

Eastern District of California

Bankruptcy Judge
Modesto, California

1. 14-91213-E-7 BRENT/KIMBERLY FOX MOTION TO AVOID LIEN OF
BP-1 Tamie L. Cummins CITIBANK (SOUTH DAKOTA), N.A.
12-3-14 [12]

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

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. At the hearing -----.

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota), N.A. ("Creditor") against property of Brent Robert Fox and Kimberly Elaine Fox ("Debtor") commonly known as 203 Tower Way, Newman,

California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$1,631.33. An abstract of judgment was recorded with Stanislaus County on May 22, 2009, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$218,000.00 as of the date of the petition. The unavoidable consensual liens total \$335,606.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 the judgment lien of Citibank (South Dakota), N.A., California Superior Court for Stanislaus County Case No. 625735, recorded on May 22, 2009, Document No. 2009-0051163-00 with the Stanislaus County Recorder, against the real property commonly known as 203 Tower Way, Newman, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

2. [14-91213](#)-E-7 BRENT/KIMBERLY FOX
BP-2 Tamie L. Cummins

MOTION TO AVOID LIEN OF
CITIBANK (SOUTH DAKOTA), N.A.
12-3-14 [[17](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Citibank (South Dakota), N.A., parties requesting special notice, and Office of the United States Trustee on December 3, 2014. By the court's calculation, 15 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. At the hearing -----.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota), N.A. ("Creditor") against property of Brent Robert Fox and Kimberly Elaine Fox ("Debtors") commonly known as 203 Tower Way, Newman, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$9,294.41. FN.1. An abstract of judgment was recorded with Stanislaus County on September 7, 2011, which encumbers the Property.

FN.1. Debtors' Motion and Schedule D states that the judicial lien is in the amount of \$13,893.83. However, the abstract of judgment lists the amount as \$9,294.41. The court will rely on the abstract of judgment.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$218,000.00 as of the date of the petition. The unavoidable consensual liens total \$335,606.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Citibank (South Dakota), N.A., California Superior Court for Stanislaus County Case No. 625734, recorded on September 7, 2011, Document No. 2011-0074038-00 with the Stanislaus County Recorder, against the real property commonly known as 203 Tower Way, Newman, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

3. [11-94427](#)-E-7 BIEN BANH AND UT QUACH
DFH-4 Drew Henwood

CONTINUED MOTION TO AVOID LIEN
OF TD AUTO FINANCE, LLC
9-15-14 [[44](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on September 15, 2014. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of TD Auto Finance, LLC, as successor-in-interest to Mercedes Benz Financial and/or DaimlerChrysler Financial Services America LLC against property of Bien Banh and Ut Quach ("Debtor") commonly known as 3013 Poppypatch Drive, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of DaimlerChrysler Financial Services America LLC in the amount of \$24,721.50. An abstract of judgment was recorded with the Stanislaus County on November 13, 2008, under DOC-2008-0121288-00, which encumbers the Property. It was also recorded with the Alameda County Recorder's Office on January 7, 2009, under 2009003168.

OCTOBER 30, 2014 HEARING

At the October 30, 2014 hearing, the court continued the hearing to 10:30 a.m. on December 18, 2014 to allow the Debtors to file supplemental

pleadings to: (1) who the actual holder of the judicial lien is; and (2) the value of the property.

DEBTORS' SUPPLEMENTAL DECLARATION

On December 5, 2014, Debtors filed the supplemental declaration of Debtor Bien Banh. Dckt. 58. In the declaration, Debtor Bien Banh states that he has reviewed the sales from October 1, 2011 through December 31, 2011 in Modesto and the immediate surrounding area for residential properties of a comparable size and condition to the Property. Attached to his declaration, Debtor Bien Banh provides a list of the comparable residential properties and a valuation of the Property as of October 25, 2011 from www.cyberhones.com. Debtor Bien Banh states that after reviewing the comparable, he believes that the Property on December 30, 2011 had a value of no more than \$90,000.00.

DISCUSSION

While the Debtors do provide information as to the value of the Property based on their personal knowledge, they do not provide any evidence or explanation as to how TD Auto Finance, LLC is the current judgement creditor.

As discussed at the October 30, 2014 hearing, the court is unable to determine who, in fact, TD Auto Finance, LLC, as successor-in-interest to Mercedes Benz Financial and/or DaimlerChrysler Financial Services America LLC is and whether it actually is the new holder of the judicial lien. With no Proof of Claim filed, the court looks at the petition and the motion to determine the actual holder of the lien.

The Debtor does not provide a copy of any transfer of interest to TD Auto Finance, LLC from DaimlerChrysler Financial Services America LLC. In fact, the Debtor in their Motion state TD Auto Finance, LLC, as successor-in-interest to Mercedes Benz Financial and/or DaimlerChrysler Financial Services America LLC," appearing to ask the court to guess which entity was the original holder of the lien and take the Debtors word that TD Auto Finance, LLC now holds the judicial lien. The court will not purport to alter the rights of a party in interest when it is not clearly shown that such named person is the holder of the interests to be altered.

The court will not begin issuing orders when the actual creditor is not readily identifiable. While Debtor names TD Auto Finance, LLC, the court cannot identify how and if the judgment has been assigned to that entity.

Though the Motion alleges that TD Auto Finance, LLC is the successor to the "and/or" entities named in the Motion, no evidence is provided that TD Auto Finance, LLC is the current judgment creditor. Exhibit 8, Dckt. 54, is a copy of the Abstract of Judgment which is the lien to be avoided. That Abstract of Judgment identifies the judgment creditor to be DaimlerChrysler Financial Services Americas, LLC. If the judgment has been assigned, California law provides for an assignment of the judgment to be filed in the state court and served on the judgment debtor. Cal. C.C.P. § 673, Assignee of Record; California Debt Collection and Enforcement of Judgments, Matthew Bender, § 9.08; Enforcing Judgments and Debts, The Rutter Group, ¶¶ 6:1539 et seq.

Debtors are unable to tell the court why or how TD Auto Finance, LLC has any interest in the judgment. They did not serve DaimlerChrysler Financial Services Americas, LLC with the Motion. If both of these possible judgment creditors were served the court may have, just to get this matter closed out, issued an order avoiding the judicial lien as it applied to both, and each, of the possible judgment creditors. But the court cannot do so and will not issue an order naming just a disassociated third party.

Because the court cannot determine who the actual judgment creditor is and the Debtors have failed to file supplemental evidence to support their claim that TD Auto Finance, LLC is the actual judgment creditor, the Motion is denied without prejudice.

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Avoid Judicial Lien is denied without prejudice.

4. [14-91231](#)-E-7 MALUK/RANJIT DHAMI
NFG-1 Nelson F. Gomez

CONTINUED MOTION TO DISMISS
CASE
10-17-14 [[19](#)]

Final Ruling: No appearance at the December 18, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 17, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss the Bankruptcy Case is continued to 10:30 a.m. on February 12, 2015.</p>
--

Maluk S. Dhami and Ranjit K. Dhami ("Debtor") has filed the Motion to Dismiss this Chapter 7 bankruptcy case. Debtor offers the Declaration of Maluk Dhami where Debtor asserts that the reason for filing this bankruptcy petition was due to several judgments which had been granted to creditors in different civil cases who had sought collection. Since filing several of the creditors have indicated a willingness to settle their claims through negotiations. In order to properly negotiate Debtor states this Bankruptcy case must be dismissed.

OPPOSITION

The Interim Trustee opposes the motion due to his findings from a preliminary investigation. Trustee has found Debtor has provided an insider with a \$600,000.00 second deed of trust on the property described as 1986 Bridget Marie Drive, Modesto, California ("Property"). There is no explanation of the receipt and use of the \$600,000.00 in this filing. Trustee notes that if the deed of trust was found to be invalid or voidable, Debtor would hold a

non-exempt equity position that could be potentially liquidated for the benefit of creditors.

NOVEMBER 24, 2014 ORDER

On November 24, 2014, the court issued an Order continuing the hearing on the Motion to 10:30 a.m. on December 18, 2014 pursuant to a stipulation between the parties.

ORDER CONTINUING HEARING

The court issued an order continuing the hearing on the instant Motion to 10:30 a.m. on February 12, 2015.

DISCUSSION

Pursuant to the court's order, the hearing on the instant Motion is continued to 10:30 a.m. on February 12, 2015.

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

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

The Motion to Dismiss bankruptcy case filed by Maluk S. Dhami and Ranjit K. Dhami 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 continued to 10:30 a.m. on February 12, 2015.

5. [14-91232-E-7](#) MICHAEL HENDRIX
BKA-1 Bret K. Adams

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
11-13-14 [[10](#)]

Final Ruling: No appearance at the December 18, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Capital One Bank (USA), N.A., and Office of the United States Trustee on November 13, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of Michael Lynn Hendrix ("Debtor") commonly known as 2496 W. J Street, Oakdale, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,595.83. An abstract of judgment was recorded with Stanislaus County on November 26, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$235,000.00 as of the date of the petition. The unavoidable consensual liens total \$166,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of \$175,000.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Capital One Bank (USA), N.A., California Superior Court for Stanislaus County Case No. 682855, recorded on November 26, 2014, Document No. 2013-0097453-00 with the Stanislaus County Recorder, against the real property commonly known as 2496 W. J Street, Oakdale, 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.

6. [08-91933](#)-E-7 BULMARO/MARIA PALAFOX
SSA-2 Pro Se

MOTION TO EMPLOY EZRA N.
GOLDMAN AS SPECIAL COUNSEL
11-17-14 [[66](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on November 17, 2014. By the court's calculation, 31 days' notice was provided. 14 days' notice is required.

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

The Motion to Employ is granted.

Chapter 7 Trustee, Michael D. McGranahan, seeks to employ Special Counsel Ezra N. Goldman, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel to assist the Trustee in collecting funds owed to the estate from a potential interest in find in the sum of \$73,000.00 being held by a State Controller's Office in which the Debtors' estate may be a one-half interest in.

The Trustee argues that Counsel's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding the Debtors' potential one-half interest in escheated funds. Trustee states that he has worked with Mr. Goldman on at least one prior occasion and that Mr. Goldman has expertise in locating and recovering unclaimed funds.

Ezra N. Goldman of Ezra N. Goldman, P.C. testifies that he is representing discovering potential assets valued at \$73,000.00 which may be jointly owed by the Debtors and a third party. Mr. Goldman testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Ezra N. Goldman as counsel for the Chapter 7 estate on the terms and conditions set forth in the Representation Agreement Trustee Contingency filed as Exhibit 1, Dckt. 70. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

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

IT IS ORDERED that the Motion to Employ is granted and the Chapter 7 Trustee is authorized to employ Ezra N. Goldman as special counsel for the Chapter 7 Trustee on the terms and conditions as set forth in the Contingency Fee Employment Agreement filed as Exhibit 1, Dckt. 70.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

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

7. 14-91433-E-7 ARTHUR RODRIGUEZ MOTION TO COMPEL ABANDONMENT
BP-1 Tamie L. Cummins 12-2-14 [[9](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 2, 2014. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

<p>The Motion to Abandon Property is denied without prejudice.</p>
--

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

The Motion filed by Arthur Rodriguez ("Debtor") requests the court to order the Trustee to abandon property commonly known as Art's Painting, a limited partner painting business, and the items used in the business consisting of a 1985 Spray Rig, 1989 Spray Rig, an air compressor, paint, paint brushes, paint pans, and miscellaneous painting equipment (the "Property").

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. Debtor, Arthur Rodriguez, hereby moves the court for an order compelling the Trustee to abandon Art's Painting, a limited partner painting business, and the items used in the business consisting of a 1985 Spray Rig, 1989 Spray Rig, an air compressor, paint, paint brushes, paint pans, and miscellaneous painting equipment on the grounds that the business has no equity and the equipment used in the business is listed on the debtor's Schedule B and exempted on Schedule C.
- B. Therefore, the business and items used in the business are of inconsequential value and benefit to the estate and that administration of the business would be burdensome to the estate

The Motion not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the Property is of inconsequential value but does not cite to a single Bankruptcy Code section nor legal authority to justify such relief. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain

sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the

grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Therefore, because the Debtor failed to plead with particularity as required by Fed. R. Bankr. P. 9013, the Motion is denied without prejudice.

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

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

The Motion to Abandon Property filed by Arthur Rodriguez ("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 denied without prejudice.

8. [13-91743](#)-E-7 CENTRAL AUTO RECOVERY MOTION FOR COMPENSATION FOR
JJC-1 SERVICES, INC. JEFFERY J. COLEMAN, ACCOUNTANT
Steven S. Altman 11-10-14 [[26](#)]

Final Ruling: No appearance at the December 18, 2014 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 7, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Jeffery J. Coleman, the Accountant ("Applicant") for Michael McGranahan the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period from November, 2013 through October, 2014. The order of the court approving employment of Applicant was entered on November 26, 2014, Dckt. 16. Applicant requests fees in the amount of \$10,210.50.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preparing the corporation's tax returns, correspondences concerning C Corporation v. S Corporation reporting issues, and general booking services. The estate has \$26,087.00 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 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.

2013 Form 1120S S-Corporation Tax Return: Applicant spent 13.50 hours in this category. Applicant assisted Client with preparing of federal and state final income tax returns.

2014 Final Form 1120S S-Corporation Tax Return: Applicant spent 4.10 hours in this category. Applicant prepared federal and state final income tax returns.

Correspondence and Discussions with Trustee and Former Accountants re: C Corporation vs. S Corporation Reporting Issues and Tax Return Preparation: Applicant spent 29.80 hours in this category. Applicant spent the time dealing with issues regarding the S-Corporation and C-Corporation accounting and reporting requirements.

General Booking Services: Applicant spent 2.60 hours in this category. Applicant prepared the year end payroll tax reports and reviewed the Franchise Tax Board notice.

Employment Application: Applicant spent 2.60 hours in this category. Applicant checked for conflicts, reviewed the bankruptcy petition, and prepared the employment application.

Fee Application: Applicant spent 10.80 hours in this category. Applicant prepared time records (divided by project billing) for the 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
Debbie Sanders, CPA, Experienced Senior Associate	42.30	\$165.00	\$6,979.50
Jeffery Coleman, CPA, Principal with Accountant	3.10	\$290.00	\$899.00
Colleen Meenk, CPA, Principal with Accountant	1.00	\$225.00	\$225.00
Donae Carvalho, CPA, Manager	.8	\$190.00	\$152.00
Donae Carvalho, CPA, Manager	.3	\$185.00	\$55.50
Mike Kelly, CPA, Experienced Associate	12.9	\$120.00	<u>\$1,548.00</u>
Cynthia Guerrero, CPA	.7	\$190.00	<u>\$133.00</u>
Lisa Blanke, Bookkeeper	1.90	\$95.00	\$180.50
Karen Sanders, Bookkeeper	.4	\$95.00	<u>\$38.00</u>
Total Fees For Period of Application			\$10,210.50

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$10,210.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

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

Fees	\$10,210.50
------	-------------

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

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

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

The Motion for Allowance of Fees and Expenses filed by Jeffery J. Coleman ("Applicant"), Accountant 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 Jeffery J. Coleman is allowed the following fees and expenses as a professional of the Estate:

Jeffery J. Coleman, Professional Employed by Trustee

Fees in the amount of \$10,210.50,

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

9. [11-94146](#)-E-11 DOMINIC/MARIA DEPALMA CONTINUED STATUS CONFERENCE RE:
Naresh Channaveerappa VOLUNTARY PETITION
12-2-11 [[1](#)]

Final Ruling: No appearance at the December 18, 2014 Status Conference is required.

Debtors' Atty: Naresh Channaveerappa

The Status Conference is continued to 2:30 p.m. on January 15, 2015.

Notes:

Continued from 11/20/14 to allow the Trustee to file a motion to administratively close the case.

[MDM-4] Motion to Abandon Real Property filed 12/3/14 [Dckt 520], set for hearing 12/18/14 at 10:30 a.m.

Trustee's Status Conference Statement filed 12/4/14 [Dckt 524]

DECEMBER 18, 2014 STATUS CONFERENCE

The court's order confirming the First Amended Plan was filed on March 13, 2014. Dckt. 472. The Trustee, who continues in that capacity under the confirmed plan, reports that he cannot seek to have this case closed as a new tax issue has arisen with the Internal Revenue Service. The Internal Revenue Service advises the Trustee that it has not received a tax return for Dominic

December 18, 2014 at 10:30 a.m.

- Page 22 of 87 -

Depalma for the year ending October 2012. The Trustee requests that the Status Conference be continued as he and his accountant address this issue.

10. [11-94146-E-11](#) DOMINIC/MARIA DEPALMA MOTION TO ABANDON
MDM-4 Naresh Channaveerappa 12-3-14 [[520](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on December 3, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon Property is granted.

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the

Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Michael D. McGranahan ("Trustee") requests the court to authorize Trustee to abandon property commonly known as 9281 Starcross Lane, Las Vegas, Nevada, APN: 163-17-219-014(the "Property"). The Property is encumbered by the lien of U.S Bank National Association, as Trustee, securing claims of \$285,280.16. The Declaration of Michael D. McGranahan has been filed in support of the motion and testifies that the value of the Property is \$210,000.00.

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

ISSUANCE OF CHAMBERS PREPARED ORDER

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

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

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

IT IS ORDERED that the Motion to Compel Abandonment is granted and that the Property identified as:

1. 9281 Starcross Lane, Las Vegas, Nevada, APN: 163-17-219-014

is abandoned to Dominic DePalma and Maria DePalma by this order, with no further act of the Trustee required.

11. [12-93049](#)-E-11 MARK/ANGELA GARCIA
PA-2 Mark J. Hannon

MOTION FOR COMPENSATION FOR
JOHN BELL, CHAPTER 11 TRUSTEE
11-20-14 [[440](#)]

Final Ruling: No appearance at the December 18, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on November 20, 2014. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.
--

John Bell, the Chapter 11 Trustee ("Applicant") for Mark Anthony Garcia and Angela Marie Garcia, the Debtors, ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period November 13, 2013 through November 17, 2014. The order of the court approving employment of Applicant was entered on November 4, 2013, Dckt. 274. Applicant requests fees in the amount of \$23,250.00 and costs in the amount of \$770.39. FN. 1.

FN.1. The Applicant originally requested \$27,587.30 for services rendered on November 20, 2014. The Applicant filed an Amendment to the Motion on December 9, 2014. Dckt. 463. The Applicant states that after discussions with the Office of the United States Trustee and due to the interim nature of the Motion, the Applicant amended his Application to voluntarily reduce the amount of the compensation sought to \$23,250.00, based on the \$400,000 in disbursements.

STATUTORY BASIS FOR PROFESSIONAL FEES

December 18, 2014 at 10:30 a.m.

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.

The Bankruptcy Code establishes the maximum compensation a Chapter 7 or Chapter 11 trustee may receive. In relevant part, 11 U.S.C. § 326 states:

(a) In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in

excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including managing the estate, marshaling and controlling all income and receipts, payment of bills, investigation of assets, investigation of prior monthly operating reports and financial records, preparing and filing of all tax returns, payments of all tax obligations, and preparing and filing of monthly operating reports. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant, as a trustee, provides the following table to justify his compensation based on the \$471,338.10 in disbursements in the case to date thus far, pursuant to 11 U.S.C. § 326:

<u>Disbursement</u>	<u>Percentage (11 U.S.C. § 326(a))</u>	<u>Trustee's Fee Maximum</u>
First \$5,000.00	25%	\$1,250.00

Next \$45,000.00	10%	\$4,500.00
Remaining \$350,000.00	5%	\$17,500
TOTAL		\$23,250.00

While the Applicant has disbursed an amount in excess of \$50,000.00 totaling \$421,338.10 which would equate to a maximum fee allowance of \$26,816.91, the Applicant has voluntarily reduced the amount sought to \$23,500.00.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$770.39 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Mileage incurred in 2013 - 346.50 miles	56.5 cents per mile	\$195.77
Mileage incurred in 2014 - 1026.1	56 cents per mile	\$574.62
Total Costs Requested in Application		\$770.39

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of \$23,250.00 for its interim fees incurred for the Client. First Interim Request for Fees in the amount of \$23,250.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review 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 11 case.

Costs and Expenses

The First Interim Request for Costs in the amount of \$770.39 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 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 11 case.

The court is authorizing that Trustee pay the fees and costs allowed by the court.

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

Fees	\$23,500.00
Costs and Expenses	\$ 770.39

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

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

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

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

John Bell, Professional Employed by Debtor

Fees in the amount of \$ 23,500.00
Expenses in the amount of \$ 770.39,

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

IT IS FURTHER ORDERED that the Trustee is authorized to pay 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 11 case.

12. [14-91149-E-7](#) PAUL/KRISTINE FALLENTINE MOTION TO AVOID LIEN OF
JCK-1 Kathleen H. Crist CITIBANK (SOUTH DAKOTA), N.A.
11-14-14 [[17](#)]

Final Ruling: No appearance at the December 18, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Chapter 7 Trustee, Citibank (South Dakota), N.A., and Office of the United States Trustee on November 14, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota), N.A. ("Creditor") against property of Paul Christopher Fallentine and Kristine Dyan Fallentine ("Debtors") commonly known as 1584 Irvin Court, Oakdale, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$17,503.98. An abstract of judgment was recorded with Stanislaus County on January 5, 2012, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$487,000.00 as of the date of the petition. The unavoidable consensual liens total \$606,126.84 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1,000.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

December 18, 2014 at 10:30 a.m.

- Page 30 of 87 -

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 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 the judgment lien of Citibank (South Dakota), N.A., California Superior Court for Stanislaus County Case No. 665159, recorded on January 5, 2012, Document No. 2012-001346-00 with the Stanislaus County Recorder, against the real property commonly known as 1584 Irvin Court, Oakdale, 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.

13. [14-90358-E-7](#) RAMON/MARIA LOMELI
MHK-4 Thomas O. Gillis

MOTION FOR REMEDIES FOR
DEBTORS' CIVIL CONTEMPT
11-18-14 [[60](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on November 18, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion for Remedies for Debtors' Civil Contempt is granted and the court orders the Debtors to deliver possession of the real property commonly known as 4203 Tapestry Way, Turlock, California, to the Chapter 7 Trustee.

Eric Nims, the Chapter 7 Trustee, filed the instant Motion for remedies for Debtors' Civil Contempt on November 18, 2014. Dckt. 60. The Trustee alleges the following:

1. Among the assets of the bankruptcy estate is the real property commonly known as 4203 Tapestry Way, Turlock, California (the "Residence"). When Ramon and Maria Lomeli ("Debtors") amended their schedules to delete a "non-existent deed of trust" against the Residence, it became clear that the Residence has significant non-exempt equity.

2. On September 8, 2014, the court issued an order that requires the Debtors to provide the Trustee and his representatives access to the Residence at "reasonable times [after September 11, 2014] as requested by the Trustee." Dckt. 41.
3. After the court entered another order requiring the Debtors to provide access to the Residence, the Debtors thereafter ignore the broker's communications and refused to provide reasonable access, even after (i) the Trustee's counsel requested such access of the Debtors' counsel; (ii) the Trustee delivered correspondence to the Debtors requesting that access be permitted; and (iii) the Trustee refrained from seeking relief where the Debtors' counsel represented that the Debtors would seek to convert this case to a case under another chapter of the Bankruptcy Code.
4. The Debtors' refusal to communicate with the Trustee's broker and their refusal to permit the Trustee access to the Residence for the purpose of marketing and sale of the Residence are acts of contempt of this court's September 8, 2014 order. The Debtors' contempt is damaging the estate, as it is preventing the Trustee from liquidating the Residence, a valuable asset of the estate with considerable equity.

The Trustee requests an order that:

1. Provides that law enforcement personnel shall put the Trustee into actual possession of the Residence by dispossessing the Debtors and/or that law enforcement personnel shall escort the Trustee and his representatives to the Residence to make possible the changing of the locks at the Residence and the installation of a lock-box, so that the Trustee's broker may use that lock-box to gain access to the Residence for the purpose of marketing it to prospective buyers, and that the Debtors shall bear the costs of such the acts by law enforcement personnel and the costs of the changing of locks at the Residence and any related and necessary work;
2. Provides that law enforcement personnel may detain the Debtors in the event they attempt to prevent the activities described above, or in any way impede or prevent the reasonable marketing and sale of the Residence;
3. Imposes monetary sanctions against the Debtors: (i) to compensate the bankruptcy estate for his legal fees and costs incurred in bring and prosecuting both his Motion to Compel Turnover of Property (DCN MHK-3) and his Motion for Remedies for Debtor's Civil Contempt (DCN MHK-4), subject to proof thereof, and (ii) to deter the Debtors from further acts in contempt of this court.

DEBTORS' OPPOSITION

On December 4, 2014, the Debtors filed an opposition to the instant Motion. Dckt. 71.

The Debtors begin by giving a brief background. The Debtors state that there is only one perfected mortgage on their Residence, with equity in the Residence that exceeds the C.C.P. § 704 exemptions available to the Debtors. In this case, only two claims were filed by creditors. One claim is unsecured in the amount \$487.01 filed by Capital one. The other was filed as a secured claim by Real Time Resolutions in the amount of \$99,870.87.

Debtors state that the offered to pay the \$487.01, plus administrative fees, if the Trustee would close the case.

However, Debtors allege that Real Time Resolutions amended their claim from secured to unsecured on October 10, 2014.

On October 21, 2014, Thomas Gillis, Debtors' counsel, called Real Time Resolutions to inquire why Real Time resolutions amended their claim to unsecured. Mr. Fillis talked to Derrick Flory and his supervisor, Tiffany Thomson. The opposition states that Ms. Thompson said she considered the claim to be secured, but the Trustee called her and instructed her to change the claim to unsecured. The Debtors allege that the Trustee told them "words to the effect that he, as Trustee, was instructing them to change the claim to unsecured" and that "the Bankruptcy Judge was requiring them to change their claim." FN.1.

FN.1. Debtor's counsel appears to have transformed himself from Debtor's counsel to their witness, at least in connection with this matter. Mr. Gillis appears to be a percipient witness (in making hearsay statements) with respect to the arguments he is making to defeat the Trustee's efforts to enforce the prior order of this court.

Mr. Gillis states that all of these conversations are recorded by the creditor, but the Debtors have not yet ordered a copy of the tape.

Debtors then argue that there is only one legitimate unsecured claim - Capitol One's claim for \$447.01. Debtors allege that the amended claim of Real Time Resolutions is not a valid claim and that they are preparing an objection to Real Time Resolutions Claim. Debtors also state that they are preparing a Motion for an Order Compelling the Trustee to Abandon the Property upon payment by the Debtors of 100% to unsecured. A review of the docket shows that neither of these pleadings have been filed to date.

Debtors next argue that civil sanctions are not appropriate. Debtors argue that a close reading of the court's order reveals that the court only ordered an inspection of the premises on October 9, 2014 at 10:00 a.m. In fact Debtors state that they complied. The Debtors request that if there is any doubt on whether Debtors did not comply with a court order, that an evidentiary hearing be set.

Debtors request that the court: (1) overrule the request for civil contempt; or (2) set the matter for evidentiary hearing; or (3) continue the matter for hearing to be held with the Motion to Compel Abandonment and Objection to Claim which will be set for hearing on January 15, 2015 at 10:30 a.m.

TRUSTEE'S REPLY

The Trustee filed a reply to Debtors' opposition on December 11, 2014. Dckt. 78.

The Trustee argues that the Debtors have offered no evidence to rebut the trustee's evidence of the Debtors' contempt. The Trustee states that given the valuations and claims scheduled by the Debtors, there is about \$144,000.00 of non-exempt equity in the Residence. On September 8, 2014, the court ordered:

IT IS ORDERED that the Debtor...shall provide access to the [Residence] to the Chapter 7 Trustee and the representative and the professionals designated by the Chapter 7 Trustee, at September 8, 9, or 11, 2014, at 2:00 p.,. and such other reasonable times thereafter as requested by the Trustee.

Trustee states that after the Debtors failed to provide access on any specific dates and times set for the in the order, the Trustee requested further relief and the court entered a second order that provides for the Debtors to provide access to the Residence on October 9, 2014. Dckt. 65. At a meeting with the Trustee and his broker on October 9, 2014, Debtor Maria Lomeli told the Trustee's broker that she would not cooperate with the broker's efforts to market the Residence. Dckt, 66, paragraph 8. The Debtors thereafter ignored the broker's subsequent phone messages intended to obtain reasonable access to the Residence. Dckt. 66, paragraph 6.

Due to this, the Trustee wrote the Debtors to reinforce that the Debtors have a statutory duty as Chapter 7 debtors not to impede the Trustee's reasonable steps to sell the Residence, and a duty to comply with the Order. The Trustee's counsel also reached out to Debtors' counsel to assist in obtaining the Debtors' cooperation. In response, the Debtors' counsel told the Trustee's counsel that the Debtors would not cooperate. Instead, Debtors' counsel represented first that the case would be converted to a chapter 13 and later that the Debtors would file a motion to convert the case to chapter 11. Dckt. 68, paragraphs 3-8.

Due to these statements, the Trustee refrained from taking further steps to market the Residence. However, when weeks passed without any action by the Debtors and without further communications, the Trustee filed the instant Motion.

The Trustee then argues that the Debtors' opposition does not rebut the facts alleged by the Trustee. First, the Trustee states that the allegations made by Debtors' counsel as to the conversation with Real Time Resolution is hearsay not within any exception and objects to the use of it in this proceeding. Fed. R. Evid. 802 and 805. If the court admits the conversation, the Trustee states that he is ready to testify and rebut any admissible evidence the Debtors might bring. The Trustee restates that the Real Time Resolutions claim is an allowed unsecured claim and that the Trustee, pursuant to his duties and the court order, is required to take steps to market and sell the Residence.

The Trustee next argues that the Debtors claim as to the illegitimacy of Real Time Resolutions unsecured claim contradicts the Debtors' prior statements. Namely, Debtors in their Schedule F list the claim of JP Morgan Chase Bank in the amount of \$104,696 is unsecured and in their Statement of Financial Affairs that the property securing the loan, 2289 Autumn Moon Way,

Turlock, California ("Autumn Moon Property") was subject to the lender's foreclosure sale in 2012. The foreclosure would have terminated any security interest in that property. The Trustee states that the Debtors now argue that by way of an unsigned, unauthenticated "Loan Modification Agreement" between JP Morgan Chase Bank and one Jimmy C. Cloniger, that the lender continues to have a security interest in the Autumn Moon Property. However, the Trustee argues that the Autumn Moon Property is not an asset of the bankruptcy estate. Thus, the Trustee argues that the Debtors fail to explain why the Real Time Resolutions' claim is improper.

Lastly, the Trustee argues that the Debtors' assertion that they were required to do nothing more than allow the Trustee to inspect the Residence once pursuant to the court's order is incorrect. The Trustee points out that the Opposition only refers to the court's second order and ignores the September 8th order which required the Debtors to give the Trustee access to the Residence at three dates and times as well as "such other reasonable times thereafter as requested by the Trustee."

SEPTEMBER 8, 2014 ORDER

On September 8, 2014, the court issued an Order Granting Trustee's Motion to Compel Turnover of Property, which explicitly stated:

IT IS ORDERED the Motion to Compel turnover of the Property is granted, and the Debtor shall provide **access** to the real property located at 4203 Tapestry Way, Turlock, California, to the Chapter 7 Trustee and the representatives and professionals designated by the Chapter 7 Trustee, at September 7, 9, or 11, 2014, at 2:00 p.m., and such other reasonable times thereafter as requested by the Trustee.

Dckt. 41 (emphasis added).

OCTOBER 3, 2014 ORDER

On October 3, 2014, the court issued an Order Granting Trustee's Motion to Compel Turnover of Property, which explicitly stated:

IT IS ORDERED that the Motion is granted, and Ramon Lomeli and Maria Lomeli shall provide **access** to the real property commonly known as 4203 Tapestry Way, Turlock, California, **the interior of the house, any attached structures and any outbuildings or other structures on said Property**, to Robert Brazeal and Eric J. Nims, the Chapter 7 Trustee, or other representative of the Trustee, at 10:00 a.m. on October 9, 2014.

Dckt. 56 (emphasis added).

APPLICABLE LAW

Bankruptcy Courts have the jurisdiction to impose sanctions even after a case has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-49 (9th Cir. 2004). The court also has the inherent civil contempt power to enforce

compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see also 11 U.S.C. §105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or sua sponte by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A Bankruptcy Court is also empowered to regulate the practice of law before it. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.* 501 U.S. 32,43 (1991); see also *Lehtinen*, 564 F.3d at 1058.

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

The court's jurisdiction over parties concerning their conduct in a bankruptcy case or adversary proceeding is not terminated by the dismissal of the case or adversary proceeding. *Schering Corp. v. Vitarine Pharmaceuticals, Inc.*, 889 F.2d 490, 495-496 (3rd Cir. 1989) ("The analogy of Rule 11 sanctions to contempt proceedings is apt. Both are designed to deter misbehavior before the Court. See Fed. R. Civ. P. 11, advisory committee's note ('Since its original promulgation, Rule 11 has provided for the striking of pleadings and imposition of disciplinary sanctions to check abuses in the signing of pleadings...To hold that a district court has no power to order sanctions after a voluntary dismissal is to emasculate Rule 11 in those cases where wily plaintiffs file baseless complaints, unnecessarily sap the precious resources of their adversaries and the courts, only to insulate themselves from sanctions by promptly filing a notice of dismissal.');

Greenberg v. Sala, 822 F.2d 882, 885 (9th Cir. 1987) ("At the time the district court denied the defendants' motions for Rule 11 sanctions, the case had been dismissed. The dismissal, however, did not deprive the court of jurisdiction to consider the motions. See *Szabo Food Service, Inc. v. Canteen Corp.*, No. 86-3093, slip op. (7th Cir. Jun. 29, 1987) (voluntary dismissal under Rule 42(a)(1)).").

DISCUSSION

Allowing access to the Chapter 7 Trustee, who has the statutory right to possession and control of the Property of the bankruptcy estate, 11 U.S.C. § 704(a), should be a very simple and straightforward process. Here, Debtors are represented by experienced and knowledgeable counsel. The Chapter 7 Trustee is experienced. Rather than access being simply allowed as it is

generally done in almost all other cases before this court, in this one case, the Chapter 7 Debtors and the Chapter 7 Trustee, and their respective attorneys, cannot complete that simple task.

If the testimony of Debtor's counsel and the Office Manager for that counsel are true and accurate, they raise some significant issues for the court concerning the Trustee and real estate agent for the Trustee. Conversely, if the statements made by these two under penalty of perjury are not accurate and truthful, then other significant issues come to the forefront.

It is disturbing to the court that Debtors have provided their declarations, under penalty of perjury, in which they provide the court with their "legal interpretations" of the court's prior orders. The Debtors are represented by counsel, and counsel has the responsibility to read, understand, and instruct his clients as to what has been ordered by the court. (Additionally, the Debtors' post-hoc "interpretation" of the clear plan language of the court's orders are incorrect.) Debtors cannot avoid complying with court orders by (1) ignoring their counsel's direction or (2) their counsel arranging not to explain the orders so the Debtors can violate the orders with plausible deniability. See Ramon Lomeli Declaration, Dckt. 72.

At the heart of this dispute is the statements by the Debtors under penalty of perjury (Debtors being represented at the time by the current counsel in this case) that their real property (4203 Tapestry) with a stated value of \$431,101 on Schedule A under penalty of perjury. Dckt. 1 at 11. On Schedule D the Debtors further state under penalty of perjury that the Property is subject to two deeds of trust. *Id.* at 16. The senior deed of trust secures an obligation of \$187,332 which is owed to PNC Mortgage. By the Debtors' statements under penalty of perjury there is \$243,769.00 of value in excess of the obligation secured by the senior deed of trust and any exemption which could be claimed under California law.

The Debtors then further state that the Property is subject to a second deed of trust securing an obligation in the amount of \$275,000.00 owed to Faviloa Cisneros. This is for a debt stated to have been in 2012. This obligation stated by the second deed of trust consumes any value.

On Original Schedule C Debtors do not claim any exemption in this real Property. *Id.* at 15.

As Debtors' counsel well knows, based on the information on Schedule D and no other significant assets shown, the Clerk of the Court issued a notice to creditors (using the addresses provided by Debtors) telling creditor not to file proofs of claim in this case. Dckt. 7.

Subsequently, the Chapter 7 Trustee determined that the asserted second deed of trust does not exist or was not recorded. This led the Trustee to seek an order turning over the Property to the Trustee. Dckt. 28. The Response does not address the inaccurate statements under penalty of perjury by the Debtors, but only that \$487.01 in claims were filed when the Trustee had a new notice to file claims sent to the creditors at the addresses provided by the Debtors. Dckt. 35.

The Debtors' credibility is further impugned when the court considers their statements under penalty of perjury with respect to the debt secured by

the 2289 Autumn Moon Way property. No interest in that property is listed on Schedule A. Dckt. 1. However, on the Statement of Financial Affairs Debtors state under penalty of perjury that Chase/WAMU foreclosed on the Autumn Moon property in 2012. Dckt. 1 at 35.

However, on October 10, 2014, JPMorgan Chase Bank, N.A., filed a proof of claim, asserting it was owed \$99,810.87 as a secured claim. While Proof of Claim No. 1 does not list the collateral on its face, the attachment identifies the collateral to be the Autumn Moon Way property. The claim is asserted to be fully secured. Attached to Proof of Claim No. 1 is an equity line credit agreement. The agreement is signed by Ramon Lomeli as the borrower. The deed of trust attached to Proof of Claim No. 1 for the Autumn Moon Way property is signed by Ramon Lomeli and Jimmy Cloniger, as the owners of the property. Proof of Claim 1 at 13-24.

On October 10, 2014, JPMorgan Chase Bank, N.A. filed an Amended Proof of Claim No. 1 which asserts the claim only as an unsecured claim. However, the same equity line agreement and deed of trust are attached. It appears that the claim of JPMorgan Chase Bank, N.A. continues to be secured.

On December 16, 2014, the Debtors filed an Objection to Amended Proof of Claim No.1. The objection asserts that on February 28, 2007, the Debtors sold the property to Jimmy C. Cloniger. It is further asserted that the loan agreement has been modified as a result of litigation between Mr. Cloniger against Washington Mutual Bank (JPMorgan Chase Bank, N.A.'s predecessor in interest).

The Objection fails to address (as the Debtors fail to address their prior statements under penalty of perjury that Faviloa Cisneros was owed a debt that exhausted all of the value in their residence) the Debtors stating under penalty of perjury that this creditor foreclosed on the Autumn Moon Way property in 2012. Debtors provide a copy of the 2007 Deed to Mr. Cloniger as Exhibit A, Dckt. 84. Debtors state that the equity line agreement has been modified by the creditor and Mr. Cloniger, and that they no longer have any obligation thereon.

But the Debtors never address why they stated under penalty of perjury that a foreclosure occurred in 2012.

The court issued its initial order for Debtors to provide access to the Trustee and real estate agent, rather than forcing them to move out of the Property and deliver possession to the Trustee. September 8, 2014 Order, Dckt. 41. This access order should have been very simple for the Debtors, Trustee, Real Estate Agent, and their respective attorneys, to comply with - if all of them were acting in good faith.

However, the Parties did not comply with the court's September 8, 2014 Order. Instead of providing such access, the Debtors filed new Schedules A, D, and C, changing their statements under penalty of perjury as to the liens against the Property. The secured claim of Faviloa Cisneros disappears from Schedule D, as mist before the morning sun. No explanation is provided for how the Debtors and their attorney could have provided such prior statements under penalty of perjury, which if they are now believed, were grossly false.

At the continued hearing the court was clear as to who violated the court's September 8, 2014 Order. It was not the Trustee, not the Trustee's real estate agent, or the Trustee's counsel.

"The Court's order filed on September 8, 2014, is clear and precise - The Debtors shall provide the Trustee access to the real property commonly known as 4203 Tapestry Way, Turlock, California at 2:00 p.m. on September 8, 9, or 11, 2014. These alternative dates were arranged with the participation of Debtors' counsel for the convenience of the parties. The Debtors have now chosen to violate the court's order.

...

At this juncture, the Debtors have made it clear that they are not complying with the order of this court. Though the court will not sua sponte issue an Order to Show Cause re contempt, at this time, the Trustee may file a motion seeking appropriate non-monetary and monetary compensatory and corrective sanctions. Non-monetary sanctions may include incarceration of either or both Debtors until they choose to comply with the order, detention of the Debtors while the Trustee's representative is given access to the property with law enforcement escort (with Debtors being financially responsible for the cost and expense of the law enforcement escort), or increasing monetary fines for which liens are imposed on the Debtors' property."

Civil Minutes, Dckt. 59.

The Debtors contempt for the court and the court's prior order led to the issuance of the equally clear, and easy to comply with, October 3, 2014 Order - allow the Trustee and Trustee's representative access to the Trustee at a specific time and date. Dckt. 56.

DEBTORS VIOLATION OF COURT'S MULTIPLE ORDERS

The Debtors' repeated failure to allow the Trustee and the Trustee's representative access to the Residence after two separate, explicit orders by this court is extremely concerning.

The Trustee raises multiple points that show Debtors have directly violated this court's order requiring the Debtors to permit the Trustee to examine the Residence for purposes of selling the Residence. The Debtors, in their response, merely cite to facts outside the scope of the instant Motion in an attempt to detract from the simple fact that the Debtors have not allowed the Trustee to execute his duties and violated the plain language of two court orders. The Debtors attempt to play a semantics game, claiming that a "close reading" of the order issued on October 3, 2014 only requires an "inspection." The court finds this "close reading" off base and a mere tactic by the Debtors and Debtors' counsel to distract from the underlying issue - the Debtors did not give access to the Trustee on any of the four dates the court set between the September 8, 2014 and the October 3, 2014 order. The language of both orders require that the Debtors give "access" to the Trustee and his representatives. The October 3, 2014 order is even more detailed, specifying that the Debtors shall "provide access to the [Residence], the interior of the house, any attached structures and any outbuildings or other structures on said

[Residence]." Nowhere in either order is the word "inspection" even used. The court does not understand how Debtors and Debtors' counsel can make such baseless claims in their opposition. It raises further questions as to both the Debtors and Debtors' counsel's candor and honesty to the court when they attempt to make such plainly false arguments.

As to the Debtors' other "accusations" in the opposition, they do not go to the underlying issue for this Motion - the Debtors failure to provide the Trustee access to the Residence. The Opposition merely states that an Objection to Claim and Motion to Compel Abandonment will be filed. Neither have been filed. Additionally, the basis for these motions as stated in the Opposition do not explain or justify why the Debtors violated the court's orders to provide access to the Trustee.

The Debtors' Opposition inherently admits that they have not provided access to the Residence to the Trustee. The word-play attempted by the Debtors does not excuse the Debtors blatant violation of the court's orders.

Because the Debtors have failed to provide access to the Residence to the Trustee or his representatives, the court grants the Trustee's Motion.

RELIEF GRANTED

At this point the court must determine the proper relief to be granted. Ordering that possession be immediately turned over to the Chapter 7 Trustee is consistent with the original relief requested by the Trustee in the original motion. Motion, Dckt. 28. Quite possibly the Debtors and Debtors' counsel have hatched the current strategy with the mistaken belief that the court would allow the continuing violation of the court's order because the two Debtors have five children and it is the Christmas Holiday. Such strategy for abusing the federal courts and bankruptcy process is ill founded.

The Debtors conduct in this case raises concerns for the court whether these bankruptcy proceedings suffer from a fundamental defect - improper notice provided by the Debtors. It is highly unusual for commercial creditors to not file proofs of claim when they receive a notice to file claims from the court. The Verification of List of Creditors and addresses appears to have some questionable addresses used for creditors. The court has not reviewed the California Secretary of State's registry for corporations or the FDIC Directory of Federally Insured Financial Institutions to determine whether such addresses are sufficient for providing the Notice to File Claims.

The court grants the Motion and Orders that possession of the real property commonly known as 4203 Tapestry Way, Turlock, California, be delivered to the Chapter 7 Trustee at noon on December 30, 2014. Debtors shall have all personal property in which they have an exemption removed from the property by said date and time.

It shall be further ordered,

- A.
- B.
- C.

D.

E.

F. Requests for corrective monetary sanctions, including recovery of fees, costs, and expenses through the date of the December 18, 2014 hearing, shall be filed and served on or before January ~~xxxxx~~, 2015.

14. [13-91459](#)-E-11 LIMA BROTHERS DAIRY
KDG-13 Jacob L. Eaton

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, ROSENLIB AND
KIMBALL, LLP FOR JACOB L.
EATON, DEBTOR'S ATTORNEY(S)
11-19-14 [[384](#)]

Final Ruling: No appearance at the December 18, 2014 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, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on November 19, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.
--

Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP, the Attorneys, ("Applicant") for Lima Brothers Dairy the Plan Administrator Debtor

December 18, 2014 at 10:30 a.m.

- Page 42 of 87 -

("Client"), makes a Fourth Interim and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period May 20, 2014 through November 11, 2014. The order of the court approving employment of Applicant was entered on December 11, 2013, Dckt. 82. Applicant requests fees in the amount of \$65,160.75.00 and costs in the amount of \$3,087.63. In addition, Applicant seeks final approval of \$87,342.50 in prior allowed interim fees and \$1,861.40 in interim costs. Applicant seeks total fees of \$152,503.25 and costs of \$4,940.03 be allowed in this Chapter 11 case for counsel for the Debtor in Possession.

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 administration, relief from stay actions, fee and employment applications, fee and employment objections, non-working travel, business operations, financing and cash collections, claims administration, plan and disclosure statement, and restructuring. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

The court also notes that this has not been a "simple" case. It began in August 2013. Filed proofs of claim in this case total \$8,081,769.93. On Amended Schedule D just the secured claims total \$6,802,116.00. Amended Schedule F adds an additional \$1,720.153.03 of general unsecured claims.

The confirmed Chapter 11 Plan in this case required the restructuring and documentation of various debt involving multiple parties and non-debtor entities (Debtor and partners). Significantly, facing a difficult market, this dairy cattle operation has been restructured, continues in operation, and creditors are not reduced to dismembering yet another agricultural operation. For creditors holding general unsecured claims, they will receive a 100% dividend paid over a sixty month period.

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 49.9 hours in this category. Applicant assisted Client with reviewing and filing Monthly Operating Reports, communicating with bookkeeper, communicating with financial advisors, communicating with partners in Debtor-in-Possession, assisting in preparation of Monthly Operating Reports, communicating with Phillip Lima, Jr. regarding monthly financial information, preparing status conference reports, attending hearing on status conferences, and preparing amendment to Schedule F and G.

Relief from Stay and Adequate Protection: Applicant spent .70 hours in this category. Applicant made court appearances on motion for relief from the automatic stay filed by American AgCredit.

Fee and Employment Applications: Applicant spent 39.00 hours in this category. Applicant communicated with GlassRatner regarding the Third Interim Fee Application for Business Consultant for Debtor-in-Possession, prepared, filed, and served the Third Application, prepared, filed, and served third interim application for allowance of Business Consultant's fees and expenses for GlassRatner, began preparing Fourth and Final Application for Applicant, and began preparing Fourth and Final Application for GlassRatner.

Fee and Employment Objections: Applicant spent 15.70 hours in this category. Applicant communicated with the Office of the United States Trustee and business consultant regarding objection to Business Consultant's fee application.

Non-Working Travel (half-rate): Applicant spent 10.30 hours in this category. Applicant traveled to and from Merced, California for hearing on approval of Disclosure Statement and meetings with Debtor-in-Possession, and traveled to and from Modesto, California for hearing on motion for further use of cash collateral, status conference, motion for relief from the automatic stay, and plan confirmation.

Business Operations: Applicant spent 3.50 hours in this category. Applicant communicated with Business Consultants and Debtor-in-Possession regarding division of business operations, communicated with secured creditor regarding dairy operations, communicated with secured creditor regarding heifer swap, communicated with Debtor-in-Possession regarding reporting requirements, communicated with Debtor-in-Possession about DHIA reports, and reviewed creamery statements.

Financing and Cash Collections: Applicant spent 12.00 hours in this category. Applicant communicated with Debtor-in-Possession regarding cash collateral budgets, communicated with Business Consultants regarding cash collateral budgets, communicated with Business Consultants and secured creditor regarding continued use of cash collateral, prepared multiple supplements to motion to use cash collateral, court appearances on hearing motion to use cash collateral, analyzed cash collateral budgets.

Claims Administration: Applicant spent 31.00 hours in this category. Applicant communicated extensively with counsel for Stanislaus Farm Supply Company regarding claim held by Stanislaus Farm Supply Company, prepared stipulation regarding value of collateral held by Stanislaus Farm Supply, prepared motion for order approving stipulation, communicated with counsel for Ag-Seeds Unlimited regarding their claim, communicated with Del Don Fertilizer regarding their claim, communicated with various unsecured creditors, communicated with counsel for Frank Coelho & Sons requesting withdrawal of duplicate proof of claim, communicated with Debtor-in-Possession regarding possible objections to claims, communicated with counsel for Cargill regarding assignment of mil proceeds to Cargill as adequate protection, communicated with Business Consultant and Debtor-in-Possession regarding amendment of claim held by America AgCredit.

Plan and Disclosure Statement: Applicant spent 113.90 hours in this category. Applicant communicated with Business Consultants and Debtor-in-Possession regarding plan of reorganization and preparation of long term budgets, communicated multiple times with secured creditors, participated in meeting with American AgCredit regarding plan of reorganization, prepared draft of plan of reorganization, prepared draft of disclosure statement, provided draft of plan of reorganization and disclosure statement to counsel for American AgCredit and Cargill, Inc., Communicated with American AgCredit and their counsel regarding disclosure statement and plan, finalized and filed disclosure statement and plan, reviewed objections, prepared and filed replies, communicated with counsel for P&M Lima Dairy regarding plan of reorganization, appeared at the hearing, prepared ballot on confirmation, prepared modification before confirmation to Debtor-in-Possession's plan of reorganization dated June 12, 2014, prepared order confirming plan of reorganization, and communicated with partners in Debtor-in-Possession regarding Plan.

Restructuring: Applicant spent 32.00 hours in this category. Applicant worked with Debtor-in-Possession. Debtor-in-Possession's principals' accountant, Business Consultant, and counsel for P&M Lima Dairy regarding restructure of Debtor-in-Possession, and prepared all formation documents for Reorganized Debtor.

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
Hagop T. Bedoyan, admitted in 1987	3.70	\$350.00	\$1,295.00
Jennifer Adams, admitted in 1999	3.20	\$350.00	\$1,120.00
Jacob Eaton, admitted in 2006	10.30	\$142.50	\$1,467.75

Jacob Eaton, admitted in 2006	139.30	\$285.00	\$39,700.50
T. Todd Egland, admitted in 2005	0.9	\$155.00	\$139.50
Joseph Whittington, admitted in 2014	21	\$155.00	\$3,255.00
Karen Clemans, CBA (paralegal)	97.50	\$150.00	<u>\$14,625.00</u>
Nancy Boles (paralegal)	23.00	\$150.00	<u>\$3,450.00</u>
Total Fees For Period of Application			\$65,052.75 FN.1

 FN.1. The court notes that in the Motion's calculation, T. Todd Egland, who is logged as working .9 hours at a rate of \$155.00 per hour is listed as having a value of \$247.50. The court corrected this mathematical error, which is why there is a reduction in the total amount of fees versus what is listed in the Motion.

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

Application	Interim Approved Fees and Costs	Interim Fees and Costs Paid
First Interim Fees and Costs	\$0.00	\$0.00
Second Interim Fees and Costs	\$41,150.54	\$29,162.24
Third Interim Fees and Costs	\$48,053.36	\$36,207.98
Total Interim Fees and Costs Allowed Pursuant to 11 U.S.C. § 331	\$89,203.90	

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$3,087.63 pursuant to this applicant.

The costs requested in this Application are,

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

Travel - Mileage and Hotel		\$218.96
Filing Fees/Corporate Searches		\$486.94
Postage		\$697.18
Photocopies		\$1,684.55
Total Costs Requested in Application		\$3,087.63

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. The Fourth Interim Fees in the amount of \$65,052.75 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and prior Interim Fees and Costs in the amount of \$89,203.90 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator Debtor under the confirmed from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

Costs and Expenses

The Fourth Interim Costs in the amount of \$3,087.63 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator Debtor under the confirmed plan from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

Applicant is allowed, and the Plan Administrator Debtor under the confirmed plan is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$65,052.75
Costs and Expenses	\$3,087.69

pursuant to this Application and prior interim fees and costs of \$23,833.68 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 Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP ("Applicant"), Attorneys for Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP is allowed the following fees and expenses as a professional of the Estate:

Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP,
Attorneys Employed by Plan Administrator Debtor

Fees in the amount of \$65,052.75
Expenses in the amount of \$3,087.69,

The Fees of \$65,052.75 and costs of \$3,087.69 allowed pursuant to this Application, and prior Allowed Interim Fees and Costs in the amount of \$87,342.50 and \$1,861.40, respectively, are approved pursuant to prior Interim Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Plan Administrator Debtor under the confirmed plan 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 11 under the confirmed Plan.

15. [13-91459](#)-E-11 LIMA BROTHERS DAIRY
KDG-14 Jacob L. Eaton

MOTION FOR COMPENSATION FOR
GLASSRATNER ADVISORY AND
CAPITAL GROUP, LLC,
CONSULTANT(S)
11-19-14 [[377](#)]

Final Ruling: No appearance at the December 18, 2014 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, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on November 19, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

GlassRatner Advisory & Capital Group, LLC, the Consultant ("Applicant") for Lima Brothers Dairy, the Debtor in Possession ("Client"), makes a Fourth Interim and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period June 1, 2014 through November 11, 2014. The order of the court approving employment of Applicant was entered on December 24, 2014. Applicant requests fees in the amount of \$17,189.50 and costs in the amount of \$4.00. Pursuant to prior Interim Applications the court has allowed \$79,679.00 in interim professional fees.

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

December 18, 2014 at 10:30 a.m.

- Page 50 of 87 -

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including business analysis, case administration, objections to employment, fee application, creditor meetings, and plan and disclosure statement. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Business Analysis: Applicant spent 43.20 hours in this category. Applicant assisted Client with preparing MOR's for March, May, June, September 2014, communicating with and transfer accounting information to bookkeeper, assisting with and reconcile MOR's, communicating with Phillip Lima Jr. regarding adding income and disbursements for P&M Lima Dairy to MORs for Lima Brothers Dairy, communicated with secured creditor regarding held funds account, reconciled milk check detail to cash accounts and assignments and compare to budget projections, preparing production versus budget projections, participating in multiple discussions with Debtor-in-Possession regarding milk production issues and cash issues, preparing multiple cash flow projections for use with obtaining authorization for use of cash collateral, and reviewing payroll tax records and reconcile to payments made.

Case Administration: Applicant spent 5.60 hours in this category. Applicant participated telephonically in hearing on approval of Disclosure Statement, reviewed case correspondence to keep abreast developments, communicated with American AgCredit regarding reconciliation of monthly payments and outstanding balance owed to creditor..

Creditor Meeting: Applicant spent .30 hours in this category. Applicant corresponded with secured creditor regarding milk production.

Employment/Fee Application: Applicant spent 2.5 hours in this category. Applicant appeared telephonically at hearing on the Second Application, and reviewed, approved, and signed the Third Application.

Objections to Employment/Fee Application: Applicant spent 1.4 hours in this category. Applicant reviewed and commented on objection to approval of Second Application filed by the Office of the United States Trustee.

Plan and Disclosure Statement: Applicant spent 8.3 hours in this category. Applicant communicated with counsel for Debtor-in-Possession and Debtor-in-Possession's partners regarding plan of reorganization and preparation of long term budgets and prepared plan budgets and revisions as required..

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
George Demos, CPA	21.60	\$295.00	\$6,372.00
Patrick Lacy, senior associate	2.5	\$235.00	\$587.50
Brad Smith, CPA	37.20	\$275.00	\$10,230.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	<u>\$0.00</u>
Total Fees For Period of Application			\$17,189.50

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

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$0.00	\$0.00
Second Interim	\$57,078.00	\$42,808.50
Third Interim	\$22,601.00	\$16,951.13

Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$79,679.00
---	-------------

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$4.00 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$776.64.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
PACER Access		\$4.00
Total Costs Requested in Application		\$4.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Fourth Interim and Final Fees in the amount of \$17,189.50 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and prior Interim Fees in the amount of \$19,919.87 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator Debtor under the confirmed plan from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

Costs and Expenses

The Fourth Interim and Final Costs in the amount of \$4.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Plan Administrator Debtor under the confirmed plan from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

Applicant is allowed, and the Plan Administrator Debtor under the confirmed plan is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$17,189.50
Costs and Expenses	\$4.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 and prior interim fees of \$19,919.87 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 GlassRatner Advisory and Capital Group, LLC ("Applicant"), Consultant for the Plan Administrator 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 GlassRatner Advisory & Capital Group, LLC is allowed the following fees and expenses as a professional of the Estate:

GlassRatner Advisory & Capital Group, LLC, Professional
Employed by Plan Administrator Debtor

Fees in the amount of \$17,189.50
Expenses in the amount of \$4.00,

The \$17,189.50 in Fees and \$4.00 in Costs pursuant to this Application, and Fees in the amount of \$79,679.00 allowed pursuant to prior Interim Application are allowed as final professional fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Plan Administrator Debtor under the confirmed plan 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 11 case under the confirmed Plan.

16. [10-94467](#)-E-7 TINA BROWN
CWC-4 Michael R. Germain

CONTINUED MOTION FOR CONTEMPT
7-11-13 [[63](#)]

In connection with Adversary Proceeding 12-9003 entered a judgment; which is final, no appeal taken; determining that the bankruptcy estate owned three vehicles which were in the possession of Timothy Brown. Mr. Brown was ordered to turn over the vehicles. When he failed to do so, corrective sanctions were ordered. When he repeatedly violated the court's order to turn over the vehicles, the Trustee obtained a monetary judgment for the value of the vehicles, in addition to the corrective sanctions previously ordered by the court.

CHAPTER 7 TRUSTEE'S STATUS REPORT

The Chapter 7 Trustee filed a status report on December 11, 2014. Dckt. 157.

In the status report, the Trustee states that as of December 10, 2014, the Debtor has failed to comply with the court's order. No vehicles or required documents or information has been turned over to the Trustee. No monetary sanctions have been paid to the Trustee.

On August 6, 2014, the court entered a supplemental Order for Election of Monetary Damages under Judgment (Dckt. 41) and Authorized Enforcement of Monetary Sanctions (10-49477, DCN: CWC-4) and Judgment Through Combined Writ of Execution and Other Judgment Enforcement ("Supplemental Order"). This Supplemental Order was forwarded to the Trustee's Special Counsel, David Cook, on August 11, 2014. On November 10, 2014, the court entered an Order Granting Motion for Assignment of Rights, Restraining Order and Turnover (12-09003; DCN: CCA-1).

On November 18, 2014, the court entered an Order Authorizing Process Server to Levy Execution (12-09003; Dckt. 72). On December 2, 2014, Bank of America advised David Cook of a safe deposit box in the name of Debtor, Tim Brown, which they had frozen pursuant to the Temporary Restraining Order.

On December 4, 2014, Defendant Timothy Brown filed a Chapter 13 case, Case No. 14-91596, in the Eastern District of California, Modesto Division, assigned to Judge Bardwil.

Special counsel, David Cook and Defendant's counsel, David Foyil, have entered into a Stipulation to Modify Automatic Stay to Continue Freeze Upon Safety Deposit Box Pending Further Order of the Court.

DECEMBER 16, 2014 HEARING

At the hearing, ----

17. [14-91268-E-7](#) GLORIA GONZALEZ
TOG-1 Thomas O. Gillis

MOTION TO COMPEL ABANDONMENT
11-20-14 [[16](#)]

Final Ruling: No appearance at the December 18, 2014 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, Debtors Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Motion to Abandon Property is granted.
--

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

The Motion filed by Gloria Gonzalez ("Debtor") requests the court to order the Trustee to abandon property commonly known as Bank Accounts ending in 7829 and 7892 (the "Property").

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. The Motion is based upon the notice of Motion and Declaration of Gloria Gonzalez filed herewith and the Memorandum of Points and Authorities filed concurrently herewith.
- B. On September 15, 2014, Debtor filed a Chapter 7 voluntary bankruptcy petition. Irma C. Edmonds was appointed Chapter 7

Trustee, and is currently Chapter 7 Trustee for Debtor's bankruptcy case.

- C. The Declaration of Gloria Gonzalez demonstrates that she owns the following exempt Bank Accounts: (a) Bank Account ending in 7829 (amended balance \$650.60); (b) Bank Account ending in 7892 (amended balance \$6,400.14).
- D. Debtor has exempted the above reference business assets that are the subject of this Motion. Debtor understands that, if for any reason, it is determined that she is not qualified to claim those exemptions, she will pay the Chapter 7 Trustee the amount of any exemption stated that is not eligible to claim.
- E. Wells Fargo blocked said bank accounts. The Trustee requires this motion in order to sign a document unblocking the accounts.
- F. Debtor believes that these assets are of inconsequential value and are a burden on the bankruptcy estate. Consequently, the assets should be abandoned to the Debtor.
- G. Served and filed concurrently with this Motion is a Memorandum of Points and Authorities supporting these contentions and a Declaration of Debtor.

While minimal, the Motion gets over the minimal hurdle (this time, and counsel should not take this as a blanket approval of this pleading practice) of Federal Rule of Bankruptcy Procedure 9013. On Schedule B Debtor lists the two bank accounts (with a typo for the account number of one). Dckt. 1 at 9. On Schedule C the Debtor fails to exempt these two bank accounts. Dckt. 1 at 12.

On November 20, 2014, the Debtor filed an Amended Schedule C in which she claims these two accounts as exempt. Dckt. 20. Debtor served the Amended Schedule C on the Trustee with the present Motion.

In looking at the exemptions on Amended Schedule C there does not appear to be an "obvious defect" in what is being asserted. (Such as claiming amounts well in excess of the total permitted under Cal. C.C.P. § 703.140(b)(5).)

The Motion is granted and the Savings Account ending in 7892, in the amount of \$6,401.00 and the Checking Account ending in 7829, in the amount of \$651.00, plus any interest which has accrued since September 15, 2014, are abandoned to Gloria Gonzalez, the Debtor.

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

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

The Motion to Abandon Property filed by Gloria Gonzalez ("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 Savings Account ending in 7892, in the amount of \$6,401.00 and the Checking Account ending in 7829, in the amount of \$651.00, plus any interest which has accrued since September 15, 2014, at Bank of America, N.A. are abandoned to Gloria Gonzalez, the Debtor. The abandonment is by operation of this order, no further act of the Trustee required.

18. [14-91074-E-7](#) CESAR PIMENTEL AND
ADJ-2 VERONICA CASTRO
Thomas O. Gillis

OBJECTION TO DEBTORS' CLAIM OF
EXEMPTIONS
10-24-14 [[36](#)]

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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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, parties requesting special notice, Kinecta Federal Credit Union and Office of the United States Trustee on October 24, 2014. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

<p>The Objection to Exemptions is set for scheduling conference at 2:30 p.m. on xxxxxx.</p>
--

Michael McGranahan, the Chapter 7 Trustee, filed the instant Objection to Claim of Exemption on October 24, 2014. Dckt. 36.

The Trustee objects to Cesar Pimentel and Veronica Castro's ("Debtors") claimed exemption for their personal injury claims related to the auto accident involving the Debtors on April 21, 2013. The exemption claimed by the Debtors is C.C.P. 703.140(b)(11)(D) in an indeterminate amount.

The Trustee argues that judicial estoppel bars the personal injury exemption pursuant to Amended Schedule C because the Debtors breached their duty of fully disclose their personal injury claims in their original Schedules and Statement of financial Affairs. Further, the Trustee argues that the Debtors made a false oath in their 341 Meeting of Creditors - Debtor Questionnaire by stating that they did not have any claims against anyone. Moreover, the Trustee asserts that if Debtor Pimentel had knowledge of the settlement offers as to the personal injury claim, he gave false testimony when

he testified at his 341 Meeting of Creditors that there had been no settlement offers associated with the personal injury claims.

The Trustee requests an evidentiary hearing to determine the Debtors' knowledge of any settlement offers relative to their personal injury claims.

Pursuant to this request, the court will set an evidentiary hearing. The parties shall proceed with standard discovery.

The court orders that a scheduling conference will be set at 2:30 p.m. on xxxxx.

The court will issue a minute order holding that the Motion to Redeem is granted.

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 Personal Property filed by Larry Blain Smith and Melissa Ann Smith ("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 xxxxx.

19. [14-91284-E-7](#) LARRY/MELISSA SMITH
PGM-1 Peter G. Macaluso

MOTION TO REDEEM PERSONAL
PROPERTY
11-11-14 [[16](#)]

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.
Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Wilshire Commercial Capital and Office of the United States Trustee on November 11, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Redemption of Personal Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Redeem 2001 GMC Yukon is denied without prejudice.

Larry Blain Smith and Melissa Ann Smith ("Debtor") seeks to redeem 2001 GMC Yukon ("Property") from the claim of Wilshire Commercial Capital ("Creditor") pursuant to 11 U.S.C. § 722.

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. The Debtor hereby moves to redeem personal property pursuant to 11 U.S.C. § 722.
- B. The secured creditor is Wilshire Commercial Capital.
- C. The property to be redeemed is a 2001 GMC Yukon.
- D. The creditor has not filed a proof of claim with the court.
- E. The principal balance on this claim is approximately \$3,349.00.
- F. The property to be redeemed is personal property intended primarily for personal, family, or household use.
- G. The property is exempt under 11 U.S.C. § 522.

CREDITOR'S OBJECTION

Creditor filed an objection to the instant Motion on December 9, 2014. Dckt. 32.

The Creditor first argues that the Debtor failed to claim the Property as exempt in Schedule C.

Creditor further opposes the Motion based on the Debtors have failed to propose a proper redemption value for the Property. Creditor argues that § 506 requires that the Debtor pay Creditor's secured value at the "price a retail merchant would charge." Creditor argues that the price is not accurately measured by the "retail" value of the vehicle. Creditor attached a NADA Guide report valuation of the Property.

Creditor requests that the Motion be denied, or in the alternative, and after the Debtors amend their Schedule C, the court should set the redemption value at the NADA Guide suggested valuation.

DEBTORS' REPLY

Debtors filed a reply to the Creditor's objection on December 11, 2014. Dckt. 35. The Debtors assert that they will amend Schedule C on or before the hearing. The Debtors request that the Motion be continued approximately 30 days.

The Debtors further assert that the Creditor's opposition does not provide admissible evidence as to this Property. The Debtors argue that the creditor did not request further briefings, did not authenticate the NADA Guide Report.

DISCUSSION

Fed. R. Bankr. P. 9013

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. In fact, the Motion

improperly states that the Property is exempt under § 522 when, in fact, the Property is not exempted on Schedule C. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2)), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise,

debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

On this independent ground alone, the court denies the Motion without prejudice.

Failure to Exempt Asset

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.

Failure to Provide Adequate Evidence of Value

The Debtors have provided their opinion of the "retail value" of the vehicle, stating that it is \$1,500.00. Debtors state that the vehicle has 154,000 miles on it, and is in need of substantial repairs - ABS Brake System, Front/Rear Brakes and Rotors need replacing, Power Steering Pump, and Air Conditioning. Declaration, Dckt. 18. While providing their layperson opinion of value, they do not provide a basis for the court taking these various repairs and any amounts for such repairs, into account.

What real life teaches is that such a beat up, damaged, high mileage vehicle will in the very near future cost the Debtors much more than \$1,500 they want to pay, and even the "clean retail" value on the unauthenticated N.A.D.A. used car value summary.

While the court does not consider the unauthenticated N.A.D.A. Report to have credible evidentiary value, even at best case for creditor, if the required repairs need to be made, it will never recover \$1,500.00 in selling the vehicle. More likely, it will lose money with the costs of repossession and disposal.

Here, the Debtors failed to reach 11 U.S.C. § 722 because the Debtors have not claimed an exemption on the Property under § 522. The evidence of value they have provided does not allow the court to make a determination of retail value. Without meeting the qualifying factors for redemption, the court cannot grant the Motion. Therefore, the Motion is denied without prejudice.

The Motion to Redeem pursuant to 11 U.S.C. § 722 and Federal Rule of Bankruptcy Procedure 6008 is denied without prejudice.

The court will issue a minute order holding that the Motion to Redeem is granted.

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 Personal Property filed by Larry Blain Smith and Melissa Ann Smith ("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. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE
RMY-14 Robert M. Yaspan

CONTINUED MOTION FOR APPROVAL
OF STIPULATION TO EXTEND ORDER
ON MOTION TO AUTHORIZE USE OF
CASH COLLATERAL THROUGH
DECEMBER 31, 2014
9-18-14 [[200](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the 20 largest unsecured claims, parties requesting special notice, creditors and Office of the United States Trustee on September 18, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Approval of Stipulation to Extend Order on Motion to Authorize Use of Cash Collateral Through December 31, 2014 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.

No opposition was presented at the hearing. The Defaults of the non-responding parties are entered by the court.

The Motion to Authorize Use of Cash Collateral Through March 31, 2015 is granted

Debtors-in-Possession Michael House and Judy House ("Debtors-in-Possession") request an interim order authorizing Debtor-in-Possession to continue to use the cash collateral through March 31, 2015, (b) granting

adequate protection to certain pre-petition secured parties for the use of their cash collateral, (c) prescribing the form and manner of notice and setting the time for further hearings regarding the continued use of cash collateral. FN.1.

FN.1. The court notes that the Debtors-in-Possession filed this Motion under the wrong DCN. The court *sua sponte* corrects this oversight and analyzes the request under the correct docket control number ("RMY-14") to ensure consistency on the docket.

PRIOR ORDERS

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

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

On October 6, 2014, the court authorized the use of cash collateral through December 31, 2014. Dckt 231. The court also continued the hearing on the Motion to 10:30 a.m. on December 16, 2014 to consider a supplement to the Motion to extend the authorization to use cash collateral.

Current Motion

This Motion requests the approval of the stipulation to extend the February 20, 2014 order issued by this court, that approved the use of cash collateral by the Debtors-in-Possession through and including August 31, 2014 to December 31, 2014. Other than extending the time for the usage of cash collateral through December 31, 2014, the only provision changed from the February Order was (a) the payment to the Trust on the Smith Property to the attorney for the Trust, instead of Karen House; and (b) confirming that none of the payments to Creditors will be deemed a waiver, or prejudice the rights and defenses of Debtors-in-Possession against Creditors.

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

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

The accompanying Memorandum of Points and Authorities states that Debtors-in-Possession own the subject properties that generate rental income. The amounts claimed pursuant to the deeds of trust against each of the Properties as of June 13, 2013, are as follows:

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

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

The Creditors claiming an assignment of rents are:

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

It is anticipated that all secured parties will consent to the use of the cash collateral subject to Debtor-in-Possession continuing to pay all of the contractually due payments and subject to the following budget (with a 20% line by line potential variance):

Income	Expense	Amount
Rental income from Smith and Triumph Properties		26,210.00
Other Income (no subject to cash collateral) including, but not limited to real estate commissions, Valk Care, pasture rent, Disney Store income and School Board stipend		4,300.00
	Payment to Petaluma	(6,275.72)
	Payment to AG Credit	(4,223.98)
	Payment to Oak Valley Community Bank	(1,692.88)
	Payment to Arthur and Karen House Trust (Triumph Ranch)	(5,516.74)
	Payment to Arthur and Karen House Trust (Smith Ranch)	(1,200.00) shall be paid to the trust account of Steven Altman, Esq., attorney for the Trust
	Expenses for Ranches	(1,370.00)
	Rent	(1,500.00)
	Utilities	(500.00)
	Home Maintenance	(25.00)
	Food	(500.00)
	Clothing	(100.00)
	Medical and Dental	(50.00)
	Transportation	(250.00)
	Recreation	(50.00)
	Charitable Contributions	(30.00)
	Life Insurance	(920.00)
	Health Insurance	(1,100.00)
	Insurance for Ranch, Auto and House	(2,500.00)
	Income Tax	(500.00)
	Photography Expenses	(200.00)

	Trustee's Fees	(325.00)
	Payments for Additional Dependents not living at home	(200.00)
	Attorneys' Fees Carve Out (to be paid only after court approval)	(1,000.00)
	Monthly Cash Flow Profit	480.68

February Order granted the Second Motion and allowed the Debtors-in-Possession to use the cash collateral through August 31, 2014. Subsequent to the filing of the Second Motion, Debtors have been informed that the Trust has agreed that Oak Valley Bank is in first position on the Smith Ranch. Also, Debtors have filed an adversary proceeding against the Trust with regard to the extent, validity, and amount of the Trust's liens against the Properties, despite the amounts claimed due.

The October Motion states that at the end of August 20, 2014, the Debtors-in-Possession and the Creditors entered into the Stipulation that agreed to consensually extend the right for the Debtors-in-Possession to continue to use the cash collateral for properties through December 31, 2014, pursuant to the terms of the February Order, with the only change in the February Order being the payment to the Trust was being made to the attorney trust account for the Trust's attorney, and that none of the parties were waiving their rights or defenses. The court granted that stipulation on October 6, 2014. Dckt. 231.

DISCUSSION

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

Debtors-in-Possession state that they are current on the payments under the current order authorizing their use of cash collateral, and are current on their compliance obligations with the United States Trustee. Debtors request the approval of a stipulation entered between the Debtors-in-Possession and their creditors to extend the February 20, 2014 order issued by this court, that approved the use of cash collateral by the Debtors-in-Possession though and including August 31, 2014, to December 31, 2014.

Other than extending the time for the usage of cash collateral through December 31, 2014, the only provision changed from the February Order was (a) the payment to the Trust on the Smith Property to the attorney for the Trust, instead of Karen House; and (b) confirming that none of the payments to Creditors will be deemed a waiver, or prejudice the rights and defenses of Debtors-in-Possession against Creditors.

Debtor-in-Possession seeks authorization to use cash collateral to pay personal expenses post petition taxes, utilities, insurance and maintenance on the rental properties pursuant to the above-referenced budget. Debtor-in-Possession will pay the contractual amounts due on the secured loans for the institutional lenders and payments to the Arthur and Karen House Trust as set forth in the Budget, except as to the Smith Property. The adequate protection payment to the Trust for Smith Ranch in the sum of \$1,200.00 per month shall be paid to the trust account of Steven Altman, Esq., attorney for the Trust. The adequate protection payments will be held in Mr. Altman's trust account subject to further court order.

The court authorizes the use of cash collateral, pursuant to the order of the court, for the period December 31, 2014, through March 31, 2015, including the required adequate protection payments. Only expenses relating to the property from which the cash collateral is generated may be paid with cash collateral for that property. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by the Debtor in Possession. All surplus Cash Collateral from each property shall be held in a cash collateral account and separately accounted for by the Debtor in Possession. The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). Here, the existence of a substantial equity cushion and the adequate protection payment protect the creditors' (namely the Arthur and Karen House Trust by virtue of their second position deed of trust on the Smith Ranch, the Oak Valley Community Bank, American AG Credit, and Petaluma Acquisition) interests.

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

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

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

IT IS ORDERED that the Motion to Use Cash Collateral is granted, pursuant to this order, for the period December 4, 2014, through March 31, 2015, and the cash collateral may be used, through an including March 31, 2015, to pay the following monthly expenses:

Expense	Amount
Payment to Petaluma	(6,275.72)
Payment to AG Credit	(4,223.98)
Payment to Oak Valley Community Bank	(1,692.88)
Payment to Arthur and Karen House Trust (Triumph Ranch)	(5,516.74)
Payment to Arthur and Karen House Trust (Smith Ranch)	(1,200.00)

Expenses for Ranches	(1,370.00)
Rent	(1,500.00)
Utilities	(500.00)
Home Maintenance	(25.00)
Food	(500.00)
Clothing	(100.00)
Medical and Dental	(50.00)
Transportation	(250.00)
Recreation	(50.00)
Charitable Contributions	(30.00)
Life Insurance	(920.00)
Health Insurance	(1,100.00)
Insurance for Ranch, Auto and House	(2,500.00)
Income Tax	(500.00)
Photography Expenses	(200.00)
Trustee's Fees	(325.00)
Payments for Additional Dependents not living at home	(200.00)
Attorneys' Fees Carve Out (to be paid only after court approval)	(1,000.00)

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

IT IS FURTHER ORDERED the hearing on the Motion is continued to 10:30 a.m. on March 5, 2015, to consider a supplemental to the Motion to extend the authorization to use cash collateral. On or before February 19, 2015, the Debtors in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the March 5, 2015 hearing. Any opposition to the requested use of cash collateral shall be filed and served on or before February 26, 2015.

21. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE
RMY-5 Robert M. Yaspan

MOTION FOR ENTRY OF INTERIM
ORDERS AUTHORIZING THE
CONTINUED USE OF CASH
COLLATERAL, GRANTING ADEQUATE
PROTECTION TO PRE-PETITION
SECURED PARTIES AND SCHEDULING
FURTHER HEARINGS
12-4-14 [[236](#)]

Tentative Ruling: The Motion for Entry of Interim Orders Authorizing the Continued Use of Cash Collateral, Motion for Granting Adequate Protection to Pre-petition Secured Parties, and Motion for Scheduling further Hearing was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on December 4, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Entry of Interim Orders Authorizing the Continued Use of Cash Collateral, Motion for Granting Adequate Protection to Pre-petition Secured Parties, and Motion for Scheduling further Hearing was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

<p>The Motion for Entry of Interim Orders Authorizing the Continued Use of Cash Collateral, Motion for Granting Adequate Protection to Pre-petition Secured Parties, and Motion for Scheduling further Hearing is dismissed as moot.</p>
--

Debtors-in-Possession Michael House and Judy House ("Debtors-in-Possession") request an interim order authorizing Debtor-in-Possession to continue to use the cash collateral through March 31, 2015, (b) granting adequate protection to certain pre-petition secured parties for the use of their cash collateral, (c) prescribing the form and manner of notice and setting the time for further hearings regarding the continued use of cash collateral.

However, the Debtors-in-Possession have improperly used "RMY-5" which is a docket control number for an order that has already been issued, making this a "dead" docket control number. The proper docket control number for the instant Motion is "RMY-14". The court has *sua sponte* corrected this oversight and discuss the instant Motion under the correct docket control number.

Therefore, the Motion is dismissed as moot.

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

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

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

IT IS ORDERED that the Motion is dismissed as moot.

22. [14-90491](#)-E-7 SEBASTIAN GUERRERO
UST-2 Thomas O. Gillis

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
10-22-14 [[34](#)]

Final Ruling: No appearance at the December 18, 2014 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, and Chapter 7 Trustee on October 22, 2014. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

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

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

Tracy Hope Davis, the United States Trustee, ("UST") filed the instant Motion for Extension of time for filing Complaint Objecting to Debtor's Discharge under 11 U.S.C. § 727(a) on October 22, 2014. Dckt. 34.

The UST states that she has information indicating that Sebastian Guerrero ("Debtor") has a legal or equitable interest in real property located in Zacatecas, Mexico and had such an interest before he filed this case. The UST alleges that the Debtor did not disclose the foregoing real property in Schedule A. The UST is presently awaiting information from the California Superior Court that describes the Debtor's interest in real property located in Zacatecas, Mexico.

In Schedule F, the Debtor seeks to discharge \$150,571.00 in general unsecured debt. The deadline for filing a complaint objecting to the discharge is not later than sixty days after the first date set for the meeting of creditors under 11 U.S.C. § 341(a).

The court has extended the deadline for filing a complaint objecting to the discharge to November 1, 2014. Dckt. 31.

The Debtor filed a non-opposition to the instant Motion on October 22, 2014. Dckt. 37.

The UST requests that the deadline to object to the Debtor's discharge be extended to February 6, 2015 so that the case trustee and the UST will have the opportunity to gather information concerning the Debtor's financial affairs, to determine if the Debtor made accurate and complete disclosure of his assets, liabilities, income, expenses, and financial affairs, and whether grounds exist to file a complaint objecting to the discharge, in connection with this case.

The court finds the UST needs to perform further investigation of the Debtor's assets, liabilities, and pre-petition use of Estate property to be sufficient cause. Therefore, the motion is granted and the deadline for the United States Trustee to object to Debtor's discharge is extended to February 6, 2015.

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

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

The Motion to Extend the Time to File an Objection to Discharge filed by the United States Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the deadline for the Chapter 7 Trustee, United States Trustee, and all parties in interest to object to Debtor's discharge is extended to February 6, 2015.

23. [14-90993-E-7](#) BARBARA MICHEAL MOTION TO COMPEL ABANDONMENT
TAW-1 Todd Allen Whiteley 11-19-14 [[21](#)]

Final Ruling: No appearance at the December 18, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 19, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Motion to Abandon Property is granted.
--

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

The Motion filed by Barbara Jean Michael ("Debtor") requests the court to order the Trustee to abandon property commonly known as 1304 David Drive, Oakdale, California (the "Property"). This Property is encumbered by the liens of City National Bank/Ocwen Loan Servicing, securing claim of \$91,313.00. The Debtor has also exempted the Property under C.C.P. § 704.730 in the amount of \$175,000.00. The Declaration of Barbara Jean Michael has been filed in support of the motion and values the Property to be \$250,000.00

The court finds that the debt secured by the Property and Debtor's exemption exceeds the value of the Property, and that there are negative financial consequences to the Estate retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate, and orders the Trustee to abandon the property.

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

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

The Motion to Abandon Property filed by Barbara Jean Michael ("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 that the Property identified as:

1. 1304 David Drive, Oakdale, California

and listed on Schedule A by Debtor is abandoned to Barbara Jean Michael by this order, with no further act of the Trustee required.

24. [13-90795](#)-E-7 JOSE IRAHETA AND ALBA
SSA-3 MARTINEZ
Thomas O. Gillis

MOTION FOR ASSIGNMENT OF
DEBTORS' STATE AND FEDERAL TAX
REFUNDS IN AIDE OF ENFORCEMENT
OF ORDERS IN UNDERLYING
BANKRUPTCY CASE AND JUDGMENT IN
ADVERSARY PROCEEDING
11-18-14 [[48](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditors, and Office of the United States Trustee on November 18, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion for Assignment of Debtors' State and Federal Tax Refunds in Aide of Enforcement of Orders in Underlying Bankruptcy Case and Judgment in Adversary Proceeding is denied without prejudice.

Michael McGranahan, the Chapter 7 Trustee, filed the instant Motion for Assignment of Debtors' State and Federal Tax Refunds in Aid of Enforcement of Orders in Underlying Bankruptcy Case and Judgment in Adversary Proceeding on November 18, 2014. Dckt. 48.

The Trustee states that the court ordered the Debtors to turnover to Trustee the value of a 2002 Nissan (\$6,000.00) and nonexempt monies in a bank account (\$1,050.00) which the debtors spent, for the total sum of \$7,050.00 by February 20, 2014. Dckt. 37.

The Trustee extended the deadline to the Debtors to March 3, 2014 at the request of Debtors' counsel, Thomas Gillis. The Debtors have failed to comply.

Following the Debtors failure to comply, the Trustee commenced an adversary proceeding to have the Debtors' bankruptcy discharge revoked pursuant to 11 U.S.C. § 727 et seq. Adversary Proceeding No. 14-09016. The Debtors failed to respond to the underlying Adversary Proceeding. The court granted the Trustee's Motion for entry of Default and Default Judgment.

The Trustee seeks:

1. Assignment of Debtors' prospective federal and state tax refunds to the Chapter 7 Trustee on behalf of the bankruptcy estate, until the amount of the outstanding claims in this matter are satisfied: which include the turnover order against Debtors (\$7,050.00) and fees and costs arising from the companion adversary proceeding owed (Adversary Proceeding No. 14-09016).
2. An order requiring Debtors to assign their prospective tax refunds to the Chapter 7 Trustee, and if they refuse or fail to act in the time prescribed by this court, an order allowing the Clerk of the United States Bankruptcy Court to execute those assignments.
3. The court to maintain continuing jurisdiction in this matter to enforce and implement its orders to assist the Chapter 7 Trustee.

In the points and authorities Movant cites to Federal Rule of Civil Procedure 69 and Federal Rule of Bankruptcy Procedure 7069 and 7070. This motion is not filed in an Adversary Proceeding or brought as a motion in enforcing a specific judgment. It is asserted that California Code of Civil Procedure § 708.510 (enforcement of judgment applicable in federal court proceedings) provides for the assignment of certain rights in the enforcement of a judgment.

It is further argued that under Rule 69 may enforce a money judgment. Under Rule 70 the court may appoint another person to do a specific act when a judgment debtor fails to so do. These rules are incorporates Federal Rule of Bankruptcy Procedure 7069 as part of the contested matter practice, but does not incorporate Rule 7070 (and no order by this court has been entered making such Rule applicable in connection with this contested matter. Fed. R. Bank. P. 9014.

DEBTORS' OPPOSITION

The Debtors filed an opposition to the instant Motion on December 4, 2014. Dckt. 54. The Debtors object on the following grounds:

1. There is no "judgment" against Debtors to facilitate a seizure of post petition assets of Debtors that are not property of the estate.
2. The Points and Authorities of the Trustee all speak to the enforcement of a "judgment." There appears to be only orders to pay; no monetary judgment was entered in either the main case or the adversary case.
3. The court does not have jurisdiction to levy on post petition property that is accumulated by a debtor.
4. The *Law v. Seagal* case severely limited the power of the Bankruptcy Court to seize exempt property, especially under 11 U.S.C. § 105.
5. The post petition tax return is exempt under C.C.P. § 703(b)(5), the wild card. Debtors do not own a house. *Law v. Seagal* forbids Bankruptcy Courts from ignoring the exemptions of debtors.

TRUSTEE'S REPLY

The Trustee filed a reply on December 10, 2014. Dckt. 56.

The Trustee argues that he is a judgment creditor in the underlying adversary complaint in which monetary relief, i.e. costs in the amount of \$293.00 was awarded to him. Adversary Proceeding No. 14-09016, Dckt. 47. The Trustee further argues that he has a valid Civil Minute Order for monetary relief in the amount of \$7,050.00 issued by this court against both Debtors, whose general bankruptcy discharge has been denied. Dckt. 37. Trustee asserts that the prior proceedings were core matters involving turnover orders and an award of damages in favor of the Trustee and bankruptcy estate and the revocation of Debtors' discharge. The Trustee argues that the Debtors were ordered to pay a monetary sum by this court of \$7,050.00. The Trustee also asserts that he is in fact a judgment creditor in the underlying nondischargeability litigation and costs were taxed in that case in the principal amount of \$293.00 and the time to appeal those orders have expired.

The Trustee next argues that *Law v. Seagal* is inapplicable to the present Motion. First, the taxes in question are not property of the bankruptcy estate. Debtors' initial bankruptcy case was filed April 15, 2013. The present tax refunds requested are for the 2014 tax period. Second, the Trustee is not attempting to solely use § 105 in enforcing his claims at issue. He has independently resorted to California state law and application of C.C.P. § 708.510. Third, as noted in the Trustee's original pleadings, the normal federal judgment scheme applies the state law remedies to enforce how a judgment may be executed on and which assets can be reached. 28 U.S.C. § 1663; Fed. R. Bankr. P. 7069 and 7070.

DISCUSSION

The Motion skates the boundaries of Federal Rule of Bankruptcy Procedure 9013, which requires that the Motion itself state with particularities the grounds upon which the request for relief is based. (Rule 9013 mirroring the law and motion practice requirements of Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007.)

The Motion states that the Trustee is seeking to enforce February 6, 2014 order of this court for the Debtors to pay the Trustee \$7,050.00 on or before February 20, 2014. The Motion states that the money has not been paid. The Trustee seeks to now enforce that order to pay money against an asset of the Debtors, their federal and state tax refunds.

The Trustee also "slips in" a request that the assignment requested to enforce the order also include monetary amounts owed in a separate adversary proceeding.

COURT'S PRIOR JUDGMENT AND ORDERS

The Court's January 30, 2014 Order requires the Debtors to pay \$7,050.00 to the Chapter 7 Trustee on or before noon on February 20, 2014. Dckt. 52. This is a "judgment" (orders within the definition of judgments) which may be enforced like any other judgment. Fed. R. Civ. P. 45; Fed. R. Bankr. P. 7054, 9014). The Debtors have failed to pay the monies as ordered by the court and now that obligation may be enforced.

Debtors contention that there is no judgment is wrong and without basis. A monetary "judgment" has been entered - the February 6, 2014 Order for \$7,050.00. The contention that there is no judgment borders on the frivolous and of being without merit.

The Opposition further admits that the tax refunds are "post-petition" property accumulated by the Debtors. Opposition ¶ 3, Dckt. 54. The Debtors then attempt to assert a bankruptcy exemption (the Cal C.C.P. § 703(b)(5) wildcard) in post-petition, non-bankruptcy property. That exemption may be claimed in assets which are property of the estate. 11 U.S.C. § 522(b), "[e]xempt from property of the estate...."

Pursuant to Federal Rule of Bankruptcy Procedure 69 and Federal Rule of Bankruptcy Procedure 7069, 9014, a money judgment (which includes an order) is enforced by a writ of execution unless the court orders otherwise. The procedure on execution is that as applies under state law, unless federal law overrides state law.

California Code of Civil Procedure § 708.510 provides that the court may order the assignment to the judgment (order) creditor a future right to payment to the judgment debtor. A non-exclusive list of rights to payment is provided in the statute. These assignments are for the types of rights to payment which are not subject to a standard levy. These include ongoing payments, such as rents and royalties, and wages due from the federal government.

However, the assignment is sought with respect to obligations of the State of California and the United States. No discussion is provided as to enforcement of judgments when the person holding the asset of the judgment debtor is the state or federal government.

California Code of Civil Procedure § 708.720 provides that if a public entity (which includes the State of California, but is not defined to include the Federal Government), that enforcement against an obligation owed by the State may be done only in the manner provided in California Code of Civil Procedure §§ 708.710-708.795 (exclusive enforcement remedies), 706.010-706.143 (wage garnishment), and 708.410-708.480 (lien in pending action or proceeding).

Several different methods of enforcement of an obligation owed by a State Agency are provided in the §§ 708.710-708.795 provisions, but none appear to include the requested "assignment."

While the Debtors' contentions are without merit, the Trustee is not seeking relief which can be otherwise awarded. The court will leave it to the Trustee and counsel to research the proper method for enforcing a judgment against an obligation owed by the Federal Government, such as a tax refund.

Therefore, the Motion is denied without prejudice.

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

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

The Motion for Assignment of Debtors' State and Federal Tax Refunds in Aid of Enforcement of Orders in Underlying Bankruptcy Case and Judgment in Adversary Proceeding filed by Chapter 7 Trustee 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.

25. [14-91197](#)-E-7 NICOLAS PEREZ AND MARIA MOTION TO EXTEND DEADLINE TO
 MLG-1 MOSQUEDA DEPEREZ FILE A COMPLAINT OBJECTING TO
 Pro Se DISCHARGEABILITY OF A DEBT AND/OR
 MOTION TO EXTEND DEADLINE TO FILE A
 COMPLAINT OBJECTING TO DISCHARGE OF
 THE DEBTOR
 11-26-14 [[18](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on November 26, 2014. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Dischargeability of a Debt and Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

<p>The Motion to Extend Deadline to File a Complaint Objecting to Dischargeability of a Debt and Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor is granted.</p>
--

Modesto Irrigation District ("Modesto") filed the instant Motion for Extension of Deadlines under 11 U.S.C. §§ 523 and 727 on November 26, 2014. Dckt. 18. Modesto requests that the court extend the deadline in which a party

in interest may filed a complaint objecting to Nicolas Perez and Maria Mosqueda DePerez's ("Debtors") discharge pursuant to 11 U.S.C. § 727 and/or excepting a claim from discharge pursuant to 11 U.S.C. § 523.

Modesto states that, according to county records, in November 2010, prior to the petition date, Debtor Maria Mosqueda DePerez purchased residential real property commonly known as 4904 Ebbett Way Empire, California ("Property"). Also according to those records, Debtor Maria Mosqueda DePerez transferred the Property to Jose Luis Moctezuma on June 19, 2014, receiving no consideration for the transfer. Modest alleges that the Debtors failed to list the Property or transfer in the Schedules or in the Statement of Financial Affairs.

Modesto states that on January 21, 2011, Debtor Maria Mosqueda DePerez contracted with Modesto for utility services for the Property. Modesto argues that in December 2012, Modesto discovered tampering at the Property which resulted in Debtor Maria Mosqueda DePerez being under billed for the electricity usage at the Property. On May 16, 2013, Modesto filed its lien under Cal. Water Code § 25806, creating a lien in the amount of \$22,076.33, reflecting the estimated amount of the undrilled usage.

At the time of the originally scheduled 341 Meeting, Modesto appeared to question Debtors regarding this undisclosed transfer of the Property. However, Debtors failed to appear. At the continued 341 Meeting, Debtors appeared and Modesto was able to inquire as to the transfer of the property. Modesto states that Debtor Maria Mosqueda DePerez confirmed that she transferred the Property for no consideration and that the transfer was omitted from the filings. Debtor Maria Mosqueda DePerez also claimed that she never lived at the Property and is not responsible for the amount past due to Modesto.

Modesto has also filed an ex parte application for order of examination of the Debtors and production of documents under Bankruptcy Rule 2004.

Modesto asserts that it needs to examine the Debtors and their documents prior to determining whether to commence an action to deny discharge or to except Modesto's claim from dischargeability. However because of the Debtors' failure to disclose transfers of the Property and their failure to appear at the initial 341 Meeting, Modesto has been delayed in that examination and cannot complete it prior to the current deadline for filing.

The court finds Modesto needs to perform further investigation of the Debtors assets, liabilities, and pre-petition use of the Property to be sufficient cause. Therefore, the motion is granted and the deadline to object to Debtor's discharge pursuant to 11 U.S.C. § 727 and/or excepting a claim from discharge pursuant to 11 U.S.C. § 523 is extended to February 20, 2015.

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

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

The Motion to Extend the Time to File an Objection to Discharge filed by Modesto Irrigation District having been

presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the deadline for all parties in interest to object to Debtor's discharge and/or excepting a claim from discharge is extended to February 20, 2015.