an amount equal not to exceed six percent of the actual purchase price upon consummation of the sale. The commission shall be paid to Movant's broker, Coldwell Banker Residential Brokerage, agent Stephanie Davis, and Buyer's broker as provided in the Purchase Agreement.~~
>
> ~~E. The sale of the property is made pursuant to 11 U.S.C. § 363(f)(2) (consent of Sacramento Lopez having been given (Dckt. 270)) and § 363(f)(3) [sales proceeds exceeding the amount of the secured claim] free and clear of the lien of Sacramento Lopez, which lien shall attach to all remaining proceeds from the sale of the Property to the extent of his secured claim in this case. Movant shall direct the disbursement directly from escrow to Sacramento Lopez in an amount not to exceed Mr. Lopez's secured claim in this case and such disbursement shall be applied to Mr. Lopez's secured claim in this bankruptcy case. Sacramento Lopez shall provide his concurrence to the amount of the disbursement directly from escrow for the final amount owing on his secured claim. In the event of a disagreement as to the total amount, Movant and Sacramento Lopez shall provide their consent to the undisputed~~

~~portion of such disbursement, with any disputes as to the amount of Mr. Lopez's secured claim to be subsequently determined by this court.~~

~~**IT IS FURTHER ORDERED** that xxxxxxxxxxx (or nominee), the proposed purchaser in the Motion, is approved as the backup buyer in the amount of $xxxxxxxxx and on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 255, as amended by this Order, and as further provided in this Order in the event that Mohsen Mohamed did not close escrow and complete the purchase within xxx days after the entry of the order approving the sale of the property. In the event that Mohsen Mohamed does not timely close the purchase and the xxx-day contingency occurs, xxxxxx (or nominee) shall complete the purchase with the period not more than xxx days after the entry of this order.~~

3. 13-91315-E-7 MDM-10 | **APPLEGATE JOHNSTON, INC. George Hollister** | **OBJECTION TO CLAIM OF TEKSTAR, INC., CLAIM NUMBER 81 10-27-17 [834]**

Final Ruling: No appearance at the December 14, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney , and Office of the United States Trustee on October 27, 2017. By the court's calculation, 48 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 81 of Tekstar, Inc. is sustained, and the claim is disallowed as a priority claim. Such claim is a general unsecured claim in this case.

Michael McGranahan, the Chapter 7 Trustee ("Objector") requests that the court disallow the claim of Tekstar, Inc. ("Creditor"), Proof of Claim No. 81 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $4,123.00, with an unspecified portion entitled to priority. Objector asserts that no dollar amount is specified for priority, despite priority status being claimed pursuant to 11 U.S.C. § 507(a)(4), (5), and (8).

Examining the claim, Objector believes that the claim is for invoices from subcontractor work done and materials provided, but he argues the cited Code sections are limited to wages, salaries or commissions, taxes, and contributions to employee benefit plans. He argues that unpaid invoices do not qualify for priority under 11 U.S.C. § 507(a)(4), (5), and (8).

DISCUSSION

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

Objector has not provided any supporting case law for this Objection and directs the court to the explicit language in 11 U.S.C. § 507(a)(4), (5), and (8). Creditor has not opposed the Objection as required by the Local Bankruptcy Rules, however. Creditor's silence may be interpreted as acquiescence. The court finds that the express references in 11 U.S.C. § 507(a)(4), (5), and (8) do not include invoices for work performed.

Based upon the Objection, Creditor's claim is disallowed as a priority claim, with such claim remaining only as a general unsecured claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Tekstar, Inc., Creditor filed in this case by Michael McGranahan ("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 Objection to Proof of Claim Number 81 of Tekstar, Inc. is sustained, and the claim is disallowed as a priority claim, with such claim remaining as a general unsecured claim in this case.

4.	**13-91315-E-7** **MDM-11**	**APPLEGATE JOHNSTON, INC.** **George Hollister**	**OBJECTION TO CLAIM OF THOMAS PEREZ, CLAIM NUMBER 74** **1-1-17 [838]**

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.

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)(C).

Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, and Office of the United States Trustee on November 1, 2017. By the court's calculation, 43 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Debtor, creditors, the Chapter 11Trustee, 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 offer 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. At the hearing, ----------.

The Objection to Proof of Claim Number 74 of Thomas Perez, Secretary of Labor, on behalf of the Applegate Johnston, Inc. 401(k) Plan is sustained, and the claim is disallowed in its entirety.

Michael McGranahan, the Chapter 7 Trustee ("Objector") requests that the court disallow the claim of Thomas Perez, Secretary of Labor, on behalf of the Applegate Johnston, Inc. 401(k) Plan ("Creditor"), Proof of Claim No. 74 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $0.00. Objector asserts that the claim is listed as "contingent and unliquidated," but 11 U.S.C. § 502(a)(1) requires a claim to be liquidated.

Objector argues that he has communicated with Creditor, who does not assert a claim, but Creditor does not intend to withdraw the claim—even though its claim file has been closed—because of a lack of resources.

DISCUSSION

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

Here, Objector has represented that Creditor no longer asserts a claim but will not be withdrawing its claim because of a lack of resources. Given that representation, and because the claim is listed as unliquidated, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Thomas Perez, Secretary of Labor, on behalf of the Applegate Johnston, Inc. 401(k) Plan, Creditor filed in this case by Michael McGranahan ("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 Objection to Proof of Claim Number 74 of Thomas Perez, Secretary of Labor, on behalf of the Applegate Johnston, Inc. 401(k) Plan is sustained, and the claim is disallowed in its entirety.

5.	**13-91315-E-7** **MDM-8**	**APPLEGATE JOHNSTON, INC.** **George Hollister**	**OBJECTION TO CLAIM OF CITY LUMBER AND HARDWARE, CLAIM NUMBER 44** **10-27-17 [826]**

Final Ruling: No appearance at the December 14, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, and Office of the United States Trustee on October 27, 2017. By the court's calculation, 48 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 44 of City Lumber and Hardware is sustained, and the claim is disallowed as a priority claim, with such claim remaining as a general unsecured claim in this case.

Michael McGranahan the Chapter 7 Trustee ("Objector") requests that the court disallow the claim of City Lumber and Hardware ("Creditor"), Proof of Claim No. 44 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $3,465.36. Objector asserts that the claim does not list a specific provision of 11 U.S.C. § 507(a) entitling the claim to priority, and regardless, the claim appears to be for unpaid invoices that would not be a basis for priority.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof

of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Objector has not provided any supporting case law for this Objection and directs the court to 11 U.S.C. § 507(a) generally. Creditor has not opposed the Objection as required by the Local Bankruptcy Rules, however. Creditor's silence may be interpreted as acquiescence. The court finds that the express references in 11 U.S.C. § 507(a) do not include invoices for work performed. Additionally, Creditor has not asserted priority under a specific section of the Code.

Based on the evidence before the court, Creditor's claim is disallowed as a priority claim, with such claim remaining as a general unsecured claim in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of City Lumber and Hardware, Creditor filed in this case by Michael McGranahan ("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 Objection to Proof of Claim Number 44 of City Lumber and Hardware is sustained, and the claim is disallowed as a priority unsecured claim, with such claim remaining as a general unsecured claim in this case.

6.	**13-91315-E-7** **MDM-9**	**APPLEGATE JOHNSTON, INC.** **George Hollister**	**OBJECTION TO CLAIM OF H & M ELLIS, INC., CLAIM NUMBER 65** **10-27-17 [830]**

Final Ruling: No appearance at the December 14, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, and Office of the United States Trustee on October 27, 2017. By the court's calculation, 48days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 65 of H&M Ellis, Inc., dba Golden State Construction is sustained, and the claim is disallowed as a priority claim, with such claim remaining as a general unsecured claim in this case.

Michael McGranahan, the Chapter 7 Trustee ("Objector") requests that the court disallow the claim of H&M Ellis, Inc., dba Golden State Construction ("Creditor"), Proof of Claim No. 65 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $60,036.27. Objector asserts that 11 U.S.C. § 507(a)(4) does not entitle this claim to priority for its unpaid invoices.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright*

v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Objector has not provided any supporting case law for this Objection and directs the court to 11 U.S.C. § 507(a)(4). Creditor has not opposed the Objection as required by the Local Bankruptcy Rules, however. Creditor's silence may be interpreted as acquiescence. The court finds that the express references in 11 U.S.C. § 507(a)(4) do not include invoices for work performed.

Based on the evidence before the court, Creditor's claim is disallowed as a priority claim, with such claim remaining as a general unsecured claim in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of H&M Ellis, Inc., dba Golden State Construction, Creditor filed in this case by Michael McGranahan ("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 Objection to Proof of Claim Number 65 of H&M Ellis, Inc., dba Golden State Construction is sustained, and the claim is disallowed in as a priority claim, with such claim remaining as a general unsecured claim in this case.

7. **17-90718-E-7** **VICTORIA MAYERS** **CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING AND MOTION TO EXTEND THE DEADLINES FOR FILING OBJECTIONS TO DISCHARGE AND MOTIONS TO DISMISS**
MDM-1 **Pro Se** **10-16-17 [13]**

Final Ruling: No appearance at the December 14, 2017 hearing is required.

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

Sufficient 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 18, 2017. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is removed from calendar.

Michael McGranahan ("the Chapter 7 Trustee") filed a Motion to Dismiss this bankruptcy case due to Victoria Mayer's ("Debtor") failure to attend the First Meeting of Creditors pursuant to 11 U.S.C. § 341. Dckt. 14. Attendance at this meeting is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

Debtor appeared at the hearing on Debtor's Motion to Waive Chapter 7 filing fee and explained to the court the circumstances relating to the failure to appear and intention to attend the continued First Meeting of Creditors.

ORDER CONTINUING AND NOVEMBER 30, 2017 HEARING

On October 23, 2017, the court entered an order continuing this Motion to 10:30 a.m. on December 14, 2017. Dckt. 21. Noting that prior order at the November 30, 2017 hearing, the court continued the matter to 10:30 a.m. on December 14, 2017. Dckt. 25.

CHAPTER 7 TRUSTEE'S REPORT

The Chapter 7 Trustee filed a Report of No Distribution for this case on December 6, 2017, which indicated that Debtor appeared at the continued Meeting of Creditors.

RULING

Debtor having appeared at the Meeting of Creditors, the Chapter 7 Trustee's Motion has been resolved, and the matter is moot.

Additionally, the court has previously issued an order dismissing this Motion. Dckt. 28. The matter is removed from calendar.

8.	**17-90627-E-7** **SCB-3**	**DANIEL/JENNIFER DEIGAN** **Dean Feldman**	**MOTION TO EMPLOY RAQUEL A. HATFIELD AS SPECIAL COUNSEL** **11-9-17 [22]**

Final Ruling: No appearance at the December 14, 2017 hearing is required.

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

Sufficient 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 November 9, 2017. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

Gary Farrar ("the Chapter 7 Trustee") seeks to employ Raquel Hatfield of Arata, Swingle, Van Egmond & Goodman, a Professional Law Corporation, ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. The Chapter 7 Trustee seeks the employment of Counsel to litigate a wrongful termination lawsuit in the United States District Court, Eastern District of California, entitled *Daniel Deigan v. HYDAC Technology Corporation*, Case No. 1:17-cv-01281-LJO-SKO.

The Chapter 7 Trustee argues that Counsel's appointment and retention is necessary because the lawsuit was disclosed in the schedules with no exemption claimed for any amount recovered. The lawsuit was filed post-petition on September 26, 2017. The proposed terms for employment in this case are the same as Daniel Deigan and Jennifer Deigan ("Debtor") and Counsel have agreed to already. Counsel agreed to be employed and incur legal fees to be applied as a percentage of any gross recovery, including settlement. If the lawsuit is resolved prior to sixty days before the initial trial date or arbitration date, then Counsel will collect 33.33% of the recovery. If the lawsuit is resolved after sixty days, though, Counsel will collect 40.00% of the recovery. Counsel's fee includes costs and expenses.

Raquel Hatfield, an attorney of Arata, Swingle, Van Egmond & Goodman, a Professional Law Corporation, testifies that she was retained by Debtor on June 28,2017. Dckt. 24. FN.1. Counsel testifies she and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

FN.1. While not appearing to be fatal to the Motion, the Hatfield Declaration appears to be missing its page 3.

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 Counsel, considering the declaration demonstrating that Counsel 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 Raquel Hatfield as Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Attorney-Client Contingent Fee Agreement filed as Exhibit A, Dckt. 26. 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 Gary Farrar ("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 Raquel Hatfield as Counsel for the Chapter 7 Trustee on the terms and conditions as set forth in the Attorney-Client Contingent Fee Agreement filed as Exhibit A, Dckt. 26. The fee terms approved by the court are for: (1) If the lawsuit is resolved prior to sixty days before the initial trial date or arbitration date, then Counsel will be paid a contingent fee of 33.33% of the recovery, and (2) if the lawsuit is resolved after sixty days before trial, Counsel will be paid a contingent fee of 40.00% of the recovery. Counsel's fee includes costs and expenses.

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.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

9.	**16-90139-E-7** **BJ-5**	**AJAVA SYSTEMS, INC.** **David Johnston**	**OBJECTION TO CLAIM OF ANAND TANDON, CLAIM NUMBER 15** **10-26-17 [168]**

Final Ruling: No appearance at the December 14, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on October 30, 2017. By the court's calculation, 45 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 15 of Anand Tandon is sustained, and the claim is disallowed in its entirety.

Michael McGranahan, the Chapter 7 Trustee ("Objector") requests that the court disallow the claim of Anand Tandon ("Creditor"), Proof of Claim No. 15 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $2,065.00. Objector asserts that 11 U.S.C. § 507(a)(4) does not entitle the claim to priority for reimbursement of travel expenses, and he argues that the claim should be disallowed because there is no apparent legal liability for the debt.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright*

v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

11 U.S.C. § 507(a)(4) does not include reimbursement of travel expenses as a category that it entitled to priority status. Additionally, there is no evidence that the asserted debt is one by which Debtor is obligated legally to pay. Creditor failed to file written opposition to this Objection as required by the Local Bankruptcy Rules, which can be interpreted as acquiescence.

It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the *prima facie* validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

> "Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

In re Holm, 931 F.2d at 623 (quoting 3 L. King, COLLIER ON BANKRUPTCY § 502.02, at 502–22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *Id.*; *see also In re Allegheny International, Inc.*, 954 F.2d 167, 173–74 (3d Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

Here, in addition to asserting that there is no legal basis for asserting the right to a priority unsecured claim, Objector argues that there is no basis provided by Creditor of any obligation by Debtor to pay the travel expenses.

In Amended Proof of Claim No. 15-2, Creditor states that the basis of the claim is "Reimbursement of travel expense incurred in visit from home in India to Ajava Systems, In. In Oct/Nov 2015." Nothing in Amended Proof of Claim No. 15-2 indicates why this Debtor corporation would be obligated to pay such travel expenses.

Though given *prima facie* validity, Objector has rebutted the Proof of Claim, which is based only on a contention that travel expenses to and from India should be paid by Debtor. Creditor shows no basis for there being any such obligation. While Objector's testimony does not include a statement that he has

reviewed the books and records of Debtor and can find no basis for such obligation, the Objection is sufficient on a legal basis—Creditor has not shown any basis for Debtor paying his travel expenses. The court notes that Debtor has listed Creditor on Schedule E as having an unsecured claim for a "loan," but that is not the basis for the claim asserted in Amended Proof of Claim 15-2.

Based on the evidence and argument before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Anand Tandon, Creditor filed in this case by Michael McGranahan ("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 Objection to Amended Proof of Claim Number 15 of Anand Tandon is sustained, and the claim is disallowed in its entirety.

10.	**16-90139-E-7** **BJ-6**	**AJAVA SYSTEMS, INC.** **David Johnston**	**OBJECTION TO CLAIM OF DYNAMIC TRANSIT, CLAIM NUMBER 31** **10-26-17 [174]**

Final Ruling: No appearance at the December 14, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on October 30, 2017. By the court's calculation, 45 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 31 of Dynamic Transit is sustained, and the claim is disallowed in its entirety.

Michael McGranahan, the Chapter 7 Trustee, ("Objector") requests that the court disallow the claim of Dynamic Transit ("Creditor"), Proof of Claim No. 31 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $3,919.86. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case is October 13, 2016. Notice of Bankruptcy Filing and Deadlines, Dckt. 129.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright*

v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a proof of claim in this matter was October 13, 2016. Creditor's Proof of Claim was filed on May 8, 2017. No order granting relief for an untimely-filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, Creditor's claim is disallowed as a priority claim and is disallowed as an untimely filed claim, subject to being paid a distribution as provided in 11 U.S.C. § 726(a)(3) as a tardily filed proof of claim in a case in which all priority claims, administrative expenses, and timely filed unsecured claims are paid in full.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Dynamic Transit ("Creditor") filed in this case by Michael McGranahan ("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 Objection to Proof of Claim Number 31 of Dynamic Transit is sustained, and the claim is disallowed as an untimely claim, subject to being paid a distribution as provided in 11 U.S.C. § 726(a)(3) as a tardily filed proof of claim in a case in which all priority claims, administrative expenses, and timely filed unsecured claims are paid in full.
>
> **IT IS FURTHER ORDERED** that Proof of Claim No. 31 is disallowed as a priority claim.

11. 17-90744-E-7 JOHNSON YOUKANA MOTION TO COMPEL ABANDONMENT
MSN-1 Mark Nelson 11-10-17 [13]

Final Ruling: No appearance at the December 14, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 10, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Compel Abandonment is granted.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is 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 Johnson Youkana ("Debtor") requests the court to order Michael McGranahan ("the Chapter 7 Trustee") to abandon a sole proprietorship commonly known as The Ritz Hair Salon ("Property"). The Declaration of Johnson Youkana has been filed in support of the Motion and values the Property's assets at $3,630.00, which has been exempted.

CHAPTER 7 TRUSTEE'S NON-OPPOSITION

The Chapter 7 Trustee entered a statement of Non-Opposition on November 17, 2017.

RULING

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 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 Compel Abandonment filed by Johnson Youkana ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the sole proprietorship identified as The Ritz Hair Salon, with its assets listed on Schedule B, by Debtor is abandoned by Michael McGranahan ("the Chapter 7 Trustee") to Johnson Youkana by this order, with no further act of the Chapter 7 Trustee required.

12. 17-90646-E-7 JUAN SALINAS
MDM-1 Pro Se

CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 10-16-17 [15]

Final Ruling: No appearance at the December 14, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and creditors on October 18, 2017. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is continued to 10:30 a.m. on January 11, 2018, due to the reported illness of Debtor**.**

Michael McGranahan ("the Chapter 7 Trustee") filed a Motion to Dismiss this bankruptcy case due to Juan Salinas's ("Debtor") failure to attend the First Meeting of Creditors pursuant to 11 U.S.C. § 341. Dckt. 15. Attendance at this meeting is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 19, 2017. Dckt. 18. Debtor explains that he was stranded in Colorado with a broken-down vehicle and no phone. He states that he intends to attend the Meeting.

OCTOBER 19, 2017 RELATED HEARING

Debtor appeared at the hearing on Debtor's Motion for Waiver of the Chapter 7 filing fee and explained to the court the circumstances relating to the failure to appear and his intention to attend the continued Meeting of Creditors. Dckt. 19.

ORDER CONTINUING HEARING

On October 23, 2017, the court entered an order continuing this Motion to 10:30 a.m. on December 14, 2017. Dckt. 24.

CHAPTER 7 TRUSTEE'S REPORT

The Chapter 7 Trustee filed a Report on December 6, 2017, which indicated that Debtor did not appear at the continued Meeting of Creditors.

DEBTOR'S EX PARTE MOTION TO CONTINUE

Debtor filed an *ex parte* Motion to continue the hearing on this Motion on December 8, 2017. Dckt. 30. Debtor states that due to a recent hospitalization, he has to remain in Palo Alto to receive treatment for a life-threatening condition (that is unspecified).

RULING

The court, by prior order, has continued this hearing to January 11, 2018, due to the reported illness of Debtor. Dckt. 32.

13. **02-94454-E-7** **LUANN SELECKY**
SSA-3 **Greg Smith**

MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS AND/OR MOTION FOR COMPENSATION FOR STEVEN ALTMAN, TRUSTEE'S ATTORNEY
11-17-17 [43]

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.

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient 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 November 17, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Compel was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion to Compel is granted.

Michael McGranahan ("the Chapter 7 Trustee") requests that the court order Luann Selecky ("Debtor") to appear at a 2004 Examination and to produce documents. The Chapter 7 Trustee also asks for reimbursement of fees and costs associated with Debtor missing the scheduled examination and for failing to comply with discovery. Additionally, the Chapter 7 Trustee seeks imposition of monetary sanctions against Debtor for any future failures and to prohibit Debtor from introducing contrary evidence to the Motion.

APPLICABLE LAW

The Federal Rules of Civil Procedure are incorporated into bankruptcy proceedings in large part. This is true with respect to the discovery provisions (whether in an adversary proceeding or contested

matter). Here, Federal Rule of Civil Procedure 37 and incorporating Federal Rule of Bankruptcy Procedure 7037 are cited in the motion as the basis for the relief requested.

Federal Rule of Civil Procedure 37(a) establishes the procedure for obtaining an order from the court to compel a party to respond to discovery. When requested and the court issues such an order, the requesting party is entitled to recover the costs and expenses in prosecution of such a motion. FED. R. CIV. P. 37(a)(5).

"Meet and Confer" Requirement

Federal Rule of Civil Procedure 37(a)(1) requires that the motion to compel discovery "include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make . . . discovery in an effort to obtain it without court action." FN.1.

FN.1. Both the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure are mentioned several times in the court's ruling. A Federal Rule of Civil Procedure will be referred to as "Rule," and a Federal Rule of Bankruptcy Procedure will be referred to as "Bankruptcy Rule."

The certification requirement of Rule 37(a)(1) was described in *Shuffle Master, Inc. v. Progressive Games, Inc.* as comprising two elements:

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

170 F.R.D. 166, 170 (D. Nev. 1996); *see also Triad Commer. Captive Co. v. Carmel (In re GTI Capital Holdings, LLC)*, No. AZ-09-1053-JuMKD, 2009 Bankr. LEXIS 4539, at *26–27 (B.A.P. 9th Cir. Aug. 20, 2009); *Sanchez v. Wash. Mutual Bank (In re Sanchez)*, No. 06-2251-D, 2008 Bankr. LEXIS 4239, at *2–3 (Bankr. E.D. Cal. Sept. 8, 2008). The court went further, stating that "a moving party must include more than a cursory recitation that counsel have been 'unable to resolve the matter.'" *Shuffle Master, Inc.*, 170 F.R.D. at 171; *see also Triad Commer. Captive Co.*, 2009 Bankr. LEXIS 4539, at *27; *Sanchez*, 2008 Bankr. LEXIS 4239, at *3.

Rule 37 also requires that the moving party must have conferred in good faith or attempted to confer with the opposing party regarding the discovery dispute. *Shuffle Master, Inc.*, 170 F.R.D. at 171. The court in *Shuffle Master* noted that good faith "cannot be shown merely through the perfunctory parroting of statutory language . . . to secure court intervention; rather it mandates a genuine attempt to resolve the discovery dispute through non-judicial means." *Id.*; *see also Sanchez*, 2008 Bankr. LEXIS 4239, at *3–4.

The movant must show good faith and the party need actually attempt a meeting or conference. *Shuffle Master, Inc.*, 170 F.R.D. at 171. Courts have found that "conferment" requirement entails "two-way communication, communication which is necessary to genuinely discuss any discovery issues and to avoid judicial recourse." *Compass Bank v. Shamgochian*, 287 F.R.D. 397, 398–99 (S.D. Tex. 2012).

The "meet and confer" requirement is not satisfied by mailing a letter from one party's counsel to another party's counsel. *See Leimbach v. Lane (In re Lane)*, 302 B.R. 75, 78–79 (Bankr. D. Idaho 2003). The requirement of filing "a certificate cannot be satisfied by including with the motion copies of correspondence that discuss the discovery at issue. . . . The Court is unwilling to decipher letters between counsel to conclude that the requirement has been met." *Ross v. Citifinancial, Inc.*, 203 F.R.D. 239, 240 (S.D. Miss. 2001).

DISCUSSION

The court first considers whether the Chapter 7 Trustee has satisfied the "meet and confer" requirement of Rule 37(a). Mr. Altman states that he attempted to meet and confer by sending a letter to Debtor advising her of the default and this prospective Motion. Dckt. 45, at 2–3; *see also* Dckt. 48, Exhibit 3 (November 9, 2017 letter to Debtor). Mr. Altman testifies that Debtor failed to appear and produce documents at a deposition on November 8, 2017. *Id.* at 2. Despite Mr. Altman informing Debtor of the discovery violations, she has not responded to him. *Id.* at 3.

The court has reviewed the November 9, 2017 "meet and confer" letter. In it, counsel for the Chapter 7 Trustee communicates to Debtor:

A. That Debtor was served with a subpoena to attend a 2004 examination to be conducted on November 8, 2017.

B. The subpoena and 2004 Examination Order were personally served on Debtor by a process server.

C. Debtor failed to appear as required by the subpoena.

D. The failure to appear caused the Chapter 7 Trustee's counsel to incur otherwise unnecessary costs and expenses.

E. Counsel will seek an order compelling Debtor's attendance and recovery of fees and expenses.

F. Counsel will refrain from taking such action for five days, requesting Debtor to contact him.

Exhibit 3, Letter, Dckt. 48.

This correspondence is considered in light of the prior proceedings in this case. On November 11, 2017, the court conducted an initial hearing on the Chapter 7 Trustee's Motion for Order Compelling

Debtor to turn over possession of real property and a $500,000 note that are property of the bankruptcy estate. Civil Minutes, Dckt. 19. Debtor appeared at the initial hearing. The hearing was continued to November 30, 2017, to afford Debtor the opportunity to engage counsel and address these issues. The Chapter 7 Trustee's discovery goes to these two assets, which Debtor did not disclose as part of her 2002 filing of this bankruptcy case.

At the November 30, 2017 final hearing on the Motion for Turn Over of the Property of the Estate, the court issued the order so requested. Civil Minutes, Dckt. 50. Debtor appeared at the final hearing. However, Debtor had not engaged counsel and had not communicated with the Chapter 7 Trustee or counsel for the Chapter 7 Trustee.

It is clear that though the Chapter 7 Trustee has attempted to engage Debtor in communication, Debtor has not reciprocated. That is not a situation where there is merely a perfunctory letter sent. Rather, there have been two face-to-face hearings at which Debtor attended. (And at the November 30, 2017 hearing, the court impressed on Debtor the significant civil and punitive sanctions, and possible criminal issues that could arise from failing to disclose assets and turn over property of the bankruptcy estate.)

In reviewing the Docket on December 12, 2017 in preparation of the hearing, no counsel has substituted in to represent the Debtor. No responsive pleadings have been filed by Debtor.

On its face, it appears that Debtor is attempting to utilize the Mohamed Ali "rope a dope" boxing strategy to try to defeat the Chapter 7 Trustee in obtaining possession of and administering property of the bankruptcy estate. Debtor's unwillingness to meet and confer does not defeat the Chapter 7 Trustee's ability to request for the court to order that Debtor appear for the 2004 examination.

Attorney's Fees and Costs Requested

The Motion requests that the court award the Chapter 7 Trustee reasonable attorney's fees and costs arising from Debtor's failure to comply with the subpoena for the 2004 Examination and the present Motion to Compel her attendance.

Federal Rule of Bankruptcy Procedure 2004(c) provides that the attendance of a person at a 2004 Examination may be compelled pursuant to Federal Rule of Bankruptcy Procedure 9016 in the same manner as compelling attendance of a witness at a hearing or trial. Rule 9016 incorporates the provisions of Federal Rule of Civil Procedure 45, providing for the issuance of a subpoena to compel attendance.

Federal Rule of Civil Procedure 45(g) provides that the court may hold in contempt a person who fails to obey the subpoena or an order relating to it. As stated in Federal Rule of Civil Procedure 45(a), the subpoena is also used to compel attendance at a deposition or document production. Commonly the first step in treating the non-responding party as being in "contempt" and imposing sanctions is for the court to issue an order compelling compliance with the subpoena. Though this may seem like the court issuing an order stating that the prior order is "really an order that must be complied with," because the subpoena is issued by an attorney, the full effect of it may not be appreciated by the other person. MOORE'S FEDERAL PRACTICE, CIVIL § 45.62[3]. However, as noted by the Seventh Circuit, no such order compelling is actually

required under the Federal Rules of Civil Procedure. *United States SEC. v. Hyatt*, 621 F.3d 687, 693 (7th Cir. 2010)

This is similar to the process used for general discovery and the failure to comply. Federal Rule of Civil Procedure 37 and Federal Rule of Bankruptcy Procedure 7037 require that a party first move to compel discovery after non-compliance. Then, if the other party fails to comply with the order to compel discovery, the sanctions are appropriate for failing to comply with the order.

The court will apply that procedure here and issue the order compelling Debtor to appear for the 2004 Examination and produce the documents. Further, in light of Debtor's failure to engage in this case since it has been reopened by the Chapter 7 Trustee to recover theretofore undisclosed property of the estate, the court will issue a corrective sanction as part of the order.

The corrective sanction will be in the amount of $5,000.00, to be paid by Debtor, to the Chapter 7 Trustee for the Bankruptcy Estate in this case, if Debtor fails to appear at the 2004 Examination as ordered by the court. The $5,000.00 is merely 1% of the amount of the promissory note that the Chapter 7 Trustee asserts is property of the estate that the court has ordered Debtor to turn over to the Chapter 7 Trustee. On top of that, there is real property worth hundreds of thousands of dollars that has also been ordered to be turned over to the Chapter 7 Trustee.

More importantly, Debtor will only be obligated to pay the $5,000.00 if she fails to comply with the order of this court to appear at the 2004 Examination.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel filed by Michael McGranahan ("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 Compel is granted and that Luann Selecky, the Chapter 7 Debtor, shall appear at **xxxxx a.m. on xxxxx, 20xx**, for her examination pursuant to Federal Rule of Bankruptcy Procedure 2004, which shall continue thereafter until completed, but which shall continue no later than 5:00 p.m. on a day and not past 5:00 p.m. on **xxxxxxxxxxx, 20xx**.
>
> **IT IS FURTHER ORDERED** that Luann Selecky shall produce and deliver at **xxxx on xxxx, 201x**, the following documents to Steven Altman, counsel for the Chapter 7 Trustee, as part of the 2004 Examination:
>
> A. Copies of any and all documents evidencing any ownership interest in real property at the time the Chapter 7 Bankruptcy Case (No. 02-94454) for

Luann Selecky was filed on November 26, 2002 (the "Selecky Bankruptcy Case").

B. Copies of any and all documents evidencing any ownership interest in promissory notes or demand promissory notes as of the November 26, 2002 filing of the Selecky Bankruptcy Case.

C. Copies of Luann Selecky's 2000, 2001, 2002, 2015, and 2016 federal and state tax returns.

D. Copies of any grant deeds in your possession (either recorded or not) evidencing an ownership interest in the real property at 1037 Westmont Terrace, Modesto, California 95356-2056 at the time the Selecky Bankruptcy Case was filed.

E. Copies of any grant deeds recorded for the real property at 1037 Westmont Terrace, Modesto, California 95356-2056 after the closing of the Selecky Bankruptcy Case on or about March 11, 2003, to the present.

F. Copies of any and all documents evidencing any ownership interest in real property at 1037 Westmont Terrace, Modesto, California 95356-2056 at any time after the closing of the Selecky Bankruptcy Case on or about March 11, 2013, to the present.

G. Copies of any and all insurance policies currently in effect for the purpose of insuring the real property 1037 Westmont Terrace, Modesto, California 95356-2056.

H. Copies of any and all documents filed in regard to your dissolution case referenced as *Stephen Joseph Goudreau v. Luann Selecky Goudreau*, Stanislaus Superior Court, Case No. 284949.

I. Copies of any and all documents filed in regard to the civil action referenced as *Stephen Goudreau v. Luann Selecky*, Stanislaus Superior Court, Case No. 2019350.

J. Copies of any and all documents in your custody, control or possession concerning the listing of the real property at 1037 Westmont Terrace, Modesto, California 95356-2056 for sale.

K. Copies of any and all documents in your (all references to "you" or "your" are Luann Selecky) custody, control, or possession evidencing demand for payment of money by you to Mr. Stephen Joseph Goudreau since close of your Chapter 7 bankruptcy case on or about March 11, 2003, to the present.

L. Copies of any and all documents in your custody, control or possession concerning escrows relating to the real property at 1037 Westmont Terrace, Modesto, California 95356-2056.

M. Copies of any and all documents in your custody, control, or possession concerning the refinancing of the real property at 1037 Westmont Terrace, Modesto, California 95356-2056 within three (3) years of the filing of the Selecky Bankruptcy Case on November 26, 2002.

N. Copies of any and all documents in your custody, control, or possession concerning any closing statements you have concerning the real property at 1037 Westmont Terrace, Modesto, California 95356-2056, since time of acquisition to the present.

O. Copies of any and all documents in your custody, control, or possession concerning the refinancing of the real property at 1037 Westmont Terrace, Modesto, California 95356-2056 from the date of your bankruptcy discharge on or about March 6, 2003, to the present.

P. Copies of any and all documents in your custody, control, or possession, concerning the payment of the secured debt on the real property at 1037 Westmont Terrace, Modesto, California 95356-2056 within one year preceding the filing of the Selecky Bankruptcy Case.

Q. Copies of any and all documents in your custody, control, or possession concerning the payment of the secured debt on the real property at l037 Westmont Terrace, Modesto, California 95356-2056 following the filing of the Selecky Bankruptcy Case on November 26, 2002, to the present.

R. Any and all documents in your custody, control, or possession concerning your attempt to communicate with the payee in the demand promissory note for $500,000.00 under your custody, control, or possession.

S. Any and all documents in your custody, control, or possession, concerning your attempt to enforce the demand promissory note for $500,000.00 against the payee under your custody, control, or possession.

T. Copies of any and all tax statements sent to you by the Stanislaus County Tax Assessors Office for the real property at 1037 Westmont Terrace, Modesto, California 95356-2056 from October 2000 to the present.

IT IS FURTHER ORDERED that if Luann Selecky fails to deliver the documents specified above in paragraphs A through T by **xxxx, on 20xx**, or fails to

appear at **xxxx on xxxx, 201x** for the 2004 Examination and continue to appear at that examination to its conclusion, the court shall issue an order for Debtor to pay a $5,000.00 corrective sanction to the Chapter 7 Trustee for the Bankruptcy Estate in this case. This corrective sanction will be ordered only if Debtor fails to timely comply with this Order. The $5,000.00 amount of corrective sanction has been determined reasonable in light of the promissory note at issue being for $500,000.00 and the real property worth hundreds of thousands of dollars. The corrective sanction is less than 1% of the value of the assets that are to be turned over as property of this Bankruptcy Estate.

IT IS FURTHER ORDERED that the order to produce the above documents and to attend the 2004 Examination is without prejudice to all rights of privilege or other objections to such production or questions at the Examination as may properly and timely be raised by Luann Selecky.

Further, the $5,000.00 corrective sanction, which will be imposed only if Luann Selecky fails to comply with this Order, does not limit further sanctions, corrective and punitive, which may be ordered by this court and the U.S. District Court for violations of this order, including awarding attorney's fees and costs to the Chapter 7 Trustee, and corrective and punitive incarceration.

14. **11-94258-E-7** **DONNA/ERIC MEGEE**
SCB-6 **Richard Schneider**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHNEWEIS- COE AND BAKKEN, LLP FOR LORIS L. BAKKEN, TRUSTEE'S ATTORNEY(S)
11-2-17 [188]

Final Ruling: No appearance at the December 14, 2017 hearing is required.

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

Sufficient 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 November 2, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Allowance of Professional Fees is granted.

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

Fees are requested for the period October 4, 2016, through November 2, 2017. The order of the court approving employment of Applicant was entered on October 11, 2016. Dckt. 144. Applicant requests fees in the amount of $3,780.00 and costs in the amount of $345.97.

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). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). 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.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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 demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913

n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to 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?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include general case administration, employing special counsel, settling with Eric Megee and Donna Megee ("Debtor") about property of the Estate, and settling a related district court lawsuit. The Estate has $11,500.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 2.4 hours in this category. Applicant prepared its employment application and this Application.

Motion to Reopen: Applicant spent 1.1 hours in this category. Applicant prepared a motion to reopen this case.

Employment of Special Litigation Counsel: Applicant spent 8.9 hours in this category. Applicant contacted various special counsel who had been hired by Debtor to prosecute a personal injury and medical expense lawsuit to determine if they would continue litigating the lawsuit on behalf of the bankruptcy estate, to which the parties agreed on the same terms as their original retainer agreement. Applicant moved for their employment in this case and prepared compensation applications for them.

Settlement with Debtor Regarding Property of the Estate: Applicant spent 11.3 hours in this category. Applicant negotiated with Debtor regarding proceeds from Debtor's lawsuit and reached a settlement.

Settlement and Motion to Compromise: Applicant spent 10.8 hours in this category. Applicant's special counsel negotiated settlement of the related district court lawsuit, and Applicant filed a motion to compromise in this case.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Loris Bakken, attorney	34.5 hours	$300.00	$10,350.00
	0	$0.00	$0.00
Total Fees for Period of Application			$10,350.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $345.97 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$167.07
Copying	$0.10	$178.90
		$0.00
Total Costs Requested in Application		$345.97

FEES AND COSTS & EXPENSES ALLOWED

Applicant seeks to be paid a single sum of $4,125.97 for its fees and expenses incurred for Client. First and Final Fees and Costs in the amount of $4,125.97 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 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 Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees and Costs & Expenses $4,125.97

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 Schneweis-Coe & Bakken, LLP ("Applicant"), Attorney for Gary Farrar, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Schneweis-Coe & Bakken, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Schneweis-Coe & Bakken, LLP, Professional employed by the Chapter 7 Trustee
>
> Fees and Costs & Expenses in the amount of $4,125.97
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 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.

15. 17-90565-E-7 MDM-1 | **RICKY/CHRISTINE LUYSTER** **David Foyil** | **OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS** **10-16-17 [15]**

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—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 16, 2017. By the court's calculation, 59 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Claimed Exemptions is overruled without prejudice as moot.

Michael McGranahan ("the Chapter 7 Trustee") objects to Ricky Luyster & Christine Luyster's ("Debtor") claimed exemption of $3,200.00 pursuant to California Code of Civil Procedure § 704.080 for savings account funds with Bank of America. The Chapter 7 Trustee states that the funds cannot be traced to Social Security deposits and that any funds from earnings are exempt up to seventy-five percent of the funds times seventy-five percent.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 1, 2017. Dckt. 25. Debtor states that Schedule C has been amended.

RULING

Debtor filed an Amended Schedule C on November 1, 2017. Dckt. 24. Debtor has claimed $787.59 exempt for "Bank of America (Account 0140)" pursuant to California Code of Civil Procedure § 704.070 and $877.43 exempt for "Bank of America (Account 7877)" pursuant to California Code of Civil Procedure § 704.070. Debtor has also amended Schedule B to reduce the stated amounts, as of the

commencement of the case, from $330.00 and $3,300.00 (Schedule B, Dckt. 1 at 15) to $1,050.12 and $1,169.91 (Amended Schedule B, Dckt. 24 at 7).

This bankruptcy case was filed on July 10, 2017. The Chapter 7 Trustee has filed as Exhibit A the July 17, 2017 Bank of America Statements for the two accounts listed on Schedule B by Debtor. Dckt. 17. The Statement for the checking account indicates the following:

June 17, 2017 Starting Balance.....$547.85
Deposits from Sonora
06/19/2017.....$120.00
06/28/2017.....$529.00
06/30/2017.....$993.84
07/07/2017.....$ 60.00

Transfer from Savings
05/23/2017.....$529.00

Counter Credit
07/06/2017.....$ 60.00

On Schedule I, Debtor's employer is identified as "Sonora Lumber Company, Inc." Dckt. 1 at 27.

The ending balance for the checking account is shown to be $1,050.12, which is the balance seven days after the July 10, 2017 filing of this case. Specific information showing the checks that cleared and other withdrawals from the checking account are not shown. However, the Statement does disclose that there were ($1,834.66) in ATM and debit card transactions, ($1,545.86) in "other subtractions," and ($79.87) checks.

The second page of Exhibit A is the statement for Debtor's Money Market Account at Bank of America. That statement shows a beginning balance of $1,728, deposits of $1,672.20, and "other subtractions" of $2,075.01. The Exhibit does not include any detail of the withdrawals or other "subtractions" from this account or when they occurred.

The Amended Schedule C appears to have addressed the present Objection by asserting the "Paid Earnings" exemption that may be claimed in earnings paid within thirty days of the bankruptcy case being filed. That exemption has a percentage limit on what can be claimed as exempt for paid earnings within the thirty-day period.

The Objection is overruled without prejudice as moot.

However, the resolution of this Objection does not render moot a further objection, if any, to the Paid Earnings exemption claimed by 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 Objection to Claimed Exemptions filed by Michael McGranahan ("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 Objection is overruled without prejudice as moot.

IT IS FURTHER ORDERED that the time period for the Chapter 7 Trustee to file an objection to the amended claim of exemption is extended for the period through and including January 15, 2018.

16. 17-90570-E-7 KRISTY SEIBERT **MOTION TO COMPEL ABANDONMENT**
Byron Nelson **11-13-17 [15]**

APPEARANCE OF BYRON NELSON, DEBTOR'S COUNSEL, REQUIRED AT THE HEARING

NO TELEPHONIC APPEARANCE PERMITTED

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.

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required. FN.1.

FN.1. Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Amended Notice of Motion states that a hearing will be held on December 14, 2017. Based upon a prior order denying continuance at setting oral argument for the December 14, 2017 hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

Movant is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

Movant filed the Notice of Motion, Proof of Service, and Motion in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is

not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee on November 13, 2017. By the court's calculation, 31 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion to Compel Abandonment is xxxxxxxxxxxxx.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is 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).

On November 13, 2017, counsel for Kristy Seibert ("Debtor") filed a Notice of Motion to Compel Abandonment of unidentified property. Notice of Motion, Dckt. 15. That Notice of Motion stated that a hearing was set on December 7, 2017. On November 14, 2017, an Amended Notice of Motion was filed, stating that the hearing on a Motion to Compel Abandonment (of unidentified property) would be heard on December 14, 2017 (a regularly scheduled hearing date for the Modesto Division). Dckt. 19.

On December 6, 2017, Debtor sent a letter to the court requesting that the hearing be expedited so that escrow can close on a house in which she had inherited a one-third interest. Dckt. 24. The letter states that Debtor seeks to expedite the hearing so she does not lose the sale.

Exhibit A filed with the Motion is a Residential Listing Agreement for real property commonly identified as 1266 Magnolia Street, Oakdale, California. Dckt. 16. The Residential Listing Agreement is not authenticated (FED. R. EVID. 901 et seq.). Filed as Exhibit B is an unauthenticated Estimated Seller's Statement showing a sales price for the Magnolia Street Property of $225,000 and net proceeds of $65,083.59 (of which 1/3% is show as "Sellers Net Proceeds Estate of Violet Darlene Taylor $21,694.53"). *Id.*

On Schedule A/B, Debtor listed having a "1/3 pending interest as tenants in common" for the Magnolia Property, with Debtor's interest having a value of $10,000.00. Dckt. 1 at 11. On Schedule C, debtor claimed a $10,000.00 exemption in her interest in the Magnolia Property pursuant to California Code of Civil Procedure § 703.140(b)(1). It appears that Debtor's equity in the Magnolia Property is greater than

the $10,000.00. However, the court does not see an amended Schedule C on file. It may be that the Chapter 7 Trustee is recognizing a de facto amendment with the abandonment of the Property.

The court ordered that the hearing date would not be continued from December 14, 2017, unless Debtor sought a warranted expedited hearing. Dckt. 26. The court ordered additionally that Debtor must file a supplement to the motion in which counsel states the grounds for such relief, the statutory basis, and the property to be abandoned. Counsel was ordered to file that supplement by December 8, 2017.

The court stated that any opposition to the Motion could be presented orally at the hearing, and Debtor's counsel was ordered to appear personally and explain to the court how the "Notice of Motion" complies with the requirements of Federal Rule of Bankruptcy Procedure 9013 and Local Bankruptcy Rule 9004-1 and how the unauthenticated exhibits comply with the Federal Rules of Evidence. Counsel was also ordered to show cause why the court should not sanction counsel $500.00 for filing only a Notice of Motion that does not identify the property to be abandoned, failing to file a motion that states with particularity the grounds upon which the relief is based and the relief requested (which must include identifying the property that is to be abandoned), and filing with the court unauthenticated documents in support o the non-specific relief requested.

AMENDED MOTION

Debtor filed an Amended Motion on December 8, 2017. Dckt. 27. Debtor requests the court to order the Chapter 7 Trustee to abandon real property commonly known as 1266 Magnolia Street, Oakdale, California ("Property"). Debtor argues that she has an undivided one-third interest in the Property, which one-third interest has a value of $10,000.00. The Property is subject to a pending sale, for which Debtor intends to testify and authenticate the sale contract at the hearing.

Debtor argues that the Property is subject to outstanding liens of approximately $146,008.58 and taxes and fees of $828.68. Debtor presents that after proration of real estate commissions and title fees, net proceeds will be $21,694.53, which is subject to capital gains taxation. Debtor maintains that the net proceeds are fully exemptible under California Code of Civil Procedure § 703.140(b)(1) and (5).

The Amended Motion states that a broker was hired to sell the Property for a 5% commission, which equates to $11,250.00. The Amended Motion requests that the court compel abandonment, or in the alternative, approve the sale.

RULING

The motion presented to the court is to compel abandonment, not to approve a sale of real property. The court declines the Amended Motion's alternative request to approve a sale.

At the hearing, Debtor testified that xxxxxxxxxxxx. Additionally, Debtor authenticated the exhibits upon which Debtor basis the Motion.

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

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

The Motion to Compel Abandonment filed by Kristy Seibert ("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 xxxxxxxxxx.

17. 15-90284-E-7 ANTONIO/LUCILA AMARAL MOTION TO ABANDON
MDM-1 Axel Gomez 11-20-17 [39]

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.

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient 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 20, 2017. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion to Abandon was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 offer 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. At the hearing, ----------.

The Motion to Abandon is granted.

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

The Motion filed by Michael McGranahan ("the Chapter 7 Trustee") requests that the court authorize him to abandon the Estate's interest in collecting a balance of $14,260.00 due to the Estate by Rafael Saldana from a default judgment in *McGranahan v. Saldana*, Adversary Proceeding No. 15-09057 ("Property"). The Chapter 7 Trustee argues that payments have been irregular and has caused the Estate to expend substantial attorney fees in collecting payments.

The Chapter 7 Trustee states that he has contacted several investors and liquidators, but no one has offered for the judgment, including from the judgment debtor. The Chapter 7 Trustee does not believe that further efforts to sell the judgment are warranted, and he requests that the court order the Property abandoned to Antonio Amaral and Lucila Amaral ("Debtor").

The court finds that there 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 Chapter 7 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 Michael McGranahan ("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 Compel Abandonment is granted, and the Property identified as the Estate's interest in collecting a balance of $14,260.00 due to the Estate by Rafael Saldana from a default judgment in *McGranahan v. Saldana*, Adversary Proceeding No. 15-09057, is abandoned to Antonio Amaral and Lucila Amaral by this order, with no further act of the Chapter 7 Trustee required.