

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Modesto, California

**January 5, 2017, at 10:30 a.m.**

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1. **11-92116-E-7**      **RENE MADRIGAL**      **MOTION TO AVOID LIEN OF EFRAIN**  
**TOG-5**      **Thomas Gillis**      **CAMARILLO**  
                **12-21-16 [53]**

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, and Office of the United States Trustee on December 21, 2016. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

This Motion requests an order avoiding the judicial lien of Efrain Camarillo (“Creditor”) against property of Rene Madrigal (“Debtor”) commonly known as 739 East Hackett Road, Ceres, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$500.00. An abstract of judgment was recorded with Stanislaus County on February 24, 2012, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$129,429.00 as of the date of the petition. The unavoidable consensual liens that total \$134,250.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$22,000.00 on Amended Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs the Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment of Efrain Camarillo, California Superior Court for Stanislaus County Case No. 670936, recorded on February 24, 2012, Document No. 2012-0015547-00, with the Stanislaus County Recorder, against the real property commonly known as 739 East Hackett Road, Ceres, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

2. [11-92116-E-7](#) **RENE MADRIGAL**  
**TOG-6** **Thomas Gillis**

**MOTION TO AVOID LIEN OF EFRAIN**  
**CAMARILLO**  
**12-21-16 [60]**

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, and Office of the United States Trustee on December 21, 2016. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

This Motion requests an order avoiding the judicial lien of Efrain Camarillo (“Creditor”) against property of Rene Madrigal (“Debtor”) commonly known as 739 East Hackett Road, Ceres, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$7,675.00. An abstract of judgment was recorded with Stanislaus County on February 24, 2012, that encumbers the Property.

Pursuant to the Debtor’s Schedule A, the subject real property has an approximate value of \$129,429.00 as of the date of the petition. The unavoidable consensual liens that total \$134,250.00 as of the commencement of this case are stated on Debtor’s Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$22,000.00 on Amended Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs the Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment of Efrain Camarillo, California Superior Court for Stanislaus County Case No. SC448771, recorded on February 24, 2012, Document No. 2012-0015548-00, with the Stanislaus County Recorder, against the real property commonly known as 739 East Hackett Road, Ceres, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.



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

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

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

**IT IS ORDERED** that Michael McGranahan, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Catherine Randall or nominee (“Buyer”), the Property commonly known as 2009 Subaru Legacy, ending in VIN 5930 (“Property”), on the following terms:

1. The Property shall be sold to Buyer for \$4,000.00 on the terms and conditions provided in this Order.
2. The Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. [16-90728-E-7](#) **JOHN/SONIA BANTA**  
MLP-1 **Martha Lynn Passalacqua**

**MOTION TO AVOID LIEN OF  
CITIBANK, N.A.**  
12-21-16 [\[35\]](#)

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on December 21, 2016. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

This Motion requests an order avoiding the judicial lien of Citibank, N.A. (“Creditor”) against property of John Banta and Sonia Banta (“Debtor”) commonly known as 1309 Tranquil Lane, Ceres, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$8,649.39. An abstract of judgment was recorded with Stanislaus County on July 9, 2012, that encumbers the Property.

Pursuant to the Debtor’s Schedule A, the subject real property has an approximate value of \$242,981.00 as of the date of the petition. The unavoidable consensual liens that total \$204,545.57 as of the commencement of this case are stated on Debtor’s Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$38,435.43 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs the Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Citibank, N.A., California Superior Court for Stanislaus County Case No. 674126, recorded on July 9, 2012, Document No. 2012-0060082-00, with the Stanislaus County Recorder, against the real property commonly known as 1309 Tranquil Lane, Ceres, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

5. [16-90728-E-7](#)      **JOHN/SONIA BANTA**  
MLP-2                      **Martha Lynn Passalaqua**

**MOTION TO AVOID LIEN OF CACH,  
LLC**  
12-21-16 [40]

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

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on December 21, 2016. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

This Motion requests an order avoiding the judicial lien of CACH, LLC (“Creditor”) against property of John Banta and Sonia Banta (“Debtor”) commonly known as 1309 Tranquil Lane, Ceres, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,359.14. An abstract of judgment was recorded with Stanislaus County on October 25, 2012, that encumbers the Property.

Pursuant to the Debtor’s Schedule A, the subject real property has an approximate value of \$242,981.00 as of the date of the petition. The unavoidable consensual liens that total \$204,545.57 as of the commencement of this case are stated on Debtor’s Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$38,435.43 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs the Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of CACH, LLC, California Superior Court for Stanislaus County Case No. 676039, recorded on October 25, 2012, Document No. 2012-0095468-00, with the Stanislaus County Recorder, against the real property commonly known as 1309 Tranquil Lane, Ceres, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

6. [16-90728-E-7](#)      **JOHN/SONIA BANTA**  
MLP-3                      **Martha Lynn Passalaqua**

**MOTION TO AVOID LIEN OF CACH,  
LLC**  
12-21-16 [44]

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on December 21, 2016. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

This Motion requests an order avoiding the judicial lien of CACH, LLC (“Creditor”) against property of John Banta and Sonia Banta (“Debtor”) commonly known as 1309 Tranquil Lane, Ceres, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$2,562.43. An abstract of judgment was recorded with Stanislaus County on June 18, 2013, that encumbers the Property.

Pursuant to the Debtor’s Schedule A, the subject real property has an approximate value of \$242,981.00 as of the date of the petition. The unavoidable consensual liens that total \$204,545.57 as of the commencement of this case are stated on Debtor’s Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$38,435.43 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs the Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of CACH, LLC, California Superior Court for Stanislaus County Case No. 676878, recorded on June 18, 2013, Document No. 2013-0052391-00, with the Stanislaus County Recorder, against the real property commonly known as 1309 Tranquil Lane, Ceres, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

7. [16-90636-E-7](#)      **SANDRA CARDOZO-VIEIRA**  
**SCB-2**                      **Muoi Chea**

**MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF SCHNEWEIS-COE &  
BAKKEN, LLP FOR LORIS L.  
BAKKEN, TRUSTEE’S ATTORNEY(S)  
12-8-16 [28]**

**Final Ruling:** No appearance at the January 5, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 8, 2016. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

Schneweis-Coe & Bakken, LLP, the Attorney (“Applicant”) for Gary Farrar, the Chapter 7 (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 30, 2016, through December 8, 2016. The order of the court approving employment of Applicant was entered on October 5, 2016. Dckt. 24. Applicant requests reduced fees and expenses in the aggregate amount of \$951.88.

**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 an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors’ Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign 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 having a creditor return \$13,169.45 in estate funds that the Debtor had paid toward a debt. The estate has \$13,169.45 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

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

### **Fees**

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

General Case Administration: Applicant spent 2.2 hours in this category. Applicant assisted Client with preparing Applicant's employment application and preparing the instant Motion for Allowance of Professional Fees.

Efforts to Assess and Recover Property of the Estate: Applicant spent 1.8 hours in this category. Applicant corresponded with Patenaude & Felix, APC regarding the return of funds that are property of the Estate and was able to secure those funds.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Loris Bakken, attorney	3.5	\$300.00	\$1,050.00
Audrey Dutra	0.5	\$150.00	\$75.00
	0	\$0.00	\$0.00

	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	<u>\$0.00</u>
<b>Total Fees For Period of Application</b>			\$1,125.00

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$21.88 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Postage		\$8.88
Copying	\$0.10	\$13.00
		\$0.00
		\$0.00
<b>Total Costs Requested in Application</b>		\$21.88

**FEES AND COSTS & EXPENSES ALLOWED**

Applicant seeks to be paid a single sum of \$951.88 for its fees and expenses incurred for the Client. First and Final Fees and Costs in the amount of \$951.88 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees, Costs, and Expenses                      \$951.88

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

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

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

The Motion for Allowance of Fees and Expenses filed by Schneweis-Coe & Bakken, LLP (“Applicant”), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Schneweis-Coe & Bakken, LLP is allowed the following fees and expenses as a professional of the Estate:

Schneweis-Coe & Bakken, LLP, Professional employed by the Trustee

Fees and Expenses in the amount of \$951.88

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

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



## **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of CACH, LLC, California Superior Court for Stanislaus County Case No. 660200, recorded on September 14, 2011, Document No. 2011-0075706-00, with the Stanislaus County Recorder, against the real property commonly known as 7015 Turnberry Lane, Riverbank, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

9.

[16-90852-E-7](#)  
JAD-2

RONALD/ARTEMIA HARVEY  
Jessica Dorn

**MOTION TO AVOID LIEN OF  
INTERNATIONAL CREDIT RECOVERY,  
INC.**  
**11-18-16 [21]**

**Final Ruling:** No appearance at the January 5, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 18, 2016. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of International Credit Recovery, Inc. dba ICR (“Creditor”) against property of Ronald Harvey and Artemia Harvey (“Debtor”) commonly known as 7015 Turnberry Lane, Riverbank, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$10,603.58. An abstract of judgment was recorded with Stanislaus County on March 4, 2009, that encumbers the Property.

Pursuant to the Debtor’s Schedule A, the subject real property has an approximate value of \$265,000.00 as of the date of the petition. The unavoidable consensual liens that total \$272,662.99 as of the commencement of this case are stated on Debtor’s Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$5,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs the Debtor’s exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of International Credit Recovery, Inc. dba ICR, California Superior Court for Stanislaus County Case No. 08CECL12568, recorded on March 4, 2009, Document No. 2009-0020369-00, with the Stanislaus County Recorder, against the real property commonly known as 7015 Turnberry Lane, Riverbank, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Final Ruling:** No appearance at the January 5, 2017 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 18, 2016. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of International Credit Recovery, Inc. dba ICR (“Creditor”) against property of Ronald Harvey and Artemia Harvey (“Debtor”) commonly known as 7015 Turnberry Lane, Riverbank, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$10,603.58. An abstract of judgment was recorded with Stanislaus County on June 6, 2016, that encumbers the Property.

Pursuant to the Debtor’s Schedule A, the subject real property has an approximate value of \$265,000.00 as of the date of the petition. The unavoidable consensual liens that total \$272,662.99 as of the commencement of this case are stated on Debtor’s Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$5,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs the Debtor’s exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of International Credit Recovery, Inc. dba ICR, California Superior Court for Stanislaus County Case No. 08CECL12568, recorded on June 6, 2016, Document No. 2016-0041409-00, with the Stanislaus County Recorder, against the real property commonly known as 7015 Turnberry Lane, Riverbank, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on December 15, 2016. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required (Fed. R. Bankr. P. 2002(a)(2)).

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 Debtor in Possession (“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 201 West Syracuse Avenue, Turlock, California (“Property”).

The proposed purchaser of the Property is Ruben Escareno (“Buyer”), and the terms of the sale are:

- A.            \$80,000.00 purchase price.
  - 1.            Buyer is to pay \$70,000.00 from escrow, plus an additional \$10,000.00 to the third-party lien holder (the Internal Revenue Service).
- B.            Buyer is to pay a \$5,000.00 deposit.
- C.            The sale is subject to approval of all existing lien holders as a short sale.





In addition to the substance of Mr. Sinclair's motion appearing moot, he has also failed to pay the required \$181.00 filing fee for a motion to abandon.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$181.00.

The Order to Show Cause is sustained, and the Motion to Compel Abandonment is dismissed 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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is sustained, and the Motion to Compel Abandonment filed by Richard Sinclair, the Chapter 7 Debtor, (DCN: None Stated), Dckt. 486, is dismissed without prejudice.

13. [15-90470-E-7](#) SUSAN FISCOE  
HCS-11 David Johnston

**MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF  
HERUM\CRABTREE\SUNTAG FOR  
DANA A. SUNTAG, TRUSTEE'S  
ATTORNEY(S)  
12-8-16 [149]**

**Final Ruling:** No appearance at the January 5, 2017 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 8, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

Herum\Crabtree\Suntag, the Attorney ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period July 24, 2015, through December 8, 2016. The order of the court approving employment of Applicant was entered on July 29, 2015. Dckt. 21. Applicant requests reduced fees in the amount of \$70,000.00 and costs in the amount of \$876.05.

#### **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 an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign 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 recovering proceeds, selling property, and objecting to motions by the Debtor. The estate has \$111,146.02 of unencumbered monies to be administered as of the filing of the application.

This Chapter 7 case is one for the text books as an example of how a Chapter 7 debtor can work at cross-purposes to his or her own financial interests and impose a significant legal expense on a bankruptcy estate. At the end of the day, Debtor's conduct resulted in her stipulating to having her discharge denied in this Chapter 7 case. Stipulation, Dckt. 142; and Adv. Pro. 15-09056; Judgment Denying Discharge, Dckt. 28. The court has twice denied Debtor's motions to convert this case to one under Chapter 13, finding that neither motion was brought in good faith. Civil Minutes, Dckt. 117; and Civil Minutes, Dckt. 104. Debtor failed to comply with orders of this court and failed to turn over property of the bankruptcy estate to the Chapter 7 Trustee. Civil Minutes, Dckt. 87. Debtor also engaged in a continuing battle of filing multiple amended Schedules C trying to claim exemptions which had been previously denied by the court. Civil Minutes, Dckts. 36, 54, and 66.

This is one of those (fortunately) rare cases in which a trustee and his or her professionals have to expend more in professional fees than monies they are ultimately able to disburse to creditors holding general unsecured claims. However, the Trustee and his professionals in this case have the duty to properly enforce the rights of the bankruptcy estate and cannot be hobbled by a debtor who seeks to "make it too expensive" and think that the court will improperly discount the professional fees to make the ratio of professional fees to creditor claim disbursements "look in balance." While creditors may only receive a modest percentage dividend distribution in this case, Debtor's obligations have not been discharged and they may pursue her to obtain payment.

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

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

### **Fees**

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

General Case Administration: Applicant spent 9.9 hours in this category. Applicant assisted Client with preparing Applicant's employment application, preparing an application for the Trustee to employ an accountant, preparing stipulations and orders to extend the deadline for the Trustee to object to exemptions and to extend the deadline to file an objection to discharge, advising the Trustee on a potential claim objection, and preparing the instant Motion for Allowance of Professional Fees.

Objections to Debtor's Amended Schedules, Reduction of Exemption in Real Property, and Elimination of Debtor's Exemption in an Annuity: Applicant spent 125.5 hours in this category. Applicant objected three times to Debtor's exemptions of real property and of an annuity, and the court sustained all of those objections. When Debtor claimed exemptions for a fourth time that had already been disallowed by the court, Applicant contacted Debtor's attorney about possible sanctions, after which Debtor withdrew the claimed exemptions.

Turnover Requests and Recovery of Proceeds: Applicant spent 38.1 hours in this category. Applicant spent more than a year in communication with Debtor's attorney attempting to have property turned over to the Trustee and was eventually successful by way of a motion.

Sale of Real Property: Applicant spent 35.0 hours in this category. Applicant determined that there was equity for the Estate in real property, prepared an application to employ a realtor, negotiated access to the property with Debtor for purpose of an inspection, reviewed and advised about offers, and filed a successful motion to sell the property.

Opposition to Debtor's Motions to Convert Case: Applicant spent 72.4 hours in this category. Applicant successfully opposed two motions by the Debtor to convert the case and also prepared for an appeal by the Debtor that was eventually withdrawn.

Adversary Proceeding to Deny Debtor's Discharge: Applicant spent 63.7 hours in this category. Applicant prepared a complaint to deny Debtor's discharge, attended a status conference, prepared the Trustee's initial disclosures, prepared and served interrogatories, negotiated with Defendant-Debtor to eventually receive responses to all interrogatories, stipulated with Debtor's attorney to a judgment of no discharge, and filed an amended scheduling order.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Dana Suntag, attorney	21.8	\$325.00	\$7,085.00
Dana Suntag, attorney	71.6	\$345.00	\$24,702.00
Wendy Locke, attorney	1.1	\$225.00	\$247.50

Wendy Locke, attorney	0.3	\$275.00	\$82.50
Benjamin Codog, attorney	233.9	\$175.00	\$40,932.50
Austin Jackson, attorney	15.1	\$150.00	\$2,265.00
Audrey Dutra, paralegal	0.3	\$90.00	\$27.00
Deanna Fillon, paralegal	0.5	\$90.00	\$45.00
<b>Total Fees For Period of Application</b>			\$75,386.50

### Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$876.05 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Postage		\$169.87
Copying	\$0.10	\$284.40
CourtCall		\$288.40
Fees for Recoding Petition		\$49.25
Mileage for Modesto Hearings		\$84.13
<b>Total Costs Requested in Application</b>		\$876.05

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

#### Fees

Applicant seeks to be paid a single sum of \$70,000.00 for its fees incurred for the Client. First Final Fees in the amount of \$70,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email,

and facsimile; and secretarial support. The costs requested by Applicant include those for use of CourtCall. No information has been provided to the court by Applicant that these cost items were extraordinary expenses than one would expect for Applicant providing professional services to Client to be charged in addition to the professional fees requested as compensation. The court disallows \$288.40 of the requested costs.

### **Costs & Expenses**

First and Final Costs in the amount of \$587.65 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$70,000.00
Costs and Expenses	\$587.65

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

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

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

The Motion for Allowance of Fees and Expenses filed by Herum\Crabtree\Suntag (“Applicant”), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:

Herum\Crabtree\Suntag, Professional employed by the Trustee

Fees in the amount of \$70,000.00  
Expenses in the amount of \$587.65,

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

**IT IS FURTHER ORDERED** that costs of \$288.40 are not allowed by the court.

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

14. [16-90870-E-7](#)      **MIGUEL RENTERIA RAMIREZ      ORDER TO SHOW CAUSE - FAILURE  
AND MARIA MONTES CISNEROS      TO PAY FEES  
Pro Se      12-19-16 [24]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. If the court’s tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:  
-----

The Order to Show Cause was served by the Clerk of the Court on Miguel Ramirez and Maria Cisneros (“Debtor”) (*pro se*), Chapter 7 Trustee, creditors, and parties requesting special notice on December 21, 2016. The court computes that 15 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case (\$31.00 due on December 5, 2016).

**The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.**

The court’s docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$31.00.

However, the court has granted Debtor’s motion to waive the Chapter 7 filing fees in this case. Order, Dckt. 27. This fee relates thereto, though technically not included in the prior motion. However, given the limited dollar amount involved and Debtor attempting to make sure the court has correct addresses, the court discharges the Order to Show Cause.

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

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

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

**IT IS ORDERED** that the Order to Show Cause is discharged, and the bankruptcy case shall continue in this court.

15. [16-90277-E-7](#)      **BENSON CONSTRUCTION,**      **MOTION FOR ADMINISTRATIVE**  
**ADJ-4**      **INC.**      **EXPENSES**  
                                 **Stephen Murphy**      **12-12-16 [44]**

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on December 12, 2016. By the court’s calculation, 24 days’ notice was provided. 14 days’ notice is required.

The Motion for Allowance of Administrative Expense 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 for Allowance of Administrative Expense is granted.**

Michael McGranahan, the Chapter 7 Trustee, requests authorization to pay \$800.00 to California Franchise Tax Board for taxes owed by the Debtor for the calendar year 2015 as an administrative expense. The Trustee requests authorization to pay an additional \$22.00 as a penalty for underpayment of the estimated tax owed by the Debtor. Finally, the Trustee requests authorization to pay any future state minimum taxes (estimated at \$800.00 per annum) and any late penalties and interest associated with the taxes and other administrative fees.

**DISCUSSION**

Section 503(b)(1) of the Bankruptcy Code accords administrative expense status to “the actual, necessary costs and expenses of preserving the estate . . . .” Paying taxes to a state’s franchise tax board is required. The Trustee has provided evidence that a tax and penalty is owed to the California Franchise Tax

Board in the total amount of \$822.00. Taxes are owed annually, and the Trustee will need to pay future taxes for the Debtor as they become due in this case.

The Trustee having presented sufficient evidence of an administrative expense, and having requested allowance of the expense, 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 for Allowance of Administrative Expense filed by Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the Trustee is authorized retroactively to pay \$822.00 to California Franchise Tax Board in satisfaction of taxes and penalties owed for calendar year 2015.

**IT IS FURTHER ORDERED** that the Trustee is authorized to pay for Debtor any future state minimum taxes and associated penalties and interest and other such administrative expenses related to annual taxes.

16. [15-90284-E-7](#)      ANTONIO/LUCILA AMARAL  
[15-9057](#)  
MCGRANAHAN V. SALDANA  
CLOSED: 07/27/2016

CONTINUED ORDER TO APPEAR FOR  
EXAMINATION (RAFAEL SALDANA)  
9-9-16 [50]

**APPEARANCE OF RAFAEL SALDANA,  
THE JUDGMENT DEBTOR,  
REQUIRED AT THE JANUARY 5, 2017 HEARING**

**No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. If the court’s tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:**

-----

The Proof of Service states that the Order to Appear for Examination for Enforcement of a Judgment was served on Rafael Saldana (“Defendant”), and Office of the United States Trustee on September 9, 2016. By the court’s calculation, 41 days’ notice has been provided.

This is a post-judgment order to appear filed by the Plaintiff, Michael McGranahan, for the examination of the judgment creditor, Rafael Saldana. The court signed a default judgment on July 8, 2016, Dckt. 33.

**The Order for Appearance and the Examination for Enforcement of a Judgment is **discharged/sustained**.**

Michael McGranahan, the Chapter 7 Trustee, applied for an Order for Appearance and Examination on September 9, 2016. As the judgment creditor, the Trustee ordered Rafael Saldana (“Judgment Debtor”) to appear and furnish information to aid in enforcement of a money judgment against the Judgment Debtor.

**JANUARY 5, 2017 HEARING**

At the hearing, **xxxxx**.

**DECEMBER 1, 2016 HEARING**

At the hearing, the Plaintiff-Trustee reported that after making the \$1,000.00 payment, no further communication has been received from Defendant-Debtor or his daughter (through whom the Plaintiff-Trustee’s counsel has been told to communicate).

Michael McGranahan, the Plaintiff-Trustee, has obtained a judgment in the amount of \$17,760.00 against Rafael Saldana, the Defendant, doing business as Saldana Bros. Hay, a sole proprietorship. Judgment, Dckt. 33. On September 9, 2016, the court issued an Order for Mr. Saldana to appear in court for a judgment debtor examination. Dckt. 50. Mr. Saldana did not appear at the October 20, 2016 debtor examination, but counsel for the Plaintiff-Trustee reported that Mr. Saldana was making a \$1,000.00 payment on the judgment and was purporting to be working with the Plaintiff-Trustee for the payment of this judgment. Counsel for the Plaintiff-Trustee requested that the court continue the debtor examination, rather than issuing an order to show cause for failure to appear.

The court continued the judgment debtor examination to December 1, 2016, at 10:30 a.m. Order, Dckt. 54. Mr. Saldana was served with the court's order at two different addresses: (1) 58 4th Street, Woodland, California; and (2) Saldana Brothers Hay Sale Service, PO Box 584, Woodland, California. Certificate of Service, Dckt. 55.

Mr. Saldana failed to appear at the continued examination on December 1, 2016. Counsel for the Plaintiff-Trustee reported that no further communication had been received from Mr. Saldana or his daughter (who Mr. Saldana had communicating with counsel for the Plaintiff-Trustee).

The failure to comply with an order of the court is a very serious act and one not taken lightly by the court. To afford Rafael Saldana the opportunity to correct his failure to comply, the court further continues the judgment debtor examination before imposing sanctions. To that end, the court: (1) continued the judgment debtor examination to 10:30 a.m. on January 5, 2017; (2) ordered Rafael Saldana, the judgment debtor, to appear in person, at the continued examination and produce all documents and records as required by the Order of Examination; (3) that if Rafael Saldana fails to appear at the continued January 5, 2017, the court shall order the immediate payment of \$5,000.00 in corrective sanctions to the Clerk of the United States Bankruptcy Court for the Eastern District of California for deposit into the United States Treasury; and (4) if Rafael Saldana fails to appear at the continued January 5, 2017 examination of judgment debtor the court shall issue an order for the United States Marshal to take Rafael Saldana into custody and present him and his records in open court at a further continued date and time for the judgment debtor examination.

Rafael Saldana could avoid the payment of the \$5,000.00 of corrective sanctions and being taken into custody by complying with the court's order and appearing, with the required books and records, at the continued judgment debtor examination at 10:30 a.m. on January 5, 2017.

## **OCTOBER 20, 2016 HEARING**

At the hearing, Plaintiff-Trustee's counsel reported that the Judgment Debtor states that a \$1,000.00 payment was being sent in immediately. Having been ordered to appear, the court interpreted Defendant's action as taking a step to address the judgment.

The Trustee requested that the Examination be continued, notwithstanding Debtor failing to appear as ordered by the court, to allow Debtor the opportunity to address the judgment before an Order to Show Cause is issued.

The court continued the hearing to 10:30 a.m. on December 1, 2016. Dckt. 52.

17. [16-90697-E-7](#)  
ADJ-2

JAMES SHIELDS  
Christian Younger

MOTION FOR TURNOVER OF  
PROPERTY  
12-8-16 [20]

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion for Turnover of Property is denied.**

Irma Edmonds, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to asserted property of the Estate held in a joint savings account in the amount of \$36,007.82.

Movant asserts that James Shields ("Debtor") had legal title to the savings account on the date of the petition, which means that the account's funds became property of the Estate. The Trustee notes that Debtor has listed an interest of \$0.00 in the account, despite claiming an exemption in it of \$100.00 on Schedule C pursuant to California Code of Civil Procedure § 703.140(b)(5).

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 22, 2016. Dckt. 26. Debtor states that his non-filing spouse received her share of an inheritance on January 7, 2016. \$58,348.63 was deposited into the spouse's checking account. Debtor asserts that his spouse intended for it to be deposited into a savings account, and on January 11, 2016, she transferred \$55,000.00 from her checking account to her savings account. Debtor asserts that his spouse did not intend for the new funds to become community property.

Debtor asserts that the savings account funds can be traced back to an inheritance and are separate property therefore.

## **APPLICABLE LAW**

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

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

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

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

A bankruptcy court may order turnover of property to debtor’s estate if, among other things, such property is considered to be property of the estate. *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 Debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), the 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.

### **Application of California Law**

California Family Code § 770(a)(2) defines separate property as “all property acquired by the person after marriage by gift, bequest, devise, or descent.” The Supreme Court of California has held that the presumption of community property can be rebutted if the property acquired during marriage is (1) traceable to a separate property source, (2) acquired by gift or bequest, or (3) earned or accumulated while spouses are living separate and apart. *In re Marriage of Valli*, 58 Cal.4th 1396, 1400 (Ca. 2014) (citing *In re Marriage of Lucas*, 27 Cal.3d 808, 815 (Ca. 1980)).

The Ninth Circuit Court of Appeals has confirmed that the community property presumption does not apply to property that is traceable to one spouse’s separate property. *In re Jacobson*, 676 F.3d 1193, 1201 (9th Cir. 2012) (citing *In re Marriage of Haines*, 33 Cal. App. 4th 277, 289–90 (Cal. Ct. App. 1995)). When

the non-filing spouse used part of his inheritance to make a down payment on real property, he was able to maintain it as separate property through tracing. *Id.*

## DISCUSSION

The Trustee asserts that Debtor's portion of funds available in the joint savings account became property of the Estate upon filing this case. Debtor counters by stating the funds in the account can be traced to an inheritance as separate property.

Debtor and his spouse were married in 1998, and the inheritance was received by Debtor's spouse during the marriage. Debtor's spouse received it originally in her checking account, but transferred almost all of it to her savings account within four days. That account happens to be a joint savings account with her husband. Despite the joint status of the account, California Family Code § 770 establishes that funds received by request are separate property. Debtor can show that his spouse received an inheritance and transferred almost all of it to a joint savings account. Therefore, Debtor can overcome the community property presumption.

Additionally, Debtor has relied upon *In re Jacobson* as precedent that inheritance funds can be used to acquire property that remains separate property because it can be traced to a separate property source. Here, the spouse's savings account funds can be traced to a separate property bequest in the form of an inheritance from her deceased father.

Melissa Bare, the non-debtor spouse, has filed her declaration in opposition to the Motion. Dckt. 27. In it she testifies as to how she received the \$58,348.62 inheritance and that \$55,000.00 was transferred. She provides testimony that she did not intend to transmute a separate property inheritance into community property. No copies of the check for the inheritance distribution are provided; correspondence from the executor, trustee, or agent responsible for the distribution of the inheritance; or documentation of these monies being an inheritance were provided. If the Trustee questioned the veracity of Ms. Bare's testimony, further discovery was available to her. Fed. R. Bankr. P. 9014.

Debtor has provided sufficient evidence to overcome the Trustee's demand for turnover of the savings account funds. The Motion is denied.

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

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

The Motion for Turnover of Property filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Turnover of Property is denied.

18. [13-90502-E-7](#)  
TOG-2

**DERRICK DELHART**  
Thomas Gillis

**MOTION TO AVOID LIEN OF PAULA  
WILSON-REED**  
12-22-16 [36]

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

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on December 22, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

This Motion requests an order avoiding the judicial lien of Paula Wilson-Reed ("Creditor") against property of Derrick Delhart ("Debtor") commonly known as 2437 Verduga Road, Hughson, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$15,462.00. An abstract of judgment was recorded with Stanislaus County on December 17, 2010, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$294,586.00 as of the date of the petition. The unavoidable consensual liens that total \$298,500.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$15,462.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs the Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Paula Wilson-Reed (with the aka of Paula Elaine Padillo included on the Abstract of Judgment), California Superior Court for Stanislaus County Case No. 628807, recorded on December 17, 2010, Document No. 2010-0112678-00, with the Stanislaus County Recorder, against the real property commonly known as 2437 Verduga Road, Hughson, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.