

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

May 26, 2022 at 10:30 a.m.

1. [19-90464-E-7](#)
[ADJ-3](#)

RICHARD RICKS
Pro Se

MOTION TO PAY
5-10-22 [206]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 10, 2022. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Pay 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 Pay 2021 estate income taxes is granted.

Irma Edmonds ("Movant") requests authority to pay income tax for 2021 owed by the bankruptcy estate to the California Franchise Tax Board in the amount of \$332.00 due by June 15, 2022.

DISCUSSION

Movant argues pursuant to 11 U.S.C. §§ 105(a); 346; 503(b), an order is required so the Trustee can properly administer the bankruptcy estate.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to “the actual, necessary costs and expenses of preserving the estate” Under 11 U.S.C. § 503(b)(1)(B), income taxes postpetition in a chapter 7 case generated from property of the estate are subject to administrative priority. 4 Collier on Bankruptcy P 503.07 (16th 2022).

Movant having demonstrated that the expenses are necessary, the court finds that Movant paying 2021 income taxes is necessary for Debtor and provides benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay administrative expenses in the amount of \$332.00 for Debtor’s 2021 income taxes to the Franchise Tax Board.

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

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

The Motion for Allowance of Administrative Expense filed by Name of Movant (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the Chapter 7 Trustee is authorized to pay the Franchise Tax Board \$332.00 as an allowed administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

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's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 21, 2022. By the court's calculation, 35 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.

<p>The Motion for Approval of Compromise is granted.</p>

Gary R. Farrar, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Darlene Ann Alameda ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Debtor's transfer of her 50% interest in her residence at 2420 Mountain Ridge Drive, Modesto, to her niece, two months before filing for bankruptcy. Settlor did not receive consideration for this transfer, received a satisfaction from the Internal Revenue Service on a claim, and she continues to reside in the Property. Debtor's interest was worth approximately \$99,500.00, encumbered by the IRS lien of \$31,000.00, leaving a net equity of about \$68,500.00.

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 F in support of the Motion, Dckt. 30):

- A. No later than 21 days after signing the Agreement, Debtor will issue and deliver a check to Trustee for \$40,000.00.

- B. Debtor shall not assert an exemption in any portion of the Settlement Agreement.
- C. The Trustee releases and discharges Debtor from any and all potential claims and causes of actions.
- D. The Debtor releases and discharges Trustee from any and all potential claims and causes of actions.

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

Trustee has a strong probability of success, however, it is not guaranteed. Settlor could be successful in arguing she did receive consideration from the IRS by satisfaction of the personal debt. Additionally, she could argue that her interest exceeded the 50% interest and she still has a beneficial interest in the Real Property.

Difficulties in Collection

Trustee argues Movant could exempt all equity in the Real Property under California Code of Civil Procedure § 704, therefore, it could result in no recovery.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues the estate has no assets to pay for litigation and the settlement allows the estate to recover \$40,000.00 immediately with minimal expense.

Paramount Interest of Creditors

Movant argues the settlement allows for a reasonable distribution to unsecured creditors, “probably” in excess of fifty cents on the dollar.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it allows for \$40,000.00 to be paid immediately, avoids fees and costs associated with litigation, and allows payment to unsecured creditors. The Motion is granted.

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

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

The Motion to Approve Compromise filed by 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 Compromise between Movant and Darlene Ann Alameda (“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 F in support of the Motion (Dckt. 30).

FINAL RULINGS

3. [20-90115-E-7](#) ALI MUTHANA MOTION FOR LEAVE TO AMEND
[21-9008](#) WF-2 COMPLAINT
MCGRANAHAN V. SUWAID ET AL 4-18-22 [26]

Final Ruling: No appearance at the May 26, 2022 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 Plaintiff-Trustee, Defendants, and Debtor's Attorney on April 18, 2022. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion for Leave to Amend Complaint 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 Leave to Amend Complaint is granted.

The Chapter 7 Trustee, Michael McGranahan ("Plaintiff-Trustee") filed this Motion for Leave to Amend Complaint against Defendants Bader Alikassim Suwaid and GNN Real Estate and Mortgage, Inc., collectively, "Defendants," to add an additional claim for relief against new defendant, Debtor Ali Muthana.

Trustee states the reason for bringing this Motion:

1. Trustee seeks to add a claim alleging the rights acquired by Defendant-Debtor from Defendant Suwaid under the Rent Free Letter are void or avoidable under 11 U.S.C. § 549. The amendment is necessary to allow Trustee to recover transferred property free and clear of unauthorized rights granted to Debtor.

2. Trustee seeks to amend the Fifth Claim for Relief for Declaratory Relief to seek a declaration that the bankruptcy estate holds title to the Property free and clear of Defendant-Debtor's rights under the Rent Free Letter and free and clear of his claim of exemption.

Trustee has provided the proposed amended complaint as Exhibit A, Dckt. 29.

DISCUSSION

Federal Rules of Bankruptcy Procedure 7015 incorporates Federal Rules of Civil Procedure 15 and allows a party to amend its complaint once as a matter of course within 21 days of serving it or after service of a responsive pleading or motion. Other amendments may only be granted with the opposing party's written consent or the court's leave. Pursuant to Rule 15, the court should freely give leave when justice requires. The court may consider the following factors when deciding to grant leave to amend: (1) undue delay; (2) bad faith or dilatory motive on the part of the movant; (3) repeated failure to cure deficiencies by amendments previously allowed; (4) undue prejudice to the opposing party; and (5) futility of the amendment. 3 Moore's Federal Practice - Civil § 15.15 (2022) (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962) (courts should freely grant leave to amend, absent specified factors)).

Given trial has not commenced, and this case is still at the pre-trial phase, as well as not finding any of the *Foman* factors present in this case, the court finds justice requires allowing Plaintiff-Trustee to amend their complaint to add a claim against Defendant-Debtor and amend the Fifth Claim for Relief.

Plaintiff-Trustee's Motion is granted.

The Chapter 7 Trustee, Michael McGranahan ("Plaintiff-Trustee") filed this Motion for Leave to Amend Complaint

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 Leave to Amend Complaint filed by Michael McGranahan ("Plaintiff-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 for Leave to Amend Complaint is granted, and Plaintiff-Trustee is allowed to amend their complaint against Bader Alikassim Suwaid and GNN Real Estate and Mortgage, Inc. to add an additional claim of relief against Debtor, Ali Muthana, and amend their Fifth Claim of Relief.

Final Ruling: No appearance at the May 26, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff-Trustee, Defendant-Debtor's, Defendants Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on May 2, 2022. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion for Entry of Judgment 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.

The hearing on the Joint Motion for Entry of Judgment is continued to 10:30 a.m. on June 16, 2022 (the next regularly schedule law and motion calendar for the Modesto Division.

CONTINUANCE OF MAY 26, 2022 HEARING

Due to the unavailability of the Judge to whom this case is assigned to attend the May 26, 2022 hearing, the court continues the hearing.

The court has identified several issues requiring clarification as to the judgment to be entered as discussed below. With the continuance, the Parties have the opportunity to file a supplemental joint pleading to clarify such issues and to insure that the judgment entered is what they sought.

Upon the filing of a supplemental pleading, the parties shall also lodge with the court a proposed order granting the Motion and a proposed judgment. That will trigger the court's review of the supplemental pleading, and if the court has no further questions, the court may then enter the order and judgment prior to the scheduled hearing, and remove that matter from the calendar.

REVIEW OF MOTION

Michael D. McGranahan, Chapter 7 Trustee, (“Plaintiff-Trustee”) filed the instant adversary proceeding on June 22, 2021, against Debtor Philip Scott Engle and Dallia Desamito Engle, United States Internal Revenue Service (“IRS”), and California Franchise Tax Board, collectively “Defendants”.

Plaintiff-Trustee’s Complaint alleges they completed the court approved sale of Defendant-Debtor’s residence at 5119 Curtis Street, Salida (the “Property”) “free and clear of liens and interests” on May 20, 2021. Plaintiff-Trustee now holds the net proceeds of the sale in the amount of \$327,404.47.

Plaintiff-Trustee states grounds for the claims asserted in the Complaint, which include:

1. The IRS recorded a lien against the property which Plaintiff-Trustee claims is avoidable pursuant to 11 U.S.C. § 724(a). Complaint at 4:5, Dckt. 1.
2. The Franchise Tax Board recorded a lien against the Property which is avoidable pursuant to 11 U.S.C. § 724(a). *Id.* at 5:4-5.
3. Plaintiff-Trustee is entitled to proceeds from sale for the portion of the tax respective priority tax claims that encumber the Property sold. *Id.* at 5:23-28.
4. Plaintiff-Trustee claims all Defendants dispute Plaintiff-Trustee’s right for payment from sale proceeds.

Plaintiff-Trustee seeks a judgment (stated to be an “order” in the complaint from this Adversary Proceeding) avoiding Tax Liens of the Defendants IRS and Franchise Tax Board and preserving it in favor of the bankruptcy estate pursuant to 11 U.S.C. § 724(a) and 551, for adjudication and declaratory relief determining Plaintiff-Trustee’s claim and legal rights from the sale proceeds, for costs of suit, and for other and further relief as allowable by law.

Defendant-Debtor’s Answer

Defendant-Debtor filed an Answer on July 20, 2021 stating they are requesting accounting of all costs and fees and their homestead exemption come before any costs and fees. Dckt. 8.

Defendant-Debtor filed an Amended Answer on August 12, 2021 (Dckt. 13) admitting much of the allegations but arguing Plaintiff-Trustee failed to mitigate damages by not abiding by Defendant-Debtor’s previous request to sell the property and pay off taxing agencies. Additionally, Defendant-Debtor states they are entitled to a homestead exemption of \$175,000.00, pursuant to California Code of Civil Procedure § 704.730(a)(3)(A), which shall come before any fees and costs, and that they are entitled to accounting of all fees and costs to determine the reasonableness.

Defendant-IRS’s Answer

On August 26, 2021, Defendant IRS filed an Answer (Dckt. 17) denies that the tax liens and secure tax assessments can be avoided pursuant to 11 U.S.C. §§ 724(a), 726(a)(4). Additionally, Defendant-IRS states they lack information as to whether Plaintiff-Trustee is entitled to reasonable fees and costs from the sale proceeds.

Defendant-FTB's Answer

Defendant-FTB filed an Answer on October 14, 2021. Dckt. 24. Defendant-FTB argues that the allegations regarding the tax liens constitute legal conclusions which does not require admission or denial. Therefore, Defendant-FTB denies the allegations. Defendant-FTB denies that Plaintiff-Trustee is entitled to payment of fees and costs from sales proceeds.

Settlement with Defendants IRS and FTB

Plaintiff-Trustee has resolved and paid the resulting claims of Defendants IRS and FTB. Motion at 3, Dckt. 47. Plaintiff-Trustee has dismissed these Defendants as parties in the present adversary.

The remaining parties in the adversary are Plaintiff-Trustee and Defendant-Debtor.

Joint Motion for Entry of Judgment

Plaintiff-Trustee and Defendant-Debtor brings this Joint Motion stipulating to the following relief to be granted in this Adversary Proceeding:

- I. The Parties seek entry of judgment “stipulating and agreeing” to be bound by the terms and conditions of the court approved settlement agreements between Plaintiff-Trustee and Defendants IRS and FTB.
- II. The Parties stipulate the bankruptcy court may enter any other orders sufficient and necessary to carry out the terms and conditions of the present Motion.
- III. The Parties execute and present the Motion by the joint-signing of the Motion.

With respect to this requested relief, it is unclear what a judgment would be stipulating and agreeing to. It is the Trustee and Defendant-Debtor who are agreeing and stipulating. It appears that the judgment they are agreeing to is one that would state something like:

IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiff-Trustee Michael D. McGranahan and Philip Engle and Dalia Engle, and each of them, Defendant-Debtors, are each bound by the terms of the Stipulation approved by the court between Plaintiff-Trustee Michael McGranahan, the Internal Revenue Service, and the California Franchise Tax Board, and each of them (20-90327; Order and Stipulation, Dckts. 143, 128 (Exhibit 1)).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the court shall enter supplemental orders for the enforcement of this judgment, which orders shall be requested by noticed motion or joint *ex parte* motion filed in this Adversary Proceeding.

With the continuance of this hearing, the Parties have the opportunity to refine the relief they are requesting, file supplemental pleadings, and lodge with the court a proposed order granting the motion and a proposed judgment.

5. [18-90029-E-11](#) **JEFFERY ARAMBEL** **CONTINUED MOTION TO ABANDON**
[FWP-13](#) **Pro Se** **4-8-21 [1410]**

Final Ruling: No appearance at the May 26, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

The Motion to Abandon 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 hearing on the Motion to Abandon is continued to 10:30 a.m. on June 30, 2022.</p>

CONTINUANCE OF MAY 26, 2022 HEARING

The Plan Administrator filed a Status Report requesting that the hearing be continued to June 30, 2022. Dckt. 1692. The proposed lot line adjustment is to be presented to the Board of Supervisors on May 24, 2022, and the parties continue in their significant good faith efforts to conclude this matter.

The court continues the hearing, first as requested by the Plan Administrator and American AgCredit (Status Report, Dckt. 1690); and second, the judge to whom this case is assigned not being available (due to disrupted travel plans by Midwestern storms) to conduct a hearing on May 26, 2022.

REVIEW OF MOTION

The Motion filed by Focus Management Group USA, Inc. (“the Plan Administrator”) requests that the court authorize the Plan Administrator to abandon the following properties commonly known as:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property
8. the Murphy Ranch 756,
9. the Murphy 240 Rangeland,

(the “Properties”).

The Declaration of Juanita Schwartzkopf has been filed in support of the Motion. Dckt. 1412. Ms. Schwartzkopf provides testimony that while the Properties have substantial market value, they are of inconsequential value as there is no realizable equity because the debt secured by the Properties exceeds the value of the real properties. *Id.*, ¶ 24. Moreover, according to the Plan Administrator, the properties are burdensome because the Estate does not have the funds to continue paying the costs of carrying the Properties including insurance, real property taxes, and other charges or the costs of administration of such properties. *Id.*, ¶36.

Ms. Schwartzkopf testifies that the Properties have been actively marketed by the Reorganizing Debtor and by the Plan Administrator for over 16 months during the Negotiated Period (Plan provision during which Debtor was to perform certain duties regarding plan assets) and for years prior to the Plan confirmation but that unfortunately they were not sold. *Id.*, ¶18. The Plan Administrator being unable to obtain offers in an amount that was sufficient to pay the secured claims on and tax liabilities related to the Properties. *Id.* Additionally, the Plan Administrator explains that SBN V Ag I LLC (“Summit”) as one of the primary sources of funds for the post-confirmation administration of the Estate has indicated they will no longer consent to further use of their cash collateral for pursuing short sales of its collateral. *Id.*, ¶ 37. Ms. Schwartzkopf also testifies that Summit has informed the Plan Administrator that it intends to proceed promptly with non-judicial foreclosure of the Properties. *Id.*, ¶35.

Creditor’s Opposition

Creditor with secured claim, American AgCredit does not object in its entirety to the abandonment of the Properties, instead Creditor American AgCredit objects specifically as to the timing of the abandonment of the Murphy Ranch Property. Dckt. 14216. American AgCredit explains that for the last five months they have been engaged in the Lot Line Adjustment (“Adjustment”) process with the County of Stanislaus related to the Murphy Ranch 756 and the Murphy 240 Rangeland. Thus, American AgCredit requests that the abandonment not occur until the County of Stanislaus approves the adjustment, the adjustment is fully recorded and the appropriate quitclaim deeds by and between the Plan Administrator and American AgCredit are approved by the parties’ title companies and successfully recorded..

Plan Administrator's Reply

The Plan Administrator filed a Reply indicating they are amenable to deferring the effective date of the abandonment of the Murphy Ranches for a reasonable time during which the Adjustment may be and should be completed; but asks the court for the authority to effectuate the abandonment of the Murphy Ranches at such future time as the Plan Administrator determines in its business judgment that the abandonment should be effective, even if the Adjustment has not been fully completed. Dckt. 1434..

The Plan Administrator believes this a reasonable request on the basis that the Plan Administrator seeks to avoid capital gains taxes in the event that Summit proceeds with foreclosure remedies; the Plan Administrator will continue to work diligently with Creditor to get the Adjustment resolved; and even after abandonment, the Adjustment process may still continue after the abandonment where Debtor has pledged to continue working with Creditor to complete the Adjustment process.

SBN V Ag I LLC ("Summit") Response

Summit filed a Response in support of the Motion on May 7, 2021 stating that they support the abandonment of the Properties and the Plan Administrator's proposal of temporary deferral of the Murphy Properties to a later date to allow for the Adjustment process but they continue to reserve their right to commence non-judicial foreclosure proceedings and request that any order approving the abandonment make it clear that any delay in abandonment is without prejudice to Summit's rights to provide notice of relief from stay and commence its foreclosure rights and remedies. Dckt. 1438.

DISCUSSION

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 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 Plan Administrator to immediately abandon the following properties:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property

With respect to the Murphy Ranch 756 and the Murphy 240 Rangeland, completion of the lot line adjustment to correct for the Debtor having recorded Certificates of Compliance, without Creditor's consent that negatively impact its collateral, which Creditor has now foreclosed on.

Rather than having a vague “the Plan Administrator can abandon at some point in the future, and then potentially having emergency motions to modify that authorization,” the court bifurcates the orders on the relief requested and issues a final order for abandonment of seven properties above, and continues the hearing on the request to abandon the Murphy Ranch 756 and the Murphy 240 Rangeland properties to 10:30 a.m. on August 12, 2021.

In addition to helping the parties avoid “abandonment anxiety,” the properties being in the Plan Estate, this federal court has jurisdiction to address the issue of the adjustments by Debtor to the property that is currently in the Plan Estate through an adversary proceeding that Creditor may believe necessary with third-parties (not the Plan Administrator) to correctly identify the property foreclosed on through these bankruptcy proceedings.

August 12, 2021 Hearing

The Plan Administrator filed an updated Status Report on August 10, 2021, Dckt. 1498, concerning this Motion. The Plan Administrator advises the court that additional time is needed and a continuance of this hearing is requested to late September 2021. A non-judicial foreclosure sale of the Murphy Ranches could be conducted in mid-October 2021, and the Plan Administrator wants to insure that the abandonment occurs before that time.

September 30, 2021 Hearing

No further documents have been filed in this Contested Matter as of the court’s September 28, 2021 review of the Docket. At the hearing, counsel for the Plan Administrator reported that the lot line adjustments have not yet been completed, and the Parties agreed to a further continuance of this hearing.

October 21, 2021 Hearing

At the hearing, the Parties requested a continuance to allow for all of the preliminary steps to be taken so that the abandonment may occur.

November 16, 2021 Status Report

The Plan Administrator filed an updated Status Report on November 16, 2021, reporting that the abandonment cannot be completed at this time and a further continuance was necessary. Dckt. 1585.

December 16, 2021 Hearing

Attorneys for the Plan Administrator filed a Status Report requesting a further continuance as further negotiations were conducted.

March 10, 2022 Hearing

At the hearing counsel for the Plan Administrator reported that all documents have been received for the lot line adjustment and it may now be completed. There still remain some quit claim deeds required, but the parties are waiting on information from the County as to what, if any, quit claims will be required.

April 18, 2022 Status Report

On April 18, 2022, the Plan Administrator filed a status report requesting the Abandonment Motion be further continued to May 26, 2022. Dckt. 1672. The Plan Administrator states there are final steps needed to complete the lot line adjustment while preserving the potential abandonment prior to the foreclosure sale.

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 filed by Focus Management Group USA, Inc., the Plan Administrator, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Abandon is continued to **10:30 a.m. on June 30, 2022.**

Final Ruling: No appearance at the May 26, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Chapter 7 Trustee, and Office of the United States Trustee on April 22, 2022. By the court's calculation, 34 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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.

The hearing on the Objection to Proof of Claim Number 14 of Michael Omeregee is continued to 10:30 a.m. on June 16, 2022.

CONTINUANCE OF MAY 26, 2022 HEARING

Due to the unavailability of the Judge to whom this case is assigned to attend the May 26, 2022 hearing, the court continues the hearing.

REVIEW OF OBJECTION

Charles Collantes Macawile, Jr., the Debtor, ("Objector") requests that the court disallow the claim of Michael Omeregee ("Creditor"), Proof of Claim No. 14-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$135,000.00. Objector asserts that the claim is not supported by any admissible evidence. Objector states no details beyond "Fraud/Conversion Civil Complaint" are provided in the proof of claim itself as to what Debtor obtained by fraud, what Debtor converted, how much of the \$135,000.00 is based on fraud, and how much is based on conversion. Rather, Creditor provides a copy of the state court complaint.

As admitted by Objector, attached to Proof of Claim 14-1 is copy of the twenty-five (25) page state court complaint in which claims for Negligence, Elder Abuse, Unfair Business Practices, and Conversion. In the prayer at the end of the Complaint it states that the conversion damages are \$65,000 and punitive damages of \$1,000,000.00. No other dollar amounts for damages are identified in the prayer or with

the Negligence, Elder Abuse, or Unfair Business Practices claims for relief. However, it is stated that for the unfair business practices claim for relief, Creditor seeks to recover “all funds paid to Defendant” along with attorney’s fees and costs. For the Elder Abuse and Negligence the damages are stated to be “damages as stated below.” This appears to incorporate the conversion damages and the unfair business practices damages (all monies paid to the Defendants in the State Court Action).

REUSED DOCKET CONTROL NUMBER

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial 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.

The court notes Creditor has attached a copy of their twenty-six (26) page state court complaint which details their causes of actions for (1) negligence; (2) dependant adult abuse/neglect; (3) unfair business practices; and (4) conversion. Within the Complaint, Creditor details, well beyond a short and plain statement and with particularity, the four causes of actions against defendant. The Proof of Claim provides substantial evidence where a “reasonable mind might accept as adequate to support a conclusion.” Creditor satisfies the requirements for a Proof of Claim.

Many arguments in Objector’s objection appear to be denying allegations in the Complaint. Objector can then present evidence and legal authorities that counters the prima facie validity of the asserted claim based on which is stated in Proof of Claim 14-1 and the twenty-six page State Court Complaint attached thereto.

The Objection to Claim states the following grounds upon which Objector alleges the claim should be disallowed in its entirety:

- A. Proof of Claim 14-1 is not “supported by admissible evidence:
 - 1. While making this introductory statement, it is then argued that Federal Rule of Bankruptcy Procedure 3001(a) requires a written statement setting forth creditor’s claim. Objection, p. 2:11-16; Dckt. 261.

2. Objector then argues that the proof of claim must be filed under penalty of perjury. Since the Creditor's attorney signed it, and can't have actual knowledge, and the Proof of Claim form itself does not have written statement, then it must fail.
3. Objector asserts that the Complaint is not verified and therefore is not sufficient. Further, that Exhibit A to the Complaint (identifying the property converted) is not attached, so it is insufficient. It is also stated to be vague as to the damages requested. As the court could readily identified, there is only \$60,000 in damages for conversion, Elder Abuse, and unfair business practices (which damages overlap) and \$1,000,000.00 in punitive damages.

B. Objector then asserts the following counter facts to what is alleged in the Complaint:

1. Objector was a principal of the entity that owned the property where the residential facility in which Creditor alleges the misconduct was located. Objector was not an employee of the residential facility.
2. Creditor alleges that the conversion occurred in December 2015, but the residential facility was closed in April 2015 due to a fire at the residential facility.
3. Neither Objector nor his entity that owed the real property never operated the residential facility located on the real property.
4. Objector provides his Declaration under penalty of perjury testifying to the above facts that counter allegations in the Complaint.

Requirement for Proof of Claim

Other than citing to Federal Rules of Bankruptcy Procedure 3001 and 3007, Objector provides no analysis of those Rule, citations to cases, or citations and analysis from third party treatises. This court begins with Federal Rule of Bankruptcy Procedure 3001, which provides in pertinent part (emphasis added):

Rule 3001. Proof of Claim

(a) Form and Content. A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

(b) Who May Execute. A **proof of claim shall be executed by the creditor or the creditor's authorized agent** except as provided in Rules 3004 [proof of claim filed by trustee, debtor in possession] and 3005 [proof of claim filed by guarantor, surety, indorser, or other codebtor].

(c) **Supporting Information.**

(1) **Claim Based on a Writing.** Except for a claim governed by paragraph (3) of this subdivision, **when a claim**, or an interest in property of the debtor securing the claim, **is based on a writing, a copy of the writing shall be filed with the proof of claim.** If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(2) Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply. In a case in which the debtor is an individual:

(A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.

(B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.

(C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.

While Objector argues that there needs to be a written statement of the grounds and evidence attached to a proof of claim, citing to Federal Rule of Bankruptcy Procedure 3001(a), that portion of the Rule clearly states:

A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

The proof of claim itself is “a written statement” which sets for the creditor’s claim. Additionally, that the proof of claim that is a written statement setting forth a creditor’s claim “SHALL conform to the . . . Official Form.” It does not state, as alleged by Objection “Rule 3001(a) requires a “written statement setting forth a creditor’s claim.” This quote omits the critical language that “**a proof of claim** is a written statement setting forth a creditor’s claim.” It does not state that in addition to the proof of claim, there must be an additional written statement.

As this is discussed in Collier on Bankruptcy:

[1] Content of Claim

Federal Rule of Bankruptcy Procedure 3001(a) sets out the required contents of a proof of claim. The Bankruptcy Code provides no guidance

concerning what a proof of claim must contain¹ and, therefore, Rule 3001 is the definitive authority concerning the contents. By making reference to the appropriate official form, Rule 3001 provides a description of a proof of claim. The proof must be in writing; set forth the creditor's claim; be executed by the creditor or an authorized agent; attach writings on which the claim, or an interest in the debtor's property that secures the claim, is based; and attach documents evidencing perfection of any security interest.

9 Collier on Bankruptcy P 3001.01 (16th 2022)

Other than attaching documents on which the claim is based (such as a note, contract, guarantee) or security interest is perfected (such as a deed of trust or UCC-1), there is nothing such as a detailed statement complying with Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008, with admissible testimony and documentary evidence to be included with the proof of claim.

Objector's assertion is a gross misstatement of Federal Rule of Bankruptcy Procedure 3001(a).

Testimony of Objector

The Objector (the Debtor) provides his testimony under penalty of perjury in support of the Objection to Claim. Declaration, Dckt. 263. The Declaration is made under penalty of perjury as required by 28 U.S.C. § 1746. With respect to objecting to Proof of Claim 14-1, Objector testifies (identified by paragraph number in the declaration, with emphasis added):

5. I am familiar with the Claim. Although it states in Section 8 that the basis of the claim is "Fraud/Conversion Civil Complaint" no further details are provided. **I have never obtained anything from the Claimant**, whether by fraud or by conversion or by any other means. I have no idea what I am accused of converting nor how the sum of \$135,000.00 was calculated.

8. During the time period covered by the Complaint, **I was a principal of Change Enterprise, Inc., which owned the real property** where the Claimant was a resident. The Complaint alleges that the Claimant became a resident of Kiernan Village Assisted Living Facility (the "Facility") "circa June, 2011." (Complaint, ¶ 12.) The Complaint is unclear as to when the Claimant ceased to be a resident, but **the conversion of personal property is alleged to have occurred in December, 2015 (Complaint, ¶ 72.) and a fire caused the Facility to shut down in April, 2015.**

9. During the time in question, **neither I nor Change Enterprise, Inc., operated the Facility. I was not employed by any of the other defendants named in the Complaint.** The Facility was leased for many years, including the time period in issue, to RMC Homes, Inc., a completely unrelated entity. RMC Homes, Inc., operated the Facility, not me and not Change Enterprise, Inc.

Though the Declaration says little more than I didn't get anything from the Creditor, I did not work for the residence facility, and neither I nor any of my businesses operated the residence facility, it does provide factual testimony to counter the alleged conversion, Elder Abuse, unfair business practices, and

negligence. It is the conversion which states the loss damages, the business relationship for the Elder Abuse negligence, and unfair business practices to recover the monies paid, and all of which are to support punitive damages. The testimony is that Objector got nothing from Creditor and did not operate the facilities where the alleged wrongs occurred.

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 Objection to Claim of Michael Omeregbee (“Creditor”), filed in this case by Charles Collantes Macawile, Jr., the Debtor, (“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 hearing on the Objection to Proof of Claim Number 14 of Creditor is continued to **10:30 a.m. on June 16, 2022.**

7. [20-90435](#)-E-7

CHARLES MACAWILE
David Johnston

TRUSTEE'S FINAL REPORT
4-4-22 [\[253\]](#)

Final Ruling: No appearance at the May 26, 2022 hearing is required.

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 May 12, 2022. By the court’s calculation, 14 days’ notice was provided. 28 days’ notice is required.

The Objection to Trustee’s Final Report 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 hearing on the Objection to Trustee’s Final Report is continued to 10:30 a.m. on June 16, 2022.</p>

CONTINUANCE OF MAY 26, 2022 HEARING

Due to the unavailability of the Judge to whom this case is assigned to attend the May 26, 2022 hearing, the court continues the hearing.

Chapter 7 Debtor, Charles Collantes Macawile, Jr., (“Debtor”), filed this objection to Chapter 7 Trustee’s, Gary Farrar, (“Trustee”) Final Report filed on April 4, 2022 (Dckt. 253).

The grounds for Debtor’s objection are:

1. The Final Report states an unsecured claim for \$135,000.00 arising from a lawsuit in Stanislaus County which has been stayed due to the bankruptcy action since March 2, 2020.
2. Debtor states as there is no judgment, Mr. Omeregbee (state court Plaintiff) is not entitled any funds from the distribution.
3. Debtor requests the court order Trustee not distribute any funds to Mr. Omeregbee.

Debtor’s Supplement to the Motion

Debtor filed a supplement to the Motion on April 25, 2022. Dckt. 266. Debtor further requests:

1. The disputed \$135,000.00 be deposited with the Clerk of the Court pending further order.
2. Debtor has no other objections to other distributions, including the surplus to the Debtor.

Trustee’s Response

Trustee filed a response on May 12, 2022 stating they agree with Debtor’s solution. Dckt. 270. If Trustee were to insert himself in the state court dispute, it would reduce the amount available to pay other creditors. Trustee requests the court authorize:

- A. Trustee to deposit the disputed \$135,000.00 to the Court to be distributed based on the resolution of the state court action.
- B. Trustee to make all other distributions his Final Report proposes.
- C. Trustee be discharged.
- D. For such other relief as is just and proper.

DISCUSSION

Pursuant to 11 U.S.C. § 704(a)(9), a Trustee is required to make a final report and file a final account of the administration of the estate with the court and United States Trustee. Federal Rules of Bankruptcy Procedure 5009 states a party has thirty (30) days after a Trustee files a final report to file an objection.

Here, the Final Report was filed on April 4, 2022. Dckt. 253. Debtor filed their objection on April 21, 2022. Dckt. 258. Therefore, they satisfied the procedural requirements of objection to Trustee's Final Report.

The Trustee's Suggested Resolution is Incomplete

The Trustee seeks to make disbursement to all other claims and administrative expenses, deposit the \$135,000.00 with the Clerk of the Court, and then when the Debtor's Objection to Claim or the State Court litigation relating to the \$135,000.00 claim is resolved, the court will then disburse the \$135,000.00. This unfortunately leaves some questions that are not expressly addressed for which the following may resolve:

- A. The Chapter 7 Trustee assigns to the Debtor all rights to object to the claim of Michael Omeregbee and to litigate the state court action, if such claim is to be determined there.
- B. The Chapter 7 Trustee, Debtor, and Michael Omeregbee agree that the Trustee deposit the \$135,000.00 with the court, which deposit shall be in the nature of an "interpleader" and the court shall disburse the monies to the prevailing party as determined in a final order on the Objection to Claim or a final judgment in the State Court Action.
- C. The request for disbursement by Creditor Michael Omeregbee or Debtor, or both, shall be by noticed motion, which notice and motion are served on Gary Farrar, who at that time will be the former Trustee in this case.
- D. The portion of the Chapter 7 Trustee's fees on the portion of the \$135,000 is computed to be **\$xxxxxxx** and said amount shall also be deposited with the court. The Chapter 7 Trustee's fees shall be computed on any amount paid to Creditor Michael Omeregbee (11 U.S.C. § 362(a), prohibiting allowance of trustee fees on monies disbursed to the debtor).
- E. Gary Farrar shall file an *ex parte* motion requesting the disbursement of the amount of Trustee's Fees computed on the monies disbursed to Creditor Michael Omeregbee as ordered by the court as provided above, which *ex parte* motion shall clearly show the computation of trustee fees in this case and the percentage (it appears it will be 3%).
- F. The court's order for distribution of the additional Trustee's fees in this case shall be deemed to be a supplement to the Trustee's Final Report, and no supplement to the Trustee's Final Report is required.

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 Objection to Trustee's Final Report filed by Charles Collantes Macawile, Jr., ("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 hearing on the Objection to the Trustee's Final Report is continued to 10:30 a.m. on June 16, 2022.

8. [22-90041](#)-E-11
[UST-1](#)

AREA X INC.
David Johnston

**MOTION TO CONVERT CASE FROM
CHAPTER 11 TO CHAPTER 7, MOTION
TO DISMISS CASE O.S.T.
5-12-22 [[40](#)]**

Final Ruling: No appearance at the May 26, 2022 hearing is required.

United States Trustee having filed a Withdrawal of Motion", which the court construes to be an Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Convert or Dismiss was dismissed without prejudice, and the matter is removed from the calendar.**