UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

August 10, 2017, at 10:30 a.m.

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1. **17-90105-E-7** **RICK/THERESA UNRUH** **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH RICK UNRUH, THERESA WILDER UNRUH AND TRUSTEE MICHAEL D. MCGRANAHAN**
ADJ-2 **Steven Altman** **7-3-17 [40]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 3, 2017. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Michael McGranahan, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Rick Unruh and Theresa Unruh ("Settlor"), the Debtors. The

claims and disputes to be resolved by the proposed settlement are related to non-exempt property listed by Debtor (a vehicle, firearms, and checking account monies).

Movant and Settlor have resolved these claims and disputes, subject to approval by the court in exchange for payment $5,153.00 from Settlor to Movant (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 44). Movant reports that he has received the settlement payment.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Movant argues that no litigation is pending, but he argues that if the court sustains Settlor's heirloom exemption, then there would be no recovery for the Estate.

Difficulties in Collection

Movant argues that he would face significant expenses in listing Settlor's property at public auction, including a sales commission and paying an auctioneer and storing and towing the property.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that the Estate would incur additional legal fees to litigate the heirloom status of firearms. Movant states that seeking recovery of $2,198.00 above the settlement amount is not in the Estate's interest.

Paramount Interest of Creditors

Movant argues that creditors are benefitted more now by having the settlement amount than by waiting to possibly recover more through 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 Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it recovers the bulk of the property's value and because Movant has received payment already. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael McGranahan, the Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Rick Unruh and Theresa Unruh ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 44).

2. **16-90513-E-7** **TIRZAH HAMILTON** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH TIRZAH HAMILTON, BRIAN HAYES AND DELORES DIANNE HAMILTON**
16-9012 **Pro Se**
SSA-5
EDMONDS V. HAYES ET AL
7-5-17 [70]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*)], Chapter 7 Trustee, and Office of the United States Trustee on July 5, 2017. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Irma Edmonds, the Trustee and Plaintiff ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Brian Hayes, Delores Dianne Hamilton, and Tirzah Hamilton ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related to an alleged fraudulent conveyance of property among the parties.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 74):

A. Settlor shall pay the Tirzah Hamilton bankruptcy estate $25,000.00.

B. An initial payment of $14,000.00 shall be due within ninety days of the settlement agreement's execution date (June 16, 2017).

C. Further payments shall be made at the rate of $300.00 per month to Movant for the bankruptcy estate of Tirzah Hamilton over a period of thirty-six consecutive months.

D. To the extent that any balance is owed to satisfy full payment, that balance shall be owed as a lump sum payment by the thirty-sixth month of the settlement agreement.

E. Upon approval of the settlement agreement, Brian Hayes shall convert his Chapter 13 case to one under Chapter 7.

F. Upon payment of $25,000.00, Movant shall dismiss this Adversary Proceeding with prejudice, but until that time, the parties agree that Brian Hayes shall continue to make monthly mortgage payments.

G. Until all payments are made, Movant—on behalf of the Tirzah Hamilton bankruptcy estate—shall hold a legal and equitable lien against the property alleged to have been conveyed fraudulently.

H. Brian Hayes agrees that payment of $25,000.00 is a post-petition payment, and it is nondischargeable debt in his bankruptcy case.

I. Each party to the agreement bears his own legal fees and expenses.

J. Neither Brian Hayes, Delores Dianne Hamilton, nor Tirzah Hamilton shall file a proof of claim in the Tirzah Hamilton bankruptcy case.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Movant estimates that a lawsuit asserting fraudulent conveyance would be 80–85% likely to succeed. The settlement amount of $25,000.00 is in the higher range of what Movant would expect to recover, though.

Difficulties in Collection

Movant argues that there would be additional expenses for listing and selling any property recovered for the Estate.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that litigation would be a mix of law and fact, with some fact contested hotly. Settling for an amount that was in Movant's higher range of expected recovery avoids the expenses and delays of more litigation.

Paramount Interest of Creditors

Movant argues that settlement is economically advantageous to creditors.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it avoids more litigation while also providing Movant with an amount that was in the higher range of possible recovery from litigation. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Irma Edmonds, the Trustee and Plaintiff ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Brian Hayes, Delores Dianne Hamilton, and Tirzah Hamilton ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit 1 in support of the Motion (Dckt. 74).

3. 17-90213-E-12 J & B DAIRY MOTION TO DISMISS CASE
JPJ-1 Patrick Greenwell 6-23-17 [62]

Final Ruling: No appearance at the August 10, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2017. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Dismiss is granted, and the case is dismissed.

Jan Johnson, the Chapter 12 Trustee, moves for dismissal of J & B Dairy's ("Debtor") case under 11 U.S.C. § 1208(c)(1) on the ground that Debtor has failed to prosecute this case, thus causing an unreasonable delay that is prejudicial to creditors.

The Trustee notes that this case was filed on March 17, 2017. Debtor was required to file a plan within ninety days, which deadline became due on June 15, 2017. *See* 11 U.S.C. § 1221. The Trustee states that Debtor not filed a plan.

The court's review of the docket shows that Debtor has not filed a plan in this case, and Debtor has not responded to this Motion to address the delay in filing a plan and setting it for confirmation. The delay in this case is unreasonable and prejudicial to creditors. 11 U.S.C. § 1208(c)(1); *see, e.g.*, *In re Lawless*, 79 B.R. 850, 853 (W.D. Mo. 1987).

The court has granted relief from the automatic stay to allow Bank of Stockton to exercise its rights in collateral asserted to include Farm Products, livestock, and proceeds—the assets used in operation of the business of this Estate. Order, Dckt. 60.

The court also notes that this Debtor has filed several recent bankruptcy cases, which are:

A. Chapter 12 Case No. 17-90129

1. Filed.....February 23, 2017
2. Dismissed.....March 15, 2017

B. Chapter 12 Case No. 16-91096

1. Filed.....December 9, 2016
2. Dismissed.....February 13, 2017

C. Chapter 12 Case No. 16-90923

1. Filed.....October 7, 2016
2. Dismissed.....December 7, 2016

Debtor has tried to, but has been unsuccessful in prosecuting a Chapter 12 case over the past ten months. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 12 case filed by the Chapter 12 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

4. **13-91315-E-7** **APPLEGATE JOHNSTON, INC.** **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH BAY CITY MECHANICAL, INC.**
WFH-50 **George Hollister** **7-13-17 [805]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 13, 2017. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

The Motion for Approval of Compromise is granted.

Michael McGranahan, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Bay City Mechanical, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related to recovery of two asserted avoidable transfers in the aggregate amount of $254,819.00.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 808):

A. Settlor shall pay to Movant $146,250.00 by July 7, 2017.

B. Movant shall grant Settlor a full release and shall dismiss an adversary proceeding against Settlor.

C. Settlor shall have the right to file an amended proof of claim asserting an additional claim in the amount of the settlement payment.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Movant notes that he obtained partial summary judgment, establishing the prima facie elements of his case. Movant disagrees with the three affirmative defenses asserted by Settlor (ordinary course of business, contemporaneous exchange for new value, and subsequent new value).

While "disagreeing" with the asserted defenses, it is appropriate for the Trustee to take them into account and mitigate the possible risk of an adverse ruling. Movant has litigated several cases, and the court has had the opportunity to write extensively in related adversary proceedings concerning these defenses and their application.

Difficulties in Collection

Movant is not aware of any difficulties in collecting the settlement amount.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that trial preparation was as good as complete, but he recognizes that trial and post-trial collection would be costly and could reach $15,000.00.

Paramount Interest of Creditors

Movant is unaware of any opposition to the Motion, but he will evaluate any opposition that is asserted.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it resolves litigation while providing Movant and the Estate with approximately 58% of what Movant sought from litigation without having to incur additional expenses. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael McGranahan, the Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Bay City Mechanical, Inc. ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 808).

5. **13-91315-E-7** **APPLEGATE JOHNSTON, INC.** **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH GRAYBAR ELECTRIC COMPANY, INC.**
WFH-51 **George Hollister** **7-13-17 [810]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 13, 2017. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

The Motion for Approval of Compromise is granted.

Michael McGranahan, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Graybar Electric Company, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are related to recovery of eight avoidable transfers which total in the aggregate $246,762.09.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 813):

A. Settlor shall pay to Movant $82,500.00 by July 18, 2017.

B. Movant shall grant Settlor a full release and shall dismiss an adversary proceeding against Settlor.

C. Settlor shall have the right to file an amended proof of claim asserting an additional claim in the amount of the settlement payment.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Movant argues that he can establish a prima facie case for some of the transfers, but he recognizes a risk as to five transfers by joint check. In fact, Movant notes that Settlor would appear to satisfy the burden of proof for a defense of ordinary course of business. The settlement recovers 34% of what was sought through litigation (also viewed as 54% of the amount sought from the non-joint check transfers).

Difficulties in Collection

Movant is not aware of any impediments to collection.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that trial preparation was mostly complete, but he notes that trial and collection expenses could reach $9,000.00 for an uncertain result.

Paramount Interest of Creditors

Movant is unaware of any opposition, but he will consider any opposition from creditors.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it recovers funds for the Estate that would not have been certain through continued litigation, according to Movant's interpretation of where litigation stands. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael McGranahan, the Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Graybar Electric Company, Inc. ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 813).

6. **13-91315-E-7** **APPLEGATE JOHNSTON, INC.** **NOTICE THAT BILL OF COSTS**
15-9026 **George Hollister** **FILED BY DEFENDANT**
MPJ-1 **6-22-17 [81]**
MCGRANAHAN V. STEPHEN CIARI
PLUMBING AND HEATING, INC.

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

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

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

FN.1. Noticing Defendant has not specified clearly whether the Notice is given according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2) [which applies to law and motion practice]. The Notice that a Bill of Costs has been filed states that a hearing will be held to determine whether to award costs to the prevailing party in this Adversary Proceeding, and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon language that there may submissions at the hearing, the court treats the Notice as being given according to Local Bankruptcy Rule 9014-1(f)(2), extending the period to object to August 10, 2017.

The Notice that a Bill of Costs has been filed in this Adversary Proceeding is removed from the Calendar.

Stephen Ciari Plumbing and Heating, Inc. ("Defendant") seeks reimbursement as a prevailing party for expenses it incurred during this Adversary Proceeding. Defendant has not filed an actual motion, however. A review of the docket shows that the Notice is listed on the Docket as a "notice" and a "motion." That is not the correct practice in bankruptcy court, to the extent that Defendant was intending to present a "motion" to this court. The Local Bankruptcy Rules specify that documents shall be filed electronically as part of the official record. LOCAL BANKR. R. 5005-1 (a) & (b). Here, Defendant has not filed a document with the court that is labeled as a motion for the requested reimbursement.

The court is uncertain as to why Defendant has filed a "Notice" of Costs Bill and set that "Costs Bill" for hearing. No motion requesting any relief from the court has been filed to which the "Notice" relates. *See* FED. R. CIV. P. 7(b) and FED. R. BANKR. P. 7007 ("A request for a court order must be made by motion," with the grounds for which to be stated with particularity in the motion).

The Notice states "will move" on August 10, 2017, for an award of prevailing party costs. This indicates that there is some other "motion" out there to be made by Defendant. The Notice also states that for such future "motion," is based on the Memorandum of Points and Authorities, Declaration, and the Notice, with Defendant also presenting "such further evidence and oral argument" at the August 10, 2017 hearing.

There is no "motion" filed with the court. There are no grounds stated with particularity in a motion requesting relief. See LOCAL BANKR. R. 9004-1 and the Revised Guidelines for Preparation of Documents, which require that the motion, points and authorities, each declaration, and the exhibits (which exhibits may be combined into one document) be filed as separate documents.

As discussed below, at this point there is no motion that could be filed with the court requesting the taxing of costs. The Clerk of the Court must first review the bill of costs, present opposition if any, and make a determination of which costs shall be taxed. Only after the Clerk of the Court has taxed costs may the parties file a motion with the court to review the Clerk's determination.

Points and Authorities

For the "Motion-less" Notice, Defendant has filed a Points and Authorities asserting that it is entitled to reimbursement of costs incurred as a prevailing party in this Adversary Proceeding, pursuant to Federal Rule of Bankruptcy Procedure 7054(b)(1), incorporating Federal Rule of Civil Procedure 54(d)(1). Defendant seeks an award of $4,377.48 in costs.

Federal Rule of Bankruptcy Procedure 7054(b)(1) governs costs other than attorney's fees, and it states:

> The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. **Costs may be taxed by the clerk** on 14 days' notice; on motion served within seven days thereafter, the action of the clerk may be reviewed by the court.

As discussed in Collier on Bankruptcy, Sixteenth Edition, ¶ 7054.05, the Federal Rules of Bankruptcy Procedure leave greater discretion to a judge in an adversary proceeding in what costs "may" be allowed as compared to Federal Rule of Civil Procedure 54(d), which provides that such costs "should" be allowed. Whether under Federal Rule of Civil Procedure 54(d) or Federal Rule of Bankruptcy Procedure 7054(b)(1), it is the clerk of the court who must first tax the costs, and only then may the parties seek relief therefrom by motion to the court.

Whether to award costs to a prevailing party is within the discretion of the bankruptcy court, and once the court determines to allow costs, then the appropriate statute for determining what costs to award is 28 U.S.C. § 1920. *See Young v. Aviva Gelato, Inc. (In re Aviva Gelato, Inc.)*, 94 B.R. 622, 624 (B.A.P. 9th Cir. 1988), *aff'd*, 930 F.2d 26 (9th Cir. 1991); *Maxwell v. Hapag-Lloyd Aktiengesellschaft, Hamburg*, 862 F.2d 767, 770 (9th Cir. 1988). There is a strong presumption in favor of allowing costs to a prevailing

party. *Brown v. Real Estate Res. Mgmt., LLC (In re Polo Builders, Inc.)*, 397 B.R. 396 (Bankr. N.D. Ill. 2008).

Section 1920 of Title 28 provides for taxing costs, with the costs process commenced by a "bill of costs" being filed in the "case," which in the bankruptcy court would be the adversary proceeding. 28 U.S.C. § 1920 (unnumbered sentence at end of section).

Local Bankruptcy Rule 1001-1(c) incorporates the rules and list of taxable costs established in Rule 292 of the Local Rules of Practice of the United States District Court for the Eastern District of California, which includes:

> (1) Clerk's fees (28 U.S.C. §§ 1914, 1920(1));
>
> (2) Marshal's fees and fees for service by a person other than the Marshal under Fed. R. Civ. P. 4 to the extent they do not exceed the amount allowable for the same service by the Marshal (28 U.S.C. §§ 1920(a), 1921);
>
> (3) Court reporter's fees (28 U.S.C. § 1920(2));
>
> (4) Docket fees (28 U.S.C. §§ 1920(5), 1923);
>
> (5) Fees for exemplification and copies of papers necessarily obtained for use in the action (28 U.S.C. § 1920(4));
>
> (6) Fees to masters, receivers, and commissioners (Fed. R. Civ. P. 53(a));
>
> (7) Premiums on undertaking bonds or security required by law or by order of the Court or necessarily incurred by a party to secure a right accorded in the action;
>
> (8) Per diem, mileage and subsistence for witnesses (28 U.S.C. § 1821);
>
> (9) Compensation of Court-appointed experts, compensation for interpreters, and salaries, fees, expenses, and costs of special interpretation services (28 U.S.C. §§ 1828, 1920(6));
>
> (10) Costs on appeal taxable in the District Court pursuant to Fed. R. App. P. 39(e); and
>
> (11) Other items allowed by any statute or rule or by the Court in the interest of justice.

Eastern District of California Local Rule 292(b) provides that within fourteen days after entry of the judgment, "the prevailing party **may serve on all other parties and file a costs bill** conforming with 28 U.S.C. § 1924." The cost bill form may be obtained from the Clerk of the Court. The Bill of Costs, using the Form 2630, was filed by Defendant on June 22, 2017. Dckt. 84.

District Court Local Rule 292(c) requires that any objection to the costs claimed in the Bill of Costs be filed within seven days of the Bill of Costs having been served on the other parties. The seven days expired without any objection to the requested costs being filed.

District Court Local Rule 292(d), which has been incorporated by the Bankruptcy Court in this District into the Local Bankruptcy Rules, then provides that if no timely objection is filed, the Clerk of the Court shall tax and enter the costs. Only if an objection is filed will a hearing be set on the Bill of Costs. *Id.*

Here, it appears that Defendant has unilaterally extended the time for an opposition to the Bill of Costs to August 10, 2017. Notice, Dckt. 81.

Review of Bill of Costs

The costs sought to be recovered by Defendant are stated in the Bill of Costs (Dckt. 84) in the amount of $4,377.48. and consist of the following:

Printing	$347.82
Witness Fees	$606.90
Costs Incident to Taking Depositions	$2,510.15
Other	$912.61
	$4,377.48

In Attachment A to the Bill of Costs (Dckt. 85), Defendant requests "that the bankruptcy clerk tax the following costs in addition to those listed in the body of the Bill of Costs form B2630. . ." in the amount of $3,770.58. Footnote 1 to Attachment A states that Defendant only seeks one-third of the actual costs of the depositions because they were taken to be used in three separate adversary proceedings being prosecuted by Plaintiff-Trustee. The additional costs listed on Attachment A are stated to be:

A. Copies and Printing Exhibits For Trial.....$347.82
(No cost per page shown for copying and "printing.")
(Same cost amount as listed on the Bill of Costs, Dckt. 84)

B. Incidental Costs to Deposition.....$2,510.15
(Same cost amount as listed on the Bill of Costs, Dckt. 84)

C. Other Costs.....$ 912.61
(Same cost amount as listed on the Bill of Costs, Dckt. 84)

It appears that these duplicate the costs are already stated on the Bill of Costs.

DISCUSSION

The Costs process is expressly provided for in the Local Rules in this District, it being the same Rule in the District Court and the Bankruptcy Court for the Eastern District of California. If Defendant had merely filed its Bill of Costs, the Clerk of the Court would have, if no opposition was filed within the seven day period, taxed and entered the costs, which Defendant could have then enforced.

But, because Defendant has given "Notice" that parties have until August 10, 2017, to object to the Bill of Costs, the Clerk has not acted.

There is no "motion" that has been presented to the court for the bankruptcy judge to issue an order. Defendant has not offered the court grounds for the bankruptcy judge usurping the duties of the Clerk in acting on a Bill of Costs. There is nothing for the court to order.

Therefore, the court shall issuing an order that the "Notice" is removed from the calendar.

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.
>
> A Notice that a Bill of Costs had been filed by Stephen Ciari Plumbing and Hearing, Inc. as the prevailing defendant, Local Bankruptcy Rule 101 and District Court Local Rule 292 specifying the procedure for a prevailing party to file a Bill of Costs and for the Clerk of the Court to act on such Bill, there being no "motion" (FED. R. CIV. P. 7(b), FED. R. BANKR. P. 7007) requesting relief from the court to which the Notice relates, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing noticed that a Bill of Costs had been filed is removed from the calendar, no relief requested from and no relief granted by this court.

7. **17-90245-E-7** **REBECCA STEPHENS** **MOTION TO SELL**
MDM-1 **Chistian Younger** **6-29-17 [15]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2017. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Michael McGranahan, the Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the Estate's interest in personal property commonly known as a 2010 Mini Cooper, VIN ending in 3361, and a 1995 Coleman Trailer, VIN ending in 5215 ("Property").

The proposed purchaser of the Property is Rebecca Stephens ("Debtor"), and the terms of the sale are:

A. Debtor shall pay $1,150.00 for the non-exempt equity in the Mini Cooper; and

B. Debtor shall pay $410.00 for the non-exempt equity in the Coleman Trailer.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Movant recovers for the Estate the full non-exempt equity in 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 Sell Property filed by Michael McGranahan, 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 Michael McGranahan, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Rebecca Stephens or nominee ("Debtor"), the Property commonly known as a 2010 Mini Cooper, VIN ending in 3361, and a 1995 Coleman Trailer, VIN ending in 5215 ("Property"), on the following terms:
>
> A. The Property shall be sold to Debtor for $1,560.00.
>
> B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> C. The Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

8. **16-91155-E-12** **LYNN/DONNA PORTER** **MOTION TO DISMISS CASE**
JPJ-1 **David Johnston** **6-16-17 [47]**

Final Ruling: No appearance at the August 10, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2017. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Dismiss is granted, and the case is dismissed.

The Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on May 4, 2017. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1208(c)(1).

This is Debtor's second attempted Chapter 12 case. The prior case was filed on February 16, 2016, and was dismissed on March 8, 2016, for failure to file the basic documents required to prosecute a Chapter 12 case (including Schedules and Statement of Financial Affairs).

The current case was filed on December 30, 2016. The Chapter 12 Plan was filed on March 30, 2017, with confirmation denied on May 9, 2017. Order, Dckt. 44. In denying confirmation, the court determined that Debtor in Possession failed to provide the court with credible evidence showing an ability to perform the proposed Plan. Civil Minutes, p. 7; Dckt. 41. The testimony provided by one debtor was merely that persons personal findings of fact and dictating to the court that person's conclusions of law. *Id.* The court also noted that the expenses asserted to be reasonable as stated on Schedule J appeared to be a

fiction, with Debtor purporting to state that the two adults have no home maintenance expenses, no clothing expenses, no medical expenses, no entertainment expenses, no health insurance expenses, and never pays any taxes (including self-employment taxes). *Id.* at 8.

The court also put into question Debtor's veracity and good faith, stating:

> "Debtor and Debtor in Possession appear to be filing and prosecuting a Chapter 12 case and plan built on misinformation, inaccurate, and undisclosed information. Take at face value, Debtor and Debtor in Possession have and know of significantly more income than disclosed - readily having at hand an "extra" $400 to produce when "caught" by the Chapter 12 Trustee in having underfunded the Chapter 12 Plan. Debtor and Debtor in Possession appear to have whatever "extra" money they need to funnel to the creditor having a lien on Debtor's home.

Id. at 9.

Though given the opportunity to step forward in the three months since the May 4, 2017 hearing on the prior plan, the Debtor in Possession has remained silent, not addressing the "financial reality" concerns of the court.

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 12 case filed by the Chapter 12 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

9. **17-90156-E-7** **LUZ ACOSTA** **MOTION FOR TURNOVER OF PROPERTY**
SSA-4 **Patrick Greenwell** **6-19-17 [28]**

Final Ruling: No appearance at the August 10, 2017 hearing is required.

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

FN.1. The court notes that Movant filed a Notice of Errata on July 6, 2017, to correct the Docket Control Number from SSA-3 to SSA-4 in compliance with LOCAL BANKR. R. 9014-1(c).

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2017. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

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

The Motion for Turnover is granted.

Michael McGranahan, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the property commonly known as:

A. Tax refund monies of $7,909.00;

B. 2013 Chevy Pick-up, VIN ending in 7145;

C. 2011 RCK WD Trailer, VIN ending in 7579;

D. 1984 Seaworld Boat, HIN ending in M84L;

E. 1984 Trailer, VIN ending in 7953;

F. 2002 Chevy Cavalier, VIN ending in 0143; and

G. 2007 Chevy Van, VIN ending in 3306 ("Property").

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

> (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this Motion to compel Luz Acosta ("Debtor") to deliver property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the Trustee. Pursuant to 11 U.S.C. § 542, a Trustee is entitled to turnover of all property of the estate from Debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, a recent Ninth Circuit decision reaffirms the power of a bankruptcy judge to issue corrective sanctions, including incarceration, to obtain the compliance of a person with the court's order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

No opposition has been filed to this Motion by Debtor or any other party in interest.

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 Turnover of Property filed by 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 the Motion for Turnover of Property is granted.
>
> **IT IS FURTHER ORDERED** that Debtor, and each of them, shall deliver on or before August 24, 2017, possession of the property commonly known as:
>
> A. Tax refund monies of $7,909.00;
>
> B. 2013 Chevy Pick-up, VIN ending in 7145;
>
> C. 2011 RCK WD Trailer, VIN ending in 7579;
>
> D. 1984 Seaworld Boat, HIN ending in M84L;
>
> E. 1984 Trailer, VIN ending in 7953;
>
> F. 2002 Chevy Cavalier, VIN ending in 0143; and
>
> G. 2007 Chevy Van, VIN ending in 3306 ("Property"),
>
> as well as all keys, licenses, registrations, and pink slips associated with the Property.

10. **17-90156-E-7** **LUZ ACOSTA** **MOTION TO SELL**
SSA-5 **Patrick Greenwell** **7-6-17 [34]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2017. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is xxxxxxxxxxxxxxxxx.

The Bankruptcy Code permits Michael McGranahan, the Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the property commonly known as a 2013 Chevrolet Silverado, VIN ending in 7145 ("Property").

The grounds and relief requested, as stated with particularity in the Motion, are summarized as follows:

A. The Motion seeks to sell the 2013 Chevrolet Silverado.

B. The vehicle is "jointly owned" by Debtor and her non-debtor Spouse.

C. The Trustee, Debtor, and non-debtor Spouse have agreed that the Vehicle may be sold and the proceeds turned over to the Trustee for administration of this estate and "potential payment" of claims. Motion ¶ 4.

D. Non-debtor Spouse has discussed a sale of the vehicle to Modesto Toyota and the non-debtor Spouse has received an offer to sell (presumably purchase) the estate's interest in the Vehicle from Modesto Toyota. Motion ¶ 5.

E. The sales price is to be $35,000.00, in "As Is," "Where Is," and "Without Warranty" condition. *Id.*

F. The Trustee shall pay the claim of Ally Bank, which is secured by the Vehicle from the sales proceeds. *Id.*

G. If Modesto Toyota decides not to purchase the Vehicle, or is not the successful high bidder, then the Trustee seeks authorization to sell the Vehicle to CarMax for $30,109. (Presumably, the Trustee seeks the CarMax back-up sales price if Modesto Toyota is not the buyer or there is no other bidder at the sale for more than $30,109.00.)

H. If a person other than Modesto Toyota or CarMax is the successful bidder, the Trustee requests that any other bidder be required to deposit with the Trustee the full sales price.

I. The Trustee requests that the court waive the fourteen-day stay of enforcement of a sale order provided under Federal Rule of Bankruptcy Procedure 6004(h) because: (1) the Vehicle is a highly depreciating asset (not stating the deprecation that will occur within fourteen days); (2) to stop the accrual of interest (in an unstated amount) on the Ally Bank secured claim; and (3) the need for continued maintenance and insurance (in an unstated amount) during the fourteen-day stay period.

Motion, Dckt. 34.

The Trustee, not having a contract in hand, is seeking authorization for a prospective sale to one of several identified persons—if such persons actually enter into a contract to purchase the Vehicle from the Trustee.

The Motion directs the court to Exhibit 1, which is identified as an Agreement between the Trustee, Debtor, and non-debtor Spouse for the sale of the Vehicle. That Agreement does not provide for a sale of the Vehicle to one of the parties to the Agreement, but that the Vehicle may be sold.

Looking at Exhibit 1, it is titled Purchase and Sale Agreement Arising from General Bankruptcy Case Involving Debtor and Husband, Non Filing Spouse. Dckt. 38. As discussed below, the "Agreement" does not provide for the purchase of any vehicle, just an agreement that the Vehicle may be sold.

In the Agreement, the Debtor and non-debtor Spouse agree that the "subject property" shall be sold by the Chapter 7 Trustee. The term "subject property" is not a defined term in the Agreement. The Agreement continues to provide:

A. The "subject property" shall be sold to Modesto Toyota for $35,000.00.

B. If Modesto Toyota should decide not to purchase the "subject property," the "parties" agree that "they" will work to find another buyer for the same or a commercially reasonable sales price.

C. The "subject property" is sold "as is" and "without warranties of any kind."

D. From the gross sales proceeds, the Trustee shall pay the liens and encumbrances, which are estimated to be $15,500.00.

E. Once a "sale agreement" is documented concerning the sale of the "2013 Chevy Silverado," the Trustee shall file and serve a motion for approval of the sale.

F. The Trustee shall hold the net proceeds until "full resolution of the claims regarding Debtor and her husband, the non filing spouse."

Exhibit 1, Dckt. 38.

Exhibit 2 filed in support of the Motion is identified as the "Modesto Toyota Offer." Dckt. 38 at 7. This "Offer" appears to be a business card for Mick Medeiros, whose title is Sales Representative, for the company Modesto Toyota. This appears be a screen shot of a cell phone image. There is some handwriting on the Exhibit, but nothing to indicate an "Offer" to buy that can be accepted by the Trustee. At the bottom of the screen shot is the following handwriting (which may be on the back of the business card):

> 6-24-17
> 2013 Chevrolet Silverado
> VIN: [vehicle identification number]
> $35,000
> [Illegible Signature]

It is not explained how this is an "Offer" that can be accepted and form a binding contract to purchase the Vehicle.

Exhibit 3 filed in support of the Motion is identified as the "CarMax Offer." Dckt. 28 at 8. This Exhibit appears to be a computer screen shot that is titled "Kelley Blue Book Instant Cash Offer." This Exhibit includes the following information:

A. The "Offer Confirmation" is for $30,109.

B. It expires "7/4/2017"

C. The Cash Offer was good for only three days.

D. Contact Information
   1. Christopher Frank

2. Email address is for Steven_M_Endo@carmax.com

It is not explained how this screen shot is an enforceable offer, how it is an offer to purchase by CarMax, and how it is presented as an offer when it expressly states that it (whatever it is) expires on July 4, 2017, now thirty-seven days before this hearing.

Though non-debtor Spouse Angelo Acosta, Jr. has consented to the Trustee selling (pursuant to 11 U.S.C. § 363(f)) whatever interest he has in the Vehicle and holding the net proceeds pending resolution of the disputes between the Trustee, Debtor, and non-debtor Spouse, that is not a "sale" presented to the court.

The Trustee has not presented the court with an agreement for the purchase and sale of the Vehicle, but has requested that the court authorize the Trustee to sell the Vehicle, if the Trustee can find a buyer to enter into an "as is, where is, no warranties" contract. In essence, the Trustee is requesting authorization to market the Vehicle for sale and to sell it for a minimum price to two possible identified buyers.

At this juncture, in light of the nonexistent offers and what appears to be potential sales of the Vehicle being orchestrated by the non-debtor Spouse, not the Trustee, the court is unsure of who it would be actually authorizing to sell the Vehicle.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxx**.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Michael McGranahan, 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 the Motion is **xxxxxxxxxxxxx**.

11. **15-90358-E-7** **LAWRENCE/JUDITH SOUZA** **MOTION FOR AUTHORITY TO OPERATE BUSINESS FOR LIMITED TIME**
WFH-3 **David Johnston** **7-27-17 [621]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Authority to Operate Business for Limited Time was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion for Authority to Operate Business for Limited Time is granted for the period through and including December 31, 2017.

Michael McGranahan, the Chapter 7 Trustee, ("Movant") seeks court approval to operate two rental properties temporarily in this case. Movant states that after he was appointed as trustee in this case, he evaluated the Estate's interests and determined that certain assets should be abandoned, while certain ones should be retained and operated for a limited time.

The two properties that Movant wants to continue operating for a limited time are located at 121 W. Syracuse and 97 W. Canal, Turlock ,California ("Properties"). Movant states that 97 W. Canal generates $675.00 per month, and 121 W. Syracuse does not generate any monthly rent currently, according to the latest filed operating report. Movant argues that Lawrence Souza and Judith Souza ("Debtor") were trying to sell the Properties before their case was converted, but they were unable to do so because of liens by the Internal Revenue Service ("IRS").

Movant intends to sell the Properties still, but he cannot do so while the IRS liens are in place. He has contact the IRS and is awaiting a response, but until he receives one, Movant wants to continue operating the Properties to generate monthly income for the Estate. Movant states that operating the Properties will include payment of insurance, maintenance, taxes, and debt service, and will include retaining a property manager.

Section 704(a)(8) of the Code instructs the trustee in a Chapter 7 case to "file with the court . . . periodic reports and summaries of the operation" of a debtor's business if it has been authorized to be operated. Section 704(a)(1) requires that a trustee close the bankruptcy estate "as expeditiously as is compatible with the best interests of parties in interest." Here, Movant has argued reasonably that the Properties could be generating monthly income for the Estate until they are sold. Movant is not able to sell the Properties yet, though, because of IRS liens. Until the IRS liens are resolved, Movant cannot do anything productive with the Properties without court approval. Movant has given the court sufficient reason to approve his continued operating of the Properties to generate funds for the Estate until such time as the IRS liens are resolved.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Authority to Operate Business for Limited Time filed by Michael McGranahan, the Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Authority to Operate Business for Limited Time is granted, and Movant is authorized to operate the rental business of 121 W. Syracuse and 97 W. Canal, Turlock, California, ("Properties") for the period through and including December 31, 2017, which authorization includes, without limitation, paying all expenses, taxes, and other amounts in the ordinary course of this business.

12. **15-90358-E-7** **LAWRENCE/JUDITH SOUZA** **MOTION TO ABANDON**
WFH-4 **David Johnston** **7-27-17 [625]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon is granted.

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 Michael McGranahan ("Trustee") requests that the court authorize the Trustee to abandon property commonly known as 1066 N. Johnson Road, Turlock, California, and stock in Souza Properties, Inc. ("Property"). The real property is encumbered by a senior and a junior lien, securing claims of $480,188.16 and $170,000.00, respectively. The Declaration of Michael McGranahan has been filed in support of the Motion and provides testimony that the value of the real property is $499,000.00.

For the stock, the Trustee reports that he has consulted with an accountant and has concluded that to sell the real property owned by the company, the Estate would have to incur more than $1,000,000.00 in tax liability. Additionally, two deeds of trust secure eight properties owned by the company, and they total

$1,418,037.77. The Trustee has consulted with a broker and believes it is highly unlikely that he will be able to generate enough sales proceeds to satisfy the deeds of trust and the tax liability.

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

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

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

The Motion to Abandon Property filed by 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 the Motion to Compel Abandonment is granted and that the Property identified as 1066 N. Johnson Road, Turlock, California, and stock in Souza Properties, Inc. is abandoned to Lawrence Souza and Judith Souza by this order, with no further act of the Trustee required.

13. 10-94960-E-7 GUADALUPE CAMPOS
HCS-2 Thomas Gillis

MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH VANESSA JIMENEZ
7-13-17 [36]

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 13, 2017. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has not been set properly for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Approval of Compromise is denied without prejudice.

Gary Farrar, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Vanessa Jimenez ("Settlor"). The claims and disputes to be resolved by the proposed settlement are from a lawsuit brought by Movant that seeks to avoid and recover alleged fraudulent transfers of assets. The Complaint does not state a specific amount of alleged fraudulent conveyances for which judgment is requested.

In the Motion, the Trustee states that there are only $12,678.22 in claims filed in this bankruptcy case. The proposed $36,000.00 settlement amount is computed by the Trustee as a sufficient amount to pay all claims filed and all administrative expenses.

INSUFFICIENT NOTICE OF MOTION

Movant provided twenty-eight days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(3) requires a minimum of twenty-one days' notice of the hearing, and Local Bankruptcy

Rule 9014-1(f)(1)(B) requires an additional fourteen days prior to the hearing for parties to file written opposition. Those two minimums total thirty-five days. Movant has provided seven fewer days than the minimum. 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 to Approve Compromise filed by Gary Farrar, the Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT PROVIDES SUFFICIENT NOTICE

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 40):

A. Settlor shall pay $36,000.00 by cashier's check to Movant, which Movant reports has occurred.

B. Movant shall hold the settlement payment in trust until court approval of the compromise is determined.

C. Settlor waives the right to appeal the court's decision regarding this Motion.

D. Upon payment and court approval, Movant shall file a stipulation seeking to dismiss Adversary Proceeding No. 17-09003-E, *Farrar v. Jimenez*.

E. Settlor shall not file a claim in this bankruptcy case, and if she does, it shall be disallowed without further action.

F. The parties exchange mutual releases from future claims.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc.*

v. Anderson, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Movant argues that the probability of success on the merits regarding Settlor's motion to dismiss the adversary proceeding is uncertain.

Difficulties in Collection

Movant argues that he does not have information about any liens that may be on certain properties, prohibiting him from determining if there is an impediment to collection.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that getting to trial could take many months, and it would be very expensive, especially with the Trustee not holding any funds to pay litigation costs.

Paramount Interest of Creditors

Movant argues that settling for $36,000.00 should allow him to pay creditors in full without having to wait until litigation is resolved, which would conclude this case.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it provides Movant with sufficient funds to pay the Estate's claims. 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 Gary Farrar, the Trustee ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Vanessa Jimenez ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 40).

14. **17-90063-E-7** **JAMES FRITZ** **MOTION FOR COMPENSATION FOR**
BB-1 **Steven Altman** **BOB BRAZEAL, REALTOR(S)**
7-20-17 [74]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 20, 2017. By the court's calculation, 21 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Bob Brazeal, the Real Estate Broker ("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.

Fees are requested for the period February 1, 2017, through February 21, 2017. The order of the court approving employment of Applicant was entered on April 4, 2017. Dckt. 47. Applicant requests fees in the amount of $550.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

A review of the application shows that Applicant investigated and valued real property in this case. The estate has $17,636.00 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 were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Investigation and Valuation of Property: Applicant spent 5.00 hours in this category. Applicant research public records, physically inspected real property, reviewed comparable sales, and projected market value for real property.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Bob Brazeal, realtor	5.00	$110.00	$550.00
	0	$0.00	$0.00
Total Fees for Period of Application			$550.00

FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $550.00 are approved pursuant to 11 U.S.C. § 330 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.

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

Fees $550.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Bob Brazeal ("Applicant"), Real Estate Broker 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 Bob Brazeal is allowed the following fees and expenses as a professional of the Estate:
>
> Bob Brazeal, Professional employed by the Trustee
>
> Fees in the amount of $550.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as real estate broker for the Trustee.
>
> **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.

15. 17-90063-E-7 JAMES FRITZ
HCS-4 Steven Altman

MOTION FOR COMPENSATION FOR DANA A. SUNTAG, TRUSTEES ATTORNEY(S)
7-13-17 [67]

Final Ruling: No appearance at the August 10, 2017 hearing is required.

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

Sufficient Notice Not 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 July 13, 2017. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is denied without prejudice.

Herum\Crabtree\Suntag, the Attorney ("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.

Fees are requested for the period February 4, 2017, through August 10, 2017. The order of the court approving employment of Applicant was entered on February 14, 2017. Dckt. 21. Applicant requests a reduced lump sum for fees and expenses in the amount of $9,500.00.

INSUFFICIENT NOTICE OF MOTION

Applicant provided twenty-eight days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires a minimum of twenty-one days' notice of the hearing when requested fees exceed $1,000.00, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for

parties to file written opposition. Those two minimums total thirty-five days. Applicant has provided seven fewer days than the minimum. Therefore, the Motion is denied without prejudice.

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 Herum\Crabtree\Suntag ("Applicant"), Attorney / 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 the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF APPLICANT PROVIDES SUFFICIENT NOTICE

STATUTORY BASIS FOR PROFESSIONAL FEES

> Pursuant to 11 U.S.C. § 330(a)(3),
>
> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from

the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including compelling abandonment of property, selling real property, and reviewing a transfer of property. The estate has $17,636.00 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 were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 14.1 hours in this category. Applicant prepared its employment application, advised the Client on legal issues during the meeting of creditors, provided advice relating to a demand letter, and prepared compensation applications.

Motion to Compel Abandonment: Applicant spent 4.9 hours in this category. Applicant negotiated with Debtor's counsel regarding a motion to compel abandonment of real property, and the parties were able to negotiate a settlement.

Sale of Real Property Interest to Debtor; Gun Exemption: Applicant spent 17.4 hours in this category. Applicant sought employment of a realtor, provided legal advice regarding a sale of real property, negotiated with Debtor's counsel regarding selling real property and about a gun exemption, prepared settlement papers for the parties, and attended the hearing regarding a sale of property.

Investigation of Transfer of 1930 Ford Tudor: Applicant spent 7.0 hours in this category. Applicant investigated the circumstances of a pre-petition transfer, provided legal advice to the Client, negotiated with Debtor's son regarding the transfer, and provided legal advice regarding trying to administer the property from the transfer.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Dana Suntag, attorney	14.0	$345.00	$4,830.00
Benjamin Codog, attorney	27.8	$175.00	$4,865.00
Benjamin Codog, attorney	1.6	$87.50	$140.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees for Period of Application			$9,835.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $143.21 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$41.00
Copying	$0.10	$61.98
Mileage to and from Modesto Courthouse		$40.23
		$0.00
Total Costs Requested in Application		$143.21

FEES AND COSTS & EXPENSES ALLOWED

Applicant seeks to be paid a single sum of $9,500.00 for its fees and expenses incurred for Client. First and Final Fees and Costs in the amount of $9,500.00 are approved pursuant to 11 U.S.C. § 330 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.

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

Fees and Costs & Expenses $9,500.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Herum\Crabtree\Suntag ("Applicant"), Attorney 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 Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:
>
> Herum\Crabtree\Suntag, Professional employed by the Trustee
>
> Fees and Costs & Expenses in the amount of $9,500.00,

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

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.

16. 17-90373-E-7 MDM-1 | **TEJINDERJIT HUNDAL** / **David Van Dyke** | **MOTION TO SELL** / **7-10-17 [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.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 10, 2017. By the court's calculation, 31 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has not been set properly for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is denied without prejudice.

The Bankruptcy Code permits Michael McGranahan, the Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the Estate's interest in property commonly known as a 2013 Toyota Venza, VIN ending in 9034 ("Property").

INSUFFICIENT NOTICE OF MOTION

Movant provided thirty-one days' notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(2) requires a minimum of twenty-one days' notice, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition. Those two minimums total thirty-

five days. Movant has provided four fewer days than the minimum. 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 to Sell Property filed by Michael McGranahan, 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 the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT PROVIDES SUFFICIENT NOTICE

Movant proposes to sell the non-exempt portion of the Property to Tejinderjit Hundal ("Debtor") in exchange for $5,815.90.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Movant recovers the entire non-exempt portion of 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 Sell Property filed by Michael McGranahan, 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 Michael McGranahan, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Tejinderjit Hundal or nominee ("Debtor"), the non-exempt equity in the property commonly known as a 2013 Toyota Venza, VIN ending in 9034 ("Property"), in exchange for $5,815.90.

17. **17-90577-E-7** **WILSON SARHAD** **MOTION TO EXTEND AUTOMATIC STAY**
DCJ-1 **David Johnston** **7-27-17 [13]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Extend the Automatic Stay is granted.

Wilson Sarhad ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 16-90717) was dismissed on August 23, 2016, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 16-90717, Dckt. 10, August 23, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor's attorney in the prior case failed to file all documents on time, due to both sickness and office miscommunication.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C.

§ 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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 the Automatic Stay filed by the 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 granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.