UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 1, 2018, at 10:30 a.m.

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1. **16-26705-E-7** **CAROL GUENTHER** **MOTION TO COMPEL**
ADR-1 **Justin Kuney** **ABANDONMENT**
2-15-18 [36]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 15, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Compel Abandonment is granted.

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

The Motion filed by Carol Guenther ("Debtor") requests the court to order Susan Smith ("the Chapter 7 Trustee") to abandon property commonly known as 5324 Agate Way, Carmichael, California ("Property"). The Property is encumbered by the lien of Pingora Loan Servicing, LLC, c/o Cenlar FSB ("Creditor"), securing a claim of $207,097.18. Proof of Claim 7-1. Debtor's Declaration has been filed in support of the Motion and values the Property at $289,900.00 currently and $263,000.00 as of the petition date. Debtor's Declaration also asserts that the claim currently is for $212,652.43.

Debtor states that even though she has claimed an exemption in the Property in the amount of $53,000.00, she could claim an exemption ranging from $75,000.00 to $100,000.00. Therefore, Debtor argues that the Property should abandoned as burdensome or of inconsequential value.

Unfortunately for Debtor, she has not actually claimed a higher exemption amount that would affect the analysis of this Motion. While contending that she could be entitled to a $100,000 exemption, nobody has been given the opportunity to challenge such asserted rights.

Nevertheless, the amounts pleaded as of the petition date establish that the Property is of inconsequential benefit to the Estate. With a property value of $263,000.00 securing a claim of $207,097.18 and a claimed exemption of $53,000.00, the remainder would be $2,902.82. Costs of any sale, estimated at 8.00%, would total approximately $21,040.00. Those costs of sale would result in the Estate netting ($18,137.18).

The court finds that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Carol Guenther ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 5324 Agate Way, California, and listed on Schedule A by Debtor is abandoned by Susan Smith ("the Chapter 7 Trustee") to Carol Guenther by this order, with no further act of the Chapter 7 Trustee required.

2. **17-22347-E-11** **UNITED CHARTER LLC** **CONTINUED STATUS CONFERENCE**
Jeffrey Goodrich **RE: VOLUNTARY PETITION**
4-7-17 [1]

Debtor's Atty: Jeffrey Goodrich

Notes:
Continued from 1/25/18 to be conducted in conjunction with other matters now scheduled at that time.

Operating Reports filed: 2/14/18 [Jan 2018]; 2/15/18 [Jul, Aug, Sept 2017]

[JJG-1] Order denying motion to use cash collateral filed 1/26/18 [Dckt 153]

The Status Conference is continued to 10:30 a.m. on xxxxxxxxx, 2018.

The court has reviewed a number of pleadings concerning the prosecution of this case and the administration of assets of this case in connection with the Motion for Relief From the Automatic Stay filed by East West Bank, and the Motion to Convert or Dismiss filed by the U.S. Trustee. The hearings on both motions have been continued pursuant to the Stipulations of the various Parties. The court concurs in this requests and is heartened by this potential convergence of the interests of the Parties.

The court is utilizing the March 1, 2018 Status Conference to address with the Parties some issues identified in connection with this case.

Authorized Use of Cash Collateral and Monthly Operating Report

The court has issued several cash collateral orders, which orders authorized the use of cash collateral to pay the following expenses through January 31, 2018:

A. For the Period June 1, 2017 through October 31, 2017, cash collateral was authorized to pay the following expenses:

1. Cal Water, Water Bill.....$ 118
2. PG&E.....$ 250
3. Property Insurance.....$2,035
4. Maintenance.....$1,000
5. FTB.....$ 75
6. Backflow Water Testing.....$ 6.25
7. Property Taxes.....$3,800
8. Accounting.....$ 500
9. Bay Alarm.....$ 103
10. Contingency.....$ 500

Order, Dckt. 61. The court granted all creditors with a lien on the cash collateral used a replacement lien on post-petition collateral of the same priority, validity, and extent, to the extent that the use resulted in a reduction in the authorized use of the collateral. *Id.*

B. For the Period November 1, 2017 through January 31, 2018, cash collateral was authorized to pay the following expenses:

1. Cal Water, Water Bill.....$ 118
2. PG&E.....$ 250
3. Property Insurance.....$2,035
4. Maintenance.....$1,000
5. FTB.....$ 75
6. Backflow Water Testing.....$ 6.25
7. Property Taxes.....$3,800
8. Accounting.....$ 500
9. Bay Alarm.....$ 103
10. Contingency.....$ 500

Order, Dckt. 77. The court granted all creditors with a lien on the cash collateral used a replacement lien on post-petition collateral of the same priority, validity, and extent, to the extent that the use resulted in a reduction in the authorized use of the collateral. *Id.*

However, on January 26, 2018, the court denied a further extension of the use of cash collateral. Order, Dckt. 153.

As of February 1, 2018 and continuing thereafter, the court has not authorized the use of cash collateral by Debtor in Possession. A review of the Docket shows that the Debtor in Possession has not filed a new motion for authorization to use cash collateral.

Monthly Operating Reports and
Disbursement of Monies by The Debtor in Possession

In reviewing the latest operating report for January 2018, Debtor in Possession reports a profit from the Statement of Operations of $18,287.00 for the current month, but Debtor in Possession also reports a cumulative loss of ($33,241.00). Dckt. 156. Also reported is that for January 2018 and December 2017, Debtor in Possession made more than double the amount of disbursements ($131,163.00) to the amount of incoming receipts ($62,808.00).

In January 2018, it appears that Debtor in Possession was only able to report a profit from the Statement of Operations because Debtor in Possession removed $68,991 in accrued post-petition interest from East-West Bank's claim. Debtor in Possession asserts that such a reduction was appropriate because the bank's appraisal conducted in November 2017 "indicates that no interest should accrue postpetition on [the bank's] secured claim other than $57,969, which is the difference between its Proof of Claim amount and the fair market value of its collateral." Dckt. 160 at 8:19–22.

The Statement of Cash Receipts and Disbursements reveals that an additional $2,000.00 was designated as a capital contribution in January 2018, and presumably, those funds came from the Zhangs. Cumulatively, $72,168.00 is listed as capital contribution. Dckt. 156 at 9.

The Debtor in Possession amended prior returns to include bank statements and copies of the checks written by the Debtor in Possession to distribute the cash collateral monies of the Bankruptcy Estate. The chart below identifies some of the payments made by Debtor which raise questions concerning the appropriateness of such payments:

January 2018 MOR Dckt. 156		
Ck No. 1103 Sig. Cindy Zhang	Payee: Classic Plan Memo: Loan #220246	$2,034.24
Ck. No: Counter Check Sig. "Magedlea R. Patiso" [illegible printed name and signature]	Payee: Cash Memo: [none stated]	$450.00
December 2017 MOR Dckt. 142		
Ck. No 2033 Sig. Cindy Zhang	Payee: Classic Plan Memo: [illegible]	$2,034.44
Ck. No 1102 Sig. Cindy Zhang	Payee: East West Bank Memo: [none]	$13,139.00
Ck. No 1100 Sig. Cindy Zhang	Payee: East West Bank Memo: [none]	$3,275.00
Ck. No 1099 Sig. Cindy Zhang	Payee: East West Bank Memo: [none]	$18,200.78
Ck. No 1093 Sig. [illegible]	Payee: East West Bank Memo: [illegible]	$3,335.00
November 2017 MOR Dckt. 115		
Ck. No 1029 Sig. Cindy Zhang	Payee: Classic Plan Memo: [illegible]	$2,034.44

October 2017 MOR Dckt.		
Ck. No 1019 Sig. Cindy Zhang	Payee: [Illegible] Property Advisors Memo: [illegible]	$3,700.00
September 2017 MOR Dckt. 159		
Ck. No Counter Check Sig. [illegible]	Payee: Bank of Stockton Memo: [none]	$12,196.00
Ck. No 1016 Sig. Cindy Zhang	Payee: Classic Plan Memo: Loan 270746 #8	$2,034.44
August 2017 MOR Dckt. 158		
Ck. No 1009 Sig. Cindy Zhang	Payee: Wayne Bier Memo: Wayne Bier	$7,000.00
Ck. No 1011 Sig. Cindy Zhang	Payee: Wayne Bier Memo: Wayne Bier	$7,000.00
Ck. No 1012 Sig. Cindy Zhang	Payee: Classic Plan Memo: Payment #4 Insurance #270246	$2,034.44
July 2017 MOR Dckt. 157		
Ck. No 1008 Sig. Cindy Zhang	Payee: Wayne Bier Memo: Wayne Bier	$7,000.00
Ck. No 1007 Sig. Cindy Zhang	Payee: Roberto Leon Memo: Pmt 1881 E. Market	$500.00
Ck. No 1006 Sig. Cindy Zhang	Payee: Guilermo Lopez Memo: For 1881 E Market St	$2,000.00
Ck. No 1003 Sig. Cindy Zhang	Payee: Classic Plan Memo: Loan # 270246	$2,136.16

Ck. No. 1005 Sig. Cindy Zhang	Payee: Classic Plan Memo: Insurance 1881 E Market	$2,034.44

Reviewing the Orders authorizing the use of cash collateral, they provide for paying expenses, not creditor claims. These Monthly Operating Reports show $21,000 being paid to Wayne Bier ($580,000 asserted claim) in July and August 2017, and $37,949.78 being paid to East West Bank ($4,522,031.36, Proof of Claim No. 3) in December 2017.

Proofs of Claims Filed

A review of the Registry of Claims in this case reflects that there are only three creditors who have elected to assert claims in this case. These creditors are:

A. Internal Revenue Service, Proof of Claim No. 1

Amount of Claim.....$16,047.98
Unsecured
Priority.....$14,477.98
Assessed No Returns For FICA and FUTA 2016 and 2017

General Unsecured.....$1,600
Assessed No Returns For FICA and FUTA 2013, 2016, 2017

B. Franchise Tax Board, Proof of Claim No. 2

Amount of Claim.....$ TBD
Unsecured

No Returns Filed 2016, 2017

C. East West Bank, Proof of Claim No. 3

Amount of Claim.....$4,522,031.36
Secured

This case appears to now be reduced to three creditors, the Debtor, the Debtor in Possession, and Raymond Zhang and Cindy Zhang as the identified recipients of what may be avoidable preferences.

Reviewing the Schedules, the Debtor identifies two main creditors. First, East West Bank for $4,522,031.36 secured by all of the real property in the Bankruptcy Estate. Proof of Claim No. 3. The other major creditor, who has failed to file a proof of claim, is identified on Schedule D as Wayne Bier, who is owed $580,000 and has a claim secured by a junior lien on all of the real property in the bankruptcy estate. Dckt. 12 at 9-10.

Under penalty of perjury, executed by Raymond Zhang as the managing member of the Debtor, on Schedule A the value of this real property is stated to be $7,855,018.99. *Id.* at 4. Based on Debtor's valuation, post-petition interest continues to accrue at the contract rates for both East West Bank and Mr. Weir, at least under confirmation of a plan.

The court has issued several orders authorizing the use of cash collateral. These have been based on stipulations with East West Bank. Mr. Bier has been absent from participation in those contested matters and asserting any rights with respect to the cash collateral.

Mr. Weir is listed on the Verification of Master Address List. Mr. Bier has been served with the various notices in this case. When the court ran an internet search for that address, the information is that this is the address for a business called Triumphs Only, which states that it is owned by a Wayne Bier.

As stated above, in addition to being "missing in action" for any of the court proceedings while purportedly being owned $580,000, Mr. Bier has not filed a proof of claim in this case. The filing deadline for a claim in this case was August 3, 2017. Dckt. 8 at 2. This Notice was sent to Mr. Bier at 1514 E Scotts Ave, Unit C, Stockton CA 95205-6249, the address provided by Debtor on the Master Address List. Cert. of Serv., Dckt. 10.

It appears that Mr. Bier may not believe that he has a claim in this case or that any obligation is owed to him by the Debtor.

Potential Preference Actions Against the Responsible Representative of the Fiduciary Debtor in Possession and Other Member of the Debtor

Raymond Zhang is stated to be a 50% "member" in Debtor, with a Cindy Zhang as the other 50% "member." Statement of Financial Affairs Question 28, Dckt. 12. Raymond Zhang has signed the Bankruptcy Petition as the managing member of Debtor. Dckt. 1 at 4.

Mr. Zhang is also the recipient of payment on a debt which falls within the voidable preference. Statement of Financial Affairs Question 4.1, $344,409.47 described as "Repayment of short-term loan and reimbursement of expenses," Dckt 12 at 16.

The court has previously addressed with Counsel for Debtor in Possession the issue of what Raymond Zhang, as the responsible representative for the fiduciary Debtor in Possession, the lack of action concerning this possible avoidable preference.

The original response by counsel for the Debtor in Possession assured the court that the failure of Raymond Zhang, as the responsible representative of the fiduciary Debtor in Possession was not of concern, as if the court where to later convert the case or appoint a trustee, the trustee could later commence such an action.

Such assurance of delayed action by a future fiduciary did not assuage the court's concerns. There were no assurances Raymond Zhang would have the monies several years from now if litigation was

required. There were no assurances that Raymond Zhang was not spending, transferring, or hiding the monies that he, as the responsible representative for the fiduciary Debtor in Possession, should be recovering from Raymond Zhang, the recipient of the apparent preferential transfer.

Counsel for the Debtor in Possession advised the court that independent counsel for Raymond Zhang, the individual possible avoidable preference transferee/obligor/defendant, with Counsel for the Debtor in Possession advising Raymond Zhang, as the responsible representative for the fiduciary Debtor in Possession as to what action must be taken against Raymond Zhang as the transferee/obligor/defendant. While such a conflict might appear to be irreconcilable, several possible solutions for the Chapter 11 practitioner and fiduciary representative could have come to mind. One is for the transferee/obligor/defendant to provide a cash deposit with the court to be held to pay any future liability if so determined. Easier, the transferee could have provided a bond or irrevocable letter of creditor to cover any such future liability. More intrusive, it may have been possible to appoint a special representative for the estate or form an active creditor's committee and appoint counsel to actively investigate and prosecute such claims against Raymond Zhang as the transferee/obligor/defendant. None were so provided.

The best that Raymond Zhang, as the responsible representative for the fiduciary Debtor in Possession has put forward is:

> "Among the assets of this estate is a potential preference action against the Debtor's members, Raymond and Cindy Zhang, based upon several transfers the Debtor made in the one year period prior to the Petition Date. The Zhangs have retained counsel to address these issues with the DIP's counsel and the parties have agreed to enter into a tolling agreement to ensure that any preference liability is preserved during this case, including through September 2023, more than five years after the expected Effective Date of the plan. Goodrich UST Dec, ¶3."

Opposition ¶ F, Dckt. 160 at 8.

This proposal is problematic on several points. First, it works to perpetuate for more than half a decade Raymond Zhang's unfettered use, transfer, and placement of the potential preferential transfer funds and his other assets. Second, though not stated on the Statement of Financial Affairs, this indicates that there are other transfers for which Cindy Zhang may have liability. This disclosure of such other possible, hereto fore undisclosed, avoidable transfers appears to be admitted to by the Debtor in this Opposition. Merely delaying the investigation and enforcement of such rights of the estate does not economically preserved them.

Purported "Capital Contributions" Made to the Bankruptcy Estate

It has been disclosed that Raymond Zhang purports to have been making "capital contributions" to the bankruptcy estate to that it can afford to operate. The court has raised this assertion that capital contributions may be made to a bankruptcy estate with counsel for Debtor in Possession at prior hearings. The court on several occasions has put this legal issue in writing for the Debtor in Possession and Counsel, including:

Capital Contributions

Schedules D, E, and F filed in this case demonstrate that the reorganization taking place is a three-party restructure: Debtor in Possession/Raymond Zhang (principal), East-West Bank (Secured Claim), and Wayne Bier (secured claim). For unsecured claims, the only significant non-insider is the City of Stockton for "fines" in the amount of $27,613.45 (which claim is listed as disputed). Schedules, Dckt. 12 at 9–12. That a limited number of parties would seek to use a Chapter 11 proceeding as a structure to achieve a better financial result for all is not inappropriate, and in fact it exemplifies conduct that persons in other bankruptcy cases should emulate.

Though a limited group, federal law requires certain conduct of the various "players" in a bankruptcy case, including accurate disclosures, the fiduciary capacity of a "debtor in possession," and compliance with the law. While the court appreciates the need for there to be "reasonable" compliance with the law and for "formalities" not to unduly hinder the parties in their effective prosecution of a bankruptcy case, cutting too many corners will only lead to potentially greater negative consequences for the parties and their attorneys than would otherwise exist.

As discussed at the prior hearing, the court has noted that the operation of the bankruptcy estate by Debtor in Possession is being funded significantly through a cash inflow labeled as "Capital Contributions." In reviewing the most recent monthly operating report, that of July 2017, it states that "Capital Contributions" totaling $25,500.00 have been made to the bankruptcy estate since this case was commenced. Dckt. 36 at 8. This represents 35.17% of the total cash receipts for the bankruptcy estate since this case was commenced.

After the last hearing, the court realized that the concept of a "capital contribution" and the bankruptcy estate were inconsistent. A capital contribution is defined under California law as being:

> " (c) 'Contribution' means **any benefit provided by a person to a limited liability company**:
>
> (1) In order to become a member upon formation of the limited liability company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the limited liability company.
>
> (2) In order to become a member after formation of the limited liability company and in accordance with an agreement between the person and the limited liability company.

(3) In the **person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the limited liability company**."

Cal. Corp. § 17701.02(c). The "capital contribution" would be made to the limited liability company by one of the members. The limited liability company is United Charter, LLC, Debtor that commenced this voluntary bankruptcy case.

As previously discussed, by operation of federal law all of the assets of Debtor were transferred into the bankruptcy estate in this case upon the filing of the bankrupt petition. 11 U.S.C. § 541(a). Because this is a Chapter 11 case, a bankruptcy trustee was not immediately appointed to manage the bankruptcy estate, but Debtor accepted the role of serving as "Debtor in Possession," 11 U.S.C. § 1001(1), who then exercises the powers and is subject to the fiduciary obligations of a bankruptcy trustee. 11 U.S.C. § 1107. The bankruptcy estate is not Debtor, the property of the bankruptcy estate is not Debtor's property, and Debtor exercises power and control over the property of the estate (here the real estate and its operation) solely in its fiduciary capacity as Debtor in Possession.

The "capital contribution" made by the member of United Charter, LLC would have been to Debtor, United Charter, LLC. It has not been explained how the money was then transferred from United Charter, LLC into the bankruptcy estate. The bankruptcy estate is not a "limited liability company" that has "members" from whom "capital contributions" may be received.

The most common method by which new money is placed in a bankruptcy estate is by a loan made pursuant to 11 U.S.C. § 364. Other than for an unsecured loan in the ordinary course of business, court authorization for such a loan is required. If court authorization is not obtained, the "lender's" right and ability to be repaid for the loan is impaired.

If things "do not go well" and this case is converted to one under Chapter 7 or if a Chapter 11 trustee is appointed, it has already been disclosed that there is a substantial preference that such trustee may be pursuing against the principal of Debtor. Debtor in Possession (Debtor and its principal as the managing member) has chosen not pursuing such preference at this time, believing that there may well be time for any subsequently appointed trustee to pursue it at a later date. The decision not to assert such rights may limit how long Debtor can serve as Debtor in Possession, or how the conduct of Debtor in fulling the fiduciary role of Debtor in Possession, counsel for Debtor in Possession, and the principal who is acting for Debtor in Possession if the preference is less collectable at that later date after the trustee is appointed than if Debtor in Possession had pursued it from day one.

Additionally, the principal making the "capital contribution" may be believing that if the "finances hit the fan" in this case, whatever he may owe on a

> preference can be offset against the "capital contributions." While such an offset might be properly provided for as part of court-approved post-petition credit pursuant to 11 U.S.C. § 364, none exists here and the principal (who, with the assistance of other professionals of the bankruptcy estate, has made the decision that the estate should not be seeking the recovery of the preference from him) may be in for a rude awakening of an even bigger loss.
>
> With respect to such "capital contributions," at the hearing Counsel for Debtor in Possession addressed this issue, stating that he and independent counsel for the member making such "capital contributions" will be addressing the points.

Civil Minutes, August 31, 2017 Mtn to Use Cash Collateral; Dckt. 59 at 7-9.

In looking at the Monthly Operating Report for January 2018, the Debtor in Possession reports that the bankruptcy estate continues to receive "capital contributions." MOR January 2018, Statement of Cash Receipts and Disbursements; Dckt. 156 at 9.

Notwithstanding the court having clearly identified the issue for the Mr. Zhang, the Debtor in Possession, and Counsel for the Debtor in Possession, somehow Raymond Zhang and Cindy Zhang are purporting to make "capital contributions" into a bankruptcy estate. No basis exists for such "investment" in a bankruptcy estate. Raymond Zhang and Cindy Zhang are not the "owners" of the bankruptcy estate and cannot increase their "investment" in the bankruptcy estate. The court has not authorized the borrowing of any monies by the fiduciary Debtor in Possession for the Bankruptcy Estate. 11 U.S.C. § 364.

Secured Claims and Treatment

In the Opposition to the U.S. Trustee's Motion to Convert or Dismiss, the Debtor in Possession argues that based on the appraisal filed by East West Bank, all of the real property valued by the Debtor in excess of $7,000,000 should be valued at $4,580,000 (the appraised value), which will be exhausted by East West Bank's $4,522,031 claim and the small amount of post-petition interest that can accrue thereon.

This is an "interesting" argument, which if accepted by the court, admits the first prong of the request for relief from the stay pursuant to 11 U.S.C. § 362(d)(2) pending by East West Bank.

On Schedule A/B, Debtor states under penalty of perjury that the Property securing Movant's claim has a value of $7,885,018. Dckt. 12 at 4, 7–8, 9. On its proof of claim, Movant uses Debtor's statement of value as the value of its collateral. Proof of Claim No. 3. Movant's claim is stated to be $4,522,031.36 as of the commencement of the case. Proof of Claim No. 3.

If the property was worth only $4,580,000 and Debtor, being represented by Raymond Zhang so believed in good faith, he would have stated so when he completed Schedule A/B under penalty of perjury. He did not. Now, as the responsible representative for the fiduciary Debtor in Possession, he has the Debtor in Possession's attorney arguing that the prior statement under penalty of perjury by Mr. Zhang is inaccurate.

The Debtor in Possession has filed which it identifies as a proposed Chapter 11 Plan and proposed Disclosure Statement. Dckts. 166, 167. Acknowledging that the authorization to use cash collateral expired, the Debtor in Possession, as the fiduciary of the Bankruptcy Estate, states that it, in its fiduciary role, is operating property of the bankruptcy estate as follows:

> "[Debtor in Possession] is presently seeking [East West Bank's] consent to use cash collateral after February 1, 2018 or, absent such consent, Court authority for such use. In the meantime, [the Debtor in Possession] is using members' [of the Debtor's] capital contributions [monies paid to Debtor] to pay for any necessary expenses prior to receiving such consent or authority."

Proposed Disclosure Statement, p. 9:5-7; Dckt. 167.

3. **17-22347-E-11** **UNITED CHARTER LLC**
MET-1 **Jeffrey Goodrich**

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION FOR TURNOVER OF CASH COLLATERAL, MOTION TO APPOINT TRUSTEE, MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE TO CHAPTER 7
11-22-17 [80]

EAST WEST BANK VS.

Final Ruling: No appearance at the March 1, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 22, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion for Relief from the Automatic Stay is continued to 10:30 a.m. on April 5, 2018, pursuant to the Stipulation of the Parties.

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 Relief From the Automatic Stay filed by East West Bank having been presented to the court, Opposition having been filed; and the Parties having filed a Stipulation to continue the hearing to allow the parties to constructively work in an effort to properly prosecute this Chapter 11 case, and good cause appearing,

IT IS ORDERED that the hearing on the Motion For Relief From the Automatic Stay is continued to 10:30 a.m. on April 5, 2018.

IT IS FURTHER ORDERED supplemental pleadings, if any, shall be filed on or before March 26, 2018.

4. **17-22347-E-11** **UNITED CHARTER LLC** **MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE**
UST-1 **Jeffrey Goodrich** **1-24-18 [143]**

Final Ruling: No appearance at the March 1, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors, parties requesting special notice on January 24, 2018. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

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

The hearing on the Motion to Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is continued to 10:30 a.m. on April 5, 2018, pursuant to the Stipulation of the Parties.

This Motion to Convert the Chapter 11 bankruptcy case of United Charter LLC ("Debtor in Possession") has been filed by Tracy Hope Davis ("Movant"), the United States Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

A. Debtor in Possession is operating on a continuing-loss basis and has been unable to sell property to generate funds, and

B. Debtor in Possession has not filed operating reports timely and has not attached bank statements to all of those reports.

Specifically, Movant argues post-petition liabilities exceed net cash receipts by more than $83,000.00. *See* Dckt. 142 at 4, 8 (December 2017 Operating Report). Debtor in Possession's cash receipts are artificially inflated by capital contributions of nearly $70,000.00 *See Id.* at 8.

Operating reports were not filed timely for April, June, October, and December 2017. *See* Dckt. 26, 31, 98, 142; *see also* 11 U.S.C. § 1112(b)(4)(F). Movant reports that the delays range from eight to thirty days. Additionally, bank statements were not attached to the operating reports for July, August, and September 2017. *See* Dckt. 36, 70, 79.

Movant argues that conversion is better than dismissal because a Chapter 7 trustee could evaluate whether pre-petition of $344,409.47 to Debtor in Possession's managing member may be recoverable as preferences.

The Debtor in Possession has filed its extensive Opposition, asserting that such relief is not warranted.

CONTINUANCE OF HEARING

The Debtor in Possession and the U.S. Trustee filed their Stipulation to continued the hearing to 10:30 a.m. on April 5, 2018. It is reported that the continuance is to allow the Parties in Interest in this case to work in good faith to provide for the prosecution of this Chapter 11 case.

The court concurs in this request made in the Stipulation.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert or Dismiss this Chapter 11 Case filed by the U.S. Trustee having been presented to the court, and upon review of the pleadings and the Parties having Stipulated to a continuance, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Convert or Dismiss is continued to 10:30 a.m. on April 5, 2018.

5. **17-22593-E-7** **HOWARD THOMAS** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
DNL-2 **Steven Shumway** **1-16-18 [169]**

Final Ruling: No appearance at the March 1, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2018. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The hearing on the Objection to Claimed Exemptions is removed from the Calendar, the court having previously issued an order thereon pursuant to the stipulation of the Parties.

6. **17-22593-E-7** **HOWARD THOMAS** **CONTINUED OBJECTION TO CLAIM OF ALADDIN BAIL BONDS, CLAIM NUMBER 4**
WSS-9 **Steven Shumway** **11-30-17 [135]**

Final Ruling: No appearance at the March 1, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 30, 2017. FN.1. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The hearing on the Objection to Claim is removed from the Calendar, the court having previously issued an order thereon pursuant to the stipulation between the Debtor and the Chapter 7 Trustee.

7.	**16-25899-E-7** **SLC-1**	**JUDITH ACERETO** **Stephen Murphy**	**MOTION FOR COMPENSATION FOR SHERI L. CARELLO, CHAPTER 7 TRUSTEE** **2-7-18 [97]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on February 7, 2018. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion for Allowance of Professional Fees is granted.

Sheri Carello, the Chapter 7 Trustee, ("Applicant") for the Estate of Judith Acereto ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period September 30, 2016, through February 6, 2018.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). A professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing

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

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

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

A review of the application shows that Applicant's services for the Estate include routine trustee duties related to case administration and selling Debtor's real property in Oakland, California The Estate has $260,226.68 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

General Case Administration: Applicant spent 60.90 hours in this category. Applicant performed routine trustee's duties which included opening the case and entering it into the case management software; reviewing the petition and related schedules; reviewing mail; preparing for and conducting § 341 meeting of creditors; preparing and filing forms required by the Office of the United States Trustee; reviewing proofs of claim; preparing monthly bank reconciliation reports; properly accounting for all assets and disbursements; maintaining the trustee's bond; and preparing and filing the Trustee's Final Report. Additionally, the Applicant sold Debtor's real property in Oakland, California.

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $950,000.00	$13,381.42
Calculated Total Compensation	**$19,131.42**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$19,131.42
Less Previously Paid	$0.00

Total First and Final Fees Requested	$19,131.42

COSTS & EXPENSES REQUESTED

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $37.99 pursuant to this application. The costs requested in this Application are for two certified copies of court orders approving a sale of real property.

FEES AND COSTS & EXPENSES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $19,131.42 pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

First and Final Costs in the amount of $37.99 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has $260,226.68 of unencumbered monies to be administered. The Chapter 7 Trustee provided routine trustee's duties, as well as selling Debtor's real property in Oakland, California. Applicant's efforts have resulted in a realized gross of $451,031.71 recovered for the estate. Dckt. 100.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$19,131.42
Costs and Expenses	$37.99

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Sheri Carello, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Sheri Carello is allowed the following fees and expenses as a professional of the Estate:

Sheri Carello, the Chapter 7 Trustee

Fees in the amount of $19,131.42
Expenses in the amount of $37.99,

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