

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Modesto, California

**July 2, 2015 at 10:30 a.m.**

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1.	<a href="#"><u>14-91002</u></a> -E-7 CWS-3	SCOTT/PAMELA MITCHELL Scott D. Mitchell	MOTION FOR COMPENSATION BY THE LAW OFFICE OF NEUMILLER & BEARDSLEE FOR CLIFFORD W. STEVENS, TRUSTEE'S ATTORNEY(S) 5-18-15 [ <a href="#"><u>41</u></a> ]
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**Final Ruling: No appearance at the July 2, 2015 hearing is required.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on May 18, 2015. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p><b>The Motion for Allowance of Professional Fees is granted.</b></p>
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Neumiller & Beardslee, the Firm ("Applicant") for Gary Farrar the Chapter 7 Trustee ("Client"), make a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period August 1, 2014 through May 18, 2015. The order of the court approving employment of Applicant was entered on August 7, 2014, Dckt. 15. Applicant requests fees in the amount of \$4,613.50 and costs in the amount of \$270.96.

**STATUTORY BASIS FOR PROFESSIONAL FEES**

**July 2, 2015 at 10:30 a.m.**

**- Page 1 of 46 -**

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). 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.

#### **Benefit to the Estate**

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as

opposed to possible] recovery." *Id.* at 958. According 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?

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including employment and fee applications, communications, general casework and research, and negotiation of a compromise between Debtor and a creditor. The estate has \$17,898.33 (18,000.00 less 101.67 already distributed) of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

#### **FEES AND COSTS & EXPENSES REQUESTED**

##### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Employment and Fee Applications: Applicant spent 3.80 hours in this category. Applicant assisted Client by preparing employment and fee applications for Applicant and other professionals retained by Trustee.

Communications with Trustee: Applicant spent 0.20 hours in this category. This category reflects time Applicant spent communicating or corresponding with the Trustee concerning this case.

Communications with Third Parties: Applicant spent 1.80 hours in this category. Applicant This category reflects time Applicant spent communicating or corresponding with the third parties concerning this case.

General Case Review, Strategy, and Research: Applicant spent 0.70 hours in this category. Applicant reviewed case issues, financial information of the Debtor, Debtor's Schedules and Statement of Financial Affairs. Applicant also researched legal questions arising during the course of the case, formed strategy concerning litigation arising in the case, and worked on other general matters.

Negotiate Compromise Between Debtor and Creditor: Applicant spent 10.50 hours in this category. Applicant drafted and negotiated an agreement to sell certain property to Debtor, in addition to drafting the motion seeking authorization for the sale

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:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Clifford W. Stevens (2014)	6.60	\$325.00	\$2,145.00
Clifford W. Stevens (2015)	1.20	\$335.00	\$402.00
Michael R. Tener (2014)	0.90	\$265.00	\$238.50
Michael R. Tener (2015)	0.20	\$280.00	\$56.00
Ricardo Z. Aranda (2014)	5.80	\$250.00	\$1,450.00
Kim L. Abdallah (2015)	2.30	\$140.00	\$322.00
<b>Total Fees For Period of Application</b>			<b>\$4,613.50</b>

#### **Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$270.96 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$52.36
Photocopies/Printing	\$0.10/page	\$218.60
Total Costs Requested in Application		\$270.96

#### **FEES AND COSTS & EXPENSES ALLOWED**

##### **Fees**

##### **Hourly Fees**

The court finds that the hourly rates were reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$4,613.50 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

##### **Costs and Expenses**

The First and Final Costs in the amount of \$270.96 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case. The court is authorizing that Trustee to pay 100% of the fees and costs allowed by the court.

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

Fees	\$ 4,613.50
Costs and Expenses	\$ 270.96

pursuant to this Application as First and Final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Neumiller & Beardslee, ("Applicant"), Firm for the 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 Neumiller & Beardslee is allowed the following fees and expenses as a professional of the Estate:

Neumiller & Beardslee, Firm Employed by Trustee

Fees in the amount of \$ 4,613.50  
Expenses in the amount of \$ 270.96,

**IT IS FURTHER ORDERED** The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that the 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.

2. [11-94410-E-7](#) SAWTANTRA/ARUNA CHOPRA  
[14-9033](#) RMY-1  
ARTERBURN ET AL V. CHOPRA

MOTION FOR LEAVE TO FILE THIRD  
PARTY COMPLAINT AGAINST MID  
VALLEY SERVICES, INC.  
6-4-15 [[19](#)]

**Final Ruling: No appearance at the July 2, 2015 hearing is required.**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney, Chapter 7 Trustee's Attorney, and Office of the United States Trustee on June 4, 2015. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Motion for Leave to File Third Party Complaint Against MID Valley Services, Inc. was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

<b>The Motion for Leave to File Third Party Complaint Against MID Valley Services, Inc. is continued to 10:00 a.m. on August 20, 2015.</b>
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Aruna Chopra ("Defendant-Debtor") filed the instant Motion for Leave to file Third Party Complaint Against MID Valley Services, Inc. on June 6, 2015. Dckt. 19.

The Defendant-Debtor seeks leave from the court to file a third party complaint against Mid Valley Services, Inc. alleging the following causes of action: (1) implied indemnity; (2) equitable indemnity; (3) contribution; and (4) declaratory relief. The Defendant-Debtor states that these claims are based upon the Defendant-Debtor's contentions that the acts and omissions of MID Valley Services, Inc. were a superseding cause of any purported damages suffered by Plaintiffs.

#### **STIPULATION**

On June 24, 2015, the Plaintiffs and Defendant-Debtor filed an ex parte Application to Approve Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 34. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on August 20, 2015.

#### **DISCUSSION**

The court approved the stipulation on June 25, 2015, approving the requested continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion is continued to 10:00 a.m. on August 20, 2015.

July 2, 2015 at 10:30 a.m.

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3. [14-90310](#)-E-7 JOHN YOUKHANNA  
DCJ-2 David C. Johnston

MOTION TO AVOID LIEN OF WELLS  
FARGO BANK, N.A.  
6-18-15 [[21](#)]

**Tentative Ruling:** The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 offers 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.

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)(iii).

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Wells Fargo & Company, Wells Fargo Bank, National Association, and Office of the United States Trustee on June 18, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

<b>The Motion to Avoid Judicial Lien is granted.</b>
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This Motion requests an order avoiding the judicial lien of Wells Fargo Bank, National Association ("Creditor") against property of John Y. Youkhanna ("Debtor") commonly known as 3304 Sharon Way, Modesto, California (the "Property").

A judgment was entered against Debtor and Tri Y Drafting Inc. in favor of Creditor in the amount of \$112,931.45. An abstract of judgment was recorded with Stanislaus County on February 6, 2012, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an

approximate value of \$250,000.00 as of the date of the petition. The unavoidable consensual liens total \$384,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on Schedule C.

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 this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided in excess of \$112,931.45 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 John Y. Youkhanna, the Chapter 7 Debtor, ("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 Wells Fargo Bank, National Association, California Superior Court for Stanislaus County Case No. 665208, recorded on February 6, 2012, Document No. 0009948 with the Stanislaus County Recorder, against the real property commonly known as 3304 Sharon Way, Modesto, California, to the extent that it encumbers any interests of Debtor in the above described real property, 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.



4. [15-90410](#)-E-7 MARK/JENNIFER STOCKDALE CONTINUED MOTION TO COMPEL  
CLH-1 Charles L. Hastings ABANDONMENT  
4-30-15 [7]

**Tentative Ruling:** The Motion to Abandon Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, and Office of the United States Trustee on April 30, 2015. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Abandon Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The hearing on the Motion to Abandon Property is granted.</b>
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After notice and hearing, the court may order the 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(b). 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 Mark Robert Stockdale and Jennifer Lynn Stockdale ("Debtor") requests the court to order the Trustee to abandon property commonly known as All God's Children Day Care (the "Property").

**JUNE 11, 2015 HEARING**

At the hearing, the court found that the Motion did not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The Motion merely stated that the business has no value to the estate with no evidence or argument as to why or how the business has no value for the estate. This was not sufficient.

Instead of denying the Motion, the court continued the hearing to July 2, 2015 at 10:30 a.m. to allow the Debtor to file a supplemental Motion complying with Fed. R. Bankr. P. 9013. Dckt. 16 .

#### **SUPPLEMENTAL PLEADING**

The Debtor filed the supplemental pleading on June 16, 2015. Dckt. 17. The pleading states:

At the time of the entry of the order for relief, debtors were the owners of the sole proprietorship business known as All God's Children Day Care. The business has no employees. It is operated by Jennifer Stockdale, who performs all of the work necessary. The only asset of the business is the debtors' 2001 Ford Expedition, which was listed by the debtors in their Schedule C with a value of \$2200. The Business has no accounts receivable and no ongoing contracts for services. The business generates a profit of approximately \$517 per month as indicated on the debtors Business Income and Expenses schedule on file with the Court. The business has no going concern value, and there is no market for the Trustee to attempt to sell it. Said business has no value to the estate herein.

#### **DISCUSSION**

A review of the Debtor's Schedule B shows that "All God's Children Day Care" is not listed as an asset. Instead, the Debtor lists "2001 Ford Expedition-Mileage 155,145 (Wife's Business Vehicle)." A review of the Debtor's Schedule C shows that the Debtor has fully exempted the 2001 Ford Expedition pursuant to California Code of Civil Procedure § 704.060.

The Debtor's Motion is solely requesting that the court abandoned All God's Children Daycare which the Motion has defined as the 2001 Ford Expedition. The Motion does not request for the Trustee to abandon any other asset, trade name, or any other interest that may or may not be part of the business.

The court finds that the Property, which the Motion solely identifies as the 2001 Ford Expedition, is fully exempt, and that there are negative financial consequences to the Estate retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate, and orders the Trustee to abandon the property.

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 Abandon Property filed by Mark Robert Stockdale and Jennifer Lynn Stockdale ("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 Compel Abandonment is granted and that the Property identified as:

1. 2001 Ford Expedition

and listed on Schedule B by Debtor is abandoned to Mark Robert Stockdale and Jennifer Lynn Stockdale by this order, with no further act of the Trustee required.

5. [11-93024](#)-E-12 JOSE/MARIA BETTENCOURT  
TOG-24 Thomas O. Gillis

MOTION TO VALUE COLLATERAL OF  
RESIDENTIAL FUNDING  
COMPANY/GMAC MORTGAGE, LLC  
6-4-15 [[243](#)]

**Tentative Ruling:** The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The Defaults of the non-responding parties are entered by the court.

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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 12 Trustee, Residential Funding Company, GMAC Mortgage, LLC, parties requesting special notice, and Office of the United States Trustee on June 4, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Value secured claim of Residential Funding Company/ GMAC Mortgage, LLC ("Creditor") is denied without prejudice.**

The Motion to Value filed by Jose and Maria Bettencourt ("Debtor") to value the secured claim of **Residential Funding Company/GMAC Mortgage, LLC** ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1983 Porter Way, Turlock, California ("Property"). Debtor seeks to value the Property at a fair market value of \$157,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

#### **UNIDENTIFIABLE CREDITOR NAMED IN MOTION**

Debtor seeks to value the collateral of "Residential Funding Company/GMAC Mortgage, LLC." However, the court cannot determine from the evidence presented what, if any, legally recognized entity the Debtor asserts is a creditor and whose secured claim is to be valued pursuant to this Motion. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid in finding creditors. FN.1.

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FN.1. If the court were to grant such order, it would be ineffective, subjecting Debtor to years of paying under a plan, only to discover that Debtor still owes that unidentified creditor the full amount of the debt. Such discovery after years of performing under a Chapter 13 Plan would be an unhappy day not only for the Debtor, but her counsel as well - most likely leaving the Debtor unable to either "lien strip" the true creditor's security interest or not having the benefit of paying a reduced secured claim.  
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#### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 21-1 filed by Residential Funding Company, LLC may be the claim which may be the subject of the present Motion. No entity named Residential Funding Company/GMAC Mortgage, LLC purports to assert a claim in this case. Proof of Claim No. 21-1 is executed by Kristi Wells, Esq., who does not state her affiliation to the creditor (she has not checked the box

that she is (1) the creditor, (2) creditor's agent, (3) the trustee or debtor, or (4) a guaranty, surety, or co-debtor. The court recognizes Ms. Wells and her law firm as one that regularly represents creditors and files proof of claim for their creditor clients. Proof of Claim No. 21-1 dos list GMAC Mortgage, LLC as the entity to which notices are to be sent and to which payments are to be made. It appears that GMAC Mortgage, LLC is the "loan servicer" for creditor Residential Funding Company, LLC.

## DISCUSSION

The Debtor appears to have filed a motion against a legal entity which does not exist --- Residential Funding Company/GMAC Mortgage, LLC. The court will not grant an order where it does not a reasonable belief that there is an legal entity before the court which holds the interests to be altered by the motion. The court will not ignore Proof of Claim No. 21-1 in this case. FN.2.

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FN.2. Another issue looms large in this case. The court confirmed the Chapter 12 Plan in this case by order filed on May 4, 2012. Dckt. 160. The court confirmed the Chapter 12 Plan filed on December 9, 2011. Dckt. 32. In the present Motion Debtor asserts that the property is subject to first and second deeds of trust held by "JPMorgan Chase." The Order confirming the Plan incorporates the stipulation of Debtor with JPMorgan Chase Bank, N.A. modifying the Plan terms for that Bank.

However, the Chapter 12 Plan makes no provision for a secured claim of Residential Funding Company, LLC. Proof of Claim No. 21-1 was filed on December 27, 2011, months before the confirmation hearing. It appears that even if the court were to value the claim, no provision is made for paying the secured portion of the claim determined by the court pursuant to 11 U.S.C. § 506(a).

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Therefore, the Motion is denied without prejudice.

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

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

The Motion for Valuation of Collateral filed by Jose and Maria Bettencourt ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

6. [10-94026-E-7](#) PHILLIP CRUMP  
CWS-3 Jessica A. Dorn

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF NEUMILLER &  
BEARDSLEE FOR CLIFFORD W.  
STEVENS, TRUSTEE'S ATTORNEY(S)  
5-22-15 [[50](#)]

**Final Ruling: No appearance at the July 2, 2015 hearing is required.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on May 22, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion for Allowance of Professional Fees is granted.</b>
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Neumiller & Beardslee, ("Applicant") for Gary Farrar the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period August 13, 2014 through May 22, 2015. The order of the court approving employment of Applicant was entered on September 15, 2014, Dckt. 38. Applicant requests fees in the amount of \$5,171.50 and costs in the amount of \$88.07.

#### **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-

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(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). 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.

### **Benefit to the Estate**

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According 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?

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including employment applications, communications, general casework and research, preparation for a motion to reopen case, and negotiation of a compromise between Debtor and a creditor. The estate has \$16,441.36 (26,439.99 less 10,018.63 already distributed) of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

#### **FEES AND COSTS & EXPENSES REQUESTED**

##### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Employment and Fee Applications: Applicant spent 4.90 hours in this category. Applicant assisted Client by preparing employment and fee applications for Applicant and other professionals retained by Trustee.

Communications with Trustee: Applicant spent 1.80 hours in this category. This category reflects time Applicant spent communicating or corresponding with the Trustee concerning this case.

Communications with Third Parties: Applicant spent 1.30 hours in this category. Applicant This category reflects time Applicant spent communicating or corresponding with the third parties concerning this case.

General Case Review, Strategy, and Research: Applicant spent 1.40 hours in this category. Applicant reviewed case issues, financial information of the Debtor, Debtor's Schedules and Statement of Financial Affairs. Applicant also researched legal questions arising during the course of the case, formed strategy concerning litigation arising in the case, and worked on other general matters.

Prepare Motion to Reopen Case: Applicant spent 0.60 hours in this category. Applicant prepared a motion for the U.S. Trustee to file to reopen the case due to the discovery of assets.

Negotiate Compromise Between Debtor and Creditor: Applicant spent 7.80 hours in this category. Applicant negotiated a compromise between Debtor and unsecured creditors to share certain assets that may have otherwise been wasted in the course of litigation. This category includes time spent actually negotiating, as well as time spent seeking court approval of the compromise.

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:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Clifford W. Stevens (2014)	4.90	\$325.00	\$1,592.50
Clifford W. Stevens (2015)	6.40	\$335.00	\$2,144.00
Michael R. Tener (2014)	4.20	\$265.00	\$1,113.00
Kim L. Abdallah (2015)	2.30	\$140.00	\$322.00
<b>Total Fees For Period of Application</b>			<b>\$5,171.50</b>

#### **Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$88.07 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$25.37
Photocopies	\$0.10	\$62.70
Total Costs Requested in Application		\$88.07

#### **FEES AND COSTS & EXPENSES ALLOWED**

##### **Fees**

##### **Hourly Fees**

The court finds that the hourly rates were reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$5,171.50 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

##### **Costs and Expenses**

The First and Final Costs in the amount of \$88.07 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 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case. The court is authorizing that Trustee to pay 100% of the fees and costs allowed by the court.

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

Fees	\$5,171.50
Costs and Expenses	\$ 88.70

pursuant to this Application First and Final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Neumiller & Beardslee ("Applicant"), Attorneys for the 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 Applicant is allowed the following fees and expenses for the professionals; Clifford W. Stevens, Michael R. Tener, Ricardo Z. Azanda, and Kim L. Abdallah; Employed by Trustee

Fees in the amount of \$ 5,171.50  
Expenses in the amount of \$ 88.70,

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

7. [14-90929-E-7](#) SASHI PAL  
[15-9004](#) UST-1  
U.S. TRUSTEE V. PAL

MOTION TO DISMISS ADVERSARY  
PROCEEDING  
6-1-15 [[13](#)]

**Final Ruling:** No appearance at the July 2, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Creditors on June 1, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Dismiss Adversary Proceeding is granted.</b>
---

The United States Trustee filed the instant Motion to Dismiss the Adversary Proceeding on June 1, 2015. Dckt. 13. The UST states that, pursuant to a stipulation, Sashi Pal ("Defendant-Debtor") stipulated to (1) dismissal of the Defendant-Debtor's bankruptcy case No. 14-90929 and (2) the imposition of a four-year bar against the Defendant-Debtor's filing of a new case. The court approved the stipulation on May 27, 2015. Case No. 14-90929, Dckt. 56.

In accordance with the stipulation, the UST consented to dismissing the instant Adversary Proceeding without prejudice as to the UST's rights under 11 U.S.C. § 524(b).

The reason for the instant Motion is that, pursuant to Fed. R. Bankr. P. 7041, an Adversary Proceeding whose complain objects to the debtor's discharge requires an order of the court to dismiss and requires notice to the trustee, the UST, and other persons the court may direct.

The UST filed a copy of the Stipulation on April 14, 2015. The court having already approved the stipulation in the underlying bankruptcy case, and the terms being in the best interest of all parties, the court finds dismissal proper.

Therefore, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, the court dismisses the Adversary Proceeding No. 15-09004 without prejudice to the United States Trustee's rights under 11 U.S.C. § 524(b).

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 Adversary Proceeding filed by the United States 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 is granted and the Adversary Proceeding No. 15-09004 without prejudice, including the rights of the United States Trustee's rights under 11 U.S.C. § 524(b).

8. [14-91633](#)-E-11 SOUZA PROPANE, INC.  
FWP-5 David C. Johnston

MOTION TO EXTEND TIME AND/OR  
MOTION TO APPROVE MODIFICATION  
OF LEASE AGREEMENT  
6-4-15 [[152](#)]

**Tentative Ruling:** The Motion to Extend Time and Motion to Approve Modification of Lease Agreement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 4, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Extend Time and Motion to Approve Modification of Lease Agreement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion to Extend Time and Motion to Approve Modification of Lease Agreement is granted.</b>
--

David Flemmer, the Chapter 11 Trustee, filed the instant Motion to Extend the Time to Assume or Reject Nonresidential Real Property Leases and Approve Modification of Lease Agreement on June 4, 2015. Dckt. 152. The Trustee is seeking several different types of relief from the court.

First, the Trustee, with the written consent of the respective landlords, requests that the court extend the time for the Trustee to assume or reject nonresidential real property leases from July 15, 2015, up to and including November 16, 2015.

Second, the Trustee requests that the court authorize the Trustee to enter into a post-petition modification of the existing lease to reduce the post-petition rents for two of the properties leased by the estate.

Third, the Trustee requests that the court authorize the Trustee to transfer two "barter exchange accounts" from the Debtor to one of the landlord.

Fourth, the Trustee requests that the court "approve" that the Trustee made, prior to the hearing on this Motion, payment of the \$228.00 for a delinquency on one lease and payment of the \$137.50 delinquency on the other lease, which cures are that was a condition for the written consent of that landlord to the requested.

The Debtor currently leases three parcels of non-residential real property from which the Debtor conducts its business. The leases are:

1. 826 Souza Street, Turlock, California

- a. The Debtor leases retail space, a shop, and a warehouse from Souza Properties, Inc., an entity owned by the Debtor's shareholders. The Souza Street Lease commenced on February 1, 2010 and provides for monthly rent of \$8,250.00 and for the tenant to pay most of the expenses relating to maintenance and operation of the leased property. The Souza Street Lease is for 10 years with an option to renew for another 10 years.

2. 199 W. Canal Drive, Turlock, California

- a. The Debtor leases office and retail space from Souza Properties, Inc. The Canal Drive Lease commenced on February 1, 2010 and provides for monthly rent of \$9,250.00 and for the tenant to pay for most of the expenses relating to maintenance and operation of the leased property. The Canal Drive Lease is for 10 years with an option to renew for another 10 years.

3. Airport Property

- a. The Debtor leases property located at the Turlock Airport from Turlock Air Park, Inc. (An entity in which Debtor's shareholders list a 25% ownership on their Amended Schedule B in their personal bankruptcy case; 15-90358, Dckt. 72.) The lease commenced January 10, 1975 and provides for monthly rent of \$100.00. The lease is for 30 years with an option to renew for an additional 30 years which the Debtor exercised pre-petition. The Debtor utilizes the property as its primary bulk storage facility large propane tanks.

The Trustee believes that the contract rent for both the Souza Street and Canal Drive leases are about market based on a review of comparable rental property. However, a potential purchaser may want these leases as part of a sale of the Debtor's assets. The Trustee states that he has negotiated with Souza Properties, Inc. to a short term reduction in the post-petition rent due under the Souza Street and Canal Drive leases.

Specifically, the Trustee has negotiated for a reduction of the combined contract rent of \$17,500.00 for the two properties to \$13,000.00 for January 2015 and to \$11,000.00 per month for February through November 2015. Souza Properties, Inc. has agreed it will not assert a claim for administrative rent for any amounts representing the difference between the contract rent and the reduced rent for the months covered by the interim reduction.

The Trustee is relying on the negotiated rent reduction and Souza Properties, Inc.'s agreement to not seek an administrative claim for the difference in requesting the extension of time to assume or reject the Souza Street and Canal Drive leases.

The Trustee states that, while not listed in the Debtor's schedules, the Debtor apparently holds rights in two barter exchange accounts: (1) IMS Barter Account No. 16606 with just under \$62,000.00 in trade credits and \$228.- is due to cure delinquencies and (2) ITEX Corporation Account No. 4157541007630 with just under \$37,000.00 in trade credits and \$137.50 is due to cure delinquencies.

The Trustee states that as a condition of the agreement of Souza Properties to a further extension of the estate's right to assume or reject the Souza Street Lease and the Canal Drive Lease as well as continuing the reduction in post-petition rent due, Debtor requires the estate to (1) transfer all of the Debtor's rights in the IMS Account to Souza Properties as well as cure the \$228.00 delinquency on the IMS Account immediately upon the signing of the stipulation for the extension and (2) transfer all of the Debtor's rights in the ITEX Account to Souza Properties as well as cure the \$137.50 delinquency on the ITEX Account immediately upon the signing of the stipulation for the extension, and no later than June 10, 2015.

The Trustee argues that the barter exchange accounts are negatively perceived by the Internal Revenue Service and may create tax issues for the estate. The Trustee asserts that he believes there is limited value for the estate and no penitential purchaser of the Debtor have expressed interests in the account.

The Trustee is seeking to have the court to extend the time to assume and reject the leases for pursuant to 11 U.S.C. § 365(d)(4)(B) to November 16, 2015.

#### **KIVA ENERGY INC.'S PARTIAL OPPOSITION**

Kiva Energy, Inc. ("Creditor") filed a partial opposition to the instant Motion on June 18, 2015. Dckt. 159. The Creditor states that it does not oppose the extension of the Trustee's time to approve or reject leases. However, the Creditor objects to the abandonment of the two barter accounts. The Creditor states that it has not had the opportunity to determine whether an asset of significant value is being abandoned. The Creditor asserts that its security interest extends to all "Accounts" of the Debtor which the Creditor argues presumably includes these unscheduled accounts. The Creditor opposes the Motion to the extend that the extension of time is predicated on the Trustee's abandonment of these assets.

#### **TRUSTEE'S REPLY**

July 2, 2015 at 10:30 a.m.



The Trustee filed a reply on June 24, 2015. Dckt. 163. First, the Trustee states that the Motion does not seek to abandon the barter accounts to the Debtor but instead seeks to transfer the barter accounts to Souza Properties as part of the consideration to the agreement. Regardless though, the Trustee states that, since the Objection, Souza Properties has agreed to withdraw its requirement that the accounts be transferred as part of the Motion, as long as the barter exchange credits are preserved for further disposition. Therefore, the Trustee withdraws his request to transfer the Debtor's rights title and interest in the barter accounts to Souza Properties.

#### **CREDITOR'S WITHDRAWAL**

The Creditor filed a Notice of Withdrawal of the Partial Opposition on June 25, 2015. Dckt. 171. The Creditor states that it withdraws its opposition in light of the Trustee withdrawing the request to transfer the barter accounts to Souza Properties.

#### **APPLICABLE LAW**

11 U.S.C. § 365 deals with executory contracts and unexpired leases. For purposes of the instant Motion, § 365(d) states in relevant part:

(2) In a case under chapter 9, 11, 12, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor at any time before the confirmation of a plan but the court, on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.

(3) The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

(4)(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of--

(I) the date that is 120 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming a plan.

(B) (I) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii) If the court grants an extension under clause (I), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

## **DISCUSSION**

Here, the Trustee argues cause exists because the Trustee is in the marketing the Debtor's business for sale. However, until the Trustee has closed a sale of the Debtor's business, the Trustee will not know which, if any, of the Debtor's nonresidential real property leases will be assumed and which ones will be rejected. Forced rejection prior to the closure of any sale may cause the Debtor to reject nonresidential real property leases which the Debtor could otherwise assume and assign values.

Furthermore, the Trustee states that the landlords are not prejudiced by the extension because the Debtor is current on its rental obligations post-petition in the contract amount for the Airport Lease and the agreed reduced amount for the Souza Street and Canal Drive leases.

The date set by 11 U.S.C. § 365 where the Trustee would have to either accept or deny the leases is April 16, 2015.

Upon review of the Trustee's request and the cause shown, the court finds that it is in the best interest of the Debtor, creditors and the estate to afford the Trustee additional time to accept or reject the leases in order to try and solidify the potential sale of the Debtor's business. Therefore, the Motion is granted and the time for assuming or rejecting all unexpired nonresidential real property leases is set for November 16, 2015, pursuant to 11 U.S.C. § 365(d)(4)(B)(ii).

The Trustee also requests for approval of the agreement with Souza Properties, Inc. on the reduced interim post-petition rent with respect to the Souza and Canal Drive leases. The Trustee provides a copy of the written agreement. Dckt. 155, Exhibit 2. A review of the stipulation with Souza Properties shows that the reduced interim post-petition rent is in consideration for the extension to assume or deny the leases. The terms of the stipulation appear to be in the best interest of the parties and the estate, which is further supported by the fact that the Creditor does not oppose the Motion. The complex nature of the instant case lends itself to approving the reduced rent to allow the Debtor, Trustee, Creditor, and other parties in interest the opportunity to settle claims for the benefit of the Debtor. Therefore, the request for the reduced interim post-petition rent with respect to the Souza and Canal Drive leases is granted, and the court approves that the combining contract rent of \$17,500.00 due under the two leases is reduced to \$11,000.00 per month for May 2015 through November 2015.

As to the request for the transfer of the barter accounts, the Trustee has withdrawn this request and therefore is dismissed as moot. See Fed. R. Civ. P. 41(a)(1)(A)(I).

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 Extend Time and Motion to Approve Interim Modification of Lease Agreement filed by 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 is granted and the time to assume or reject the unexpired nonresidential real property leases is extended to and including July 15, 2015, pursuant to 11 U.S.C. § 365(d)(4)(B)(ii).

**IT IS FURTHER ORDERED** that the request for the reduced interim post-petition rent with respect to the Souza and Canal Drive leases is granted, and the court approves that the combined contract rent of \$17,500.00 due under the two leases is reduced to \$11,000.00 per month for May 2015 through November 2015.

**IT IS FURTHER ORDERED** that the Trustee is not authorized to transfer the "barter accounts," the Trustee having withdrawn that portion of the requested relief, and the court does not approve or authorize such terms as part of the stipulations with the Trustee.

No other or additional relief granted

9. [15-90434](#)-E-7 LOUIS GUTIERREZ  
Pro se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
6-16-15 [[19](#)]

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, 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 Louis Gutierrez ("Debtor") and Trustee on June 18, 2015. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$335.00 due on May 1, 2015).

<b>The court's decision is to sustain the Order to Show Cause and order the case dismissed.</b>
---

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$335.00.

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

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

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

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

10. [12-93049](#)-E-11 MARK/ANGELA GARCIA  
PA-3 Mark J. Hannon

CONTINUED MOTION FOR  
COMPENSATION FOR KRISTIN  
KIRCHNER, ACCOUNTANT  
4-30-15 [[583](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 30, 2015. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

Kristin Kirchner, the Accountant ("Applicant") for John Bell the Chapter 11 Trustee ("Client"), makes a Second Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period January 1, 2014 to December 31, 2014. The order of the court approving employment of Applicant was entered on January 11, 2015, Dckt. 276. Applicant requests fees in the amount of \$31,880.79.00 and costs in the amount of \$438.29.

#### **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,

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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). 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.

#### **Benefit to the Estate**

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According 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?

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including examination of banking records, tax preparation, and preparation of the Monthly

Operating Reports. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

#### **MAY 21, 2015 HEARING**

At the hearing, the court continued the hearing, rather than denying the Application without prejudice, to afford Applicant the opportunity to provide the court, U.S. Trustee, and other parties in interest requesting the information with the necessary task billing analysis. Dckt. 619. The court continued the hearing to 10:30 a.m. on July 2, 2015.

#### **FEES AND COSTS & EXPENSES REQUESTED**

##### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Monthly Examination of Banking Records: Applicant spent 59.35 hours in this category. Applicant assisted Client with researching, analyzing and verifying transactions engaged in by the Debtors prior to the appointment of the Trustee, examining deposits and payments in an effort to maintain an orderly and accurate general ledger, and reconciling the accounts.

Reconciliation of Bank Statements: Applicant spent 15.25 hours in this category. Applicant reconciled the bank statements for the accounts maintained by the Trustee, including the reconciliation of the "build up fund" or "BUF account" which is maintained by the bond insurer.

Meetings & Communications with Trustee: Applicant spent 12.35 hours in this category. Applicant communicated and corresponded (via telephone, e-mail, and in person) with the Trustee and Trustee's counsel with regards to the transactions of the Debtors, the current status of books and records, general ledgers, and cash balances, amongst other issues relevant to the matter.

Meetings & Communications with Debtor/Debtors Agents: Applicant spent 16.90 hours in this category. Applicant communicated and corresponded (via telephone, e-mail, and in person) with the Debtor and his assistant regarding the books and records maintained during the period that the Debtors were in possession as well as to request statements, and met with debtors to discuss unclassified items.

Preparation of Monthly Operating Reports: Applicant spent 35.75 hours in this category. Applicant reconciled bank accounts and maintained the general ledger, and drafted and revised the Monthly Operating Reports.

Preparation of Tax Documents: Applicant spent 28 hours in this category. Applicant prepared Form 1099s for the 2013 calendar year, prepared state and federal tax returns for the years 2012 and 2013.

Clerical: Applicant spent 2.25 hours in this category. Applicant received clerical assistance in an effort to organize and file year end files as well as vendor and quarterly information, and to copy and assemble the 2012 and 2013 tax returns.

Matters Relating to Plan Including Projections: Applicant spent 11.75 hours in this category. Applicant prepared projections for inclusion in a possible Plan of Reorganization, conducted calculations regarding potential tax liabilities for the years 2012 and 2013, communicated with both counsel for the Trustee and for a creditor, prepared economic data, prepared various summaries, and attended the Creditors Meeting.

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:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Kristin L. Kirchner	179.35	\$175.00	\$31,386.25
MAM	1.5	\$25.00	\$37.50
SR	0.75	\$25.00	\$18.75
<b>Total Fees For Period of Application</b>			\$31,442.50

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

<b>Application</b>	<b>Interim Approved Fees</b>	<b>Interim Fees Paid</b>
First Interim	\$10,938.75	\$10,938.75
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$10,938.75	

### **Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$438.29 pursuant to this applicant.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Postage	\$0.46 each (6)	\$2.76
Forms 1099, including envelopes	\$0.92 each (6)	\$5.53



Lacerte Tax Software processing fee for 2012 & 2013 returns		\$430.00
Total Costs Requested in Application		\$438.29

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Second Interim Fees in the amount of \$31,442.50 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 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

### **Costs and Expenses**

The Second Costs in the amount of \$438.29 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 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11.

The court allows and the Trustee is authorized to pay Applicant the following interim fees and costs pursuant to 11 U.S.C. § 331, pending a final application for compensation pursuant to 11 U.S.C. § 330:

Fees	\$ 31,442.50
Costs and Expenses	\$ 438.29

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 Kristin L. Kirchner ("Applicant"), Accountant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Kristin L. Kirchner is allowed the following fees and expenses as a professional of the Estate:

Kristin L. Kirchner, Professional Employed by Trustee

Fees in the amount of \$ 31,442.50

July 2, 2015 at 10:30 a.m.

Expenses in the amount of \$ 438.29

The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that the Trustee is authorized to pay the above allowed Interim Fees and Costs from the available unencumbered monies of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

11. [12-93049](#)-E-11 MARK/ANGELA GARCIA  
PA-5 Mark J. Hannon

MOTION TO APPROVE STIPULATION  
RE: CONSENT TO SALE OF  
COLLATERAL AND CARVE OUT  
AGREEMENT IN FAVOR OF  
BANKRUPTCY ESTATE  
6-11-15 [[631](#)]

**Tentative Ruling:** The Motion to Approve Stipulation Re: Consent to Sale of Collateral and Carve Out Agreement in Favor of Bankruptcy Estate was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 offers 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.

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)(iii).

-----  
Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 11, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Approve Stipulation Re: Consent to Sale of Collateral and Carve Out Agreement in Favor of Bankruptcy Estate was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

<p><b>The Motion to Approve Stipulation Re: Consent to Sale of Collateral and Carve Out Agreement in Favor of Bankruptcy Estate is granted.</b></p>
---

John Bell, the Chapter 11 Trustee, filed the instant Motion to Approve the Stipulation re Consent to Sale of Collateral and Carve Out Agreement on June 11, 2015.

**REVIEW OF MOTION AND GROUNDS STATED WITH  
PARTICULARITY UPON WHICH TRUSTEE RELIES  
FOR RELIEF REQUESTED**

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. The Trustee seeks approval of a Stipulation re Consent to Sale of Collateral and Carve Out Agreement in Favor of Bankruptcy Estate (hereinafter referred to as the "Stipulation"), which has been entered into by and among the Trustee and United State Fire Insurance Company and Iain A. Macdonald, secured creditors. A true and correct copy of the Stipulation is attached as Exhibit 1 to the Separate List of Exhibits filed concurrently herewith.
- B. It is respectfully submitted that the Trustee's Motion be granted for those reasons more fully set forth within the Memorandum of Points and Authorities in Support of Motion to Approve Stipulation re Consent to Sale of Collateral and Carve Out Agreement in Favor of Bankruptcy Estate, which is filed concurrently herewith, which also sets forth the salient terms of the stipulation.

This Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that there is a stipulation and that the court shall go review all the other documents filed to compile the grounds for relief. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court* in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2)), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on

its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

*Weatherford*, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity"

has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

*Martinez v. Trainor*, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

This court for the past five years have made it clear that parties must comply with Fed. R. Bankr. P. 9013 when seeking relief. The moving party must state with particularity the grounds in which relief is sought. However, the Trustee here merely states that there is a stipulation between the three parties and that all the information can be found elsewhere. The court declines the opportunity to provide associate attorney or law clerk services to the Trustee, to assemble the proper motion for Trustee, assert those grounds, and then rule upon such asserted grounds.

The instant case has been lingering for far too long and the instant stipulation provides some long overdue headway in settling the complex issues. While the court will assemble from the arguments stated in the Memorandum of Points and Authorities as well as the attached stipulation the "grounds" for the Motion, the court does note that the caliber of pleadings presented here and the "prosecution" of the case will be considered when determining reasonable compensation (including hourly rates) for the Trustee and Trustee's counsel. The failure of the Trustee and Trustee's counsel to comply with Fed. R. Bankr. P. 9013, a fact that both parties know this court enforces, will be a factor that the court considers if and when the parties file any Motions for Compensation.

#### **CONSIDERATION OF "GROUNDS" DERIVED FROM POINTS AND AUTHORITIES AND OTHER SUPPORTING PLEADINGS**

As noted *supra*, even though the court does not typically consider motions that do not comply with Federal Rule of Bankruptcy Procedure 9013, in light of the long history of this case and lack of progress until recently, the court will consider the "grounds" which may be deciphered from the Motion, Points and Authorities, Stipulation, and other pleadings filed by the Trustee. Many of the "grounds" are buried in fourteen pages of arguments, narrative, authorities, citations, and quotations.

#### **Settlement with USFI and Iain A. McDonald**

The Trustee requests that the court approve a compromise and settle competing claims and defenses with United State Fire Insurance Company ("USFI") and Iain A. Macdonald ("Macdonald"). The claims and disputes to be resolved by the proposed settlement are concerning the USFI Short Form Deed of Trust and the Macdonald judgment claim as to the real property commonly known as 5672 Eleanor Avenue, Oakdale, California ("Oakdale Property").

Trustee, USFI, and Macdonald 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 is set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 635):

- A. The Trustee has agreed to promptly list, market and sell the Oakdale Property. The Trustee shall have the exclusive authority to accept an offer for the Oakdale Property and any sale will be subject to overbids
- B. USFI has consented to the sale of the Oakdale Property, conditioned on the closing of escrow within six months of the entry of an order approving the Stipulation.
- C. Macdonald has consented to the sale of the Oakdale Property and his claim shall be allowed as follows:
  - 1. \$8,135.00 secured
  - 2. \$8,135.00 unsecured
- D. On approval by the court of a sale of the Oakdale Property, the proceeds of the sale shall be applied as such:
  - 1. First, to the costs of sale, including broker's commissions, escrow fees, and like costs.
  - 2. Second, to the payment of accrued but unpaid real property taxes and assessments
  - 3. Third, to the allowed amount of the Deutsche Bank Deed of Trust.
  - 4. Fourth, to the payment of one-half of the balance of the Macdonald Judgment Lien (\$8,135.00).
  - 5. Fifth, as to the remaining balance ("net sale proceeds"):
    - a. An amount equal to 80% of the net sales proceeds shall be paid to USFI, up to the allowed amount of its Proof of Claim No. 19-3 and
    - b. An amount equal to 20% of the net sales proceeds shall be paid to the Trustee as the representative of the bankruptcy estate, for the payment of administrative claims and to

creditors holding unsecured claims other than USFI and Macdonald ("Carve-Out").

- E. The Stipulation is without prejudice to the Objection to Claim of USFI being pursued by the Debtors and a possible settlement of that Claim. The Trustee will not join in the Objection to Claim, will not seek to intervene in the Objection to Claim, nor file an independent objection to the USFI Claim, and any settlement of USFI's Proof of Claim No. 19-3 or the Adversary Proceeding will not impact the terms of this Agreement, except to fix the amount of USFI's allowed Claim for purposes of the Stipulation.
- F. USFI's allowed claim, as ultimately determined by order, after application of the net sales proceeds shall be entitled to participate in any distributions to unsecured creditors, except as provided herein. Specifically, USFI shall not be entitled to have any portion of the allowed USFI Claim be paid from the Carve-Out.
- G. Macdonald shall be an allowed unsecured claim in the amount of \$8,135.00 after payment of the proceeds of sale as set forth above, and shall be entitled to participate in any distributions to unsecured creditors, except as provided herein. Specifically, Macdonald shall not be entitled to have any portion of his unsecured claim paid from the Carve-Out.
- H. USFI agrees to forebear from completing a judicial foreclosure of the Oakdale Property for a period of six months from the date of the Stipulation to allow the Trustee's sale of the Oakdale Property to be consummated. By separate agreement and Stipulation in the Adversary Proceeding, USFI has agreed to extend the time for the Trustee to respond to the Amended Complaint.
- I. In the event that the Trustee has not completed a sale of the Oakdale Property and the escrow for such sale has not closed within six months of the order approving the Stipulation, then USFI's consent to such sale shall be deemed withdrawn and USFI may proceed to enforce its remedies with respect to the Oakdale Property by judicial or non-judicial foreclosure, subject to applicable non-bankruptcy and bankruptcy law, including 11 U.S.C. § 362(a).

#### 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 Construction)*, 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 Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (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); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Under the terms the Settlement, the claims of the Settlers are resolved and the Trustee is authorized to pursue the sale of the Oakdale Property without USFI attempting to foreclose on the property prior to a six month window.

#### **Probability of Success**

The Trustee states that since the Short Form Deed of Trust has an error on it as to the legal description of the Oakdale Property, the Trustee would have to prosecute an adversary proceeding to seek a determination of the extent, validity, and priority of the deed. Since each party has a viable claim as to the validity of the deed, the Trustee asserts that the outcome is uncertain and this factor weighs in favor of settlement.

#### **Difficulties in Collection**

The Trustee states that this factor is not relevant since any litigation would determine the validity, extent, and priority of the Short Form Deed of Trust.

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

Trustee argues that prosecuting an adversary proceeding will be costly in terms of fees, costs, and delay. Furthermore, there is high likelihood that any judgment would be appealed further causing cost. The Trustee argues that the Stipulation avoids continuing costs, attorneys' fees, and expenses, as well as the delays and risks inherent in litigation, which providing the Carve Out for the benefit of the other creditors.

#### **Paramount Interest of Creditors**

Movant argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation.

#### **Consideration of Additional Offers**

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to the Movant to purchase or prosecute the property, claims, or interests of the estate to 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. As noted earlier, this case has been complex, involving complicated claims. The proposed Stipulation provides for the sale of the Oakdale Property, satisfying the claims of the two Settlers as well as providing for potential funds for all creditors. The Stipulation also provides for the alternative if the Trustee is unable to consummate a sale in the six months following the order approving the Stipulation. In light of the Stipulation being in the best interest of the estate and all parties, 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 John Bell, the Chapter 11 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 to Approve Compromise between Movant and United State Fire Insurance Company and Iain A. Macdonald, and each of them, 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 1 in support of the Motion (Docket Number 635).

12. [14-91186-E-7](#) DIMITRIOS/NANET  
DCJ-1 VOULGARAKIS  
David C. Johnston

MOTION TO COMPEL ABANDONMENT  
6-18-15 [[40](#)]

Tentative Ruling: The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the 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 offers 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.

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)(iii).

-----

Local Rule 9014-1(f)(2) Motion.

Correct 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 June 18, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----

<b>The Motion to Abandon Property is granted.</b>
---

After notice and hearing, the court may order the 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(b). 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 Dimitrios and Nanet Voulgarakis ("Debtors") request the court to order the Trustee to abandon property commonly known as 4313 Jacinthe Court, Modesto, California (the "Property"). This Property is encumbered by the liens of Wells Fargo Home Mortgage, Bank of America, N.A., and Ray Essa, securing claims of \$780,000.00, \$249,000.00 and \$195,000.00,

respectively. The Declaration of Dimitrios B. Voulgarakis has been filed in support of the motion and values the Property to be \$1,100,000.00.

The Voulgarakis Declaration also indicates that the two most senior liens have increased by approximately \$60,000.00 since filing the petition due delinquency. Dckt. 42. Debtors have also amended their Schedule C, switching from § 703.140 to § 704.730 exemption, claiming an exemption of \$100,000.00 in the Property. The Voulgarakis Declaration asserts that the total value of liens and exemptions in the Property is currently \$1,384,000.00.

On June 29, 2015, Eric Nims, the Chapter 7 Trustee, filed a copy of a Stipulation between the Debtor and Trustee. Dckt. 44. The Stipulation states that the Trustee will not oppose the Motion on the condition the Debtors will not amend their exemptions to claim any exemption under California Code of Civil Procedure § 703.140(b).

The court finds that, in light of the Stipulation and the fact that the debt secured by the Property exceeds the value of the Property, there are negative financial consequences to the Estate retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate, and orders the Trustee to abandon the property.

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 Abandon Property filed by Dimitrios B. Voulgarakis and Nanet B. Voulgarakis ("Debtors") 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 that the Property identified as:

1. 4313 Jacinthe Court, Modesto, California

and listed on Schedule A by Debtor is abandoned to Dimitrios B. Voulgarakis and Nanet B. Voulgarakis by this order, with no further act of the Trustee required.

**IT IS FURTHER ORDERED** that, pursuant to the Stipulation (Dckt. 44), the Debtors, and each of them, shall not amend their Schedule C to claim any exemptions under California Code of Civil Procedure § 703.140(b).

13. [15-90491](#)-E-7 LEWIS/PATSY STILLWELL  
CLH-1 Charles L. Hastings

MOTION TO AVOID LIEN OF  
DEVELOPERS SURETY AND INDEMNITY  
COMPANY  
6-1-15 [[12](#)]

**Tentative Ruling:** The Motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Developers Surety and Indemnity Company, and Office of the United States Trustee on June 1, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Lien of Developers Surety and Indemnity Company has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

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

This Motion requests an order avoiding the judicial lien of Developers Surety and Indemnity Company ("Creditor") against property of Lewis and Patsy Stillwell ("Debtor") commonly known as 9917 Amiel Way, Valley Springs, California (the "Property").

A judgment was entered against Lewis Stillwell, one of the debtors in this case, in favor of Creditor in the amount of \$5,500.00. An abstract of judgment was recorded with Calaveras County on February 12, 2015, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$280,000.00 as of the date of the petition. The unavoidable consensual liens total \$536,215.22 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption

pursuant to Cal. Civ. Proc. Code § 703.140 (b) (5) in the amount of \$1.00 on Schedule C.

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 this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided in excess of 5,500.00 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 the Debtor(s) 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 Developers Surety and Indemnity Company, California Superior Court for Calaveras County Case No. 39-2013-00303957-CU-BC-STK, recorded on February 12, 2015, Document No. 2015-1368 with the Calaveras County Recorder, against the interests of Lewis Stillwell in the real property commonly known as 9917 Amiel Way, Valley Springs, 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.