UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

December 15, 2016, at 10:30 a.m.

1.	**16-90812-E-7** **ICE-1**	**KENNETH MCCORKLE AND KATRINA CAMPBELL** **Pro Se**	**TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS** **11-17-16 [44]**

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—Opposition Filed.

Adequate Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, and parties requesting special notice on November 19, 2016. Debtor has filed a Notice of Hearing in response to the Motion.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Dismiss is xxxxxxxxxxxxxxxxx.

Irma Edmonds, the Chapter 7 Trustee, alleges that Kenneth McCorkle and Katrina Campbell ("Debtor") did not appear at the Meeting of Creditors held on November 14, 2016, pursuant to 11 U.S.C. § 341. Attendance 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. § 1307(c)(1).

Alternatively, if Debtor's case is not dismissed, the Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 12:00 p.m. on December 19, 2016. If Debtor fails to appear at the continued Meeting of Creditors, the Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 28, 2016. Dckt. 48. FN.1. Debtor provides the following explanation for not attending the Meeting of Creditors:

> We were evicted from our home on Nov 1st 2016 and all of our belongings including mail and all paperwork were and are being withheld from our possession. All without just cause. There was no possible way for us to get to all things need for this court date. We ask for a new date after Jan 2017 to get all things needed and proceed forward[.]

FN.1. Debtor filed the Opposition, Notice, and Certificate of Mailing 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, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Debtor is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents, 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 and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

DISCUSSION

While Debtor has not explained why there was no appearance at the Continued Meeting of Creditors, Debtor has explained that an eviction has hindered their ability to receive mail, including notices of matters in this case. While stating that Debtor was evicted from the property, Debtor does not address the lack of prosecution of this, and Debtor's prior, bankruptcy case.

In the prior bankruptcy case, Bankr. E.D. Cal. 16-90617, Debtor commenced the case on July 12, 2016, and it was dismissed on August 1, 2016. The case was dismissed due to Debtor's failure to file the basic documents necessary to prosecute a bankruptcy case (Schedules and Statement of Financial Affairs). 16-90617; Order, Dckt. 24, and Notice, Dckt. 10.

The current bankruptcy case was filed on September 2, 2016. This case was also dismissed due to the failure of Debtor to file the required basic documents, including the Schedules and Statement of Financial Affairs. Order, Dckt. 24. However, the court vacated the dismissal when Debtor presented the court with what were stated to be endorsed copies of Schedules and Statement of Affairs timely filed. Order, Dckt. 30. A subsequent review of the endorsement stamps on those documents revealed some abnormalities

that would not exist if documents were endorsed and stamped by the Clerk of the Court. The endorsement stamp also purports to state that there has been a "fee waiver," but the court has denied Debtor's request for a fee waiver. Order, Dckt. 51.

In this case, the court has also granted relief from the automatic stay to Debtor's landlord. Order filled October 3, 2016; Dckt. 41.

DISCUSSION AT DECEMBER 15, 2016 HEARING

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by 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 Dismiss is xxxxxxxxxx.

2.	**15-90814-E-7** **SSA-3**	**MARKET 49 VENTURES INC.** **Patrick Greenwell**	**MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY(S)** **11-21-16 [66]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 21, 2016. By the court's calculation, 24 days' notice was provided. 21 days' notice is required (Fed. R. Bankr. P. 2002(a)(6), twenty-one-day notice requirement when requested fees exceed $1,000.00).

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

Steven Altman, the Attorney ("Applicant") for Irma Edmonds, 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 September 30, 2015, through December 1, 2016. The order of the court approving employment of Applicant was entered on October 15, 2015. Dckt. 35. Applicant requests fees in the amount of $4,455.00 and costs in the amount of $115.90.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
>
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

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

Benefit to the Estate

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

According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including reviewing the case file, performing conflicts checks, reviewing assets for disposition, reviewing appoint and sale application of David Huisman of Huisman Auctions, Inc., assisting with business operations of Debtor, reviewing the sale report, and reviewing claims in the bankruptcy estate. The estate has $14,782.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and 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 3.85 hours in this category. Applicant assisted Client with coordination and compliance activities; preparation of statement of financial affairs, schedules, list of contracts, U.S. Trustee interim statements and operating reports; contacts with the U.S. Trustee; and general creditor inquiries.

Asset Analysis & Recovery: Applicant spent 2.80 hours in this category. Applicant identified and reviewed potential assets, including causes of action and non-litigation recoveries.

Asset Disposition: Applicant spent 2.60 hours in this category. Applicant worked with sales leases (§ 365 matters), abandonment, and related transaction work.

Business Operation: Applicant spent 0.20 hours in this category. Applicant reviewed issues related to Debtor operating in Chapter 11—issues related to employees, vendors, tenants, and similar other issues.

Claims Administration & Objection: Applicant spent 2.30 hours in this category. Applicant reviewed the claims filed in the case and prepared a motion between the estate and a landlord to resolve the landlord's administrative claim pending disposition of collateral on business premises pending sale and vacation of premises.

Fee/Employment Application: Applicant spent 3.10 hours in this category. Applicant discussed with Trustee the scopes of employment for counsel and for auctioneer, prepared employment applications, and prepared a fee application.

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**
Steven Altman	14.85	$300.00	$4,455.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$4,455.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $115.90 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.10	$27.50
Copying	$0.15	$23.25
Postage	$0.48	$26.40

Postage	$0.70	$3.50
Postage	$35.25	$35.25
Total Costs Requested in Application		$88.40

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $4,455.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $88.40 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case. The additional $27.50 requested by Applicant is not allowed. Applicant provided invoices with expenses that total $88.40. Exhibit 2, Dckt. 70. Applicant also stated in his Declaration that the expenses total $144.96. Dckt. 68. The Motion and the supplied evidence conflict with each other, and therefore, the court allows only the $88.40 documented in Applicant's Exhibits.

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

Fees	$4,455.00
Costs and Expenses	$88.40

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 Steven Altman ("Applicant"), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Steven Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Steven Altman, Professional Employed by the Trustee

Fees in the amount of $4,455.00
Expenses in the amount of $88.40,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Trustee.

IT IS FURTHER ORDERED that costs of $27.50 are not allowed by the court.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

3. **13-91315-E-7 WFH-35** | **APPLEGATE JOHNSTON, INC.** **George Hollister** | **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JAMES D. STRUCK** **11-18-16 [688]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 18, 2016. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. Fed. R. Bankr. P. 2002(a)(3) (twenty-one-day notice).

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

Michael McGranahan, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with James Struck, dba The Struck Firm ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related to an Adversary Proceeding that Movant brought against Settlor seeking recovery of $88,674.50 in alleged preferential transfers.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 691):

A. Settlor will pay to the Estate the sum of $20,000.00 on or before December 5, 2016.

B. Movant will give Settlor a general release of all claims, including but not limited to claims related to the Adversary Proceeding.

C. Movant agrees:

1. To dismiss the Adversary Proceeding,

2. That Settlor will be entitled to file an amended claim pursuant to 11 U.S.C. § 502(h), and

3. That the claim will be allowed.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met. Under the settlement, Movant shall recover $20,000.00 in satisfaction of the Estate's claim for recovery of the property, with an asserted value of $88,674.50, from Settlor. Movant asserts that the property can be recovered for the Estate as a preference. This proposed settlement allows Movant to recover for the Estate $20,000.00 without further cost or expense and is 22.55% of the maximum amount of the claim identified by Movant.

Probability of Success

Settlor asserts a defense under 11 U.S.C. § 547(c)(4) of providing subsequent new value based on services provided after the date of the first challenged payment. Settlor's defense is asserted in the amount of $26,352.09, which Movant acknowledges.

Settlor also asserts a defense of $20,368.33 based on services provided as an attorney in certain litigation matters after the commencement of the case. Movant asserts that post-petition services or goods cannot support a defense under 11 U.S.C. § 547(c)(4). Movant also argues that these services are not compensable as administrative expenses because Settlor was not, and could not be, retained as a professional by Movant during the case.

Settlor asserts an ordinary course of business defense arguing that the lapse in time between due date of the payments and actual payment is consistent with ordinary terms in the industry. Settlor argues that the earliest payment was due when Debtor received a settlement generated by Settlor's efforts, and was actually paid shortly thereafter. A second payment appears to have been paid one day after an invoice was forwarded, although the payment was also applied to a prior balance.

Movant believes that Settlor has not established the ordinary course of business defense, but he recognizes that application of it is not by bright line rule and represents substantial risk to litigation.

Difficulties in Collection

Movant is unaware of any impediments to collecting the settlement amount.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, estimated up to $25,000.00. Movant would be required to analyze a complicated series of transactions between Settlor and Debtor. Movant believes that judgment would not possible until 2017.

Paramount Interest of Creditors

Movant is not aware of any opposition by creditors, but he will evaluate the interests of any objecting creditors.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it provides immediate payment to creditors while avoid litigation where Settlor may be able to establish a defense to the alleged preferential payments. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Michael McGranahan, the Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and James Struck, dba The Struck Firm ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 691).

4. **13-91315-E-7** **APPLEGATE JOHNSTON, INC.** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ACE AUTOMATIC GARAGE DOORS, INC.**
WFH-36 **George Hollister** **11-18-16 [693]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 18, 2016. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. Fed. R. Bankr. P. 2002(a)(3) (twenty-one-day notice).

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

Michael McGranahan, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with ACE Automatic Garage Doors, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related to an Adversary Proceeding that Movant brought against Settlor seeking recovery of $24,704.27 in an alleged preferential transfer.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 696):

A. Settlor will pay to the Estate the sum of $2,500.00—which amount has been paid.

B. Movant will give Settlor a general release of all claims, including but not limited to claims related to the Adversary Proceeding.

C. Movant agrees:

1. To dismiss the Adversary Proceeding,

2. That Settlor will be entitled to file an amended claim pursuant to 11 U.S.C. § 502(h), and

3. That the claim will be allowed.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met. Under the settlement, Movant shall recover $2,500.00 in satisfaction of the Estate's claim for recovery of the property, with an asserted value of $24,704.27, from Settlor. Movant asserts that the property can be recovered for the Estate as a preference. This proposed settlement allows Movant to recover for the Estate $2,500.00 without further cost or expense and is 10.12% of the maximum amount of the claim identified by Movant.

Probability of Success

Movant notes that Settlor asserts an ordinary course of business defense arguing that the lapse in time between due date of the payments and the actual payments is consistent with the ordinary terms in the industry. Movant does not believe that Settlor has met its burden of proof for the defense, but Movant notes that the defense creates a substantial risk in litigation. Overall, Movant believes that he has the more compelling case than Settlor.

Difficulties in Collection

Movant believes that collecting on any judgment in the Adversary Proceeding would be difficult because Settlor has provided pro forma bankruptcy schedules signed under penalty of perjury showing negative net worth, exclusive of liabilities under the Adversary Proceeding. Movant is motivated primarily to settle because of that impediment to collection.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, estimated up to $12,000.00. A pre-trial conference is scheduled for December 15, 2016, and collection efforts after trial could further delay the closing of the Chapter 7 case.

Paramount Interest of Creditors

Movant is not aware of any opposition by creditors, but he will evaluate the interests of any objecting creditors.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because of the immediate benefit to creditors and because of the potential impediment in collecting any judgment amount that the court may award. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Michael McGranahan, the Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and ACE Automatic Garage Doors, Inc. ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 696).

5. **13-91315-E-7 WFH-37** | **APPLEGATE JOHNSTON, INC.** **George Hollister** | **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH C&T WELDING, INC.** **11-18-16 [698]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 18, 2016. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. Fed. R. Bankr. P. 2002(a)(3) (twenty-one-day notice).

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

Michael McGranahan, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with C&T Welding, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related to an Adversary Proceeding that Movant brought against Settlor seeking recovery of alleged preferential transfers.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 701):

A. Settlor will pay to the Estate the sum of $2,000.00 on or before January 31, 2017.

B. Movant will give Settlor a general release of all claims, including but not limited to claims related to the Adversary Proceeding.

C. If Settlor fails to timely pay the settlement amount, then Movant will be entitled to entry of judgment against Settlor in the full amount sought against Settlor in the Adversary Proceeding.

D. If Settlor timely pays the settlement amount, Movant agrees:

1. To dismiss Settlor from the Adversary Proceeding,

2. That Settlor will be entitled to file an amended claim pursuant to 11 U.S.C. § 502(h), and

3. That the claim will be allowed.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met. Under the settlement, Movant shall recover $2,000.00 in satisfaction of the Estate's claim for recovery of the property, with an asserted aggregate value of $149,053.10, from Settlor and others. Movant asserts that the property can be recovered for the Estate as a preference. This proposed settlement allows Movant to recover for the Estate $2,000.00 without further cost or expense and is 1.34% of the maximum amount of the claim identified by Movant.

Probability of Success

Movant notes that Settlor asserts an ordinary course of business defense arguing that payment through joint payments is consistent with the ordinary terms in the industry. Movant does not believe that Settlor has met its burden of proof for the defense, but Movant notes that the defense creates a substantial risk in litigation. Overall, Movant believes that he has the more compelling case than Settlor.

Difficulties in Collection

Movant believes that collecting on any judgment in the Adversary Proceeding would be difficult because Settlor has provided pro forma bankruptcy schedules signed under penalty of perjury showing negative net worth, exclusive of liabilities under the Adversary Proceeding. Movant is motivated primarily to settle because of that impediment to collection.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, estimated up to $25,000.00. Movant would be required to analyze a complicated series of transactions between Settlor and Debtor. Movant believes that judgment in a case may not be possible until mid-2017, in which case immediate settlement would be more beneficial to creditors.

Paramount Interest of Creditors

Movant is not aware of any opposition by creditors, but he will evaluate the interests of any objecting creditors.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because of the immediate benefit to creditors and because of the potential impediment in collecting any judgment amount that the court may award. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael McGranahan, the Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and C&T Welding, Inc. ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 701).

6.	**13-91315-E-7** **WFH-38**	**APPLEGATE JOHNSTON, INC.** **George Hollister**	**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH SKYLINE STEEL ERECTORS, INC.** **11-18-16 [703]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 18, 2016. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. Fed. R. Bankr. P. 2002(a)(3) (twenty-one-day notice).

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

Michael McGranahan, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Skyline Steel Erectors, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related to an Adversary Proceeding that Movant brought against Settlor seeking recovery of alleged preferential transfers.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 706):

A. Settlor will pay to the Estate the sum of $30,000.00 on or before January 31, 2017.

B. Movant will give Settlor a general release of all claims, including but not limited to claims related to the Adversary Proceeding.

C. If Settlor fails to timely pay the settlement amount, then Movant will be entitled to entry of judgment against Settlor in the full amount sought against Settlor in the Adversary Proceeding.

D. If Settlor timely pays the settlement amount, Movant agrees:

1. To dismiss Settlor from the Adversary Proceeding,

2. That Settlor will be entitled to file an amended claim pursuant to 11 U.S.C. § 502(h), and

3. That the claim will be allowed.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met. Under the settlement, Movant shall recover $30,000.00 in satisfaction of the Estate's claim for recovery of the property, with an asserted aggregate value

of $149,053.10, from Settlor and others. Movant asserts that the property can be recovered for the Estate as a preference. This proposed settlement allows Movant to recover for the Estate $30,000.00 without further cost or expense and is 20.13% of the maximum amount of the claim identified by Movant.

Probability of Success

Movant notes that Settlor asserts an ordinary course of business defense arguing that payment through joint payments is consistent with the ordinary terms in the industry. Movant does not believe that Settlor has met its burden of proof for the defense, but Movant notes that the defense creates a substantial risk in litigation. Overall, Movant believes that he has the more compelling case than Settlor.

Difficulties in Collection

Movant believes that collecting on any judgment in the Adversary Proceeding would be difficult because Settlor has provided pro forma bankruptcy schedules signed under penalty of perjury showing negative net worth, exclusive of liabilities under the Adversary Proceeding. Movant is motivated primarily to settle because of that impediment to collection.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, estimated up to $20,000.00. Movant would be required to analyze a complicated series of transactions between Settlor and Debtor. Movant believes that judgment in a case may not be possible until 2017, in which case immediate settlement would be more beneficial to creditors.

Paramount Interest of Creditors

Movant is not aware of any opposition by creditors, but he will evaluate the interests of any objecting creditors.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because of the immediate benefit to creditors and because of the potential impediment in collecting any judgment amount that the court may award. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Michael McGranahan, the Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Skyline Steel Erectors, Inc. ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 706).

7. 13-91315-E-7 WFH-39 | **APPLEGATE JOHNSTON, INC.** **George Hollister** | **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CAL WEST STEEL DETAILING, LLC** **11-18-16 [708]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 18, 2016. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. Fed. R. Bankr. P. 2002(a)(3) (twenty-one-day notice).

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

Michael McGranahan, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Cal West Steel Detailing, LLC ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related to an Adversary Proceeding that Movant brought against Settlor seeking recovery of $13,440.00 in an alleged preferential transfer.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 711):

A. Settlor will pay to the Estate the sum of $5,000.00 on or before January 31, 2017, $2,000.00 of which will be submitted as a downpayment.

B. Movant will give Settlor a general release of all claims, including but not limited to claims related to the Adversary Proceeding.

C. If Settlor fails to timely pay the settlement amount, then Movant will be entitled to entry of judgment against Settlor in the full amount sought against Settlor in the Adversary Proceeding.

D. If Settlor timely pays the settlement amount, Movant agrees:

1. To dismiss Settlor from the Adversary Proceeding,

2. That Settlor will be entitled to file an amended claim pursuant to 11 U.S.C. § 502(h), and

3. That the claim will be allowed.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met. Under the settlement, Movant shall recover $5,000.00 in satisfaction of the Estate's claim for recovery of the property, with an asserted value of $13,440.00, from Settlor. Movant asserts that the property can be recovered for the Estate as a preference. This proposed settlement allows Movant to recover for the Estate $5,000.00 without further cost or expense and is 37.20% of the maximum amount of the claim identified by Movant.

Probability of Success

Movant notes that Settlor asserts an ordinary course of business defense arguing that payment through joint payments is consistent with the ordinary terms in the industry. Movant does not believe that Settlor has met its burden of proof for the defense, but Movant notes that the defense creates a substantial risk in litigation. Overall, Movant believes that he has the more compelling case than Settlor.

Difficulties in Collection

Movant believes that collecting on any judgment in the Adversary Proceeding would be difficult because Settlor has provided a balance sheet showing liabilities in excess of assets of $427,778.00. Movant is motivated primarily to settle because of that impediment to collection.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, estimated up to $10,000.00. Movant would be required to analyze a complicated series of transactions between Settlor and Debtor. Movant believes that judgment in a case may not be possible until mid-2017, in which case immediate settlement would be more beneficial to creditors. Additionally, Movant asserts that the cost of litigation would exceed the maximum possible recovery for the Estate.

Paramount Interest of Creditors

Movant is not aware of any opposition by creditors, but he will evaluate the interests of any objecting creditors.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the costs of litigation would

overshadow the maximum recovery and because collection against a judgment may be impeded by Settlor's liabilities in excess of assets. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael McGranahan, the Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Cal West Steel Detailing, LLC ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 711).

8. **13-91315-E-7** **APPLEGATE JOHNSTON, INC.** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH INDEPENDENT ELECTRIC SUPPLY, INC.**
WFH-40 **George Hollister** **11-18-16 [713]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 18, 2016. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. Fed. R. Bankr. P. 2002(a)(3) (twenty-one-day notice).

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

Michael McGranahan, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Independent Electric Supply, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related to an Adversary Proceeding that Movant brought against Settlor seeking recovery of $283,108.23 in alleged preferential transfers.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 716):

A. Settlor will pay to the Estate the sum of $46,500.00 on or before December 5, 2016.

B. Movant will give Settlor a general release of all claims, including but not limited to claims related to the Adversary Proceeding.

C. Movant agrees:

1. To dismiss the Adversary Proceeding,

2. That Settlor will be entitled to file an amended claim pursuant to 11 U.S.C. § 502(h), and

3. That the claim will be allowed.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met. Under the settlement, Movant shall recover $46,500.00 in satisfaction of the Estate's claim for recovery of the property, with an asserted aggregate value of $283,108.23, from Settlor. Movant asserts that the property can be recovered for the Estate as a preference. This proposed settlement allows Movant to recover for the Estate $46,500.00 without further cost or expense and is 16.42% of the maximum amount of the claim identified by Movant.

Probability of Success

Movant notes that Settlor asserts four defenses to Movant's claim. Movant gives no weight to the first argument that Settlor can overcome the presumption of insolvency.

Based on case law, Settlor asserts that the joint checks it received were not transfers from the Debtor's estate because a joint check agreement existed. Movant will argue that an independent contractual or statutory liability of the general contractor to Settlor has been established.

Settlor asserts a defense under 11 U.S.C. § 547(c)(1) that in exchange for payment, Settlor gave new value to the Debtor in the form of a release of its right to assert a claim under the general contractor's payment bond, and Settlor asserts supporting case law. Movant believes that the case law is distinguishable, but has not determined if the general contractor would have a valid setoff right. If one exists, then it might constitute new value and be a complete defense in the Adversary Proceeding.

Settlor also asserts an ordinary course of business defense, which Movant disagrees with, but recognizes that it presents risk to his likelihood of success.

Difficulties in Collection

Movant is unaware of any impediments to collecting the settlement amount.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, estimated up to $65,000.00. Movant would be required to analyze a complicated series of transactions between Settlor and Debtor, retain an expert witness, and conduct expert depositions. Movant believes that judgment in a case may not be possible until 2017, in which case immediate settlement would be more beneficial to creditors.

Paramount Interest of Creditors

Movant is not aware of any opposition by creditors, but he will evaluate the interests of any objecting creditors.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it allows Movant to recover immediate funds for the Estate while avoid litigation that may not yield any return for creditors due to the uncertain nature of Settlor's defenses. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Michael McGranahan, the Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Independent Electric Supply, Inc. ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 716).

9. 13-91315-E-7 WFH-41 | **APPLEGATE JOHNSTON, INC.** **George Hollister** | **MOTION FOR ADMINISTRATIVE EXPENSES** **11-18-16 [724]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 18, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

Michael McGranahan, the Chapter 7 Trustee, requests ratification and authorization to pay:

A. $412.73 on October 28, 2013, to Bear Postal for copies, mailing, and postage incurred in serving the Motion to Abandon Personal Property (MDM-3) and supporting documents;

B. $134.00 on January 8, 2014, to Modesto Main Post Office for a fee for Debtor's pre-petition Post Office Box;

C. $312.93 on January 12, 2016, and $27.97 on January 19, 2016, to Downtown Postal for copies, mailing, and postage incurred in serving the Trustee's First Interim Application for Fees (Dckts. 546–50); and

D. $31.29 on July 19, 2016, to Downtown Postal for mailing certain laptop computers to Trustee's electronic information expert retained in connection with certain preference recovery litigation.

The Trustee incurred the expenses believing that he was paying them in the ordinary course of business consistent with his duties under 11 U.S.C. § 363(b). The Office of the United States Trustee instructed the Trustee to pursue this Motion.

DISCUSSION

Section 503(b)(1) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ."

There are many creditors in this case who require service of motions, and serving them while also maintaining Debtor's Post Office address is necessary to the Estate. The Trustee has moved for approval of various postal expenses he incurred during this case on behalf of Debtor. The Trustee has presented sufficient evidence of administrative expenses and requested court approval and ratification, and accordingly, the Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expenses filed by 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 is granted, and the Trustee is authorized, retroactively, to pay and allow the following amounts as administrative expenses:

A. $412.73 on October 28, 2013, to Bear Postal for copies, mailing, and postage incurred in serving the Motion to Abandon Personal Property (MDM-3) and supporting documents;

B. $134.00 on January 8, 2014, to Modesto Main Post Office for a fee for Debtor's pre-petition Post Office Box;

C. $312.93 on January 12, 2016, and $27.97 on January 19, 2016, to Downtown Postal for copies, mailing, and postage incurred in serving the Trustee's First Interim Application for Fees (Dckts. 546–50); and

D. $31.29 on July 19, 2016, to Downtown Postal for mailing certain laptop computers to Trustee's electronic information expert retained in connection with certain preference recovery litigation.

10. **13-91315-E-7** **APPLEGATE JOHNSTON, INC.** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CHESTER C. LEHMANN, INC. AND/OR MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH GRANITE ELECTRICAL SUPPLY, INC.**
WFH-42 **George Hollister**
11-18-16 [718]

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Settlor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 18, 2016. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. Fed. R. Bankr. P. 2002(a)(3) (twenty-one-day notice).

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

Michael McGranahan, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Chester C. Lehmann, Inc. dba Electrical Distributors, Co. and Granite Electrical Supply, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related to Adversary Proceedings that Movant brought against Settlor seeking recovery of $1,101,561.54 in alleged preferential transfers.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 721):

A. Settlor will pay to the Estate the sum of $308,000.00.

B. Movant will give Settlor a general release of all claims, including but not limited to claims related to the Adversary Proceedings.

C. Movant agrees:

1. To dismiss the Adversary Proceedings,

2. That Settlor will be entitled to file an amended claim pursuant to 11 U.S.C. § 502(h), and

3. That the claim will be allowed.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Under the settlement, Movant shall recover $308,000.00 in satisfaction of the Estate's claim for recovery of the property, with an asserted value of $1,101,561.54, from Settlor. Movant asserts that the property can be recovered for the Estate as a preference. This proposed settlement allows Movant to recover

for the Estate $308,000.00 without further cost or expense and is 27.96% of the maximum amount of the claim identified by Movant.

Probability of Success

Movant notes that the probability of success is offset by a defense (established in case law) that Settlor intends to present arguing that there was an independent contractual or statutory liability for the thirty-two transfers made to Settlor Electrical Distributors. Movant asserts that he has not seen evidence of such a defense basis, but admits that Settlor may be able to establish it.

Settlor also will present a defense that it gave new value to the Debtor in the form of a release of its right to assert a claim under the general contractor's payment bond. That defense is based in case law too, and while Movant believes that the present case is distinguishable, he has not determined if the general contractor would have a valid setoff right if Settlor had made a claim on the payment bond. If the release of a valid setoff right existed, then it might constitute new value and be a complete defense for Settlor.

Movant also notes that Settlor may be able to establish an ordinary course of business defense to some of the payments at issue with Settlor Electrical Distributors.

Settlor Granite Electrical is expected to present similar defenses based on a claim that a joint check is not a transfer of Debtor's property, contemporaneous exchange for new value under 11 U.S.C. § 547(c)(1), and an ordinary course of business argument.

Difficulties in Collection

Movant is unaware of any impediments to collecting the settlement amount.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, estimated up to $150,000.00. Movant would be required to analyze a complicated series of transactions between Settlor and Debtor, attend ten to fifteen depositions, retain an expert witness, prepare for trial, and conduct a very fact-specific trial. Movant believes that judgment in a case may not be possible until the latter half of 2017, in which case immediate settlement would be more beneficial to creditors.

Paramount Interest of Creditors

Movant is not aware of any opposition by creditors, but he will evaluate the interests of any objecting creditors.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it provides for more than a quarter of what Movant would recover from successful litigation without having incur costs of trial and while avoiding the potential outcome that Settlor is able to assert a full defense to Movant's claims. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael McGranahan, the Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Chester C. Lehmann, Inc. dba Electrical Distributors, Co. and Granite Electrical Supply, Inc. ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit Ain support of the Motion (Dckt. 721).

11. **13-91315-E-7** **APPLEGATE JOHNSTON, INC.** **CONTINUED STATUS CONFERENCE RE: COMPLAINT**
15-9038
MCGRANAHAN V. ELECTRICAL DISTRIBUTORS, CO.
7-13-15 [1]

Final Ruling: No appearance at the December 15, 2016 Status Conference is required in light of the Motion to Approve Compromise set for hearing on December 15, 2016.

Plaintiff's Atty: Anthony Eaton
Defendant's Atty: Gleb Finkelman

Adv. Filed: 7/13/15

Nature of Action:
Recovery of money/property - preference

The Status Conference is continued to 2:00 p.m. on January 26, 2017.

Notes: Plaintiff asserts that a settlement has been reached that should bring this adversary proceeding to resolution. Dckt. 87.

The court granted an ex parte motion to convert the December 1, 2016 evidentiary hearing to a status conference regarding all remaining deadlines and the pending settlement. Dckt. 89.

The parties filed a Stipulation on November 15, 2016, in which they agree to a stay on all deadlines, including discovery efforts, while they seek court approval of a settlement. Dckt. 90. The parties also agree that all matters set for hearing on December 1, 2016, will be continued.

At the December 1, 2016 hearing, the court continued the status conference to 10:30 a.m. on December 15, 2016, to be conducted in conjunction with a hearing on a Motion for Approval of Compromise of the claims in this Adversary Proceeding. Dckt. 91.

The court having granted the Motion for Approval of Compromise, this Status Conference is continued to afford the parties the opportunity to have the Adversary Proceeding dismissed.

12. **13-91315-E-7** **APPLEGATE JOHNSTON, INC.** **CONTINUED MOTION TO EXTEND DEADLINES AND/OR MOTION TO CONTINUE HEARING**
15-9038
EDC-2
MCGRANAHAN V. ELECTRICAL DISTRIBUTORS, CO.
8-22-16 [41]

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.

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

The Order Setting Hearing on Ex Parte Motion was served by the Clerk of the Court on Debtor, Debtor's Attorney, Chapter 7 Trustee, Plaintiff's Attorney, Defendant's Attorney, and other parties in interest on August 26, 2016. The court computes that 13 days' notice has been provided.

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

The Motion to Extend Deadlines and Motion to Continue Pre-Trial Conference is dismissed without prejudice as moot.

Chester C. Lehmann, Inc. doing business as Electrical Distributors, Co., Defendant, filed the instant *Ex Parte* Motion to Extend Deadlines and Continue Pre-Trial Conference on August 22, 2016. Dckt. 41. Defendant requests that the court extend all deadlines and the pre-trial conference by five months.

The court issued an Order Setting Hearing on *Ex Parte* Motion on August 24, 2016. Dckt. 49. That hearing has been continued by the parties as they have addressed issues in, and the resolution of, this Adversary Proceeding.

On December 15, 2016, the court approved a settlement of this Adversary Proceeding, which moots the subject matter of the present Motion. Thereon, the Motion is dismissed without prejudice.

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

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

The Motion to Extend Deadline having been presented to the court, the court having granted a Motion for Approval of Compromise that fully resolves this Adversary Proceeding, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Extend Deadlines is dismissed without prejudice as moot.

13. 13-91315-E-7 15-9038 EDC-3 MCGRANAHAN V. ELECTRICAL DISTRIBUTORS, CO. — **APPLEGATE JOHNSTON, INC.** — **CONTINUED MOTION FOR PROTECTIVE ORDER 11-2-16 [74]**

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney and Office of the United States Trustee on November 2, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Protective Order 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 Protective Order is dismissed without prejudice as moot.

The hearing on the Defendant's Motion for Protective Order has been continued by the parties as they have addressed issues in, and the resolution of, this Adversary Proceeding.

On December 15, 2016, the court approved a settlement of this Adversary Proceeding, which moots the subject matter of the present Motion. Thereon, the Motion is dismissed without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Protective Order filed by Defendant having been presented to the court, the court having granted a Motion for Approval of Compromise that fully resolves this Adversary Proceeding, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Protective Order is dismissed without prejudice as moot.

14. 13-91315-E-7 15-9044 MCGRANAHAN V. GRANITE ELECTRICAL SUPPLY, INC.

APPLEGATE JOHNSTON, INC.

CONTINUED STATUS CONFERENCE RE: COMPLAINT 7-13-15 [1]

Final Ruling: No appearance at the December 1, 2016 Status Conference is required.

Plaintiff's Atty: Daniel Egan
Defendant's Atty: Gleb Finkelman

Adv. Filed: 7/13/15

Nature of Action:
Recovery of money/property - preference

The Status Conference is continued to 2:00 p.m. on January 26, 2017.

Notes: Plaintiff asserts that a settlement has been reached that should bring this adversary proceeding to resolution. Dckt. 47.

The court granted an ex parte motion to set a status conference regarding all remaining deadlines and the pending settlement for 10:30 a.m. on December 1, 2016. Dckt. 49.

At the December 1, 2016 hearing, the court continued the status conference to 10:30 a.m. on December 15, 2016, to be conducted in conjunction with a hearing on a Motion for Approval of Compromise of the claims in this Adversary Proceeding. Dckt. 54.

The court having granted the Motion for Approval of Compromise, this Status Conference is continued to afford the parties to consummate the settlement and dismiss this adversary proceeding.

15. 13-91315-E-7 15-9044 APPLEGATE JOHNSTON, INC.
GES-1
MCGRANAHAN V. GRANITE ELECTRICAL SUPPLY, INC.
CONTINUED MOTION FOR PROTECTIVE ORDER
11-2-16 [38]

Final Ruling: No appearance at the December 1, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney and Office of the United States Trustee on November 2, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Protective Order 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 Protective Order is dismissed without prejudice as moot.

The hearing on the Defendant's Motion for Protective Order has been continued by the parties as they have addressed issues in, and the resolution of, this Adversary Proceeding.

On December 15, 2016, the court approved a settlement of this Adversary Proceeding, which moots the subject matter of the present Motion. Thereon, the Motion is dismissed without prejudice.

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

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

The Motion for Protective Order filed by Defendant having been presented to the court, the court having granted a Motion for Approval of Compromise that fully resolves this Adversary Proceeding, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Protective Order is dismissed without prejudice as moot.

16. 11-92116-E-7 TOG-3 | **RENE MADRIGAL** **Thomas Gillis** | **MOTION TO AVOID LIEN OF EFRAIN CAMARILLO** **11-21-16 [34]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 21, 2016. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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 Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Efrain Camarillo ("Creditor") against property of Rene Madrigal ("Debtor") commonly known as 739 East Hackett Road, Ceres, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,675.00. An abstract of judgment was recorded with Stanislaus County on February 24, 2012, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $129,429.00 as of the date of the petition. The unavoidable consensual liens that total $134,250.00 as of the commencement of this case are stated on Debtor's Schedule D.

Debtor has not claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1). The Motion states that Debtor's Declaration specifies what exemption is taken, and the Declaration does assert that the lien impairs Debtor's homestead exemption, but Debtor has not claimed a homestead exemption on Schedule C. *Compare* Dckt. 36, *with* Dckt. 1.

If Debtor had claimed an exemption in the Property, then after application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there would be no equity to support the judicial lien. Without an exemption being claimed, though, the formula cannot be used. Therefore, the Motion is denied without prejudice.

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 Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

17. 11-92116-E-7 RENE MADRIGAL MOTION TO AVOID LIEN OF EFRAIN
TOG-4 Thomas Gillis CAMARILLO
11-21-16 [40]

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 21, 2016. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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 Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Efrain Camarillo ("Creditor") against property of Rene Madrigal ("Debtor") commonly known as 739 East Hackett, Ceres, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $600.00. An abstract of judgment was recorded with Stanislaus County on February 24, 2012, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $129,429.00 as of the date of the petition. The unavoidable consensual liens that total $134,250.00 as of the commencement of this case are stated on Debtor's Schedule D.

Debtor has not claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1). The Motion states that Debtor's Declaration specifies what exemption is taken, and the

Declaration does assert that the lien impairs Debtor's homestead exemption, but Debtor has not listed an actual exemption on Schedule C. *Compare* Dckt. 42, *with* Dckt. 1.

If Debtor had claimed an exemption in the Property, then after application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there would be no equity to support the judicial lien. Without an exemption being claimed, though, the formula cannot be used. Therefore, the Motion is denied without prejudice.

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 Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

18. 11-91824-E-7 GARY/CAROLYN WEBBER MOTION TO AVOID LIEN OF
MRG-2 Michael Germain AMERICAN EXPRESS CENTURION BANK
11-14-16 [27]

Final Ruling: No appearance at the December 15, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2016. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of American Express Centurion Bank ("Creditor") against property of Gary Webber and Carolyn Webber ("Debtor") commonly known as 2744 Dunn Road, Valley Springs, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,504.99. An abstract of judgment was recorded with Calaveras County on September 20, 2010, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $110,000.00 as of the date of the petition. The unavoidable consensual liens that total $254,016.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of American Express Centurion Bank, California Superior Court for Calaveras County Case No. 10CF9217, recorded on September 20, 2010, Document No. 2010 11226, with the Calaveras County Recorder, against the real property commonly known as 2744 Dunn Road, Valley Springs, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

19. 16-90457-E-7 JOSE/LUCILA PULIDO MOTION TO REDEEM
PLL-2 Peter Lago 10-24-16 [27]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on October 19, 2016. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

The Motion to Redeem 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 Redeem is denied without prejudice.

Jose Pulido and Lucila Pulido ("Debtor") seeks to redeem a 2013 Honda Civic, ending in VIN Number 1659 ("Property") from the claim of Travis FCU ("Creditor") pursuant to 11 U.S.C. § 722. Under this provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Property, not just to the Debtor's exempt interest in it. *See* H.R. Rep. No. 95-595, at 381 (1977).

To redeem the Property, Debtor must pay the lien holder "the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption." 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). To determine the amount of the secured claim, the court looks to 11 U.S.C. § 506.

The Motion is accompanied by the declaration of Jose Pulido and Lucila Pulido. Debtor seeks to value the Property at a replacement value of $9,763.00 as of the petition filing date. As the owner, the

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

The lien perfected on the Property secures Creditor's claim with a balance of approximately $19,702.00. Therefore, Creditor's claim secured by the lien is under-collateralized, and pursuant to 11 U.S.C. § 506(a), the court determines Creditor's secured claim to be in the amount of $9,763.00.

The Motion states that Debtor has elected to exempt the Property on Schedule C, but Debtor has not exempted the Property and has not filed an Amended Schedule C. Debtor listed the Property on Schedule A/B with a value of $6,546.00. Debtor has not met the requirements of 11 U.S.C. § 722 by not claiming an exemption in the Property, and therefore, the Motion is denied without prejudice.

The court shall issue an order in 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 Redeem filed by Jose Pulido and Lucila Pulido ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

20. **10-94467-E-7** **TINA BROWN** **MOTION FOR ADMINISTRATIVE EXPENSES**
CWC-7 **Michael Germain** **11-16-16 [181]**

Final Ruling: No appearance at the December 15, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Administrative Expense 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 Administrative Expense is granted.

Michael McGranahan, the Chapter 7 Trustee, requests retroactive authorization to pay $500.00 to Chicago Title Company for preparation of a preliminary title report on Timothy Brown's residence, whom the Trustee had filed an Adversary Proceeding against to compel him to turn over the residence to the bankruptcy estate. The court entered judgment in favor of the Trustee on December 13, 2012. Judgment, Case No. 12-09003, Dckt. 41.

The Trustee paid for the preliminary title report on May 4, 2016, and he asserts that he believed he was paying the fee in the ordinary course of business consistent with his duties under 11 U.S.C. § 363(b)(1). The Office of the United States Trustee instructed the Trustee to pursue this Motion.

DISCUSSION

Section 503(b)(1) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ."

As a preliminary matter, the Trustee is seeking a "retroactive authorization" rather than nunc pro tunc authorization. The Ninth Circuit has noted that nunc pro tunc approval is not the proper name for seeking retroactive authorization of actions in a bankruptcy case. *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 515 n. 4 (9th Cir. 2007). Nunc pro tunc amendments are usually used to correct errors in the record and are extremely limited in scope. *Id.* The Ninth Circuit noted that while it is more accurate to call such after-the-fact authorizations "retroactive approvals," it is customary, but not necessarily correct, to refer to them generically as nunc pro tunc in bankruptcy practice. *Id.* The two names stand for the same set of standards and can be used interchangeably. *See, e.g., Atkins v. Wain*, 69 F.3d 970, 974–78 (9th Cir. 1995) (alternating between using nunc pro tunc and "retroactive approval" when determining whether a law firm had established exceptional circumstances allowing them to be paid for services to debtor not approved by the court).

A bankruptcy court can exercise its equitable discretion to grant retroactive authorizations when it is appropriate in order to carry out the Bankruptcy Code and the approval benefits the debtor's estate. *In re Harbin*, 486 F.3d at 522. Retroactive approvals should only be used in "exceptional circumstances." *Atkins*, 69 F.3d at 974. Here, the Trustee has demonstrated that he believed he was acting in the ordinary course of his duties. *See* Dckt. 183.

The Trustee having presented sufficient evidence of an administrative expense, and having requested allowance of the expense, the Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by 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 is granted, and the Trustee is authorized retroactively to pay $500.00 to Chicago Title Company for preparation of a preliminary title report on Timothy Brown's residence in Adversary Proceeding No. 12-09003.

21. 08-92474-E-7 DARLENE BLAN
SCB-5 Steven Altman

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DARLENE LILLIAN BLAN
11-17-16 [57]

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 17, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 for Approval of Compromise is granted.

Gary Farrar, the Trustee ("Movant"), requests that the court approve two compromises and settle competing claims and defenses, one with defendants in Darlene Blan's ("Debtor") products liability lawsuit and one with Debtor herself ("Settlor"). FN.1. The claims and disputes to be resolved by the proposed settlement are a settlement of the products liability case and a settlement with Debtor regarding distribution of proceeds from the products liability case.

FN.1. Federal Rule of Civil Procedure 18(b) allows a party to "join two claims even though one of them is contingent on the disposition of the other." A court may grant relief on the two claims "only in accordance with the parties' relative substantive rights," though. *Id.*

Federal Rule of Bankruptcy Procedure 9014(c) does not incorporate Federal Rule of Civil Procedure 18—adopted in bankruptcy as Federal Rule of Bankruptcy Procedure 7018—in contested matters.

Local Bankruptcy Rule 9014-1(d)(1) states:

> Except as otherwise provided in these rules, every application, motion, contested matter or other request for an order, shall be filed separately from any other request, except that relief in the alternative based on the same statute or rule may be filed in a single motion.

Local Bankruptcy Rule 1001-1(g) states that not complying with the rules is a ground to dismiss an action.

Here, Movant has requested court approval of two separate compromises. One relates to Debtor's products liability lawsuit, and the other is between Debtor and the Trustee in the bankruptcy case. What has been presented to the court could be dismissed because the compromise, which is not stated in the alternative, appears to require two motions. However, the court could envision some arguments that could (and should have been asserted in the motion) as to why this represents one compromise to be approved as part of one motion.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreements filed as Exhibits B & E in support of the Motion, Dckt. 61):

A. Products Liability Lawsuit Compromise

1. Defendants shall pay the gross settlement amount of $76,656.00 to the bankruptcy estate.

2. Disbursements and out-of-pocket expenses total $37,140.93 as follows:

a. Attorney's Fees (40%) of $30,662.40 made up of

(1) Court-allocated (4% of gross to be withheld) of $3,066.24 and

(2) $27,596.16;

b. Out-of-Pocket Expenses of $2,423.68 made up of

(1) Court-allocated (1% of gross to be withheld) of $766.56,

(2) Common expenses (pro rata share) of $149.41, and

(3) Attorneys' expenses of $1,507.71; and

c. Expenses and Liens of $4,054.85 made up of

(1) Bankruptcy coordination fee of $500.00 and

(2) Medicare of $3,554.85.

3. The bankruptcy estate shall receive a balance of $69,268.35 as a net settlement amount.

4. After compromise with and payment to Debtor, the Estate shall retain a balance of $37,253.28:

a. $29,753.28 of the balance shall be allocated to attorney's fees and expenses, and

b. $7,500.00 shall be allocated to the Estate's professional fees and distribution to unsecured creditors.

B. Compromise with Debtor

1. Movant shall pay Debtor $32,015.07.

2. Debtor shall not claim any additional interest in the products liability lawsuit and shall waive all claims for exemptions or otherwise.

3. The parties shall exchange mutual releases of claims.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met. Under the settlement, Movant shall recover $76,656.00 for the Estate as a gross settlement amount. This proposed settlement allows Movant to recover for the Estate a net (after payments, liens, and compromise with Debtor) of $37,253.28 without further cost or expense.

Probability of Success

Movant argues that the probability of success in both the lawsuit and the dispute with Debtor is uncertain. There are difficult factual and legal issues to be litigated in the lawsuit, and defendants deny all allegations while raising numerous defenses, including but not limited to failure to state a claim, lack of standing, and that Debtor failed to exercise ordinary care for safety.

Additionally, Plaintiff-Debtor's attorneys in the lawsuit are aware of fewer than twenty cases involving similar claims that have been tried to verdict. For the ones in which a plaintiff received a judgment, defendant manufacturers have appealed. Thousands of similar cases have been pending for several years, but only a few have been tried, which indicates the difficulty of getting a case to trial.

Regarding the dispute with Debtor, Movant and Debtor each assert interpretations of 11 U.S.C. § 703.140(b)(11)(D), and Movant believes that it is difficult to predict the manner in which their assertions will be resolved.

Difficulties in Collection

Movant asserts that any recovery from litigation of the lawsuit would be limited by several factors. The lawsuit would be very costly because of numerous medical expert witness reviews. Even if there were a recovery at trial, Movant expects the defendants to appeal, which would reduce any recovery because of the costs of further litigation.

Expense, Inconvenience, and Delay of Continued Litigation

Movant expects post-trial motions and appeals if Debtor-Plaintiff prevails in the lawsuit, and even if that happens, the costs of litigation in the dispute with Debtor could consume a significant portion of any potential benefit to the Estate.

Paramount Interest of Creditors

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

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it provides for recovery of a meaningful settlement amount while avoiding prolonged and costly litigation (including potential appeals) that could consume any recovery to the Estate. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Gary Farrar, the Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and defendants in products liability lawsuit *In re: C.R. Bard, Inc., Pelvic Repair System Prods. Liability Litigation* (Case No. MDL-2187, S.D. W.Va.) and between Movant and Debtor Darlene Blan ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibits B & E in support of the Motion (Dckt. 61).

22. **08-92474-E-7** **DARLENE BLAN** **MOTION FOR COMPENSATION FOR**
SCB-6 **Steven Altman** **LEZZLIE HORNSBY, OTHER PROFESSIONAL(S)**
11-17-16 [64]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 17, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 denied without prejudice.

Gary Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case for Lezzlie Hornsby, Special Litigation Counsel for Client ("Applicant"). Fees will be disbursed from a product liability lawsuit case settlement fund ("MDL 2187 Fund")

Fees are requested for the period June 19, 2016, through November 15, 2016. The order of the court approving employment of Applicant was entered on June 19, 2016. Dckt. 47. Applicant requests fees in the amount of $27,596.16 and costs in the amount of $2,157.12.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature,

the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or
(ii) services that were not—
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including litigating and achieving a proposed settlement in Debtor's lawsuit for personal injuries and medical expenses caused by a defective transvaginal mesh product. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant has not provided a task billing analysis and supporting evidence for the $27,596.16 of services provided, but he has described the litigation services in the following main category.

Litigation: Applicant assisted Client with litigating a products liability case, reviewing and analyzing more than 100,000 pages of documents, deposing key witnesses, hiring and preparing experts, deposing Defendant's experts, preparing and defending evidentiary motions and motions for summary judgment, and negotiating a proposed settlement of $76,656.00.

Applicant computes the fees for the services provided as a percentage of the monies recovered in settlement. Applicant represented Client in products liability litigation, for which Client agreed to a contingent fee of 40% of the gross recovery in the case. In approving the employment of applicant, the court approved the contingent fee, subject to further review pursuant to 11 U.S.C. § 328(a). The proposed settlement in the litigation is for $76,656.00.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $2,157.12 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**

Clark, Love & Hutson, GP Expenses		$1,507.71
Bankruptcy Coordination fee		$500.00
Common Expenses		$149.41
		$0.00
Total Costs Requested in Application		$2,157.12

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $27,596.16 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Trustee is authorized to pay or approve disbursement from the available settlement funds of the MDL 2187 Fund in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

Applicant has not provided any description for its expenses, leaving the court to guess as to what they may be. First and Final Costs in the amount of $2,157.12 are not approved pursuant to 11 U.S.C. § 330 and are not authorized to be paid by the MDL 2187 Fund from the available funds of the MDL 2187 Fund.

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 Lezzlie Hornsby ("Applicant"), Special Litigation Counsel for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice, Applicant not having explained its requested costs and expenses.

23. **16-90892-E-7** **PATRICK READY** **MOTION TO COMPEL ABANDONMENT**
FF-1 **Gary Fraley** **11-16-16 [12]**

Final Ruling: No appearance at the December 15, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 16, 2016. By the court's calculation, 29 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 the 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 Patrick Ready ("Debtor") requests the court to order the Trustee to abandon property commonly known as 310 Parliament Way, Newman, California ("Property"). The Property is encumbered by the lien of Nationstar Mortgage, securing a claim of $132,838.25. The Declaration of Patrick Ready has been filed in support of the Motion and values the Property at $275,000.00. Dckt. 14. Debtor has claimed an exemption on Schedule C in the Property pursuant to California Civil Procedure § 704.730 in the amount of $142,161.75. Based upon the claimed exemption and an estimated 8% cost of sale, Debtor asserts that the Estate's interest in the Property is ($11,372.94). Dckt. 14.

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 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not a minute order) substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Patrick Ready ("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 Property identified as 310 Parliament Way, Newman, California and listed on Schedule A by Debtor is abandoned to Patrick Ready by this order, with no further act of the Trustee required.

24. 08-92594-E-7 ROBERT/STEPHANIE ACHTERBERG
15-9054

MOTION FOR COMPENSATION FOR PREVAILING PARTY ATTORNEYS' FEES (11 U.S.C. § 362(k))
11-16-16 [42]

ACHTERBERG, JR. ET AL V. CREDITORS TRADE ASSOCIATION,

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant's Attorney on November 18, 2016. By the court's calculation, 27 days' notice was provided. 28 days' notice is required. FN.1

FN.1. The court ordered Plaintiff-Debtors to file and serve a motion for attorneys' fees and costs in this Adversary Proceeding on or before November 16, 2016. The Motion was filed on November 16, 2016, but it was not served apparently until November 18, 2016. Given that the court provided December 15, 2016, as a potential hearing date and that Defendant-Creditor has submitted a timely opposition, the court waives the service defect.

The Motion for Attorneys' Fees and Costs During Adversary Proceeding 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 for Attorneys' Fees and Costs During Adversary Proceeding is granted.

Robert Achterberg, Jr. and Stephanie Achterberg, the Plaintiff-Debtors, request an award of attorneys' fees and costs in this adversary proceeding as part of their actual damages pursuant to 11 U.S.C. § 362(k) as part of claims against Creditors Trade Association, Inc. dba Great Western Collection Bureau ("Defendant-Creditor"). The court having taken the matter under submission and having determined that judgment for Plaintiff-Debtors will be issued, has ordered that the determination of attorneys' fees and costs, as part of the mandatory 11 U.S.C. § 362(k) damages, be determined prior to and as part of the judgment itself, rather than the normal post-judgment award of attorneys' fees and costs. Order, Dckt. 40.

Fees are requested for the period May 15, 2015, through September 26, 2016. Applicant requests total fees in the amount of $16,529.95 and total costs in the amount of $688.79. The totals are computed for the Plaintiff-Debtors' two attorneys as follows:

A. Malcolm Gross

1. Fees: $10,679.95

2. Costs: $641.74

3. Total: $11,305.19

B. Steven Altman

1. Fees: $5,850.00

2. Costs: $47.05

3. Total: $5,897.05

Review of Motion

Plaintiff-Debtors assert the right to recover, as part of their actual damages, their attorneys' fees and costs relating to Defendant-Creditor's asserted violation of the automatic stay. The attorneys' fees and costs are for the period when the asserted violation of the automatic stay was identified, communications with the Defendant-Creditor seeking to have it correct the asserted violation (a state court judgment obtained in violation of the automatic stay and which was continuing to be reported by the California Superior Court for San Francisco County, as a valid, enforceable judgment that was being reported on Plaintiff-Debtors' credit report.

Evidence was presented at trial that Plaintiff-Debtors' attorneys made repeated attempts to communicate with Defendant-Creditor's attorney of record in the Superior Court action who obtained the state court judgment, with no response received. Then, further communications directly with Defendant-Creditor and Defendant-Creditor's new counsel (though all communications with said new "counsel" were issued by and signed by an employee of Defendant-Creditor, which were written on said new "counsel's" letterhead), to which responses were received acknowledging the asserted violation of the automatic stay. When the asserted violation was not corrected, after affording Defendant-Debtor and its counsel a reasonable opportunity, the Complaint in this adversary proceeding was filed and served on Defendant-Debtor. Within days of being served with the summons and Complaint, Defendant-Debtor then had the void state court judgment vacated. (The specific dates and timing of Defendant-Creditor's conduct will be detailed in the court's written memorandum opinion and decision issued in this Adversary Proceeding).

Declarations have been provided by Plaintiff-Debtors' two attorneys. Dckts. 44, 45. Plaintiff-Debtors have also provided detailed billing records by both of the attorneys (which have been properly authenticated, Fed. R. Evid. 901, 902) for the fees and costs requested. Dckt. 43.

The Plaintiff-Debtors have asserted in this Adversary Proceeding that the filing of the Complaint was necessary because Defendant-Creditor would not correct the violation of the automatic stay and that Defendant-Creditor did not correct the violation of the automatic stay until after it was filed and served, and Defendant-Creditor has not paid the damages incurred, including the attorneys' fees and costs.

DEFENDANT-CREDITOR'S OPPOSITION

Defendant-Creditor has filed two oppositions. The first was filed on November 30, 2016. Dckt. 48. The attorney filing this is Defendant-Creditor's attorney of record, Ralph L. Pollard. However, on November 30, 2016, a second, nearly identical opposition was filed, this time adding another attorney, from another law firm in the upper left-hand corner of the pleading—Douglas Provencher. For this second opposition, it purports to have the "/s/" signature for Mr. Provencher. FN.2.

FN.2. The purported signature for Mr. Provencher does not comply with the requirements of Local Bankruptcy Rule 9004-1(c)(1), which requires:

> "(1) Signatures on Documents Submitted Electronically.
>
> (A) Signature of the Registered User. [U]nless the electronically filed document has been scanned and shows the registered user's original signature or bears a software-generated electronic signature thereof, **an "/s/" and the registered user's name shall be typed in the space where the signature would otherwise appear.**
>
> (B) Signatures of Other Persons. Signatures of persons other than the registered user may be indicated by either:
>
> (i) Submitting a scanned copy of the originally signed document;
>
> (ii) Attaching a scanned copy of the signature page(s) to the electronic document; or
>
> (iii) Through the use of "/s/ Name" or a software-generated electronic signature in the signature block where signatures would otherwise appear. Electronically filed documents on which **"/s/ Name"** or a software-generated electronic signature is used to indicate the signatures of persons other than the registered user shall be subject to the requirements set forth in Subparts (C) and (D) below."

The electronic "signature" for this new attorney, who is not the attorney of record in this Adversary Proceeding, fails to comply with this basic requirement. Interestingly, the same is true for the opposition purported to be signed by Mr. Pollard, which has only a "/s/" on the signature line, leaving out the name of the person whose signature is suppose to be on that line. The court does not know if both attorneys have independently failed to comply with this requirement, whether Mr. Provencher may not be aware that a pleading has been filed purporting to be from him, or that this is an attempt to disavow responsibility for the pleading with a "we did not *really* sign any pleadings" in our advocacy for Defendant-Creditor.

Notwithstanding this defect, the court will treat the two pleadings as having been filed by each of the attorneys, and consider the merits of the oppositions presented. Given that the oppositions are so similar, the court will not sanction the attorneys for attempting to file multiple oppositions for one party.

The court will reserve for a separate day (if the court determines it necessary) to address with the two attorneys how a non-attorney of record can appear in a case without the required substitution or association of counsel in violation of Local Bankruptcy Rule 2017-1(j), which is consistent with Eastern District of California District Court Local Rule 182(I).

Opposition of Defendant-Creditor

Defendant-Creditor begins by stating that "Creditors Trade Association, Inc. does not object to the hourly rates asserted by plaintiffs' counsel nor does CTA question the actual time spent." Pollard Opposition, p. 1:24–25, Dckt. 48 ("Pollard Opposition"); and Provencher Opposition, p. 1:25.5–26.5, Dckt. 50 ("Provencher Opposition"). The court concurs with Defendant-Creditor's two oppositions and does not take exception to either the hourly rates billed nor the time billed by the two attorneys. As discussed below, the two attorneys appropriately divided the "labor" and are not attempting to double bill for legal services.

However, Defendant Creditor does object to any attorneys' fees and costs incurred after it "promised" to vacate the void judgment (but had failed to so do). Specifically, this is stated as, "CTA does object to the attorneys' fees incurred by the plaintiffs for filing and continuing an adversary proceeding when after CTA agreed to vacate the underlying state court judgment." Pollard Opposition, p.1:25.5–27.5; and Provencher Opposition, p. 1:27.5–28.5, 2:1.

Both attorneys Pollard and Provencher express confusion, stating that because they have not seen the court's ruling, they are presuming that the court will not find that the "discharge injunction" was violated. Pollard Opposition, p. 2:4.5–5.5; Provencher Opposition, p. 2:5.5–6.5. They "assume" that attorneys' fees will be awarded only pursuant to 11 U.S.C. § 362(k), as if such an award allows Defendant-Creditor to avoid liability for the actual damages attorneys' fees and costs it has caused.

Neither attorney Pollard nor attorney Provencher provide the court with any legal authority for the following contentions:

A. "CTA believes this would be correct because CTA's only act was obtaining a default judgment in February 2009 while the Chapter 7 was pending. CTA did nothing after March 2009 when the debtors' received their discharge except to set aside the default judgment." Pollard Opposition, p. 2:6–8; Provencher Opposition, p. 2:7–9.

B. "CTA believes that only the actual attorneys' fees incurred by the debtors to obtain the vacating of the judgment should be compensated. Those attorneys' fees are set forth-in Mr. Gross's October 18, 2016 Invoice on the Plaintiff Exhibit List [Docket 43] at Page 1 of Exhibit A." Pollard Opposition, p. 2:10.5–13; Provencher Opposition, p. 2:7–9.

C. "That invoice shows the debtors incurred 11.2 hours at $265 an hour for $2,968 in fees related to the outstanding judgment and efforts to have it vacated." Pollard Opposition, p. 2:14–14.5; Provencher Opposition, p. 2:14–15.

D. "On July 15, 2015, Mr. Gross acknowledged receipt of a letter from CTA agreeing to vacate the underlying default judgment. The debtors incurred an additional 2.6 hours at $265 or $689 for services related to the correspondence with the lender and client regarding the judgment." Pollard Opposition, p. 2:15.5–18; Provencher Opposition, p. 2:15.5–18.

E. "The additional $12,856 in fees and costs were incurred for the litigation after the judgment was vacated." Pollard Opposition, p. 2:21.5–22.5; Provencher Opposition, p. 2:21.5–22.5.

As stated in the two oppositions, Defendant-Creditor's only objection is that once it finally vacated the void judgment, bringing to an end the continuing violation of the automatic stay in August 2015, that Plaintiff-Debtors can recover no further attorneys' fees as it tries to enforce its rights to recover actual damages (economic, emotional distress and attorneys' fees).

In making this opposition, Defendant-Creditor offers no evidence of having paid the actual damages, having tendered payment of the actual damages, having made an offer to settle this litigation as provided by Federal Rule of Civil Procedure 68 and Federal Rule of Bankruptcy Procedure 7068, or making any effort to not force Plaintiff-Debtors to continue in the prosecution of this litigation to enforce its rights to recover the actual damages and be forced to incur additional actual damages (further attorneys' fees) in trying to recover the actual damages already owed by Defendant-Creditor.

PLAINTIFF-DEBTOR'S RESPONSE

Plaintiff-Debtor filed a Response on December 6, 2016. Dckt. 51. Plaintiff-Debtor reasserts the grounds in its motion and contends that Defendant-Creditor has ignored that the court has already ruled that the automatic stay was violated. While the court has not issued its memorandum opinion and decision, so the court has not "ruled," the court did announce such at the conclusion of the trial when announcing that it would be issuing a written decision. Also, there is no dispute that obtaining the Superior Court judgment was in violation of the stay and that violation continued until that Superior Court judgment was vacated in August 2015.

STATUTORY BASIS FOR ATTORNEYS' FEES AND COSTS AS ACTUAL DAMAGES

For individual debtors asserting a violation of the automatic stay Congress has provided a specific statutory provision (in addition to the inherent contempt powers of the federal courts for violation of orders and stays), which states:

> (k) (1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover **actual damages, including costs and attorneys' fees**, and, in appropriate circumstances, may recover punitive damages.
>
> (2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

11 U.S.C. § 362(k). Such violations of the stay are of such significant importance that Congress has specified that the aggrieved debtor **Shall Recover** attorneys' fees. This is true even when the offending party can assert the "good faith belief" exception to possible (may recover) punitive damages liability. *See America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1099 (9th Cir. 2015) ("In some respects the statute [11 U.S.C. § 362(k)] strengthened the remedies previously available to debtors injured by willful stay violations. It makes an award of actual damages and attorney's fees mandatory, and grants bankruptcy courts the discretion to impose punitive damages in appropriate cases.")

The attorneys' fees and are not merely limited to the "litigation," but that "Those fees can be incurred out of court, as when a debtor retains an attorney to call or write a creditor to demand that it end its stay-violating conduct. When those efforts fail, a debtor can also incur attorney's fees in court by pursuing injunctive relief aimed at ending the stay violation." *Id.*

The Ninth Circuit, sitting *en banc*, put an end to the contention that if the violator terminated the stay, then the debtor lost the right to any further attorneys' fees in attempting to recover the damages caused by the violation of the stay.

> "For these reasons, § 362(k) is best read as authorizing an award of attorney's fees incurred in prosecuting an action for damages under the statute. Although § 362(k) makes such fee awards mandatory rather than discretionary, we do not think that feature of the statute will result in unnecessary litigation brought solely to drive up the award. Only an award of fees reasonably incurred is mandated by the statute; courts awarding fees under § 362(k) thus retain the discretion to eliminate unnecessary or plainly excessive fees. *In re Dawson*, 390 F.3d 1139, 1152 (9th Cir. 2004). Sound exercise of this discretion will provide a sufficient check on any abuses that might otherwise arise."

Id. at 1101.

There is no general right to recover attorneys' fees under the Bankruptcy Code. *See In re Kord Enterprises II*, 139 F.3d 684 (9th Cir. 1998) (whether included as part of secured claim); *Heritage Ford v. Baroff (In re Baroff)*, 105 F.3d 439 (9th Cir. 1997) (prevailing party contractual attorneys' fees in nondischargeability action). Unless authorized by statute or contractual provision, attorney fees ordinarily are not recoverable as costs. Cal. Code Civ. Proc. § 1021; *International Industries, Inc. v. Olen*, 21 Cal. 3d 218, 221 (Cal. 1978). The prevailing party must establish that a contractual provision exists for attorneys'

fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956).

In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

ATTORNEYS' FEES AND COSTS & EXPENSES REQUESTED AS PART OF 11 U.S.C. § 362(k) DAMAGES

Fees

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

Malcolm Gross: Applicant Gross spent 40.3 hours in this category. Applicant assisted Plaintiff-Debtors with vacating the judgment that violated the automatic stay and with litigating this adversary proceeding.

Steven Altman: Applicant Altman spent 19.5hours in this category. Applicant assisted Plaintiff-Debtors with litigation, asset analysis and recovery, and general case administration.

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
Malcolm Gross	40.3	$265.00	$10,679.50
Steven Altman	19.5	$300.00	$5,850.00

	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$16,529.50

Defendant-Creditor asserts that $16,529.50 of attorneys' fees for more than one year of pre-litigation and then litigation through a one-day trial are "unreasonable" for "only" $4,346.00 in legal fees up to the time that Defendant-Creditor finally acted (after being served with the summons and Complaint). This contention demonstrates the underlying disregard that Defendant-Creditor and its attorneys show for the Bankruptcy Code and Congress in enacting the automatic stay. Defendant-Creditor assumes that having its attorney of record refusing to respond to Plaintiff-Debtors' counsel when contacted in Spring 2015 and address the continuing violation of the stay (which said counsel's conduct constituted a personal violation of the stay), then engaging in a protracted letter writing scheme in which Defendant-Debtor, purportedly communicating through its new counsel (with every correspondence signed by an employee of Defendant-Debtor, which employee was not show to be an employee or representative of said new counsel's law firm), would promise action to correct the continuing violation of the automatic stay, but never actually correcting the continuing the violation. It was not until Defendant-Creditor was served with the summons and Complaint that Defendant-Creditor could act within days to have the void Superior Court judgment vacated and not make the court's official records, relied upon others (including consumer reporting agencies) rely on and report false information.

As addressed above, Defendant-Creditor has failed (or refused) to provide any evidence that it attempted to pay the damages that were owed or made any attempt not to force Plaintiff-Debtors to incur further and increasing attorneys' fees in trying to enforce their rights to recover the actual damages that Congress has statutorily provided **Shall** be awarded a debtor. Even if Defendant-Creditor believed that the attorneys' fees demand was unreasonable, it held the ability to unilaterally blunt any unreasonable demands and turn the tables on an unreasonable plan. Federal Rule of Civil Procedure 68 and Federal Rule of Bankruptcy Procedure 7068 allow a defendant to make a written offer of judgment. Not only would this result in cutting off demands for "unreasonable damages," it would also render attorneys' fees and costs in trying to pursuant such "unreasonable damages" unreasonable themselves. To the extent that there could be a reciprocal right to attorneys' fees (either statutory or contractual) or Federal Rule of Civil Procedure 11 and Federal Rule of Bankruptcy Procedure 11 sanctions, Defendant-Creditor could have been in the driver's seat. But there has been no such action by Defendant-Creditor.

Here, the attorneys' fees incurred prior to the Superior Court judgment being vacated and then for the additional fees while Plaintiff-Debtors were forced to continue the litigation to enforce their rights for actual damages (economic, emotional distress, and attorneys' fees) and punitive damages. Defendant-Creditor's arguments (which as the court notes are unsupported by any legal authority) that so long as it

"promised" to correct the continuing violation of the automatic stay, no further actual damages (including attorneys' fees) should be awarded is without merit.

Defendant-Creditor's further argument that once it had the void judgment vacated (only after being served with the summons and Complaint in this Adversary Proceeding) all of the attorneys' fees incurred by Plaintiff-Debtors in enforcing their right to actual damages that shall be awarded and possible punitive damages may not be recorded is also without merit.

The court awards $16,529.00 in attorneys' fees through the filing of the Motion now before the court and an additional four hours of time at the hourly billing rate of Malcolm Gross, $265.00 for the present Motion, responding to the Opposition, and the hearing on December 15, 2016—which is an additional $1,060.00.

The total attorneys' fees awarded to Plaintiff-Debtors as part of the judgment for actual damages is $17,589.00. FN.3.

FN.3. The court has endeavored to make this attorneys' fees process reasonable, notwithstanding the meritless arguments of Defendant-Creditor. From a review of the pleading prepared by Plaintiff-Debtor's attorneys, it is clearly reasonable that at least three, if not more hours, were spent in presently properly preparing, legally appropriate pleadings, as well as having to reply to Defendant-Creditor's meritless opposition.

If Defendant-Creditor desires further attorneys' fees hearings to determine the additional actual damages that **Shall** be awarded, the court will consider such request, as well as Defendant-Creditor's logical, well-presented arguments why such further hearings are reasonable and necessary.

FEES AND COSTS & EXPENSES ALLOWED

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $688.79 pursuant to this application. FN.4.

FN.4. Applicant Altman's invoices do not match the requested amount of expenses, leading to a lower total number in costs. Exhibit B, Dckt. 43.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Complaint Filing Fee	$350.00	$350.00
Copying Charges	$0.10	$19.20
Copying Charges	$0.15	$54.15

Postage		$248.94
		$0.00
Total Costs Requested in Application		$672.29

An award of costs in the amount of $672.29 is approved. All of the above are reasonable and necessary.

Applicant is allowed the following amounts as compensation in this Adversary Proceeding:

Fees	$17,589.00
Costs and Expenses	$672.29

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 Attorneys' Fees and Costs in this Adversary Proceeding filed by Robert and Stephanie Achterberg, the Plaintiff-Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Plaintiff-Debtors are awarded the following legal fees and expenses as part of their 11 U.S.C. § 362(k) actual damages in this Adversary Proceeding:
>
> Fees in the amount of $17,589.00
> Expenses in the amount of $672.29,
>
> and that such fees and costs will be included in the judgment as part of the 11 U.S.C. § 362(k) actual damages issued by the court in this Adversary Proceeding.