

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**March 18, 2021 at 10:30 a.m.**

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<b>1.</b>	<b><u>20-25606-E-7</u></b>	<b>PATRICK BARTHOLOMY</b> <b>Scott Tibbedaux</b>	<b>ORDER TO SHOW CAUSE - FAILURE TO PAY FEES</b> <b>2-25-21 [20]</b>
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**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, then the court will make the following findings of fact and conclusions of law:

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on February 27, 2021. The court computes that 19 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: \$32.00 due on February 11, 2021.

<b>The Order to Show Cause is sustained, and the case is dismissed.</b>
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The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$32.00.

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

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

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

**IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on February 25, 2021. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

**The Motion for Approval of Compromise is granted.**

Alan S. Fukushima, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Raley's a California corporation ("Settlor"). The claims and disputes to be resolved by the proposed settlement are for Debtor's claim against Settlor related to work performed by the Debtor primarily at Raley's Rancho Murieta location.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 94):

- A. Settlement Payment of \$35,537.50 from Settlor to Movant within 14 days of the approval order being entered.
- B. The Movant and Settlor will exchange broad mutual releases.

- C. Parties to bear their own attorney's fees. If the Agreement requires enforcement, prevailing party will be entitled to reasonable attorney fees and costs.
- D. Parties expressly agree that there is no admission of liability.

## DISCUSSION

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

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

Under the settlement, Movant shall recover \$35,537.50 in satisfaction of the Estate's claim for recovery of the property, with an asserted value of \$64,928.62, from Settlor. Movant asserts that the property can be recovered for the Estate for the claim it has against Settlor. This proposed settlement allows Movant to recover for the Estate \$35,537.50 without further cost or expense and is 54.73% of the maximum amount of the claim identified by Movant.

Under the terms of the settlement, all claims of the Estate, including any pre-petition claims of 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 argues that the Murieta Claim is heavily disputed and subject to set-off rights asserted by way of a counterclaim. The Trustee has been advised by counsel that the Agreement is a fair and equitable result, accounting for the risks of litigation.

## **Difficulties in Collection**

Movant is not aware of any collection issues as to Settlor.

## **Expense, Inconvenience, and Delay of Continued Litigation**

Movant argues that any litigation with Settlor will require time and expense that is otherwise wholly avoidable by the agreement.

## **Paramount Interest of Creditors**

Movant argues that the Agreement will result in an efficient administration of the Debtor's estate as well as ensure a return to creditors on account of the Murieta Claim, while saving estate resources otherwise associated with litigation.

## **Consideration of Additional Offers**

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it settles the claim and any counter-claim while providing a substantial value to the estate. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Alan S. Fukushima, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Raley's a California corporation ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 94).

**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.

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

Sufficient Notice **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, Office of the United States Trustee on February 16, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

A review of the Certificate of Service states that this Federally Insured Credit Union was served in compliance with Federal Rule of Bankruptcy Procedure 7004 and 9014 by service as follows:

Bryan M. Grundon  
Law Office of Bryan M. Grundon  
Attorney for Navy Federal Credit Union  
16870 West Bernardo Drive, Suite #400  
San Diego, California 92127

Federal Rule of Bankruptcy Procedure 9014(b) provides that when commencing a contested matter, service of the motion, application, or objection shall be made in the manner required for a subpoena as provided in Federal Rule of Bankruptcy Procedure 7004.

For an FDIC insured financial institution, the Supreme Court provides in Federal Rule of Bankruptcy Procedure 7004(h):

(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) <sup>Fn.1.</sup> 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.

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FN. 1. The term “Insured Depository Institution” is defined in 12 U.S.C. § 1813(c)(2) as:

(2)Insured depository institution

The term “insured depository institution” means any bank or savings association the deposits of which are insured by the Corporation pursuant to this chapter.

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The National Credit Union Administration website identifies Navy Federal Credit Union as a Federally Chartered credit union that is federally insured.<sup>Fn.2.</sup>

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FN. 2. <https://mapping.ncua.gov/SingleResult.aspx?ID=5536&IsCorpCU=0>.

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No appearance has been made by an attorney for Navy Federal Credit Union in this Contested Matter (or even in this case). It is not clear how Navy Federal Credit Union has been served as required by the Federal Rules of Bankruptcy Procedure with this Motion for sanctions.

At the hearing, **XXXXXXX**

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

<b>The Motion for an Order to Show Cause is <b>XXXXX</b>.</b>
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J. Michael Hopper, the Chapter 7 Trustee, (“Movant”) seeks an order to show cause why a contempt citation should not be issued against Navy Federal Credit Union for its failure to respond to Trustee’s subpoena. Movant requests this order on the basis of the following allegations:

- A. Debtor has an interest in real property located at 22 Solano Drive, Dixon, California (“Property”). The interest was held as a joint tenancy with Debtor’s wife, Becky Almeida.

- B. Debtor's wife filed a petition for dissolution on May 3, 2016 and a judgment of dissolution was entered on February 7, 2019, with the state court reserving jurisdiction over unadjudicated issues including property division.
- C. A preliminary title report for the Subject Property has identified that it is subject to an abstract of judgment in favor of Navy Federal CU, which was recorded on March 7, 2018 ("Abstract").
- D. The judgment debtor in the Abstract is Becky individually. Debtor is not a named judgment debtor in the Abstract.
- E. On December 16, 2020, Navy Federal CU was served with a subpoena to produce documents ("Subpoena") with a December 31, 2020 deadline to produce documents responsive to the Subpoena. Navy Federal CU filed no challenge to the Subpoena. Navy Federal CU failed to respond to the subpoena.
- F. Trustee communicated with Navy's Counsel on two occasions. On January 4, 2021, Counsel Navy responded to Trustee's email that he would follow up. On January 20, 2021 Trustee again communicated with Navy's Counsel but received no response.

## DISCUSSION

Failure to comply with a subpoena without adequate excuse is governed by Federal Rule of Civil Procedure 45. Specifically, FRCP 45(g) provides that

(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Fed. R. Civ. P. 45(g). Rule 45 of the Federal Rule of Civil Procedure has been incorporated as Federal Rule of Bankruptcy Procedure 9016, and applies in adversary proceedings, contested matters, contested or involuntary petitions, Rule 2004 examinations and all other matters in a bankruptcy case in which testimony may be compelled. Failure to obey a subpoena is punishable as a contempt of the issuing court. *Riley v. Sciaba (In re Sciaba)*, 334 B.R. 524, 526 (Bankr. D. Mass. 2005); Fed. R. Civ. P. 45(g).

This court has the authority to enforce its subpoenas and orders. *Fernos-Lopez v. U.S. Dist. Ct.*, 599 F.2d 1087, 1090 (1st Cir. 1979). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). The purposes of sanctions in a civil contempt proceeding are to coerce the contemnor into complying with an order of the court and to compensate the harmed party for losses sustained on account of the contempt. *Riley v. Sciaba (In re Sicaba)*, 334 B.R. 524, 526 (Bankr. D. Mass. 2005), citing to *In re Power Recovery Systems, Inc.*, 950 F.2d 798, 802 (1st Cir. 1991).

Here, Trustee argues that Trustee has engaged in good faith efforts to obtain documents related to the judgment as sought by the subpoena. Navy has failed to respond to the subpoena and no explanation has been provided as to its delay or lack of response. Thus, Trustee argues that Navy Federal Credit Union has no excuse for failing to respond to the subpoena and the court should issue an order for Navy Federal Credit Union to show cause why a contempt citation should not be issued.

Trustee served this motion to counsel for Navy Federal Credit Union. The subpoena was also served on Counsel for Navy Federal Credit Union. *See* Exhibit A, Dckt. 50.

At the hearing Counsel for Trustee **XXXXXXX**

At the hearing Counsel for Navy Federal Credit Union **XXXXXXXXX**

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 an Order to Show Cause filed by J. Michael Hopper, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for an Order to Show Cause is **XXXXXXX** .



**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.

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

Sufficient Notice **Not** 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, 2021. By the court's calculation, 30 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

Movant gave five days less than the required notice. At the hearing **xxxxxxx**

The Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is granted, and the case is converted to one under Chapter 13.**

Susana Elianet Santana ("Debtor") seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor asserts that the case should be converted because the Chapter 7 Trustee seeks to sell Debtor's home. Debtor is requesting conversion to Chapter 13 because she will be able to pay the unsecured creditors through a plan rather than having Trustee sell her home.

Trustee filed a Response on February 22, 2021 stating non-opposition provided that:

1. The motion is not construed as a motion to confirm plan. (The court notes that Debtor filed a “Probable Plan” in support of the Motion as Exhibit A, Dckt. 50. Such is clearly a better practice, demonstrating that a debtor has good faith plans to prosecute a plan, and not merely attempting to juke away from a trustee in an effort to divert assets from creditors.)
2. All approved administrative expenses incurred in this Chapter 7 must be included in any confirmed Chapter 13 Plan.
3. Upon confirmation of a Chapter 13 plan, if the Debtor fails to make plan payments, the case should not be dismissed but converted back to a Chapter 7 case so that Trustee may administer property of the estate for the benefit of the creditors with unsecured claims.

Dckt. 54.

Here, Debtor’s case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties. No opposition has been filed.

The court requires that the Debtor sufficiently fund the plan to provide for a dividend on unsecured claims to be computed as if there were no Chapter 7 administrative expenses to be paid in the Chapter 13 case. This avoids the creditors with unsecured claims having to “foot the bill” for the Chapter 7 attempt when Debtor should have clearly known to file Chapter 13 if the Debtor did not want the property liquidated due to the non-exempt equity.

With respect to prospectively ordering that the case is to be reconverted in default and not dismissed, the court leaves it to the Chapter 13 Trustee and the Chapter 7 Trustee to be diligent (as the court is confident they are) in their duties, and if such conversion is proper, to seek that relief from the court rather than prophylactically just seeking to dismiss the Chapter 13 case. It could be that dismissal, rather than reversion, would be what the Trustees believe is proper at some future date.

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

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

The Motion to Convert filed by Susana Elianet Santana (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Convert is granted, and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code.

**IT IS FURTHER ORDERED** that though the Chapter 7 administrative

expenses must be paid through the Chapter 13 plan, the distribution to unsecured creditors shall be computed as if such Chapter 7 administrative expenses are not having to so be paid (thereby not imposing those expenses on the creditors with unsecured claim, but requiring a little additional funding in light of the jump from Chapter 7 to Chapter 13 when the Chapter 7 Trustee was moving to pay creditors in the Chapter 7 case).

Debtors' Atty: Pro Se

Notes:

Continued from 2/25/21 for the court to then set for final hearing. A Status Report with recommended pleading filing dates and final hearing date to be filed and served on or before 3/15/21.

**The hearing on the Motion for Allowance of an Administrative Expense for Scott Sackett, the Plan Administrator and Chapter 11 Trustee, has been continued to 10: 30 a.m. on May 13, 2021.**

Supplemental Pleadings in support of the Motions filed by the Plan Administrator/Trustee, and Counsel for the Plan Administrator/Trustee filed and served on or before April 15, 2021. Opposition to Supplemental Pleadings filed and served on or before April 29, 2021. Replies, if any, by the Plan Administrator/Trustee and Counsel to the Opposition to Supplemental Pleadings, filed and served on or before May 6, 2021.

Scott Sackett, the Plan Administrator and the Chapter 11 Trustee in this case, ("Plan Administrator/Trustee") has filed his updated status reports for the Motion of Felderstein Fitzgerald Willoughby Pascuzzi & Rios, LLP ("Counsel"), for Allowance of an Administrative Expense for the Plan Administrator/Trustee (DCN: FWP-40; Dckt. 1292), and Motion for Allowance of an Administrative Expense for Counsel for the Plan Administrator/Trustee (DCN: FWP-41; Dckt. 1298) for fees, costs, expenses, and damages relating to District Court proceedings, and proceedings related thereto, commenced and prosecuted by the late Hoda Samuel, the former co-debtor in this case.

Aiad Samuel, the surviving debtor, has been appointed as the personal representative for the rights and interests of the late Hoda Samuel in this case. Order, Dckt. 1538. At the continued Status Conference for this Motion, the court was advised that it appears all of the litigation, including appeals relating thereto, commenced by Hoda Samuel appears to have been concluded and the Movants can proceed with the Motions. The court requested that the Plan Administrator/Trustee file updated status reports with suggested dates for the filing of supplemental pleadings and a hearing date. Status Reports have been filed for each Motion. Status Reports; Dckts. 1539, 1541.

The Plan Administrator/Trustee and Counsel request that the court set the following dates and deadlines for the prosecution of the two Motions:

- A. Supplemental Pleadings in support of the Motions filed by the Plan Administrator/Trustee, and Counsel for the Plan Administrator/Trustee filed and

served on or before **April 15, 2021**.

- B. Opposition to Supplemental Pleadings filed and served on or before **April 29, 2021**.
- C. Replies, if any, by the Plan Administrator/Trustee and Counsel to the Opposition to Supplemental Pleadings, filed and served on or before **May 6, 2021**.
- D. Final hearing on the Motions held at **10:30 a.m. on May 13, 2021**.

The Plan Administrator/Trustee reports that these suggested dates were communicated to Aiad Samuel, Peter Samuel (the Debtors' adult son), and Richard Jare, Esq. (who has stated that he is representing Aiad Samuel, though he has not substituted into this case as of this time) on March 8, 2021, and no objection or other response as been communicated to Counsel for the Plan Administrator/Trustee as to the above requested dates and deadlines.

The court has issued a separate order setting forth the above dates and deadlines.

Debtors' Atty: Pro Se

Notes:

Continued from 2/25/21 for the court to then set for final hearing. A Status Report with recommended pleading filing dates and final hearing date to be filed and served on or before 3/15/21.

**The hearing on the Motion for Allowance of an Administrative Expense for Felderstein Fitzgerald Willoughby Pascuzzi & Rios, LLP, Counsel for Scott Sackett, the Plan Administrator and Chapter 11 Trustee, has been continued to 10: 30 a.m. on May 13, 2021.**

Supplemental Pleadings in support of the Motions filed by the Plan Administrator/Trustee, and Counsel for the Plan Administrator/Trustee filed and served on or before April 15, 2021. Opposition to Supplemental Pleadings filed and served on or before April 29, 2021. Replies, if any, by the Plan Administrator/Trustee and Counsel to the Opposition to Supplemental Pleadings, filed and served on or before May 6, 2021.

Scott Sackett, the Plan Administrator and the Chapter 11 Trustee in this case, ("Plan Administrator/Trustee") has filed his updated status reports for the Motion for Allowance of an Administrative Expense for the Plan Administrator/Trustee (DCN: FWP-40; Dckt. 1292), and Motion of Felderstein Fitzgerald Willoughby Pascuzzi & Rios, LLP ("Counsel"), for Allowance of an Administrative Expense for Counsel for the Plan Administrator/Trustee (DCN: FWP-41; Dckt. 1298) for fees, costs, expenses, and damages relating to District Court proceedings, and proceedings related thereto, commenced and prosecuted by the late Hoda Samuel, the former co-debtor in this case.

Aiad Samuel, the surviving debtor, has been appointed as the personal representative for the rights and interests of the late Hoda Samuel in this case. Order, Dckt. 1538. At the continued Status Conference for this Motion, the court was advised that it appears all of the litigation, including appeals relating thereto, commenced by Hoda Samuel appears to have been concluded and the Movants can proceed with the Motions. The court requested that the Plan Administrator/Trustee file updated status reports with suggested dates for the filing of supplemental pleadings and a hearing date. Status Reports have been filed for each Motion. Status Reports; Dckts. 1539, 1541.

The Plan Administrator/Trustee and Counsel request that the court set the following dates and deadlines for the prosecution of the two Motions:

- A. Supplemental Pleadings in support of the Motions filed by the Plan Administrator/Trustee, and Counsel for the Plan Administrator/Trustee filed and served on or before **April 15, 2021**.
- B. Opposition to Supplemental Pleadings filed and served on or before **April 29, 2021**.
- C. Replies, if any, by the Plan Administrator/Trustee and Counsel to the Opposition to Supplemental Pleadings, filed and served on or before **May 6, 2021**.
- D. Final hearing on the Motions held at **10:30 a.m. on May 13, 2021**.

The Plan Administrator/Trustee reports that these suggested dates were communicated to Aiad Samuel, Peter Samuel (the Debtors' adult son), and Richard Jare, Esq. (who has stated that he is representing Aiad Samuel, though he has not substituted into this case as of this time) on March 8, 2021, and no objection or other response as been communicated to Counsel for the Plan Administrator/Trustee as to the above requested dates and deadlines.

The court has issued a separate order setting forth the above dates and deadlines.

## FINAL RULINGS

7. [20-24833-E-7](#) [MOT-1](#) MARIA ESTRADA  
Mark O'Toole MOTION TO AVOID LIEN OF  
CALVERY SPV I, LLC  
2-11-21 [14](#)

**Final Ruling:** No appearance at the March 18, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on February 11, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Cavalry SPV I, LLC ("Creditor") against property of the debtor, Maria Carolina Estrada ("Debtor") commonly known as 5369 Walmer Road, Oroville, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$1,304.60. Exhibit A, Dckt. 18. An abstract of judgment was recorded with Butte County on August 29, 2016, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$179,030.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$124,557.06 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$175,000.00 on



After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs 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 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 Maria Carolina Estrada ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Cavalry SPV I, LLC, California Superior Court for Butte County Case No. 163580, recorded on August 29, 2016, Document No. 2016-0031599, with the Butte County Recorder, against the real property commonly known as 5369 Walmer Road, Oroville, 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.

**Final Ruling:** No appearance at the March 18, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 1, 2021. By the court’s calculation, 45 days’ notice was provided. 28 days’ notice is required.

The Motion to Approve Stipulation to Dismiss Chapter 7 Case Without Entry of Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In r 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 No Discharge to be Granted in this Chapter 7 Case pursuant to the Stipulation by Debtor is granted.**

The United States Trustee, Tracy Hope Davis (“Movant”), requests that the court approve a stipulation with Kayla Ranae Plata and Miguel Tovar Plata (“Debtor”) which provides for the dismissal of the instant case without discharge.

In substance, the Motion is merely one to dismiss this Chapter 7 case, with the Debtor stipulating to/joining the motion for dismissal of this case. <sup>FN.1</sup>

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FN. 1. If the court were to grant the relief as literally requested, the court would merely “approve” a stipulation and the case would continue to proceed in this court until someone affirmatively acted to obtain relief pursuant to the “approved stipulation.”  
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## **STIPULATION**

Movant and Debtor stipulate to an order regarding this Chapter 7 case, subject to approval by the court upon the following facts, specifically (the full terms are stated in the Stipulation, Dckt. 28):

- A. Debtor and the U.S. Trustee stipulated to enlarge the time periods to file a motion to dismiss under 11 U.S.C. § 707(b)(2), (3) and a complaint to deny discharge under 11 U.S.C. § 727 from October 26, 2020 to January 26, 2021.
- B. The U.S. Trustee moved to extend the deadlines again until April 2, 2021, with a hearing date set for February 25, 2021.
- C. The U.S. Trustee is prepared to file a motion to dismiss case for abuse pursuant to 11 U.S.C. §§ 707(b)(1), 707(b)(2) (i.e., presumed abuse) and/or 707(b)(3) (i.e., bad faith and/or totality of the circumstances abuse).
- D. Debtor desire to voluntarily dismiss this Chapter 7 case prior to entry of discharge.
- E. Parties stipulate to the dismissal of this Chapter 7 case prior to the entry of discharge in this matter.
- F. The Parties are not aware of any prepetition/pre-dismissal bad faith conduct and/or non 11 U.S.C. § 707(b) abuse of the bankruptcy process that would limit the Debtors right to dismiss the case.

## **DISCUSSION**

Here, Debtor and the U.S. Trustee have stipulated for the dismissal of this case without entry of discharge. The Motion was filed and was set for hearing. A total of 45 days notice was provided with oppositions and responses to be filed prior to the hearing. The Motion's Certificate of Service provides for all who received notice of this Stipulation.

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 Approve Stipulation to Dismiss Chapter 7 Case Without Entry of Discharge filed by Tracy Hope Davis, the United States 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 is granted and this Bankruptcy Case is dismissed.

9. [20-23267](#)-E-7      **SHON/JILL TREANOR**      **MOTION TO COMPROMISE**  
[DNL-4](#)      **Peter Macaluso**      **CONTROVERSY/APPROVE**  
9 thru 11           **SETTLEMENT AGREEMENT WITH**  
           **SANDERS & ASSOCIATES**  
           **2-4-21 [85]**

**Final Ruling:** No appearance at the March 18, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2021. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

**Pursuant to prior Order of this court and as stipulated by the parties, the hearing on the Motion for Approval of Compromise is continued to 10:30 a.m. on April 22, 2021.**

Hank Spacone, the Chapter 7 Trustee, (“Movant”) requests that the court approve a compromise and settle competing claims and defenses with Sanders & Associates (“Settlor”). The claims and disputes to be resolved by the proposed settlement are all related state court cases and adversary proceeding related to Debtor’s interest in the Cheryl Gortemiller Living Trust U/T/A March 12, 2014.

### **March 8, 2021 Stipulation**

On March 8, 2021, the parties filed a Stipulation agreeing to continue DNL-4, DNL-5, DNL-6, and DNL-7 to April 22, 2021 at 10:30 a.m. Dckt. 160. The court granted the motion stipulating to the continuance on March 10, 2021. Dckt. 171.

**Final Ruling:** No appearance at the March 18, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**Pursuant to prior Order of this court and as stipulated by the parties, the hearing on the Motion for Approval of Compromise is continued to 10:30 a.m. on April 22, 2021.**

Hank Spacone, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Karen L. Fisher ("Settlor"). The claims and disputes to be resolved by the proposed settlement are final compensation claims related to Debtor's interest in the Cheryl Gortemiller Living Trust U/T/A March 12, 2014.

#### **March 8, 2021 Stipulation**

On March 8, 2021, the parties filed a Stipulation agreeing to continue DNL-4, DNL-5, DNL-6, and DNL-7 to April 22, 2021 at 10:30 a.m. Dckt. 160. The court granted the motion stipulating to the continuance on March 10, 2021. Dckt. 171.

**Final Ruling:** No appearance at the March 18, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2021. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

**Pursuant to prior Order of this court and as stipulated by the parties, the hearing on the Motion for Turnover of Property is continued to 10:30 a.m. on April 22, 2021.**

Hank Spacone, the Chapter 7 Trustee, (“Movant”) in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 4390 Emerald Ridge Lane, California (“Property”).

#### **March 8, 2021 Stipulation**

On March 8, 2021, the parties filed a Stipulation agreeing to continue DNL-4, DNL-5, DNL-6, and DNL-7 to April 22, 2021 at 10:30 a.m. Dckt. 160. The court granted the motion stipulating to the continuance on March 10, 2021. Dckt. 171.

**Final Ruling:** No appearance at the March 18, 2021 hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on February 18, 2021. The court computes that 28 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: \$2.00 due on February 2, 2021.

**The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.**

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

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

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

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

**IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

**Final Ruling:** No appearance at the March 18, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2021. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion for Allowance of Administrative Expenses is granted.</b></p>
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J. Michael Hopper (“Movant”) requests allowance of and authority to pay from available funds of the estate, administrative expenses in the amount of \$800.00, for the estate’s 2021 corporate tax liability to the Franchise Tax Board (“FTB”).

## DISCUSSION

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to “the actual, necessary costs and expenses of preserving the estate . . . .” Movant argues that 11 U.S.C. § 503(b)(1)(B) provides that “there shall be allowed administrative expenses ... any tax ... incurred by the estate.” Here, Movant seeks allowance of the estate’s liability to the Franchise Tax Board as an administrative expense.

Movant having demonstrated that the expenses are necessary, the court finds that Movant having the allowance and authority to pay from the available funds of the estate is necessary for Debtor and provides a benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay the Franchise Tax Board administrative expenses in the amount of \$800.00.



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 Administrative Expense filed by J. Michael Hopper (“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 is granted, and the Chapter 7 Trustee is authorized to pay the Franchise Tax Board \$800.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).