

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

**Honorable Ronald H. Sargis**  
Bankruptcy Judge  
Modesto, California

**DUE TO SCHEDULING CONFLICTS FOR THE COURT  
THIS CALENDAR SHALL BE CALLED AT 11:00 A.M.**

**May 18, 2023 at 10:30 a.m.**

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<b>1.</b>	<b><u>22-90415</u>-E-7</b> <b><u>BLF</u>-3</b>  <b>1 thru 3</b>	<b>JOHN MENDOZA</b> <b>Peter Macaluso</b>	<b>MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH WVJP 2021-4, LP 4-11-23 <a href="#">[50]</a></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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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 April 11, 2023. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

Gary R. Farrar, the Chapter 7 Trustee, (“Movant”) requests that the court approve a “Case Administration Settlement Agreement” (“Compromise”) with Creditor WVJP 2021-4, LP (“Creditor”) in which the parties have agreed how to administer scheduled real property and possible administration of undisclosed assets.

This Agreement is a combined post-petition credit/reduction of secured claim/order of distribution of monies recovered by the Movant as the Trustee administering the bankruptcy case. Movant states Creditor’s judgment liens diminish recovery available to the bankruptcy estate from liquidation, therefore, Movant cannot feasibly pursue liquidation without a compromise with Creditor.

Movant and Creditor have reached a compromise, which is summarized below:

1. Movant will liquidate scheduled real property and Creditor will subrogate a portion of its entitlement to pay unsecured claims, summarized as follows:
  - a. If the property sold is subject to Creditor’s lien, then:
    - i. A carve out of the lesser of (a) 10% of the monies payable to Creditor from the proceeds or (b) 10% of the total unsecured claims, up to a collective maximum of 10% of the total unsecured claims.
2. Additionally, if Movant pursues a claim against Debtor or third party to recover prepetition transfers or undisclosed properties, and recovers, for the benefit of the estate, Movant agrees to distribute proceeds from liquidation of each claim in an agreed upon order:
  - a. First, if the recovery results in a sale of the property, to pay costs of sale, senior liens, agreed additional costs for disposition of the property, and a reserve for estimated taxes.
  - b. Second, to Creditor to pay any outstanding credit balance for monies provided to the Trustee for paying fees and costs to the Golden Goodrich LLP Law Firm employed as special counsel.
  - c. Third, to agreed administrative expenses of the Bankruptcy Estate.
  - d. Fourth, the lesser of 10% of each recovery, after costs of sale, or 10% of the total unsecured claims, to and for the benefit of creditors holding unsecured claims, up to a collective maximum of 10% of the unsecured claims.
  - e. Fifth, the remainder to Creditor until Creditor’s claim is paid in full, with the remainder going to general unsecured claims.
3. Creditor will provide a line of credit that Movant will use to make periodic payments to Special Counsel for fees and costs reasonably earned and incurred in pursuing claims. The terms for the post-petition credit as part

of this Agreement are sated in paragraph 1(e) of the Agreement, and are summarized by the court as:

- a. The line of credit will be in the form of a segregated account funded with \$50,000.
  - b. The Trustee will use the monies to make periodic payments to the Golden Law Firm for their fees and costs, as authorized by the court in the order authorizing their employment.
  - c. All of the disbursement to the Golden Law Firm are subject to interim and final approval by the court as provided in 11 U.S.C. § 331 and § 330.
4. Creditor reduces its secured claim against a Michigan Property by \$250,000 due to purchasing the property at a judicial levy sale for \$150,000 less than what Debtor valued the property for. Creditor further agrees to reduce the claim by an additional amount equal to the difference between \$250,000 and the net proceeds amount if Creditor is able to sell the property within one year of Movant's waiver of right of redemption.

The full terms of the Settlement are set forth in the Case Administration Settlement Agreement filed as Exhibit B in support of the Motion, Dckt. 56.

## **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 the probability in success is “uncertain, at best.” Movant argues the Compromise allows Movant to potentially administer previously undisclosed assets in a manner expedient and cost-effective to pay administrative expenses and distributions to unsecured claims.

### **Difficulties in Collection**

Movant argues this factor is not applicable as it would not be possible to sell the scheduled real property in an amount in excess of Creditor’s lien, making collection not possible.

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

Given the uncertainty in litigation, initiating litigation would be expensive, take time, and consume a significant portion of any potential benefit to the estate.

### **Paramount Interest of Creditors**

Movant argues this factor weighs in favor of approval as it allows Movant to collect to make distributions to unsecured claims and results in a significant savings in time and administrative expenses.

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

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

The Motion to Approve Case Administration and Settlement Agreement filed by Gary R. Farrar, 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 the Case Administration Settlement Agreement between Movant and WVJP 2021-4, LP (“Creditor”) 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 in support of the Motion (Dckt. B).

**IT IS FURTHER ORDERED** that as part of the Approval of the Case Administration Settlement Agreement the court, pursuant to 11 U.S.C. § 364(b) authorizes Creditor to provide a \$50,000.00 line of credit for Trustee to use to pay the fees and expenses owing to the Golden Goodrich , LLP Law Firm as special counsel for the Trustee, as provided for by the court in the separate order authorizing such employment and for the payment of interim and final attorney’s fees and costs for special counsel pursuant to 11 U.S.C. § 331, § 330.

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

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Local Rule 9014-1(f)(1) Motion—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 April 17, 2023. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge 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 Extend Deadline to File a Complaint Objecting to Discharge, Motion To Extend Deadline to File Complaint Objecting to Dischargeability of a Debt and Motion to Extend Deadlines Objecting to Exemptions is granted for One Final Extension.**

WVJP 2021-4, LP, ("Movant") moves to extend the deadline to file a complaint objecting to John Pierre Mendoza's ("Debtor") discharge because Movant and the Chapter 7 Trustee have "been engaged in extensive negotiations related to the disposition of estate assets." Motion, Dckt. 60 at 2:24-25. Because of these discussions, Movant has not had sufficient time to investigate the property or exemptions. Movant's Counsel's Declaration notes that Movant and Trustee have been engaged in extensive negotiations related to estate assets. Declaration, Dckt. 62 at 2 ¶ 4. The discussions have caused Movant to have insufficient time to investigate Debtor's property or exemptions. *Id.* Therefore, Movant is requesting a second extension of deadlines to object to exemptions, discharge, or whether certain debts are dischargeable.

## **Debtor's Opposition**

Debtor filed an opposition on May 3, 2023. Dckt. 65. Debtor states the deadline to request an extension has passed, as this Motion was not filed until April 17, 2023. Additionally, Debtor states there is no evidence of why a second extension is warranted.

## **Movant's Reply**

Movant filed a reply on May 10, 2023. Dckt. 67. Movant states the deadline to object to exemptions, discharge, and file a non-dischargeability complaint were extended through and including April 17, 2023. Additionally, Movant reasserts their Motion and supporting Declaration as grounds for why an extension is warranted.

## **Discussion**

The court may, on motion and after a noticed hearing, extend the time for objecting to a claim of exemption or the entry of discharge for cause. FED. R. BANKR. P. 4003(b)(1), 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.* The rules do not distinguish whether the “time for objection” is the original time, or extended time. Therefore, under the plain language of the Rules, there can be numerous extensions to objecting to a claim of exemption or entry of discharge, so long as the request is made prior to the expiration of time for the objection.

The court order Movant's deadline to object to Debtor's exemptions and discharge be extended “through and including” April 17, 2023. Order, Dckt. 33. As such, pursuant to Federal Rules of Bankruptcy Procedure 4003(b)(1) and 4004(b)(1), April 17, 2023 was the last day a motion could be filed to further extend the deadlines. Here, Movant filed their Motion on April 17, 2023, prior to the expiration of the deadlines. The Motion has met its procedural deadline.

Debtor argues there is no evidence as to why a second extension is warranted. The court disagrees. From the evidence provided to the court, and upon further review of the docket, Movant has been engaged in lengthy and productive negotiations with Trustee regarding their interests in the bankruptcy estate. Movant's discussions with Trustee have led to the entry of a compromise, which has the potential to recover and make significant distributions not only to Movant, but also other creditors in the case.

The court finds Movant has been an active and productive participant in this bankruptcy case, and finds good cause to further extend the deadlines. The court finds that in the interest of Movant to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge is extended to June 16, 2023.

This is granted as the final extension of the deadline, the court recognizing Debtor's desire to either get served with a complaint and tackle the contentions or move forward in the Chapter 7 case and get the discharge entered now.

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

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

The Motion to Extend Deadline to File a Complaint Objecting to Discharge filed by WVJP 2021-4, LP, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the deadline for Movant to object to John Pierre Mendoza’s (“Debtor”) discharge is extended to June 16, 2023.

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

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

Sufficient Notice 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 April 11, 2023. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

The Motion to Employ 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 Employ is granted.**

Gary Farrar (“Trustee”) seeks to employ Golden Goodrich LLP (“Counsel”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel to investigate whether Debtor has additional, undisclosed assets, and, if warranted, proceed with adversary proceedings to recover the assets.

Trustee argues that Counsel’s appointment and retention is necessary to determine if the Debtor has undisclosed assets and recover them. The terms of employment are as follows:

- |    |                           |  |
|----|---------------------------|--|
| 1. | Hourly rate               | \$250 to \$600 per hour.   |
| 2. | Monthly Payment Procedure | Creditor WVJP 2021-4, LP will provide a \$50,000.00 line of credit |



that the Trustee will use to make monthly payments.

3. Fee Applications

Counsel will apply to the court for the approval of compensation in accordance with 11 U.S.C. § 330 and 331.

Jeffrey I. Golden, a Partner of Golden Goodrich LLP, testifies that the firm has extensive experience surrounding the scope of the proposed representation. Jeffrey I. Golden testifies he and the firm represent WVJP 2021-4, LP, the largest secured creditor of Debtor and the Estate in unrelated matters. Mr. Golden states the representation of WVJP 2021-4, LP have no relation to Debtor's case. Therefore, Mr. Golden states, there is no conflict for the Firm to represent the Trustee as Counsel.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Golden Goodrich LLP as Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Motion and supporting documents. Approval of compensation is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by Gary Farrar ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is granted, and Trustee is authorized to employ Golden Goodrich LLP as Counsel for Trustee on the terms and conditions as set forth in the Motion.

**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 331 and § 330 and subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED**, the court authorizes the Trustee to pay the legal fees and expenses the Trustee determines are reasonable for the monthly billings for the services provided by Golden Goodrich, LLC subject to:

1. The Trustee filing a monthly running report stating the monthly fees and costs paid for the then current and the prior months;
2. Golden Goodrich LLP filing an interim fee application at least every four months, with the first interim fee application to be filed in September 2023 (for the May - August 2023 fees and costs), and then every fourth month thereafter.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 25, 2023. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Abandon 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, -----.

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

The Motion filed by Gary R. Farrar ("the Chapter 7 Trustee") requests that the court authorize him to abandon property commonly known as 1439 Calaveritas Road, San Andreas, California ("Property"). The Property is encumbered by the liens of Bank of America, N.A., securing claims of \$127,812.32. The value of the Property is \$472,330.00, based on Debtor's Schedules A/B, C, and D. Dckt. 22.

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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

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

The Motion to Abandon Property filed by Gary R. Farrar (“the Chapter 7 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 1439 Calaveritas Road, San Andreas, California is abandoned to Robert Allen Merrick by this order, with no further act of the Chapter 7 Trustee required.