

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 25, 2019 at 10:30 a.m.

1.	<u>19-20108-E-7</u>	KRISTIE WILLIAMS Pro Se	TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 3-13-19 [16]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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 (*pro se*), the Chapter 7 Trustee, and creditors on March 15, 2019. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 7 Trustee, Alan S. Fukushima ("Trustee"), seeks dismissal of the case on the grounds that Kristie K. Williams ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 1:00 p.m. on May 15, 2019. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

No opposition or response was filed by Debtor.

DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 10, 2019. By the court's calculation, 15 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice).

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 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is ~~granted, and the case is converted to one under Chapter 13.~~

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

Debtor asserts that the case should be converted because she is eligible for a Chapter 13, and the case has not been previously converted.

Debtor also argues that previously she was acting on the guidance of prior counsel, Linda M. Louder, and pursuant to legal advice did not list her real property on her schedules. Debtor sates she has amended her schedules to list the property and alter tax withholdings to help fund a Chapter 13 plan. ^{FN.1.}

FN. 1. The court's records disclose that the former counsel has been representing debtors in bankruptcy cases in this District since 2010, with the cases being one hundred forty-three (143) in number. These are all Chapter 7 cases, in which the debtors under penalty of perjury had to accurately state their assets. The grounds for this Motion to Convert is Debtor's testimony that said former counsel advised the Debtor not to list community property in which the Debtor had an interest or Debtor's husband's income on Debtor's schedules. These are very fundamental issues, well known by bankruptcy practitioners as assets that have to be disclosed on the Schedules which are filed under penalty of perjury.

DISCUSSION

Order On Substitution of Attorney

On April 12, 2019, the court issued an Order granting Debtor's *Ex Parte* Application To Substitute Candance Brooks as attorney of record. Dckt. 27.

The court further ordered Debtor's counsel Ms. Brooks to address at the hearing the reported fee arrangement with prior counsel, Linda M. Louder, Esq., the fees paid from any source to Ms. Louder, and the accuracy of the Amended Disclosure of Compensation Form (Dckt. 18) stating that Ms. Louder was paid \$0.00 for the legal services rendered Debtor. The Original Disclosure of Compensation (Dckt. 14 at 50) states that Ms. Louder was paid \$407.00 and was to receive an additional \$2,000.00.

The Order also provided Debtor's counsel Ms. Brooks will also address the good faith of Debtor in signing Schedules and Statement of Financial Affairs stating that she had no income for the current and prior two years (Stmt of Fin Aff. Part 2, Dckt. 14 at 35-36); Schedule I stating that Debtor had \$3,848 in month income, but failing to disclose the name of her employer and how long employed on Schedule I (Dckt. 15 at 30-31), and the accuracy of the statement in response to Question 16 on the Statement of Financial Affairs that no payments were made by anyone to anyone relating the Debtor to seeking bankruptcy or preparing a bankruptcy petition.

No supplemental pleadings were filed by Debtor addressing the above issues in the two weeks since the entry of the order authorizing the Substitution and identifying the inconsistencies in the information provided by Debtor.

Amended Schedules were filed on April 10, 2019 (prior to the court's order) in which Debtor then disclosed: Debtor gross monthly income of \$3,848 and non-debtor spouse income of \$3,879; and her 2018 income of \$39,758.73 and 2017 income of \$33,216.22, as well as income for the non-debtor spouse. Statement of Financial Affairs Question 4 Dckt. 25.

At the hearing, **xxxxxxxxxxxxxx**.

Ruling

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

~~The court 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 filed by Bridgette Marie Long (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

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.

<p>The Motion to Avoid Judicial Lien is granted.</p>

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").

MARCH 21, 2019 HEARING

At the March 21, 2019 hearing, the court continued the hearing on the Motion to allow Debtor to file a copy of the recorded abstract of judgment. Dckt. 59.

DISCUSSION

A judgment was entered against Debtor in favor of Creditor in the amount of \$23,280.05. Exhibit, Dckt. 60. An abstract of judgment was recorded on August 12, 2008, that encumbers the Property. *Id.*

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.

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, County Case No. 34200800004531, recorded on August 12, 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.

Final Ruling: No appearance at the April 25, 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 Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 26, 2019^{FN.1..} By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

FN.1. The initial Notice of Hearing set the hearing for May 1, 2019 before the Honorable Christopher M. Klein. Dckt. 23. The same day, Debtor filed an Amended Notice of Hearing correcting the date to April 25, 2019 before the Honorable Ronald H. Sargis. Dckts. 28, 29.

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.

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of Beneficial Bank ("Creditor") against property of Mable Jane Norse ("Debtor") commonly known as 4045 Archean Way, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$12,968.79. Exhibit 2, Dckt. 24. An abstract of judgment was recorded with Sacramento County on September 10, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$200,000.00 as of the petition date. Dckt. 20. The unavoidable consensual liens that total \$257,968.79 as of the commencement of this case are stated on Debtor's Amended Schedule D. *Id.*

Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$1.00 on Amended Schedule C. *Id.*

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 Mable Jane Norse ("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 Beneficial Bank, California Superior Court for Sacramento County Case No. 34-2008-00025060-CL-CL-GDS, recorded on September 10, 2009, Book 20090910 and Page 0826, with the Sacramento County Recorder, against the real property commonly known as 4045 Archean 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.

[19-21976-E-7](#)
[DNL-2](#)

CONQUIP, INC.
Eric Nyberg

**MOTION TO REJECT LEASE OR
EXECUTORY CONTRACT**
4-10-19 [\[14\]](#)

Final Ruling: No appearance at the January 9, 2019 Hearing is required.

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 Lease Parties, Debtor, Debtor’s Attorney, creditors, and Office of the United States Trustee on April 10, 2019. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

The Motion to Reject Lease or Executory Contract was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, 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 Reject Lease or Executory Contract is continued to May 9, 2019
at 10:30 a.m. by prior Order of the court. Dckt. 30.**

J. Michael Hopper, the Chapter 7 Trustee, (“Movant”) moves to reject the debtor, ConQuip, Inc.’s (“Debtor”), lease with William Cummings (“Lessor”) for nonresidential property commonly known as 11255 Pyrites Way, Suite 100, Gold River, California (“Property”).

On April 18, 2019, Movant filed an Application seeking to continue the hearing on the Motion to May 9, 2019 at 10:30 a.m. The court issued an Order on April 22, 2019 granting the Application and continuing the hearing to that date. Order, Dckt. 30.

6.

[18-20577-E-7](#)

RUBEN CALDERON

OBJECTION TO CLAIM OF JESSICA

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 3007-1 Objection to Claim—Hearing Required.

The Proof of Service states that the Objection to Claim and supporting pleadings were served on creditors and the Office of the U.S. Trustee on March 19, 2019.^{FN.1.} By the court's calculation, 37 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

FN.1. Debtor filed its Original Notice on March 18, 2019 and provided notice the same day. Dckts. 35, 38. The Original Notice sought to set the hearing on the Motion for April 25, 2019 at 10:00 a.m. No such hearing date/time existing, the court issued a Memo To File Re: Calendar Correction informing Debtor the Motion would not be calendared until an Amended Notice corrected the defect. Dckt. 39.

Pursuant to the written instruction of the court, Debtor filed an Amended Notice seeking to set the hearing for April 25, 2019 at 10:30. Dckts. 40, 41.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Objection to Proof of Claim Number 6 of Jessica Marie Calderon is overruled without prejudice</p>

Douglas M. Whatley, the Chapter 7 Trustee, ("Objector") requests that the court disallow the claim of Jessica Marie Calderon ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be priority unsecured in the amount of \$16,359.00, which debt is indicated to be for domestic support obligations.

Objector asserts that Creditor's Claim is likely duplicative of the Proof of Claim, No. 7, subsequently filed by the Placer County Department of Child Support Services. That proof of claim asserts a priority unsecured debt in the amount of \$17,240.44, also for domestic support obligations.

Objector argues that based on the timing of the proofs (being filed the same day), and similar amounts (\$16,359.00 compared to \$17,240.44), the two claims are duplicative and Creditor's Claim should be "denied" as duplicative.

Objector notes that if both claims are duplicative and nonetheless allowed, Creditor may receive double recovery.

Objector filed the Declaration of Douglas M. Whately in support of the Objection. Dckt. 35. The Whately Declaration provides testimony that Whatley reviewed the Claim and Proof of Claim, No. 7, and "concluded" that the two claims are duplicative.

DISCUSSION

Prior Objection To Claim of Creditor & Insufficient Notice

On August 20, 2018, Objector filed an Objection to Proof of Claim No. 5, which was also filed by Creditor on the basis that the proof of claim was for a family law judgment for attorney fees and costs. Dckt. 22. At the hearing on that Objection, the court dismissed the Objection without prejudice because it was not served on the respondent creditor at the address given in the proof of claim. Civil Minutes, Dckt. 25. The address provided for notice was as follows:

Yasha Rahimzadeh
980 9th Street, 16th Floor, PMB 1021
Sacramento, California 95814

Proof of Claim, No. 5.

In reviewing the Proofs of Service filed in support of this Objection, it appears Objector has again failed to provide notice at the address designated in the Claim. This appears to be the attorney for Creditor, but nothing indicates that the attorney is Creditor's agent for service of process. An address is shown for Creditor on Proof of Claim No. 6.

At the hearing, **xxxxxxxxxxxxxxxxxx**.

Present Objection to Creditor's Claim

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

such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Here, little evidence is provided in support of the Objection.

Objector filed the Declaration of Douglas M. Whately in support of the Objection. Declaration, Dckt. 36. The Whately Declaration provides testimony that Whatley reviewed the Claim and Proof of Claim, No. 7, and “concluded” that the two claims are duplicative. *Id.*, ¶ 4. Such a conclusion does not provide the court the factual information necessary to determine these two claims are duplicative. *In re Austin*, 583 B.R. at 483..

While the two claims were filed the same day and present similar amounts owing, such is not per se indicative of a duplicative claim. The debtor, Ruben Richard Calderon, could feasibly have multiple claims for domestic support obligation which are similar in value and coincidentally were filed the same day.

At the hearing, xxxxxxxxxxxxxxxxxx.

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

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

The Objection to Claim of Jessica Marie Calderon (“Creditor”), filed in this case by Douglas M. Whatley, the Chapter 7 Trustee, (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 6 of Creditor is overruled without prejudice.

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 Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 7, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien of Patricia A. Turnage is XXXXX.

This Motion requests an order avoiding the judicial lien of Patricia Turnage ("Creditor") against property of Constance Lou Cherrone ("Debtor") commonly known as 1611 Hearthsong Drive, Manteca, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$37,978.36. An abstract of judgment was recorded with Alameda County on September 26, 2009, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$350,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$223,000 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §704.730 in the amount of \$175,000.00 on Schedule C. Dckt. 1.

Applying the arithmetic formula and Debtor's valuation and liens:

FMV.....	\$350,000
Unavoidable Liens.....	(\$223,000.00)
Homestead Exemption.....	(\$175,000.00)
Judgment Lien.....	<u>(\$ 37,978.36)</u>

Amount Liens and Homestead Exemption Exceed Value of Property.....(\$85,978.36)

Incorrect Identification As Chapter 13 Case

In the Motion Debtor states that she filed a “Chapter 13 Case” on March 19, 2018. Creditor restates this reference to this being a Chapter 13 case in her opposition pleadings. While this case was filed on March 19, 2018, it was filed as a Chapter 7 case and has been prosecuted as a Chapter 7 case, with Debtor obtaining her Discharge on July 23, 2018. Discharge, Dckt. 28.

CREDITOR’S MOTION FOR CONTINUANCE & AMENDED NOTICES

Creditor filed a Notice of Motion and Motion To Continue the hearing date on March 25, 2019. Dckt 41. Creditor asserts in the Motion that she requires additional time to oppose Debtor’s Motion due to staffing issues, and requests the hearing on the Motion be continued to May 30, 2019 at 11:00 a.m. Creditor asserts further that Debtor does not oppose the continuance, and Creditor would be irreparably harmed without the continuance.

After the clerk of the court filed a Memo To File Re: Calendar Correction (Dckt. 44), Creditor filed a Corrected Notice of Hearing seeking to continue the hearing on the Motion to May 30, 2019 at 10:30. a.m. Dckt. 45.

Creditor also filed her Declaration in support of the requested continuance. Dckt. 42. Creditor states under penalty of perjury she is a personal injury and civil litigation attorney with no bankruptcy experience. Creditor states further that her daughter, working as Creditor’s front desk legal assistant, was hospitalized on March 11, 2019, and forgot to inform Creditor about notice of this Contested Matter.

CREDITOR’S OBJECTION

Creditor filed a combined “Objection” to the Motion and Declaration of Creditor on March 27, 2019. Dckt. 47.

The Objection portion of the pleading states the following:

1. There has been insufficient time for Creditor to obtain an appraisal due to inadvertently late discovery of the Contested Matter.
2. Counsel for Debtor agreed to a continuance of the hearing.
3. Debtor passed a bad check twice in relation to fees and costs at trial during a civil case; therefore fraud was involved.
4. Debtor initially filed a Chapter 7 case and the Trustee advised Creditor there were no assets to pay her claim.
5. Creditor understands Debtor converted the case to one under Chapter 13.
6. Debtor should not be allowed to avoid Creditor’s lien because monies owed to Creditor were due to fraud and check kiting.

The Creditor's Declaration portion of the joint pleading states that Creditor sought to file the Objection/Declaration on March 21, 2019, but her Northern California Pacer registration was not recognized by the Eastern District of California. Nonetheless, Creditor argues the Debtor was served with the Objection by mail that day.

APRIL 4, 2019 HEARING

At the April 4, 2019 hearing, no appearance was made by Creditor Patricia Turnage, Esq., whose judgment lien was at issue. Without Attorney Turnage present to address the court's questions concerning her opposition, the various documents she filed which were not consistent with the Local Bankruptcy Rules, the court did not remember that she was seeking a continuance of the hearing.

In her Declaration, Creditor provided testimony that she and Movant's counsel agreed to a continuance. Opposition/Declaration ¶¶ 2, 3, p. 2:20.5-25.5. Attorney Gonzalez did not address that issue with the court.

The court issued an Order continuing the hearing on the Motion to April 25, 2019. Dckt. 51. The court further ordered the appearance of Robert Goldstein, Esq. and Eduardo Gonzalez, Esq. as counsel for Debtor, and Patricia Turnage, Esq., in *pro se* as the Creditor—telephonic appearances permitted. *Id.*

DISCUSSION

Alleged Stipulation For Continuance

As discussed, *supra*, Creditor provided evidence that there was some understanding as to a stipulation for continuance. However, no such continuance was addressed at the April 4, 2019 hearing by Movant's counsel.

At the hearing, **xxxxxxxxxxxxxxxxxx**.

Untimely Opposition

Creditor filed her Motion To Continue Hearing on March 25, 2019, and her Objection/Declaration on March 27, 2019. Dckts. 41, 47. By the court's calculation, 10 and 8 days' notice was provided, respectively.

On the notice provided pursuant to Local Bankruptcy Rule 9014-1(f)(1), written opposition is required 14 days prior to the hearing. Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

Creditor has not addressed for the court the failure to file a timely opposition. Creditor merely requests a continuance—a request made only 10 days prior to the hearing on the motion.

In reviewing Creditor's supporting Declarations, the court could possibly find good cause to hear the opposition. However, Creditor's statements under penalty of perjury seem conflicting.

In her first Declaration, Creditor states she learned of this Contested Matter March 17, 2019. Declaration ¶ 6, Dckt. 42. After speaking with Debtor's attorney on March 21, 2019, Creditor believed a stipulation would not be filed and that she needed to file a motion for continuance. *Id.*, ¶ 10. However, that Motion was not filed until March 25, 2019. Dckt. 42.

In her second Declaration, Creditor states she attempted unsuccessfully to file the Objection/Declaration on March 21, 2019—fourteen days before the hearing date. Declaration ¶ 5, Dckt. 47. The next day, Creditor learned she was not registered to access the Eastern District Pacer System, but the Motion To Continue was not filed until another 3 days later on March 25, 2019. *Id.*, ¶ 6.

Purportedly, Creditor then filed the Objection/Declaration on March 26, 2019. *Id.*, ¶ 8. However, the court's records indicate the pleading was filed March 27, 2019. Dckt. 47.

Creditor does not explain why, if the Objection/Declaration was ready to file March 21, 2019, she did not file that pleading along with the Motion To Continue, or why the Objection/Declaration was not referenced at all. The statements given under penalty of perjury give the impression they were manufactured to show that Creditor "tried" to file her Objection/Declaration 14 days before the hearing, thus meeting the Local Bankruptcy Rules.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

Failure To Meet Local Rules

Creditor's "Objection/Declaration pleading, two merged documents, is not permitted under the Local Bankruptcy Rules for the Eastern District of California. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

Lien Avoidance

Creditor requests a continuance to obtain a valuation of the Property.

Creditor also argues the case was converted to Chapter 13 (which the docket does not so reflect), and that the basis of the judicial lien was fraudulent check kiting. No evidence is presented as to

check kiting or any other fraud. Furthermore, no legal authority is cited to supporting the argument that a lien securing a debt based on fraud is not avoidable. Finally, Debtor obtained her discharge in this case on July 23, 2018. To the extent that “fraud” is being advanced as a basis for granting relief to Creditor, such would have been a possible issue in determining a debt to be nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), but is not a factor for a determination under 11 U.S.C. § 522(f) lien avoidances.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Constance Lou Cherrone (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Avoid Judicial Lien of Patricia A. Turnage be continued to **XXXXXX**

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. 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*), Hong and Qui Vo, Chapter 13 Trustee, and Office of the U.S. Trustee, and other parties in interest as stated on the Certificate of Service on December 9, 2018. The court computes that 51 days' notice has been provided.

The Order to Show Cause is XXXXXXXXXXXXXXXXXX.

On October 19, 2018, Julian Perez commenced this Chapter 13 case, in pro se. On his Bankruptcy Petition Mr. Perez states that he has also used the name "AKA TKC TRUST" in the eight years preceding the commencement of this case. Petition, p. 1, Dckt. 1. Debtor states that his residence is 4412 Pinckney Way, Rancho Cordova, California. Id., p. 2. Debtor states that he had filed one prior bankruptcy case in the prior eight years, Case No. 18-24429 in the Eastern District of California.

Debtor's Prior Chapter 13 Case

Debtor commenced Chapter 13 Case No. 18-24429 on July 16, 2018. That case was dismissed on August 17, 2018. 18-24429; Order, Dckt. 22. On the Petition, Debtor lists his residence as 4412 Pinckney Way, Rancho Cordova, CA. On the Verification of Master Mailing List of Creditors, Debtor listed only two possible creditors:

QUALITY LOAN SERVICE CORP
411 IVY ST
SAN DIEGO, CA 92101

MIDFIRST PLAZA
501 NW GRAND BLVD
OKLAHOMA CITY, OK 73118

Id., Dckt. 9.

The case was dismissed, notwithstanding the court having granted Debtor an extension of time to file a Chapter 13 Plan, Schedules, and Statement of Financial Affairs. Id.; Notice of Incomplete Filing, Dckt. 3, and Order Extending Time, Dckt. 14. Debtor filed his Motion to Extend Time to File Documents using the Central District of California motion form (Id., Dckt. 12), to which he attaches an application for the Extension prepared on lined pleading paper. In the attached Application, which is incorporated into the form motion, Debtor expressly represents to the court and promises:

3. JULIAN PEREZ is an individual and resident of Rancho Cordova, California. Facing foreclosure from property in which he resides, JULIAN PEREZ filed this bankruptcy petition on an emergency basis.

...

6. JULIAN PEREZ is in the process of compiling and organizing the information required to complete the Schedules and Chapter 13 Plan, but finalization of these documents will extend beyond the fifteen day period ending Aug 30, 2018. Due to the press of business and matters incident to the commencement of this case, it has been impracticable for JULIAN PEREZ to assemble all of the information necessary to complete the Schedules and the Chapter 13, and the fifteen (15) day period does not provide sufficient time to accurately complete the Schedules.

7. JULIAN PEREZ believes the extension herein requested will be sufficient time within which to compile all necessary information and accurately complete the Schedules. Good cause exists sufficient to grant this Application. *Id.*; Motion, Dckt. 12, pp. 5-6. The last two pages of the Motion for Extension are a proof of service.

Id.; Motion, Dckt. 12, pp. 5-6.

The last two pages of the Motion for Extension are a proof of service. The proof of service is not signed by the pro se Debtor, but by a “Jay Wilson” (with what is obviously a digital signature stamp). *Id.*, p. 7. On the list of persons served, there is obviously a cut and past of the Debtor’s name into the name of the case at the top of the page. *Id.*, p. 8. Then, the Debtor purports to have served himself with his own Motion. This is a curious act.

Mr. Wilson lists his address as “8291 Main St Apt # 31, CA.” *Id.*, p. 7. Conspicuously absent is the town in which Mr. Wilson’s apartment exists. In conducting a simple internet search the court was unable to identify any such Jay Wilson tied to a 8291 Main St Apt #31 address or a general 8291 Main St address.

Debtor then failed to fulfill his promises and did not file a Plan, Schedules, or Statement of Financial Affairs.

Current Bankruptcy Case Pleadings and Action by Debtor

When Debtor filed the current case he filed a petition, but failed to file a Plan, Form 122C-1 Statement of Monthly Income, Schedules, Statement of Financial Affairs, and Summary of Assets and Liabilities. Notice of Incomplete Filing, Dckt. 3. Debtor filed an Application for Order Extending Time to file the missing documents. Dckt. 11. Debtor, in pro se, again used the Central District of California form motion and attached to it his uniquely created Application on pleading paper. This appears to be identical to the Application in the prior case, with the exception of changing dates for the requested extension. Debtor’s representations and promises in the Application for Extension include:

3. Julian Perez is an individual and resident of Mather, California. Facing foreclosure from property in which she ^{FN.1.} resides, Julian Perez filed this

bankruptcy petition on an emergency basis.

...

6. Julian Perez is in the process of compiling and organizing the information required to complete the Schedules and Chapter 13 Plan, but finalization of these documents will extend beyond the fifteen day period ending Dec 1, 2018. Due to the press of business and matters incident to the commencement of this case, it has been impracticable for Julian Perez to assemble all of the information necessary to complete the Schedules and the Chapter 13, and the fifteen (15) day period does not provide sufficient time to accurately complete the Schedules.

7. Julian Perez believes the extension herein requested will be sufficient time within which to compile all necessary information and accurately complete the Schedules. Good cause exists sufficient to grant this Application.

Application, pp. 5-6.

FN.1. The court notes a gender confusion point, with Debtor now using the female gender.

A Certificate of Service is attached to the Application. *Id.*, pp. 8-9. On the Certificate, Debtor again lists on the following two potential creditors:

QUALITY LOAN SERVICE CORP
411 IVY ST
SAN DIEGO, CA 92101

MIDFIRST PLAZA
501 NW GRAND BLVD.
OKLAHOMA CITY, OK 73118

Id., p. 9. This Certificate of Service is executed by Jose Lavarez, who lists his address as “7388 Main st #100, Mather, CA 95655.” *Id.*, p. 8.

A Google Maps search states that there is no “Main Street” address in Mather, California.^{FN.2.} The same is true for a Yahoo search for “Main Street, Mather, California.”

FN.2. www.google.com/maps/search/7388+Main+St+%23+100,+Mather+CA+95655/@38.5502775,-121.2816616,105m/data=!3m1!1e3

It appears that the person or persons who have executed the Certificates of Service may be fictional “persons” or are deliberately misstating their identifies or addresses.

As to the substance of the Motion, in the prior Chapter 13 case Debtor stated that he would

have the documents completed by early September 2018. Now, in the present case he states that he needs through mid-December 2018. Though 133 days have passed since the first bankruptcy case has been filed, Debtor has failed to file any Chapter 13 Plan, any one of the Schedules, and no Statement of Financial Affairs. In both cases, other than filing the case and a motion to extend deadline to file documents, the Debtor has been missing in action.

Motion for Relief From Stay

On November 6, 2018, Mary Jenkins, Raymond Cordeiro, and Terese Cordeiro, as Trustees of the Cordeiro Trust, filed a Motion for Relief From the Automatic Stay. Dckt. 17. Debtor chose not to or failed to file any opposition or response to the Motion for Relief From the Automatic Stay. The Motion makes some very concerning allegations concerning the conduct of Debtor and third parties.

The court issued its ruling on the Motion for Relief as stated in the Civil Minutes for the November 20, 2018 hearing. Those findings and conclusions include that Debtor's bankruptcy case is part of a fraudulent scheme for which relief pursuant to 11 U.S.C. § 362(c)(4)(d) is proper.

The fraudulent scheme relates to real property commonly known as 311 Bromley Cross Drive, San Jose, California ("Property") which is stated to be owned by Hong Xuan Vo (the "True Owner") and her husband Qui Vo. It is alleged that these two owners have been debtors in numerous other bankruptcies (See Exhibits J, K, and L, Dckt. 19) and have caused three additional bankruptcies (including this one) to be filed with three different debtors, to hinder the Cordeiro Trustees from foreclosing on the Property.

The scheme has included recording junior deeds of trust in the names of third parties and then having the third parties file bankruptcy, with the bankruptcy filings of the purported "third party creditor" preventing the Cordeiro Trustees from foreclosing. Exhibit C is identified as a facsimile sent to PLM Loan Management Services (conducting the foreclosure sale for the Cordeiro Trustees) by Hong Vo, one of the two owners of the 311 Bromley Cross Drive property. In it, Hong Vo states:

I have filed a Short Form Deed of Trust which the trust is In a Chapter 13 Bankruptcy filed in the Eastern District. The Trust Name is TKC Trust case No: 18-26585 assigned to Judge Ronald H Sargis. Please Cancel My Auction.

Exhibit C, Dckt. 19 at 18. This contention by Hong Vo is a bit curious. There can be no "trust" that files Chapter 13. 11 U.S.C. § 109(e), limiting Chapter 13 to "individuals." It is unclear how a "short form deed of trust" is a trust in a Chapter 13 case.

Attached to the facsimile is a copy of the Short Form Deed of Trust. The beneficiary of the deed of trust is stated to be "TKC Trust, Hong Vo, Co-Trustee." *Id.*, p. 19.

ORDER TO SHOW CAUSE AND ORDER TO APPEAR

The conduct of Julian Perez, Debtor in the current and prior bankruptcy case raises significant issues as to the good faith, accuracy of information provided under penalty of perjury, and conduct of Mr. Perez in the prior and current bankruptcy cases. Additionally, the purported conduct of Hong Vo in apparently highjacking the Julian Perez bankruptcy case to forestall the foreclosure of the

San Jose property appears to be a further abuse of the federal judicial system and the Bankruptcy Code.

Therefore, the court issued an Order To Show Cause on December 6, 2018. Order, Dckt. 40. The Order required Julian Perez and Hong Vo, and each of them, to appear in person, and meet other requirements set out fully in the Order under penalty of sanction in the event of noncompliance. *Id.*

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response in Support of the court's Order on January 15, 2019. Dckt. 45. Trustee states the following:

1. Debtor has made no payments since filing the case.
2. Debtor did not appear at the December 6, 2018, Meeting of Creditors or the January 10, 2019, Continued Meeting of Creditors.
3. The Motion For Relief From Automatic Stay of Mary Jenkins, Raymond Cordeiro, and Teresa Cordeiro (Dckt. 30) was heard and granted.
4. The Motion For Relief From Automatic Stay of Creditor Ocean Point Townhouse Association (Dckt. 44) was heard and granted.

FAILURE OF DEBTOR AND HONG VO TO COMPLY WITH ORDER TO APPEAR BY JANUARY 29, 2019 HEARING

At the January 29, 2019 hearing, the court reviewed the docket and found that no written responses or evidence had been filed by either Debtor or Hong Vo.

furthermore, both the Debtor and Hong Vo failed to appear at the hearing as ordered by the court.

Hong Vo Norther District Bankruptcy Cases

Hong Vo failing to appear, the court reviewed the case filings in the Northern District of California Bankruptcy Court involving a party named "Hong Vo." These cases include:

- A. N.D. Cal. Bankruptcy Case No. 18-51485
 1. Filed.....July 3, 2018
 2. Dismissed.....October 15, 2018
 3. Debtors
 - a. Hong Vo
 - b. Qui Vo
 4. Assets Listed Under Penalty of Perjury on Schedule A/B

- a. 311 Bromley Cross Drive, San Jose, California (N.D. Bankr. 18-51485; Dckt. 15 at 3).
 - b. Ownership is stated under penalty of perjury to be only in the two debtors Hong Vo and Qui Vo. *Id.*
 - c. On the Petition debtor Hong Vo and Qui Vo state under penalty of perjury that the Bromley Cross Drive property is the residence of Hong Vo and Qui Vo. *Id.*; Petition, Dckt. 1 at 2.
 - d. On the Petition debtors Hong Vo and Qui Vo state under penalty of perjury that the Bromley Cross Drive Property is the business address of Hong Vo's real estate business. *Id.* at 4.
 - e. On the Statement of Financial Affairs debtors Hong Vo and Qui Vo state under penalty of perjury that they have lived at the Bromley Cross Drive Property for at least the three years preceding the July 3, 2018 filing of N.D. Cal. Bankr. Case No. 18-51485. *Id.*; Statement of Financial Affairs Question 2, Dckt. 16 at 1.
5. On Schedule D, signed under penalty of perjury, debtors Hong Vo and Qui Vo do not list Julian Perez and the TCK Trust as having a deed of trust encumbering the 311 Bromley Cross Dr property. *Id.*; Schedule D, Dckt. 15 at 11-12.
- a. The copy of the Deed of Trust purported to be included in the Julian Perez bankruptcy case is dated November 17, 2017. Julian Perez E.D. Bankr. No. 18-26585; Exhibit C, Dckt. 19 at 20-23.
 - (1) While dated November 17, 2017, it bears a County Recorder stamp stating that it was recorded on October 24, 2018. *Id.* at 20.
 - (2) Even if not recorded, if given in November 27, 2017, then debtors Hong Vo and Qui Vo were required to include it on their Schedule D which is stated under penalty of perjury.
 - (3) Additionally, the purported Notary Certificate of execution of the Deed of Trust by Hong Vo is dated October 24, 2018.
 - b. The Deed of Trust states that it secured a note which is dated the same date as the Deed of Trust – November 17, 2017, which well predates the filing of the Northern District Bankruptcy Case.
6. The attorney for Qui Vo and Hong Vo listed on the petition is Michael D.

Lee, Lee & Li, Attorneys at law, 333 West Santa Clara Street, Suite 6110, San Jose, California. *Id.* at 7.

- a. Attorney Michael Lee filed a motion to withdraw as counsel for debtors Hong Vo and Qui Vo in the Northern District Bankruptcy Case. N.D. Cal. Bankr. No. 18-51485; Motion, Dckt. 37.
- b. The grounds stated in the Motion to Withdraw include:
 - (1) “8. On September 12, 2018, Patric Kelly counsel to secured creditors Mary Jenkins, Raymond L. Cordeiro, and Terese M. Cordeiro transmitted to Counsel evidence that Debtor Hong Vo had recorded a Short Form Deed of Trust and Assignment of Rents (“Deed of Trust”) on her property 311 Bromley Cross Drive, San Jose, California 95119 on September 5, 2018.”
 - (2) “9. Further, based on the documents provided by Mr. Kelly, it appeared that the Deed of Trust is implicated in the bankruptcy case of Arif Pasha case number 18-52019 MEH.”
 - (3) 10. Counsel was completely unaware of the Deed of Trust and surrounding activity until informed by Mr. Kelly.”

Id.; Motion to Withdraw, Dckt. 37. The Motion is stated by attorney Michael Lee’s declaration. As stated, Debtor Hong Vo was recording deeds of trust during the Northern District Bankruptcy case in apparent violation of the automatic stay in that case.

B. N.D. Cal. Bankruptcy Case No. 17-51938

1. Filed.....August 14, 2017
2. Dismissed.....November 6, 2018
3. Debtor
 - a. Hong Vo
4. Assets Listed Under Penalty of Perjury on Schedule A/B
 - a. 311 Bromley Cross Drive, San Jose, California (N.D. Bankr. 17-51938; Dckt. 16 at 3).
 - b. Ownership is stated under penalty of perjury to be only in debtor Hong Vo. *Id.*
 - c. On the Petition debtor Hong Vo states under penalty of perjury

that the Bromley Cross Drive property is the residence of Hong Vo and Qui Vo. *Id.*; Petition, Dckt. 1 at 2.

- d. On the Statement of Financial Affairs debtors Hong Vo and Qui Vo state under penalty of perjury that they have lived at the Bromley Cross Drive Property for at least the three years preceding the August 14, 2017 filing of N.D. Cal. Bankr. Case No. 17-51938. *Id.*; Statement of Financial Affairs Question 2, Dckt. 16 at 1.
 5. The attorney for Hong Vo listed on the petition is David Boone, Law Offices of David Boone, 1611 The Alameda, San Jose, California 95126. *Id.* at 7.
 6. Debtor Hong Vo confirmed a Chapter 13 Plan on May 31, 2018. *Id.*; Order, Dckt. 56.
 7. On August 30, 2017, the Chapter 13 Trustee filed a Notice of Default in Plan Payments. *Id.*; Notice, Dckt. 60. The Trustee also filed a Motion to Dismiss based on the default. *Id.*; Dckt. 61. The defaults cited by the Trustee were for the June and July 2017 payments, which indicates that debtor Hong Vo defaulted immediately after the order confirming the Plan was filed by the court.
- C. Debtors Hong Vo and Qui Vo obtained Chapter 7 discharges in N.D. Cal. Bankr. Case No. 11-59464; and filed and had dismissed N.D. Bankr. Cal. Cases Nos. 13-52060, 15-50599,

This further review of the filings in the Northern District of California further raises this court's concerns that there is a multi-district scheme of fraudulent filings, documents filed under penalty of perjury which are known to be false, and an abuse of the Bankruptcy Laws and the United States Courts.

Therefore, the court shall issue its order continuing the hearing to afford the U.S. Attorney for the Eastern District of California and the U.S. Trustee for Region 17 to review, coordinate, and determine what action, if any, they determine appropriate.

Debtor Julian Perez and Hong Vo, and each of them, having elected to not comply with the order of this court to appear at the January 29, 2019 hearing as ordered, the court shall order:

- A. The payment of a corrective sanction of \$5,000 each if there is a failure to appear at the continued hearing,
- B. Service of a copy of this Order and the Civil Minutes from the January 29, 2019 hearing on Tracy Hope Davis, U.S. Trustee Region 17; Gregory Powell, Asst. U.S. Trustee; and McGregor Scott, U.S. Attorney for the Eastern District of California, attn: Michelle Beckwith, Executive Assistant U.S. Attorney.

- C. Service of the Order and these Civil Minutes on Debtor Julian Perez and Hong Vo by United States Mail (Fed. R. Bankr. P. 7004(b)) at the following addresses:

Julian Perez
4412 Pinckney Way
Rancho Cordova, CA 95655

Julian Perez
4412 Pinckney Way
Mather, CA 95655

Hong Vo
Silvercreek Realty
4997 Gardenside Place
San Jose, CA 95138

Hong Vo
311 Bromley Cross Drive
San Jose, CA 95119

- D. In addition to the service provided above, the court shall forward the order and Civil Minutes to the U.S. Marshal so that Marshal may serve additional copies of the Order and Civil Minutes on Julian Peterson and Hong Vo as a courtesy so that they can appreciate the need to comply with the court's order and appear, and thereby they can avoid the U.S. Marshal having to take a non-complying party into custody to be presented in court.
- E. If Hong Vo or Julian Perez fails to appear at the continued hearing, then for the person failing to appear the court will issue an order for the U.S. Marshal to take the non-complying party into custody and present such non-complying party in court at the further continued hearing date. Additionally, the court will refer the person(s) failing to appear to the Chief Judge of the United States District Court for consideration of that Judge's exercise of the contempt punitive power for the imposition of punitive monetary and possible incarceration sanctions.

ORDER CONTINUING HEARING ON ORDER TO SHOW CAUSE AND ORDER TO APPEAR

On February 4, 2019, the court issued an Order continuing the hearing on the Order to Show Cause to April 4, 2019. Order, Dckt. 51. The court further order Julian Perez and Hong Vo, and each of them, to appear in person, and meet other requirements set out fully in the Order under penalty of sanction in the event of noncompliance. *Id.*

APRIL 4, 2019 HEARING

Julian Perez appeared at the April 4, 2019 hearing as ordered by the court. A response was filed in the name of Mr. Perez, purportedly in pro se. As discussed below, these pleadings are being written by a paralegal identified by Mr. Perez named Alan (Allen) Davis in Los Angeles, California. The

court discharges the Order to Show Cause as to Mr. Perez.

Hong Vo failed to appear as ordered by the court. Because the court did not specify a dollar amount for a corrective sanction in the order, the court continues the hearing to afford Hong Vo the opportunity to comply with the order and avoid paying a corrective sanction of \$5,000.00. The court has determined, in light of the conduct of Hong Vo, the assets being protected, and the “value” being generated by the conduct, an amount less than \$5,000.00 would not be sufficient for Hong Vo to comply with the order rather than pay a sanction - if Hong Vo desires to comply with orders of the court.

Information Provided by Julian Perez at April 4, 2019 Hearing

A Response was filed by/for Julian Perez on April 2, 2019. Dckt. 60. From a review of the pleading, it appeared that the document was prepared by someone with legal training, not a *pro se* party. At the hearing Julian Perez readily advised the court that the Response, as were all the pleadings and documents filed in the current and prior case, were prepared by a paralegal in Los Angeles, California named Alan (or Allen) Davis. Mr. Perez did not have an address for Mr. Davis, saying that he found him on the internet. He did have a phone number - (310) 954-9535.

Mr. Perez stated that he has been paying Mr. Davis \$750.00 a month, which has now been occurring for ten months for these services. For the \$7,500.00 to date, the services were to communicate with the mortgage holder on Mr. Perez’s residence and prepare the bankruptcy documents in this and the prior case. In both cases, Mr. Davis’ legal services have consisted on the basic petition and little more other than motions to extend the time to file documents.

At the hearing, the counsel for the Trustee reported that the documents stated to be prepared by Mr. Davis appears to be identical to pleadings that were being filed “by” debtors in the other Hong Vo cases in other Districts.

In addition to the counsel for the Chapter 13 Trustee being present, an attorney for the U.S. Trustee was present monitoring the hearing. At the hearing Mr. Perez reported that the \$750.00 a month payments were being made monthly by an automatic electronic funds transfer from his bank account to Mr. Davis. Mr. Perez also stated that he has email communication from Mr. Davis. These all can be available to the Chapter 13 Trustee and U.S. Trustee.

Looking at the pleadings that have been prepared for and filed purportedly by the Debtor (Mr. Perez) in pro se, it appears that this goes beyond merely “document preparation.” Additionally, \$7,500.00 in fees being paid in the past ten months are well in excess of document preparation fees.

As the court discussed at the hearing, this Bankruptcy Case has not been dismissed. The bankruptcy estate continues to exist, which consists all of the assets of Debtor, including his residence for which he states that he is paying Mr. Davis to obtain a loan modification.

ORDER CONTINUING HEARING

On April 9, 2019, the court issued an Order continuing the hearing to April 25, 2019. Dckt. 64. The court further Ordered the appearance of Hong Vo—no telephonic appearance permitted— and set out other requirements set out fully in the Order under penalty of sanction in the event of noncompliance. *Id.*

Additionally, as discussed above, the Order To Show Cause was discharged as to Julian Perez, and only Julian Perez, and he is not required to attend the continued hearing in this Bankruptcy Case. *Id.*

DISCUSSION

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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 **XXXXXXXXXX**.

Final Ruling: No appearance at the April 25, 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 March 12, 2019. By the court’s calculation, 44 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.

The Law Offices of F. Van Derdys, the Attorney (“Applicant”) for J. Michael Hopper, the Chapter 7 Trustee (“Client”), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 5, 2016, through March 5, 2019. The order of the court approving employment of Applicant was entered on June 6, 2016. Dckt. 109. Applicant requests fees in the amount of \$2,450.00.

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 Brunswick 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 can 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 location and liquidation of real property of the Estate, which was located in Costa Rica. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

The Motion states that Applicant assisted in the location and liquidation of real property of the Estate, which was located in Costa Rica. Applicant provides a summary of services performed in this case as follows:

1. Investigating the location and tax history of the property.
2. Investigating competing claims for the property.
3. Assisting Client with location a real estate broker.
4. Advising Client regarding the process for selling real property in Costa Rica.

A complete billing statement (for the modest amount of fees sought herein) is included as Exhibit A to provide a complete overview of services rendered in this case. Exhibit A, Dckt. 131.

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
Fernando Van Derdys	9.8	\$250.00	\$2,450.00
Total Fees for Period of Application			\$2,450.00

FEES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$2,450.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved 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 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	\$2,450.00
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pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 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 The Law Offices of F. Van Derdys (“Applicant”), Attorney for J. Michael Hopper, 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 The Law Offices of F. Van Derdys is allowed the following fees and expenses as a professional of the Estate:

The Law Offices of F. Van Derdys, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$2,450.00,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

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

10. [14-29391-E-7](#)
[DNL-9](#)

ENRIQUE QUILES
Eric Schwab

**MOTION TO SELL AND/OR MOTION
FOR COMPENSATION FOR BC
PROPERTIES, BROKER(S)
3-12-19 [[123](#)]**

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 Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2019. By the court's calculation, 44 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 Sell Property 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.

<p>The Motion to Sell Property is granted.</p>

The Bankruptcy Code permits J. Michael Hopper, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as real property described as 19,957.452 square meters of land in Manuabo, Puerto Rico ("Property").

The proposed purchasers of the Property are Maxie Santiago and Michale Young, and the terms of the sale are:

- A. Purchase price is \$40,500.00.
- B. Deposit of \$2,025.00 with balance of \$38,475.00 due within 7 calendar days of hearing on this Motion.
- C. Property sold "as is."
- D. Property sold free of all liens.
- E. Movant shall pay real property taxes until date of execution of deed of purchase and sale. Buyer shall pay the balance of real property taxes.
- F. Movant shall pay the stamps of the original sales deed, notary fees, and stamps for the cancellation of any encumbrance.

- G. Buyer shall pay all expenses related to the certified copy of the sales deed, its presentation and inscription in the Property registry and financial charges, including discounts, taxes, and interest.
- H. The sale is subject to overbidding.

Trustee requests that any overbids be in increments of \$1,000.00.

While there are liens on the Property held by Western Insurance Company and Mark j. Rice, A Professional Corporation, those parties entered into a Stipulation with the Movant allowing the sale of the Property free and clear of liens. Dckt. 113.

Trustee estimates net proceeds from the sale of \$36,860.00.

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: **XXXXXXXXXXXXXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it allows the liquidation of property of the estate and provides proceeds to be administrated in the Chapter 7 case.

Request for Approval of Broker's Fee

Movant has estimated that a 6 percent broker's commission from the sale of the Property will equal approximately \$2,430.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 6 percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court to allow the sale to move forward immediately upon entry of the order approving sale because there is no anticipated opposition to the Motion.

Here, no party in interest has opposed the Motion.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief 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 Sell Property filed by J. Michael Hopper, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Movant, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Maxie Santiago and Michale Young or nominee (“Buyer”), the Property commonly known as described as 19,957.452 square meter of land in Manuabo, Puerto Rico (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$40,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 125, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 7 Trustee is authorized to pay a real estate broker’s commission in an amount not more than 6 percent of the actual purchase price upon consummation of the sale. The 6 percent commission shall be paid to BC Properties, the broker for the Estate.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is not waived for cause.

11. [18-26393-E-7](#)
[HSM-2](#)

JOHNNY/DIANE MCCOY
Nikki Farms

**MOTION TO COMPROMISE
CONTROVERSY/APPROVE
SETTLEMENT AGREEMENT WITH
JOHNNY LEN MCCOY AND DIANE
MICHELLE MCCOY
3-11-19 [32]**

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 Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2019. ^{FN.1.} By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

FN.1. Debtor filed its Original Notice on March 11, 2019 and provided notice the same day. Dckts. 33, 387. The Original Notice sought to set the hearing on the Motion for April 16, 2019 at 10:30 a.m. No such hearing date/time existing, the court issued a Memo To File Re: Calendar Correction informing Debtor the Motion would not be calendared until an Amended Notice corrected the defect. Dckt. 38.

Pursuant to the written instruction of the court, Debtor filed an Amended Notice seeking to set the hearing for April 25, 2019 at 10:30. Dckts. 39, 40.

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

The Motion for Approval of Compromise is granted.
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Michael P. Dacquist, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with the debtors, Johnny Len McCoy and Diane

Michelle McCoy (“Settlor”).

The claims and disputes to be resolved by the proposed settlement relate to insurance proceeds, some received and some anticipatory, which stem from fire damage (the Camp Fire) to Settlor’s real and personal property (“Insurance Proceeds”). More specifically, the parties dispute as to what amounts are exempt and what amounts, if any, should be distributed to creditors.

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. 36):

- A. Settlor shall pay Movant from the Insurance Proceeds an amount sufficient to pay (1) all allowed claims and (2) all allowed administrative claims. In the event payment is due before all allowed claims are determined, the payment amount shall be reasonably estimated by the Movant.
- B. Settlor shall deposit within 5 days of the Agreement \$131,500.00 of the Insurance Proceeds to be held in a client trust account by their counsel, Nikki Farris, until the estimated payment is fully determined.
- C. Settlor shall make the payment to the Movant no later than 5 business days after March 20, 2019. Settlor shall have until that time to inform Movant whether they have any objection to any filed proofs of claim.
- D. Settlor agrees (1) not to further amend Schedule C with respect to the Insurance Proceeds and the personal and real property pertaining thereto; (2) not assign, sell, transfer, or encumber their or the Estate’s interest in the Insurance Proceeds; (3) shall not impede Movant’s right to obtain payment pursuant to the Agreement; and (4) shall cooperate with the Movant in effectuating the purpose of the Agreement.
- E. Movant agrees not to undertake efforts to impair Settlor’s rights.
- F. The Agreement is condition on Bankruptcy Court approval.
- G. In the event of default by either party, Movant may commence an adversary proceeding or file a motion with the court to enforce rights and remedies pursuant to the Agreement.

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 argues that “litigation always involves a risk of loss.” However, no specific challenges in the present litigation are raised. No details are provided as to what the likelihood of Debtor successfully claiming an exemption would be, or what portion of the Insurance Proceeds would go to Settlor, the Estate, and Creditors.

Based on the evidence presented, this factor is at best neutral.

Difficulties in Collection

Movant argues this factor would be “of limited import” here because Settlor has already received significant Insurance Proceeds.

Contrary to that assertion, easy collection clearly makes settlement less essential.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues “the [Movant’s] claims are relatively straight forward,” and that the primary delay and expense here would arise from discovery and trial.

This argument is well-taken. The Insurance Proceeds would likely be significantly diminished if the parties were forced to proceed with discovery and trial.

Paramount Interest of Creditors

Movant argues the settlement is in the best interest of the creditors because it would result in full payment to all allowed claims.

Movant’s argument here is also well-taken.

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 delay and expense of discovery and trial are mitigated, allowing full payment of allowed claims in this case, and for Settlor to retain funds as well. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Michael P. Dacquist, 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 debtors, Johnny Len McCoy and Diane Michelle McCoy (“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. 36).