UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 3, 2016, at 10:30 a.m.

---

1. **16-90401-E-11 WFH-4** | **NATIONAL EMERGENCY MEDICAL SERVICES** **David Johnston** | **MOTION FOR AUTHORITY TO ENTER INTO AFFILIATION AGREEMENT WITH NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES AND/OR MOTION TO TERMINATE DAY TO DAY OPERATIONS OF DEBTOR** **10-6-16 [99]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on October 18, 2016. By the court's calculation, 16 days' notice was provided. The court ordered that notice be given by October 18, 2016. Dckt. 112.

The Motion for Authority to Enter into Affiliation Agreement with National Association of Government Employees and/or Motion to Terminate Day-to-Day Operations of Debtor 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 (14) 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 Authority to Enter into Affiliation Agreement with National Association of Government Employees and/or Motion to Terminate Day-to-Day Operations of Debtor is granted.

Russell Burbank, the Chapter 11 Trustee, filed this Motion seeking a court order to enter into an affiliation agreement with National Association of Government Employees ("NAGE") and to terminate the day-to-day operations of National Emergency Medical Services Association, Inc. ("Debtor").

The Trustee has taken control of Debtor's assets, has investigated the business operations, and has determined that Debtor's gross monthly income derived from its current collective bargaining unit membership is approximately $18,500.00. That amount depends upon the continued certification of Debtor as the authorized bargaining representative of bargaining units, but NAGE is attempting to replace Debtor as the authorized representative in many of those units, which puts Debtor's income stream at risk. For the third quarter of 2016, Debtor incurred a loss of approximately $6,700.00 on income of $63,666.00.

The Trustee believes that continued operation of the union will require Debtor to continue to hire union representatives and legal counsel on period and ongoing bases to represent union member interests, to grow membership, and to prevent the attrition of existing members. The Trustee states that the estate does not have sufficient recurring revenue to pay those periodic and ongoing expenses. At current and expected revenue levels, Debtor does not have sufficient cash flow to function as a going concern, and the Trustee estimates that Debtor could become administratively insolvent as early as the first quarter of 2017.

To avoid liquidation, the Trustee has negotiated an affiliation agreement with NAGE in which NAGE would assume and perform all of the obligations of Debtor to its members commencing on the effective date of the agreement. Debtor would retain all union dues payable through December 31, 2016, and NAGE would retain them thereafter. On January 1, 2017, NAGE would make a payment of $20,000.00 to Debtor. Additionally, NAGE has agreed that its unsecured claim of $260,064.00 will be subordinated to all other claims in this case.

Under the agreement, NAGE will continue to organize Debtor's bargaining units and members, and Debtor agrees to cooperate in NAGE's efforts to become the authorized bargaining representative of Debtor's bargaining units. Both parties anticipate that NAGE or another union will replace Debtor ultimately. At that time, the Trustee will liquidate Debtor's assets either through a Chapter 11 plan or through Chapter 7.

The Trustee believes that from November 3, 2016, to January 1, 2017, the Trustee will receive approximately $60,000.00 in union dues and the one-time $20,000.00 payment from NAGE. Simultaneously, the Trustee will have reduced Debtor's operating costs significantly because NAGE will bear the cost of providing services that Debtor would otherwise provide.

APPLICABLE LAW

Section 363 of the Bankruptcy Code provides that a "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . ." 11 U.S.C. § 363(b)(1). The court must find in the evidence "a good business reason" to grant an application of sale under 11 U.S.C. § 363(b). *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *see also In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1228 (5th Cir. 1986) (further explaining the need for a business justification for a sale of assets outside of a confirmed plan); *In re Braniff Airways, Inc.*, 700 F.2d 935 (5th Cir. 1983) (further explaining the need for a business justification for a sale of assets outside of a confirmed plan).

Several factors have been articulated for a court to consider when addressing proposed sales outside of the ordinary course of business, and those factors are:

A. Has the debtor articulated a business justification for the request?

B. Is it good business judgment for the debtor to enter into the proposed transaction?

C. Will the proposed transaction further the diverse interests of the debtor, creditors, and equity holders alike?

D. Is the asset increasing or decreasing in value?

E. Does the proposed transaction specify terms for adoption of the reorganization plan?

F. Will the approval of the proposed transaction effectuate a de facto reorganization in such a "fundamental fashion" as to render creditors' rights meaningless under the other provisions of Chapter 11?

In re Work Recovery, Inc., 202 B.R. 301, 303–04 (Bankr. D. Ariz. 1996). A corollary to the factors is that an objector bears the burden of proof to show what, if any, protection is being denied. *Id.* (citing *In re Continental Air Lines, Inc.*, 780 F.2d at 1228).

One of the more important (if not the most important) factors is whether the asset is increasing or decreasing in value. *See In re Humboldt Creamery, LLC*, No. 09-11078, 2009 WL 2820610, at *1 (Bankr. N.D. Cal. Aug. 14, 2009) ("Modernly, one overriding factor has come to dominate consideration of sales of substantially all of a debtor's assets outside a proper plan: whether the asset is a 'melting ice cube' with its value decreasing day after day and no ability to continue in business for any length of time.").

DISCUSSION

Here, more factors favor granting the Motion than denying it. For instance, the Trustee has established that entering into the affiliation agreement with NAGE is a justifiably good business decision because it puts the Debtor on a solid end-game path while minimizing gouging expenses and costs in the short that otherwise would have made Debtor administratively insolvent by the first quarter of 2017. Not only is that decision justified, but it is also represents good business judgment to cut costs and secure enough funds for Debtor to last until its assets are liquidated as planned by the Trustee. Most importantly, the Trustee has shown that Debtor is decreasing in value rapidly, such that it will probably become administratively insolvent in the near future without some intervening action taken by the Trustee—such as entering into an affiliation agreement with a competing union.

While stated to be a "Servicing Agreement," it is effectively a sale of the estate's business operations. NAGE is to attempt, and the Trustee will cooperate with NAGE's efforts to replace National Emergency Medical Services Association as the representative of the various employee units the Debtor, and now the bankruptcy estate, now represented. The court has considered this "Servicing Agreement" as a sale of the business operations of the bankruptcy estate.

After entering into the "Servicing Agreement," the Trustee receiving the fees and dues paid through December 2016, and the Trustee receiving the one-time $20,000.00 from NAGE, all future fees and dues are owed to NAGE.

At the hearing, the counsel for the Trustee and other parties in interest addressed the following questions presented by the court:

A. During the Period after approval of this Motion and January 1, 2017, NAGE's obligation to pay all expenses of operating the estate business is:

xxxxxxxxxxxxxxxx

B. After January 1, 2017, and NAGE receiving all dues and fees, the obligation of the estate to pay any expenses for operation of the business that NAGE is servicing and the duty to defend and indemnify the estate and Trustee for any such expenses is:

xxxxxxxxxxxxxxxx

C. The insurance for the operation of the business of the estate which is being serviced by NAGE will be obtained and maintained by, and the bankruptcy estate and Trustee shall be provided coverage by:

xxxxxxxxxxxxxxxx

Position Asserted by Torren K. Colcord

Though not filing an opposition to the present Motion, Torren K. Colcord has filed an opposition to the motion to terminate his pre-petition employment agreement. Opposition, Dckt. 119. In it, Mr. Colcord asserts that non-bankruptcy labor law precludes the termination of his employment and, essentially, the operation of the estate's business in a bankruptcy case. The court considers those contentions in connection with the Motion.

Mr. Colcord signed the voluntary bankruptcy petition in this Chapter 11 case, as the Executive Director of the Debtor, on May 4, 2016. Dckt. 1 at 4. By this act, Mr. Colcord affirmatively acted to place all of the Debtor's business operations and assets in the bankruptcy estate. The current bankruptcy case was commenced on May 10, 2016.

The court ordered the appointment of a Chapter 11 trustee in this case, rather than converting it to Chapter 7 (thereby terminating the business operations and the representation provided to the members of the Debtor's business) or dismissing this case. The court's findings of fact and conclusions of law are stated in the Civil Minutes for the August 4, 2016 hearing on the NAGE motion to dismiss this case. Civil Minutes, Dckt. 54. The court's findings and conclusions include:

A. During the years of 2013 through 2015, the annual revenues generated by the Debtor from its business operations declined from $911,923 (2013) to $745,116 (2014) to $405,028 (2015). In 2016, for the first four months of the case, the Debtor stated having revenues of only $89,335. Dckt. 54 at 6.

B. "Here, cause exists for conversion, dismissal, or the appointment of a Chapter 11 trustee. After twenty months of opportunity the Debtor in Possession and counsel have been unable to float any possible Chapter 11 plan. The revenues of the estate continue to diminish. Though asserting that a violation of the automatic stay existed in the prior case, Debtor in Possession failed to act." *Id.*

C. "Though qualifying for a conversion to Chapter 7, the Schedules do not indicate there are significant assets to liquidate. Rather, the potential for paying creditors exists from continued operations, advocacy of its rights (including alleged violations of the automatic stay) and the good faith, effective prosecution of a Chapter 11 case." *Id.*

D. "The court is convinced that only through the appointment of a Chapter 11 trustee will the estate get the clear-eyed look of a fiduciary to evaluate the rights and assets of the estate, the possible business, and bring to a conclusion the death spiral litigation with NAGE."

The reference to Debtor, serving as the Debtor in Possession, having twenty months to reorganize the business and failing to do so makes reference to this being the Debtor's second bankruptcy case. The first voluntary Chapter 11 case was filed by the Debtor on February 6, 2015. Bankr. E.D. Cal. 15-90109 ("First Chapter 11 Case").

The voluntary Chapter 11 Petition in the First Chapter 11 Case was signed by Torren Colcord, as the Executive Director for Debtor. 15-90109, Dckt. 1 at 3. On April 13, 2016, more than fourteen months after the First Chapter 11 Case was filed, the court filed its order dismissing that prior Chapter 11 case. *Id.*; Order, Dckt. 91. In dismissing the case, the court's findings of fact and conclusions of law include the following:

A. "The instant case was filed February 6, 2015. Dckt. 1. Since that time, the Debtor-in-Possession has failed to propose any type of plan or disclosure statement. The Debtor-in-Possession has been benefitting from the protections of the Bankruptcy Code without prosecuting the case in good faith. The Debtor-in-Possession on multiple occasions represented to the court that the Debtor-in-Possession would be filing a Disclosure Statement and plan in the immediate future." *Id.*; Civil Minutes, Dckt. 88 at 2.

B. "The Debtor-in-Possession has failed to meet this promise. The Debtor-in-Possession does not appear to be prosecuting this case in good faith. Instead, the Debtor-in-Possession appears to be 'dragging their feet' in order to avoid having to fulfill the obligations of a Chapter 11 Debtor-in-Possession fiduciary." *Id.*

C. "Looking at the February 2016 Monthly Operating Report, untimely filed on March 31, 2016, in the past year this Debtor in Possession has generated $426,257.00 in cash receipts. Dckt. 85. During that time the Debtor in Possession has disbursed $359,08.00 as it has continued to operate under bankruptcy protection. The largest expense is for Salary and wages, $160,211. When the payroll tax and insurance expenses are included, the employee costs are $241,979. *Id.* This is 67% of the total disbursements during the year this Debtor has been in bankruptcy." *Id.*

D. "The court has given Debtor-in-Possession ample opportunity to the Debtor-in-Possession to prosecute this case in good faith and diligently. There is nothing to indicate that there is any reorganization ongoing, but merely the Debtor in Possession continuing to operate the business and pay its employees, without providing for paying any pre-petition creditors." *Id.*

During the First Chapter 11 Case and the period in which the Debtor served as Debtor in Possession, Mr. Colcord served as the Executive Director and was responsible for not only the operation of the business in the bankruptcy estate, but also for the Debtor fulfilling its fiduciary duties as the Debtor in Possession.

Non-Bankruptcy Labor Law

Mr. Colcord asserts that his contract with the Debtor, that is now part of the bankruptcy estate, should not be terminated for a number of reasons. One is that by terminating the contract the Chapter 11 Trustee would be violating the Labor Management Reporting and Disclosures Act, which Mr. Colcord asserts "preempts" the Bankruptcy Code. Opposition, p. 2; Dckt. 119. Mr. Colcord appears to quote an unidentified source saying that labor unions are "entirely different than US businesses contemplated under chapter 11 trusteeships and many if not all other laws respecting businesses." *Id.*, pp. 2–3. Mr. Colcord, and the quote, only cites to the general statutory provisions of 29 U.S.C. § 401 et seq. (The "Act"), and not to any specific statute or case law.

Beginning with the provisions of 29 U.S.C. § 401, the general legislative declaration of purpose for the Labor-Management Reporting and Disclosure Procedure, Congress declared that the Act was necessary to "eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended and the Railway Labor Act. . . ." 29 U.S.C. § 401(c). In running a word search for the Act for "bankruptcy" or "title 11," the court found the following:

A. The term "person" for the Act expressly includes a bankruptcy trustee, stating:

1. (d) "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, **trustees in cases under title 11 of the United States Code**, or receivers." 29 U.S.C. § 402(d) [emphasis added].

Mr. Colcord further argues that his employment contract should not be terminated because it "deprives the union membership of their rights to representation as mandated under the National Labor Relations Act. (NLRA), 29 U.S.C. §§ 151–169." Opposition to Motion to Terminate Employment Contract, p. 4; Dckt. 119. He asserts that because he, Mr. Colcord, has served as the executive director of the Debtor, then he must be allowed to continue to provide such services, even though his employer has decided to terminate his employment.

Another argument asserted by Mr. Colcord is that if his employment is terminated and the bankruptcy estate ceases operating the business, then there will be no future monies to pay creditors—or pay Mr. Colcord's future salary. *Id.*, p. 6. He asserts that the bankruptcy estate should be receiving $18,000.00 per month in dues revenue—which would then total $216,000 per year. This amount would be a 50% decrease from the 2015 revenues, which were part of an ongoing substantial drop in revenues from the prior years.

The Bankruptcy Code defines persons allowed to be Chapter 11 debtors as "Only a railroad, a person that may be a debtor under chapter 7 of this title (except a stockbroker or a commodity broker), and an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor under chapter 11 of this title." 11 U.S.C. § 109(d). Any "person" may be a Chapter 7 Debtor, except:

> (1) a railroad;
>
> (2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958, a small business investment company licensed by the Small Business Administration under section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act, except that an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or
>
> (3) a foreign insurance company, engaged in such business in the United States; or a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978 in the United States.

11 U.S.C. § 109(b). Mr. Colcord, acting in his capacity as the Executive Director of the Debtor, did avail the Debtor (twice) of the relief available under the Bankruptcy Code. Merely because his efforts were not successful does not render the Bankruptcy Code inapplicable when it does not suit his interests.

RULING

The Trustee has established sufficient grounds showing that Debtor is on the brink of administrative insolvency and that the proposed affiliation agreement with NAGE is beneficial to Debtor. The operation of the estate's business has been reduced to one employee, whose contract the Trustee has determined should be rejected.

While the court recognizes that for Torren K. Colcord and others who have been operating the Debtor and Debtor's business in the years before the prior Chapter 11 case, during the prior Chapter 11 case, and up to the appointment of the Chapter 11 Trustee to take control of this case and the business in this bankruptcy estate may view this as the Trustee making a deal with the devil (NAGE being Debtor's mortal enemy in litigation and competition), the Trustee has found a way to generate value from the business operation without exhausting all possible assets.

Mr. Colcord's belief that he has the right, notwithstanding the appointment of a Trustee, to continue to operate the bankruptcy estate's business until the last dollar is spent does not trump the Trustee's determination of the operation of the business that is property of the bankruptcy estate. The court ordered the appointment of a Chapter 11 Trustee expressly to preserve the business operation and provide the members who look to it for representation with such continuing representation while they would determine whether to continue with this representation or move to another union representative. If the court had converted the case to one under Chapter 7, after the more than twenty months of failed Chapter 11 efforts by the Debtor, serving as Debtor in Possession with Mr. Colcord as its Executive Director, there would have been no continuity of representation.

While Mr. Colcord requests the court continuing the hearing on the termination of his employment contract, which presumably would require the court to continue the hearing on the present Motion, as the court is sure that Mr. Colcord would not be requesting that his contract be continued and he be paid with no work being done, no good reason has been shown for a continuance. This business has been, as previously described by the court, as being in a financial death spiral under the operation by its executives. The Trustee has done exactly what could be expected—found another union representative business to take over providing that continued representation. While it is the entity that Mr. Colcord and the Debtor have continued to fight as the Debtor's business continued to decline does not give Mr. Colcord and the Debtor the right to veto the decision made by the independent fiduciary Chapter 11 Trustee.

The Motion is granted, and the Trustee is authorized to enter into the affiliation agreement and to terminate the day to day operations of Debtor.

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 Enter into Affiliation Agreement with National Association of Government Employees and/or Motion to Terminate Day-to-Day Operations of Debtor 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 for Authority to Enter into Affiliation Agreement with National Association of Government Employees and/or Motion to Terminate Day-to-Day Operations of Debtor is granted, and the Trustee is authorized to enter into the affiliation agreement with National Association of Government Employees set forth as Exhibit A, Dckt. 101.

IT IS FURTHER ORDERED that the Chapter 11 Trustee is authorized to terminate the day-to-day operations of National Emergency Medical Services Association, effective as of the day of the signed affiliation agreement.

2. **16-90401-E-11 WFH-2** | **NATIONAL EMERGENCY MEDICAL SERVICES** **David Johnston** | **CONTINUED MOTION FOR ORDER AUTHORIZING REJECTION OF EMPLOYMENT AGREEMENT OF TORREN K. COLCORD** **10-6-16 [93]**

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)(3) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on October 6, 2016. By the court's calculation, 14 days' notice was provided.

The Motion for Order Authorizing Rejection of Employment Agreement was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 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 Order Authorizing Rejection of Employment Agreement is granted.

Russell Burbank, the Chapter 11 Trustee, filed this Motion to reject the employment contract of Torren Colcord. The Trustee asserts that National Emergency Medical Services Association, Inc. ("Debtor") entered into an employment agreement with Mr. Colcord (Exhibit A, Dckt. 96) on October 28, 2010. The five-year agreement includes a base salary of $150,000.00 per year; the possibility of annual salary increases; and health, welfare, and fringe benefits. The agreement seems to have been modified in 2015 to set the base salary at $100,000.00 per year. Following the initial five-year term, the agreement would continue on a year-to-year basis, unless either party provides notice of wishing to modify the agreement. The agreement forbids Debtor from terminating Mr. Colcord's employment without a showing that he "committed acts of gross misconduct or, gross negligence."

Since being appointed, the Trustee has determined that Debtor has gross monthly income of approximately $18,500.00. Mr. Colcord's monthly compensation costs the estate $8,333.00 per month. The Trustee believes that there is not sufficient revenue on hand to pay Mr. Colcord in the future, and furthermore, the Trustee is not convinced that Mr. Colcord's contributions to the company justify his salary.

The Trustee has entered into an agreement with NAGE—subject to court approval—under which NAGE would take over operating the Debtor. If that agreement is approved, Debtor will have no further obligations that require the employment of Mr. Colcord.

OCTOBER 20, 2016 HEARING

At the hearing, Debtor's counsel and Mr. Colcord appeared, urging the court to set the matter for further hearing in conjunction with the pending motion to approve the sale of the Debtor's business. Mr. Colcord (appearing in pro se) asserted that he is in the middle of providing representation to the members, which representation is lacking if he does continue in that capacity.

The Trustee responded that there will be a cost, approximately $5,000.00 plus expenses, in keeping Mr. Colcord employed for another two weeks (the hearing on the motion to sell set for November 3, 2016).

The court continued the hearing on the matter to 10:30 a.m. on November 1, 2016. Dckt. 118.

DISCUSSION

11 U.S.C. § 365(a) allows the Trustee to reject any executory contract of the debtor, subject to court approval. In the Ninth Circuit, courts apply the business judgment rule when reviewing a trustee's decision to reject an executory contract. *See In re Pomona Valley Medical Group*, 476 F.3d 665 (9th Cir. 2007). In reviewing a rejection motion, the bankruptcy court should presume that the trustee "acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate" and should approve rejection unless the "conclusion that rejection would be advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *Id.* at 670. Adverse effects upon the other contract party are not relevant, unless the effect is so disproportionate to the estate's prospective advantage that it shows rejection could not be a sound exercise of business judgment. *See id.* at 671; *In re Old Carco LLC*, 406 B.R. 180, 192 (Bankr. S.D.N.Y. 2009).

Here, the Trustee has demonstrated several sound business judgment reasons for rejecting Mr. Colcord's employment agreement with Debtor. First, the Trustee has established that Mr. Colcord's salary cuts deeply in the Debtor's gross monthly income. Second, the Trustee has alleged that Mr. Colcord's contributions to the company do not merit his current salary, which leads into the third point. If the court approves of NAGE taking control of Debtor's business operations, then Mr. Colcord would not be making any contributions to the company, at least none that the court has evidence of or sees.

The court ordered the appointment of a Chapter 11 Trustee, rather than converting the case to one under Chapter 7, to allow for the maintenance of the ongoing business rather than have it immediately

proceed to liquidation. The Debtor, under the direction of Mr. Colcord, had demonstrated through two unsuccessful Chapter 11 attempts that he and the existing management were incapable of restructuring the business and of prosecuting a successful Chapter 11 reorganization.

Opposition of Torren Colcord

The court has considered the Opposition filed by Torren Colcord (Dckt. 119) not only in connection with the present Motion, but also in the Chapter 11 Trustee's Motion to enter into a Servicing Agreement with NAGE. The court's consideration of the Opposition (which is stated in substantially the same language as for the other motion) is as follows.

Mr. Colcord asserts that non-bankruptcy labor law precludes the termination of his employment and, essentially, the operation of the estate's business in a bankruptcy case. Mr. Colcord signed the voluntary bankruptcy petition in this Chapter 11 case, as the Executive Director of the Debtor, on May 4, 2016. Dckt. 1 at 4. By this act, Mr. Colcord affirmatively acted to place all of the Debtor's business operations and assets in the bankruptcy estate. The current bankruptcy case was commenced on May 10, 2016.

The court ordered the appointment of a Chapter 11 trustee in this case, rather than converting it to Chapter 7 (thereby terminating the business operations and the representation provided to the members of the Debtor's business) or dismissing this case. The court's findings of fact and conclusions of law are stated in the Civil Minutes for the August 4, 2016 hearing on the NAGE motion to dismiss this case. Civil Minutes, Dckt. 54. The court's findings and conclusions include:

A. During the years of 2013 through 2015, the annual revenues generated by the Debtor from its business operations declined from $911,923 (2013) to $745,116 (2014) to $405,028 (2015). In 2016, for the first four months of the case, the Debtor stated having revenues of only $89,335. Dckt. 54 at 6.

B. "Here, cause exists for conversion, dismissal, or the appointment of a Chapter 11 trustee. After twenty months of opportunity the Debtor in Possession and counsel have been unable to float any possible Chapter 11 plan. The revenues of the estate continue to diminish. Though asserting that a violation of the automatic stay existed in the prior case, Debtor in Possession failed to act." *Id.*

C. "Though qualifying for a conversion to Chapter 7, the Schedules do not indicate there are significant assets to liquidate. Rather, the potential for paying creditors exists from continued operations, advocacy of its rights (including alleged violations of the automatic stay) and the good faith, effective prosecution of a Chapter 11 case." *Id.*

D. "The court is convinced that only through the appointment of a Chapter 11 trustee will the estate get the clear-eyed look of a fiduciary to evaluated the rights and assets of the estate, the possible business, and bring to a conclusion the death spiral litigation with NAGE."

The reference to Debtor, serving as the Debtor in Possession, having twenty months to reorganize the business and failing to do so makes reference to this being the Debtor's second bankruptcy case. The first voluntary Chapter 11 case was filed by the Debtor on February 6, 2015. Bankr. E.D. Cal. 15-90109 ("First Chapter 11 Case").

The voluntary Chapter 11 Petition in the First Chapter 11 Case was signed by Torren Colcord, as the Executive Director for Debtor. 15-90109, Dckt. 1 at 3. On April 13, 2016, more than fourteen months after the First Chapter 11 Case was filed, the court filed its order dismissing that prior Chapter 11 case. *Id.*; Order, Dckt. 91. In dismissing the case, the court's findings of fact and conclusions of law include the following:

A. "The instant case was filed February 6, 2015. Dckt. 1. Since that time, the Debtor-in-Possession has failed to propose any type of plan or disclosure statement. The Debtor-in-Possession has been benefitting from the protections of the Bankruptcy Code without prosecuting the case in good faith. The Debtor-in-Possession on multiple occasions represented to the court that the Debtor-in-Possession would be filing a Disclosure Statement and plan in the immediate future." *Id.*; Civil Minutes, Dckt. 88 at 2.

B. "The Debtor-in-Possession has failed to meet this promise. The Debtor-in-Possession does not appear to be prosecuting this case in good faith. Instead, the Debtor-in-Possession appears to be 'dragging their feet' in order to avoid having to fulfill the obligations of a Chapter 11 Debtor-in-Possession fiduciary." *Id.*

C. "Looking at the February 2016 Monthly Operating Report, untimely filed on March 31, 2016, in the past year this Debtor in Possession has generated $426,257.00 in cash receipts. Dckt. 85. During that time the Debtor in Possession has disbursed $359,08.00 as it has continued to operate under bankruptcy protection. The largest expense is for Salary and wages, $160,211. When the payroll tax and insurance expenses are included, the employee costs are $241,979. *Id.* This is 67% of the total disbursements during the year this Debtor has been in bankruptcy." *Id.*

D. "The court has given Debtor-in-Possession ample opportunity to the Debtor-in-Possession to prosecute this case in good faith and diligently. There is nothing to indicate that there is any reorganization ongoing, but merely the Debtor in Possession continuing to operate the business and pay its employees, without providing for paying any pre-petition creditors." *Id.*

During the First Chapter 11 Case and the period in which the Debtor served as Debtor in Possession, Mr. Colcord served as the Executive Director and was responsible for not only the operation of the business in the bankruptcy estate, but also for the Debtor fulfilling its fiduciary duties as the Debtor in Possession.

Non-Bankruptcy Labor Law

Mr. Colcord asserts that his contract with the Debtor, that is now part of the bankruptcy estate, should not be terminated for a number of reasons. One is that by terminating the contract the Chapter 11 Trustee would be violating the Labor Management Reporting and Disclosures Act, which Mr. Colcord asserts "preempts" the Bankruptcy Code. Opposition, p. 2; Dckt. 119. Mr. Colcord appears to quote an unidentified source saying that labor unions are "entirely different than US businesses contemplated under chapter 11 trusteeships and many if not all other laws respecting businesses." *Id.*, pp. 2–3. Mr. Colcord, and the quote, only cites to the general statutory provisions of 29 U.S.C. § 401 et seq. (The "Act"), and not to any specific statute or case law.

Beginning with the provisions of 29 U.S.C. § 401, the general legislative declaration of purpose for the Labor-Management Reporting and Disclosure Procedure, Congress declared that the Act was necessary to "eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended and the Railway Labor Act. . . ." 29 U.S.C. § 401(c). In running a word search for the Act for "bankruptcy" or "title 11," the court found the following:

A. The term "person" for the Act expressly includes a bankruptcy trustee, stating:

1. (d) "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, **trustees in cases under title 11 of the United States Code**, or receivers." 29 U.S.C. § 402(d) [emphasis added].

Mr. Colcord further argues that his employment contract should not be terminated because it "deprives the union membership of their rights to representation as mandated under the National Labor Relations Act. (NLRA), 29 U.S.C. §§ 151–169." Opposition to Motion to Terminate Employment Contract, p. 4; Dckt. 119. He asserts that because he, Mr. Colcord, has served as the executive director of the Debtor, then he must be allowed to continue to provide such services, even though his employer has decided to terminate his employment.

Another argument asserted by Mr. Colcord is that if his employment is terminated and the bankruptcy estate ceases operating the business, then there will be no future monies to pay creditors—or pay Mr. Colcord's future salary. *Id.*, p. 6. He asserts that the bankruptcy estate should be receiving $18,000.00 per month in dues revenue—which would then total $216,000 a year. This amount would be a 50% decrease from the 2015 revenues, which were part of an ongoing substantial drop in revenues from the prior years.

The Bankruptcy Code defines persons allowed to be Chapter 11 debtors as "Only a railroad, a person that may be a debtor under chapter 7 of this title (except a stockbroker or a commodity broker), and an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor under chapter 11 of this title." 11 U.S.C. § 109(d). Any "person" may be a Chapter 7 Debtor, except:

> (1) a railroad;
>
> (2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958, a small business investment company licensed by the Small Business Administration under section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act, except that an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or
>
> (3) a foreign insurance company, engaged in such business in the United States; or a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978 in the United States.

11 U.S.C. § 109(b). Mr. Colcord, acting in his capacity as the Executive Director of the Debtor, did avail the Debtor (twice) of the relief available under the Bankruptcy Code. Merely because his efforts were not successful does not render the Bankruptcy Code inapplicable when it does not suit his interests.

RULING

The Trustee has established sufficient grounds showing that Debtor is on the brink of administrative insolvency and that termination of Mr. Colcord's employment agreement is consistent with the exercise of good business judgment by the Trustee.

Mr. Colcord's belief that he has the right, notwithstanding the appointment of a Trustee, to continue to operate the bankruptcy estate's business until the last dollar is spent does not trump the Trustee's determination of the operation of the business that is property of the bankruptcy estate. The court ordered the appointment of a Chapter 11 Trustee expressly to preserve the business operation and provide the members who look to it for representation with such continuing representation while they would determine whether to continue with this representation or move to another union representative. If the court had converted the case to one under Chapter 7, after the more than twenty months of failed Chapter 11 efforts by the Debtor, serving as Debtor in Possession with Mr. Colcord as its Executive Director, there would have been no continuity of representation.

While Mr. Colcord requests the court continue the hearing on the termination of his employment contract, no good reason has been shown for a continuance. This business has been, as previously described by the court, as being in a financial death spiral under the operation by its executives. The Trustee has done exactly what could be expected—found another union representative business to take over providing that continued representation. While it is the entity that Mr. Colcord and the Debtor have continued to fight as

the Debtor's business continued to decline does not give Mr. Colcord and the Debtor the right to veto the decision made by the independent fiduciary Chapter 11 Trustee.

In substantial part, the gist of Mr. Colcord's opposition is that "he," personally, has the right to continue to operate the business and get paid for it, without regard to the business decision of his employer. While Mr. Colcord could "call the shots" and run the business outside of bankruptcy, when he chose to file the Chapter 11 cases, he submitted the Debtor to the Bankruptcy Code. He chose to transfer all assets, including the business operations, into the bankruptcy estate. When, through the failure of the Debtor's executives, fulfilling the fiduciary duties of the Debtor, acting as the Debtor in Possession, caused the appointment of a Chapter 11 Trustee, Mr. Colcord lost the ability to "call the shots." Mr. Colcord's real objection is that the Trustee, having lost confidence in Mr. Colcord, is engaging the services of NAGE to manage what remains of the business while the Trustee recovers some value from it, rather than it being rendered worthless by the continued operation by executives of the Debtor.

Mr. Colcord's employment agreement with Debtor is burdensome to the ongoing operations of the company, and the court believes that the Trustee has acted with sound business judgment in seeking to reject the employment agreement. The motion is granted, and the employment agreement is rejected.

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 Order Authorizing Rejection of Employment Agreement filed by Russell Burbank, 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 for Order Authorizing Rejection of Employment Agreement is granted, and the employment agreement between National Emergency Medical Services ("Debtor") and Torren Colcord is rejected in its entirety.

3. **12-34203-E-7** **WATSON VENTURES, LLC** **MOTION TO RE-ESTABLISH BAR DATE FOR FILING MOTIONS FOR ALLOWANCE OF CHAPTER 11 AND CHAPTER 7 ADMINISTRATIVE CLAIMS**
HCS-6 **Pro Se** **10-6-16 [179]**

Final Ruling: No appearance at the November 3, 2016 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 (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 6, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Re-Establish Bar Date for Filing Motions for Allowance of Chapter 11 and Chapter 7 Administrative Claims 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 (14) days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Re-Establish Bar Date for Filing Motions for Allowance of Chapter 11 and Chapter 7 Administrative Claims is granted.

Alan Fukushima, the Chapter 7 Trustee, requests that the court set December 19, 2016, as the new bar date for creditors to file motions for allowance of administrative claims incurred while this case was in Chapter 11 (from August 1, 2012, to November 9, 2012) or Chapter (from November 9, 2012, to the present date). The Trustee brings this motion pursuant to 11 U.S.C. §§ 502(b)(9) and 503 and Federal Rules of Bankruptcy Procedure 2002(a)(7), (f)(3), and 3003(c)(3).

Federal Rule of Bankruptcy Procedure 3003(c)(3) provides that "[t]he court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed."

Here, the Trustee argues that one or more parties may seek administrative claim status for expenses incurred while the case was in Chapter 11 or Chapter 7. He states that forty-five days from November 3, 2016, is a reasonable amount of time for the administrative claims bar date, and it will allow

sufficient time for the Trustee to serve notice of the administrative claims bar date by mail at least thirty days before the bar date.

A review of the docket shows that the court granted the Trustee's Motion to Establish Bar Date for Filing Motions for Allowance of Chapter 11 and Chapter 7 Administrative Claims on July 27, 2016. Dckt. 169. The court set September 4, 2016, as the bar date and required the Trustee to serve notice of the bar date by August 4, 2016. The Trustee states that he "inadvertently" failed to mail notice of the bar date. Despite the Trustee's lapse, the court finds that a bar date of December 19, 2016, provides sufficient time for any creditor or indenture trustee to file a proof of claim. The Trustee shall provide notice to all interested parties of this deadline to file an administrative proof of claim and/or motion seeking administrative priority for any such proof of claim by November 19, 2016.

The Motion is granted, and the court sets December 19, 2016, as the bar date for filing motions for allowance of Chapter 11 and Chapter 7 administrative claims.

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 Re-Establish Bar Date for Filing Motions for Allowance of Chapter 11 and Chapter 7 Administrative Claims 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 to Re-Establish Bar Date for Filing Motions for Allowance of Chapter 11 and Chapter 7 Administrative Claims is granted, and December 19, 2016, is set as the bar date for filing motions for allowance of Chapter 11 and Chapter 7 administrative claims.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee will serve notice of the December 19, 2016 bar date by November 19, 2016.

4. **13-32506-E-7** **RICHARD EADDY** **MOTION TO TURN OVER FUNDS**
DPC-4 **Richard Jare** **9-29-16 [128]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on September 29, 2016. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Motion to Turnover 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. 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 Turnover is granted.

David Cusick, Chapter 13 Trustee in this case before it was converted ("Movant"), in the above entitled case and moving party herein, seeks an order authorizing Movant to turn over funds in the amount of $8,011.19, of which $8,000.00 is being held pursuant to the court's Order Granting Motion to Sell. Dckt. 64. The Movant asserts that Debtor manipulated the code to exempt the $8,000.00 to avoid the lien of Cach LLC ("Creditor") and subsequently waived the claim of exemption to maximize Debtor's proceeds from the sale of real property.

The Movant seeks an order authorizing Movant to turn over the funds to either the Chapter 7 Trustee, Creditor, or Debtor, but requests that the court consider the character of the funds when making the decision of where the funds should go. The Trustee is currently holding these funds because the lien of Creditor was avoided as impairing Debtor's homestead exemption. The Debtor has changed exemptions since the time the case has been converted and has waived the homestead exemption without serving the amended exemptions on any party. Under the current exemptions, Debtor would not be eligible to avoid the lien of Creditor.

DEBTOR'S OPPOSITION

Richard Eaddy ("Debtor") filed an Opposition to Trustee's Motion to Turn Over Funds on October 20, 2016. Dckt. 134. Debtor indicates that $11.19 of the funds being held by the Movant are post-petition earnings of the Debtor that should have been refunded to the Debtor per *Harris v. Viegelahn*, 135 S. CT. 1829 (2015), which holds that a debtor who converts to Chapter 7 is entitled to a return of any post-petition wages not yet distributed by the Chapter 13 Trustee. *Harris* 135 S. CT. at 1835.

Debtor indicates that the remaining $8,000.00 is being held for Creditor should the case not discharge. The Debtor is concerned that if the money is transferred to the Chapter 7 Trustee, additional trustee fees will be applied on top of the prior administrative fee applied by Movant in Chapter 13. Debtor requests that this motion be continued past the December 19, 2016 Chapter 7 discharge deadline until a discharge has occurred and when the Chapter 7 Trustee can appear in court.

MOVANT'S REPLY

Movant filed a Reply on October 26, 2016. Dckt. 137. Movant begins by addressing Debtor's contention that *Harris v. Viegelahn* requires either (1) all of the funds to be returned to Debtor or (2) has already required the return of $11.19 to Debtor. Movant states that Debtor does not explain how he arrived at those conclusions. Movant distinguishes the present case from *Harris* by stating that this case involves monies held to preserve a creditor's security interest in the event that the case is dismissed, but *Harris* involved a Chapter 13 trustee attempting to disburse monies held on conversion to creditors pursuant to the plan. While Debtor takes the position that of the $16,211.44 ordered to be paid to the Movant from escrow (Dckt. 65) all except $8,000.00 held must be post-petition wages, Movant asserts that proceeds from the sale of real property do not appear to be wages.

Movant states that he intends to reverse the fees taken as to the $8,000.00 because a trustee is only supposed to take fees on a plan payment, and no plan ever proposed Movant to hold those funds. Movant is holding funds because of the court's order.

Lastly, Movant asserts that Debtor's Attorney has failed to explain why continuing the matter has any likelihood of resolving the issue. Movant requests that the court determine whether the Debtor's later waiver of an exemption claimed to avoid a lien merits the restoration of the lien and whether the funds should be turned over to the Creditor, the Chapter 7 Trustee, or the Debtor.

APPLICABLE LAW

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 interest of the debtor in property as of the commencement of the case."

11 U.S.C. § 543 provides, in relevant part:

(a) A custodian with knowledge of the commencement of a case under this title concerning the debtor may not make any disbursement from, or take any action in the

administration of, property of the debtor, proceeds, product, offspring, rents, or profits of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.

(b) A custodian shall—

(1) deliver to the trustee any property of the debtor held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the case; and

(2) file an accounting of any property of the debtor, or proceeds, product, offspring, rents, or profits of such property, that, at any time, came into the possession, custody, or control of such custodian.

A custodian is defined as: (1) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title; (2) assignee under a general assignment for the benefit of the debtor's creditors; or (3) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors. 11 U.S.C. § 101(11). The term "custodian" is intended "to encompass a variety of pre-petition agents who had taken charge of the debtor's assets. . . . The categories of custodians [in the definition] are descriptive rather than exhaustive." *In re Cash Currency Exch., Inc.*, 762 F.2d 542, 553 (7th Cir. 1985).

DISCUSSION

Movant initiated this proceeding to turn over $8,011.19 to the appropriate party in the converted case. If a 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. *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 one 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 estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), a 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.

Here, the $8,011.19 is from the sale of property of the bankruptcy estate, not post-petition earnings of the Debtor. This is clearly outside the scope of *Harris v. Viegelahn*, ___ U.S. ___, 135 S. Ct. 1829, 2015 U.S. LEXIS 3203 (2015). Congress has provided that upon conversion of a case from one under Chapter 13 to Chapter 7, the property of the estate as of the commencement of the Chapter 13 case is property of the bankruptcy case. 11 U.S.C. § 348(f)(1)(A), which further provides that the property of the estate will include post-petition obtained assets if the case was converted in bad faith by the debtor. 11 U.S.C. § 348(f)(2).

Here, the $8,011.19 are the proceeds from the sale of the 8205 Weyburn Court Property, which was property of the bankruptcy estate as of the commencement of this case. Order, Dckt. 64; Schedule A, Dckt. 1 at 9. By operation of law, this is not post-petition property (such as the wages in *Harris v. Viegelahn*) to be excluded from the Chapter 7 bankruptcy estate.

Debtor has filed an Original and two Amended Schedules C in this case.

A. Original Schedule C, Dckt. 1 at 13; Filed September 25, 2013.

    1. Exemption of $698.00 claimed in the 8205 Weyburn Court Property pursuant to California Code of Civil Procedure § 704.730 [non-bankruptcy case exemption].

B. First Amended Schedule C, Dckt. 54 at 2; Filed April 21, 2015.

    1. Exemption of $100,000 claimed in the 8205 Weyburn Court Property pursuant to California Code of Civil Procedure § 704.730 [non-bankruptcy case exemption].

C. Second Amended Schedule C, Dckt. 59 at 2; Filed April 27, 2015.

    1. Exemption of $24,655.00 claimed in the 8205 Weyburn Court Property pursuant to California Code of Civil Procedure § 703.140(b)(5) [California bankruptcy wildcard].

On April 27, 2015, the Debtor and his non-debtor Spouse filed a Spousal Waiver of exemptions other than as provided in California Code of Civil Procedure § 703.140(b).

At this juncture, the $8,011.19 of proceeds from the sale is subject to the asserted exemption of the Debtor and the judgment lien of the creditor. As opposed to avoiding a lien that impairs an exemption in real property, in which the lien avoidance is in the real property, which lien and potential reinstatement by operation of law in the event of a dismissal is of record title, thus protecting the creditor, here it is just money. If given the asserted exempt amount, Debtor could spend the money and then work to have the case dismissed, leaving the creditor with no effective remedy (except possibly for a determination of non-dischargeability of debt due to wilful and malicious injury, but a judgment to enforce in the future is not of equal value to the lien proceeds to pay the judgment today).

The Motion is granted, and the court determines that Movant must turn over $8,011.19 held in his possession to the Chapter 7 Trustee. The Chapter 7 Trustee shall hold the monies, which shall be disbursed to the Debtor when the Trustee is prepared to have the case closed, if the bankruptcy case is not dismissed. If dismissed, then the Chapter 7 Trustee will disburse the monies as proceeds of the creditor's collateral, which was voluntarily sold by the Debtor during the Chapter 13 period of this case, and for which the judgment lien in the monies has been reinstated by operation of law, 11 U.S.C. § 349(b)(1).

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 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 Turnover of Property is granted, and Movant shall turn over $8,011.19 to the Chapter 7 Trustee.

The Chapter 7 Trustee may request any supplemental orders as he deems appropriate for the disbursement of these monies at the appropriate time.

5.	**12-28312-E-7** **KJH-2**	**MARIANNE GULLINGSRUD** **Scott Shumaker**	**MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY, ACCOUNTANT(S)** **9-29-16 [105]**

Final Ruling: No appearance at the November 3, 2016 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 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 26, 2016. By the court's calculation, 38 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

The Motion for Allowance of Professional Fees 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 (14) 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 granted.

Kimberly Husted, Chapter 7 Trustee, appointed Gabrielson & Company ("Applicant") as an accountant for Marianne Gullingsrud ("Debtor"). Applicant makes a First and Final Request for the Allowance of Fees and Expenses in this case. FN.1.

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

The period for which the fees are requested is for the period February 2, 2016, through September 1, 2016. The order of the court approving employment of Applicant was entered on February 3, 2016. Dckt. 71. Applicant requests fees in the amount of $2,153.50 and costs in the amount of $129.05.

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). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including aiding the debtor in the preparation of tax returns. 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.

Accounting and Tax Services Provided to Estate: Applicant spent 5.9 hours in this category. Applicant assisted Client with preparing Federal and California estate income tax returns, including

determination of liabilities and preparation of Cloobeck motion for payment of administrative tax claims. Applicant also prepared declaration and related employment documents for trustee review.

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**
Michael Gabrielson, Principal	5.9	$365.00	$2,153.50
	0	$0.00	$0.00
Total Fees For Period of Application			$2,153.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $129.05 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying Charges		$85.40
Postage		$43.65
		$0.00
Total Costs Requested in Application		$129.05

FEES AND COSTS & EXPENSES ALLOWED

Fees

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 $2,153.50 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

Costs & Expenses

The First and Final Costs in the amount of $129.05 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

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

Fees	$2,153.50
Costs and Expenses	$219.05

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gabrielson & Company ("Applicant"), Accountant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:
>
> Gabrielson & Company, Professional Employed by the Chapter 7 Trustee,
>
> Fees in the amount of $2,153.50, and
> Expenses in the amount of $129.05.
>
> **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.

6.	**16-20852-E-11** **DNL-6**	**MATHIOPOULOS 3M FAMILY LIMITED PARTNERSHIP** **J. Luke Hendrix**	**MOTION TO EMPLOY BACHECKI, CROM AND CO., LLP AS ACCOUNTANT(S)** **10-6-16 [116]**

Final Ruling: No appearance at the November 3, 2016 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 creditors, parties requesting special notice, and Office of the United States Trustee on October 6, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

Mathiopoulos 3M Family Limited Partnership ("Debtor in Possession") seeks to employ Accountant Bacheki, Crom & Co., LLP, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Section 328(a). Trustee seeks an accountant to assist the Debtor in Possession with income tax preparation in compliance with state and federal authorities and tax-related accounting services.

The Debtor in Possession argues that the accountant's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present income taxes and tax-related accounting.

Jay Crom, a partner of Bachecki, Crom & Co., LLP, testifies that Bachecki, Crom & Co., LLP has extensive experience performing tax-related accounting and income tax preparation in bankruptcy cases, and the terms of the employment consist of a flat fee agreement in the amount of $1,500.00. Jay Crom testifies that he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

The court previously denied the Debtor in Possession's motion to employ an accountant because of an actual conflict of interest. Dckt. 108. The present Motion, however, seeks to employ an accountant who does have a conflict with any party in the proceedings.

Taking into account all of the relevant factors in connection with the employment and compensation of an accountant, considering the declaration demonstrating that the accountant does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Bachecki, Crom & Co., LLP as accountant for the Chapter 11 estate on the terms and conditions set forth in the Flat Fee Agreement for Accounting Services filed as Exhibit A, Dckt. 119. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

The court shall issue 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 Employ filed by the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, and the Debtor in Possession is authorized to employ Bachecki, Crom & Co., LLP as counsel for the Debtor in Possession on the terms and conditions as set forth in the Contingency Fee Employment Agreement filed as Exhibit A, Dckt. 119.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

7. 12-36884-E-7 JENNY PETTENGILL
Richard Hall

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
9-19-12 [1]

Debtor's Atty: Richard Hall

Notes:
Continued from 10/6/16. The Trustee reported that a settlement had been reached with Corrigan Finance Limited that will resolve the dispute and allow the Trustee to generate monies to make a distribution on general unsecured claims in this case and the related case In Re Lazutkine.

8. **12-36884-E-7** **JENNY PETTENGILL** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CORRIGAN FINANCE LIMITED**
HLC-7 **Richard Hall** **10-4-16 [274]**

Tentative Ruling: The Motion to Approve Compromise 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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 5, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required. FN.1

FN.1. The court notes that Debtors' Proof of Service, signed under penalty of perjury, is post-dated as being served on October 5, 2016, despite being filed with the court on October 4, 2016.

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 (14) 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 Approval of Compromise is granted.

John Roberts, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Corrigan Finance Limited ("Settlor"). The claims and disputes to be resolved by the proposed settlement are any and all claims asserted or assertable by Settlor against the Trustee and the Estate.

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. 278).

A. Trustee will sell and convey, as is, where is, and without any warranty of any kind all of the Trustee's and the Estate's collective rights, title, and interest in claims against and related to, if any, in the real and personal property located at 1590 North Lake Boulevard, Tahoe City, California, and also in the businesses listed in the various schedules which are as follows:

1. Trusban Finance, aka Trisban Finance;

2. Loomis Engineering;

3. Loomis Leasing, Inc.;

4. Dino Transport, Inc.;

5. Corrigan Finance Limited; and

6. The so-called Metprom Group of Businesses, comprised of 000 Metpromproekt; 000 Metprom; ZAO Metprmproekt; 000 Metpromservice; 000 Metpromstal; 000 Metpromukrania; Steel Power Trade

B. Sale will be either to:

1. Corrigan Finance Limited for

a. $300,000.00 cash, and

b. The irrevocable waiver of any and all claims asserted or assertable by Corrigan against the Trustee and his Estate as of the closing; or

2. In the event of a successful overbid, for the highest and best bid by the highest and best bidder approved by the court.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve

compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (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); *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 if the Agreement is approved and consummated, it is projected to satisfy all but approximately $120,000.00 in estimated allowed claims, all of which are isolated to the Lazutkine case, which previously had filed claims as high as $1,551,069.00, resulting in an approximate 30% distribution. The Agreement is estimated to pay off 100% of the remaining claims in the Instant Case, which previously had filed claims as high as $2,461,969.00.

Movant further argues that in order to do better than what the Agreement provides for, the Trustee will have to prove that a Russian national is the alter ego of a complex web of international business entities, the most valuable of which are either organized under Russian or West Indies law that is known as a tax shelter. Trustee would have to collect on any judgment rendered against such entities.

Difficulties in Collection

Movant argues that the collection of any judgment against a Russian national in a complex web of international business entities that he appears to control is problematic. If a judgment is rendered against Settlor, and the judgment quiets title of the Tahoe City property in the name of the estates, collection against Settlor should not be difficult, at least up to the net sale proceeds of the property.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that among the reasons for not pursuing litigation aggressively to date is that Movant has been unable to locate counsel willing to handle litigation on a contingency fee basis. The Movant states that this is a powerful indication of how complex, speculative, and potentially expensive the litigation is perceived to be by the legal community at large.

Paramount Interest of Creditors

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

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it avoids potentially lengthy, uncertain litigation while maintaining to provide for full payment of claims in this case. The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by John Roberts, 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 Corrigan Finance Limited ("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 (Docket Number 278).

9. **12-36884-E-7** **JENNY PETTENGILL** **MOTION TO SELL**
HLC-8 **Richard Hall** **10-4-16 [280]**

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.

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 October 5, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required. FN.1

FN.1. The court notes that Debtors' Proof of Service, signed under penalty of perjury, is post-dated as being served on October 5, 2016, despite being filed with the court on October 4, 2016.

The Motion to Sell 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 (14) 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 is granted.

The Bankruptcy Code permits the Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell claims and interests ("Assets") to Corrigan Finance Limited ("Buyer") on the following terms:

A. Movant will sell and convey, as is, where is, and without any warranty of any kind all of the Movant's and the Estate's collective rights, title, and interest in claims against and related to, if any, in the real and personal property located at 1590 North Lake Boulevard, Tahoe City, California, and also in the businesses listed in the various schedules as follows:

1. Trusban Finance, aka Trisban Finance;

2. Loomis Engineering;

3. Loomis Leasing, Inc.;

4. Dino Transport, Inc.;

5. Corrigan Finance Limited; and

6. The so-called Metprom Group of Businesses, comprised of 000 Metpromproekt; 000 Metprom; ZAO Metprmproekt; 000 Metpromservice; 000 Metpromstal; 000 Metpromukrania; and Steel Power Trade.

B. Sale will be either to:

1. Corrigan Finance Limited for:

a. $300,000.00 cash; and

b. The irrevocable waiver of any and all claims asserted or assertable by Corrigan against the Trustee and his Estate as of the closing; or

2. In the event of a successful overbid, for the highest and best bid by the highest and best bidder approved by the court.

Movant states that after selling the Assets, all claims in Jenny Pettengill's ("Debtor") case will be paid fully, and Debtor will receive a distribution of $40,000.00 at maximum. Movant asserts that Debtor or her prior underwriter, Captain Enterprises, may be motivated to purchase the Assets, but on more than one occasion, they have declined to purchase the Assets when offered by Movant.

Movant asserts that good cause exists to waive the fourteen-day stay of Federal Rule of Bankruptcy Procedure 6004(h) because the matters have been pending for a number of years and there is no reason to delay the final $250,000.00 payment that would be due eleven calendar days after the hearing.

DISCUSSION

At the time of the hearing the court announced the proposed sale an 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: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Debtor has declined to purchase the Assets on multiple occasions and because the sale will result in complete payment of the claims in this bankruptcy case.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement set by Rule 6004(h), and this part of the requested relief 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 Sell filed by John Roberts 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 John Roberts, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Corrigan Finance Limited or nominee ("Buyer"), the real and personal property located at 1590 N. Lake Blvd., Tahoe City, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $300,000.00, and the irrevocable waiver of any and all claims asserted or assertable by Buyer against the Trustee and the Estate as of the closing, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 284, and as further provided in this Order.

B. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

10. 13-21893-E-7 STANISLAV LAZUTKINE
Andrew Reisinger

OBJECTION TO CLAIM OF GERARDO CAPIEL, CLAIM NUMBER 5
10-4-16 [184]

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 3007-1—Objection to Claim.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on October 4, 2016. By the court's calculation, 30 days' notice was provided. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.)

The Objection to Claim 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. 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 Objection to Claim is sustained, and the claim is disallowed in its entirety.

John Roberts, the Trustee ("Objector"), requests that the court disallow the claim of Gerardo Capiel ("Creditor"), Proof of Claim No. 5 ("Claim"), Official Registry of Claims in this case. FN.1. The Claim is asserted to be unsecured in the amount of $26,411.21. Objector asserts that there is no evidence to support that the debt belongs to the debtor.

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

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

of claim has the burden of presenting a substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Objector filed a declaration on October 4, 2016. Dckt. 186. The Declaration indicates that the Promissory Note attached to the claim states that the borrower is Jenny Pettengill, not the Debtor. Objector's Declaration states that Jenny Pettengill is the ex-spouse of Debtor, and she filed for divorce on September 1, 2010. The Promissory Note indicates that the money was borrowed on December 21, 2011. Exhibit A, Dckt. 187.

Based on the evidence before the court, the debt for Proof of Claim No. 5 was incurred solely by Debtor's ex-spouse after divorce proceedings had been filed. Accordingly, the debt is not community debt subject to liability for the estate. The creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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 Objection to Claim of Gerardo Capiel, Creditor filed in this case by John Roberts, 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 objection to Proof of Claim Number 5 of Gerardo Capiel is sustained, and the claim is disallowed in its entirety.

11. 13-21893-E-7 STANISLAV LAZUTKINE
Andrew Reising

OBJECTION TO CLAIM OF JENNY BELLE PETTENGILL, CLAIM NUMBER 11
10-4-16 [189]

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 3007-1—Objection to Claim.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Creditor's Attorney, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on October 4, 2016. By the court's calculation, 30 days' notice was provided. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.)

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007(d)(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. 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 Objection to Proof of Claim Number 11 of Jenny Pettengill is overruled without prejudice.

John Roberts, the Trustee ("Objector") requests that the court disallow the claim of Jenny Pettengill ("Creditor"), Proof of Claim No. 11 ("Claim"), Official Registry of Claims in this case. FN.1. The Claim is asserted to be unsecured in the amount of $924,897.75. Objector asserts that the creditor received a payment of $1,000,000.00 in the divorce proceeding. Objector asserts that creditor has failed to amend her claim.

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

REVIEW OF GROUNDS AS STATED IN OBJECTION

While an Objection to Claim is not a "motion," the court does read the objection to determine what grounds are being asserted as the grounds upon which the objection is based. Here, the Objection consists of one paragraph, which alleges:

A. "Claim No. 11 filed by JENNY BELLE PETTENGILL on OCTOBER 17, 2013 in the amount of $924,897.75..."

B. The objection is based "on the grounds that the creditor received a one million dollar payment in the divorce proceeding in payment of the domestic support order and has failed to amend her claim."

Objection to Claim, Dckt. 189.

The evidence filed in support of the Objection consists of a copy of the Proof of Claim and the Trustee's Declaration, in which he testifies under penalty of perjury:

A. "I have reviewed Claim No. 11 filed by JENNY BELLE PETTENGILL on OCTOBER 17, 2013 in the amount of $924,897.75."

B. "I am informed and believe that the creditor received a payment of one million dollars in the divorce proceeding for the domestic support order."

C. "I have asked the creditor, through her attorney Richard Hall, to amend her claim and account for the payment. To date she has failed to amend her claim."

Declaration, Dckt. 191.

RULING

Section 502(a) provides that a claim supported by a Proof of Claim is allowed, unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting a substantial factual basis to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Family law support matters are ones in which the federal courts give due deference to the state courts, so long as the state court proceedings can be diligently prosecuted in a timely manner. 11 U.S.C. § 507(a)(1) allows first priority for allowed unsecured claims for domestic support obligations that as of the date of the filing of the petition are owed to or recoverable by a spouse, former spouse, or child of the debtor. 11 U.S.C. § 101(14A) provides that a "domestic support obligation" means a debt that accrues before, on or after the date of the order for relief, that is owed to a former spouse in the "nature of alimony,

maintenance, or support . . . without regard to whether such debt is expressly so designated" of such former spouse.

Generally, a timely-filed claim may not be amended after the deadline to assert an entirely new claim. 11 U.S.C. § 502(b)(9). Under certain circumstances, courts have permitted creditors to amend timely filed claims after the claims bar deadline. One such circumstance is when the amendment "relates back" to the original claim. The original claim must give"fair notice of the conduct, transaction or occurrence that forms the basis of the claim asserted in the amendment." *In re Westgate-California Corp.*, 621 F2d 983, 984 (9th Cir. 1980).

In this case, the original proof of claim was filed on October 17, 2013. Trustee asserts that the creditor received a one million dollar payment in the divorce proceeding in payment of the domestic support order.

However, Trustee does not provide sufficient evidence that this claim has been paid, only stating in the declaration that the Trustee was informed and believes the creditor received this payment. By testifying that he can only make statements only based on "information and belief," he indicates that he has no first hand, personal knowledge. Federal Rules of Evidence 601 and 602 require such testimony to be based on personal knowledge of the witness.

Additionally, this Objection was filed by the Trustee in pro se. However, the Trustee has employed, as authorized by the court, counsel in this case. Order, Dckt. 79. Said counsel has actively been representing the Trustee in this case and the related case of the Debtor's ex-wife. That attorney is the Trustee's counsel of record in this bankruptcy case. Now, someone other than the Trustee's counsel of record is appearing for the Trustee in this case.

The court also notes that the Notice of Hearing (Dckt. 190) fails to comply with Local Bankruptcy Rule 9014-1(d)(3) and (4) [emphasis added], which provides:

> "(3) Separate Notice. Every motion shall be accompanied by a separate notice of hearing stating the Docket Control Number, the date and time of the hearing, the location of the courthouse, the name of the judge hearing the motion, and the courtroom in which the hearing will be held.
>
> (4) Contents of Notice. The notice of hearing **shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition.** If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition."

The Notice (Dckt. 190) sent by the Trustee only provided the following information about the Objection and scheduled hearing thereon:

> "A hearing is scheduled for NOVEMBER 3, 2016, at 10:30 A.M., in Courtroom 33, before the Honorable RONALD H. SARGIS, United States Bankruptcy Court, 501

I Street, 6th Floor, Sacramento. You may arrange to attend by telephone by contacting Court Call at 1-866-582-6878 at least 24 hours prior to the hearing."

While the Trustee and his counsel of record may believe that the grounds for the objection are "obvious," that supporting evidence is not actually required because the grounds are so "obvious," and that anybody should be able to figure out/guess when a written opposition is required, that does not create a basis by which a party can self-waive the requirements of the Local Bankruptcy Rules.

Based upon the lack of evidence before the court, the Objection to the Proof of Claim is overruled 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 Objection to Claim of Jenny Pettengill, Creditor filed in this case by John Roberts, 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 objection to Proof of Claim Number 11 of Jenny Pettengill is overruled without prejudice.

12.	**14-29284-E-7** **DNL-25**	**CHARLES MILLS** **Lucas Garcia**	**MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR REED BLOCK REALTY, BROKER(S)** **10-13-16 [439]**

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.

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 October 13, 2016. 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. 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 Sell Property is granted.

The Bankruptcy Code permits the Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 9285 Pinehurst Drive, Roseville, California ("Property").

The proposed purchasers of the Property are Will Mentesh and Lisa Mentesh ("Buyer"), and the terms of the sale are:

A. The purchase price of the property is $597,500.00.

1. $6,000.00 initial deposit; $537,750.00 first loan.

2. Balance of $531,750.00 to be deposited with escrow holder.

3. Balance due at close of escrow, which shall be fifteen days after entry of the court's order approving the sale.

B. The transfer of the property shall be "as is" and "where is."

1. All inspection and contingency removal time periods to begin upon execution of the contract and expire on November 1, 2016.

2. Buyer waives the purchase of a home warranty plan.

C. The Trustee and the Buyer shall split costs equally for all escrow fees, transfer taxes, HOA transfer fees, and owners' title insurance policy.

D. The Trustee shall be responsible for applicable prorations, a natural hazard zone disclosure report, and any required smoke alarm and carbon monoxide device installation and water heater bracing.

E. Commission is 4% for dual representation of the contract. If the property goes into overbidding, the commission will be 5% and will be split 2.5% and 2.5% between buying and listing agents.

F. The sale is subject to overbidding through conclusion of the sale hearing.

1. The overbidding is requested to begin at $605,000.00 with minimum increments thereafter in the amount of $1,000.00.

2. The be a qualified overbidder, prior to or at the sale hearing, a party must provide the Trustee a deposit by cashier's check in the amount of $6,000.00 and provide sufficient proof of funds for the balance of the purchase price.

3. If Buyer is not the successful overbidder at the sale hearing, Buyer may elect to retain first position, for a period of thirty days after the hearing, to buy the property at the purchase price or highest bid made by buyer at the sale hearing, if the successful overbidder fails to close its purchase.

SALE FREE AND CLEAR OF LIENS

The Motion seeks to sell Property free and clear of the liens of Tony Manning ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> "(f) The trustee [debtor in possession or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

11 U.S.C. § 363(f).

For this Motion, the Movant has established that the property is encumbered by secured claims in the amount of $480,000.00, which includes a second deed of trust held by Creditor in the amount of $100,000.00. This second deed of trust is subject to avoidance. Trustee and Creditor entered into a settlement agreement to resolve the Trustee's claim of avoidance under 11 U.S.C. § 547. Under the settlement, Creditor's claim of lien is avoided and preserved for the estate. The net sale proceeds are divided 75% to the estate and 25% to Creditor until Creditor receives $115,000.00. Creditor consents to the sale of the property free and clear of any liens, encumbrances, and claims of interest. Creditor also agreed to withdraw the lis pendens and cooperate with the Trustee's efforts to sell the property. The order granting this settlement was entered on May 6, 2016. Dckt.398.

WELLS FARGO'S NON-OPPOSITION

Wells Fargo Bank, N.A., a creditor with a claim secured by the Property, filed a statement of non-opposition on October 27, 2016. Dckt. 447. Wells Fargo Bank, N.A., states that it will cooperate with producing an updated payoff demand to ensure that the sale is closed timely.

DISCUSSION

At the time of the hearing the court announced the proposed sale an 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: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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 Kimberly Husted, 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 Kimberly Husted, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(2) to Will Mentesh and Lisa Mentesh or nominee ("Buyer"), the Property commonly known as 9285 Pinehurst Drive, Roseville, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for $597,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit C, Dckt. 443, 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 Property is sold free and clear of the lien of Tony Manning, creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), with the lien of such creditor attaching to the proceeds. The Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.

4. 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 four percent (4%) of the actual purchase price upon consummation of the sale. The four percent (4%) commission shall be paid to the broker, Reed Block Realty.