

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 27, 2014 at 10:30 a.m.

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1. [12-39515](#)-E-11 WATSON COMPANIES, INC. CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
11-5-12 [[1](#)]

Debtor's Atty: W. Steven Shumway

Final Ruling: The court having issued an order to close the case, the Status Conference is removed from the calendar. No appearance at the February 27, 2014 Status Conference is required.

Notes:

Continued from 2/6/14 to be heard in conjunction with motion for final decree and order closing case.

2. [12-39515](#)-E-11 WATSON COMPANIES, INC. MOTION FOR FINAL DECREE AND
WSS-4 W. Steven Shumway ORDER CLOSING CASE
1-14-14 [[181](#)]

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 Debtors and all creditors on January 14, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Final Decree and Order Closing 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). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to grant the Motion for Final Decree and Order Closing Case. No appearance at the February 25, 2014 hearing is required.

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) additionally states that

February 27, 2014 at 10:30 a.m.

the court is required to close a case after an estate is "fully administered and the court has discharged the trustee." The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk*, 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been "fully administered," the court considers whether:

- the plan confirmation order is final;
- deposits required by the plan have been distributed;
- property to be transferred under the plan has been transferred;
- the debtor (or the debtor's successor under the plan) has taken control of the business or of the property dealt with by the plan;
- plan payments have commenced; and
- all motions, contested matters and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. See *id.*; *In re John G. Berg Assocs., Inc.*, 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

Here, the Chapter 11 Plan was confirmed on September 28, 2013. The Plan provided that Debtor is responsible for operating its business and making distributions in accordance with the terms of the plan. Debtors state that all distributions to be made under the plan are current and that all the post-confirmation operating reports have been filed.

As indicated by the Advisory Committee Notes accompanying Fed. R. Bankr. P. 3022, entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Rather, the above-listed factors should be considered in determining whether the estate has been fully administered. As stated by Debtors, there are no outstanding deposits that require distribution under the plan and that all disputed claims have been resolved.

Upon confirmation of the Plan, the relevant property became fully vested in Debtors, who are currently managing the estate. Debtors appear to be current on all distribution under the plan and filed post-confirmation operating reports.

Thus, the court finds that Debtors have satisfactorily met the above-listed factors, determining whether the Chapter 11 bankruptcy estate has been fully administered within the meaning of 11 U.S.C. § 350(a). The court will enter a final decree closing Debtors' case.

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

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

The Motion for Final Decree and Order Closing Case 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 granted and Debtors' Chapter 11 Bankruptcy Case is closed pursuant to 11 U.S.C. § 350(a) and Federal Rule of Bankruptcy Procedure 3022, without limitation or restriction of this court's post-confirmation jurisdiction in this case.

3. [11-25921](#)-E-11 HENRY/CARMEN APODACA
DAC-10 Douglas A. Crowder

MOTION FOR FINAL DECREE AND
ORDER CLOSING CASE
1-16-14 [273]

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 Debtors and all creditors on January 17, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion for Final Decree and Order Closing 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).

The court's tentative decision is to grant the Motion for Final Decree and Order Closing Case. 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:

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) additionally states that the court is required to close a case after an estate is "fully administered and the court has discharged the trustee." The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk*, 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been "fully administered," the court considers whether:

- the plan confirmation order is final;
- deposits required by the plan have been distributed;
- property to be transferred under the plan has been transferred;
- the debtor (or the debtor's successor under the plan) has taken control of the business or of the property dealt with by the plan;
- plan payments have commenced; and
- all motions, contested matters and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. See *id.*; *In re John G. Berg Assocs., Inc.*, 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

Here, the Chapter 11 Plan was confirmed on May 20, 2013. The Plan provides that the Debtors propose to pay creditors from future income. And that unsecured creditors will receive no less than \$70,470.00. Under the Plan, the Debtors are responsible for making monthly distributions to creditors. Debtors state they are not currently in default under the terms of the Plan and, while the Debtors reserve the right to seek to reopen the Case should judicial intervention become necessary in the future, the Debtors do not anticipate a need for the Court's further involvement in the distribution process at this time.

As indicated by the Advisory Committee Notes accompanying Fed. R. Bankr. P. 3022, entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Rather, the above-listed factors should be considered in determining whether the estate has been fully administered. As stated by Debtors, there are no outstanding deposits that require distribution under the plan and that all disputed claims have been resolved.

Upon confirmation of the Plan, the relevant property became fully vested in Debtors, who are currently managing the estate. Debtors appear to be current on all distribution under the plan and filed post-confirmation operating reports.

Thus, the court finds that Debtors have satisfactorily met the above-listed factors, determining whether the Chapter 11 bankruptcy estate has been fully administered within the meaning of 11 U.S.C. § 350(a). The court will enter a final decree closing Debtors' case.

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

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

The Motion for Final Decree and Order Closing Case 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 granted and Debtors' Chapter 11 Bankruptcy Case is closed pursuant to 11 U.S.C. § 350(a) and Federal Rule of Bankruptcy Procedure 3022, without limitation or restriction of this court's post-confirmation jurisdiction in this case.

4. 11-25921-E-11 HENRY/CARMEN APODACA MOTION FOR COMPENSATION FOR
DAC-9 Douglas A. Crowder DOUGLAS A. CROWDER, DEBTOR'S
 ATTORNEY(S), FEES: \$38,365.00,
 EXPENSES: \$0.00
 1-16-14 [[276](#)]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to grant the Final Application for Fees in the amount of \$29,420.00. 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:

FEES REQUESTED

Douglas A. Crowder, Crowder Law Center, Counsel for the Debtors, ("Counsel") makes a Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period January 14, 2012 through May 20, 2013. The order of the court approving employment of counsel was entered on April 6, 2012. Dckt. 127.

PRIOR FEES

On April 25, 2013, Counsel Applicant was awarded \$20,000 as interim fees. (Docket No. 231) The court noted that fees for co-counsel Anthony

Hughes would have to be sought separately.

On August 29, 2013, Counsel's co-counsel, C. Anthony Hughes, was awarded \$8,865 as final fees. (Docket # 260).

On September 23, 2013, Debtor's previous attorney was ordered to repay \$15,000 to the Debtors. (Docket # 266). On November 13, 2013, Debtors' previous counsel paid the sum of \$14,000 to Applicant.

Counsel states he has received a total of \$30,000 of monies for payment of legal fees and costs. Counsel states he has disbursed those funds as follows:

- A. \$8,865 to Hughes,
- B. \$20,000 to Counsel, and
- C. the remaining \$1,135 is in Applicant's trust account to be applied to post-confirmation fees or to be applied to any additional pre-confirmation fees to be awarded to Applicant.

Final Fee Application, Dckt. 276.

Interim Fee Applications, Awards, and Final Fee Requested

The court has reviewed the evidence provided in support of the present Motion. There is no billing statement provided showing the requested fees and costs since February 2013, the period for which the court has allowed prior fees. Rather, Exhibit A is a sheet of raw data organized by task billing area, with work done over three years lumped together. The court having already addressed the period February 2013 and prior, allowed it now needs to review the post February 2013 fees and costs requested. The Motion does not state the fees and costs for the post-February 2013 period, but merely lumps them together. As presented, the court cannot tell from the Motion and evidence whether the total amount includes fees and costs which were disapproved as part of the First Interim Application. (Presumably they do not.)

Rather than waste everyone's time and resources and making counsel supplement these materials (recognizing counsel's efforts in getting this case righted and a plan confirmed), the court can construct a post-February 2013 calculation based on Exhibit A.

The following are the interim and final fee awards for the attorneys representing the Debtors in Possession:

Douglas A. Crowder Crowder Law Center		C. Anthony Hughs	
April 30, 2013 Order, Dckt. 233 – First Interim Fees (January 14, 2012 through February 2013)	\$25,000.00	September 5, 2013 Order, Dckt. 262 – Final Fee Award	\$8,865.00

Second Interim (March 1, 2013 through May 20, 2013) and Request for Final Approval of All Fees	\$4,410.00		
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The additional \$4,410 in fees was computed by the court from review of Exhibit A for all items which had a date after February 2013. This was somewhat challenging because the billing program used to produce Exhibit A does not clearly separate each task and billing information. Some activities appear to run from one date entry to the other. The court has given Counsel the benefit of the doubt and included any charge which appears to relate to a post-February 2013 date.

Description of Services for Which Fees Are Requested

The court computes these additional fees to the following tax billing areas:

- A. Preparation and Solicitation of Ballots
 - 1. \$240.00, 0.80 hours billed.
- B. Case Administration
 - 1. \$1,125.00, 9.50 hours billed
- C. Creditor Negotiation
 - 1. \$150.00, 0.50 hours billed
- D. Employment and Fee Applications
 - 1. \$2,280.00, 7.60 hours billed
- E. Monthly Operating Reports
 - 1. \$615.00, 3.70 hours billed.

DISCUSSION

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).

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 as legal 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 legal services undertaken 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 [legal fee] tab without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney is obligated to consider:

- (a) Is the burden of the probable cost of legal 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.

Personnel

However, there is one other attorney named and billed for: Henry G. Broome, billed at \$300.00 per hour. There is also one paralegal and one administrative assistant, billed at \$150.00 and \$50.00 per hour, respectively. However, no information is provided regarding these personnel in the supporting pleadings. Though not having the background information, the court will assess the appropriateness of the billing rates in light of the confirmation of the Plan and resolution of this case.

Monthly Operating Reports

The court is has expressed concerns in the past relating to attorneys who take on the task of being the accountants and bookkeepers for debtors in possession. From reviewing the billing statement, it appears that the services provided were appropriate as counsel review and paralegal assistance to make sure that the monthly operating reports were properly completed and formatted for filing.

CONCLUSION

The court finds that the billing rates are appropriate and grants the motion to approve the fees for the period March 1, 2013 through May 20, 2013, in the amount of \$4,410.00, and makes the prior interim award of \$25,000.00 final pursuant to 11 U.S.C. § 330. The court finds such fees to be reasonable and appropriate in this case, including those fees allowed local counsel C. Anthony Hughes in the amount of \$8,865.00. The total attorneys' fees in this case for the Debtors in Possession was \$38,285.00.

The Plan Administrators are authorized to pay such allowed fees totaling \$29,420.00, after full credit for interim fee payments and all retainers paid and monies recovered from the prior attorney remaining Counsel's trust account, as provided in the confirmed Chapter 11 Plan.

The Motion does not identify, and no request is made to approve prior fees in the amount of \$2,321.00. While the court is willing to construct the post-February 2013 fees from the raw billing data, the court will not presuppose that it has the ability or knowledge to dig out what pre-February 2013 amounts that Counsel may have though he was entitled to be paid in the present Motion.

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

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

The Motion for Allowance of Fees and Expenses filed by
Counsel 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 Crowder Law Firm, Douglas A.
Crowder, attorney; is allowed the following fees and
expenses as a professional of the Estate:

Crowder Law Firm, Douglas A. Crowder, attorney; as
counsel for the Debtors in Possession:

Applicant's Fees Allowed in the amount of \$29,420.00
Applicant's Expenses Allowed in the amount of \$0.00,

for total fees and costs in this Chapter 11 case.

IT IS FURTHER ORDERED that this is a final award of
fees pursuant to 11 U.S.C. § 330, including all prior
interim awards of fees and costs, and the Plan
Administrators authorized to pay such allowed fees totaling
\$29,420.00, after full credit for interim fee payments and
all retainers paid and monies recovered from the prior
attorney remaining Counsel's trust account, as provided in
the confirmed Chapter 11 Plan.

5.	<u>13-24254</u> -E-7	RUSS TRANSMISSION INC	MOTION TO SELL AND/OR MOTION TO
	HSM-10	Gary F. Zilaff	PAY
			2-6-14 [114]

Local Rule 9014-1(f)(2) 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, all creditors, and Office of the United States Trustee on February 6, 2014. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(a)(2). 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 court's tentative decision is to grant the Motion to Permit Trustee to Sell Property. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Trustee to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b). Here, the Trustee proposes to sell the real property commonly known as 5334 Lesier Road, located in the City of Knights Landing, Sutter County, California ("Knights Landing Property").

In her Motion, Trustee seeks approval from the court for:

- I. Trustee's entry of the Purchase Agreement and sale of the property pursuant to the terms outlined below;
- II. Payment from the Sales Proceeds of the commission to Agent consistent with the approved listing agreement, if the proposed sale is approved and consummated with the proposed Buyer of any successful qualifying overbidder;
- III. Payment of other customary expenses of closing associated with this sale;
- IV. If not previously paid in connection with the sale of the Elvas property, payment of the remaining net sales proceeds to Dos Rios, up to the undisputed amount of the Dos Rios Secured Claim described below.

The Knights Landing Property was listed on Debtor's Schedule A, filed in this case on March 29, 2013, with an estimated value of \$750,000.00, and as being improved with eight (8) two bedroom houses and one duplex unit. In Debtor's Schedule D, Debtor listed a \$600,00.00 debt to Julia Carrington ("Carrington") for a loan of such an amount from Carrington to Debtor (the "Carrington Loan"), which was secured by a deed of trust recorded against the Knights Landing Property and other real property commonly referred to as 6801 Elvas Avenue, Sacramento, California property (the "Elvas Property").

In a proof of claim filed in this case on August 13, 2013, Claimant 701 Dos Rios Investors, LLC as successor by assignment of the Carrington Loan from Carrington to Dos Rios, asserted that it is owed \$684,478.33 for the Carrington Loan (the "Dios Rios Secured Claim.")

To assist with the marketing and sale of the property, the Trustee elected to retain Bluett & Associates, a real estate services and brokerage firm ("Brokers") and specifically Lori Bluett, as her real estate broker and agent ("Agent"). The employment of the Broker and Agent on behalf the estate was approve by this court on June 20, 2013. Due to the efforts of the Agent, Trustee has received and accepted an offer to purchase the property from Gregory T. Royston ("Buyer"), subject to court approval and overbidding.

The purchase price for this property is \$360,000.00. Although Debtor valued the Knights Landing Property at approximately \$750,000 in its Schedule A filed on March 29, 2013, the Trustee believes the purchase price represents the fair value of the property, given the poor condition of the property (which was modestly restored through emergency repairs made by the Agent and habitability issues related to plumbing, electrical, trash, hazardous trees, and other deficiencies) and competing offers received by the Agent on the Knights Landing Property.

Liens Against the Property

The Property is subject to a deed of trust securing the claim of the Knights Landing Property. The Claim is asserted in the amount of approximately \$684,478.33, plus such additional interest and other

undisputed sums as may be claimed by Dos Rios.

The Dos Rios claim is also secured by real property commonly known as 6801 Elvas Avenue (and sometimes described by Debtor as property located at 6801 Folsom Boulevard), Sacramento County, Sacramento, California (the "Elvas Property"). The Trustee anticipates paying off the undisputed amount of the Dos Rios Secured Claim in full upon the sale of the Elvas Property.

If the sale of the Knights Landing Property closes prior to the sale of the Elvas Property, the Trustee anticipates obtaining the cooperation and consent of Dos Rios to allow the release from the Knights Landing Property of the lien securing repayment of the Dos Rios Secured Claim, subject to payment to Dos Rios of the Net Sales Proceeds from the sale of the Knights Landing Property remaining after deduction of all closing costs and payment of the Agent commission, up to the undisputed amount owed on the Dos Rios Secured Claim.

Purchase Agreement

Buyer's offer to purchase the Knights Landing Property has been accepted by the Trustee, as Seller, through the mutual execution of a Standard Offer, Agreement, and Escrow Instructions for Purchase of Residential Income Properties, dated January 27, 2014, and an Addendum to Purchase Agreement dated January 27, 2014 (collective referred to as the "Purchase Agreement"). The terms of the purchase agreement are set forth in the true and correct copy of the Purchase Agreement, attached as Exhibit "A" in support of the Motion. Dckt. No. 117.

The materials terms of the Purchase Agreement include:

1. The purchase price for the Knights Landing Property is \$360,000.00.
2. Buyer has deposited the sum of \$10,000.00 into escrow. The deposit is creditable against the purchase price and is non-refundable after satisfaction of all of the Buyer's conditions to closing, subject to Seller obtaining court approval of this agreement. If the Buyer fails to close the purchase due to default by Buyer, the deposit shall be non-refundable and be retained by the Trustee as liquidated damages for such breach.
3. Buyer has 21 days from the date of the Agreement to inspect and approve the condition of the Knights Landing Property, and 10 days from the receipt of the preliminary title report and existing leases on the Property to approve the title to the Property and leases on the Property.
4. Buyer will pay the purchase price and close escrow on or before 15 days after the filing of the court's order approving this Motion.
5. The following costs will be allocated to the estate and be paid from the sales proceeds: one-half the cost of the escrow fee; the premium for the standard coverage title insurance

policy; costs to prepare and record the grant deed; the prorated share of real property taxes and assessments secured against the property and rents and utilities; any amounts required to be withheld for state or federal taxes. The portion of the sales proceeds remaining after deduction of the costs allocable to the estate as Seller, and after payment of commission to the Agent, shall be referred as the "Net Sale Proceeds."

6. Buyer will acquire the Knights Landing Property in its "AS IS," "WHERE IS," "WITH ALL FAULTS" condition.
7. Title to the Knights Landing Property shall be subject to all liens or encumbrances for real property taxes and/or assessments which are not delinquent as of the close of escrow. The Knights Landing Property is subject to the lien securing repayment of the Dos Rios Secured Claim of approximately \$684,478.33, plus such additional interest and other undisputed sums as may be claimed by Dos Rios. Trustee anticipates paying off the undisputed amount of the Dos Rios Secured Claim in full upon the sale of the Elvas Property. If the sale of the Knights Landing Property closes prior to the sale of the Elvas Property, the Trustee anticipates obtaining the cooperation and consent of Dos Rios to allow the release from the Knights Landing Property of the lien securing repayment of the Dos Rios Secured Claim, subject to payment to Dos Rios of the Net Sales Proceeds from the sale of the Knights Landing Property remaining after deduction of all closing costs and payment of the Agent commission, up to the undisputed amount owed on the Dos Rios Secured Claim.
8. Trustee is not aware of any other secured interests in the Knights Landing Property.
9. To the extent that any improvements or fixtures are located on the Knights Landing Property and the bankruptcy Estate owes any interest therein, the Motion seeks authority to sell and transfer to the Buyer the Estate's interest in such assets as part of the Knights Landing Property.
10. The proposed sale to Buyer is subject to overbidding at the hearing on this Motion.

Overbidding Procedures

Trustee proposes that any entity or person wishing to become a Qualified Overbidder must deliver to the Trustee a non-refundable deposit in the amount of \$10,000.00, in the form of a cashier's check or money order made payable to "Susan Didriksen, Chapter 7 Trustee of the Russ Transmission Inc Bankruptcy Estate," which will be applied to the purchase price for the property, if the Qualified Overbidder is the successful purchaser following the hearing on the Motion, and demonstrate to the Trustee the ability to close escrow within seven calendar days of the court's order approving the Motion.

Such financial showing shall include, without limitation, either overbidder qualification for financing acceptable to Trustee and sufficient to pay the purchase price for the property, or proof of the ability of the overbidder to fund payment of the purchase price in cash. The Overbidder Deposit and showing of financial ability to perform shall be delivered to the Trustee no later than two business days prior to the date scheduled for the hearing on this Motion. The overbidder may obtain permission to inspect the property. If a Qualified Overbidder is not successful at the hearing, the deposit shall be returned to the Overbidder upon entry of the order confirming the successful bidder for the Knights Landing Property.

Trustee proposes that the initial overbid be \$365,000.00 and subsequent overbids, if any, be in increments of \$2,500. The high bidder must purchase the Knights Landing Property on terms identical to those set forth in the Purchase Agreement, including the waiver of all contingencies to closing (i.e. without any right to terminate the Purchase Agreement on the basis of any subsequent review or title or investigation of the condition of the Knights Landing Property), subject to any modifications ordered by the Court. If they Buyer is the higher bidder, it shall pay the greater of its high bid of \$360,000.00 for the Knights Landing Property. In the event that a Qualified Overbidder outbids the Buyer, Buyer's offer to purchase the Knights Landing Property pursuant to the terms of the Purchase Agreement shall be maintained, for a period of 30 days after the conclusion of the hearing on this motion, as a back-up offer.

Authorization to Pay Commission to Agent

Trustee required the professional services of Agent to act as the Estate's agent to market and sell the Knights Landing Property. The Listing Agreement provides for the agent to receive a commission of six percent (6%) of the sales price of the Knights Landing Property. Trustee believes such a commission is within the range of customary and reasonable fees charged and paid in the area for professional brokerage services in connection with commercial real estate such as the Knights Landing Property. Trustee seeks authorization from the court to pay the commission to Agent upon closing the escrow from the Sales Proceeds.

Trustee is informed and believes that the agent is disinterested within the meaning of the Bankruptcy Code for purposes of this engagement. The Buyer, a licensed broker, represents himself in this transaction. The Agent represents the Trustee. Trustee believes that the Agent has carried and continues to carry out its responsibilities under the Listing Agreement, and that the payment of the commission pursuant to the Listing Agreement is appropriate and reasonable.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the Knights Landing Property.

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 Sell 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 Susan Didriksen, the Chapter 7 Trustee ("Trustee"), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Gregory T. Royston ("Buyer"), the residential real property commonly known as 5334 Leiser Road, City of Knights Landing, Sutter County, California ("Real Property"), on the following terms:

1. The Knights Landing Property shall be sold to Buyer for \$360,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 117.
2. The Knights Landing Property will be sold on an "as is" "where is" "with all faults" basis, with no representations or warranties, express or implied, with respect to the property.
3. The Trustee is hereby authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Trustee's real estate broker / agent, Lori Bluett.
5. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale. The reasonable and necessary costs and expenses of closing include the Estate's pro-rata share of real property taxes and assessments secured against the Knights Landing Property, and the amount of all delinquent taxes secured against the Property, upon the closing of the sale from the Sale Proceeds thereof.
6. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtor. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 7 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or

paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 7 Trustee directly from escrow.

7. The Net Sales Proceeds from the sale of the Knights Landing Property may be used to pay off the undisputed amount of the Dos Rios Secured Claim in full, upon the sale of the property located at 6801 Elvas Avenue, Sacramento, California. The Dos Rios Secured Claim is claimed in Proof of Claim No. 17. Claimant 701 Dos Rios Investors, LLC, is claiming an amount of \$684,478.33 owed for a note secured by a Deed of Trust recorded against the Knights Landing Property (5334 Leiser Road, City of Knights Landing, California) and the other real property located at 6801 Elvas Avenue, Sacramento, California. Trustee may pay Dos Rios from the remaining Net Sales Proceeds, the outstanding dispute amount owed on the secured claim to obtain the release of the claim from the Knights Landing Property.
8. All remaining liens shall attach to the Net Sales Proceeds in the same priority, extent and amount as they existed in the Property, remaining after paying the above authorized amounts shall be held by the Chapter 7 Trustee and not disbursed except upon further order of the court.

6.	<u>13-24254-E-7</u>	RUSS TRANSMISSION INC Gary F. Zilaff	MOTION TO SELL AND/OR MOTION TO PAY 2-4-14 [<u>109</u>]
	HSM-9		

Local Rule 9014-1(f)(2) 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, all creditors, and Office of the United States Trustee on February 4, 2014. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(a)(2). 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 court's tentative decision is to grant the Motion to Permit Debtor to Sell Property. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Trustee to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) [and 1303]. Here, the Trustee proposes to sell the real property commonly known as 6801 Elvas Avenue (and sometimes described by Debtor as property located at 6801 Folsom Boulevard), Sacramento County, Sacramento, California (the "Elvas Property").

In her Motion, Trustee seeks approval from the court for:

- I. Trustee's entry of the Purchase Agreement and sale of the property pursuant to the terms outlined below;
- II. Trustee's entry of the Storage Container Purchase Agreement and payment of \$15,000.00 to Ron Nelson from the proceeds of the sale of the Elvas Property for storage containers located on the Elvas Property (as described below);
- III. Payment of other customary expenses of closing associated with this sale;
- IV. Payment of the commission to Agent consistent with the approved listing agreement, if the proposed sale is approved and consummated with the proposed Buyer or any successful Qualified Overbidder.

BACKGROUND

The Elvas Property was listed on Debtor's Schedule A, filed in this case on March 29, 2013, by reference to the 6801 Folsom Boulevard Address, and was described as including an improved building containing approximately 14,000 square feet, with an estimated value of \$1,500,000.00.

In Debtor's Schedule D, Debtor listed a \$600,00.00 debt to Julia Carrington ("Carrington") for a loan of such an amount from Carrington to Debtor (the "Carrington Loan"), which was secured by a deed of trust recorded against the Elvas Property and other real property commonly referred to 5334 Lesier Road, located in the City of Knights Landing, Sutter County, California (the "Knights Landing Property").

In a proof of claim filed in this case on August 13, 2013, Claimant 701 Dos Rios Investors, LLC as successor by assignment of the Carrington Loan from Carrington to Dos Rios, asserted that it is owed \$684,478.33 for the Carrington Loan (the "Dios Rios Secured Claim.")

To assist with the marketing and sale of the property, the Trustee elected to retain Bluett & Associates, a real estate services and brokerage

firm ("Brokers") and specifically Lori Bluett, as her real estate broker and agent ("Agent"). The employment of the Broker and Agent on behalf the estate was approve by this court on June 20, 2013. Dckt. No. 68.

Pursuant the efforts of the Agent, Trustee *previously* received and accepted an offer to purchase the Property from George Sugarman ("Sugarman") for \$950,000.00. Trustee previously filed a motion, on October 29, 2013 (HSM-008), to have the sale to Sugarman approved, but Sugarman subsequently reduced the amount of his offer to \$900,000.00 as a condition of approving the condition of the Elvas Property during his due diligence. Although Trustee was willing to accept Sugarman's reduced offer, the timing of this proposed reduction days before the hearing, and the inability to notify potential bidders of the proposed reduction days before the hearing, and the inability to notify potential bidders of this change led Trustee to withdraw the motion.

During the Trustee's negotiations with Sugarman to finalize an amendment to the previous offer, Trustee received notice from Ron Nelson ("Nelson"), authorized agent of the Debtor, that certain storage containers located on the Property were actually purchased by Nelson and were his personal property, not the property of the Debtor or this Estate. These storage containers have been located on the Property for many years and serve, in part, as fencing along the boundary of the Elvas Proeprty. Sugarman raised concerns that removal of the storage containers might damage or expose damage to the Elvas Property, and could affect Sugarman's intended financing for the Property, and / or require Sugarman to provide replacement fencing along the border of the Elvas Property.

As a result, to facilitate the sale of the Property, and since the containers were not listed by Debtor as assets of the Estate and Trustee did not have any other documentation indicating any interest of the Estate in the containers, Trustee reached an agreement to purchase Nelson's interest in the containers for \$15,000.00, payable only from the proceeds of the sale of the Property.

Despite Trustee's efforts, Trustee could not reach an agreement with Sugarman on the terms of the amendment to his offer. Through the renewed efforts of the Broker, Trustee received and accepted a new offer to purchase the Elvas Property from Friedland Boctor Enterprises, LLC, the proposed buyer herein ("Buyer") for \$925,000.00. The terms of the new offer to purchase the Property are summarized below.

As set forth in its Schedule A, filed March 29, 2013, Debtor valued the Elvas Property at approximately \$1,500,000.00. The purchase price, however, is less than Debtor's estimated value, based on the other offers received by the Agent--including the lower offer from Sugarman that Trustee had previously been willing to accept subject to timely completion of the necessary documentation. Trustee believes that the price of \$925,000.00 represents fair value to the Estate and represents a fair market value for the property. Trustee also makes this conclusion based on similarly situated properties in the area, the condition of the existing improvements to the Elvas Property, the value of the Elvas property associated with the existing lease to 101 Building Supply, as disclosed in Debtor's Schedule G.

Trustee also believes that the price for the existing storage

containers to be paid by the Estate only from the sale proceeds for the sale of the Property is a fair and reasonable cost to be incurred by the Estate to facilitate the sale of the property.

Purchase Agreement

Buyer's offer to purchase, as amended, the Elvas Property has been accepted by the Trustee, as Seller, through the mutual execution of a Standard Offer, Agreement, and Escrow Instructions for Purchase of Real Estate, dated for reference as of January 27, 2014, and an Addendum to Purchase Agreement dated January 27, 2014 (collective referred to as the "Property Sale Agreement"). The terms of the purchase agreement are set forth in the true and correct copy of the Property Sale Agreement, attached as Exhibit "A" in support of the Motion. Dckt. No. 112.

The materials terms of the Purchase Agreement include:

1. The purchase price for the Elvas Property is \$925,000.00.
2. Buyer has deposited the sum of \$25,000.00 into escrow. The deposit is creditable against the purchase price and is non-refundable, subject to Seller obtaining court approval of this agreement. If the Buyer fails to close the purchase due to default by Buyer, the deposit shall be non-refundable and be retained by the Trustee as liquidated damages for such breach.
3. Buyer has 15 days from the date of the Agreement to inspect and approve the condition of the Elvas Property, and 10 days from the receipt of the preliminary title report and existing leases on the Property to approve the title to the Property and leases on the Property.
4. Buyer will pay the purchase price and close escrow on or before seven (7) days after the satisfaction of all contingencies and approval of this Motion by the court.
5. The following costs will be allocated to the estate and be paid from the sales proceeds:
 - a. \$15,000 for the Estate's purchase of the existing storage containers;
 - b. one-half the cost of the escrow fee;
 - c. the premium for the standard coverage title insurance policy;
 - d. costs to prepare and record the grant deed;
 - e. the prorated share of real property taxes and assessments secured against the property and rents and utilities;
 - f. any amounts required to be withheld for state or

federal taxes.

The portion of the sales proceeds remaining after deduction of the costs allocable to the estate as Seller, and after payment of commission to the Agent, shall be referred as the "Net Sale Proceeds."

6. Buyer will acquire the Elvas Landing Property in its "AS IS," "WHERE IS," "WITH ALL FAULTS" condition.
7. Title to the Elvas Property shall be subject to all liens or encumbrances for real property taxes and/or assessments which are not delinquent as of the close of escrow. Title shall also be subject to Nelson's right, pursuant to the Storage Container Purchase Agreement, to enter the Property for a period of 60 days after closing to remove any personal items within the storage containers.
8. The Elvas Property is subject to the lien securing repayment of the Dos Rios Secured Claim of approximately \$684,478.33, plus such additional interest and other undisputed sums as may be claimed by Dos Rios. Trustee anticipates paying off the undisputed amount of the Dos Rios Secured Claim in full upon the sale of the Elvas Property (less any amount that may be credited thereto upon any approved sale of the Knights Landing Property that closes prior to the sale of the Property), and accordingly is not seeking approval to sell the Property free and clear of this lien.
9. Trustee is not aware of any other secured interests in the Elvas Property. If any other monetary liens are discovered to exist against the Elvas Property, the delivery of the title free and clear from other liens may require the cooperation and consent of such lien holders. The Property Sale Agreement allows Trustee to request an extension of the hearing date to obtain the secured creditor's consent to the sale.
10. To the extent that any improvements or fixtures are located on the Elvas Property and the bankruptcy Estate owes any interest therein, including the storage containers located on the Property to be acquired by the Estate, the Motion seeks authority to sell and transfer to the Buyer the Estate's interest in such assets as part of the Elvas Property.
11. The proposed sale to Buyer is subject to overbidding at the hearing on this Motion.

Storage Container Purchase Agreement

Trustee's offer, as Buyer, to purchase the existing storage containers on the Property has been accepted by Nelson, as Seller, through the execution of a Purchase and Sale Agreement for Storage Containers located at 6801 Elvas Avenue, dated as of December 31, 2013 (the "Storage Container Purchase Agreement"). A true and correct copy of the Storage

Container Purchase Agreement is attached as Exhibit B, Dckt. No. 112, in support of this Motion.

The material terms of the Storage Container Purchase Agreement are as follows:

1. The Purchase Price for the existing storage containers is \$15,000.00;
2. The Purchase Price will be paid by the Estate if and only if the sale of the Elvas Property is completed and will be paid solely from the proceeds of the sale of the Elvas Property
3. The proposed purchase by the Estate of the existing storage containers and the Storage Container Purchase Agreement are subject to Bankruptcy Court approval through the granting of this Motion;
4. Nelson represents that he is the sole owner of the existing storage containers and is not aware of any liens or encumbrances thereon; and
5. Nelson will retain the right, for 60 days after the closing of the sale, to enter the Elvas Property to remove any and all property located within the storage containers. Any personal property remaining therein shall be deemed abandoned by Nelson and become part of the storage containers transferred to Buyer.

Overbidding Procedures

Trustee proposes that any entity or person wishing to become a Qualified Overbidder must deliver to the Trustee a non-refundable deposit in the amount of \$25,000.00, in the form of a cashier's check or money order made payable to "Susan Didriksen, Chapter 7 Trustee of the Russ Transmission Inc Bankruptcy Estate," which will be applied to the purchase price for the property, if the Qualified Overbidder is the successful purchaser following the hearing on the Motion, and demonstrate to the Trustee the ability to close escrow within seven calendar days of the court's order approving the Motion.

Such financial showing shall include, without limitation, either overbidder qualification for financing acceptable to Trustee and sufficient to pay the purchase price for the property, or proof of the ability of the overbidder to fund payment of the purchase price in cash. The Overbidder Deposit and showing of financial ability to perform shall be delivered to the Trustee no later than two business days prior to the date scheduled for the hearing on this Motion. The overbidder may obtain permission to inspect the property. If a Qualified Overbidder is not successful at the hearing, the deposit shall be returned to the Overbidder upon entry of the order confirming the successful bidder for the Knights Landing Property.

Trustee proposes that the initial overbid be \$930,000.00 and subsequent overbids, if any, be in increments of \$5,000. The high bidder

must purchase the Elvas Property on terms identical to those set forth in the Purchase Agreement, including the waiver of all contingencies to closing (i.e. without any right to terminate the Purchase Agreement on the basis of any subsequent review or title or investigation of the condition of the Knights Landing Property), subject to any modifications ordered by the Court. If the Buyer is the higher bidder, it shall pay the greater of its high bid of \$925,000.00 for the Elvas Property. In the event that a Qualified Overbidder outbids the Buyer, Buyer's offer to purchase the Elvas Property pursuant to the terms of the Purchase Agreement shall be maintained, for a period of 30 days after the conclusion of the hearing on this motion, as a back-up offer.

Authorization to Pay Commission to Agent

Trustee required the professional services of Agent to act as the Estate's agent to market and sell the Knights Landing Property. The Listing Agreement provides for the agent to receive a commission of six percent (6%) of the sales price of the Knights Landing Property. Trustee believes such a commission is within the range of customary and reasonable fees charged and paid in the area for professional brokerage services in connection with commercial real estate such as the Elvas Property. Trustee seeks authorization from the court to pay the commission to Agent upon closing the escrow from the Sales Proceeds.

Trustee is informed and believes that the Agent is disinterested within the meaning of the Bankruptcy Code for purposes of this engagement. As described in the Property Sale Agreement, the Broker represents both the Trustee and the Buyer in this transaction. Based on her experience, the Trustee is informed that such dual representation is common in the commercial real estate brokerage community. This dual representation was disclosed to the Trustee and the Buyer.

Because the Agent is acting as agent for both buyer and seller in this transaction, the entire six percent (6%) commission will be paid to the Broker, and will not be split with other parties. Trustee believes that the Agent has carried and continues to carry out its responsibilities under the Listing Agreement, and that the payment of the commission pursuant to the Listing Agreement is appropriate and reasonable.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the Knights Landing Property.

Trustee further requests that the court waive the application of Federal Rule of Bankruptcy Procedure 6004(h). The Property Sale Agreement provides for escrow to close within seven (7) days of the approval of this Motion by the Court. Due to this short escrow period for the closing of the sale, a waiver that would otherwise stay the effectiveness of the court's order for a period of fourteen (14) days is asserted as necessary, so that Trustee may promptly consummate the sale to the Buyer or other successful Qualified Overbidder. Trustee states that the prompt closing the sale will enable the Estate to avoid additional interest accrual on the loan held by Dos Rios, thereby benefitting the Estate and Creditors.

Federal Rule of Bankruptcy Procedure 6004(h) provides a fourteen (14) day stay of enforcement on orders authorizing the use, sale, or lease of property other than cash collateral. The court determines that cause exists to waive the application of Federal Rule of Bankruptcy Procedure 6004(h) in this case.

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 Sell 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 Susan Didriksen, the Chapter 7 Trustee ("Trustee"), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Gregory T. Royston ("Buyer"), the residential real property commonly known as 5334 Leiser Road, City of Knights Landing, Sutter County, California ("Real Property"), on the following terms:

1. The Elvas Property shall be sold to Buyer for \$925,000.00, on the terms and conditions set forth in the Property Sale Agreement, filed as Exhibit A in support of the Motion. Dckt. 112.
2. The Elvas Property will be sold on an "as is" "where is" "with all faults" basis, with no representations or warranties, express or implied, with respect to the property.
3. The Trustee is hereby authorized to execute any and all documents reasonably necessary to effectuate the sale of the Elvas Property and consummate the purchase of the storage containers from Nelson.
4. The Trustee is authorized to enter the Storage Container Purchase Agreement with Ron Nelson, filed with the court as Exhibit B in support of the Motion, Dckt. No. 112, to acquire at closing the existing storage containers located on the Elvas Property.
5. The Trustee is authorized to transfer the Estate's interest in the storage containers acquired from Nelson to Buyer or any successful Qualified Overbidder as part of the Property being conveyed thereto, subject to Nelson's 60-day right of entry to remove any and all personal property located therein.

6. Trustee is authorized to pay the sum of \$15,000.00 to Nelson from the Estate's purchase of the existing storage containers to be included with the Property, upon the closing of the sale of the Property from the Sales Proceeds thereof.
7. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Trustee's real estate broker/agent, Lori Bluett.
8. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale. The reasonable and necessary costs and expenses of closing include the Estate's pro-rata share of real property taxes and assessments secured against the Elvas Property, and the amount of all delinquent taxes secured against the Property, upon the closing of the sale from the Sale Proceeds thereof.
9. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtor. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 7 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 7 Trustee directly from escrow.
10. The Net Sales Proceeds from the sale of the Elvas Property may be used to pay off the undisputed amount of the Dos Rios Secured Claim in full, upon the sale of the property located at 6801 Elvas Avenue, Sacramento, California. The Dos Rios Secured Claim is claimed in Proof of Claim No. 17. Claimant 701 Dos Rios Investors, LLC, is claiming an amount of \$684,478.33 owed for a note secured by a Deed of Trust recorded against the Knights Landing Property (5334 Leiser Road, City of Knights Landing, California) and the other real property located at 6801 Elvas Avenue, Sacramento, California. Trustee may pay Dos Rios from the remaining Net Sales Proceeds, the outstanding dispute amount owed on the secured claim to obtain the release of the claim from the Knights Landing Property.
11. All remaining liens shall attach to the Net Sales Proceeds in the same priority, extent and amount as

they existed in the Property, remaining after paying the above authorized amounts shall be held by the Chapter 7 Trustee and not disbursed except upon further order of the court.

11. The fourteen (14) day stay of enforcement provided in Rule 6004(h), Federal Rules of Bankruptcy Procedure, is waived.

7. 13-30455-E-7 CHRISTOPHER SANCHEZ ORDER TO SHOW CAUSE - FAILURE
 Aaron C. Koenig TO PAY FEES
 2-11-14 [[52](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$25.00 due on January 28, 2014). The court docket reflects that on February 18, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

8. [10-23577](#)-E-11 GLORIA FREEMAN
GMF-19 Pro Se

HEARING RE: MOTION TO COMPEL
ABANDONMENT
2-13-14 [[1342](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 11 Plan Administrator, all creditors, the Internal Revenue Service, and the United States Attorney on February 13, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Counter Motion for An Order to Compel Abandonment of Personal Property has been set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 6007(b) and 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Counter Motion for An Order to Compel Abandonment of Personal Property. 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:

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).

**APPLICATION OF FEDERAL RULE OF CIVIL PROCEDURE 41(e),
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9017**

In this motion the Debtor states, "**We do not** consent to the Courts resolution of disputed material factual issues pursuant to F.R.Civ.P. 43(e) as made applicable to F.R. Bankr P 9017." Dckt. 1342 [emphasis in original]. Federal Rule of Bankruptcy Procedure 9017 provides that the Federal Rules of Evidence and Rules 43, 44 and 44.1 of the Federal Rules of Civil Procedure apply in cases under the Bankruptcy Code.

Federal Rule of Civil Procedure 43 provides for the taking of testimony in federal court. Rule 43(c) provides that for motions the court may hear the matter on affidavits or, in whole or in part, on oral

testimony. There is no Federal Rule of Civil Procedure 43(e).

However, Federal Rule of Bankruptcy Procedure 9014(d) provides that evidence relating to disputed material facts in a contested matter shall be taken in the same manner as testimony in an adversary proceeding. Thus, under this rule, to the extent that there are disputed material facts, if the parties request, the court shall conduct an evidentiary hearing. Evidentiary hearings are conducted in this District with the use of direct testimony statements, L.B.R. 9017-1, as part of the live testimony.

MOTION DOES NOT CONFORM FEDERAL RULE OF BANKRUPTCY PROCEDURE 9013

Debtor requests an order approving the abandonment of Debtor's postpetition interests in her tax refunds from 2011, but does not describe the funds with specificity, and makes vague references to the origin of the tax payments, and a settlement between her Laurence Freeman and Trustee David Flemmer on July 19, 2013. Debtor, however, does not state with particularity the grounds upon which the request for abandonment is based, in contravention of Federal Rule of Bankruptcy Procedure 9013.

Rather, Debtor describes the particular asset that she is requested to be abandoned as the following:

1) Tax Refunds from 2011 Wildcard exemption: Re: 2011 Tax refund: Under the Wildcard Exemption which Debtor is entitled: Debtor chooses the IRS tax refund originally in the amount of \$52,857.09, See (Doc 1057) Pages 4 - 6, the original tax payments came out of Ulrich, Nash and Gump for back taxes that were rejected by the IRS (see Exhibit K). The entire tax refund (\$52,000) was settled with Laurence Freeman and Trustee David Flemmer on July 19, 2012 (Exhibit A/B). The sum of \$18,448.60 and \$3600 and \$800 in the Frozen US Bank Accounts and the amounts coming back and approved from Stephen Bernicker of \$3500 mentioned in Trustee's objection page 5 (Exhibits C/D/E/I) constitutes the other half of the amount, the \$18,448.60 claimed by Debtor under the Wildcard Exemption. Mr. Laurence Freeman believed it to be his separate property as does Christopher Merrill (See Exhibit F and H). Furthermore, many administrative expenses were paid out of this tax refund and the debtor has a claim for administrative expenses (Exhibit J) [all sic]. Counter Motion for Order to Compel, Dckt. No. 1342 at 2.

Debtor presents a thicket of facts, densely packed, with no clear recitals on the details and current status of Debtor's 2011 Tax Refund. Debtor has not exempted a 2011 tax refund in her most recently amended Schedule C, filed on September 19, 2013. Throughout the Motion, Debtor makes references to a settlement agreement that was entered between the Chapter 11 Plan Administrator and Laurence Freeman, wherein joint escrow instructions, and a release and settlement agreement were executed between Laurence Freeman (Debtor's spouse) and the Chapter 11 Trustee. Exhibit B, Dckt. No. 1345.

The impact of the settlement between Laurence Freeman and the Trustee, as it relates to this Debtor, is not clear. Debtor seems to expect

the court to sift through the pleadings to ascertain how the settlement affected Debtor and the Chapter 11 Estate's rights to the return of the tax refund. From the court's recollection, Laurence Freeman and Debtor were once married, then asserted to be divorced, and then asserted to still be married because of the indeterminate status of Debtor and Laurence Freeman's marital dissolution proceedings. It is not clear whether Laurence Freeman once had possession of the tax refund, and whether he delivered back possession of these funds as a condition of the settlement. The court notes that it had previously granted the Trustee's Motion to Approve the Compromise with Laurence Freeman, WFH-24, on July 19, 2012. Order Granting Trustee's Motion, Dckt. No. 444.

In that order, the court authorized Trustee to execute a grant deed to convey title to certain real property to Laurence Freeman, and execute a Quitclaim Bill of Sale transferring the estate's interest in the business of Freeman's company, Ulrich, Nash & Gump to Laurence Freeman. *Id.* The final settlement, however, makes no mention of the status of the alleged income tax refund that Trustee alleged Laurence Freeman received on July 1, 2011. Dckt. No. 430 at 4. Trustee alleged that the tax refund of \$52,857.09, payable jointly to Debtor and Laurence Freeman, was deposited by the couple, each retaining half of the proceeds without disclosing the tax refund to the Trustee. Debtor is uncertain as to whether the tax funds are still being held in the accounts where they were deposited.

Debtor references the Settlement Agreement and Mutual Release between two Chapter 11 Trustees and Steven Berniker, which was executed after the Jon Tesar, the Trustee for the Staff USA case, filed a Motion in the Debtor's bankruptcy case to recover for the Estate the value of various payments made to Berniker, who rendered legal services for the benefit of Debtor without obtaining prior bankruptcy court approval to be employed as her counsel, or to be compensated for such services. Exhibit C, Dckt. No. 1345. Again, however, the court is confused as to how this settlement agreement, which mandated that Berniker pay the aggregate sum of \$3,500 to Tesar as the Chapter 11 Trustee for the Staff USA bankruptcy case, relates in any way to the tax refund amounts claimed by Debtor.

PRIOR MOTION TO COMPEL

The court further notes that Debtor had previously filed a Motion to Compel Abandonment on July 31, 2013, which included a request for a court order authorizing the abandonment of "Tax Refunds from 2011, 2012 from Debtor's personal earnings." Motion to Compel Abandonment, GMF-12. The court granted the Motion in part, with respect to certain household goods and furnishings, but rejected Debtor's request for a court order compelling the abandonment of her 2011 tax refund.

In the court's ruling on that Motion, the court noted that there was a pending objection to claim of exemption (DCN:WFH-36) that related to allegedly undisclosed tax refunds. The Debtor's husband, Laurence Freeman, had claimed an interest in the tax refunds. The court stayed discovery pending Mr. Freeman substituting in counsel to represent him, as W. Austin Cooper, the Debtor's attorney who sued Mr. Freeman and alleged that Mr. Freeman was mentally incompetent, had withdrawn from attempting to represent Mr. Freeman. Dckt. No. 1024.

The court also noted that it appeared that Debtor was seeking the abandonment of her postpetition earnings. Pursuant to 11 U.S.C. § 1115, however, postpetition income of an individual Chapter 11 Debtor is property of the bankruptcy estate. Debtor has not provided evidence or argument for the court to find otherwise. Debtor also sought the abandonment of assets that she has claimed as exempt and are currently subject to a pending objection by the Trustee. The court agreed that this request is premature, as the Trustee's time for objecting to exemptions had not yet run and the Trustee is currently in discovery to litigate these matters.

It appears that most of Trustee's prior objections to Debtor's claims of exemptions have been resolved, except for one. On December 17, 2013, the court clarified in its Civil Minute Order, Dckt. No. 1279, that the Plan Administrator's Objection is only to the following exemption set forth in the Fifth Amended Schedule C, stating,

2003 - 2005 tax refunds of appx. \$52,857.09 resulting from overpayment by Non-filing spouses corporation; this refund and all other refunds were disposed of pursuant to the July 19, 2012 settlement in this case - already given to non-filing spouse no value to the estate; debtor properly exempted her interest in the taxes with all remaining b(5) wildcard C.C.P. § 703.140(b)(5)

Amount Claimed as Exempt: \$19,899.06

Value of Asset: \$0.00

This appears to be the same asset that Debtor seeks to abandon. The court then reiterates that Debtor's request to abandon assets which Debtor has claimed as exempt is premature. Trustee has objected to Debtor's exemptions and has begun efforts at discovery, but has not fully litigated his objections to date.

CONCLUSION

The Motion does not describe the personal property sought to be abandoned, and does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The court does not have sufficient information regarding the property to be abandoned. This court will not issue vague orders. Furthermore, Debtor has not provided sufficient evidence or legal authority for the court to abandon assets in which she has claimed as exempt. The asset appears to be the subject of an ongoing objection to claim by the Chapter 11 Trustee.

Thus, the Motion is denied.

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 Abandon Property filed by the Debtor

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

IT IS ORDERED that the Motion to Compel Abandonment is denied.

9. [10-23577](#)-E-11 GLORIA FREEMAN MOTION TO ABANDON
WFH-43 Pro Se 2-4-14 [[1328](#)]

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service filed on February 4, 2014, states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Office of the United States Plan Administrator in Sacramento, the United States Department of Justice, the United States Attorney, other creditors, and other parties in interest on February 4, 2014. By the court's calculation, 23 days' notice was provided. 14 days' notice is required

Tentative Ruling: The Motion to Abandon Exempt Property has been set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 6007(b) and 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

The Chapter 7 Trustee has filed this Motion for an order authorizing the abandonment of specified assets in which the Debtor has claimed an exemption. The Debtor filed a statement of non-opposition on February 13, 2014. Dckt. 1338.

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).

Here, the Chapter 11 Plan Administrator, moves the court for an authorizing the Plan Administrator to abandon certain exempt property.

On May 23, 2013, May 31, 2013, and June 13, 2013, Debtor filed an Amended Schedule C list of claimed exemptions. The Plan Administrator timely objected. On July 30, 2013, Debtor filed a further amendment to her Schedule C list of claimed exemptions. At a hearing held on August 29, 2013, the court ordered that Debtor would have one more opportunity to amend her Schedule C. After such an amendment, the Plan Administrator's existing objection to exemptions would apply to the final Amended Schedule C, exempt as supplemented by the Plan Administrator.

Debtor filed her final Amended Schedule C list of exemptions on September 19, 2013. Dckt. No. 1057. The Plan Administrator did not supplement the objection, and with only one exception, did not object to Debtor's amended list of exemptions. On December 16, 2013, this court noted that the Plan Administrator's only remaining objection was to the exemptions related to the "2002-2005 tax refunds of appx. \$52,857.09...." Dckt. No. 1279.

Specifically, the court in its Civil Minute Order, Dckt. No. 1279, ordered that the Plan Administrator's Objection is only to the following exemption set forth in the Fifth Amended Schedule C, stating,

2003 - 2005 tax refunds of appx. \$52,857.09 resulting from overpayment by Non-filing spouses corporation; this refund and all other refunds were disposed of pursuant to the July 19, 2012 settlement in this case - already given to non-filing spouse no value to the estate; debtor properly exempted her interest in the taxes with all remaining b(5) wildcard C.C.P. § 703.140(b)(5)

Amount Claimed as Exempt: \$19,899.06

Value of Asset: \$0.00

The Plan administrator now seeks to abandon these assets not subject to a valid objection, up to the amount of the claimed objection. The assets are described in the below chart.

Description of Property	Basis for Exemption	Value of Claimed Exemption
Charles Schwab, 211 Main St, San Francisco, CA 94105- Acct # xxxx2814 (W) \$22,750.38 On Date of Filing, the exempted amount of 2468.09 plus any growth in the stock value remains in the account the remainder was transferred to the debtor in possession account	C.C.P. § 703.140(b)(5)	\$2,468.09
Schools Federal Credit Union, 1485 Response Rd. #126, Sacramento, CA 95815, Acct # xxxx9710 \$578.16; the balance of \$100.00 was transferred to the debtor in possession account	C.C.P. § 703.140(b)(5)	\$457.31

Household Goods and Furnishings various furniture, gardening tool, wooden lights, Misc home repair tools, bed, shelf, cabinet, small table, 11 table lamps, vacuum cleaner, two twin beds, hall rug, office table and chair, book case, VCR, coffee table, 4 stacking tables, two wooden carriers abandoned on August 29, 2013	C.C.P. § 703.140(b)(3)	\$3,725.00
Family pictures, 15 framed prints, 8 small framed pictures, CD collection, book collection, no single item worth more than \$100.00 and most valued between \$5.00 and \$10.00 total value \$645.00 - abandoned August 29, 2013	C.C.P. § 703.140(b)(3)	\$645.00
Debtors Clothes, abandoned August 29, 2013	C.C.P. § 703.140(b)(3)	\$320.00
2 furs, wedding ring \$1000.00 value, misc jewelry - abandoned August 29, 2013	C.C.P. § 703.140(b)(4)	\$1,350.00
Camera, exercise bike, skis, 2 bikes, tennis racket, music key board and piano total value \$360.00 - abandoned August 29, 2013	C.C.P. § 703.140(b)(5)	\$360.00
State Farm Life Ins Co, 1555 Promontory Circle Greeley CO 80638 Policy # LF-1099-xxxx, current value \$4000.00 exempting maximum due to ongoing dividends	C.C.P. § 703.140(b)(10)(E)	\$11,075.00
Safe Credit Union 7475 Madison Avenue Citrus Heights CA 95610, IRA Account \$25,856.98 at date of filing current value appx \$15,000.00/ Account # 32877-60 and 32877-61	C.C.P. § 703.140(b)(10)(E)	\$25,856.98
E*Trade Securities LLC , P0 Box 1542 Merrifield VA 22116, SEP IRA \$64,812.51 on date of filing current value appx \$60,000.00. Account #5739-4088	C.C.P. § 703.140(b)(10)(E)	\$64,812.51
Ameriprise , SPS Advantage c/o Westlake, Grahl & Glover 9265 Sierra College Blvd Granite Bay CA 95746, SEP IRA worth on date of filing \$434,773.95 worth appx \$442,000.00 on 7/29/13 this is property of the Non-Filing Spouse and has no value to the estate	C.C.P. § 703.140(b)(10)(E)	\$442,000.00
Ameriprise , SPS Advantage c/o Westlake, Grahl & Glover 9265 Sierra College Blvd Granite Bay CA 95746, SEP IRA from 401k \$62,203.00. Account #0000-6100-7354-6133.	C.C.P. § 703.140(b)(10)(E)	\$62,203.00
American United life Ins Company P0 Box 368 Indianapolis IN 46206-0368, Qualified Pension \$11,323.63. Account #G43040.	C.C.P. § 703.140(b)(1)(E)	\$11,323.63
Delinquent Support from Laurence Freeman - located no court order to support this asset	C.C.P. § 703.140(b)(10)(D)	\$92,853.58
2002 Acura VIN JHKA9602COI 2350 Mileage 130,000-value \$3,000.00 on date of filing (February 2010) - Already abandoned back to debtor and non-filing spouse no further value to the estate	C.C.P. § 703.140(b)(2)	\$0.00
2006 Scion (UNG driven by husband) value \$11,000.00 on date of filing (February 2010) - Already abandoned back to debtor and non-filing spouse no further value to the estate	C.C.P. § 703.140(b)(2)	\$3,300.00
row boat \$20.00 - Abandoned August 29, 2013	C.C.P. § 703.140(b)(3)	\$20.00

Computers, fax machines, misc machinery, fixtures, equipment and supplies located at UNG, Staff USA and Premium Access included in business valuations; debtor would like exempt the computers and desks and electronics for tools for the trade along with various other pieces of office furniture - except any office equipment and furniture already liquidated, sold, or lost to landlords / secured creditors

C.C.P. § 703.140(b)(6)

\$2,075.00

The assets listed above are subject to valid claims of exemption and have no value to the estate. The Plan Administrator notes that he is requesting only the abandonment of the assets in the amounts set forth above; to the extent that accounts or other assets have values in excess of the amounts claimed exempt, such excess amounts are not subject to this Motion.

Since there are negative financial consequences to the Estate from retaining the property, the court determines that the property is of inconsequential value and benefit to the Estate, and orders the Chapter 11 Plan Administrator to abandon the property.

ISSUANCE OF A COURT DRAFTED ORDER

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 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. Charles Schwab, 211 Main St, San Francisco, CA 94105- Acct # xxxx2814 (W), in the exempted amount of \$2,468.09 plus any growth in stock value which remains in the account and was transferred to the Debtor in Possession.
2. Schools Federal Credit Union, 1485 Response Rd. #126, Sacramento, CA 95815, Acct # xxxx9710 in the amount of \$457.31.
3. Various furniture, gardening tool, wooden lights, miscellaneous home repair tools, bed, shelf, cabinet, small table, 11 table lamps, vacuum cleaner, two twin beds, hall rug,

office table and chair, book case,
VCR, coffee table, 2 stacking tables,
two wooden carriers, which were
already abandoned on August 29, 2013.

4. Family pictures, 15 framed prints, 8 small framed pictures, CD collection, book collection, no single item worth more than \$100.00 and most valued between \$5.00 and \$10.00 total value \$645.00, which were already abandoned on August 29, 2013.
5. Debtors Clothes, abandoned August 29, 2013.
6. 2 furs, wedding ring \$1000.00 value, misc jewelry, which were abandoned on August 29, 2013.
7. Camera, exercise bike, skis, 2 bikes, tennis racket, music key board and piano total value \$360.00, which were abandoned August on 29, 2013.
8. State Farm Life Ins Co, 1555 Promontory Circle Greeley CO 80638 Policy # LF-1099-xxxx, in the amount not to exceed \$11,075.00.
9. Safe Credit Union 7475 Madison Avenue, Citrus Heights CA 95610, IRA Account # 32877-60 and 32877-61, in the amount not to exceed \$25,865.98.
10. E*Trade Securities LLC , PO Box 1542 Merrifield VA 22116, SEP IRA Account #5739-4088, in an amount not to exceed \$64,812.51
11. Ameriprise, SPS Advantage c/o Westlake, Grahl & Glover 9265 Sierra College Blvd Granite Bay CA 95746, SEP IRA, worth on date of filing \$434,773.95, and worth approximately \$442,000.00 on 7/29/13; this is property of the Non-Filing Spouse and has no value to the estate.
12. Ameriprise , SPS Advantage c/o Westlake, Grahl & Glover 9265 Sierra College Blvd Granite Bay CA 95746, SEP IRA Account #0000-6100-7354-6133, in an amount not to exceed \$62,203.00.
13. American United life Ins Company PO

Box 368 Indianapolis IN 46206-0368,
Qualified Pension Account #G43040, in
an amount not to exceed \$11,323.63.

14. Delinquent Support of \$92,853.58 from Laurence Freeman; Trustee could not locate a court order to support this asset.
15. 2002 Acura VIN JHKA9602COI, which was already abandoned back to debtor and non-filing spouse, and has no further value to the estate.
16. 2006 Scion (UNG driven by Laurence Freeman); this asset was already abandoned back to debtor and non-filing spouse, and is of no further value to the estate.
17. Row boat worth \$20.00; already abandoned on August 29, 2013.
18. Computers, fax machines, misc machinery, fixtures, equipment and supplies located at UNG, Staff USA and Premium Access included in business valuations; debtor would like exempt the computers and desks and electronics for tools of the trade along with various other pieces of office furniture - except any office equipment and furniture already liquidated, sold, or lost to landlords / secured creditors.

are abandoned to Gloria Freeman, the Debtor, by this order,
with no further act of the Trustee required.

10. [09-35543](#)-E-13 ROBERT/ASHLEY PLACE
ADR-3 Justin K. Kuney

CONTINUED MOTION TO SELL
12-4-13 [[62](#)]

CONT. FROM 2-25-13, 1-14-13

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). 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 court's tentative decision is to grant the Motion to Sell Property. 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:

PRIOR HEARING

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

The Debtor proposed to sell the real property commonly known as 11016 Rainbow River Court, Rancho Cordova, California. The sales price was \$225,000.00 and the named buyer was Olivia P Hormoz. However, the Debtors appeared and the hearing and advised the court that the Buyer withdrew from the contract.

The court continued the hearing to afford the Debtors the opportunity to find a replacement buyer

SUPPLEMENTAL DOCUMENTS

The Debtor filed supplemental documents, proposing to sell the real property commonly known as 11016 Rainbow River Court, Rancho Cordova, California. The sales price is \$250,000.00 and the named buyer is Alex Vasquez and Wendy Stevenson. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 83.

The court notes these terms are equal to or greater than the terms set forth in the prior Purchase Agreement and the court treats the present offer as an overbid. The Notice of Proposed Short Sale is sufficient.

The court considered such other offers as stated on the record at the hearing.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the property.

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

IT IS ORDERED that Robert Kenneth Place and Ashley Lee Place, Debtor ("Debtor"), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Alex Vasquez and Wendy Stevenson or nominee ("Buyer"), the residential real property commonly known as 11016 Rainbow River Court, Rancho Cordova, California, on the following terms:

1. The Real Property shall be sold to Buyer for \$250,000.00, on the terms and conditions set forth in the Purchase Agreement, Dckt. 83.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale.
5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or

paying the fees and costs as allowed by this order,
shall be disbursed to the Chapter 13 Trustee directly
from escrow.