UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 21, 2019 at 10:30 a.m.

1.	**15-28108-E-11** **RLC-17**	**WILLARD BLANKENSHIP** **Stephen Reynolds**	**MOTION FOR ENTRY OF DISCHARGE** **2-21-19 [261]**

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

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

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

Sufficient Not Notice Provided. No Proof of Service has been provided as evidence establishing that proper service was made. 14 days' notice is required by Local Bankruptcy Rule 9014-1(f)(2).

The Motion for Entry of Discharge was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 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 Entry of Discharge is denied without prejudice.

The Motion for Entry of Discharge has been filed by Willard Blankenship ("Debtor"). 11 U.S.C. § 1141(d)(5)(A) permits the court's discharge of debts provided for in a plan when all payments have been made.

In support of the Motion, Debtor filed the Declaration of Debtor's counsel, Stephen M. Reynolds ("Counsel"). Counsel's Declaration seeks to provide evidence that the last payments required

under the First Amended Plan (totaling $12,000.00) were made November 2018. Declaration, Dckt. 263, ¶ 2.

In addition to stating payments required by the Plan have been made, the Motion further states:

> Dr. Blankenship has exempted property in excess of the $155,675 limit imposed by 11 U.S.C. §522(q)(1) in force when this case was filed. However, Dr. Blankenship has not been convicted of a felony, does not owe a debt arising from a violation of Federal or State Securities law, racketeering as contemplated by 18 U.S.C. §1962, any criminal act, intentional tort, or willful or reckless misconduct as contemplated by 522(q)(1)(B). Further, the Property exempted in this case (primarily the $175,000 homestead exemption provided by the California Code of Civil Procedure 704.140(a)(3)) are reasonably necessary for the support of the Debtor who is more than eighty years old.
>
> Dr. Blankenship will complete the course required by 11 U.S.C. §1007(b)(7) prior to the hearing of this motion.

Motion ¶¶ 2-3, Dckt. 261.

DISCUSSION

Debtor has provided evidence that payments required under the Amended Plan have been completed. Declaration, Dckt. 263, ¶ 2.

However, no evidence has been presented as to the requirements of 11 U.S.C. § 522(q)(1). Though stated in the Motion that Debtor "has not been convicted of a felony, does not owe a debt arising from a violation of Federal or State Securities law, racketeering as contemplated by 18 U.S.C. §1962, any criminal act, intentional tort, or willful or reckless misconduct," Debtor has not provided testimony under penalty of perjury as to these factual assertions. Counsel has also (possibly a calculated decision) not provided testimony as to these facts.

Furthermore, Debtor has not provided evidence he has completed a financial management course and filed the certificate with the court (in the Motion Debtor states this will be complete prior to the hearing), and has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case.

Debtor has not presented sufficient evidence for the court to determine whether he is entitled to a discharge. Therefore, the Motion is denied without prejudice.

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

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

hearing.

The Motion for Entry of Discharge filed by Willard Blankenship ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

2.	**17-28324-E-7** **HSM-6**	**MORTIMER/ARLENE JARVIS** **Walter Dahl**	**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MICHAEL JARVIS AND LOREN JARVIS** **2-28-19 [113]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 28, 2019. 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.

Geoffrey Richards, the Chapter 7 Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Michael Jarvis and Loren Jarvis (collectively "Settlor"). Movant states Michael Jarvis is the son of the debtors, Mortimer James Jarvis and Arlene Ruth Jarvis ("Debtor"), and Loren Jarvis is the daughter-in-law of Debtor.

The claims and disputes to be resolved by the proposed settlement include a allegedly avoidable transfer of $38,850.51 from Debtor to Settlor on August 25, 2017 for the purpose of paying Settlor's loan debt.

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. 117):

A. Settlor shall pay Movant $12,500.00 prior to the hearing on the Motion.

B. the settlement is contingent on a final order of the bankruptcy court approving compromise.

C. Movant will seek, and Settlor will stipulate, to dismiss the Adversary Proceeding *In re James Jarvis and Arlene Ruth Jarvis*, E.D Cal. Bk, Case No. 17-28324-E-7.

D. In the event of default, any collected payment shall be administered as assets of the estate.

E. The parties agree to mutually release claims against each other pertaining to the alleged avoidable transfer.

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.

Probability of Success

Movant concedes the probability of success is high here because Settlor does not dispute the transferred monies were not received for consideration. Motion ¶ 16, Dckt. 113. Movant argues that the primary risk here is in the depletion of assets of the Estate.

The court agrees with Movant that the probability of success appears high based on the evidence presented, Debtor having transferred to Settlor monies for the purpose of paying off Settlor's loan. Declaration ¶¶ 5-7.

Difficulties in Collection

Movant argues this factor weighs heavily in favor of settlement because litigation expenses may exceed potential recovery. Movant also argues Settlor has represented having significant tax debt and limited unencumbered and non-exempt assets. Movant argues that the $12,500.00 would represent a meaningful recovery of the $38,000.00 where collection would otherwise be difficult.

Despite Movant's arguments, the Movant's testimony is minimal in connection with this point. He merely testifies that the cost and expense of verifying what the Movant asserts does not warrant such investigation. On this point, it appears to be asserted that because the Movant concludes, without investigation, that there is an expense, no evidence is presented to this court to reach the same conclusion. On this point, it appears that he Movant has made the finding of fact for the court, which is to just be adopted because it is dictated by the Movant.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues most of the expense, delay, and inconvenience of continued ligation are related to the necessary discovery the parties would have to undergo if the matter is not settled. Movant also argues the settlement of the claims herein are the last significant administrative task in this case and settlement would allow the case to close.

Movant's arguments as to this factor are well-taken. Even though the Adversary Proceeding appears straight forward, litigation costs in this matter would likely exceed the recovery sought fairly quickly. Furthermore, litigation would delay the administration of the Estate and close of the bankruptcy case.

This factor weighs in favor of settlement.

Paramount Interest of Creditors

Movant argues the $12,500.00 settlement is in the best interest of creditors because it mitigates the risk, expense, and delay of litigation.

This argument is well-taken. While the risk in this litigation appears small, the expense of litigation could easily surpass the sought after recovery. The settlement here is roughly one-third of the $38,000.00 alleged as the avoidable transfer. If counsel were to take a one-third contingent fee for such litigation, the delta of what is at risk diminishes quickly. This settlement amount appears to be a reasonable estimation and reflection of the risk and expense of litigation.

Therefore, this factor supports settlement.

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 the settlement amount is reasonable in consideration of the expense and risk of the litigation. 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 Geoffrey Richards, 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 Michael Jarvis and Loren Jarvis (collectively "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. 117).

3. **18-27127-E-7** **KATRINA SAYLES** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Pro Se **2-12-19 [36]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then 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 Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on February 14, 2019. The court computes that 35 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: $31.00 due on January 29, 2019.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $31.00.

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.

4. **09-29749-E-7** **JOSE BURGOS** **MOTION TO AVOID LIEN OF UNIFUND**
JALB-3 **Pro Se** **CCR PARTNERS**
1-25-19 [55]

No 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2019. By the court's calculation, 52 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 xxxxx.

This Motion requests an order avoiding the judicial lien of Unifund CCR Partners Assignee of Palisades Collection, LLC, a partnership doing business in California,("Creditor") against property of Jose Angel Lopez Burgos ("Debtor") commonly known as 6786 Sandylee Way, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $17,833.98, which claim totaled approximately $23,281.00 at the time of filing. Declaration ¶¶ 3-4, Dckt. 57. An abstract of judgment was issued on May 21, 2008, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $145,000.00 as of the petition date. Dckt. 7. The unavoidable consensual liens that total $101,030.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 7. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.710 in the amount of $43,970.00 on

Schedule C. Dckt. 7.

The Debtor did not provide the court with a copy of the abstract of judgment or a preliminary title report. The court does not have the state court case number or recording information.

In taking a look at information provided in the LEXIS public records report (which is not evidence for this Motion), reference is made to two abstracts of judgment being filed, one on May 21, 2008 and one on August 12, 2008. Both are for a judgment in the same amount - $23,280. The court cannot tell if the second is an amended abstract of judgment.

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 (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 Jose Angel Lopez Burgos ("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 Unifund CCR Partners Assignee of Palisades Collection, LLC, a partnership doing business in California, California Superior Court for Sacramento, recorded on May 21, 2008, Book 20080812 and Page 960, with the Sacramento County Recorder, against the real property commonly known as 6786 Sandylee Way, Sacramento, 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.

5. **09-23465-E-7 WFH-5** **MOORE EPITAXIAL, INC.** **George Hollister** **MOTION TO APPROVE STOCK REDEMPTION TRANSACTION BETWEEN DEBTOR AND INTERNATIONAL REACTOR SERVICES, INC.** **2-7-19 [293]**

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 7, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Approve Stock Redemption Transaction is granted.

The Bankruptcy Code permits the Chapter 7 Trustee, Michael D. McGranahan ("Movant"), to sell, use, or lease property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant seeks approval of a stock redemption between the Debtor, Moore Epitaxial, Inc.'s ("Debtor"), in the company International Reactor Services, Inc. ("Reactor" or "Buyer").

When the bankruptcy case was filed, Debtor owned shares in Reactor, which in turned owned shares of stock in Shanghai Simgui Technology Co., Ltd., a Chinese Corporation ("Simgui"). On Schedule B filed in this case Debtor listed the Reactor shares of stock, stating a value of $4,200,000.

Dckt. 18 at 5. On Amended Schedule B Debtor decreased the value of these shares of stock to $2,000,000, stating that it held only 8,947 shares (Dckt. 241 at 3), as opposed to the 30,850 shares stated on original Schedule B. However, in Debtor's confirmed Chapter 11 Plan it is stated that Debtor has 30,850 shares of Reactor stock.

This case was originally filed as a Chapter 11 case in which a plan was confirmed. Conf. Order with Plan attached; Dckt. 194. On January 2010, approximately a year and one-half after the Plan was confirmed, Debtor purported to transfer 71 percent of the Reactor stock to GSI Creos Corporation The Chapter 11 Plan provided that the GSI Creos Corporation claim was secured solely by the Reactor stock. Plan ¶ 6.02; Dckt. 194.

To fund the Plan, Debtor, as Plan Administrator, was to sell the Reactor stock. If certain events did not occur and the stock was not sold, then 80 percent of the Reactor stock was irrevocably deemed assigned to GSI Creos Corporation in full satisfaction of its secured claim. Plan ¶ 6.02, p. 10:12.5-20 of the Plan, *Id.*

The Motion states that the Debtor, as Plan Administrator, "apparently" transferred 71 percent of the stock to GSI Creos Corporation. The Debtor and its responsible representatives and the Trustee have not provided the court with evidence of what was actually transferred.

When the Debtor, as Plan Administrator, could not sell the rest of the stock, the bankruptcy case was reopened. The Debtor, as Plan Administrator, requested the case be reopened so the case could be converted to one under Chapter 7. In determining the case should be converted, the Judge's Civil Minutes include the following:

> As the debtor has been unable to meet the plan conditions for raising the necessary funds to pay allowed claims and as it does not have sufficient income to continue operating, there is cause for conversion or dismissal under 11 U.S.C. § 1112(b)(1).
>
> The debtor has assets that could be liquidated for the benefit of the estate, including its 8,947 shares of International Reactor stock. Accordingly, conversion to chapter 7, rather than dismissal, would be in the best interest of the estate. The motion will be granted and the case will be converted to chapter 7.

Civil Minutes, Dckt. 233 at 2.

Reactor's only asset is reported to be shares in Shanghai Simgui Technology Co., Ltd., a Chinese Corporation ("Simgui"). In late 2018, Reactor was able to liquidate its Simgui shares, and Reactor transferred $1,413,802.10 of those sale proceeds to Movant as Debtor's share.

The present stock redemption transaction would allow for the formal transfer the proceeds from Reactor to the Trustee for the stock.

Movant has been involved in this bankruptcy case for four years and provides testimony

under penalty of perjury that prior attempts to sell stock in Int Reactor Svs resulted in only one interested party, offering substantially less than the proposed sale proceeds herein. Declaration ¶ 6, Dckt. 295.

Summary of the Agreement

The terms of the Equity Acquisition Agreement (the "Agreement") are summarized as follows:

A. The 8,947 shares of Reactor, which constitutes all of the Debtor and Estate's shares are transferred to Reactor.

B. Reactor has delivered the $1,423,803 to Movant.

C. Movant shall return to Reactor the certificates for the 8,947 shares within 30 days of bankruptcy court approval.

D. Agreement disputes will be resolved by arbitration.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the stock redemption allows for the liquidation of Debtor's interest in Int Reactor Svs, and for a greater sale price than Movant had previously been able to achieve marketing the Debtor's shares.

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 Stock Redemption Transaction filed by Chapter 7 Trustee, Michael D. McGranahan ("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 Movant is authorized to sell pursuant to 11 U.S.C. § 363(b) to International Reactor Services, Inc. or nominee ("Buyer"), 8,947 shares of in International Reactor Services, Inc. held by the debtor, Moore Epitaxial, Inc.'s ("Debtor"), on the following terms:
>
> A. The Property shall be sold to Buyer for $1,413,802.10, on the

terms and conditions set forth in the Equity Acquisition Agreement and Addendum, Exhibits A and B, Dckt. 296, and as further provided in this Order.

B. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.

6. **09-23465-E-7 WFH-7** **MOORE EPITAXIAL, INC.** **George Hollister** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF LOCKE LORD LLP FOR SCOTT BARTEL, SPECIAL COUNSEL(S)** **2-7-19 [298]**

Final Ruling: No appearance at the March 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 7, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

Locke Lord LLP fka Locke Lord Edwards LLP, the Attorney ("Applicant") for Michael D. McGranahan, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 7, 2015 through November 29, 2016. The order of the court approving employment of Applicant was entered on March 31, 2015. Dckt. 258. Applicant requests fees in the amount of $27,498.50.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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 demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that[attorney "free reign

to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include in locating a buyer for, and negotiating the sale of stock, reviewing applicable securities law, and drafting a potential bidder letter. The Estate has $1,430,888.75 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a summary of services and supporting evidence for the services provided, which are described as follows:

Sale of Property of the Estate: Applicant performed services relating to the sale of Debtor's interest in company shares. Applicant initially sought to assist in locating a buyer for, and negotiating the sale of stock, as well as documenting and closing the sale. Subsequently, Applicant advised Client on securities law for a proposed sale, participated in conference calls, and prepared a letter and bidder suitability questionnaire.

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
Scott Bartel	38.70	$655.00	$25,348.50
Deborah Seo	5	$430.00	$2,150.00
Total Fees for Period of Application			$27,498.50

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $27,498.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate Plan Funds in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay the fees allowed by the court.

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

Fees $27,498.50

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Locke Lord LLP fka Locke Lord Edwards LLP, the Attorney ("Applicant"), Attorney for the debtor, Moore Epitaxial, Inc. ("Client"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Locke Lord LLP fka Locke Lord Edwards LLP is allowed the following fees and expenses as a professional of the Estate:

Locke Lord LLP fka Locke Lord Edwards LLP, the Attorney, Professional employed by Michael D. McGranahan, the Chapter 7 Trustee,

Fees in the amount of $27,498.50

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

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

7. **18-26373-E-13 JHH-1** **HERBERT MILLER** **Judson Henry** **CONTINUED MOTION TO RECONSIDER DISMISSAL OF CASE 1-15-19 [30]**

DEBTOR DISMISSED: 11/07/2018

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 15, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Vacate is denied.

Herbert Edward Miller ("Debtor") filed the instant case on October 9, 2018. Dckt. 1. On November 7, 2018, the Chapter 13 case was dismissed for failure to timely file documents. Order, Dckt. 23.

On January 15, 2019, Debtor filed this instant Motion to Vacate. Dckt. 30. The Motion states with particularity:

1. Debtor inadvertently missed filing his Form 122C-1 - Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period, and his case was dismissed on or about November 7, 2018. *Id*. at 2:13-15.

2. Because Debtor still requires adjustment of his debts, he now brings this application to reopen his case in order to proceed with his chapter 13

plan. *Id*. at 2:16-17.

3. Debtor also attaches a copy of his missing Form 122C-1 - Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period, which he will file immediately upon the reopening of this case. *Id*. at 2:17-19.

4. Relief is proper because a new fact not in existence at the time Debtor's case was dismissed, as this case has not yet been closed, and Debtor is prepared to proceed forward with his case. *Id*. at ¶ A. Debtor asserts that the "newly discovered fact" is that the Court has not yet closed this case. *Id*. at 4:2-3.

5. If relief is not granted, Debtor will be prejudiced by 11 U.S.C. § 362(c)(3). *Id*. at ¶ B. Debtor, then *pro se*, prepared a Form 122C-1 but due to inadvertence did not get it filed. No other form or schedule was or is missing. *Id*. at 4:21-24.

6. Equity supports the court granting the motion because (1) the previous deficiency that led to dismissal is now entirely cured, (2) this case has remained open since the dismissal and remains open now, (3) Debtor is ready to immediately proceed with his case, and (4) requiring Debtor to file a new case would be in the case's present status entirely unnecessary yet at the same time materially prejudicial to Debtor. *Id*. at 5:2-7.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on January 23, 2019. Dckt. 35. Trustee provides an overview of the case history. Among events in the case, the court issued an Order on Extension of Deadline to File Missing Documents giving Debtor until November 6, 2018 to file documents and give notice to all creditors. Dckt. 16. Trustee asserts Debtor has to date failed to file proof of service.

Trustee notes further that Debtor lists on Schedule D secured debts of $9,919,447.28. Schedule D, Dckt. 14. Trustee argues that even if the court finds cause to reconsider its Order, the Debtor is not eligible for Chapter 13 relief. 11 U.S.C. § 109(e), stating the current secured debt limit for Chapter 13 is $1,184,200.

CREDITOR'S OPPOSITION

Allan Frumkin ("Creditor") filed an Opposition on January 29, 2019. Dckt. 39. Creditor argues the court should deny the Motion because there are no new facts or errors of law, since forgetting to file documents is not a new fact or error of law. *Id.* at 2:22-24.5. Creditor asserts further Debtor's argument that (1) the case not being closed and (2) that the Form 122C-1 has now been filed are new facts is unrelated to the Order dismissing the case, and that no facts have changed. *Id*. at 2:25.5-3:3.

DEBTOR'S REPLY TO CREDITOR'S OPPOSITION

Debtor filed a Reply to Creditor's Opposition on February 5, 2019. Dckt. 40. Debtor reiterates the newly discovered fact is that the case has yet to be closed, that many facts are now known and in existence that were not at the time Debtor's case was dismissed, that equity supports granting the Motion.

Debtor also now argues, apparently acknowledging that Debtor is ineligible for Chapter 13 relief, that the more equitable efficient treatment of this case would be conversion to Chapter 11.

DEBTOR'S REPLY TO TRUSTEE'S RESPONSE

Debtor filed a Reply to Trustee's Response on February 5, 2019. Dckt. 42. Debtor argues, apparently acknowledging that Debtor is ineligible for Chapter 13 relief, that the more equitable efficient treatment of this case would be conversion to Chapter 11. Debtor reiterates the newly discovered fact is that the case has yet to be closed, that many facts are now known and in existence that were not at the time Debtor's case was dismissed, that equity supports granting the Motion.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles

when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The court in this case had granted an extension of time for filing documents. Dckt. 16. Debtor failed to meet the extended deadline, and the case was automatically dismissed for failure to timely file documents. Order, Dckt. 23.

Debtor has not provided an explanation as to why documents were not timely filed, other than that it was "pure oversight and inadvertence." Dckt. 30 at 4:21-24. Based on the evidence presented, the court finds there was no mistake, inadvertence, surprise, or excusable neglect. Debtor was proceeding in *Pro Se*. Debtor knew he did not have the specialized knowledge of a licensed bankruptcy attorney, and assumed the risk of proceeding without counsel. Debtor received clear notice of the documents necessary for filing, and the court issued an extension on the time for filing. Debtor did not file all necessary documents, and did not file proof of service on all creditors as required by this court's Order. Dckt. 16.

Debtor argues there are new facts and evidence that could not have been reasonably discovered, including (1) this bankruptcy case has not been closed, (2) Debtor is prepared to proceed forward with his case, and (3) Debtor has now filed his missing Form 122C-1. Dckt. 30 at 4:2-3.

That the case was not closed when the order to dismiss was filed or that it has not yet been closed is not "newly discovered evidence." It has been known by Debtor and his counsel since the case was dismissed.

Debtor now appears to acknowledge that he needs to proceed under Chapter 11, having filed his Motion to Convert the case to one under Chapter 11. Dckt. 47.

In the Motion to Convert Debtor states with particularity (Fed. R. Bankr. P. 9013) the grounds that he will be "irreparably harmed" as follows:

> B. Relief is proper under 11 U.S.C. § 105(a) because if Debtor is required to file a new case, he would be inequitably prejudiced by the "not in good faith" presumption of 11 U.S.C. § 362(c)(3), in spite of the fact the dismissal of this case was precipitated by nothing more than a clerical error/purely inadvertent oversight on the part of Debtor.
>
> Pursuant to 11 U.S.C. § 362(c)(3), if Debtor is required to file a new chapter 13 case, the automatic stay arising from the new case will only be in force and effective for 30 days. This is because if Debtor is required to file a new case, the result will be two bankruptcy case filings within the past one year time-period from the new case, invoking the automatic stay being restricted to only 30 days pursuant to 11 U.S.C. § 362(c)(3). While this subsection is operative, under its own language, to a presumed lack of good faith, here the only cause of a second filing within a one year time-period would be a purely inadvertent clerical error and absolutely nothing beyond this.

Motion, p. 4:7-18; Dckt. 30 (emphasis added).

However, Debtor's contention that the automatic stay will be restricted to just thirty days is an inaccurate statement of the law. First, 11 U.S.C. § 362(c)(3)(A) states that the automatic stay as to the debtor will terminate thirty-days after the commencement of the case unless extended by the court in that thirty-day period. Though not universally agreed on, the majority opinion is that when Congress stated that the stay will terminate as to the debtor, Congress understood that in 11 U.S.C. § 362(a) it had created the automatic stay, which applied in part to the Debtor and in part to property of the bankruptcy estate. The provisions of 11 U.S.C. § 362(c)(3)(A) do not provide for termination of the stay as to the property of the bankruptcy estate (11 U.S.C. § 541(a)).

Second, even if it applied to the bankruptcy estate, 11 U.S.C. § 362(c)(3)(B) expressly authorizes the court to extend the stay beyond the thirty days. Obtaining counsel and filing a case under which the Debtor can properly obtain relief go a long way to rebutting any presumption of bad faith under 11 U.S.C. § 362(c)(3)(B).

This bankruptcy case was dismissed on November 7, 2018. In the one hundred and thirty-four days since this case was dismissed there has been no bankruptcy stay protecting the Debtor and Debtor's property (it no longer being in the bankruptcy estate). 11 U.S.C. §§ 349(b)(3), 363(c)(1),

(2)(B). Debtor has easily operated for that one hundred and thirty-four day period without any stay.

If the Debtor were intent on: (1) being protected and (2) diligently prosecuting a bankruptcy reorganization in good faith, he would have immediately filed a new Chapter 11 bankruptcy case, filed a motion to extend the stay (to the extent he was concerned that termination of the stay as to the debtor also terminated the stay as to the bankruptcy estate), and would have the case being timely moved forward. Instead, he has just marked time, taking no action to proceed with a reorganization.

What is not apparent from the pleadings is why Debtor has been spending the time and money gazing back to November 7, 2018, and not diligently prosecuting a new bankruptcy case. While Debtor continues to argue that it would merely be a new case number so the present corpse of a case should be resuscitated, he cannot show any reason for doing so.

As for cost, Debtor has paid his $310.00 filing fee for this now dismissed Chapter 13 case. While he would not get credit for that when paying the $1,717.00 filing fee for a new Chapter 11 case, rather than the $932.00 conversion fee from Chapter 13 to Chapter 11, Debtor has spent well in excess of that in his various pleadings to try and vacate the dismissal and now the motion to convert the dismissed case to one under Chapter 11. There is a negative economic utility to Debtor's strategy of not filing a new Chapter 11 case.

Debtor's pleadings do not identify any avoidance actions that would be lost if a new case is filed rather than the dismissal of this case vacated. Debtor offers no reason for his failure, in good faith, to just file a new Chapter 11 case once he obtained counsel.

The court cannot divine any *bona fide* reason for Debtor not just filing a new bankruptcy case. There does not appear to be any prejudice to Debtor here. Debtor can file another case, and seek to extend the automatic stay in accordance with the provisions of the Bankruptcy Code.

The Motion is denied.

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 Vacate filed by Herbert Edward Miller ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

8. **18-26373-E-13 JHH-2** **HERBERT MILLER** **Judson Henry** **MOTION TO CONVERT CASE TO CHAPTER 11** **2-28-19 [47]**

DEBTOR DISMISSED: 11/07/2018

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 28, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Convert was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 11 is Denied.

Herbert Edward Miller ("Debtor") filed the instant case on October 9, 2018. Dckt. 1. On November 7, 2018, the Chapter 13 case was dismissed for failure to timely file documents. Order, Dckt. 23.

On January 15, 2019, Debtor filed a Motion to Vacate. Dckt. 30. The Debtor argued in that Motion grounds supported vacating dismissal because Debtor only inadvertently missed the filing of necessary documents, and there have been newly discovered facts since dismissal, including the fact the case has not yet been closed.

At the first hearing on that Motion, the Debtor (without admitting directly) seemed to

acknowledge he is ineligible for Chapter 13 relief, and asserted a more equitable and efficient treatment of the (dismissed) case would be conversion to Chapter 11. Civil Minutes, Dckt. 46.

On February 28, 2019 Debtor filed the present Motion seeking conversion of the case to one under Chapter 11. Debtor states this requested relief is in alternative to closing the case.

Debtor states with particularity in the Motion that a case under Chapter 11 would be in the best interest of creditors over either a case under Chapter 7 or "dismissal [closure]." However, no explanation is actually offered for why a Chapter 11 would be better.

Debtor further argues in the Motion that the equities support conversion because Debtor has a desire and intent to reorganize, with the case having been dismissed because Debtor proceeded in *pro se.*

APPLICABLE LAW

The Bankruptcy Code Provides:

> Except as provided in subsection (f) of this section, at any time before the confirmation of a plan under section 1325 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court *may* convert **a case under this chapter** to a case under chapter 11 or 12 of this title.

11 U.S.C. § 1307(d)(emphasis added).

A debtor seeking conversion from a Chapter 13 to Chapter 11 must establish both eligibility to be a debtor under the new chapter and a reasonable prospect for a successful reorganization. *In re Tornheim,* 181 B.R. 161, 169 (Bankr. S.D.N.Y. 1995)(citing *In re Funk,* 146 B.R. 118, 124 (D.N.J.1992)). In exercising its discretion to convert the Chapter 13 case, the court may consider whether the debtor has willfully failed to abide by orders of the court or appear before the court to prosecute her case, whether she has caused unreasonable or prejudicial delay or is unable to effectuate a plan and whether she has filed and conducted her case in good faith. *Id*; *In re Funk,* 146 B.R. 118, 123 (D.N.J. 1992); *Anderson v. U.S. on Behalf of Small Bus. Admin*., 165 B.R. 445, 449 (S.D. Ind. 1994); *In re Dilley*, 125 B.R. 189, 195 (Bankr. N.D. Ohio 1991).

DISCUSSION

Conversion of a Dismissed Case

Debtor argues in the Motion:

> Case law exists in support of the proposition that dismissal [closure] is not in the best interests of the creditors or the bankruptcy estate when conversion to another chapter can be reasonably expected to generate some yield to the general

> unsecured creditors, while at the same time dismissal deprives the debtors the opportunity to make a fresh start.

Motion, Dckt. 47 at 2:1-5. However, the case law to which Debtor references is not included.

11 U.S.C. § 1307 governs the "conversion **or** dismissal" of a Chapter 13 bankruptcy case. 11 U.S.C. § 1307 (emphasis added). Federal Rule of Bankruptcy Procedure also provides the following:

> (f) Procedure for dismissal, conversion, or suspension.
>
> > (1) Rule 9014 governs a proceeding to **dismiss or suspend a case, or to convert a case** to another chapter, except under §§ 706(a), 1112(a), 1208(a) or (b), or 1307(a) or (b).
> >
> > (2) **Conversion or dismissal** under §§ 706(a), 1112(a), 1208(b), or 1307(b) **shall be on motion filed and served as required by Rule 9013**.
> >
> > (3) A chapter 12 or chapter 13 case shall be converted without court order when the debtor files a notice of conversion under §§ 1208(a) or 1307(a). The filing date of the notice becomes the date of the conversion order for the purposes of applying § 348(c) and Rule 1019. The clerk shall promptly transmit a copy of the notice to the United States trustee.

FED. R. BANKR. P. 1017(f).

Here, Debtor argues "dismissal [closure]" is not in the best interest of creditors and the Estate. However, this seems to contemplate the court is assessing here whether to close the case.

That presumption is not correct. The bankruptcy case was already dismissed. The Bankruptcy Code and Federal Rules of Bankruptcy Procedure provide for when the case shall be closed–such is not decided on a motion for dismissal or conversion under 11 U.S.C. § 1307.

Debtor has not presented any authority for the novel proposition that a dismissed case can be converted (albeit with the nuance that the case has not been closed). Such would seem to cause an odd result where the case is dismissed, but now dismissed under a new Chapter of the Bankruptcy Code, and Debtor still needing to vacate the dismissal.

The court has determined that grounds do not exist to vacate the dismissal of the present case. As discussed in connection with the Motion to Vacate, while professing to need the automatic stay to reorganized, the Debtor has gone "automatic stay naked" since the November 7, 2018 dismissal of this case. In his Declaration in support of the Motion to Convert, Debtor argues that there has been dramatic turn around in his business since October 2018. Dckt. 49. Such would be reflected in a new filing, not

in the old filing.

In Debtor's Declaration, Debtor provides testimony that he his occupation as a broker for distressed real properties. Declaration ¶ 3, Dckt. 49. Debtor testifies further his financial situation has improved since October 2018. *Id.* Debtor also testifies he is involved in a start-up jewelry business which is seeking an investor for a $1,000,000 purchase of raw jadeite. *Id*., ¶ 8. He projects this to turn into $100,000,000 in revenue. *Id.*

Debtor states in his Declaration he has spent a considerable amount of time to prepare amended schedules for the Chapter 11 case. *Id*., ¶ 7. This effort would not be wasted, as it can be used in his properly filed new Chapter 11 case.

Conclusion

The court having determine that grounds do not exist for vacating the dismissal in this case, there is not a basis for converting a dismissed case to one under Chapter 11.

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert the Chapter 13 case filed by the debtor, David Foyil("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 Convert is denied.

9. **17-25481-E-7** **JOHN ROSE**
HSM-5 **Paul Pascuzzi**

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JOHN W. ROSE AND DEREK TAGGARD, M.D.
2-28-19 [81]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 28, 2019. 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.

Kimberly Husted, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Derek Taggard, M.D. ("Settlor"). The claims and disputes to be resolved by the proposed settlement include the debtor, John W Rose's ("Debtor"), claims of invasion of privacy, public disclosure of private facts, false light, intentional infliction of emotional distress, and negligence. Debtor's claims are alleged in the pending state court action *William Rose, III v. Derek Taggard, M.D., et al.*, Case No. 34-2014-00170221 (the "State Court Action").

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. 85):

A. Debtor and the Estate shall release all claims alleged or raised in any of the pleadings on file in the State Court Action against Settlor and his insurer USAA, excluding specifically claims against th non-settling defendant Ivy Taggard.

B. Settlor shall pay a total of $125,000.00 ($112,500.00 paid by Settlor's insurance company USAA, and $12,500.00 directly from Settlor).

C. The State Court Action shall be dismissed with prejudice by **xxxxxxxxxxx**.

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.

Probability of Success

Movant states the probability of success in litigation is strong as to proving liability, but less certain as to damages. Movant argues therefore that this factor supports settlement.

On the evidence provided, the court finds that the probability is success is high. Trustee has represented that Movant's claims have a high probability of success as to liability. While Trustee

represents that the damages amount is uncertain, Trustee does not actually provide any evidence of likely amounts or specific facts casting doubt on success.

Therefore, this factor weighs against settlement.

Difficulties in Collection

Movant argues that this factor favors settlement, but concedes there is no anticipated difficulty in collecting on a potential judgement.

Movant misunderstands this factor. Generally, settlement is favored where collection would otherwise be difficult. Here, Trustee concedes there is no difficulty in potential collection because Settlor is insured, and is also a high-earner. Based on there being no potential difficulty in collecting on a judgment, this factor weighs against settlement.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues this factor favors settlement considering the State Court Action has been pending since 2014, has been set for jury trial several times, and has a risk of being appealed.

Movant's argument is well-taken. If required to move forward with a jury trial, the litigation costs would likely be substantial. Moreover, any appeals would further raise costs and delay recovery.

Comparing the significant time and expense involved in the litigation here, which has already dragged on for 5 years, with the current settlement offer, this factor weighs strongly in favor of settlement.

Paramount Interest of Creditors

Movant argues this factor weighs in favor of settlement because the Estate will recover $125,000.00, and the risk, delay, and expense of litigation will be mitigated.

While no evidence is presented as to potential damages in a trial on the merits, the settlement is appears to obtain a reasonable recovery in light of the significant risk, delay, and expense of litigation. Trustee has presented evidence that the case has been pending for 5 years with a jury set for trial several times. While success at trial seems likely, Trustee's testimony supports that damages are uncertain.

Based on the foregoing, settlement is in the best interest of the creditors.

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 the settlement offers a reasonable recovery in light of the significant risk, delay, and expense of litigation. 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 Kimberly Husted, 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 Derek Taggard, M.D. ("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. 85).

10. **17-25481-E-7** **JOHN ROSE** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JOHN W. ROSE**
HSM-6 **Paul Pascuzzi** **2-28-19 [86]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 28, 2019. 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.

Kimberly Husted, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with the debtor, John W Rose ("Debtor" or "Settlor"). The claims and disputes to be resolved by the proposed settlement include Debtor's claimed exemption in a personal injury cause of action relating to a HIPPA violation.

On Debtor's Amended Schedule C filed October 27, 2017, Debtor claims the following exemption pursuant to CCP section 704.140:

> Personal injury cause of action for a HIPPA violation. Attorney on HIPPA claim has an attorney lien of 40% on the settlement amount. It may be higher if this is taken to trial. $100,000.00 settlement offer to the Debtor was offered by

Defendant Dr. Derek.

Dckt. 20.

The personal injury exemption includes Debtor's claims of invasion of privacy, public disclosure of private facts, false light, intentional infliction of emotional distress, and negligence. Debtor's claims are alleged in the pending state court action *William Rose, III v. Derek Taggard, M.D., et al.*, Case No. 34-2014-00170221 (the "State Court Action").

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 B in support of the Motion, Dckt. 90):

A. Division of Settlement Proceeds:

i. Debtor agrees that compensation for Spinelli, Donald, and Nott, special counsel hired to represent the Trustee in the State Court Action, may be distributed out of the $125,000.00 settlement proceeds rom the State Court Litigation.

ii. The remaining settlement proceeds shall be divided 55 percent to the Estate and 45 percent to Debtor, with Debtor receiving no less than $33,750.00.

iii. Debtor shall not claim an exemption in the Estate's settlement proceeds portion.

iv. The Agreement applies only to the claims and parties in the State Court Litigation.

B. Performance of Debtor:

i. Debtor agrees to waive his claimed exemption.

ii. Debtor represents and agrees he will not file a further amended schedule C.

iii. Debtor represents and agrees he will not assign, sell, transfer, or encumber his interest in the exemption to a third party.

iv. Debtor represents and agrees he will not impede special counsel's right and ability to be compensated.

v. Debtor shall cooperate with Movant in seeking bankruptcy court approval of the Agreement.

C. The amount of compensation to special counsel is $40,000.00 plus costs and expenses arising from the State Court Litigation. Special counsel's compensation herein does not include services as to claims and parties outside the State Court Litigation.

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.

Probability of Success

Movant states that while she is confident in the success of litigation here, discovery has not been conducted and therefore the underlying facts may not be as Movant understands them. Movant argues this uncertainty makes this factor weigh in favor of settlement.

Movant provides testimony that an objection to Debtor's claim of exemption here would likely be successful (though not providing the court with specific details as to the grounds for such an objection). Declaration ¶ 9, Dckt. 88; *See also* Motion ¶ 12, Dckt. 86. While Trustee argues the facts underlying the objection could change after discovery, no evidence has been provided to suggest this is a likely outcome. Therefore, this factor weighs against settlement.

Difficulties in Collection

Movant argues that this factor supports settlement, but is of lesser importance than others in the *Woodson* test (without providing supporting case law).

Despite Movant's argument, no difficulty in collection here is identified. Furthermore, it does not appear Movant provided the correct focus for this inquiry.

This factor solicits the difficulty in collecting in the event the litigation is successful. Here, if Movant prevails on an objection to Debtor's claim of exemption, the exemption will be disallowed and Movant will easily be able to collect any settlement funds. While it is true the settlement is not yet complete as of the hearing on this Motion, the absence of funds does not speak to the Movant's ability to collect any funds if any there were.

Therefore, this factor weighs against settlement.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that while the objection to claim of exemption does not appear complex, the legal and factual issues therein center on Debtor's reasonable need for recovered funds for support. Movant provides testimony that the objection would require substantial time and expense for the required discovery, informal investigation, pretrial preparation, and trial work. Trustee estimates the litigation would take 6 months to a year.

Movant's argument is well-taken. Based on the foregoing arguments of the Movant, this factor weighs in favor of settlement.

Paramount Interest of Creditors

Movant argues this factor weighs in favor of settlement because the Agreement would provide for funds to compensate special counsel and put towards other administrative expenses. Movant also states that Movant's general bankruptcy counsel has offered a reduced fee contingent on this Agreement. Movant argues that the aforementioned mitigates the risks and avoids known expenses and delay of litigation.

Movant's argument here is well-taken. The proposed settlement provides $40,000.00 (plus costs) in expenses of special counsel, a professional employed by the Estate. Additionally, the settlement would result in further dividend to the Estate of 55 percent of the remaining proceeds. Litigation on this matter would result in costs incurred by both the Debtor and Estate. While trustee does not raise specific supported doubts as to the success of the litigation, the settlement contemplated herein is likely justified in consideration of the risk the litigation is not successful.

Therefore, this factor weighs in favor of settlement.

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 the settlement contemplated herein is a reasonable reflection of the expense, delay, and risk of litigation. 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 Kimberly Husted, 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 the debtor, John W Rose ("Debtor" or "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 B in support of the Motion (Dckt. 90).

11. **17-25481-E-7** **JOHN ROSE** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF SPINELLI, DONALD & NOTT FOR ROSS R. SCOTT, SPECIAL COUNSEL(S)**
HSM-7 **Paul Pascuzzi** **2-28-19 [91]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 28, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Spinelli, Donald, and Nott, the Attorney ("Applicant") for Kimberly Husted, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested on a contingency fee basis. The debtor, John W Rose ("Debtor") initially hired Applicant to represent him in a personal injury state court action on October 9, 2014. The original agreement provided for a contingent fee of 33 percent if settlement was reached prior to filing suit, and 40 percent if settlement was after filing.

After Debtor filed this bankruptcy case, Client sought, and on October 31, 2017 the court issued an order approving, the employment of Applicant. Order, Dckt. 29. Applicant requests fees in the amount of $40,000.00 and costs in the amount of $8,280.15.

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

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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 demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505

B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include investigation of causes of action; preparation and filing of the complaint; mediation; preparation and taking of depositions; written discovery exchange; draft of discovery motions, motions for summary judgment, summary adjudication, and remand/abstention; disclosure of expert witnesses; attendance of mandatory settlement conferences. The court finds the services were beneficial to Client and the Estate and were 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.

State Court Litigation: Applicant spent 193 hours on work necessary in prosecuting Debtor's state court litigation. These services include investigation of causes of action; preparation and filing of the complaint; mediation; preparation and taking of depositions; written discovery exchange; draft of discovery motions, motions for summary judgment, summary adjudication, and remand/abstention; disclosure of expert witnesses; attendance of mandatory settlement conferences

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in personal injury litigation, for which Debtor agreed to a contingent fee of 40% of the settlement post filing suit. Exhibit A ¶ 6, Dckt. 95. The Agreement also provided for the costs and expenses incurred to be deducted from the recovery amount before the percentage. Therefore, under the Contingency Fee Agreement approved by the court, the following fees would be allowed:

Settlement Amount $125,000.00

Less Expenses.....$8,280.15.

Subtotal.....$116,719.85

x 0.40
Contingent Fee.....$46,687.94

Add Expense.....$8,280.15.

Total Expense &
Contingent Fee.....$54,968.09

However, Applicant pursuant to this Application has agreed to a reduced fee of only $40,000.00 in fees, for a total fee and expense request of $48,280.15.

While the work performed was pursuant to a contingency fee arrangement, Applicant calculates that the average billing rate based on the 193 hours expended and fee sought is $207.25.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $8,280.15. pursuant to this application. However, no analysis has been provided aggregating the expenses–the court is directed to the Declaration of Ross Nott for an itemized list of the expenses, which simply lists the raw expense entries.

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the fees and expenses charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided and expense incurred, the easier it is for Applicant to quickly state the tasks and collect the expenses. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the fees and expenses being requested.

In this instance, the court has for the benefit of Applicant reviewed the expenses listed in the Nott declaration. The expenses sought relate to the state court litigation, and include filing fees, service of process costs, arbitration deposits, jury deposits, reporting and transcript costs, postage, CourtCall fees, and other related costs. The expenses do not appear unreasonable in light of the extensive litigation.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the fees, as an amount reduced from the agreed percentage fee recovery, are reasonable and a fair method of computing the fees of Applicant in this case. Percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type, and the reduced rate seeks a fee lower than Applicant would normal charge clients for similar work. The court allows Final Fees of $40,000.00 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Chapter 7 Trustee is authorized to pay from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $8,280.15 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay the fees and costs allowed by the court.

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

Fees	$40,000.00,
Costs and Expenses	$8,280.15,

pursuant to this Application as final fees and costs 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 Spinelli, Donald, and Nott, the Attorney ("Applicant"), Attorney for Kimberly Husted, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Spinelli, Donald, and Nott, the Attorney is allowed the following fees and expenses as a professional of the Estate:
>
> Spinelli, Donald, and Nott, the Attorney , Professional employed by Chapter 7 Trustee,
>
> Fees in the amount of $40,000.00,

Expenses in the amount of $8,280.15,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that Chapter 7 Trustee is authorized to pay the fees and costs 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.

12. **17-22347-E-11 JJG-15** | **UNITED CHARTER LLC** **Jeffrey Goodrich** | **MOTION TO USE CASH COLLATERAL** **O.S.T.** **3-12-19 [340]**

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2019. Dckt. 347. The court set the hearing for March 21, 2019, requiring 9 days' notice. Order, Dckt. 338. 9 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). Debtor, creditors, 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 Authority to Use Cash Collateral is granted, and the hearing is continued to xx:xx a.m. on xxxx, 201x.

The Debtor in Possession, United Charter, LLC ("ΔIP"), moves for an order approving the use of cash collateral from ΔIP's real property identified as an industrial warehouse property located in Stockton, California ("Property"). Debtor in Possession requests the use of cash collateral to pay an average of $7,785 per month of budgeted property-related expenses such as property taxes, insurance, utilities and maintenance that EWB had approved for payment.

ΔIP proposes to use cash collateral for the following monthly expenses for the period August 1, 2018 through May 31, 2019:

EXPENSE	**PREVIOUS ORDER**	**CURRENT REQUEST**
Cal Water	$118	$120
PGE	$250	$250
Insurance	$2,560.41	$2,900
Maintenance	$200	$1,000
Bay Alarm	$103	$105
Contingency	$500	$500
FTB	$76.84	$75
Accounting	$1,200	$500
Storm Drain		$421
Backflow Test		$7
TOTAL	**$5,008.25**	**$5,878**

ΔIP proposes that the cash collateral be approved with a 10% variance in each category and that remaining funds be retained by Debtor in Possession.

ΔIP also requests the following one-time expenses be authorized:

EXPENSE	**COST**
San Joaquin County property taxes (December 10, 2018)	$43,065.10
San Joaquin County property taxes (April 10, 2019)	$47,500

Nobel H. Brown Roofing for roof repair on 1885 Market property	$45,000
John Anderson/Team VRG and John Anderson/Realty commissions	$81,130
City of Stockton storm drain fees	$11,159.79
Tenant Improvements and Repairs on 1885 E Market Street property	TBD
Tenant Improvements and Repairs on 1811/1821 E Market Street property	TBD
TOTAL (less to be determined amounts)	**$227,854.89**

Stipulation

Along with the Motion, ΔIP filed a Stipulation between ΔIP, and creditors East West Bank ("EWB") and Wayne Bier ("Bier"). Dckt. 339. The Stipulation consents to the aforementioned expenses sought to be paid by ΔIP, as well as a variance of 10 percent in any individual line item expense as long as the total amount used does not exceed five percent of the monthly budget.

Pursuant to the Stipulation and as a adequate protection for the use of cash collateral, the ΔIP has offered, and EWB and Bier have agreed to accept:

> (a) Replacement liens in post-petition rents to the same extent, and with the same validity and priority, as such lenders held in the cash collateral expended, to the extent the DIP's use of such cash collateral resulted in a reduction of such lender's secured claim; and
>
> (b) Turnover to EWB of all net rents received between August 1, 2018 and May 31, 2019 after payment of the previously approved or to be authorized monthly and one-time expenses described in the Stipulation and this Motion.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in

the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless–

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease–

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 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

ΔIP has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for various expenses to maintain the collateral, including payment of taxes, utilities, and repair costs. The Motion is granted, and ΔIP is authorized to use the cash collateral for the period August 1, 2018 through May 31, 2019, including the one-time expenses stated in the Motion and required adequate protection payments. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by ΔIP . ΔIP shall turnover to EWB all net rents received between August 1, 2018 and May 31, 2019 after payment of the authorized monthly and one-time expenses.

The court continues the hearing to **10:30 a.m. on May Xx,** 2109, for Debtor in Possession to file a Supplement to the Motion to extend authorization. That Supplement is due by **xxxx, 2019 (seven**

days before hearing), with any opposition to be presented orally at the continued hearing.

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 Authority to Use Cash Collateral filed by Debtor in Possession, United Charter, LLC ("ΔIP") 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, pursuant to this order, for the period August 1, 2018 through May 31, 2019, and the cash collateral may be used to pay the following monthly expenses, granting ΔIP a variance of 10% in any individual line item expense as long as the total amount used does not exceed five percent of the monthly total budget:

EXPENSE	**PREVIOUS ORDER**	**CURRENT REQUEST**
Cal Water	$118	$120
PGE	$250	$250
Insurance	$2,560.41	$2,900
Maintenance	$200	$1,000
Bay Alarm	$103	$105
Contingency	$500	$500
FTB	$76.84	$75
Accounting	$1,200	$500
Storm Drain		$421
Backflow Test		$7
TOTAL	**$5,008.25**	**$5,878**

> **IT IS FURTHER ORDERED** that ΔIP cash collateral may be used to pay the following one-time expenses:

EXPENSE	COST
San Joaquin County property taxes (December 10, 2018)	$43,065.10
San Joaquin County property taxes (April 10, 2019)	$47,500
Nobel H. Brown Roofing for roof repair on 1885 Market property	$45,000
John Anderson/Team VRG and John Anderson/Realty commissions	$81,130
City of Stockton storm drain fees	$11,159.79
Tenant Improvements and Repairs on 1885 E Market Street property	TBD
Tenant Improvements and Repairs on 1811/1821 E Market Street property	TBD
TOTAL (less to be determined amounts)	**$227,854.89**

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds 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.

IT IS FURTHER ORDERED that ΔIP shall turnover to East West Bank, as adequate protection payment, all net rents received between August 1, 2018 and May 31, 2019 after payment of the monthly and one-time expenses authorized by this Order.

.

IT IS FURTHER ORDERED that the hearing on the Motion is continued to **xxxx a.m. on May XX , 2019**, to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before **xxxx, 2019**, Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the **xxxx, 2019** hearing. Any opposition to the requested use of cash collateral may be presented orally at the hearing.

13. **17-22347-E-11** **UNITED CHARTER LLC** **MOTION TO PAY O.S.T.**
JJG-16 **Jeffrey Goodrich** **3-12-19 [341]**

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2019. Dckt. 348. The court set the hearing for March 21, 2019, requiring 9 days' notice. Order, Dckt. 338. 9 days' notice was provided.

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

The Motion To Pay is ~~denied without prejudice.~~

United Charter, LLC, the debtor in possession ("ΔIP") filed this Motion To Pay seeking authorization to pay commissions to its former broker, Virtual Realty Group ("VRG"), and current broker, Realty Executives ("RE") (collectively "Brokers").

On January 26, 2018, the court issued an Order authorizing the employment of of VRG. Dckt. 155. On February 25, 2019, the court issued an Order authorizing the employment of RE. Dckt. 336.

The Motion states the primary asset of ΔIP is a 15+ acre industrial warehouse property located in Stockton, California. ΔIP states that as of the petition filing date, that property was less than 47 percent occupied and rents were $15,400.00.

ΔIP argues that the services provided by the Brokers have resulted in 80 percent occupancy.

ΔIP lists the following commissions sought to be paid in relation to specific leases executed with the assistance of the Brokers:

Lease Agreement	**Requested Commission**	**Broker**
City Wide Towing Lease	$9,569.00	VRG
Kraustrunk Lease	$34,330.20	RE
Premium Truck Repair Lease	$24,846.78	RE
Aries Builders Lease	$12,385.14	RE

The total commission sought are $9,569.00 for VRG and $71,562.12 for RE.

ΔIP filed in support of the Motion as Exhibits A and B the lease agreements for the various leases executed with the assistance of the Brokers. Dckts. 343-6.

DISCUSSION

The court begins it consideration of the relief sought with the grounds stated with particularity in the Motion (Fed. R. Bankr. 9013).

Grounds Stated in Motion

The entirety of the Motion consists of an explanation of why the services of the Brokers were necessary (Motion ¶ 1, Dckt. 341), what specific commissions are being sought for each lease the Brokers assisted with executing (*Id.*, ¶¶ 2-13), and a prayer for relief requesting authorization to pay the requested fees. *Id.* at 4:21-24. The Motion does not alleged that the ΔIP obtained authorization to employ these Brokers as professionals.

Here, no legal grounds for the requested relief was provided. The court generally declines an opportunity to do the work of the attorney in researching possible grounds for relief. Rather, relief is merely requested because there are leases.

The court recalls there being a discussion between the Parties in this case about the ΔIP front loading the payment of commissions and depleting cash collateral. In looking at the two requests for the Brokers and the alleged monies received by the estate on these leases as of the filing of the Motion:

	VRG	RE
Commission Requested to be Paid	$9,569.00	$71,562.12
Rent Monies Stated to be received		

City Wide Towing Lease	$34,400.00	
Krautstrunk		$30,000.00
Premium Truck Repair		$32,500.00 (plus 2 months rent of $13,000 used by tenant to fix leaking roof)
Aries Builders		$29,160.00
Net of Rent Over/Under Proposed Commission Payments	$24,831.00	$20,097.88

It appears that on a gross basis there has been more rent money paid then commissions to be paid, that does not take into account all of the cost and expenses being borne by the bankruptcy estate in keeping the tenants happy and paying rent.

Failure to Authenticate Exhibits

Additionally, while exhibits have been submitted with the Motion, there is no declaration or other evidence seeking to authenticate the exhibits. The ΔIP has taken leave to merely file sixty-one pages of exhibits without authenticating the documents. Fed. R. Evid. 901 et seq. While ΔIP may believe that there is no one who might dispute the documents, for the court, there is no one who is willing to state under penalty of perjury that these are true and accurate copies of the documents.

Without the exhibits, the Motion is devoid of any credible, authenticated evidence upon which the court may make the necessary factual findings, and from there, the conclusions of law.

Failure to Provide Evidence of Consent

The ΔIP alleges in the Motion that creditors "EWB and Bier" have consented to the use of cash collateral. While the ΔIP knows who "EWB" is and who "Bier" is, those terms are not defined in the Motion. No evidence of such consent by "EWB" and "Bier" has been filed with the Motion.

Burden on Professionals

ΔIP and ΔIP Counsel have put the court in a difficult situation. There are non-bankruptcy professionals who are providing services that appear to be benefitting the bankruptcy estate. But ΔIP and ΔIP Counsel appear to be using that situation to try and chip away at the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and Federal Rules of Evidence to create their own "Special Rules." Choosing to dictate their own Rules to the court puts these professionals at further delay in being paid.

Allowance of Compensation

For professionals hired by the bankruptcy estate, the court's standard order mirrors the Bankruptcy Code and states that no compensation will be paid other than as allowed pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328. The Motion is titled as being tied to 11 U.S.C. § 330, but only seeks authorization to "pay," not a motion for "compensation." In substance, the ΔIP skips over the allowance of compensation and goes directly to disbursing monies.

ΔIP and ΔIP Counsel may have been tiring of the court citing to the law and rules for the proper prosecution of a bankruptcy case. ΔIP Counsel may believe that the judges in the Northern District of California "properly apply the law," shortcutting what the Code and Rules required. This court's inquiry into that subject is to the contrary.

~~Cause exists to deny the Motion without prejudice so that ΔIP can research possible legal grounds in support of the Motion and provide supporting evidence.~~

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 Pay filed by United Charter, LLC, the debtor in possession ("ΔIP") 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 Pay is denied without prejudice.~~