UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

March 17, 2016 at 10:30 a.m.

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1. 14-91403-E-7 CONCEPCION MAGANA — CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
SSA-3 Thomas O. Gillis — 1-13-16 [46]

CONTINUED: 2/4/16

Final Ruling: No appearance at the March 17, 2016 hearing is required.

Local Rule 9014-1(f)(2) Motion - Continued - No Hearing Required.

Correct Notice Not Provided. The Trustee failed to provide a Proof of Service. 14 days' notice is required.

The Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 4003(b). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to dismiss without prejudice the Objection, pursuant to the Rule 41(a)(2) request for dismissal by the objecting trustee. Reply, Dckt. 57.

Irma Edmonds, the Chapter 7 Trustee, filed the instant Objection to Debtor's Original and Amended Claim of Exemptions on January 13, 2016. Dckt. 46. The Trustee objects to the Debtor's use of the California exemptions pursuant to California Code of Civil Procedure § 703.140(b)(5) because the Debtor is attempting to exempt assets in excess of the allowable amount.

The Trustee states that the Debtor's initial Schedule C filed on October 16, 2014 reflects the total sum of California Code of Civil Procedure § 703.140(b)(5) exemptions of $3,850.00. Dckt. 1.

Subsequently, the Debtor filed an Amended Schedule C on December 14, 2015. The amended exemptions claim various other assets exempt under § 703.140(b)(5)for the total amount of $26,925.00. In total, between the original and amended schedules, the total claimed pursuant to § 703.140(b)(5) is $30,775.00, which is $5,435.00 in excess of what is permissible under the section.

REVIEW OF OBJECTION, CLAIM OF EXEMPTIONS,

TRUSTEE DISCOVERED ASSET, AND AMENDED CLAIM OF EXEMPTIONS

The Trustee states that the Debtor's initial Schedule C filed on October 16, 2014 reflects the total sum of California Code of Civil Procedure § 703.140(b)(5) exemptions of $3,85.00. Dckt. 1.

Subsequently, the Debtor filed an Amended Schedule C on December 14, 2015. The amended exemptions claim various other assets exempt under § 703.140(b)(5)for the total amount of $26,925.00. In total, between the original and amended schedules, the total claimed pursuant to § 703.140(b)(5) is $30,775.00, which is $5,435.00 in excess of what is permissible under the section.

> (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter, as follows:
>
> > (1) If a husband and wife are joined in the petition, they jointly may elect to utilize the applicable exemption provisions of this chapter other than the provisions of subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.
> >
> > (2) If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).
> >
> > (3) If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.
>
> (b) The following exemptions may be elected as provided in subdivision (a):
>
> > (1) The debtor's aggregate interest, not to exceed twenty-four thousand sixty dollars ($24,060) in value,

> in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence. . . .
>
> (5) The debtor's aggregate interest, not to exceed in value one thousand two hundred eighty dollars ($1,280) plus any unused amount of the exemption provided under paragraph (1), in any property.

The Debtor's original Schedule B and Schedule C filed on October 16, 2014 lists the following assets and exemptions:

Asset	Value	Exemption Claimed	Exemption Amount
Cash on hand	***$250.00***	***California Code of Civil Procedure § 703.140(b)(5)***	***$250.00***
B of A Checking Account	***$100.00***	***California Code of Civil Procedure § 703.140(b)(5)***	***$100.00***
Household item: furniture and appliances	$1,800.00	California Code of Civil Procedure § 703.140(b)(3)	$1,800.00
Personal Clothes	$1,000.00	California Code of Civil Procedure § 703.140(b)(3)	$1,000.00
2004 Chevy Tahoe	***$3,500.00***	***California Code of Civil Procedure § 703.140(b)(5)***	***$3,500.00***

In the Debtor's original Schedule C, the Debtor claimed a total of $3,850.00 exempt under California Code of Civil Procedure § 7013.140(b)(5).

On February 10, 2015, the Debtor's discharge was entered. Dckt. 15. The case was closed on February 13, 2015. Dckt. 17.

On May 6, 2015, the United States Trustee filed a Motion to Reopen the Case because the Debtor advised that there was funds being held by Stanislaus Treasurer/Tax Collectors Office from the sale of real property as the result of defaulted property taxes. The court granted the Motion and reopened the case on May 6, 2015. Dckt. 22.

On December 14, 2015, the Debtor filed Amended Schedule B and C. Dckt.

44. The Amended Schedules listed the following property:

Asset	Value On Amended Schedule B	Increase/ (Decrease) From Original Schedule B	Exemption Claimed	Exemption Amount	Increase/ (Decrease) From Original Schedule B
Check Account, Bank of America	***$10.00***	***($240.00)***	***California Code of Civil Procedure § 703.140(b)(5)***	***$10.00***	***($240.00)***
Household Goods	$2,000.00	$200.00	California Code of Civil Procedure § 703.140(b)(3)	$2,000.00	$200.00
Clothing	$500.00	$500.00	California Code of Civil Procedure § 703.140(b)(3)	$500.00	$500.00
1991 Accura Integra 4dr (255k miles/fair)	***$2,280.00***	***Not Listed***	***California Code of Civil Procedure § 703.140(b)(5)***	***$2,280.00***	***$2,280.00***
2002 Volkswagen Jetta (116k miles/poor)	$2,640.00	Not Listed	California Code of Civil Procedure § 703.140(b)(2)	$2,640.00	$2,640.00
1991 Ford Explorer (no engine)	***$800.00***	***Not Listed***	***California Code of Civil Procedure § 703.140(b)(5)***	***$800.00***	***$800.00***
1995 Accura Integra LS 2dr (225K miles/poor)	***$1,200.00***	***Not Listed***	***California Code of Civil Procedure § 703.140(b)(5)***	***$1,200.00***	***$1,200.00***
2004 Chevy Tahoe	***$3,500.00***	***Note Listed***	***California Code of Civil Procedure § 703.140(b)(5) $3,500.00***	***$3,500.00***	***Not listed***
Funds owed to Debtor by Stanislaus County	***$34,737.00***	***Not Listed***	***California Code of Civil Procedure § 703.140(b)(5)***	***$22,635.00***	***$22,635.00***

The Debtor's Amended Schedule B and C are dramatically different than the originally filed Schedule B and C. The Amended Schedules contain additional assets (the four vehicles and the funds) as well as changing the value of the bank account, the household goods, and clothing. Notably as well, the Debtor no longer reports having cash on hand.

Debtor offered no explanation with the Amended Schedules B and C to try and preemptively address the post-discharge sudden appearance of assets and post-discharge sudden claim of exemption in the heretofore undisclosed assets. In light of such tangible, substantial assets as vehicles appearing, and disappearing, from and on Original and Amended Schedule B, such explanation is essential. Both purport to state the assets of Debtor as of the commencement of this bankruptcy case.

Trustee's Objection

The Trustee's basis for objecting to the Debtor's claim of exemption is that based on the Original and Amended Schedules, the Debtor has over claimed the exemptions allowable under California Code of Civil Procedure § 703.140(b)(5).

The Trustee computes that the Debtor claims an exemption amount of $3,850.00 on the Original Schedule C, pursuant to § 703.140(b)(5). Then, the Trustee computes that the Debtor claims an exemption amount of $26,925.00 on the Amended Schedule C pursuant to § 703.140(b)(5). Combined, the Trustee computes that a total of $30,775.00 was claimed exempt by the Debtor under California Code of Civil Procedure § 703.140(b)(5), which is $5,435.00 in excess of the permitted amount.

The Debtor does not provide any supplemental declaration to explain why the Amended Schedules provide different values and different property. The Amended Schedules only indicate that the "Funds owed to Debtor by Stanislaus County" are amended by indicating it through the annotation of "A." Nothing else on the Amended Schedules are noted as being amended. However, as seen supra, there are many different amendments to both Schedule B and C. If the Debtor did mean to file Amended Schedules, this indicates that the Debtor is correcting the assets and exemptions claimed at the time of the filing. However, if the Debtor is meaning to supplemental the schedules, this means that she is adding assets since the time of filing that have been left out. The Debtor indicates that this is an Amended Schedule, indicating to the court that these are the assets that the Debtor had at the time of filing. As such, the Amended Schedule B and Schedule C become the controlling Schedules, not to be read in conjunction with the originally filed schedules.

As such, computing the claimed exemptions on the Amended Schedule C under California Code of Civil Procedure § 703.140(b)(5), the Debtor attempts to claim a total of $26,925.00, which still exceeds the allowable amount. This is $1,585.00 in excess of the allowable amount under California Code of Civil Procedure § 703.140(b)(5).

What is even more concerning, though, is why the Debtor, after nearly a year since discharge, has filed amended schedules that are notably different, in both assets and value, than that on the originally filed schedules. The Debtor does not provide a declaration explaining why the assets and value of the assets have changed.

The Objection requests that the court disallow all of the § 703.140(b)(5) objections and then order Debtor to file yet another amended Schedule C to reclaim exemptions. The court does not believe such round of reclaiming exemptions is required. Taking Debtor at her word under penalty of perjury on her assets and exemptions she wants to take, the Trustee may honor those requests, liquidate assets as appropriate, and allow Debtor to either retain the assets themselves or pay Debtor the dollar value of the remaining amount of the claimed exemption in assets liquidated or cash assets.

Based on the Objection, evidence presented, Debtor's statements under penalty of perjury and the value of assets as of the commencement of this case, the exemptions claimed based on the value of assets as of the commencement of the case, the additional assets and exemptions claimed, the court computes the exemptions which survive the Trustee's objection to be:

Asset	Value as of Commencement of Case on Schedule B	Exemption Claimed		Exemption Amount
Check Account, Bank of America	$250.00	California Code of Civil Procedure § 703.140(b)(5)		$250.00
2004 Chevy Tahoe	$3,500.00	California Code of Civil Procedure § 703.140(b)(5)		$3,500.00
	Value as of Commencement of Case Amended Schedule B	Exemption Claimed on Amended Schedule C		
1991 Accura Integra 4dr (255k miles/fair)	$2,280.00	California Code of Civil Procedure § 703.140(b)(5)		$2,280.00
1991 Ford Explorer (no engine)	$800.00	California Code of Civil Procedure § 703.140(b)(5)		$800.00
1995 Accura Integra LS 2dr (225K miles/poor)	$1,200.00	California Code of Civil Procedure § 703.140(b)(5)		$1,200.00
Subtotal of California Code of Civil Procedure § 703.140(b)(5) Exemption in Assets Other Than Discovered Post-Petition by Trustee				$8,030.00
	Maximum California Code of Civil Procedure § 703.140(b)(5) Exemption As of October 16, 2014 Commencement of Case			$25,340.00
	Balance of California Code of Civil Procedure § 703.140(b)(5) Exemption for Post-Petition Discovered Asset			$17,340.00
Post-Petition Trustee Discovered Proceeds of Sale of Property	$34,737.00	Debtor Claim of Exemption Pursuant to California Code of Civil Procedure § 703.140(b)(5) in Proceeds Not Disallowed Pursuant to Trustee's Exemption		$17,340.00

Value of Assets (based on Debtor's values) for Estate in excess of allowable California Code of Civil Procedure § 703.140(b)(5) Exemption			$17,397.00

From the Notice of Hearing, the Trustee states that this Objection has been filed pursuant to Local Bankruptcy Rule 9014-1(f)(2), for which opposition may be presented at the hearing. Setting a service (if service has not been actually made) and briefing schedule is consistent with the procedure utilized by the Trustee.

Further, the court believes that the present Objection should be prosecuted. The filing of Schedules, declarations, and other documents under penalty of perjury are not opportunities to make conflicting (unexplained) statements under penalty of perjury, with the only consequence being an opportunity to a third, fourth, or fifth time make other statements under penalty of perjury. Debtor has made statements under penalty of perjury. A case or controversy has now arisen for the court to determine. FN.1.

FN.1. It may be that Debtor is pleased that the Trustee is merely asserting a simple computation of the amount of the exemption, and not asserting non-bankruptcy law federal and state law grounds challenging Debtor's ability to claim the additional exemptions set forth on Amended Schedule C and the additional assets disclosed on Amended Schedule B.

FEBRUARY 4, 2016 HEARING

At the hearing on the Objection, the court continued the hearing to 10:30 a.m. on March 17, 2016. The Debtor was ordered file and serve Opposition on or before February 26, 2016, and a Reply, if any, filed and served on or before March 4, 2016.

TRUSTEE'S SUPPLEMENTAL REPLY

The Trustee filed a reply and status updated on February 29, 2016. Dckt. 57. The Trustee states that neither the Trustee nor her counsel have received further written reply by the Debtor or her counsel.

The Trustee states that her counsel had been informed by Jed Byerly, Global Discoveries, LTD, that his company, on or about February 4, 2016, that by assignment from Bank of the West, it held a superior claim to both those of the Trustee and Debtor to residual proceeds arising from the tax sale of property under Cal. Revenue & Taxation Code § 4675.

The Trustee states that Trustee's counsel has emailed Debtor's counsel this information and has had a phone conference with counsel.

The Trustee concludes by stating that she will not be pursuing this continued exemption objection and she will be filing a "No Asset" Report in this case.

WITHDRAWAL

The Chapter 13 Trustee having filed a “Reply” for the pending Objection, the court construing the reply as a “Withdrawal”, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, the court dismisses without prejudice the Chapter 13 Trustee's Objection to Exemptions.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Exemptions filed by the Trustee having been presented to the court, the Trustee having filed a Notice that she is not pursuing the objection (which the court interprets as a motion to dismiss this objection pursuant to Fed. R. Civ. P. 41(a)(2), and Fed. R. Bankr. P. 7041 and 9014), the dismissal consistent with the opposition stated by Debtor at the prior hearing, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is dismissed without prejudice.

2.	15-90811-E-7 DHL-2	ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS Peter G. Macaluso	OBJECTION TO CLAIM OF AFCO, CLAIM NUMBER 5-1 2-12-16 [99]

THE ATTENDANCE OF DON LEE, CREDITOR, IS REQUIRED FOR THE MARCH 17, 2016 HEARING

No Telephonic Appearance Permitted for Mr. Lee

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

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

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

Local Rule 3007-1 Objection to Claim.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney and Office of the United States Trustee on February 12, 2016. By the court's calculation, 34 days' notice was provided. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.)

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007(d)(2). Creditor, Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Objection to Proof of Claim Number 5-1 of AFCO is overruled without prejudice.

Don Lee, the Creditor ("Objector") requests that the court disallow the claim of AFCO ("Creditor"), Proof of Claim No. 5-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $3,809.49. Objector asserts that the claim should be disallowed on the basis:

1. The Creditor fails to state in its Proof of Claim what property secures the alleged claim and what is the value of such property.

2. The Creditor fails to state in its Proof of Claim what is the basis for the perfection of its alleged security interest and the amount of its secured claim in this bankruptcy.

3. The Creditor fails to state the interest rate that applies to its claim or that its claim caries interest.

The Objector asserts that the claim is based upon a promissory note for an insurance policy issued by Lloyds of London, with an effective date of April 12, 2015 and that the insured is the "Gold Strike Homeowners Association."

The Objector argues that "Gold Strike Homeowners Association" is not the Debtor. The Debtor is "Gold Strike Heights Homeowners Association," and is allegedly a different entity.

The Objector argues that counsel for the "Gold Strike Homeowners Association," an entity which is based in El Dorado County, has represented to the Objector that his client is not the Debtor and is not otherwise involved in the Calaveras County based HOA's business affairs.

Lastly, the Objector argues that the post-petition payments made to Creditor were done in violation of bankruptcy law.

Statutory Claims Objection Standards

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

The objecting party is a creditor, not the Chapter 7 Trustee. 11 U.S.C. § 502(a) provides that a "party in interest" may file an objection to a claim. However, to provide for an orderly administration of bankruptcy cases, it is the Chapter 7 Trustee who has the initial right to file an objection to a claim. A creditor shall seek leave to file an objection to a claim, if the Chapter 7 trustee elects or fails to object. In re Thompson, 965 F.2d 1136, 1147 (Cir. 1st 1992); In re Dominelli, 820 F.2d 313, 317(9th Cir. 1987); and Collier on Bankruptcy, 16th Edition, ¶ 502.02[d], which states,

"It has been held, however, that creditors have an 'indirect

> right' to object to the claim of another creditor. The Court of Appeals for the First Circuit has stated that, as a general rule, the chapter 7 trustee alone may interpose objections to proofs of claim unless the trustee refuses to act and the bankruptcy court permits the creditor to act on behalf of the trustee. Other courts have followed this lead. 22 In addition, in instances in which the rights of the creditor are directly implicated by a claim, the creditor should be accorded standing to object. For example, in *In re Dominelli*, the court recognized that although the trustee normally represents the interests of all creditors in objecting to claims, on occasion the interest of a secured creditor may diverge from that of other creditors and may be effectively represented only by the secured creditor.
>
> Yet apart from the line of cases permitting some indirect mode of contest, the right of individual creditors to object to the claim of another creditor is restricted. While a creditor may object before a trustee is qualified or when there is no trustee, once the trustee has been duly appointed it is the duty of the trustee to examine and take action concerning the disallowance of claims."

Here, it is another creditor, Don Lee, who has stepped up and filed the objection. There is a long history of litigation by Mr. Lee with the Debtor. The court has several adversary proceedings pending. In one, in which Mr. Lee has an attorney representing him, the Trustee has informed the court (in a adversary proceeding status report) that the attorney has represented he will be dismissing part of the case and Mr. Lee will proceed to litigate the matter on his own. The court has not allowed for the withdrawal of any counsel in that adversary proceeding.

The court has not granted Mr. Lee authorization to unilaterally proceed with an objection to the claim. There has been no showing that the Chapter 7 Trustee does not intend to review the claims and file objections as appropriate.

This primary objection standing for the Trustee is necessary for the orderly, and proper, administration of the case. The Trustee is not to be tugged and pulled by creditors from objection to objection. Individual creditors, who may, or may not, have the ability to properly object, may not preemptive create claim objections that may have a final, preclusive ruling on the Trustee and rest of the creditors if that objecting creditor loses.

This is grounds to overrule, without prejudice, the objection to claim.

Review of Objection to Claim

The first batch of objections by Mr. Lee relate to the form of the Proof of Claim. He objects that the Proof of Claim fails: (1) state what property secures the claim; (2) the value of the property securing the claim; (3) the basis for perfection; and (4) the interest rate. A review of Proof of Claim No. 5, the court notes that Mr. Lee is correct, that information is *not on the face* of the proof of claim form. However, the attachment to the Proof of Claim lists other necessary pieces of information. On the first page, the

terms of the insurance are listed including annual percentage rate (9.75%) and the amount financed ($10,041.99). On page 2 of the agreement, there is a section entitled "SECURITY INTEREST AND POWER OF ATTORNEY" which states:

> The Insured assigns and hereby gives a security interest to AFCO as collateral for the total amount payable in this Agreement and any other past, present or future extension(s) of credit: (a) any and all unearned premiums or dividends which may become payable for any reason under all insurance policies financed by AFCO, (b) loss payments which reduce the unearned premiums, subject to any mortgage or loss payee interests and (c) any interest in any state guarantee fund relating to any financed policy. . . .

Mr. Lee is correct that there is not attached a financing statement or other documentation of perfection of the security interest. However, the failure of perfection is not a claims objection issue, but an avoidable transfer issue. 11 U.S.C. § 544. If avoided, then the unperfected lien is preserved for the benefit of the bankruptcy estate, and ultimately all of the creditors. 11 U.S.C. § 551. The rights and interests are not "thrown away."

The court also notes that the nature of the collateral is quite limited and not something which would otherwise generally be available for other creditors.

This part of the objection demonstrates why it is the Trustee who has the initial right to object, and other parties in interest seek leave from the court. Mr. Lee, with his objection, could have inadvertently caused harm to the bankruptcy estate.

Objection Based on Pre-Petition Transfers

Mr. Lee bases his objection also on the debt being "tainted by improper pre-petition and post-petition payments." With respect to the pre-petition payments, though not citing to the Bankruptcy Code, it appears that Mr. Lee is asserting that such payments could be recovered as a preference. 11 U.S.C. § 547. In general, there is nothing illegal, immoral, or unethical about a creditor having received a pre-petition payment that constitutes a preference under the Bankruptcy Code. To be a preference, the payment must have been made to a bona fide creditor, but made during the statutory preference period (generally 90 days for non-insider creditors). If a statutory preference, Creditor has determined that the payment shall be returned to the estate and then divided among the other creditors. Once determined a preference, then the creditor is not paid on its claim until the preference has been returned to the estate. As with transfers avoided under 11 U.S.C. § 544, a recovered preference or an improper post-petition payment (11 U.S.C. § 549) are preserved for the benefit of the estate pursuant to 11 U.S.C. § 550.

Thus, on its face, this portion of the objection does not appear to be based on proper objection grounds. See *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); directing bankruptcy judges to properly apply the law, irrespective of the responses of the parties.

Objection based on Identity of Obligor

Mr. Lee's third basis for objection is questioning whether the Creditor, an insurance premium finance company, did business with the Debtor or some other entity. He contends that the "Gold Strike Homeowners Association" listed on the Proof of Claim and the attachment thereto is an entity other than the Debtor, Gold Strike Heights Homeowners, Association.

Mr. Lee provides no declaration in support of the Objection. However, he argues that he has spoken to an attorney for Gold Strike Homeowners Association, and has been advised that Gold Strike Homeowners Association is not the Debtor. Objection, ¶ 5). There is also an unauthenticated exhibit which is a copy of an email from an attorney stating that Gold Strike Homeowners Association is not Gold Strike Heights Homeowners Association. Exhibit C, Dckt. 101 at 10. Neither Mr. Lee nor the attorney for Gold Strike Homeowners Association did business with AFCO or are obligated to pay the debt evidenced by Proof of Claim No. 5.

The court notes that on the attachment to the proof of claim, the address for "Gold Strike Homeowners Association" is stated to be 120 Gold Strike way, San Andreas, California. That is the same address stated on the Petition for the address of Gold Strike Heights Homeowners Association. Dckt. 1. The signature for "Gold Strike Homeowners Association" on the exhibit to Proof of Claim No. 5 appears to be for a Michael W. Cooper, President. The Petition is signed by Michael W. Cooper, as the president of Goldstrike Heights Homeowners Association. Dckt. 1.

Filed as Exhibit B by Mr. Lee is an unauthenticated computer screen shot of what is stated to be the California Secretary of State business portal information for "Gold Strike Homeowners Association." This exhibit lists the address for "Gold Strike Homeowners Association" as 4364 Glory Hole Dr., Camino, California. Dckt. 101 at 9.

While not authenticated, the evidence and arguments advanced by Mr. Lee appear to undercut his objection. While contending that the obligation might be owed by an entity named "Gold Strike Homeowners Association," Mr. Lee provides documents, emails, and arguments which indicate that "Gold Strike Homeowners Association" is not the obligor on the debt which is the basis for Proof of Claim No. 5.

This further shows why it is necessary and proper for the Chapter 7 Trustee to have the lead in asserting objections to claims, and for creditors to seek leave from the court. Mr. Lee could well, by prosecuting an unfounded objection, create an even bigger obligation. Additionally, Mr. Lee may be unintentionally sabotaging the bankruptcy case by contending that the underlying insurance was not obtained by the Debtor, leaving the estate financially naked.

RULING

The Objection to Claim is overruled without prejudice. As this court has previously noted, this bankruptcy case has the earmarks of a dysfunctional state court dissolution action. From the filing of this case by the Debtor, the adversary proceedings, motions filed in the case, and contentions that the Chapter 7 Trustee is unreasonable, the creditors and Trustee sound more like bickering soon to be ex-spouses than good faith litigants in federal court. While some parties may believe that the judicial process is one in which they

may run amuck throwing claims and arguments to over-burden the court and bleed down the other parties – such is not a condoned or permitted practice in federal court.

The court is confident that this War of the Roses litigation mentality will come to an end. FN.1. The court notes that Mr. Lee has been a good study of the federal process, and has been responsive to addressing federal issues as he learns of them. However, federal court litigation is not the same as law school, and for even a *pro se*, prosecuting litigation not based on proper law or facts may result in negative financial consequences.

FN.1. War of the Roses is a 1998 Moving directed by Danny DeVito which stars Michael Douglas, Kathleen Turner, and Danny DeVito. The storyline for the movie relates to the unrelenting campaign spouses wage against the other in a divorce battle over who will be victorious in retaining their home, and successfully punishing the other. One description of the plot line is,

> "In an effort to win the house, Oliver offers his wife a considerable sum of cash in exchange for the house, but Barbara still refuses to settle. Realizing that his client is in a no-win situation, Gavin advises Oliver to leave Barbara and start a new life for himself. In return, Oliver fires Gavin and takes matters into his own hands. At this point, Oliver and Barbara begin spiting and humiliating each other in every way possible, even in front of friends and potential business clients. Both begin destroying the house furnishings; the stove, furniture, Staffordshire ornaments, and plates. Another fight results in a battle where Barbara nearly kills Oliver by using her monster truck to ram Oliver's antique automobile. In addition, Oliver accidentally runs over Barbara's cat in the driveway with his car. When Barbara finds out, she retaliates by trapping him inside his in-house sauna, where he nearly succumbs to heatstroke and dehydration."

Www.Wikipedia.org and www.imbd.com.

Such battles are not permitted to be transported to federal court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of AFCO, Creditor filed in this case by Don Lee, Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 5-1 of AFCO is overruled with out prejudice.

3.	**15-90811-E-7** **DHL-3**	**ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS** **Peter G. Macaluso**	**OBJECTION TO CLAIM OF SPROUL TROST LLP, CLAIM NUMBER 6-1** **2-12-16 [103]**

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

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

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

Local Rule 3007-1 Objection to Claim.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, and Office of the United States Trustee on February 12, 2016. By the court's calculation, 34 days' notice was provided. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.)

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007(d)(2). Creditor, Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Objection to Proof of Claim Number 6-1 of Sproul Trost LLP is overruled without prejudice.

Don Lee, the Creditor ("Objector") requests that the court disallow the claim of Sproul Trost LLP ("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $25,529.61. Objector asserts that the claim should be disallowed because:

1. The claim is for services that did not benefit the Debtor but rather for the members of the board of directors in their individual capacities.

2. The claim contains preferential pre-petition payments of no less than $5,500.00.

3. The debt set forth in the claim is the proper debt of the HOA board of directors and not a debt of Debtor.

The Objector asserts that the Creditor was an insider at the time of filing and worked with the Debtor to file this allegedly fraudulent bankruptcy. The Objector argues that there were six payments of $500.00 made by the Debtor to the Creditor in August 2014 through January 2015. The Objector states that this is withing the one year look back period as well as made a preferential payment.

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

INCORPORATION OF RULING IN OBJECTION TO PROOF OF AFCO, FILED BY DON LEE, DCN: DHL-3

In another objection filed by Don Lee, the court extensively addressed the issue that the Chapter 7 Trustee has the initial right to object to claims and a creditor must obtain leave from the court; that an alleged preference, fraudulent conveyance, or post-petition (which is preserved for the benefit of the estate pursuant to 11 U.S.C. § 551) is not the basis for a claims objection (and must be brought by an adversary proceeding, Fed. R. Bankr. P. 7001). See Civil Minutes for March 17, 2016 hearing on the Objection to Claim of AFCO, DCN: DHL-3, filed by Don Lee. The court incorporates that discussion by this reference.

For this Objection, Don Lee argues that the legal fees alleged to be owed to Sproul Trost were part of an "illegal scheme" to shed debt, keep common areas undisclosed in bankruptcy, and arise in a new homeowners association free of all debt. While stating these legal conclusions, the Objection does not state with particularity the grounds upon which such conclusions are based. The Objection also does not state how this association could "shed the debt" in a Chapter 7 case. *See* 11 U.S.C. § 727(a)(1), stating that the court shall deny a discharge if the debtor is not an individual:

> "Section 727(a)(1) provides that unless the debtor is an individual, the debtor cannot be granted a discharge in a proceeding under chapter 7 of the Code. Thus, in a departure from pre-Code law, partnerships and corporations cannot receive a discharge in a liquidation case. The policy behind this provision is the prevention of trafficking in corporate shells and bankrupt partnerships. A corporation may obtain relief from its debts through dissolution. But it does not

need relief if it no longer has any assets."

Collier on Bankruptcy, 16th Edition, ¶ 727.01[3]. See also NLRB v. Better Bldg. Supply Corp., 837 F.2d 377, 378-79 (9th Cir. 1988).

Once again, Mr. Lee, while presumably well intentioned, has spawned litigation that might well be adverse to the interests of the estate. If the actions of the lawyers were improper, then the Trustee can pursue such objections and any possible rights against the lawyers relating to that conduct. If there are transfers (pre-petition payments) to be recovered, the Trustee may do so for the benefit of the bankruptcy estate. It is not Mr. Lee's position to try and litigate, and possibly lose, rights of the estate.

The objection is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Sproul Trost LLP, Creditor filed in this case by Don Lee, Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 6-1 of Sproul Trost LLP is overruled without prejudice.

4. 16-90014-E-7 APRIL ZAVALA
SCF-1 Pro Se

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 2-18-16 [15]

Final Ruling: No appearance at the March 17, 2016 hearing is required.

Local Rule 9014-1(f)(2) Motion – No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Notice of Hearing and Opposition to the Motion and supporting pleadings were served on the Chapter 7 Trustee and Office of the United States Trustee on March 3, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss for Failure to Appear at Sec. 341(A) Meeting of Creditors was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The Motion to Dismiss for Failure to Appear at Sec. 341(a) Meeting of Creditor is denied without prejudice

On February 18, 2016, the Trustee file a Notice of Trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors. Dckt. 16.

The Debtor filed an opposition on March 3, 2016. Dckt. 19. The Debtor opposes the Motion as follows:

> I, April Doreen Zavala, oppose the motion of dismissal due to the fact that I am unable to meet my current financial obligations due to excessive debt and inadequate income to cover both living expenses and all outstanding debts.
>
> I failed to appear at my original meeting due to the fact that I did not have all paperwork submitted to the trustee that was required 7 days prior to the meeting nor did I have the Post Financial Management class complete. I have been extremely physically & emotionally exhausted and I sincerely apologize. Thank you.

Id.

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

Here, the Debtor does not provide any admissible evidence or testimony showing that the Debtor has filed all necessary documentation to the Trustee.

However, on March 10, 2016, the Trustee filed a Chapter 7 Trustee's Report of No Distribution. The report notes that the Debtor appeared at the Meeting of Creditors. The Trustee has filed nothing further, and the court therefore determines the Debtor's appearance has resolved his objection.

Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss for Failure to Appear at Sec. 341 (a) Meeting of Creditor filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

5. 13-91315-E-7 APPLEGATE JOHNSTON, INC.
MDM-5 George C. Hollister

MOTION FOR COMPENSATION FOR MICHAEL D. MCGRANAHAN, CHAPTER 7 TRUSTEE
1-20-16 [546]

Final Ruling: No appearance at the March 17, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Trustee Fees is granted.

Michael McGranahan, the Trustee ("Applicant") for Debtor, Appelgate Johnston, Inc.("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period July 16, 2013 through December 31, 2015. The order of the court approving employment of Applicant was entered on July 16, 2013, .

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

Work performed under matter code "AAA:" Applicant spent 1.60 hours in this category. Applicant assisted Client by meeting with an accountant to discuss matters of the case.

Asset Recovery: Applicant spent 115.10 hours in this category. Applicant assisted Client with the organization and sale at auction of personal assets. Applicant also filed amended tax returns and pursued claims and settlments for preference claims.

Asset Disposition: Applicant spent 7.90 hours In this category. Applicant assisted Client by organizing sales with an auctioneer.

Claims Administration: Applicant spent 2.60 hours in this category. Applicant assisted Client by reviewing and analyzing administrative claims of this case.

Fee Employment Application: Applicant spent 0.50 hours in this category. Applicant assisted Client by engaging in email correspondence regarding, and reviewing employment applications.

Retirement Plan Administration: Applicant spent 6.20 hours in this category. Applicant assisted Client by engaging in email and telephone correspondence regarding, and reviewing, the administration of retirement and pension plans.

Tax Matters: Applicant spent 15.80 hours in this category. Applicant assisted Client by engaging in email and telephone correspondence regarding, and reviewing, the correction of Applicant's tex returns, as well as their amended filing.

General Case Administration and Efforts to Assess and Recover Property of the Estate: Applicant spent 112.70 hours in this category. Applicant assisted Client by reviewing the case, emails from counsel, and all documents and information. Applicant also filed an amended tax return and organized the sale of personal assets. Fn. 1.

FN.1. The court notes that an applicant is normally required to provide detailed task billing. Here, Applicant explains that a switch to new software eliminated some of the categories of work performed, lumping work into a broad category of "case administration." Dckt. 548. Because the details of each task are still provided, albeit buried under an umbrella category, the court waives the defect and will allow the fees.

Trustee 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	$47,500.00
3% of the balance of $103,935.49	$3,118.06
Calculated Total Compensation	**$56,368.06**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$56,368.06
Less Previously Paid	$0.00
Total First Interim Fees Requested	$25,000.00

The Fees are computed on the total sales generated $1,103,935.49 of net monies (exclusive of these requested fees and costs) was recovery for Client, with an estimated gross value of $3,088,000.00 remaining in claims currently being pursued.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the a trustee must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided as the court's authorization to employ a trustee to work in

a bankruptcy case does not give that a trustee "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including the sale of personal property, recovery of funds from an amended tax return, and pursuit of preference claims, as well as general case administration. The estate has $274,026.62 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

The court finds that the requested fees reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $25,000.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are authorized to be paid by the Trustee from the available funds of the Estate Funds in a manner consistent with the order of distribution in a Chapter 7 case.

In this case the Chapter 7 Trustee currently has $274,026.62 of unencumbered monies to be administered. The Chapter 7 Trustee marshaled personal assets of Client for sale at public auction, reviewed and filed amended tax returns, and pursued or settled preference claims. Applicant’s efforts have resulted in a realized gross of $1,103,935.49 recovered for the estate, with an estimated $3,088,000.00 yet to be recovered. Dckt. 546.

This case required significant work by the 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 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$25,000.00
Costs and Expenses	$ 0.00

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 Michael McGranahan ("Applicant"), Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Michael McGranahan is allowed the following fees and expenses as a professional of the Estate:

Michael McGranahan, Trustee

Fees in the amount of $ 25,000.00
Expenses in the amount of $ 0.00,

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

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

6. 13-91315-E-7 APPLEGATE JOHNSTON, INC.
WFH-22 George C. Hollister

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH TEKSTAR SYSTEMS
2-25-16 [560]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2016. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(3), 21 day notice.)

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

The Motion For Approval of Compromise is granted.

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Tekstar Systems, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising from the Trustee's Adversary Proceeding 15-9041 against the Settlor seeking recovery of $32,600.12 as an avoidable pre-petition transfer.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the

court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 563):

A. Movant shall accept from Settlor, and Settlor shall pay to Movant, the sum of $10,000.00 on account of the Adversary Proceeding. The Payment Amount shall be paid within seven days of the date of execution by the last of the parties to sign this Agreement.

B. Settlor shall retain any and all rights under 11 U.S.C. § 502(h). The Movant shall not object to the allowance of Settlor's § 502(h) claim to be filed in the amount of the Payment Amount.

C. Movant shall not object to the allowance of Claim No. 81 as filed.

D. Upon receipt of the Payment Amount, Movant shall seek court approval of this Agreement. Within seven days of the final, non-appealable court order approving this Agreement, Movant shall voluntarily dismiss the Adversary Proceeding with prejudice. If the court does not approve this Agreement, Movant shall return to Settlor the Payment Advance.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Under the Settlement Movant shall recover $10,000.00 in satisfaction of the estate's claim for recovery of the property, with an asserted value of $17,817.62, from Settlor. Movant asserts that the property can be recovered for the estate pursuant as a preference. This proposed settlement allows Movant to recover for the estate $10,000.00 without further cost or expense and is 56.2% of the maximum amount of the claim identified by Movant.

Probability of Success

The Movant asserts that the Settlor contends that two payments, totaling nearly half of the disputed amount, were joint checks that cleared outside the 90-day preference window. The Movant does not disagree. While the Settlor does assert a defense pursuant to § 547(c)(2), the Movant asserts that out of thee remaining $17,812.62, the settlement provides for recovery of 56% of the amount remaining at issue.

Difficulties in Collection

The Movant is not aware of any difficulties in collection.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, estimated at $15,000.00, which are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

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

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The settlement provides for a 56% return on the remaining amounts in contention. The estate is able to avoid the unnecessary cost of litigation and the potential expenses that would further diminish any relief received. Given the possibility for a defense and the amount being litigated having been reduced given part of the original claim being outside the preference window, the settlement is in the best interest of the parties. The motion is granted.

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

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

IT IS ORDERED that the Motion to Approve Compromise between Movant and Tekstar Systems, Inc. ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Docket Number 563).

7. 13-91315-E-7 WFH-23 — APPLEGATE JOHNSTON, INC. — George C. Hollister — MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH UNITED RENTALS (NORTH AMERICA), INC. — 2-25-16 [565]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2016. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(3), 21 day notice.)

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

The Motion For Approval of Compromise is granted.

Michael D. McGranahan, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with United Rentals (North America) Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are The claims and disputes to be resolved by the proposed settlement are those arising from the Trustee's Adversary Proceeding 15-9034 against the Settlor seeking recovery of $49,232.64 as an avoidable pre-petition transfer.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 568):

A. Movant and Settlor agree to resolve the litigation and all disputes between them, except the excluded items set forth, for the sum of $21,250.00.

B. Within thirty days of the execution of the agreement, the Settlor will cause to be delivered to the Movant a check in the amount of $21,250.00. The check shall be made payable to "Applegate Johnston, Inc." and shall be sent to Michael D. McGranahan, Trustee, P.O. Box 5081, Modesto, California.

C. Settlor shall have the right to file an amended proof of claim asserting an additional claim pursuant to § 502(h) in the amount of the settlement amount.

D. Upon receipt of the settlement check, the Movant will promptly file a motion with the court for approval of the compromise.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

F.2d 610, 620 (9th Cir. 1988).

Under the Settlement Movant shall recover $21,250.00 in satisfaction of the estate's claim for recovery of the property. Movant asserts that the property can be recovered for the estate as a preference. This proposed settlement allows Movant to recover for the estate $21,250.00 without further cost or expense and is 43.2% of the maximum amount of the claim identified by Movant.

Probability of Success

The Movant states that the Settlor asserts a defense pursuant to § 547(c)(1). The Settlor asserts that in exchange for the challenged payment, Settlor released its rights to assert claims against Liberty Mutual on the bond issued on the underlying projects. The Settlor asserts the new value defense. While the Movant does not completely disagree with the analysis, the Movant does assert that it would only partially be relevant. As such, the Movant argues that the Settlor will not be able to satisfy its burden for the defense which would result in a minimum recovery of $18,008.26.

Difficulties in Collection

The Movant does not believe there are any difficulties.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, estimated at $15,000.00. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a grater recovery for the Estate then if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

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

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The settlement provides for a 56% return on the remaining amounts in contention. The estate is able to avoid the unnecessary cost of litigation and the potential expenses that would further diminish any relief received. Given the possibility for a defense and the amount being litigated having been reduced given part of the original claim being outside the preference window, the settlement is in the best interest of the parties. The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael D. McGranahan, the Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Compromise between Movant and United Rentals (North America) Inc. ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion(Docket Number 568).

8. 13-91315-E-7 WFH-25 — APPLEGATE JOHNSTON, INC. / George C. Hollister — MOTION TO EMPLOY CROWE HORWATH, LLP AS ELECTRONIC DISCOVERY CONSULTANT / 2-25-16 [570]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Employ is denied without prejudice.

Chapter 7 Trustee, Michael D. McGranahan, seeks to employ electronic discovery consultant Crowe Horwath LLP, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel to assist the Trustee in sorting and retrieving information from the Debtor's server in order to enable Trustee to respond to discovery requests and to prepare for trial.

The Trustee argues that Counsel's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present needs to organize and compile all information of the Debtor for purposes of trial and discovery.

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

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

However, the Trustee does not seek authorization to employ Crowe Horwath LLP as a "professional" to which those provisions apply. Though not stated with particularity in the Motion (Fed. R. Bankr. P. 9013), in the Points and Authorities (not the Motion), the Trustee appears to state the grounds that he asserts Crowe Horwath LLP is not a "professional" for which 11 U.S.C. § 327 authorization is required.

Taking the Trustee at his word, then there is no basis for the court to issue an order "authorizing" the employment. However, it appears that what the Trustee is attempting to say, is that out of an abundance of fiduciary caution, the Trustee is bringing this Motion to vet his contention and see if there is any disagreement. (A "discretion is the better part of valor" approach in a close call, rather than merely seeking a "protective order.")

The Motion does not state what "Crowe Horwath LLP is - a consulting company, a law firm, accountants, a computer technical company, or what. The Motion merely says it is a "Discovery Consultant," without defining that term. The scope of the work state in the Motion is,

> "7. Trustee now wishes to retain Crowe Horwath to sort and retrieve information from the Debtor's server in order to enable Trustee to respond to discovery requests and to prepare for trial. Trustee believes Crowe Horwath is qualified to provide information retrieval services and to provide access to information not accessible to Trustee at this time."

Motion, p.2:22-25; Dckt. 570. This sounds in the nature of technical services, as opposed to professional advice, consulting, and testimony.

However, further in the Motion the Trustee refers to the charges to be made as being for "professionals." *Id.*, p.2:28, 3:1-2.

The engagement letter, Dckt. 547, includes the following descriptions of the services to be provided (emphasis added):

A. "This engagement Letter agreement "Agreement") sets forth our understanding of the **consulting services** to be provided...." Dckt. 574; Exhibit A, Engagement Letter, p. 3 (of Exhibit Document).

B. "[e]ngage Crowe to **provide consulting and support services** in the Applegate Johnston, Inc. Bankruptcy Case." *Id.*

C. "The provision of services may consist of in-person meetings, review and analysis of documents, discussions by telephone, and **written and oral reports of findings** as may be directed or requested by Client or Client's counsel." *Id.*

D. "You may direct Crowe to **evaluate opinions expressed or reports issued by other consultants or experts** and to **assist you with your preparation for taking relevant fact and/or expert depositions**." *Id.*

E. "**Crowe may perform** technology, economic, industry and accounting **research to support our analysis or conclusions. Crowe will provide advice** as requested within our expertise and expert witness testimony, if **on technology, business and financial matters** requested." *Id.*

F. "**As a regulated professional services firm**, Crowe must follow certain professional standards where applicable, including the Code of Professional Conduct promulgated by the **American Institute of Certified Public Accountants.**"

G. "Therefore, if circumstances arise that, in **Crowe's professional judgment**, prevent it from completing this engagement, **Crowe retains the right to take any course of action permitted by professional standards**, including declining to issue a work product, or terminating the engagement." *Id.*, pg. 5.

H. **LIMITATION OF LIABILITY**

"[**The Trustee] agrees to indemnify** and hold **Crowe**, its partners and employees harmless **from all claims**, including any third party claims or other liabilities, costs and expenses (including reasonable attorneys' fees) incurred by reason of any action taken or omitted by us in good faith arising out of this engagement, **except for matters judicially determined to be caused by the gross negligence Of bad faith of Crowe**.
...
Further, [Trustee] agrees that **any liability of Crowe** or its partners Of employees **will be limited to** no more than **the fees paid Crowe for this engagement**, and a return of fees paid will **be the exclusive remedy** for
any damages.
...
To the extent allowed by law, any dispute arising under this Agreement or relating to the services performed or to be performed by Crowe, including, but not limited to, disputes as to fees, the scope of the engagement, or **professional malpractice**, **will be first submitted for non-binding mediation**

or alternative dispute resolution before litigation is filed.

I. "Crowe Horwath LLP and the Engagement Authorized Signer above **are licensed or otherwise authorized by the California Board of Accountancy**."

The Engagement Letter is inconsistent with Motion. While possibly innocently so, if the court were to grant a *carte blanche* "approval" of the employment stating that Crow Horwath, LLP are not professionals and the Trustee can pay whatever he wants without court approval pursuant to 11 U.S.C. § 330, it is clear that the Engagement Letter provides for professional services. Additionally, the Motion fails to disclose that the Engagement Letter seeks to limit the business and professional liability of Crowe Horwath, LLP, limiting to whatever fees were paid, irrespective of the damage caused by the non-professional and professional services.

The court also searched for the Crowe Horwath webpage and information it provides about itself. On the overview page, Crowe Horwath describes itself as follows (emphasis added):

> "Crowe Horwath LLP is one of the **largest public accounting, consulting, and technology firms** in the United States. Under its core purpose of "Building Value with Values®," **Crowe uses its deep industry expertise** to provide **audit services** to public and private entities while also **helping clients reach their goals with tax, advisory, risk, and performance services**. With offices coast to coast and 3,000 personnel, Crowe is recognized by many organizations as one of the country's best places to work. Crowe serves clients worldwide as an independent member of Crowe Horwath International, one of the largest global accounting networks in the world. **The network consists of more than 200 independent accounting and advisory services firms in more than 120 countries around the world**."

http://www.crowehorwath.com/about/. This too sounds more as a professional for purposes of 11 U.S.C. § 327 rather than a "computer technician" to assist the Trustee in getting data off of a server.

For the Motion and Engagement Agreement as presented, the court cannot "approve" it by determining that Crowe Horwath are not professionals to be employed for which 11 U.S.C. § 327 authorization is required. Additionally, the Motion does not state with particularity that the Trustee is seeking authorization to limit the rights of the estate for damages which might be caused to it through the services to be obtained by the Trustee.

The court denies the Motion without prejudice, confident that the Trustee and Crowe Horwath and either create an Engagement Agreement which clearly provides for non-professional services, or and Engagement Agreement for professional services which can be approved by the court.

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

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

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

IT IS ORDERED that the Motion to Employ is denied without prejudice.

9. 10-94117-E-7 ELDON/PAMELA HENDERSON
SCB-3 Scott D. Mitchell

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHNEWEIS-COE AND BAKKEN, LLP FOR LORIS L. BAKKEN, TRUSTEE'S ATTORNEY(S)
2-17-16 [131]

Final Ruling: No appearance at the March 17, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 17, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

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

The period for which the fees are requested is for the period October 6, 2015 through February 17, 2016. The order of the court approving employment of Applicant was entered on October 12, 2015, Dckt. 113. Applicant requests reduced fees in the amount of $3,945.00 and costs in the amount of $73.39.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including representing the Client as the fiduciary of the estate, prepared motions to employ, motions to compensate, objected to Debtor's claim of exemptions, and attended hearings. The estate has $15,108.70 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 4.0 hours in this category. Applicant assisted Client with preparing employment motion, attending hearing, and preparing compensation motion.

Objection to Exemptions: Applicant spent 12.4 hours in this category. Applicant reviewed case law concerning Debtor's burden of proof when amending exemptions, held conference calls with Client on possible objection, prepared and filed a turnover agreement between Client and Debtor.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Louis Bakken	16.4	$300.00	$4,920.00
	0	$0.00	$0.00
Total Fees For Period of Application			$4,920.00

The Applicant is seeking a reduced fee $3,945.00.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $73.39 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$48.59
Photocopies	$0.10 per page	$24.80
Total Costs Requested in Application		$73.39

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $3,945.00 for its fees incurred for the Client. First and Final Fees in the amount of $3,945.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs and Expenses

The First and Final Costs in the amount of $73.39 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $3,945.00
Costs and Expenses $73.39

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Schneweis-Coe and Bakken, LLP (“Applicant”), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Schneweis-Coe and Bakken, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Schneweis-Coe and Bakken, LLP, Professional Employed by

Trustee

Fees in the amount of $3,945.00
Expenses in the amount of $73.39,

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

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

10. 15-90717-E-11 MRG-4 | **PLASMA ENERGY PROCESSES, INC.** Michael R. Germain | **MOTION TO DISMISS CASE** 3-2-16 [60]

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

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

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

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

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2016. By the court's calculation, 15 days' notice was provided. 21 days' notice is required. Fed. R. Bank. P. 2002(a)(4) 21-day notice for Chapter 7, 11, and 12 cases.

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

The Motion to Dismiss the Chapter 11 Bankruptcy Case is denied without prejudice.

This Motion to Dismiss the Chapter 11 bankruptcy case of Plasma Energy Processes, Inc., ("Debtor-in-Possession") has been filed by Plasma Energy Processes, Inc., "Movant," the Debtor-in-Possession. Movant asserts that the case should be dismissed based on the following grounds.

A. Cause exists because there is no further purpose that would be served by the Debtor-in-Possession continuing in bankruptcy, both administrative expenses and judicial resources, would be conserved by the dismissal of this case, and legitimate

creditors can be paid in full through the liquidation of the Debtor-in-Possession's real properties outside of bankruptcy.

B. Dismissal is in the best interest of the estate and creditors because:

1. the automatic stay would be terminated,

2. the Debtor-in-Possession can propose only a liquidating Chapter 11 Plan in order to pay its legitimate creditors, but the Debtor-in-Possession can pay these creditors by liquidating its properties outside of bankruptcy with no further administrative expenses or expenditure of judicial resources

3. Neither of the two legitimate creditors would incur greater benefits through either a liquidating Chapter 11 Plan or a Chapter 7 liquidation than they would received by liquidation and payment outside of bankruptcy.

4. Both judicial resources and administrative expenses will be conserved through immediate dismissal.

Unfortunately, the Debtor-in-Possession has only provided 15 days notice. However, as required by Fed. R. Bankr. P. 2002(a)(4), a minimum of 21 days notice is necessary. Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 11 case filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT CAN SHOW PROPER GROUNDS FOR WHICH THE REQUESTED RELIEF MAY BE ENTERED IN LIGHT OF THE FORGOING ISSUES

ALTERNATIVE RULING

This Motion to Dismiss the Chapter 11 bankruptcy case of Plasma Energy Processes, Inc., ("Debtor-in-Possession") has been filed by Plasma Energy Processes, Inc., "Movant," the Debtor-in-Possession. Movant asserts that the case should be dismissed based on the following grounds.

A. Cause exists because there Is no further purpose that would be served by the Debtor-in-Possession continuing in bankruptcy, both administrative expenses and judicial resources, would be conserved by the dismissal of this case, and legitimate creditors can be paid in full through the liquidation of the Debtor-in-Possession's real properties outside of bankruptcy.

B. Dismissal is in the best interest of the estate and creditors because:

1. the automatic stay would be terminated,

2. the Debtor-in-Possession can propose only a liquidating Chapter 11 Plan in order to pay its legitimate creditors, but the Debtor-in-Possession can pay these creditors by liquidating its properties outside of bankruptcy with no further administrative expenses or expenditure of judicial resources

3. Neither of the two legitimate creditors would incur greater benefits through either a liquidating Chapter 11 Plan or a Chapter 7 liquidation than they would received by liquidation and payment outside of bankruptcy.

4. Both judicial resources and administrative expenses will be conserved through immediate dismissal.

Unfortunately, the Debtor-in-Possession has only provided 15 days notice. However, as required by Fed. R. Bankr. P. 2002(a)(4), a minimum of 21 days notice is necessary. Therefore, the Motion is denied without prejudice.

RULING

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Debtor-in-Possession has presented evidence and argument that the continuation of the case would not lead to any effective reorganization. The Debtor-in-Possession asserts that there are only two remaining creditors for the estate to deal with, both of which would be better served outside the bankruptcy. There does not appear to be a conceivable reason to keep the instant case in bankruptcy when no purpose would be served.

The motion is granted and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 11 case filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted and the case is dismissed.

11. 13-90323-E-12 FLG-10 — FRANCISCO/ORIANA SILVA — Peter L. Fear — OBJECTION TO CLAIM OF JOEL VELASCO, CLAIM NUMBER 15, CLAIM NUMBER 16 AND CLAIM NUMBER 17 — 1-13-16 [165]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Chapter 12 Trustee, and Office of the United States Trustee on January 13, 2016. By the court's calculation, 64 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 15, 16, and 17 of Joel Velasco is sustained.

Francisco Mendes Silva, the Debtor ("Objector") requests that the court disallow two of the three claims filed by Joel Velasco ("Creditor"), Proofs of Claim No. 15 ("Claim"), 16, and 17 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $14,665.00. Objector asserts that the Claim is a duplicate of Proof of Claim Number 16 and 17. Further the Objector asserts that the Proof of Claim No. 15 should be allowed as a general unsecured with non-priority, which Claims No. 16 and 17 disallowed.

TRUSTEE'S OPPOSITION

Jan Johnson, the Chapter 12 Trustee, filed an opposition on February 26, 2016. Dckt. 194. The Trustee states that the Proof of Claim was filed on June 25, 2013. The plan was confirmed on November 25, 2013. Prior to the filing of this objection, the Trustee paid a total of $1,599.76 on the claim. The Trustee opposes the objection to the extent it would require the Trustee to seek recovery of the funds that were disbursed in accordance with the confirmed plan and the timely proof of claim.

DISCUSSION

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

A review of the Proof of Claim Nos. 15, 16, and 17 show that each of the claims are identical of each other. Each claim asserts an unsecured claim for $14,655.00, stating that an "unascertained" portion of the amount is entitled to priority as wages, salaries, or commissions earned within 180 days prior to the case being filed. Therefore, based on the evidence before the court, the creditor's Proof of Claims No. 16 and 17 are disallowed in their entirety. The Objection to the Proof of Claim No. 16 and 17 are sustained.

As to the Trustee's objection, the court is also concerned at the administrative effects of disallowing all monies paid to the Creditor to date based on the confirmed plan and timely filed claim. The Trustee states that he paid a total of $1,599.76. Therefore, the court disallows $13,055.24 as a priority claim, the remainder of the Creditor's Proof of Claim No. 15 be allowed as a general unsecured claim.

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

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

The Objection to Claim of Joel Velasco, Creditor filed in this case by Francisco Mendes Silva, 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 objection to Proofs of Claim Number 16, and 17 of Joel Velasco is sustained and the Proof of Claim Nos. 16 and 17 are disallowed in its entirety, without prejudice to the rights of the creditor pursuant to Proof of Claim Number 15.

IT IS FURTHER ORDERED that the Objection to Proof of Claim No. 15 is sustained and the Proof of Claim No. 15 is disallowed for all amounts in excess of $1,599.76, which has heretofore been paid as a priority claim by the Chapter 12 Trustee, with the remainder of the Creditor's Proof of Claim No. 15 allowed as a general unsecured claim.

12. 13-90323-E-12 FRANCISCO/ORIANA SILVA **OBJECTION TO CLAIM OF JOSE**
FLG-11 Peter L. Fear **VELASCO, CLAIM NUMBER 18**
1-13-16 [170]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Chapter 12 Trustee, and Office of the United States Trustee on January 13, 2016. By the court's calculation, 64 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 18 of Joel Velasco is sustained, disallowing it as a priority claim.

Francisco Mendes Silva, the Debtor ("Objector") requests that the court disallow the claim of Joel Velasco ("Creditor"), Proof of Claim No. 18 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be priority in the amount of $8,777.00. Objector asserts that the claim be allowed only as a non-priority general claim because the Creditor fails to assert that the claim is for wages, salaries, or commissions incurred in the 180 days prior to the filing of the bankruptcy. The Objector states that the basis for the claim arises from a complaint filed in the California Superior Court in Stanislaus County on September 15, 2009 as case number 645698..

TRUSTEE'S OPPOSITION

Jan Johnson, the Chapter 12 Trustee, filed an opposition on February 26, 2016. Dckt. 197. The Trustee states that the Proof of Claim was filed on June 25, 2013. The plan was confirmed on November 25, 2013. Prior to the filing of this objection , the Trustee paid a total of $957.75 on the claim. The Trustee opposes the objection to the extent it would require the Trustee to seek recovery of the funds that were disbursed in accordance with the confirmed plan and the timely proof of claim.

DISCUSSION

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

A review of the Proof of Claim No. 18 shows that the claim asserts a priority pursuant to 11 U.S.C. § 507(a)(4). The claim asserts an unsecured claim for $8,777.00, stating that an "unascertained" portion of the amount is entitled to priority as wages, salaries, or commissions earned within 180 days prior to the case being filed. However, the Creditor does not provide any evidence that the claim is entitled to priority. As the Debtor highlighted, the complaint was filed on September 15, 2009, which is more than 180 days from the time the case was filed.

As to the Trustee's objection, the court is also concerned at the administrative effects of disallowing all monies paid to the Creditor to date based on the confirmed plan and timely filed claim. The Trustee states that he paid a total of $957.75. Therefore, the court disallows $7,819.25 as a priority claim, the remainder of the Creditor's Proof of Claim No. 18 be allowed as a general unsecured claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Joel Velasco, Creditor filed in this case by Francisco Mendes Silva, 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 objection to Proof of Claim Number 18 of Joel Velasco is sustained and the claim is disallowed for all amounts in excess of $957.75, which have been paid as a priority claim by the Chapter 12 Trustee, with the remainder of the Creditor's Proof of Claim No. 18 allowed as a general unsecured claim.

13. 13-90323-E-12 FRANCISCO/ORIANA SILVA
FLG-12 Peter L. Fear

OBJECTION TO CLAIM OF LUIS MANUEL JIMENEZ, CLAIM NUMBER 19
1-15-16 [175]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Chapter 12 Trustee, and Office of the United States Trustee on January 15, 2016. By the court's calculation, 62 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 19 of Luis Manuel Jimenez is sustained, and the claim is disallowed as a priority claim.

Francisco Mendes Silva, the Debtor ("Objector") requests that the court disallow the claim of Luis Manuel Jimenez ("Creditor"), Proof of Claim No. 19 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be priority unsecured in the amount of $8,305.00. Objector asserts that the claim be allowed only as a non-priority general claim because the Creditor fails to assert that the claim is for wages, salaries, or commissions incurred in the 180 days prior to the filing of the bankruptcy. The Objector states that the basis for the claim arises from a complaint filed in the California Superior Court in Stanislaus County on September 15, 2009 as case number 645698.

TRUSTEE'S OPPOSITION

Jan Johnson, the Chapter 12 Trustee, filed an opposition on February 26, 2016. Dckt. 200. The Trustee states that the Proof of Claim was filed on June 25, 2013. The plan was confirmed on November 25, 2013. Prior to the filing of this objection , the Trustee paid a total of $906.25 on the claim. The Trustee opposes the objection to the extent it would require the Trustee to seek recovery of the funds that were disbursed in accordance with the confirmed plan and the timely proof of claim.

DISCUSSION

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

A review of the Proof of Claim No. 19 shows that the claim asserts a priority pursuant to 11 U.S.C. § 507(a)(4). The claim asserts an unsecured claim for $8,305.00, stating that an "unascertained" portion of the amount is entitled to priority as wages, salaries, or commissions earned within 180 days prior to the case being filed. However, the Creditor does not provide any evidence that the claim is entitled to priority. As the Debtor highlighted, the complaint was filed on September 15, 2009, which is more than 180 days from the time the case was filed.

As to the Trustee's objection, the court is also concerned at the administrative effects of disallowing all monies paid to the Creditor to date based on the confirmed plan and timely filed claim. The Trustee states that he paid a total of $906.25. Therefore, the court disallows $7,398.75 as a priority claim, the remainder of the Creditor's Proof of Claim No. 19 be allowed as a general unsecured claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Luis Manuel Jimenez, Creditor filed in this case by Francisco Mendes Silva, 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 objection to Proof of Claim Number 19 of Luis Manuel Jimenez is sustained and the claim is disallowed for all amounts in excess of $906.25 as a priority claim, which has heretofore been paid by the Chapter 12

Trustee, with the remainder of the Creditor's Proof of Claim No. 19 allowed as a general unsecured claim.

14. 13-90323-E-12 FLG-13 FRANCISCO/ORIANA SILVA Peter L. Fear — OBJECTION TO CLAIM OF JOSE PALOMARES, CLAIM NUMBER 20 1-15-16 [180]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Chapter 12 Trustee, and Office of the United States Trustee on January 15, 2016. By the court's calculation, 62 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 20 of Jose Palomares is sustained.

Francisco Mendes Silva, the Debtor ("Objector") requests that the court disallow the claim of Jose Palomares ("Creditor"), Proof of Claim No. 20 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be priority unsecured in the amount of $5,072.00. Objector asserts that the claim be allowed only as a non-priority general claim because the Creditor fails to assert that the claim is for wages, salaries, or commissions incurred

in the 180 days prior to the filing of the bankruptcy. The Objector states that the basis for the claim arises from a complaint filed in the California Superior Court in Stanislaus County on September 15, 2009 as case number 645698.

TRUSTEE'S OPPOSITION

Jan Johnson, the Chapter 12 Trustee, filed an opposition on February 26, 2016. Dckt. 203. The Trustee states that the Proof of Claim was filed on June 25, 2013. The plan was confirmed on November 25, 2013. Prior to the filing of this objection , the Trustee paid a total of $553.45 on the claim. The Trustee opposes the objection to the extent it would require the Trustee to seek recovery of the funds that were disbursed in accordance with the confirmed plan and the timely proof of claim.

DISCUSSION

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

A review of the Proof of Claim No. 20 shows that the claim asserts a priority pursuant to 11 U.S.C. § 507(a)(4). The claim asserts an unsecured claim for $8,777.00, stating that an "unascertained" portion of the amount is entitled to priority as wages, salaries, or commissions earned within 180 days prior to the case being filed. However, the Creditor does not provide any evidence that the claim is entitled to priority. As the Debtor highlighted, the complaint was filed on September 15, 2009, which is more than 180 days from the time the case was filed.

As to the Trustee's objection, the court is also concerned at the administrative effects of disallowing all monies paid to the Creditor to date based on the confirmed plan and timely filed claim. The Trustee states that he paid a total of $553.45. Therefore, the court disallows $4,518.55 as a priority claim, the remainder of the Creditor's Proof of Claim No. 20 be allowed as a general unsecured claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Jose Palomares, Creditor filed in this case by Francisco Mendes Silva, 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 objection to Proof of Claim Number 20 of Jose Palomares is sustained and the claim is disallowed for all amount in excess of $553.45 as a priority claim, which has been paid by the Chapter 12 Trustee, with the remainder of the Creditor's Proof of Claim No. 20 allowed as a general unsecured claim.

15. 13-90323-E-12 FLG-14 | **FRANCISCO/ORIANA SILVA** **Peter L. Fear** | **OBJECTION TO CLAIM OF JUAN CARLOS IBARRA, CLAIM NUMBER 21 1-15-16 [185]**

No Tentative Ruling: The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Chapter 12 Trustee, and Office of the United States Trustee on January 15, 2016. By the court's calculation, 62 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 21 of Juan Carlos Ibarra is xxxx

Francisco Mendes Silva, the Debtor ("Objector") requests that the court disallow the claim of Juan Carlos Ibarra ("Creditor"), Proof of Claim No. 21 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to

be priority unsecured in the amount of $4,388.00. Objector asserts that the claim be allowed only as a non-priority general claim because the Creditor fails to assert that the claim is for wages, salaries, or commissions incurred in the 180 days prior to the filing of the bankruptcy. The Objector states that the basis for the claim arises from a complaint filed in the California Superior Court in Stanislaus County on September 15, 2009 as case number 645698.

TRUSTEE'S OPPOSITION

Jan Johnson, the Chapter 12 Trustee, filed an opposition on February 26, 2016. Dckt. 206.

Unfortunately, the Trustee appears to have inadvertently filed the same objection as he did for Objection to Poof of Claim Number 20. Dckt. 203.

The Trustee states that the Proof of Claim was filed on June 25, 2013. The plan was confirmed on November 25, 2013. Prior to the filing of this objection , the Trustee stated at the hearing that a total of **$xxxxxx** has been disbursed on this priority claim. The Trustee opposes the objection to the extent it would require the Trustee to seek recovery of the funds that were disbursed in accordance with the confirmed plan and the timely proof of claim.

DISCUSSION

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

A review of the Proof of Claim No. 21 shows that the claim asserts a priority pursuant to 11 U.S.C. § 507(a)(4). The claim asserts an unsecured claim for $8,777.00, stating that an "unascertained" portion of the amount is entitled to priority as wages, salaries, or commissions earned within 180 days prior to the case being filed. However, the Creditor does not provide any evidence that the claim is entitled to priority. As the Debtor highlighted, the complaint was filed on September 15, 2009, which is more than 180 days from the time the case was filed.

As to the Trustee's objection, the court is also concerned at the administrative effects of disallowing all monies paid to the Creditor to date based on the confirmed plan and timely filed claim. The Trustee states that he paid a total of $xxxx. Therefore, the court disallows $xxx as a priority claim, the remainder of the Creditor's Proof of Claim No. 21 be allowed as a general unsecured claim.

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

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

The Objection to Claim of Juan Carlos Ibarra, Creditor filed in this case by Francisco Mendes Silva, 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 objection to Proof of Claim Number 21 of Juan Carlos Ibarra is sustained and the claim is disallowed for all amounts in excess of $xxxx as a priority claim, which has heretofore been disbursed by the Chapter 12 Trustee, with the remainder of the Creditor's Proof of Claim No. 21 allowed as a general unsecured claim.

16. 15-90628-E-7 SSA-2 | **RICARDO/MARIA BALDERAS** | **Mark S. Nelson** | **MOTION FOR ADMINISTRATIVE EXPENSES** | **2-22-16 [35]**

DISCHARGED: 10/26/15

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 22, 2016. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

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

The Motion for Administrative Expenses is granted.

Michael McGranahan, the Chapter 7 Trustee, seeks authorization to pay certain post-petition tax liabilities to be paid by the estates as an administrative expense pursuant to 11 U.S.C. § 503(b).

The Trustee asserts that the Trustee was informed that administrative taxes to state and/or federal governmental entities have been incurred in the principal amount of $1,737.00 due, specifically:

1. Taxes incurred by the **estate in the amount of $1,737.00 to the Internal Revenue Service.**

11 U.S.C. § 503 of the Bankruptcy Code provides for the "allowance" of administrative expenses. Section 503(b)(1)(A) allows as administrative expenses “the actual, necessary costs and expenses of preserving the estate.” The burden of proving an administrative expense is on the claimant. *Microsoft Corp. v. DAK Indus. (In re DAK Indus.)*, 66 F.3d 1091 (9th Cir. 1995). The claimant must show that the debt asserted to be an administrative expense (1) arose from a transaction with the debtor-in-possession as opposed to the preceding entity; and (2) directly and substantially benefitted the estate. *Id.* In order to keep administrative costs to the estate at a minimum, "the actual, necessary costs and expenses of preserving the estate," § 503(1)(A), are construed narrowly. *In re Palau*, 139 Bankr. 942, 944 (B.A.P. 9th Cir. 1992), *aff'd*, 18 F.3d 746 (9th Cir. 1994).

In the instant case, the expenses the Trustee is seeking authorization to pay are federal taxes to the Internal Revenue Service. 11 U.S.C. § 503(b)(2) specifically allow for the payment of taxes as an administrative expense. Here, the Trustee has shown that the $1,737.00 are taxes incurred by the estate. Therefore, the Motion is granted and the administrative expense is allowed.

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 Administrative Expenses filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is approved and Michael McGranahan, the Chapter 7 Trustee, is authorized to pay post-petition federal taxes to the Internal Revenue Service in the principal amount of $1,737.00 and any accrued interest and penalties by the estate, with the returns when filed, and is an allowed administrative expense under 11 U.S.C. § 503(b). .

17. 14-91633-E-7 SOUZA PROPANE, INC.
FWP-19 David C. Johnston

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
2-25-16 [398]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2016. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(3), 21 day notice.)

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

The Motion For Approval of Compromise is granted.

David D. Flemmer, the Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Aasim Propane and Gas Corporation, and Ashraf Ali ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising from the 84 prepaid accounts that were not accounted for in the closing reconciliation when the Movant sold the Debtor's assets to Settlor. Additionally, there was $1,903.16 in net proceeds that were paid to the Movant rather than the Settlor. As such, the Settlor will take full responsibility for propane deliveries for customers that prepaid more than $15,000.00 to Debtor and the estate will pay Settlor $11,800.00 to resolve this and other disputes that have arisen after

the sale of substantially all of the Debtor's assets to Settlor.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 402):

A. The effective date of the agreement shall be the 15th day after entry of an order approving the agreement

B. The Movant shall promptly after the effective day, pay the Settlor by wire transfer, cashier's check or other form of payment satisfactory to the Settlor $11,800.00.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Under the terms the Settlement all claims of the Estate, including any pre-petition claims of the Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

Movant asserts that this factor weighs in favor of settlement because the uncertain nature of the litigation, namely the liability of the estate for certain prepaid accounts, makes settlement the best option for all parties. If the litigation was to proceed, it is possible that the prepaid accounts may be an administrative or priority claim which would bind the estate's money.

Difficulties in Collection

Movant states that it is unlikely that the Estate would collect money from the Settlor based on the disputed claims.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, which are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery as well as the potential effect of the claims on the estate.

Paramount Interest of Creditors

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

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The settlement releases the estate from liability on accounts that were not properly reconciled at the time of closing. The Settlor is willing to take on the liability of these 84-plus accounts and release the Debtor of any liability. In light of these claims having potential to have priority, the settlement is in the best interest of the parties because it allows the estate to avoid the potential influx of priority claims. The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by David D. Flemmer, the Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Approve Compromise between Movant and Aasim Propane and Gas Corporation, and Ashraf Ali ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Docket Number 402).

18. 16-90035-E-7 JEFFREY/BARBARA MORGENSEN MOTION TO AVOID LIEN OF BH FINANCIAL SERVICES, LLC
EAT-1 Ethan A. Turner 2-1-16 [9]

Final Ruling: No appearance at the March 17, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Creditor, Chapter 7 Trustee, and Office of the United States Trustee on February 1, 2016 By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of BH Financial Services, LLC ("Creditor") against property of Jeffrey and Barbara Morgensen ("Debtor") commonly known as 581 Timber Lane, West Point, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $26,029.61. An abstract of judgment was recorded with Calaveras County on October 11, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $150,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of BH Financial Services, LLC, California Superior Court for Calaveras County Case No. 13CF10809, recorded on October 11, 2013, Document No. 14133 Calaveras County Recorder, against the real property commonly known as 581 Timber Lane, West Point, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

19. 15-90953-E-7 RACHEL MARMOL
15-9067 SSA-1
MCGRANAHAN V. AGUILAR

MOTION FOR ENTRY OF DEFAULT JUDGMENT
2-3-16 [16]

Final Ruling: No appearance at the March 17, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, Defendant (pro se), and Office of the United States Trustee on February 3, 2016. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Default Judgment is granted.

Michael McGranahan ("Plaintiff-Trustee") filed the instant Motion for Default Judgment on February 3, 2016. Dckt. 16.

Juan Aguilar's ("Defendant-Co-Debtor") ex-wife Rachel Marmol ("Debtor") filed a Chapter 13 petition on October 6, 2015. Case No. 15-90953.

Plaintiff-Trustee filed the instant Adversary Proceeding on December 15, 2015. The Complaint seeks judgment to determine that real property commonly known as 1133 S. Minaret Ave., Turlock, California (the "Property") was community property of Defendant Co-Debtor, and for subsequent sale of co-owner's interest in real property requested the following relief:

First Claim

1. [That the court grant] Plaintiff authority to market and sell the bankruptcy estate's interest and the interest of the co-owners in the subject real property pursuant to § 363(h) of the Bankruptcy Code with the price and other terms of sale to be subject to further court approval and for this Court to determine a proper allocation of costs and fees attributable to said sale;

2. For costs of suit herein, including attorneys fees; and

3. For such other and further relief as the court may deem proper.

Second Claim

4. For a declaratory judgement concerning the characterization of the [Property], a determination that the entire property interest is community in nature and also a determination that all residual proceeds of the property may be distributed as property of the bankruptcy estate pursuant to 11 U.S.C. § 541;

5. For reasonable attorneys' fees and costs incurred; and

6. Such other relief as the Court deems just.

The summons and complaint were served on Defendant and Registered Agent on December 16, 2016. Dckt. 12. Service was made on Defendant within fourteen days of the date that the summons was issued.

Plaintiff-Trustee states that the Defendant was required to file an answer or other responsive pleading to the Complaint or a motion pursuant to Fed. R. Bankr. P. 7012 on or before January 14, 2016. Plaintiff submitted a courtesy letter to Defendant on January 15, 2016, informing him that a default would be entered in the case if he did not file an answer within 7 days. Dckt. 16. The Defendant did not file an answer, a motion, or other responsive pleading.

An Entry of Default was entered by the Clerk of the Court on January 29, 2016. Dckt. 13.

APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.* at 770.

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 Moore's Federal Practice - Civil ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, as the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors which the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and

(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471-72 (citing 6 Moore's Federal Practice - Civil ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.)).; *In re Kubick*, 171 B.R. at 661-662.

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee,* 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff did not offer evidence in support of the allegations. *See id.* at 775.

DISCUSSION

Applying these factors, the court finds that the Complaint is sufficient and the requests for relief requested therein are meritorious. It has not been shown to the court there is or may be any dispute concerning material facts. Defendant has not contested any facts in this Adversary Proceeding, nor has he disputed facts presented in his ex-wife's bankruptcy case regarding his community interest in the Property. Further, there is no evidence of excusable neglect by the Defendant. Although the Federal Rules of Civil Procedure favor decisions on the merits through the crucible of litigation, Defendant has been given several opportunities to respond and there is no indication that Defendant has a meritorious defense or disputes Plaintiff's right to judgment in this Adversary Proceeding. Failing to fulfill one's contractual and statutory obligations, and then failing to respond to judicial process, is not a basis for denying relief to an aggrieved plaintiff. The court finds it necessary and proper for the entry of a default judgment against the Defendant.

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 Entry of Default Judgment filed by Plaintiff having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Entry of Default Judgment is granted. The court shall enter judgment determining that the entire property interest, of the property commonly known as 1133 S. Minaret Ave., Turlock, California (the "Property"), is community property, and thereby property of the bankruptcy estate in the Rachel Marmol bankruptcy case (Bankr. E.D. Cal. 15-90953). The court determines further that all residual proceeds of the Property may be distributed as property of the bankruptcy estate pursuant to 11 U.S.C. § 541.

> Counsel for the Plaintiff shall prepare and lodge with the court a proposed judgment consistent with this Order. The judgment shall further provide that any attorneys' fees and costs allowed by the court shall be enforced as part of the judgment.

20. 15-90953-E-7 SSA-2 | **RACHEL MARMOL** | **Pro Se** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** | **2-2-16 [42]**

Final Ruling: No appearance at the March 17, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on February 2, 2016. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Objection to Debtor's Amended Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The objection to debtor's amended claimed of exemptions is overruled.

The Trustee objects to the Debtor's use of the California exemptions by "stacking" two different exemption sections. Specifically, the Debtor is attempting to claim exemptions under both California Code of Civil Procedure § 703 and § 704. California Code of Civil Procedure §703.140, subd. (a)(3), provides:

> If the petition is filed for an unmarried person, that person may elect to utilize the applicable exemption provisions of this chapter other than subdivision (b), or to utilize the applicable exemptions set forth in subdivision (b), but not both.

Debtor’s amended Schedule C filed on January 15, 2016 indicates that the Debtor is claiming exemptions under both California Code of Civil Procedure § § 703 and 704. This is impermissible.

However, on February 11, 2016, the Debtor filed an amended Schedule C, claiming exemptions all under California Code of Civil Procedure § 703. Dckt. 49. Specifically, the Debtor corrected the exemption claimed on the homestead to be pursuant to California Code of Civil Procedure § 704.730.

Therefore, in light of the Debtor filing an amended Schedule C correctly claiming exemptions, the Trustee’s objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Debtor’s Amended Claim of Exemptions 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 Objection is overruled without prejudice.

21. 15-90960-E-7 KEVIN MIXON
CJY-1 Christian J. Younger

MOTION TO AVOID LIEN OF STATE OF CALIFORNIA, EMPLOYMENT DEVELOPMENT DEPARTMENT
2-2-16 [20]

DISCHARGED: 2/10/16

Final Ruling: No appearance at the March 17, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on February 2, 2016. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of State of California, Employment Development Department ("Creditor") against property of Kevin Mixon "Debtor") commonly known as 154 Lavender Lane, Patterson, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,662.37. An abstract of judgment was recorded with Stanislaus County on January 4, 2012, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $350,000.00 as of the date of the petition. The unavoidable consensual liens total $344,227.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $5,773.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore,

the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of State of California, Employment Development Department, California Superior Court for Stanislaus County Case No. 90051096, recorded on January 4, 2012, Document No. 0000716-00 with the Stanislaus County Recorder, against the real property commonly known as 154 Lavender Lane, Patterson, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

22. 11-93765-E-7 JACK BIDDLE **CONTINUED OBJECTION TO DEBTOR'S**
SSA-7 **CLAIM OF EXEMPTIONS**
9-23-15 [58]

Tentative Ruling: The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Defendant's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 23, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Debtor's claimed of exemption in the distributions and proceeds of the bankruptcy estate from the Jack Biddle, Sr. probate; California Superior Court, Stanislaus County, Probate No. 439610; is sustained and the exemptions claimed therein by the Debtor are disallowed in their entirety.

Irma Edmonds, the Chapter 7 Trustee objects to the Debtor's use of the California exemptions pertaining to Debtor's purported attempt to exempt his one-half interest in probate proceeding proceeds arising from the estate of Debtor's late father, Jack Williams Biddle Sr.

Debtor's amended Schedule C attempts to exempt the sum of $22,500.00 from the estate under the wild card exemption pursuant to California Code of Civil Procedure § 703.140(b)(5). Dckt. 19.

The Trustee argues that the basis of the objection is the findings in the Stanislaus Superior Probate Court where that court found that the Debtor and his sister, Sandra Biddle, should be removed as co-administrators of their father's estate and surcharged.

The Trustee states that as a result of these post-petition events, the events have given rise to surcharge against the Debtor (in the amount of $46,000.00), the Trustee submits it is both warranted and appropriate that the court sustain the Trustee's objection to Debtor's amended Schedule C exemption in probate proceeds in the amount of $22,5000.00, or any amount, arising under California Code of Civil Procedure § 703.140(b)(5), up to the amount of surcharge found in the underlying State Court probate proceedings to the sum of $46,000.00.

The Superior Court of Stanislaus County found that Debtor and Debtor's sister both breached their duties as co-administrators and fiduciaries of their father's estate and both were ordered removed as co-administrators of their father's estate. The court surcharged Debtor $46,000.00 and Debtor's sister $13,457.00. The court found both Debtor and debtor's sister mismanaged and intentionally breached their fiduciary duties and their discharge as administrators was warranted under Probate code section 8502(a), (c), and (d).

The Trustee argues that based on this surcharge, the findings by the Superior Court subsumes the Debtor's claim of exemption in the principal amount of $22,500 (in residual probate proceeds) and, as such, the court should sustain the Trustee's Objection.

LEGAL AUTHORITIES CITED BY TRUSTEE

In the Trustee's Points and Authorities, the Trustee argues that this Objection does not run afoul *Law v. Siegel* because the Debtor's misconduct arises post-petition and post-amended exemption claim and it is not the Trustee attempting to surcharge the Debtor's exemptions to pay administrative expenses.

The Ninth Circuit has discussed post-*Law v. Siegel* effects on objections to debtor's exemptions. In *In re Elliott*, the Ninth Circuit stated the following:

> A debtor's bad faith is not a statutorily created exception to the exemption but rather is a judge-made exception under Ninth Circuit authority. The Supreme Court has now mandated in *Law v. Siegel* that "[t]he Code's meticulous ... enumeration of exemptions and exceptions to those exemptions confirms that courts are not authorized to create additional exceptions." *Id.* Accordingly, courts can no longer deny claimed exemptions or bar amendments to exemptions on the ground that the debtor acted in bad faith, when no statutory basis exists for doing so. As such, despite Elliott's apparent bad faith, his claimed homestead exemption must stand absent some statutory basis for its denial.

In re Elliott, 523 B.R. 188, 194 (B.A.P. 9th Cir. 2014).

The Trustee, while citing to some Ninth Circuit cases, does not provide to any statutory basis for disallowing the exemption. The court understands the Trustee's argument that the post-petition finding of the probate court and that the Debtor's breach of his fiduciary duties resulted in a surcharge on his inheritance. However, this boils down to an argument of bad faith post-petition being grounds to disallow the exemptions. As the Ninth Circuit has found post-Siegel, such an argument, without some sort of statutory exception, is not permitted.

The Points and Authorities does not cite the court any legal authority by which the court can issue a judgment (order) which can be enforced against exempt property. The one case cited by Objector is *England v. Golden*, 789 F.2d 698 (9th Cir. 1986). That case does not hold a court may order a judgment (order) be enforced against exempt property. To the contrary, the decision was that California law provided that the asset at issue could not be claimed as exempt.

Based on the foregoing, the court set a further briefing schedule on the Objection, ordering:

> **IT IS ORDERED** that hearing on the objection to Debtor's claimed of exemptions is continued to 10:30 a.m. on March 17, 2016. Movant shall file and serve on or before January 15, 2016, a supplemental Points and Authorities citing to the court grounds upon which the court may require payment of a monetary obligation of Debtor from exempt property. Replies, if any, shall be filed and served on or before January 29, 2016.

Dckt. 81.

SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITY

The Trustee filed a supplemental memorandum of points and authority on December 17, 2106. Dckt. 86. The Trustee argues that equitable estoppel provides sufficient ground to deny the Debtor's amended exemptions.

The Trustee asserts that Debtor represented to the court and creditors that he would act as a fiduciary in his father's estate or concealed the material fact that he intended not to do so. The Debtor has been found to have breached his fiduciary duty to creditors of his father's probate estate and this directly impacts creditors of his bankruptcy estate due to the fact that there will be significantly less proceeds derived from the probate estate for Debtor's estate. Specifically, the Trustee argues that the sum of $41,021 would have otherwise inured to the benefit of the Debtor's creditors. Additionally, the Trustee argues that this defalcation is compounded by the fact Debtor is claiming a residual exemption in the probate proceeds of $22,500.00.

The Trustee argues that when Debtor acted as a co-administrator for his father's estate, the Debtor made an express, if not implied, promise to the Probate Court, the Bankruptcy Court, and Trustee. The Trustee argues that it was not until the Debtor amended his claimed exemptions that the Trustee learned of the Probate Court's finding of the Debtor's fraud.

The Trustee argues that the Debtor was the only one who knew the true facts of the fraudulent transfer to the debtor's girlfriend to hinder the collection of a judgment against the Debtor's father's estate. As such, the Trustee argues that the second element is met.

As to the third element, the Trustee argues that, while the Trustee was joined in an action to both surcharge and remove the Debtor from being an administrator of the estate, the Trustee did not know the actual truth of the matter. The Trustee argues that the element is met.

As to the fourth element, the Trustee argues that Debtor acted with the intent to adversely effect the estate. The Trustee reiterates that it was not until the Probate Court's finding of fraudulent conveyance that the Trustee learned of the Debtor's intent. As such, the Trustee argues that she relied on the representations of the Debtor up to the point that there was a judgment.

Lastly, the Trustee argues that she was induced to act on the misrepresentation of the Debtor. The Trustee states that following the Meeting of Creditors she was aware that the Debtor held a probate interest in the Debtor's father's estate and was a co-administrator. However, the Trustee argues that she had no actual knowledge at that time that the Debtor harbored a secret or clandestine intent to do harm to the probate estate and ultimately the bankruptcy estate. The Trustee argues that the estate was actually harmed because the Debtor's failure to act responsibly resulted in a dollar diminution to the estate because of the probate surcharging the principal amount.

The Trustee concludes that while on its face Fed. R. Bankr. P. 4003(b) does not allow for an objection to exemption, Fed. R. Bankr. P. 4003(b)(3) allows for the Debtor to object to the amended exemptions because the Debtor fraudulently asserted the claim. The Trustee argues that because the Debtor is seeking to claim an exemption that, as she argues, was fraudulent, that the 30-day window of Rule 4003 does not apply to the Trustee.

APPLICABLE LAW

Equitable doctrines, such as equitable and judicial estoppel focus upon *conduct*. *Alary Corp. v. Sims (In re Associated Vintage Group, Inc.)*, 283 B.R. 549, 565 (B.A.P. 9th Cir. 2002). Courts have found that "a valid claim for equitable estoppel requires: (a) a representation or concealment of material facts; (b) made with knowledge, actual or virtual, of the facts; (c) to a party ignorant, actually and permissibly, of the truth; (d) with the intention, actual or virtual, that the ignorant party act on it; and (e) that party was induced to act on it." *Simmons v. Ghaderi*, 44 Cal. 4th 570, 584, 187 P.3d 934, 943 (2008)(citing 13 Witkin, Summary of Cal. Law (10th ed. 2005) Equity, § 191, pp. 527-528.)

Since estoppel is an equitable doctrine, it should be applied "where justice and fair play require it." *United States v. Ruby Co.*, 588 F.2d 697, 703 (9th Cir. 1978).

DISCUSSION

The State Court judge determined:

a. "The court finds petitioner has met her burden of proof that Mr. Jack Biddle Jr. did fraudulently transfer and/or attempted to transfer the Running Iron business to Ms. Holidy with the intent to prevent or hinder the petitioner [a creditor of Jack Biddle, Jr.] from collecting her judgment against Mr. Jack Bidddle Jr. per Civil Code section 3439.04." Exhibit 3, State Court Decision, Dckt. 62 at 14.

b. "The court finds the value of the business as to tangible assets and good will to be $46,000.00. Due to the actions of Mr. Jack Biddle Jr. he is surcharged that amount, per Probate Code section 9601. The surcharge must be paid to the petitioner, the bankruptcy trustee and/or the Department of Child Support Services as determined by the Public Guardian's Office or other creditors, and as approved by the court. In making this determination the court is not setting forth any priority of such claims. In the event that the liquor license is marketable and is sold Mr. Jack Biddle Jr. shall receive a credit against the surcharge after deduction of allowable costs incurred in reinstating and sale of the Running Iron liquor license issued in the name of the decedent." *Id.* at 15.

c. California Probate Code § 9601 imposes liability for the breach of a fiduciary duty by the personal representative of the probate estate.

d. "The actions described above clearly show mismanagement and intentional breach of the co-administrators [Jack Biddle, Jr.] breach fiduciary duties and hence their discharge as administrators per Probate Code section 8502 (a) (c) and (d). Further, the court finds the previous co-administrators shall not be, entitled to any probate statutory compensation due to their actions other than the recovery of necessary filing costs and publication." *Id.* at 16.

The State Court judge noted that the persons actually harmed by the breach of fiduciary duty of Jack Biddle, Jr. were the beneficiaries of the probate estate, which now is the bankruptcy estate of Jack Biddle, Jr., not Jack Biddle, Jr. personally.

The State Court judge further expressly held that Jack Biddle, Jr. was "surcharged" $46,000.00 due to his breach of fiduciary conduct. The State Court judge ordered such surcharge as a matter of California law, having such monies by-pass Jack Biddle, Jr. personally and instead be directed to several over parties, including the bankruptcy trustee for the estate in the Jack Biddle, Jr. bankruptcy case.

Duties of Personal Representative

The personal representative of a probate estate must use "ordinary care and diligence" in managing and controlling property of the probate estate. Cal. Prob. § 9600. The personal representative is a fiduciary, acting as the agent or trustee for the heirs (to which the bankruptcy estate is for the Jack Biddle, Jr. interests). *Estate of Boggs*, 19 Cal. 2d 324 (1942); *Hewitt v. Hewitt*, 17 F.2d 716 (9th Cir. 1927).

The State Court judge has determined that Jack Biddle, Jr. breached those duties, causing harm to the beneficiary - the bankruptcy estate.

RULING

The court concludes that as a matter of California State Law, the doctrine of equitable estoppel precludes Debtor from amending his Schedule C to now try and claim an exemption in the bankruptcy estate's interest in Jack Biddle, Sr.'s probate estate. The court decides the state law elements of equitable estoppel as follows.

First, one needs to carefully distinguish between Jack Biddle, Jr., the fiduciary probate administrator, and the interests of beneficiary Jack Biddle, Jr., which are not property of the bankruptcy estate in this case. This is similar to the different duties and responsibilities of a Chapter 11 debtor in possession and the Chapter 11 debtor. When Jack Biddle, Jr. chose to be the fiduciary administrator to all of the beneficiaries, it was to all beneficiaries and their successors - including the bankruptcy trustee as the representative of the beneficiary bankruptcy estate.

Jack Biddle, Jr. breached his fiduciary duties by concealing the probate estate assets (material facts) from the beneficiaries (which rights relating thereto are now held by the bankruptcy estate) and Jack Biddle, Jr.'s own creditors, who are now also creditors of the bankruptcy estate. Jack Biddle, Jr. knew he was concealing the value of the assets (the material facts). Jack Biddle Jr's. misconduct in concealing these facts were so egregious as to constitute a breach of his fiduciary duty to the beneficiaries. This was done with the intention of hiding the assets from the beneficiaries and Jack Biddle, Jr's. creditors, who are now creditors of this bankruptcy estate. The beneficiaries relied upon these misrepresentations of materials facts until the Trustee was appointed in the bankruptcy case and was forced to assert the rights.

The above is based on the findings of the State Court judge in the Decision issued in the Jack Biddle, Sr. probate. Exhibit 3, State Court Decision, Dckt. 62.

The State Court judge went even further, ordering that the rights and interests of Jack Biddle, Jr. be surcharged, as a matter of state law, and the monies go to his creditor's, not Jack Biddle, Jr. This surcharge bypasses the rights of Jack Biddle, Jr. to claim any interest ahead of the bankruptcy trustee, bankruptcy estate, or creditors in the bankruptcy case.

To do otherwise would be a perversion of California law and allow the federal bankruptcy process to reward Jack Biddle, Jr. by overriding the surcharge determination made by the State Court judge. The surcharge worked to take money away from Jack Biddle, Jr., not merely impose a monetary obligation to pay a debt from non-exempt assets. This gave the bankruptcy estate and creditors first call on the estate's interest in the Jack Biddle, Sr. probate estate, ahead of any interest Jack Biddle, Jr. could assert in it, including an exemption for an unsecured monetary obligation.

Jack Biddle, Jr. has elected not to file an opposition to the Objection to Claim of Exemption. The court continued the hearing to allow for supplemental briefing, expressly requiring the Chapter 7 Trustee to identity

California or federal law basis, other than a Section 105(a) lightning strike, for disallowing the exemption. The Chapter 7 Trustee has provided such a California state law basis.

The Objection to Claim of Exemption is sustained and the exemption is disallowed in its entirety in any and all proceeds received or to be received by the bankruptcy estate in this case from the Jack Biddle, Sr. probate; California Superior Court, Stanislaus County, Probate No. 439610.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Debtor's Claim of Exemptions 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 Objection to Debtor's claimed of exemption in the distributions and proceeds of the bankruptcy estate from the Jack Biddle, Sr. probate; California Superior Court, Stanislaus County, Probate No. 439610; is sustained and the exemptions claimed therein by the Debtor are disallowed in their entirety.

23. 14-91565-E-7 RICHARD SINCLAIR
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-8-16 [382]

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

The Order to Show Cause was served by the Clerk of the Court on Richard Carroll Sinclair ("Debtor"), Trustee, and other parties in interest on February 8, 2016. The court computes that 38 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case ($30.00 due on January 25, 2016).

The court's decision is to continue the hearing on the Order to Show Cause to 10:00 a.m. on January 26, 2017, for a status conference.

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: [$30.00].

Gary Farrar, the Chapter 7 Trustee, filed a response to the instant Order to Show Cause on March 3, 2016. Dckt. 403. The Trustee states that, since the conversion to one under Chapter 7, the Trustee has worked diligently to evaluate the Debtor's business affairs, assets, and other property interests. The Trustee states that due to the complex state of the Debtor's affairs, the Trustee requests the case not be dismissed.

It appears that there are substantial assets which are to be administered by the Trustee, from which the fee can be paid from the Debtor's possible surplus estate, if one exists, or from the Debtor if he desires to obtain a discharge if there is not a surplus estate.

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 hearing on the Order to Show Cause is the hearing on the Order to Show Cause to 10:00 a.m. on January 26, 2017, for a status conference.

24. 14-91565-E-7 HSM-4 | **RICHARD SINCLAIR** | **Pro Se** | **MOTION TO REJECT LEASE OR EXECUTORY CONTRACT AND/OR MOTION TO EXTEND TIME** | **2-12-16 [398]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 12, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Reject Lease or Executory Contract is granted.

Gary Farrar, the Chapter 7 Trustee, filed the instant Motion to Reject Residential Lease of 8212 Oak View Drive, Oakdale, California and Extend Deadline to Assume or Reject Other Executory Contracts and Unexpired Leases on February 2, 2016. Dckt. 398.

As an initial matter, pursuant to 11 U.S.C. § 365(d)(1), the Trustee assert that the instant Motion was filed within the 60 days after the date of conversion.

The Trustee requests that the court authorize the rejection of Debtor's alleged 20 year lease of real property located at 8212 Oak View Drive, Oakdale, California, ("Property"), effective as of the conversion of the case.

The Trustee first argues that the Debtor has failed to appear at the Meeting of Creditor nor has the Debtor provided all of the documents requested by the Trustee. In light of the Debtor not appearing at the Meeting of Creditors, after having been found competent and able to participate in the prosecution of his case, the Trustee has sought to investigate the Debtor's financial affairs through informal communications and independent research.

The Trustee has concluded that the Oakdale Lease is not beneficial to the estate and should be rejected. The Trustee argues that the lease appears to be a type of insider arrangement, possible with the Richard C. Sinclair Living Trust (or some naming variation thereof), or with the Debtor's sister, Dr. Kathryn Machado, possibly in her capacity as trustee.

The Trustee argues that in the Oakdale Lease provides the estate with no discernable benefit, while the unknowns associate therewith present the estate with unnecessary and unknown risks.

Additionally, the Trustee requests that the court extend the deadline within the estate may assume or reject other executory contracts and unexpired leases to April 18, 2016. The Truste asserts that he is working diligently to investigate the Debtor's assets and financial affairs but the case is hotly disputed which has made collection of suh information difficult. Furthermore, the Debtor's continued failure to appear at the Meeting of Creditors has made it impossible for the Trustee to collect all necessary information.

APPLICABLE LAW

11 U.S.C. § 365 provides for the ability for the Trustee to assume and assign executory contracts and unexpired leases. Specifically, 11 U.S.C. § 365 provides the following:

> (a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.
>
> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee--

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

(2) Paragraph (1) of this subsection does not apply to a default that is a breach of a provision relating to–

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title;

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement; or

(D) the satisfaction of any penalty rate or penalty provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.

...

(d)(1) In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected. . .

(3) The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

(4)(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of--

(I) the date that is 120 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming a plan.

(B) (I) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii) If the court grants an extension under clause (I), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

In determining whether a court should allow a trustee to assume a lease, the court uses a business judgment standard. *In re G.I. Indus.*, 204 F.3d 1276 (9th Cir. 2000).

DISCUSSION

First, to address the Trustee’s request to reject the Oakdale Lease, the Trustee has sufficiently provided argument that the rejection of the lease is in the best interest of the estate and parties in interest. As has been noted by the court on multiple occasions, the instant case is complicated, due in most part to the Debtor’s repeated failure to perform his statutory duties in reporting his financial information. The court has, on previous occasions, found the Debtor competent and able to prosecute his case. See Dckt. 383.

The Trustee, as the fiduciary of the estate, determined through the information gathered from the Debtor and other sources, that the alleged Oakland Lease, in whatever force and effect it may have, is not beneficial to

the estate. Therefore, the court authorizes the Trustee to reject the residential lease of 8212 Oak View Drive, Oakdale, California.

As to the Trustee's second request, the Trustee argues that cause exists to extend the deadline because the Debtor has failed to appear at the Meeting of Creditors, making it impossible for the Trustee to gather all necessary information. The Trustee will not know which, if any, of the other leases should be rejected because the Debtor has not provided the requested information. Forced rejection prior to the Trustee being able to make a sound business decision could possibly harm the estate.

Upon review of the Trustee's request and the cause shown, the court finds that it is in the best interest of the Debtor, creditors and the estate to afford the Trustee additional time to accept or reject the leases in order to try and solidify the potential sale of the Debtor's business. Therefore, the Motion is granted and the time for assuming or rejecting all unexpired nonresidential real property leases is set for April 18, 2016, pursuant to 11 U.S.C. § 365(d)(4)(B)(I).

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 Reject Lease or Executory Contract and Motion to Extend Time filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the Trustee is authorized to reject the residential lease of 8212 Oak View Drive, Oakdale, California.
>
> **IT IS FURTHER ORDERED** that the time to assume or reject the unexpired nonresidential real property leases is extended to April 18, 2016, pursuant to 11 U.S.C. § 365(d)(4)(B)(I).

25. 14-91369-E-7 ADJ-2 | **ALDO LEONARDI TOSO AND MEREDITH LEONARDI** | **MOTION TO COMPEL** | **2-5-16 [50]**
Gary Ray Fraley

Final Ruling: No appearance at the March 17, 2016 hearing is required.

The Chapter 7 Trustee having filed a Withdrawal of the Motion to Compel Turnover, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Compel Turnover was dismissed without prejudice, and the matter is removed from the calendar.**

26. 15-90976-E-7 SSA-1 | **NIGH/MELVA LAWHON** | **CONTINUED MOTION TO COMPEL ABANDONMENT** | **11-24-15 [12]**
Gary Ray Fraley

DISCHARGED: 2/16/16

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 24, 2015. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the

Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Motion to Abandon Property is granted.

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

The Motion filed by E.J. Vallortigara, Betty Vallortigara, Kenji Yoshimura, Jeanette Yoshimura, Kenette Yoshimura, Jay Vallortigara, Jon D. Gaier, and Fay Gaier ("Creditors") requests the court to authorize Trustee to abandon property commonly known as 3139 Beaver Court, Copperopolis, California (the "Property").

The Property is encumbered by the lien of Creditor, securing claim of $177,835.02. Additionally there are judgment liens and fees totaling $30,928.36. The Declaration of Gene Vallortigara has been filed in support of the motion and testifies that the value of the Property is $350,000.00.

The Creditor argues that they attempted to work out a promissory note workout agreement with the Debtor but such efforts have been unsuccessful.

DECEMBER 17, 2015 HEARING

The court continued the hearing to 10:30 a.m. on January 14, 2016. Dckt. 47.

AMENDED SCHEDULE C

On January 1, 2016, the Debtor filed amended Schedule C. Dckt. 48. For purposes of the instant Motion, the Debtor amended the exemption claimed on the Property as follows:

	California Code of Civil Procedure § 704.730	California Code of Civil Procedure § 703.140(b)(1)
Schedule C - October 13, 2015, Dckt. 1.	$175,000.00	
Amended Schedule C - January 6, 2016, Dckt. 48.		$25,575.00

JANUARY 14, 2016 HEARING

At the hearing, the court continued the hearing to 10:30 a.m. on March 17, 2016. Dckt. 54.

BOB BRAZIL'S DECLARATION

Mr. Brazil filed a declaration on January 27, 2016. Dckt. 65. Mr. Brazil is a real estate broker employed by PMZ Real Estate. Mr. Brazil asserts that the value of the Property is estimated to be between $200,000.00 to $215,000.00.

TRUSTEE'S DECLARATION

The Trustee filed a supplemental declaration on January 27, 2016. Dckt. 64. The Trustee states that she has consulted with and reviewed the declaration of Bob Brazil, concerning the moving parties' abandonment motion.

The Trustee states that based on this information, the Trustee asserts that the value of the Property is between $200,000.00 to $215,000.00.

The resulting liens and encumbrances against the Property, which is a modular property, equal if not exceed the value of the Property. The Trustee states that there is no value to the estate and is burdensome to the estate to keep the Property.

The Trustee does not oppose the Motion.

DISCUSSION

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

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 Abandon Property filed by the Creditors 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. 3139 Beaver Court, Copperopolis, California
>
> is abandoned to Nigh and Melva Lawhon by this order, with no further act of the Trustee required.

27. 15-90979-E-7 ANA HERNANDEZ
ICE-1 Pro Se

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 1-26-16 [26]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, and Office of the United States Trustee on February 17, 2016. By the court's calculation, 29 days' notice was provided. 21 days' notice is required. Fed. R. Bank. P. 2002(a)(4) 21-day notice for Chapter 7, 11, and 12 cases.

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

The Motion to Dismiss the Chapter 7 Bankruptcy Case is granted and the case is dismissed.

This Motion to Dismiss the Chapter 7 bankruptcy case of Ana B. Hernandez ("Debtor") has been filed by Irma Edmonds ("Movant"), the Trustee. Movant asserts that the case should be dismissed based on the Debtor failing to appear at the Meeting of Creditors.

The Debtor filed a Notice of Hearing on the instant Motion, setting the Motion to Dismiss for hearing at 10:30 a.m. on March 17, 2016. Dckt. 34. The Debtor has failed to state a basis for the opposition.

RULING

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

Cause exists to dismiss this case pursuant to 11 U.S.C. § 707.

The Movant states that Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 707(a)(1).

Therefore, the motion is granted and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted and the case is dismissed.

28. 12-90380-E-7 TOG-3 | **PRASIT/SOMTAWIL PROMSAWASDI Thomas O. Gillis** | **MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A. 2-2-16 [23]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 2, 2016. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota) N.A. ("Creditor") against property of Prasit Promsawasdi and Konkaun Promsawasdi ("Debtor") commonly known as 809 Snead Drive, Modesto, California (the "Property").

However, Debtors failed to serve the Creditor pursuant to Federal Rule of Bankruptcy Procedure 7004(h).

Creditor Citibank (South Dakota), N.A. is a federally insured financial institution. Congress created a specific rule to provide for service of pleadings, including this contested matter, on federally insured financial institution, Federal Rule of Bankruptcy Procedure 7004(H), which provides

> (h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in

> a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless–
>
> (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
>
> (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
>
> (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Here, Debtors served Citibank (South Dakota), N.A. by regular first class mail. The Debtor failed to serve the pleadings via certified first class mail.

Due to this failure, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

29. 12-91080-E-7 ANN SKINNER-COLTRIN
LDD-3 Linda D. Deos

MOTION FOR VIOLATION OF AUTOMATIC STAY
2-11-16 [39]

Final Ruling: No appearance at the March 17, 2016 hearing is required.

The court having previously continuing the Motion for Violation of Automatic Stay based on the stipulation filed by the parties (Dckt. 45) to 10:30 a.m. on April 28, 2016 (Dckt. 46), **the Motion is removed from calendar.**

30. 15-90982-E-7 RICHARD LEFFLER
CJY-1 Christian J. Younger

MOTION TO AVOID LIEN OF RESURGENCE FINANCIAL, LLC/COLLECT ACCESS, LLC
1-19-16 [13]

DISCHARGED: 2/16/16

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Resurgence Financial LLC, Collect Access LLC, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 58 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Resurgence Financial LLC/Collect Access LLC ("Creditor") against property of Richard John Leffler ("Debtor") commonly known as 3003 Grand Oak Court, Turlock, California (the "Property").

UNIDENTIFIABLE CREDITOR NAMED IN MOTION

Debtor seeks to avoid the lien of "Resurgence Financial LLC/Collect Access LLC." However, the court cannot determine from the evidence presented what, if any, legally recognized entity the Debtor asserts is a creditor and whose lien is to be avoided pursuant to this Motion. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid in finding creditors. FN.1.

FN.1. It appears that the name "Resurgence Financial LLC/Collect Access LLC" may be a made-up name, an admission that Debtor has no idea which creditor holds the lien. Or the name may be a mash-up of the creditor and a third-party collection agency. In either cased, if the court were to grant such order, it would be ineffective.

No proofs of claim have been filed in the instant case.

The Motion does state that Resurgence Financial LLC recorded an abstract of judgment with the Stanislaus County Recorder's Office on October 5, 2007 and that the claim was later assigned to Collect Access LLC. The Motion states that Collect Access LLC had an abstract of judgment issued in its favor on July 30, 2013. Collect Access LLC recorded the Abstract with the Stanislaus County Recorder's Office, which the Debtor asserts created a second involuntary lien on the Property.

The Debtor appears to have the court avoid the liens of two possible creditors in a single motion by combining their names to identify one new dual entity. The Debtor is not permitted to seek avoidance of two different liens of two different creditors, or one lien of two creditors, by creating a new fictitiously named entity.

Therefore, because the Debtor failed to accurately identify a creditor, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

31.	**16-90083-E-7 SSA-2**	**VALLEY DISTRIBUTORS, INC. Iain A. MacDonald**	**FINAL HEARING RE: MOTION FOR AUTHORITY TO OPERATE BUSINESS PENDING HEARING IN THIS MATTER, MOTION FOR NUNC PRO TUNC AUTHORITY APPROVING TRUSTEE'S AUTHORITY TO OPERATE BUSINESS EFFECTIVE FEBRUARY 2, 2016 AND MOTION TO USE CASH COLLATERAL 2-12-16 [16]**

CONTINUED: 2/23/16

Tentative Ruling: The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

Local Rule 9014-1(f)(3) Motion.

Emergency Hearing Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Trustee, Debtor's Attorney, creditors, and Office of the United States Trustee on February 17, 2016. By the court's calculation, 6 days' notice was provided.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

No opposition was presented at the hearing.

The Motion for Authority for the Trustee to Operate the Business and to Use Cash Collateral is granted, and a supplemental hearing on the further use of cash collateral is set for 10:30 a.m. on June 16, 2016.

Irma Edmonds, the Chapter 7 Trustee, filed the instant Motion for Authorization to Operate Business Pending Hearing in this Matter and Request

for *Nunc Pro Tunc* Authority Approving Trustee's Authority to Operate Business Effective February 2, 2016 and Use of Cash Collateral on February 2, 2016. Dckt. 15. The Trustee is seeking authorization pursuant to 11 U.S.C. §§ 363 and 721.

On February 16, 2016, the court issued an order shortening time, setting the Motion for hearing at 1:30 p.m. on February 23, 2016. Dckt. 26. The Order also authorized the Trustee to make ordinary and reasonable expenditures to maintain the premises and also pay from unencumbered monies of the Estate to pay the approximate $5,733.00 charge to release the subject vehicle.

The Trustee states that Valley Distributors, Inc. ("Debtor"), which previously operated a retail establishment for the sale of lumber, doors, tools, and related supplies at 1900 Paulson Road, Turlock, California ("Property") has ongoing expenses in the form of rent, insurance, security, storage, and utilities where the subject collateral is located.

In addition, the Trustee states that she is seeking authority to pay a charge of approximately $5,733.00 to Pacific Materials Handling Solutions for repair of the vehicle owned by Debtor, a 2005 GM Trust, Model W-4500, which the Trustee estimates to be worth $16,000.00.

The Trustee states that she is not aware of any creditor that contends it may have a security agreement or lien in the Debtor's cash collateral which presently is held by the Trustee and totals approximately $59,200.00.

FEBRUARY 23, 2016 HEARING

At the hearing, the court granted the Motion, issuing the following order:

> **IT IS ORDERED** that the Motion is granted and that the Irma Edmonds, the Chapter 7 Trustee is authorized to operate the Debtor's business pursuant to 11 U.S.C. § 721, retroactively effective as of February 2, 2016.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to use the cash collateral pay the following expenses, granting the Trustee a variance of ten percent, except for the authorization to pay Pacific Material Handling Solutions, in any individual line item expense as long as the total amount used does not exceed the total amount allowed:

EXPENSE	**AMOUNT**
Rent	$4,200.00
Alarm/Security	$183.00
Utilities (TID, etc)	$1,400.00
Outside Storage	$115.00

ATT Outside Line	$500.00
Insurance (Premises Liability Casualty)	$3,500.00
Vehicle Insurance	$3,500.00
General Miscellaneous	$750.00
Pacific Material Handling Solutions, Vehicle Repairs	$5,733.00
	_____
Total Cash Collateral Authorized Pending Noticed Hearing	$19,881.00

IT IS FURTHER ORDERED that American Express Bank, FSB ("AEB") and any other creditors who have perfected security interests in the cash collateral used by the Trustee are given replacement liens in the other pre-petition and post-petition assets of the estate, in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim. The granting of the replacement lien is without prejudice to the rights of the Trustee to recover from the collateral any monies expended which were reasonably necessary to preserving or disposing of the collateral to the extent of any benefit derived by such creditor pursuant to 11 U.S.C. § 506(c). The liens are perfected upon the issuance of this order, no further act, filing, or other action of AEB or other creditor granted such replacement liens.

IT IS FURTHER ORDERED that the final noticed hearing on the Motion shall be conducted at 10:30 a.m. on March 17, 2016. The Trustee shall serve the Notice of Hearing, Motion, Supporting Pleadings to all parties as required by Federal Rule of Bankruptcy Procedure 4001(b)(1)(C) on or before March 1, 2016.

Dckt. 32.

TRUSTEE'S SUPPLEMENTAL PLEADINGS

The Trustee filed a Supplemental Points and Authorities on February 29, 2016. Dckt. 36. The Trustee states that since the hearing, the Trustee has performed a further UCC-1 search and discovered a potential further secured creditor, Jensen-Byrd Company was February 28, 2012. In turn, from recorded records West American Bank had an original financing statement on file on July 11, 1996, with continuation statements filed April 12, 2001, May 26, 1006, and May 16, 2011. There was a termination statement filed on May 12, 2014.

The Trustee asserts that she has been working with Jensen-Boyd and American Express Bank to work out a consensual agreement for the use of cash

collateral, operation of Debtor's business and a mechanism for a proposed stipulation for payment of Trustee's administrative expenses and "carve out" of further monies which could be earmarked for unsecured creditors.

The Trustee requests that the court continue authority to operate Debtor's business under 11 U.S.C. § 721 for a period of ninety days from the continued hearing. The Trustee also requests for authority to use cash collateral, consistent with the previous budget, with the allowance of any creditor's duly perfected security interest in cash collateral to be given replacement liens in other pre-petition and post-petition assets of the estate.

APPLICABLE LAW

Section 721 dictates when a court may authorize a trustee to operate a business. Specifically, § 721 states:

> The court may authorize the trustee to operate the business of the debtor for a limited period, if such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate.

11 U.S.C. § 721. Courts may authorize a Chapter 7 trustee to operate a debtor's business on an interim basis "where doing so will maximize the value of the estate and thus increase creditor recoveries." 6 COLLIER ON BANKRUPTCY ¶ 721.02 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

The Ninth Circuit has fond that "bankruptcy courts ... possess the equitable power to approve retroactively a professional's valuable but unauthorized services," but such authorization is limited "to situations in which ˜exceptional circumstances' exist." *In re Atkins*, 69 F.3d 970, 973 (9th Cir. 1995). In Atkins, the Ninth Circuit held that "[t]o establish the presence of exceptional circumstances, professionals seeking retroactive approval must satisfy two requirements: they must (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankrupt estate in a significant manner." Id. at 974.

> In relevant part, for business cases, 11 U.S.C. § 363 states:
>
> (c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.
>
> (2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless--
>
> > (A) each entity that has an interest in such cash collateral consents; or

> (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.
>
> (3) Any hearing under paragraph (2)(B) of this subsection may be a preliminary hearing or may be consolidated with a hearing under subsection (e) of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.

11 U.S.C. § 363. In order to determine whether certain transactions are in the ordinary course of business, the courts have developed a two step test: (1) the "horizontal dimension" test to determine whether the transaction is of the sort commonly undertaken by companies in the debtor's industry; and (2) the "vertical dimension" test to determine whether the transaction subjects the creditors to economic risk different from the risk they accepted and could reasonably expect when they extend credit. *See In re* Dant & Russel, Inc., 853 F.2d 700 (9th Cir. 1988).

Fed. R. Bankr. P. 4001(b) provides the procedures in which a trustee may move the court for authorization to use cash collateral. In relevant part, Fed. R. Bankr. P. 4001(b) states:

> (b)(2) Hearing
>
> The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

In the instant case, the Trustee is seeking authorization of the court to use cash collateral on a continued interim basis, pending a final hearing, to pay necessary expenses and for authorization to operate the Debtor's business.

First, to address the request to authorize the Trustee to operate the Debtor's business, the court finds that such authorization is in the best interest of the Debtor, the estate, and parties in interest. The Trustee seeks such authorization for the purpose of paying rent on the Property, paying for security, utilities, insurance, and related expenses, until the collateral on the premises can be liquidated in a commercially reasonable fashion. The Trustee has presented sufficient evidence to show that the Trustee's operation of the business will enable the Trustee to continue operation prior to liquidation to ensure the largest return for parties in interest.

As to the Trustee's request for authorization to use cash collateral, the Trustee attached a projected monthly budget. Dckt. 18, Exhibit 1. The following expenses are listed: (deducting the vehicle repair)

EXPENSE	**AMOUNT**
Rent	$4,200.00
Alarm/Security	$183.00
Utilities (TID, etc)	$1,400.00
Outside Storage	$115.00
ATT Outside Line	$500.00
Insurance (Premises Liability Casualty)	$3,500.00
Vehicle Insurance	$3,500.00
General Miscellaneous	$750.00
	_____
Total Cash Pending Noticed Hearing	$14,148.00

The proposed budget indicates expenses that are all reasonably necessary for the Trustee to continue the operation of the business pending the liquidation. The Trustee has provided sufficient grounds and testimony (Declaration; Dckt. 17) that the above expenses are both the " sort commonly undertaken by companies in the debtor's industry" and that "the transaction subjects the creditors to economic risk different from the risk they accepted and could reasonably expect when they extend credit."

The Trustee's Motion does not identify any creditor who may be asserting a lien in the monies expended. To date, Debtor has not filed Schedules in this case. The court has extended the time to file the Schedules, Statement of Financial Affairs, and related documents until March 1, 2016. Order, Dckt. 12.

On February 19, 2016, American Express Bank, FSB ("AEB") filed Proof of Claim No. 4, asserting a secured claim of $223,477.81. On the proof of claim form, AEB describes the collateral as "SECURED INSTALLMENT LOAN." From this description, it could appear that AEB is claiming a lien only against an unidentified loan made by Debtor to a third party. (Part 2, § 9, of the proof of claim form requires the creditor to describe the collateral which secures the claim.)

However, in Part 2, § 9, of Proof of Claim No. 4, AEB describes the basis of the claim to be,

> "Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing

> information that is entitled to privacy, such as healthcare information."

The court is uncertain how AEB would have a claim against the Debtor for personal injury or wrongful death. Further, the court is uncertain as to what goods AEB (a bank) would be selling to Debtor.

Attachment 1 to Proof of Claim No. 4 is titled "Business Loan and Security Agreement." This appears to be a document supporting the claim. This document indicates that AEB was lending money to the Debtor. Paragraph 11 includes the granting of a security interest in assets of the Debtor. These assets include:

> "(a) any and all amounts owing to you now or in the future from any merchant processor or Card Processor, including the Settlement Amounts;
>
> (b) all Accounts;
>
> (c) all Chattel Paper (including Tangible Chattel Paper and Electronic Chattel Paper);
>
> (d) all Instruments;
>
> (e) all Goods, including, without limitation, Equipment, Inventory, Farm Products, Accessions, and As Extracted Collateral;
>
> (f) all Documents;
>
> (g) all General Intangibles (including, without limitation, Payment Intangibles and software);
>
> (h) all Deposit Accounts;
>
> (I) all Letter of Credit Rights;
>
> (j) all Investment Property;
>
> (k) all Supporting Obligations;
>
> (l) all trademarks, trade names, service marks, logos and other sources of business identifiers, and all registrations, recordings and applications with the U.S. Patent and Trademark Office ("USPTO") and all renewals, reissues and extensions thereof (collectively "IP");
>
> (m) any records and data relating to any of the foregoing, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of your right, title and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media; and

> (n) any and all proceeds of any of the foregoing, including insurance proceeds or other proceeds from the sale, destruction, loss, or other disposition of any of any of the foregoing, and sums due from a third party who has damaged or destroyed any of the foregoing or from that party's insurer, whether due to judgment, settlement or other process."

The Business Loan and Security Agreement continues, stating that "Notwithstanding the foregoing, the Collateral does not include any real estate, motor vehicles, household furniture or fixtures, and any other goods for personal, family or household use."

The last page of Attachment 2 to Proof of Claim No. 4 is a copy of UCC Financing Statement stating a file date of April 10, 2015. This is consistent with the March 25, 2015 date on the Business Loan and Security Agreement. In the collateral description on the Financing Statement, the collateral is described as:

"All assets of the Debtor, whether now owned or hereafter acquired."

It appears that AEB may have a security interest in the monies used and to be used by the Trustee. The monies to be used by the Trustee are only described as "Debtor's cash...which presently held by the Trustee...." Motion ¶ 4, Dckt. 16. In her Declaration, the Trustee states, "I currently have receipts of more than $59,200 from Debtor's banking operations which can be used to pay expenses on an interim basis." Declaration ¶ 8, Dckt. 17.

There is nothing in the record to indicate that Debtor had a business of "banking operations." Rather, the Motion states that the Debtor's business was "a retail establishment for the sale of lumber, doors, tools, and related supplies...." Motion ¶ 2, Dckt. 16. Piecing the two together, it may be that the Trustee is stating that she is holding $59,200 in receipts from the operation of Debtor's business, including payment of accounts receivable and from the sale of inventory.

It appears that AEB may have a lien on the monies, and as such, the monies may be cash collateral. 11 U.S.C. § 363(a), (c).

It appears that, if AEB has a lien against the equipment and inventory of Debtor, most of the expenses relating to preserving and protecting that possible collateral. For the other uses of the money, such as repairing the vehicle (against which AEB does not assert a lien), it appears that there will be significant value in excess of the monies used.

The Trustee's supplemental paper does not address specifically the security of AEB and the newly discovered creditor Jensen-Boyd.

Therefore, the court grants the Motion and authorizes the Trustee to operate the business to wind down its affairs in an orderly manner, and to use case collateral to pay the specified expenses.

To protect AEB and any other creditors who have perfected security interests in the monies used by the Trustee, AEB and any such other creditors

having an interest in the cash collateral are given replacement liens in the other pre-petition and post-petition assets of the estate, in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim. The granting of the replacement lien is without prejudice to the rights of the Trustee to recover from the collateral any monies expended which were reasonably necessary to preserving or disposing of the collateral to the extent of any benefit derived by such creditor pursuant to 11 U.S.C. § 506(c).

Therefore, the court grants the Motion authorizing the emergency use of cash collateral pending a final notice hearing on the Motion which shall be conducted at **10:30 a.m. on June 16, 2016**. The order authorizing the Trustee to use cash collateral and operate the business shall direct the Trustee to serve the Notice of Hearing, Motion, Supporting Pleadings to all parties as required by Federal Rule of Bankruptcy Procedure 4001(b)(1)(C) on or before June 1, 2016.

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 for Authority to Use Cash Collateral filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and that the Irma Edmonds, the Chapter 7 Trustee is authorized to operate the Debtor's business pursuant to 11 U.S.C. § 721, retroactively effective as of February 2, 2016.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to use the cash collateral, through and including June 30, 2016, to pay the following expenses, granting the Trustee a variance of ten percent in any individual line item expense as long as the total amount used does not exceed the total amount allowed:

EXPENSE	**AMOUNT**
Rent	$4,200.00
Alarm/Security	$183.00
Utilities (TID, etc)	$1,400.00
Outside Storage	$115.00

ATT Outside Line	$500.00
Insurance (Premises Liability Casualty)	$3,500.00
Vehicle Insurance	$3,500.00
General Miscellaneous	$750.00
	_____
Total Cash Collateral Authorized Pending Noticed Hearing	$14,148.00

IT IS FURTHER ORDERED that American Express Bank, FSB ("AEB") and any other creditors who have perfected security interests in the cash collateral used by the Trustee are given replacement liens in the other pre-petition and post-petition assets of the estate, in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim. The granting of the replacement lien is without prejudice to the rights of the Trustee to recover from the collateral any monies expended which were reasonably necessary to preserving or disposing of the collateral to the extent of any benefit derived by such creditor pursuant to 11 U.S.C. § 506(c). The liens are perfected upon the issuance of this order, no further act, filing, or other action of AEB or other creditor granted such replacement liens.

IT IS FURTHER ORDERED that a hearing on a request to use additional cash collateral 10:30 a.m. on June 16, 2016. The Trustee shall serve the Notice of Hearing, Motion, Supporting Pleadings to all parties as required by Federal Rule of Bankruptcy Procedure 4001(b)(1)(C) on or before June 2, 2016, and Responses, if any, shall be filed and served on or before June 9, 2016.

32. 15-90984-E-7 EJS-1 | **ANTONIO CANTO AND MARIA PEREIRA** | **OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS**
Axel B. Gomez | **2-12-16 [24]**

DISCHARGED: 2/10/16

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - 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, and Office of the United States Trustee on February 12, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

(1) The Objection is sustained and the Debtors' claimed exemptions in the 1999 Ford F250, the Wilson Cow Trailer pursuant to California Code of Civil Procedure § 704.010 are disallowed in their entirety; (2) The Objection is sustained and the exemptions in the 2002 Lincoln LS and 1996 Toyota Rav 4 for amounts in excess of $2,300.00 is disallowed; and (3) The Objection is overruled as to the exemptions claimed in household goods pursuant to California Code of Civil Procedure § 704.020.

Ornelas Transportation, Inc. ("Creditor") objects to the Debtor's use of certain California exemptions. Specifically, the Creditor objects to the Debtor's use of the following exemptions:

1. Property claimed as exempt under California Code of Civil Procedure § 704.060(a)(3).

    a. 1999 Ford F250 with stated equity of $4,000.00

    b. Wilson Cow Trailer with stated equity of $8,000.00

2. Property claimed as exempt under California Code of Civil Procedure § 704.010

    a. 2002 Lincoln LS, with stated equity of $2,900.00

    b. 1996 Toyota Rav 4, with stated equity of $1,000.00

3. Property claimed as exempt under California Code of Civil Procedure § 704.020

    a. Unspecified items: "Household Goods and furnishings, no item exceeds $600.00 in value, Location: 11594 N Griffith Avenue, Turlock CA 95381-9624."

DEBTOR'S RESPONSE

On March 10, 2016, the Debtor filed a response to the instant Objection. Dckt. 28. The Debtor responds first by stating that the Debtor is entitled to a fresh start and that exemptions should be construed liberally.

As to each of the objections, the Debtor responds as follows:

1. Property Claimed as exempt under California Code of Civil Procedure § 704.060(a)(3).

    a. The Debtor's Ford F250 and Wilson Cow Trailer are necessary. The Debtor asserts that after selling the business and the business assets, Debtor were only left with social security as their only source of income. The Debtor state "[e]ven after the discharge of their debtors, [D]ebtors realized they were left with a deficiency of $1,864.66 per month in meeting their primary obligations." The Debtor now asserts that they finally secured income while transporting animals to and from the different dairies and dairy auctions.

2. Property claimed as exempt under California Code of Civil Procedure § 704.010

    a. The Debtor asserts that the Debtor and the Trustee have agreed that the value of the Debtors vehicle exceeds the exemption limit. The Debtor asserts that the Trustee has tentatively agreed to accept the sum of $2,100.00 from the Debtor to allow Debtor to purchase

the unprotected equity in the vehicle pending court approval.

3. Property claimed as exempt under California Code of Civil Procedure § 704.020

a. The Debtor argues that the general description of the household goods and furnishings were to preserve judicial economy. The Debtor attached a questionnaire Debtors completed prior to the petition being filed.

DISCUSSION

The argument is made that Debtors, having sold their business, are now living on Social Security. To supplemental that, Debtors intend to engage in a livestock hauling business. Though a budget for is attached as an exhibit to the Opposition, there is no testimony that any of the information is truthful and accurate, under penalty of perjury.

When Debtors filed this bankruptcy case on October 15, 2015, they stated under penalty of perjury that they ceased the operation of their goat dairy business on August 20, 2015. Statement of Financial Affairs Question 18, Dckt. 1. However, on Schedule B Debtors listed a "Wilson Cow Trailer" as "Machinery, fixtures, equipment, and supplies used in business." Schedule B, Item 28; *Id.* at 16. On Schedule B, Debtors state under penalty of perjury that: (1) they have no customer lists and (2) no interests in unincorporated businesses. Schedule B, Items 13 and 24; *Id.* at 15.

On Schedule I, Debtors state under penalty of perjury that they have $0.00 in income from any businesses. *Id.* at 34. Even on the unauthenticated exhibit budget showing income presented by Debtors' counsel, there is no business income. Dckt. 26 at 7.

California Code of Civil Procedure § 704.060, for which the 1999 Ford F250 and the Wilson Cow Trailer exemption is claimed, provides:

> (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:
>
> (1) Six thousand seventy-five dollars ($6,075), if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood.
>
> (2) Six thousand seventy-five dollars ($6,075), if reasonably necessary to and actually used by the spouse of the judgment debtor in the exercise of the trade, business, or profession by which the spouse earns a livelihood.
>
> (3) Twice the amount of the exemption provided in paragraph (1), if reasonably necessary to and actually used by the judgment debtor and by the spouse of the judgment debtor in the exercise of the same trade, business, or profession by

which both earn a livelihood. In the case covered by this paragraph, the exemptions provided in paragraphs (1) and (2) are not available.

Debtors' counsel argues that the Debtors previously used the truck and trailer as part of their goat dairy business. The goat dairy business was sold pre-petition. Debtors, who are both 65 years young, have decided that they need additional income (beyond Social Security) so intend to engage in an animal hauling business. Debtors' counsel directs the court to an unauthenticated letter from Antonio and Alexandrina Dairy as "evidence" of Debtors having a business.

This letter, attached to the Response, is undated. It is addressed "To whom it may concern." It says that "as of February 5, 2016, Anotnio Canto has been working for that dairy to move cattle. This letter is cryptic at best. Presumably, if such an employment arrangement existed, there would have been presented a declaration from the employer. Rather, it appears that this "letter" may well be a fabrication to try and improperly claim as exempt an almost 20 year old truck and trailer as exempt.

A declaration has been provided by Maria Pereira, which is attached to the Response. Mr. Pereira does not provide any testimony. Maria Pereira states that when Debtors filed this bankruptcy case, they decided to offer their services to the animal industry. She further states that this enterprise commenced on February 5, 2016.

This "commencement date" is surprisingly close to the February 12, 2016 filing of the Objection to Claim of Exemption. No explanation is provided for why from the August 2015 sale of the business, through the October 2015 bankruptcy filing, it was not until February 2016 that a "to whom is may concern" business letter is produced. Deafening in its silence is the absence of any contract for hauling animals, existence of insurance for engaging in the commercial operation of animal hauling, and any licenses for the commercial operation of an animal hauling business.

Rather, based on the evidence presented, Debtors have failed to show that any such business exists, that Debtors are actually engaged in such a business, and that there is a bona fide business for which such an exemption may be claimed. Instead, the evidence shows that the "business" upon which the exemption is claimed was "created" when the Creditor objected to the claim of exemption.

The court finds, given the context of the exemption and the Debtor's financial reality, the 1999 Ford F250 and the Wilson Cow Trailer are not reasonably necessary to and actually use by the Debtor to perform any trade or business. While the Debtors may desire to seek employment to supplement their Social Security benefits, there is no animal hauling business operated prior to or after the commencement of this bankruptcy case.

The objection to the Debtor's use of California Code of Civil Procedure § 704.060 is sustained and disallowed in its entirety as to 1999 Ford F250 and the Wilson Cow Trailer.

Lincoln and Toyota Rav 4

As to the Creditor's objection as to the 2002 Lincoln LS and 1996 Toyota Rav 4, the court concurs with the Creditor that the Debtor is attempting to improperly claim exemption in excess of that permitted. California Code of Civil Procedure § 703.010 states, in relevant part:

> (a) Any combination of the following is exempt in the amount of two thousand three hundred dollars ($2,300):
>
> (1) The aggregate equity in motor vehicles.
>
> (2) The proceeds of an execution sale of a motor vehicle.
>
> (3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

The Debtor claims the following assets exempt pursuant to California Code of Civil Procedure § 703.010:

2. 2002 Lincoln LS

   a. Value: $2,900.00

   b. Exemption: $2,900.00

3. Toyota Rav 4

   a. Value: $1,000.00

   b. Exemption: $1,000.00

4. TOTAL EXEMPTION CLAIMED: $3,900.00

Dckt. 16. Debtor admits that they have over-exempted under § 704.010. However, the Debtor argues that the Trustee has tentatively agreed to sell the equity in the vehicles to the Debtor. However, no such Motion to Sell has been filed. The Debtor is attempting to claim $1,600.00 in excess of what is permitted by the statute. The court will not assume which asset the Debtor wishes to exempt or what portion. As such, the objection is sustained and the Debtor's claimed exemption pursuant to California Code of Civil Procedure § 704.010 is disallowed in their entirety.

Household Furnishings

Lastly, as to the Creditor's objection as to the household goods and furnishings, the court finds that the Debtor's supplemental report sufficient to describe, in detail, the assets sought to be exempted under California Code of Civil Procedure § 703.020. Attached to the Debtor's response is an itemized list of each household furnishings and electronic the Debtor has and their accompanying value. While the Debtor should have included this information from the onset in the Schedules, the Debtor has sufficient supplemented the record to show the items that are legitimately claimed exempt pursuant to § 704.020. Therefore, the objection as to the Debtor's use of exemptions pursuant to California Code of Civil Procedure § 704.020 is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Debtors' Claim of Exemptions filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained and the Debtors' claimed exemptions in the 1999 Ford F250, the Wilson Cow Trailer pursuant to California Code of Civil Procedure § 704.010 are disallowed in their entirety.
>
> **IT IS FURTHER ORDERED** that the Objection is sustained and the exemptions in the 2002 Lincoln LS and 1996 Toyota Rav 4 for amounts in excess of $2,300.00 is disallowed.
>
> **IT IS FURTHER ORDERED** that the Objection is overruled as to the exemptions claimed in household goods pursuant to California Code of Civil Procedure § 704.020.

33. 13-91189-E-11 MICHAEL/JUDY HOUSE
RMY-14 Robert M. Yaspan

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

CONTINUED: 12/3/15

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the 20 largest unsecured claims, parties requesting special notice, creditors and Office of the United States Trustee on February 19, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Approval of Stipulation to Extend Order on Motion to Authorize Use of Cash Collateral Through March 31, 2016 was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Motion to Authorize Further Use of Cash Collateral is removed from the calendar, no further relief being requested pursuant to this Motion.

Pursuant to the motion of the former Debtors-in-Possession Michael House and Judy House ("Debtors-in-Possession"), the court has authorized the use of

cash collateral through March 31, 2016. Order, Dckt. 376. The court set this continued hearing for the Debtors-in-Possession to request the further use of cash collateral.

The Chapter 11 Plan was confirmed in this case on January 21, 2016. Order, Dckt. 412. No further request for cash collateral has been made in this case.

The court removes this matter from the Calendar, no further relief sought pursuant to the Motion.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Authorize Use of Cash Collateral filed by the Debtors-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Use Cash Collateral is removed from the Calendar, no further relief being requested pursuant to the Motion.

34. 13-91189-E-11 MICHAEL/JUDY HOUSE
WJS-1 Robert M. Yaspan

MOTION FOR COMPENSATION BY THE LAW OFFICE OF CRABTREE SCHMIDT FOR WALTER J. SCHMIDT, CREDITOR'S ATTORNEY(S)
2-16-16 [416]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on February 16, 2016. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Prevailing Party Fees and Costs is Granted, with American AgCredit, FLCA awarded $44,475.95 in fees and $117.00 in costs, which are part of this creditor's secured claim pursuant to 11 U.S.C. § 506(b).

American AgCredit ("Creditors"), makes an application for the award of Fees and Expenses in connection with this bankruptcy case.

The period for which the fees are requested is for the period July, 2013 through February 10, 2016. Applicant requests fees in the amount of $52,378.50 and costs in the amount of $117.12.

CREDITORS FEES AND EXPENSES AS PART OF SECURED CLAIM

11 U.S.C. § 506(b) provides:

> (b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Case Intake/Client Communications: Attorneys spent 5.4 hours in this category. The category includes: initial contact with clients regarding loan and payment history, event of default, determination of secured status; receive/review documents from client; receive/review Debtor's petition and schedules, including later amendments; draft and file Request for Special Notice; continued communication with client as needed to update client on the new filings and case strategy.

Proof of Claim: Attorneys spent 11.0 hours in this category. This category includes: receive/review underlying loan documentation, promissory notes, deeds of trust, UCC-1 filings, security agreements; communicate with client regarding interest rate, number of missed payments pre-filing, event of default, unpaid principal, interest and costs incurred; legal research on applicability of default interest; draft and file Proof of Claim.

Attorney Communications with Counsel for Debtors and other Creditors (Attorney Correspondence): Attorneys spent 5.10 hours in this category. The category includes: communications with attorneys for Debtors and other creditors to the extent not covered in another category, including requests for financial and tax reporting required by loan covenants and to coordinate appraisals.

Status Conference/Monthly Operating Reports: Attorneys spent 19.2 hours in this category. This category included: review monthly operation reports filed by Debtors; discuss with clients and obtain feedback; identify concerns raised by the monthly operating reports; review status conference reports and attend Status Conference hearings.

Cash Collateral Motions: Attorneys spent 22.3 hours in this category. This category included: communications with Debtors and other creditors regarding use of cash collateral where necessary; review and respond to Debtor's Motions to use Cash Collateral; draft objections where necessary; attend hearings on cash collateral motions (no fees charged in reviewing and responding to court's order showing cause regarding stipulation to cash collateral in October 2014)

Case Monitoring: Attorneys spent 15.80 hours in this category. This category included: review of case activity and motions for effect on client's interest, client communication where necessary; matters not covered under another specific heading; reviewing Debtor's filings and attend hearings where not covered in another specific heading.

Perfecting/Enforcing Security: Attorneys spent 4.6 hours in this category. This category included: steps to perfect security in rents; client discussion of security concerns and enforcement options throughout case; legal research on enforcement options.

Workout Negotiations: Attorneys spent 5.2 hours in this category. This category included: phone calls, correspondence, letters regarding claim treatment and plan viability prior to filing of initial Chapter 11 Plan; entries after initial plan was filed (May 2014) are in Category 9.

Plan and Disclosure Analysis: Attorneys spent 52.8 hours in this category. This category included: review multiple versions of various incarnations of Debtor's plan (both versions filed and previous unfiled proposed plans); discuss various proposed treatments of claim with client; determine whether objection to disclosure statement and plan are warranted; communications with counsel for Debtor and other Secured Creditors regarding proposed plan treatment; review and compare four versions of projection schedules based on various assumptions.

Objections to Disclosure Statement Attorneys spent 16.5 hours in this category. This category included: case law research on basis for objection to Disclosure Statement; draft objection to disclosure statement, necessary declarations, and objections; review Debtor's reply; prepare for and attend hearing on approval of disclosure statement.

Fee/Employment Applications: Attorneys spent 48.3 hours in this category. This category included: draft fee application, notice of hearing; declaration of counsel, exhibits; review any opposition; draft reply to opposition as needed; prepare for and attend hearing on application.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Walter Schmidt	49.5	$350.00	$17,325.00
Eric D. Capron	119.5	$275.00	$32,862.50
Cathy Schoonover, Paralegal	.2	$100.00	$20.00
Cathy Schoonover, Paralegal	9.3	$110.00	$1,023.00

Linda Holbrooks, Paralegal	27.6	$110.00	$3,036.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Motion			$52,375.50 FN.1

FN.1. The total requested is a voluntary reduction based on the Attorneys *sua sponte* excluding billing for certain time entries.

Costs and Expenses

Creditor also seeks the allowance and recovery of costs and expenses in the amount of $49.32 pursuant to this Motion.

The costs requested in this Motion are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying		$20.80
Postage		$96.32
Total Costs Requested in Motion		$117.12

PLAN ADMINISTRATOR'S OPPOSITION

Michael and Judy House ("Plan Administrator") filed the instant Opposition on March 3, 2016. Dckt. 424.

The Plan Administrator asserts that because there is substantial equity in the Property and no risk in the bankruptcy for any loss as to the Client's note and deed of trust, the Plan Administrator asserts that the fees requested are not reasonable.

The Plan Administrator first argues that the Creditor has been adding attorney's fees to the Plan Administrator 's monthly statements and charging interest on those fees, even though it did not obtain court approval pursuant to 11 U.S.C. § 506. The confirmed plan allowed for allowed fees to be included as of the Effective Date of the Plan (being March 1, 2016). Dckt. 412. The Plan Administrator asserts that, as such, Client was not entitled to include any attorneys' fees and costs prior to court approval allowing the fees. Therefore, the Plan Administrator argues that all previously assessed charges and interest should be reversed.

The Plan Administrator also objects to the Attorneys use of block billing. The Plan Administrator argues that the block billing is problematic because they cannot determine the time for the potentially legitimate fees and the fees that could have been done by a paralegal or are uncompensable because they are administrative office work.

As to reasonableness, the Plan Administrator argues that the fees are not reasonable since Client was a fully secured creditor and was not at any risk of losing its position or collateral. The Plan Administrator argues that the following categories should be denied or reduced to a reasonable amount:

1. Proof of Claim

    a. The Plan Administrator argues that there was nothing complicated about the proof of claim sine the Plan Administrator was oversecured. It appears though that Client was spending a substantial amount of time unsuccessfully trying to include default interest post-petition. As such, the Plan Administrator argues that the proof of claim category should be reduced to a reasonable sum of not more than $500.00.

2. Status Conference/Monthly Operating Reports

    a. The Plan Administrator argues that transmitting reports to Client is something a paralegal could perform at a fraction of the expense of the attorneys. There are several expenses relating to the review of the monthly operating reports. The Plan Administrator also argues that there are duplicate fees being charged. Rather than objecting to every unreasonable expense in these categories, the Plan Administrator asserts that the category should be reduced by 60% to $2,073.20.

3. Cash Collateral Motions

    a. The Plan Administrator asserts that there is duplicative work as two attorneys attended some of the hearings. The Plan Administrator argues that as a fully secured creditor, it was unreasonable to send two attorneys to the hearing and it was duplicative to bill both of them. Furthermore, after the initial hearings, the Plan Administrator argues that the subsequent cash collateral motions and their orders were substantially the same motions and orders. As such, there should not have been a substantial amount of work to do after the initial hearing. The Plan Administrator argues that they should not pay for every attorney to transmit the order, nor should it pay for printing tentative rulings. The Plan Administrator requests that the category by reduced by $2,500.00 to $2,879.00.

4. Case Monitoring

a. The category included attending a fee application of the Plan Administrator ‘s counsel, reviewing objections to proof of claims of the House Trust and pulling document for a hearing. The Plan Administrator argues that the Client was never at risk of losing its collateral, so it was not reasonable to bill the hours in monitoring every court appearance or filing. The Plan Administrator argues that the fees should be reduced to no more than $1,000.00.

5. Plan and Disclosure Analysis

a. The Plan Administrator argues that spending 52.8 hours in reviewing the plan when the Cleint was fully secured is unreasonable. The Plan Administrator argues that this was a 100% plan from Client’s standpoint. In non of the versions of the plans was Client’s collateral at risk. The only issue was the restructuring of four pre-filing loan payments. The Plan Administrator argues that the category should be reduced by approximately 75% to $3,450.00.

6. Objections to Disclosure Statement

a. The Plan Administrator begins by arguing this is in addition to the 52.8 hours billed in the Plan and Disclosure Analysis. The Plan Administrator argues that it was unreasonable for Client to file an objection to the adequacy of the Disclosure Statement, whihc was ultimately denied because the court determined it was a confirmation issue (and there was no objection filed to the plan confirmation). The Plan Administrator argues that the entire category should be disallowed.

7. Fee/Employment Applications

a. The category includes 48.3 hours. An employment application was never filed. The Plan Administrator argues that the Attorneys spent hours to prepare the instant Application, including approximately 20 hours of attorneys’ time to prepare the Application. The Plan Administrator asserts, as an example, that the Plan Administrator should not be responsible to pay nearly $9,000.00 for the Attorneys to prepare the schedules and creating the spreadsheets that were for the benefit of the Client. Rather, the Plan Administrator argues the sum of $1,000.00 for a fee application of this nature would be reasonable.

In addition to the objections to the individual categories, the Plan Administrator provides 79 individual objections to individual time entries. The Plan Administrator argues that each of the entries listed are unreasonable, mainly on the grounds that the entry could have bene taken care of by a secretary, is duplicative, or is excessive.

CREDITOR'S REPLY

The Creditor filed a reply on March 10, 2016. Dckt. 428. The Creditor begins by stating that it disagrees with the Plan Administrator that a secured creditor with significant equity in its collateral should not actively monitor or participate in a reorganization bankruptcy because that equity eliminates the risk of loss.

The Creditor outlines that attenuated and extensive history of the instant case which was filed in July 2013. By the Creditor's count, there have been: 31 Monthly Operating reports; 7 status reports; 9 status conferences; 9 requests made for cash collateral/adequate protection; and 2 formal attempts to confirm a plan.

The Creditor argues that there were at least four different versions of plan circulated among creditors at various times for analysis and feedback. The Creditor argues that multiple times the attorneys would have to make multiple attempts to contact Plan Administrator's counsel.

The Creditor argues that a reasonable creditor, even if fully secured, would keep itself informed by engaging bankruptcy counsel to monitor case filings and to attend hearings. A reasonable attorney, the Creditor argues, evaluates plans for feasability and provides feedback regarding its concerns because to do otherwise would result in further delay when the plan fails, regardless of the equity in the collateral.

The Creditor asserts that to hold othewise would be to place counsel for secured creditors in the unenviable position of counseling their clients not to review all of the documents filed by a debtor, and to have counsel attend only "important" hearings and perhaps review only some of the tentative rulings before appearing.

As to the Plan Administrator's specific objections, the Creditor responds as follows:

1. Secretarial work

    a. The Creditor argues that the Plan Administrator should not be permitted to simultaneously criticize attorneys for doing work that it characterizes as secretarial and at the same time argue that paralegals should not be compensated for preparing service lists and transmitting documents. Creditor notes that over $8,000.00 in fees were requested by Plan Administrator's counsel for work performed by his firm's paralegals and secretaries. As a comparison, the Creditor states that less than half that amount is requested by the Creditor in the instant Motion.

2. Duplicative Billing

    a. The Creditor argues that it takes every effort to provide cost-effective legal services. The Creditor argues that Attorney Schmidt (who bills at a higher rate in light of his experience) could have performed

all the work needed but instead the firm utilized Mr. Capron as well (who bills at a lower rate than any of the Plan Administrator's attorneys).

3. Work That is Reasonably Necessary

a. The Creditor states that at least 45 of the specific objections raised by Plan Administrator are based on the ground of "no reasonable benefit." The Creditor argues that the standard of evaluation is whether the action would be taken by a similarly situated reasonable creditor – there is no requirement that the action have a "reasonable benefit" to the estate before the fees are reimbursed.

4. Fee Application

a. The Creditor states that they approached Plan Administrator's counsel to stipulate to fix those fees (at an amount less than 60% of the fees requested in the instant Motion) in order to avoid the necessity of filing the instant application. The Creditor argues that since the firm's work in bankruptcy is only about 25% of the practice, the attorney's reduced fee rates as to those compared to Plan Administrator's counsel reflect the difference in expertise. The Creditor states that the Creditor has only prepared fee applications in a small percentage of its cases and when it does, the billing categories can vary. The Creditor argues that had Plan Administrator's counsel not voluntarily reduced the fees associated with his application to $7,030.00, the Plan Administrator's counsel's own Motion would have required reimbursement of several hundred dollars more in attorney time than the instant Application. The Creditor states that while it did not object to the Plan Administrator's fee application, the Creditor has incurred several additional hours of fees in responding to the 23-page objection filed by Plan Administrator.

FEES AND COSTS & EXPENSES ALLOWED

The Creditor is seeking to have the attorneys fees and costs included as part of Creditors' secured claim pursuant to 11 U.S.C. § 506(b). The Creditor argues that due to the fact that the Creditors have an oversecured claim and have taken steps to enforce their rights as a creditor, in addition to the fact that the underlying note and Deed of Trust are fully matured, that Creditors are entitled to reimbursement of attorneys fees and costs. The Creditor provides the Deed of Trust and Promissory Note, both of which provide for reasonable fee and costs. Dckt 422, Exhibits A and B.

Courts have stated that attorney's fees of an oversecured creditor are included as part of an allowed secured claim only to the extent the fees are reasonable. *See Welzel v. Advocate Realty Invs., LLC* (*In re Welzel*), 275 F.3d 1308 (11th Cir. 2001).

The court begins its analysis with an overview of this case and Creditor's claim. This bankruptcy case was filed on June 25, 2013. The Chapter 11 Plan was confirmed on January 21, 2016 – thirty months later. On a gross basis, the fees sought by Creditor average $1,745 a month. At a $325.00 an hour billing rate, that averages five hours a month that Creditor had its attorneys working on this case.

The Debtors in Possession filed the Original Plan and Original Disclosure Statement on May 24, 2014 – a full year after the case was filed. The case did not start out smoothly for the Debtors in Possession. In reviewing the Civil Minutes for the status reports, by August 1, 2013, America Ag was reporting that Debtors in Possession were delinquent in payments. October 31, 2013 Status Conference Civil Minutes, Dckt. 70.

Though due, the Debtors in Possession had failed to file the Monthly Operating Report for September 2013, and were late in filing the Monthly Operating Report for August 2013 (filed October 30, 2013). *Id.*

A review of the Civil Minutes for the April 10, 2014 Status Conference raise several significant issues concerning the conduct of the Debtors in Possessions, as the fiduciaries of the bankruptcy estate. Dckt. 110. As stated in the Civil Minutes,

> "The Monthly Operating Report raises several items of concern for the court. These include the liquidation of assets by the Debtors in Possession (with no order authorizing the sale having been issued by the court), the investing of $13,179.00, and the payment of $10,485.00 in Professional Fees (without the court having issuing an order approving any such fees or authorizing the payment).
>
> From the latest Monthly Operating Report the Debtors in Possession appear to be operating at a financial loss, being able to continue only with gifts from family members and liquidating assets (without court authorization)."

Id.

The Original Plan and Disclosure Statement caught the ire of some creditors. While "simple," AgCredit filed an opposition stating that the Original Disclosure Statement and Plan failed to provided for termination of the Petaluma lease, which would insure the plan failing. Dckt. 132. The court reviewed all of the oppositions in the Civil Minutes for the July 24, 2014 hearing on the Original Disclosure Statement. Dckt. 163. The court sustained the various objections, rejecting the Debtors' in Possession responses.

On July 17, 2014, the Debtors in Possession filed an Amended Disclosure Statement, notwithstanding having expended the time and attorneys' fees to respond to the objections. Dckt. 156. The court ordered the Debtors in Possession to file an amended plan and further amended disclosure statute by a date certain to go with the Amended Disclosure statement, with the final deadline being September 12, 2014. Order, Dckt. 181. The Debtors in Possession failed to comply with the extended deadline, resulting in the Amended Disclosure Statement not being approved. Civil Minutes, Dckt. 221. In denying the request for further extension of time, the court noted:

> "Debtors in Possession state in the present Motion that they still need more time to negotiate commercial lease terms. Now Debtors in Possession want the time to file documents for this continued motion extended to October 23, 2014, one week before the continued hearing. In addition, Debtor in Possession request that the court continue the hearing to November 20, 2014.
>
> At this point, the court concludes that not approving the existing disclosure statement and affording Debtors in Possession, creditors, and possible lessors whatever reasonable time they need for the good faith, diligent prosecution of this case proper. **Continuing the hearing further runs counter to proper notice and prosecution of the case. Rather, it is beginning to take on the nature of a strategy to delay prosecution and the Debtors in Possession advancing a Plan to a confirmation hearing.** This bankruptcy **case is entering into its sixteenth month, without a proposed plan moving toward confirmation.**"

Id. The court was clearly concerned about how the Debtor in Possession were prosecuting this case, and equally clearly, the strategy of the Debtors in Possession was requiring reasonable, diligent monitoring what the Debtors in Possession were (and were not) doing as fiduciaries of the bankruptcy estate.

The next Amended Plan and Amended Disclosure Statement were filed on September 18, 2015. Dckts. 332 and 334. American AgCredit filed an objection to this Disclosure Statement, specifically identifying financial information which was inconsistent with the information theretofore provided by the Debtors in Possession. The court reserved over most of American AgCredit's objection for the confirmation hearing. Civil Minutes, Dckt. 351. Debtor then filed a Final Amended Disclosure Statement working in the final amendments agreed to at the October 22, 2015 hearing.

For this multi-year bankruptcy odyssey, counsel for the Debtor in Possession request the court approve in excess of $300,000.00 in legal fees and costs. The court allowed fees of $45,000.00 for the first interim application (having denied $45,391.13 in additional fees requested). Civil Minutes, Dckt. 409. As part of the final application, counsel for the Debtor in Possession requested an additional $219,125.10 in fees. *Id.* The court approved for counsel for the Debtor in Possession $264,125.10 in legal fees (with an additional $45,291.13 sought, but disallowed). Order, 411.

While the Debtor in Possession was running up in excess of $300,000 in legal fees, for work which creditors had to pay attention, the same Debtors in Possession find it "mind-boggling" that AgCredit incurred $52,495.62 in fees and costs during the same period of time. While AgCredit had procured good collateral and maintained an equity cushion, that does not mean that it sits idly by for thirty months while the Debtors in Possession are navigating the bankruptcy case.

Debtor's objection to the format of the billing information is indicative of "over-lawyering" for the sake of "over-lawyer." The Debtors argue that because of the block billing, "There is absolutely no way to

determine the reasonableness of the time or fees." Objection, p. 5:9-10; Dckt. 424.

The courts review of the Motion and the information provided includes the following:

A. Motion provides eleven categories of billing tasks. Motion, pp. 2-3; Dckt. 416.

B. Motion discloses the one Partner, one Associate, one Paralegal, and one Assistant, and their respective billing rates. *Id.*, p. 4.

C. Exhibit A to the Motion is a project billing summary.

1. This summarizes the total hours billed, the billers, and the time charged for each biller.

2. The largest block of time is 52.80 hours for the four versions of the plan and disclosure statement, spread over two years. The total dollar amount billed for the versions of the plan and disclosure statement over two years is $13,694.50.

3. There is an additional 16.5 hours, for $5,400.00, broken out for objections to disclosure statement. This increases the plan and disclosure statement billing to $19,094.50 for the plan and disclosure statement categories.

D. Exhibit B to the Motion is a statement of expenses.

1. The expenses total $117.12.

E. Exhibit C is the chronological contemporaneous billing records.

1. This is the long, detailed chronological statement of billing. But this is mitigated by Exhibit D.

F. Exhibit D are chronological billing records, with the data segregated for each biller and billing category

Rather than failing to provide information, the "mind-boggling" nature of what has been provided is the detail of information provided. The information is consistent with that provided by counsel for Debtors in Possession in seeking more than $300,000.00 in fees.

Interestingly, the Debtors in Possession contend that the fees should be reduced to $15,000.00, for thirty months of legal work. It appears that the Debtors in Possession are taking a "if we assert an unreasonably low position, than the judge will split the baby and award $33,689.25 in fees." This court does not work that way - values are determined, fees awarded, and judgments issued on the merits, not merely creating averages.

Award of Fees

Here, the court finds that the Attorneys for Creditor has performed necessary and reasonable services to entitle the Creditor to an award of attorneys' fees pursuant to the terms of the Deed of Trust and Note. Much of the Debtors' in Possession objections are of minor merit, and appear to be stated solely for the purpose of making the objection look bigger. Some of the objections appear to assert that the attorneys, as part of their services, should not be keeping accurate records.

On a macro basis, the court considers the following task billing areas and fees:

A. Case Intake, Initial Client Communications

1. $1,717.50.

2. This is not an unreasonable amount of money for an attorney to do an initial check of the client and situation.

3. **The court allows $1,717.50 in fees for this category.**

B. Proof of Claim

1. $3,197.50, 11 hours of time

a. One proof of claim was filed on August 8, 2013. Proof of Claim no. 7.

b. There are nine attachments to the proof of claim. There is not only a note and deed of trust, but a security agreement, UCC Financial Statement, Reamoritization Loan Agreement, Assumption Agreement, Grant Deed, UCC financial Statement, and a UCC Continuation Statement.

c. In reviewing the time records relating to the Proof of Claim, there is a 2.10 charge by Eric Capron for $577.50 which catches the court's eye. Part of this is for multiple meetings with the partner, Walter Schmidt, and drafting a letter on default interest. Walter Schmidt also has a .30 of a time entry and another hour for meeting with Eric Capron and reviewing the letter regarding default interest, for an additional $455.00 in "proof of claim" billings.

d. The court also notes that there is an August 5, 2013 entry for Eric Capron to draft the proof of claim *without default interest*. While it may have been necessary and proper to research the issue and for American AgCredit to pay its attorneys for doing such, it is not

for the Debtors to pay for legal services which were not related to enforcing AgCredit's rights and interests. There is a July 25, 2013 $385.00 charge by Eric Capron for researching the default interest rate issue, as well as a $350.00 charge on July 22, 2013 by Walter Schmidt for the default interest issue.

2. The court reduces the reasonable attorneys' fees relating to the proof of claim by $1,190.00 to address the default interest work and the duplicative work with respect to the proof of claim issue between Eric Capron doing the work, at $275.00 an hour, and then Walter Schmidt spending additional time meeting with Mr. Capron and then revising his work.

3. **The court awards $2,007.50 in fees relating to the proof of claim.**

C. Attorney Communications with Debtors' Counsel and Other Creditor Counsel

1. $1,517.50

2. **The court awards $1,517.50 in fees relating to these communications** over the thirty months of the case through confirmation.

D. Status Conferences/Monthly Operating Reports

1. Fees are billed for the two attorneys total $5,030.00 and an additional $153.00 for paralegals.

2. Of the attorney billings, $5,183.00, $4,400.00 was billed by Eric Capron (at $275.00 an hour) and $630.00 was billed by Walter Schmidt (at $350.00 an hour).

3. For thirty months of Monthly Operating Reports and having to attend Status Conferences (during which some significant "short-comings" of the Debtors in Possession were addressed), $5,030.00 for attorneys is not unreasonable. There is no significant overlap between the Mr. Schmidt's billings and Mr. Capron's.

4. The court disallows the $153.00 for the paralegal services. Upon reviewing the detail on Exhibit D for Ms Schoonover, the services are in the nature of secretarial, which are included in the hourly rate, and not paralegal.

5. **The court awards $5,030.00 for attorneys fees in this category.**

E. Cash Collateral Motions

1. Walter Schmidt has billed $1,540.00 (5.90 hours) and Eric Capron has billed $3,740.00 (16.40 hours) for legal services relating to the cash collateral motions.

2. Over the thirty months of this case, there were multiple hearing relating to the Debtor in Possession seeking authorization to use cash collateral.

3. In this category, it appears that Mr. Schmidt and Mr. Capron have doubled up on some of the billing based on the court's review of Exhibit D. Examples include:

   a. For the August 2013 cash collateral hearing,

      (1) Mr. Schmidt billed $105.00 to check for a tentative ruling and an additional $105.00 to review with Eric Capron the status for the hearing.

      (2) Eric Capron then bills $82.50 to conference with Walter Schmidt, and then a second conference and bill $302.50 for attending the cash collateral hearing.

      (3) Mr. Schmidt then bills $700.00 to talk with the client and attend the cash collateral hearing.

      (4) It is clear that either Mr. Schmidt or Mr. Capron are capable of representing the client at the hearing. And the Debtors have the privilege of paying those fees. However, the Debtors do not have to pay for having two attorneys do the same work.

   b. For the September 2013 cash collateral hearing, there are the same duplicate billings.

      (1) Mr. Schmidt billed $280.00 to "Debrief" Mr. Capron and to review the court's minute order.

      (2) Mr. Capron billed $330.00 to confer with Mr. Schmidt and communicate with other counsel and client. Then $220.00 to communicate with the court about the order, review the amended order ($192.50)and another $220.00 communicating with the client.

4. Creditor also seeks to bill $99.00 for Catherine Schoonover for services relating to cash collateral. As shown on Exhibit D, these are secretarial services, not attorney or paralegal services, and are not awarded.

5. **The court awards Creditor $3,700.00 in fees relating to the cash collateral matters.** The court does not award the balance, as they are not fees which the Debtors are obligated to reasonably pay Creditor.

F. Case Monitoring

1. There is $5,379.00 in fees sought in this category consisting of: $1,540.00 for Walter Schmidt (5.90 hours); $3,740.00 (16.40 hours); and $99.00 for Cathy Schoonover, "paralegal" (1.60 hours).

   a. For the attorneys, the "case monitoring" consists of watching and reviewing what is being filed in the case, what others are doing, and the impact it may have on Creditor's claim. From the court's review of Schedule D, there is not the "overlap" of the Schmidt and Capron services as in other categories.

   b. Again, the Schoonover services are secretarial in nature and not part of the legal fees that Debtors are obligated to pay.

2. **The court awards $5,279.00 in legal fees to Creditor for this category of services.**

G. Perfecting and Enforcing Security

1. In this category Walter Schmidt has billed $770.00 and Eric Capron has billed $632.50. In reviewing Schedule D, there is not an overlap of services between these two attorneys.

2. For Ms. Schoonover, her services continue to be secretarial.

3. The court awards $1,402.50 in fees to Creditor for these services.

H. Workout Negotiations

1. In this category Walter Schmidt has billed $280.00 and Eric Capron has billed $1,210.00. In reviewing Schedule D, there is not an overlap of services between these two attorneys. The services provided were focused and related to the workout through a plan.

2. **The court awards $1,490.00 in fees to Creditor for these services.**

I. Plan and Disclosure Analysis

1. In this category Walter Schmidt has billed $2,625.00 and Eric Capron has billed $10,695.50. In reviewing Schedule D, there is not an overlap of services between these two attorneys.

2. While substantial, $13,320.50 is not surprising for thirty months of a Chapter 11 case in which there were four versions of disclosure statements and plans floating around. In reviewing Schedule D, the time billed is appropriate, and does not reflect duplicative billings. The work done by Mr. Schmidt is commensurate with his rate and experience, and the work undertaken by Mr. Capron.

   a. However, the court makes the following reductions:

      (1) $357.50 for November 17, 2015 preparation and meeting with Maryam Ghazi, when Mr. Schmidt was billing for the same preparation and meeting.

3. For Ms. Schoonover, her services continue to be secretarial.

4. **The court awards $12,963.00 in fees to Creditor for these services.**

J. Objections to Disclosure Statements

1. In this category Walter Schmidt has billed $5,180.00 and Eric Capron has billed $55.00.

2. In reviewing Schedule D, there appears to be some adjustments which are:

   a. $350.00 billed by Mr. Schmidt for e-filing documents and overseeing service of objection. This is not normal, attorney billable time to be awarded as prevailing party attorneys' fees. This is a secretarial and general overhead function.

3. For Ms. Schoonover, her services continue to be secretarial.

4. **The court awards $4,885.00 in fees to Creditor for these services.**

K. Fee and Employment Applications

1. In this category Walter Schmidt has billed $1,015.00, Eric Capron has billed $4,8945.00, and Linda Holbrooks (paralegal) has billed $3,036.00.

2. It appears that these "Applications" actually is just the present motion for prevailing party attorneys' fees for this Creditor. For bankruptcy attorneys, preparing such motions or applications for professional fees pursuant to 11 U.S.C. § 330 are routine course. With computerized billing systems, the information can be readily organized and presented. Even if the "old days," an associate with different colored highlighters could go through the detailed billing records and organize the billings by task group and biller.

3. Whether prevailing party attorneys' fees or professional fees, the same lodestar analysis as used in District Court for attorney fee awards applies. There is little difference in the present motion from a post-judgment motion for attorneys' fees in District Court.

4. In the Reply, Creditor asserts that a stipulation was sought for the prevailing party attorneys' fees, but none was reached. The Debtors have struck their position that no more than $15,000.00 were reasonable fees.

5. The fees awarded above for the legal serves other than relating to the current motion for prevailing party fees total $38,589.50. That is more than double what Debtors propose. Creditor justifiably brought this Motion for prevailing party fees.

6. However, Attorneys for Creditor explain that the fees relating to this Motion are so high is because:

> "Unlike counsel for DIPs whose legal practice is dominated by bankruptcy work, counsel for Secured Creditor devotes less than twenty-five percent (25%) of its practice to representing creditors and defending preference actions in bankruptcy. This difference is reflected in the billable rate charged by counsel for Secured Creditor which is significantly less than the rate charged by counsel for DIPs. As a result, counsel for Secured Creditor only prepares fee applications in a small percentage of its cases and when it does, the billing categories can vary significantly depending on the type of case and the type of client involved. This makes it extremely difficult to create and implement a front-end system where each billing is allocated to a category as time is entered on a monthly basis. Instead,

when it becomes necessary to file a fee application, counsel for Secured Creditor must look backwards to evaluate the billings, craft meaningful billing categories, assign billings to each category and devote staff time to creating the type of grouping spreadsheets required in a bankruptcy fee application. Significantly more attorney and staff time should be required then for Secured Creditor to prepare its fee application."

Motion, p.9: 9-23.

This contention fails for two reasons. First, as set forth above, any attorneys who are involved in litigation (and yes, bankruptcy is litigation) for which at the end of the day the client may want to recover attorneys' fees, knows up-front that the proper time records need to be maintained.

Second, this fee process is not unique or foreign, to either the State Courts or the District Courts. Every attorney involved in litigation knows, or should know, how to keep time records and be prepared to drive the prevailing party attorneys' fees stake into the heart of the defeated opponent.

Additionally, to the extent that counsel's firm does not have or know how to maintain and present time records as a prevailing party, it is not for the losing party to pay full hourly rate for the education or the inefficiencies. In essence, Creditor's argument is that the attorneys we chose, on this one area of the representation, are inexperienced, so the Debtors should pay attorneys' fees at the full hourly rate for the inexperience.

7. While it may have taken Attorneys for Creditor more time to prepare the Motion and records, what has been prepared is an excellent example of how to do it right. Creditor, with this Motion and supporting documents, has managed to blunt substantially all of Debtors' objections.

8. In reviewing Schedule D, it appears that a significant part of the "inefficiencies" and "inexperience" were covered by the services of Ms. Holbrooks. She performed what is basically either secretarial work or clerical work in getting the billing information out of a 21st Century (or even late 20th Century) law firm billing system. The $3,036.00 is not awarded as legal fees.

9. That leaves $4,895.00 having been billed by Eric Capron and $1,015.00 by Mr. Schmidt.

a. Beginning with Mr. Schmidt's time, much of it appears to be general senior partner oversight.

(1) The court allows $210.00 of his billable time.

b. For Eric Capron, his time includes the attempts to resolve the issue of prevailing party attorneys' fees without the necessity of this Motion. Some of the time is clearly setting up the office procedures to provide the necessary information for any prevailing party motion.

c. What's not included in the current Motion is the time responding to the detailed, picayune Objection filed by Debtors, as well as reasonable time for the March 17, 2016 hearing.

d. For Mr. Capron's billings,

(1) The court does not allow $683.55 of the billings, concluding that they relate to the general overhead part of the law firm operation.

(2) For responding to the Objection and for the hearing on March 17, 2016, the court awards and additional 5 hours of Mr. Capron's time, which equals $1,375.00, in addition to the $4,211.45 above.

10. **The court awards $5,796.45 in fees to Creditor for these services.**

Fees

The court finds that the hourly rates reasonable and that Attorneys for Creditor effectively used appropriate rates for the services provided to Creditor, the prevailing party. The Court awards Creditor attorneys' fees, to be paid by Debtors as part of the secured claim in this Bankruptcy case, in the amount of $44,475.95.

Costs and Expenses

Creditor has requested $117.12 of costs for photocopies and postage during this bankruptcy case, including the present Motion. These costs are reasonable and awarded Creditor as part of its secured claim in this Bankruptcy Case.

Fees and Costs Included In Secured Claim

It has not been disputed that:(1) Creditor's secured claim is oversecured by such a great amount that the collateral has sufficient value to pay the fees and costs, (2) that the attorneys' fees and costs are subject to the contractual provisions of the underlying note and deed of trust, and (3) the deed of trust secures the Debtor's obligation to pay Creditor the attorneys' fees and costs. Pursuant to 11 U.S.C. § 506(b) Creditor is entitled to have the award of attorneys fees and costs be included as part of its secured claim in this bankruptcy case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Prevailing Party Fees and Expenses filed by American AgCredit, FLCA, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that American AgCredit, FLCA, is awarded $44,475.95 in attorneys' fees and $117.12 of costs as the prevailing party in this bankruptcy case as against Michael House and Judy House, the Debtors. The award of attorneys' fees and costs, are included as part of American AgCredit, FLCA's secured claim in this case pursuant to 11 U.S.C. § 506(b). Said fees and costs, as part of the secured claim, shall be paid as provided in the confirmed Chapter 11 Plan in this case.

35. 16-90017-E-7 DEBRA HUIE
SCF-1 Pro Se

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 2-18-16 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, and Office of the United States Trustee on March 8, 2016. By the court's calculation, 9 days' notice was provided. 21 days' notice is required. Fed. R. Bank. P. 2002(a)(4) 21-day notice for Chapter 7, 11, and 12 cases.

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

The Motion to Dismiss the Chapter 7 Bankruptcy Case is denied without prejudice.

This Motion to Dismiss the Chapter 7 bankruptcy case of Debra Kay Huie ("Debtor") has been filed by Stephen C. Ferlmann ("Movant"), the Trustee. Movant asserts that the case should be dismissed on the ground that the Debtor failed to attend the First Meeting of Creditors.

The Debtor filed a Notice of Hearing on the instant Motion, setting the Motion to Dismiss for hearing at 10:30 a.m. on March 8, 2016. Dckt. 19. The Debtor has failed to state a basis for the opposition.

RULING

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Movant states that Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343.

On March 10, 2016, the Trustee filed a Report of No Distribution. The Report indicates that the Debtor appeared at the Meeting of Creditors held on March 10, 2016. As such, the Trustee's ground for dismissal is overruled.

Therefore, the Debtor having attending the Meeting of Creditors, cause does not exist to dismiss this case. The motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.