

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

August 27, 2015 at 10:30 a.m.

1. **14-31901-E-7 SUSAN YORK MOTION TO REDEEM**
 HDR-2 Harry D. Roth 6-30-15 [100]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 30, 2015. By the court's calculation, 58 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Redeem 2010 Chevrolet Aveo, VIN No. XXXX4726 is granted.</p>
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Susan York ("Debtor") seeks to redeem 2010 Chevrolet Aveo, VIN No. XXXX4726 ("Vehicle") from the claim of Ally Financial ("Creditor") pursuant

August 27, 2015 at 10:30 a.m.

to 11 U.S.C. § 722. Under this provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the property, not just to the Debtor's exempt interest in it. See H.R. Rep. No. 95-595, at 381 (1977). To redeem the property, Debtor must pay the lien holder "the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption." 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). To determine the amount of the secured claim, the court looks to 11 U.S.C. § 506.

The Motion is accompanied by the declaration of Debtor. Debtor seeks to value the Vehicle at a replacement value of \$6,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien perfected on Vehicle secures a claim of Creditor with a balance of approximately \$9,062.22. Therefore, Creditor's claim secured by the lien is under-collateralized and pursuant to 11 U.S.C. § 506(a) the court determines Creditor's secured claim to be in the amount of \$6,000.00.

An exemption in the amount of \$677.00 in the Vehicle has been claimed by Debtor pursuant to California Code of Civil Procedure § 703.140(b)(5).

STIPULATION

On August 12, 2015, the Debtor and the Creditor (named in the stipulation as Ally Financial serviced by Ally Servicing LLC) filed a stipulation. Dckt. 107. The stipulation provides that the value of Creditor's secured claim for redemption purposes under 11 U.S.C. § 722 in regards to the Vehicle is \$6,600.00. The stipulation provides that the Debtor shall pay Creditor the sum of \$6,600.00 withing 60 days of entry of an Order approving the stipulation. The payment shall be made payable to "Ally Financial" and sent to the address provided for in the stipulation. Upon receipt of payment, Creditor shall release its lien on the Vehicle and send the Certificate of Title to Debtor.

The stipulation provides that if the payment is not made within the time period, Creditor shall have immediate relief from the automatic stay, and the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3) will be waived.

DISCUSSION

The stipulation filed by the parties provides for the redemption value of \$6,600.00. The stipulation also provides for the caveat that if the Debtor does not pay the redemption value within 60 days of the order, the Creditor will have "immediate relief from the automatic stay, and the fourteen (14) day waiting period under Bankruptcy Rule 4001(a)(3) will be expressly waived."

The \$6,600.00 redemption amount is less than the \$9,062.22 claim filed by Creditor on January 6, 2015. Proof of Claim No. 3. By the Stipulation, Creditor has concurred in the value stated by Debtor in the Motion. While the Stipulation provides that Creditor will have "immediate" relief from the stay,

it does not provide how such relief will be obtained. As the parties know, relief for which an adversary proceeding is not required and the Bankruptcy Rules do not provide for seeking the relief by "application," a motion is required. Fed. R. Bankr. P. 9014.

In these situations where a debtor agrees to termination of the stay at some future date and only upon the occurrence of a condition precedent or condition subsequent, the court orders the following procedure for the conditional relief:

- A. **IT IS FURTHER ORDERED** that if Debtor fails to pay the full \$6,600.00 redemption price on or before October 29, 2015 (the "Condition"), Creditor may seek relief from the automatic stay by *ex parte* motion based on the failure of said condition. The *ex parte* motion shall be filed using the same Docket Control Number as for this Contested Matter (DCN:HDR-2). The court waives the requirement to pay a filing fee for an *ex parte* motion for relief from the automatic stay filed by creditor based solely on the failure of the condition stated above.

The relief from the automatic stay shall be for Creditor, its agents, representative, assigns, and successors, to obtain possession of, sell, and apply to the debt the proceeds from the sale of the Vehicle.

- B. **IT IS FURTHER ORDERED** that the court shall enter an order granting Creditor relief from the automatic stay pursuant to the above *ex parte* motion if Debtor has not (1) filed an opposition to the *ex parte* motion which is supported by admissible evidence and served the motion within 10 days of the date the *ex parte* motion was served and (2) Debtor has set a hearing on the objection to *ex parte* motion on the court's first available regular law and motion calendar that is more than twenty days from the date the *ex parte* motion was served.

If the opposition to the *ex parte* motion is not timely filed and served within the ten day period from the service of the *ex parte* motion, or the hearing on the opposition to the *ex parte* motion is not set for the first available regular law and motion date more than twenty days after the service of the *ex parte* motion, Creditor shall lodge with the court a proposed order granting relief from the automatic stay.

The *ex parte* provisions for relief from the automatic stay are without prejudice to Creditor seeking by separate motion relief from the automatic stay for any grounds other than the failure of the condition for which relief may be requested by *ex parte* relief.

Pursuant to 11 U.S.C. § 722, the court values the claim pursuant to 11 U.S.C. § 506(a). In light of the stipulation, the Creditor's claim secured by the lien is under-collateralized and pursuant to 11 U.S.C. § 506(a) the court determines Creditor's secured claim to be in the amount of \$6,600.00.

The Motion to Redeem pursuant to 11 U.S.C. § 722 and Federal Rule of Bankruptcy Procedure 6008 is granted.

The court will issue a minute order holding that the Motion to Redeem is granted.

The court shall issue an order in 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 Redeem Personal Property filed by Susan York ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS FURTHER ORDERED that Debtor is authorized and allowed pursuant to 11 U.S.C. § 722 to redeem the 2010 Chevrolet Aveo, VIN No. XXXX4726 ("Vehicle") by paying Ally Financial, the creditor holding the claim secured by the Property, the total amount of \$6,600.00, in full at the time of redemption, which must be paid on or before October 26, 2015.

IT IS FURTHER ORDERED that if Debtor fails to pay the full \$6,600.00 redemption price on or before October 29, 2015 (the "Condition"), Creditor may seek relief from the automatic stay by ex parte motion based on the failure of said condition. The ex parte motion shall be filed using the same Docket Control Number as for this Contested Matter (DCN:HDR-2). The court waives the requirement to pay a filing fee for an ex parte motion for relief from the automatic stay filed by creditor based solely on the failure of the condition stated above.

The relief from the automatic stay shall be for Creditor, its agents, representative, assigns, and successors, to obtain possession of, sell, and apply to the debt the proceeds from the sale of the Vehicle.

IT IS FURTHER ORDERED that the court shall enter an order granting Creditor relief from the automatic stay pursuant to the above ex parte motion if Debtor has not (1) filed an opposition to the ex parte motion which is supported by admissible evidence and served the motion within 10 days of the date the ex parte motion was served and (2) Debtor has set a hearing on the objection to ex parte motion on the court's first available regular law and motion calendar that is more than twenty days from the date the ex parte motion was served.

If the opposition to the ex parte motion is not timely filed and served within the ten day period from the service of the ex parte motion, or the hearing on the opposition to the ex parte motion is not set for the first available regular law

and motion date more than twenty days after the service of the ex parte motion, Creditor shall lodge with the court a proposed order granting relief from the automatic stay.

The ex parte provisions for relief from the automatic stay are without prejudice to Creditor seeking by separate motion relief from the automatic stay for any grounds other than the failure of the condition for which relief may be requested by ex parte relief.

2. [14-26919](#)-E-7 RODERICK ROBBINS
HSM-3 Stephen N. Murphy

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
7-6-15 [[120](#)]

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.
Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 6, 2015. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

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

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor is granted, with the deadline extended to xxxxxx, 2015.
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Geoffrey Richards, the Chapter 7 Trustee, ("Trustee") filed the instant Motion for Extension of Time to File Objection to Discharge of Debtor on July 6, 2015. Dckt. 120.

The Trustee states that on July 1, 2014, Roderick Robbins ("Debtor")

filed a voluntary petition. Case No. 14-26919. On January 22, 2015, the case was converted from a Chapter 13 to a Chapter 7. Case No. 14-91596, Dckt. 71.

The Trustee states that the deadline for filing a complaint objecting to discharge is not later than 60 days after the first set of meeting of creditors under 11 U.S.C. § 341(a), which translates to a deadline of July 7, 2015.

The Motion requests that the deadline to object to the Debtor's discharge be extended to August 31, 2015.

The Trustee has previously requested that the court extend the deadline, that motion having been filed on April 29, 2015. Dckt. 109. At that time, the deadline for filing a complaint objecting to discharge was May 4, 2015. The Trustee requested the extension to July 7, 2015 (two months), stating similar grounds as the in the current motion.

It is argued by the Trustee argues that cause exists for the extension because the Trustee is investigating Debtor's interest in assets, including real property in San Francisco and rental property in Sacramento. The Trustee states that he has requested the Debtor produce a number of documents and information to assist him in his investigation. The Trustee states that while some documents have been transmitted, he still is awaiting further documents from the Debtor and requires time to review the documents. Due to the San Francisco property in pending probate, the Trustee requests an extension in order to review possible alternative.

In the current request, the Trustee requests that the deadline be extended for two more months. The Trustee states that the First Meeting of Creditors was "concluded" on June 23, 2015, but that it was concluded "based upon the understanding that the outstanding documents were likely to be provided promptly. However, the outstanding documents have not yet been provided to the Trustee." Motion, p.2:18-21, Dckt. 120. It appears that the meeting may not actually be concluded, as it was contingent on documents being produced. The current Motion was filed on July 6, 2015, and this hearing is being conduct four days before the requested deadline will expire. As of the court's August 24, 2015 review of the Docket, this Motion has not been dismissed by the Trustee, which indicates that the documents have not been produced.

If the documents have not been produced then it is likely that the Trustee will be filing yet another motion to extend the time for the Trustee to file a complaint objecting to Debtor's discharge, the two month extension having been too short.

The Trustee's Report of the continued First Meeting of Creditors states,

"Trustee's Notice of Assets and 341 Meeting Concluded. The 341 Meeting was held on 06/23/15. Debtor Did Not Appear; Counsel Did Not Appear;"

June 24, 2015 Docket Entry Report. If Debtor and Debtor's counsel did not appear and the meeting was concluded, then it would appear that little reason remains for extending the deadline as there has been no First Meeting of Creditors in this case as required by the Bankruptcy Code.

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b)(1). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 4004(b)(1).

The court finds that the complicated nature of the case, emphasized by the Debtor's property in probate and the Trustee still awaiting documents from the Debtor, and in the interest of the Trustee to complete its investigation is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted and the deadline for the Trustee to object to Debtor's discharge is extended to **xxxxxx, 2015**. The court finds it necessary to extend the time for a longer period for the Debtor to either have produced the documents and no further extension required, or the Trustee proceed with a complaint objecting to a discharge. Short-term extensions create the appearance that there is no "real deadline," causing an otherwise unnecessary expenditure of the court's time and resources handling multiple motions dealing with a fundamental duty of the Debtor when one should suffice.

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 Motion for Extension of Time to File an Objection to Discharge filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the deadline for the Chapter 7 Trustee to object to Debtor's discharge is extended to **xxxxxx, 2015**.

3. [14-23471](#)-E-11 ERROL/SUZANNE BURR
DNL-14 Matthew Olson

CONTINUED MOTION TO DISMISS
CASE
7-16-15 [[290](#)]

Final Ruling: No appearance at the August 27, 2015, hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 16, 2015. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss the Chapter 11 Bankruptcy Case is granted and the case is dismissed.</p>
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This Motion to Dismiss the Chapter 11 bankruptcy case of Errol and Suzanne Burr ("Debtor") has been filed by Susan Smith, the Chapter 11 Trustee ("Movant"). Movant asserts that the case should be dismissed or converted based on the following grounds.

- a. The boundary dispute with the Zolldans and the claims asserted in the state court action has been resolved and approved by the court. The resulting stipulation provided:
 - i. The Zolldans to pay the Debtor \$175,000.00 on account of their claim of exemption against Slate Castle
 - ii. The Trustee to quitclaim the estate's interest in the Burr Parcels and the Zolldan Parcels to the Zolldans
 - iii. The state court boundary case to be dismissed along with appeals and

- iv. The parties to exchange mutual releases including the Zolldans' release of Proof of Claim Nos. 1-1 and 2-1.
- b. The claims for malpractice asserted against Mr. Shine, the Debtor's counsel in the boundary dispute from the commencement to November 2009, and the Debtor's potential claims for professional negligence and excessive fines incurred by the firm have been settled. The court approved the agreement with Mr. Shine and the firm between the Debtor which provided the following:
 - i. The Trustee was to release any claims against Stoel Rives LLP, including professional negligence, in exchange for the Stoel Rives LLP's release of any claims against the estate, including pre-petition and post-petition fees and expenses approximating \$120,000.00
 - ii. In exchange for, among other things, a release of all claims of the estate and the Debtor, Mr. Shine agreed to pay the estate \$120,000.00
- c. The Debtor has agreed to pay the California State Board of Equalization's proof of claim in the amount of \$117.33.

The Movant states that she is currently holding approximately \$326,439.71 in funds, after accounting for the payment of the Debtor's homestead exemption in the amount of \$175,000.00 and other secured and administrative claims. The Movant asserts that the total funds on hand are sufficient to pay the remaining claims. The Movant has recovered a total of approximately \$531,985.58 in this case.

ORDER CONTINUING HEARING

On July 29, 2015, the court granted an application to continue the hearing on the instant Motion from 10:30 a.m. on August 13, 2015 to 10:30 a.m. on August 27, 2015.

DEBTOR'S NON-OPPOSITION

Debtor filed a statement of non-opposition to the instant Motion on July 30, 2015. Dckt. 320.

UNITED STATES TRUSTEE'S NON-OPPOSITION

The United States Trustee filed a non-opposition to the instant Motion on August 18, 2015.

RULING

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the

creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). As the Movant has discussed, the Movant has sufficient funds on hand to satisfy any remaining claims of the estate, including secured and administrative claims. The court has approved compromises between the Debtor and various parties, resolving the disputes arising from the boundary dispute and the malpractice claims. These compromises resulted in settlements of various claims and assets to the estate for the payment of the remaining claims of the estate.

Furthermore, both the Debtor and the United States Trustee have filed non-oppositions to the instant Motion, implicitly supporting the dismissal of the case.

The Movant, in her Trustee capacity, has successfully and competently settled contentious claims and suits that have plagued the instant case. Through these settlements, the Movant has been able to settle litigious claims to the benefit of creditors, the estate, and the Debtor. With the contentious claims all being settled and paid, and there being sufficient funds to pay the remaining claims and administrative fees, cause exists to dismiss the 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 11 case filed by the Chapter 11 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. [14-23471](#)-E-11 ERROL/SUZANNE BURR
DNL-15 Matthew Olson

CONTINUED MOTION FOR
COMPENSATION FOR SUSAN K.
SMITH, CHAPTER 11 TRUSTEE
7-16-15 [[302](#)]

Final Ruling: No appearance at the August 27, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 16, 2015. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Trustee Fees is granted.

Susan Smith ("Applicant"), the Chapter 11 Trustee for the bankruptcy estate of Errol and Suzanne Burr ("Debtors"), makes a first and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period July 15, 2014 through July 11, 2015. The order of the court appointing Applicant was entered on July 16, 2015. Dckt. 118. Applicant requests fees in the amount of \$13,998.57 and costs in the amount of \$535.88. FN.1.

FN.1. The Applicant in the original Motion requested \$40,722.50 for fees and \$535.99 for expenses. Dckt. 302. However, the Applicant filed a Supplemental Declaration in which the Applicant stated that she decided to reduce her fee request to the amount calculated under 11 U.S.C. § 326(a). Dckt. 334.

ORDER CONTINUING HEARING

On July 29, 2015, the court granted an order continuing the hearing of the instant Motion to 10:30 a.m. on August 27, 2015. Dckt. 314.

DEBTORS' NON-OPPOSITION

The Debtors filed a Statement in Support of First and final Application to Approve Compensation to the Trustee on July 30, 2015. Dckt. 322. The Debtors state that the Applicant has provided real, valuable services to settle claims and provide the most for the creditors, estate, and Debtors.

UNITED STATES TRUSTEE'S NON-OPPOSITION

The United States Trustee filed a non-opposition to the instant Motion on August 11, 2015. Dckt. 339.

STATUTORY BASIS FOR TRUSTEE 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). 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.

In cases under Chapter 11, 11 U.S.C. § 326(a) provides the mechanisms for determining the compensation for a trustee. In relevant part, § 326(a) states:

(a) In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

Benefit to the Estate

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

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits income from settlement of claims arising from underlying state court actions and the payment of secured and other claims. The estate has \$326,439.71 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

The Bankruptcy Code limits the maximum amount of fees which a Chapter a

Chapter 7 or Chapter 11 trustee may be paid in a bankruptcy case. Pursuant to 11 U.S.C. § 326(a),

In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25% on the first \$5,000 or less, 10% on any amount in excess of \$5,000 but not in excess of \$50,000, 5% on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3% of such monies in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

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.

Asset Investigation: Applicant spent 23.4 hours in this category. Applicant assisted Client with investigating the real property, communicating with parties over litigation and settlements, and coordinating turnover of funds.

Claims, Negotiations, and Compromises: Applicant spent 40.9 hours in this category. Applicant coordinated and executed the settlements and claims of the parties arising from the underlying state court actions as well as other claims against the estate.

General Case Administration: Applicant spent 57.0 hours in this category. Applicant reviewed and communicated with various parties concerning the status of case as well as underlying litigation, prepared necessary reports, and review filings and operating reports..

Tax Issues: Applicant spent 4.0 hours in this category. Applicant communicated with tax specialist over tax issues and tax returns.

Trustee requests the following fees:

25% of first \$5,000.00	\$1,250.00
10% of next \$45,000.00	\$4,500.00
5% of next \$134,971.39	\$8,248.57
3% of next \$0.00	\$0.00
Calculated Total Compensation	\$13,998.57
Plus Adjustment	\$0.00
Total Compensation	\$10,082.26

Less Previously Paid	\$0.00
<u>Total Requested Compensation</u>	<u>\$13,998.57</u>

The Fees are computed on a distribution of \$214,971.39 by the Chapter 11 Trustee, which excludes any monies which are being distributed to the Debtors.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$329.26 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Mileage	\$0.56	\$224.00
Postage	\$11.88	\$11.88
Additional appraiser cost due to additional property boundary scenarios	\$300.00	\$300.00
Total Costs Requested in Application		\$535.88

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. §326(a) and that Applicant effectively used appropriate rates for the services provided. and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

In this case, the Chapter 11 Trustee has \$214,971.39 of unencumbered monies to be administered. The Chapter 11 Trustee was able to negotiate and settle multiple litigations between the Debtor and various parties, ranging from boundary disputes to malpractice claims, which resulted in a release of claims and a benefit to the estate. The Chapter 11 Trustee thoroughly investigated all assets of the Debtors to determine the validity and likelihood of success on the claim.

This case required significant work by the Trustee, with the full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowed as a commission to the Chapter 7 Trustee.

Costs and Expenses

The First and Final Costs in the amount of \$535.88 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11.

The final fees in the amount of \$13,998.57 and costs in the amount of \$535.88 pursuant to 11 U.S.C. § 330 and 11 U.S.C. § 326(a) and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

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

Fees	\$13,998.57
Costs and Expenses	\$535.88

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 Susan Smith ("Applicant"), Chapter 11 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 Susan Smith is allowed the following fees and expenses as a professional of the Estate:

Fees in the amount of \$ 13,998.57
Expenses in the amount of \$ 535.88,

The Fees and Costs pursuant to this Applicant, and Fees in the amount of \$13,998.57 and costs of \$535.88 pursuant to 11 U.S.C. §326(a) and 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

5. [15-20081](#)-E-7 JANET ROBINSON
DNL-5 Jared A. Day

MOTION TO SELL AND/OR MOTION
FOR COMPENSATION FOR
BHG/HIGHLAND PARTNERS,
BROKER(S)
8-6-15 [[81](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2015. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion to Sell Property is granted.
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The Bankruptcy Code permits the J. Michael Hopper, Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

A. 681 8th Street, Richmond, California

The proposed purchaser of the Property is Jose Castro and the terms of the sale are:

1. Purchase price is \$260,000.00.
2. Initial deposit of \$3,000.00.
3. Escrow shall close within 30 calendar days of the court approving the sale.
4. The Property is sold "as is" and "where is" without representation or warranty.
5. The estate and the Buyer shall split 50/50 all city transfer taxes.
6. The estate shall pay all county transfer fees, a one-year home warranty not to exceed \$400.00, and up to 3.5% of the Buyer's closing costs.
7. The Buyer shall pay all escrow fees and title insurance.
8. The sale is subject to overbidding.

The Movant is also requesting an order approving compensation to the estate's real estate broker, BHG/Highland Partners, in the amount of \$13,650.00 (5.25 % of the gross sale price) to be shared with the Buyer's broker (All Pro Realty).

As background, the Movant did a public record search and states that the Property was conveyed to the Debtor by the Debtor's father on November 17, 2007 and the Grant Deed was recorded on May 1, 2008. The Movant asserts that the Property is solely in Debtor's name. The Debtor has a 1/6 interest in real property located at 725 Acacia Avenue, Richmond, California, which is directly next door to the Property.

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: xxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The purchase price exceeds the Debtor's valuation of the Property by \$100,000.00 and the actual list price by \$15,000.00. The sale provides for the additional liquid assets into the estate which will benefit the creditors and the Debtor. Furthermore, the compensation of the broker is proper.

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

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

The Motion to Sell Property filed by J. Michael Hopper, Chapter 7 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the J. Michael Hopper, Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Jose Castro or nominee ("Buyer"), the Property commonly known as 681 8th Street, Richmond, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$260,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit G, Dckt. 85, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
5. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount equal to 5.25% of the actual purchase price upon consummation of the sale. The 5.25% commission shall be paid to the Trustee's broker, BHG/Highland Partners, and the Buyer's broker.