

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,673.60. Exhibit, Dckt. 48. An abstract of judgment was recorded with San Joaquin County on October 18, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$72,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$112,507.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$1000.00 on Schedule C. Dckt. 1.

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 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 Remy L. Sugabo ("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 Midland Funding LLC, California Superior Court for San Joaquin County Case No. 39-2011-00258105-CL-CL-STK, recorded on October 18, 2011, Document No. 2011-125749, with the San Joaquin County Recorder, against the real property commonly known as 52 Delhi Street, Stockton, 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. If the court's tentative ruling becomes its final ruling, then 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 Debtor and Debtor's Attorney as stated on the Certificate of Service on January 6, 2021. The court computes that 50 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required filing fees in this case: \$188.00 due on January 11, 2021 for Debtor's Motion to Compel Abandonment, FF-1.

The Order to Show Cause is sustained, and the case is dismissed.

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: \$188.00.

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

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

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

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

3. [20-24176-E-7](#)
[BHS-1](#)
3 thru 4

WHOMAN/CHARISSA RYDER
Richard Steffan

**MOTION TO EMPLOY BARRY H.
SPITZER AS ATTORNEY(S) AND/OR
MOTION FOR COMPENSATION FOR
BARRY H. SPITZER, TRUSTEES
ATTORNEY(S)
1-6-21 [18]**

Final Ruling: No appearance at the February 25, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 6, 2021. By the court’s calculation, 50 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 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.

The Chapter 7 Trustee, Geoffrey Richards (“Trustee”), seeks to employ Barry H. Spitzer (“Counsel) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel to assist Trustee in preparing a motion to approve the sale of the Subject Property, as well as assisting the Trustee on other matters related to the estate.

Trustee argues that Counsel’s appointment and retention is necessary to assist Trustee in evaluating the fair market value of the Subject Property and to also represent Trustee in preparing a motion to approve a sale of the Subject Property, and other matters related to the estate.

Barry H. Spitzer, an attorney of Law Office of Barry H. Spitzer, testifies that he will assist the Trustee in evaluating the fair market value of the Subject Property and to also represent him in preparing a motion to approve a sale of the Subject Property, and on other matters related to the estate. Dckt. 21. Since 1992, Barry H. Spitzer has represented creditors, debtors, and trustees in Chapters 7, 11, and 13 proceedings in the Eastern District of California and Northern District of California. Barry H. Spitzer testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they

February 25, 2021 at 10:30 a.m.

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have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Trustee also seeks authority to pay Counsel from funds of the estate without further application a flat rate of compensation in the amount of \$1,500 for the professional time and expenses incurred by Counsel. In his Declaration, Counsel testifies that the flat rate covers all work necessary for the Trustee in this matter, including costs. *Id.*

DISCUSSION

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.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel 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 Barry H. Spitzer as Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Motion to Employ.

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 Geoffrey Richards("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 Employ is granted, and Trustee is authorized to employ Barry H. Spitzer as Counsel on the terms and conditions as set forth in the Motion to Employ, Dckt. 18.

IT IS FURTHER ORDERED that the Chapter 7 Trustee, Geoffrey Richards ("Trustee") is authorized to pay \$1,500 flat rate compensation to Barry H. Spitzer, subject to the provisions of 11 U.S.C. § 328, pursuant to this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 6, 2021. By the court’s calculation, 50 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Geoffrey Richards, the Chapter 7 Trustee, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the estate’s interest in a promissory note secured by real property commonly known as 16 Palm Avenue, Savannah, Georgia 31404 in the face amount of \$20,000 dated March 16, 2016 with 5% interest payable at \$212.13 per month (“Property”).

The proposed purchasers of the Property are the Chapter 7 Debtors, Whoman Joshua Ryder and Charissa Lavelle Ryder (“Debtors”), and the terms of the sale are (the full terms of the sale are set forth in the Purchase and Sale Agreement filed as Exhibit A, Dckt. 27) :

- A. The sale price is \$10,451.09, less Debtors exemption of \$5,451.09 pursuant to California Code of Civil Procedure section 703.140(b)(5), for a net payment of \$5,000.00 to the Estate.
- B. The property is sold “as-is” and “where-is” with no warranties or guarantees, subject to existing liens and encumbrances, if any.
- C. Debtors has paid a \$4,000 deposit with the remaining \$1000.00 to be paid in 10, \$100.00 installments beginning on the 5th day of the month after the

February 25, 2021 at 10:30 a.m.

Bankruptcy Court approves the sale. The payments shall be payable to “Geoffrey Richards, Chapter 7 Trustee of the Ryder Estate” and delivered to P.O. Box 579, Orinda, CA 94563.

Proposed Overbidding Procedures

Trustee proposes the following procedures:

1. Overbidding shall start at \$10,651.09, with overbids in minimum \$200.00 increments.
2. Successful bidder must sign a Purchase and Sale Agreement with the same terms as Exhibit “A” of this Motion to Sell.
3. Any costs of transfer or income tax would be the sole responsibility of the buyer.
4. To qualify, bidder must send the Trustee or his attorney a cashier’s check in the amount of \$4,200 no later than February 23, 2021. This payment serves as a non-refundable deposit if the overbid is successful.
5. Successful overbidder must deliver to the Trustee a cashier’s or certified check for the overbid amount within 10 days of the Court Order entry on the docket approving the sale.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Estate will receive \$5,000.00 from the sale and this will allow for the orderly liquidation of the estate.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Though making a request for the court to waive the fourteen day waiting period imposed by Federal Rule of Bankruptcy Procedure 6004(h) as adopted by the United States Supreme Court, Movant has failed to provide grounds for such a waiver.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is not 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 Property filed by Geoffrey Richards, the Chapter 7 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 Geoffrey Richards, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Whoman Joshua Ryder and Charissa Lavelle Ryder (“Buyer”), the Property commonly known as the estates interest in a promissory note secured by real property commonly known as 16 Palm Avenue, Savannah, Georgia 31404 in the face amount of \$20,000 dated March 16, 2016 with 5% interest payable at \$212.13 per month (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$10,451.09, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 27, and as further provided in this Order.
- B. 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 to effectuate the sale.
- C. The Chapter 7 Trustee 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 not waived for cause.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors, and Office of the United States Trustee on January 11, 2021. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

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

The Motion to Dismiss the Chapter 11 Case is granted.

This Motion to Convert or to Dismiss the Chapter 11 bankruptcy case of David Foyil ("Debtor") has been filed by Tracy Hope Davis ("Movant"), the U.S. Trustee. Movant asserts that the case should be dismissed or converted pursuant to 11 U.S.C. § 1112 based on the following grounds:

- A. This is Debtor's sixth bankruptcy case since 2011.
- B. Cause to dismiss exists under 11 U.S.C. § 1112(b)(1): Debtor cannot effectuate a plan, where there is no pending request to approve a disclosure statement or to confirm a plan of reorganization. The filed priority tax claims of the Employment Development Department, the Franchise Tax Board, and the Internal Revenue Service exceed \$600,000.
- C. Cause to dismiss also exists under 11 U.S.C. § 1112(b)(4)(K): The U.S. Trustee's records reflect that the Debtor owes quarterly fees to the U.S. Trustee in the amount of \$3.80, and estimated fees of \$650 for the Fourth Quarter of 2020 will be payable on January 31, 2021.

- D. Dismissal appears to be in the best interest of creditors and the estate where Debtor's assets appear to be fully encumbered by mortgage and secured tax claims.

CREDITOR'S JOINDER

Kondaur Capital Corporation, not in its individual capacity but solely in its capacity as Separate Trustee of Matawin Ventures Trust Series 2019-4 ("Creditor"), filed a Joinder to the U.S. Trustee's Motion on February 11, 2021. Dckt. 286. Creditor filed Proof of Claim 6-1 on December 31, 2018 perfected by a deed of trust over real property commonly known as 130 Poppy Lane, Ione, California.

Creditor states that there is cause to dismiss or convert this case pursuant to 11 U.S.C. § 1112 on the basis that Debtor has been unable to confirm a plan and resolve Creditor's claim for almost two years. Moreover, Creditor argues that dismissal is in the best interest of creditor because there is no equity in the estate as to Creditor's property, Debtor's Schedules indicate Debtor has little to no general unsecured claims.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1).

DISCUSSION

Debtor filed a Chapter 13 bankruptcy case on December 1, 2018. Dckt. 1. The court granted Debtor's motion to convert the case to one under Chapter 11. Dckt. 57. The Chapter 11 meeting of creditors in this case was initially held on April 11, 2019 and concluded on May 17, 2019.

Debtor's Amended Schedules reflect assets at a value of \$711,967. Debtor's most valuable asset is the real property located at 130 Poppy Lane, Ione, California (the "The Poppy Lane Property"). The Debtor valued his interest in the Poppy Lane Property at \$650,000. According to amended Schedule D, the Poppy Lane Property is encumbered by the first deed of trust claim of PennyMac in the amount of \$733,645.

Debtor also lists as personal property, among other things, a 2015 Chrysler 200 valued at \$12,000 and a 2015 Nissan Armada valued at \$25,000. Both interests appear to be fully encumbered.

According to Amended Schedule E/F, there are no priority unsecured claims and Debtor scheduled five non-priority unsecured claims in the aggregate amount of \$34,285. There are three filed priority tax claims totaling at least \$601,655 and secured tax claims total at least \$273,698:

1. Employment Development Department (“EDD”) has filed a proof claim in the amount of \$14,355.02, of which \$5,553.20 is asserted as priority,
2. the Franchise Tax Board (“FTB”) has filed a proof claim in the amount of \$195,106.11, of which \$132,980.83 is asserted as secured and \$44,717.53 is asserted as priority, and
3. the Internal Revenue Service (“IRS”) has filed a proof claim in the amount of \$1,076,408.22, of which \$140,717.82 is asserted as secured and \$551,385.17 is asserted as priority.

Based on the filed claims, U.S. Trustee argues that a monthly payment of approximately \$10,027.60 would be necessary to pay the filed priority tax claims in full over 60 months without interest (\$601,655 divided by 60 months).

U.S. Trustee points the court to Debtor’s post-petition financial performance. Debtor’s post-petition financial performance as calculated by the U.S. Trustee shows that during the nearly 21 months from the date this case converted from Chapter 13 to Chapter 11 (March 7, 2019) through November 30, 2020:

- a. the Debtor’s average monthly receipts have been approximately \$7,662 (\$160,899 in total receipts divided by 21 months).
- b. the Debtor’s average monthly disbursements have been approximately \$7,123 (\$149,586 in total disbursements divided by 21 months).
- c. the Debtor’s average monthly net receipts have been approximately \$539 (\$11,313 in net receipts divided by 21 months).

U.S. Trustee adds that Debtor has failed to obtain approval of a disclosure statement or confirm a plan of reorganization.

Thus, U.S. Trustee argues that there is cause to convert or dismiss this bankruptcy case on the basis Debtor cannot effectuate a plan and as his financial performance shows, Debtor afford plan payments to address his priority tax claims.

U.S. Trustee also argues that cause exists to convert or dismiss because Debtor has failed to make the U.S. Trustee’s quarterly fees. 11 U.S.C. § 1112(b)(4)(K) includes as a “cause” for conversion or dismissal of a case under § 1112(b)(1), a debtor’s failure to pay any fees or charges required under chapter 123 of title 28.

U.S. Trustee records show that Debtor owes quarterly fees in the amount of \$3.80, and estimated fees of \$650 for the Fourth Quarter of 2020 will be payable on January 31, 2021. U.S. Trustee filed the

Supplemental Declaration of Carla Cordero where she testifies that Debtor failed to make the quarterly fee of \$650.00 due for the fourth quarter of 2020. Dckt. 295.

Lastly U.S. Trustee contends that between conversion or dismissal, in this case, dismissal is in the best interest of the creditors because Debtor's asserts appear to be fully encumbered., including by mortgage and secured tax claims.

At the hearing, **XXXXXXX**

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is dismissed

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

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

The Motion to Convert or Dismiss the Chapter 11 case filed by Tracy Hope Davis ("the U.S. 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 Convert or Dismiss the Chapter 11 Case is granted, and the 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.

Local Rule 9014-1(f)(1) Motion—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, and Office of the United States Trustee on January 26, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is ~~XXXXX~~.

First U.S. Community Credit Union ("Creditor") holding a secured claim seeks dismissal of the case on the grounds that Jose R. Ayala ("Debtor") has failed to provide pay advices, tax returns and documents and information related to Debtor's income and expenditures, and thus Creditor was unable to review them and examine Debtor at the meeting of creditors.

Moreover, Creditor requests that order dismissing the case include a bar for filing a subsequent bankruptcy case for 180 days after the dismissal of this case.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 11, 2021. Dckt. 24. Debtor's counsel states that Creditor did not receive the pay advices, tax returns and other documents requested due a series of unforeseen events, mainly a breakdown in communication between the staff, and COVID-19 related issues.

Counsel alleges that the task of producing the car loan documents was first delegated to a staff member who was diagnosed with COVID-19. Eventually the documents were sent by another staff member. When creditor later asked for additional documents, counsel alleges that due to the Christmas and New Year holidays and the fact that most of his staff had been sheltering at home, the office was unable to send the tax and pay advices. Counsel states that the documents were sent to Creditor via email on January 28, 2021.

Counsel notes that Creditor is not alleging that the delay in sending the tax and pay documents have caused any damages.

DISCUSSION

Debtor has failed to timely provide Creditor with certain documents including:

- A. Copies of pay advices,
- B. Copies of federal income tax returns

11 U.S.C. §§ 521(e)(2)(A). Section 521(e)(2)(C) states the Court shall dismiss the case unless the Debtor demonstrates that the failure to do so is due to circumstances beyond the control of the Debtor. Debtor is required to submit those documents and cooperate with a party of interest who timely requests such documents. FED. R. BANKR. P. 4002(b)(4).

Creditor filed an Amended Reply on February 17, 2021. Dckt. 31. Creditor argues that Debtor's Opposition fails to show that the failure to timely provide a copy of the requested documents was due to circumstances beyond the control of Debtor. Creditor points out that the Opposition filed is made up of "I" and "my" statements, and yet no declaration under penalty of perjury was filed in support of the opposition. Moreover, the exhibits filed were not properly authenticated.

Creditor argues that counsel fails to provide evidence that establishing the failure to timely provide the documents was due to circumstances beyond the control of the Debtor. Though admitting to having received emails, Creditor asserts that the Opposition is silent about information on whether counsel took any actions to procure the information and documents requested or what counsel did when the court sent the Notice of Electronic Filing. Creditor asserts that counsel received various emails, and where counsel does not dispute receiving the email, counsel does not explain why no action was taken in response to the several emails sent requesting the missing documents. Creditor notes that the Opposition is also silent as to when the documents were obtain and why the documents were sent to the Trustee but not to Creditor.

Creditor notes that the documents were received the day after the instant motion was filed, which was 37 days after the request was made, and 23 days after they were due.

Creditor is not satisfied with counsel's excuses regarding illness and office closures when other staff could have responded to handle work when the other staff member was sick and the documents could have been provided during the working days in December.

Lastly, Creditor argues that Debtor is held accountable or the acts and omission of his or her attorney, pointing the court to *Pioneer nv. Servs. Co. v Brunswick Assocs. Ltd. P'Ship*, 507 U.S. 380, 396-397 (1993) the court stated "we give little weight to the fact that counsel was experiencing upheaval in this law practice at the time of the bar date". Thus, Creditor argues, Debtor having failed to show that the failure to provide the requested 521 documents was due to circumstances beyond the control of the debtor, the case should be dismissed.

The events at hand are concerning to the court. The opposition shows incompetence in the part of the counsel involved. It is also interesting that Trustee received the same requested documents and yet Creditor did not. The court finds itself in a predicament. Without knowing Debtor's actual side of the story, the court is unable to assess whether indeed the present situation was beyond the control of the debtor. If the court agrees with Creditor, and dismisses the case, it is not counsel who will be affected but Debtor. A debtor that, according to counsel, has limited assets and limited knowledge of the English language.

At the hearing, **XXXXXXX**

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 7 case filed by First U.S. Community Credit Union (“Creditor”) holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is **XXXXX**.

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, creditors, and Office of the United States Trustee on January 15, 2021. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Substitute is ~~XXXXX~~.

On January 15, 2021, the Chapter 11 Plan Administrator Scott Sackett filed a Motion for a Representative to be substituted for the late Hoda Samuel, a co-debtor in this Bankruptcy Case, or that such substitution be waived. Dckt. 1507. Unfortunately, Mrs. Samuel passed away on August 21, 2020. Notice of Death and Motion to Continue Administration and Order; Dckts. 1496, 1506.

The Motion for substitution of a representative for the late Mrs. Samuel states that no motion for appointment of a representative has been filed by co-debtor Aiad Samuel (her husband) or other representative of her estate. The Motion requests the court appoint co-debtor Aiad Samuel, Peter Samuel (Mrs. Samuel's son), other representative of Mrs. Samuel's estate, or other person. Dckt. 1507. The Motion does not indicate that either of the two named persons (naturals to be the representative) has consented and join in the relief requested.

The Motion recounts that at the hearing on the Notice of Death and Motion to Continue Administration of the Hoda Samuel Chapter 11 case, attorney Richard Jare appeared and reported that the Samuel Family was in the process of engaging his services to represent the Family. It also states that Mr.

Jare and counsel for the Plan Administrator communicated in writing at the end of December 2020 and early January 2021. *Id.*, ¶¶ 9, 11, 12.

Interim Status Conference

Both Debtor Aiad Samuel and the late Co-Debtor Hoda Samuel have been strident in asserting various claims and interests. Though this case appears to be nearing an end, there are rights and interests of the late Co-Debtor Hoda Samuel for which the appointment of a representative is appropriate. It may be Aiad Samuel, her husband, one of their children, or a successor to her rights and interests. Such representative would be for this Chapter 11 case only and not necessarily for the various District Court actions and appeals thereon that the late Hoda Samuel was attempting to prosecute.

Debtor Aiad Samuel has not attended the last several hearings in this case. The court believes that his attendance and participation is necessary and appropriate. Additionally, in light of Richard Jare, Esq. having indicated that he is providing legal services to the Samuel family members, his attendance and participation at the Interim Status Conference is necessary and appropriate. In appearing at the Interim Status Conference, Mr. Jare will not be making an appearance in the case on behalf of any person to constitute him becoming an attorney of record.

The court's order setting the February 4, 2021 Interim Status Conference required the appearances of Aiad Samuel, a Debtor in this case; Richard Jare, Esq., Scott Sackett, the Chapter 11 Plan Administrator and Chapter 11 Trustee; and Jason Rios, Esq., counsel for Scott Sackett in this case.

A review of the Docket on February 3, 2021 discloses that no counsel has substituted in to represent Mr. Samuel and no report from Mr. Samuel in *pro se* has been filed updating the court of said debtor's intentions in the case. (The court did not order the filing of any reports in light of the short time between issuing the order for the Interim Status Conference on January 21, 2021, and the February 4, 2021 Interim Status Conference.)

At the Interim Status Conference, counsel for the Plan Administrator and former Trustee reported communicating with Aiad Samuel, the surviving Debtor, Peter Samuel, the son of Aiad and Hoda Samuel, and Richard Jare, Esq., who may be counsel for them.

Mr. Jare and Peter Samuel reported that there is a Sacramento attorney who prepared Hoda Samuel's will and that Peter Samuel has been communicating with that attorney. The court directed Peter Samuel to have a copy of the will sent to counsel for the Plan Administrator and former Trustee. The court suggested that it would be constructive for that probate attorney to contact the Plan Administrator's counsel.

The Parties indicated that it was likely that Aiad Samuel, the surviving debtor, would seek appointment as the personal representative.

REVIEW OF THE MOTION AND SUPPLEMENTAL PLEADINGS

Scott M. Sackett, Chapter 11 Trustee and Plan administrator ("Plan Administrator"), seeks an order approving the motion to substitute any one of the following representatives: (i) co-debtor and surviving spouse Aiad Samuel, (ii) Hoda Samuel's surviving son, Peter Samuel, (iii) the representative, if any, for

Hoda Samuel's decedent estate, or (iv) any other representative that the Court determines as appropriate, for the deceased Debtor, Hoda Samuel. Or, if no surviving family member or representative of Hoda Samuel will accept such appointment, that no substitution be required. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 1016, 7025, and 9014.

The Motion for Substitution states that no motion for appointment of a representative has been filed by co-debtor, Aiad Samuel or any other representative of the Estate. Motion, Dckt. 1507.

On February 18, 2021 Scott M. Sackett, Chapter 11 Trustee and Plan Administrator, filed a supplement to the instant motion stating his satisfaction that Hoda Samuel's surviving spouse Aiad Samuel, is the appropriate representative for the interests of Hoda Samuel in this bankruptcy case. Dckt. 1529 at 2:14. Plan Administrator requests the Court enter an order designating Aiad Samuel as the representative for Hoda Samuel's interests, if any, in this case. *Id.* at 2:17.

Debtor filed for relief under Chapter 11 on March 15, 2016. On September 27, 2018, Debtor's Chapter 11 Plan was confirmed. Dckt. 1246. On August 21, 2020, Debtor Hoda Samuel passed away. Plan administrator asserts that Aiad Samuel is the lawful successor and representative of Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, Plan Administrator requests the court appoint Debtor's surviving spouse, Aiad Samuel to perform the obligations and duties of the deceased party in addition to performing his own obligations and duties. A Suggestion of Death was filed on October 19, 2020. Dckt. 1496. Aiad Samuel is the surviving spouse of the deceased party and is the successor's heir and lawful representative.

Following the February 4, 2021 Status Conference regarding this motion, Plan Administrator was provided copies of both (1) Hoda Samuel's Last Will and Testament ("Hoda's Will"), and (2) the Aiad and Hoda Samuel Family Trust dated October 17, 2001 (the "Samuel Revocable Trust") Exhibits A-B, Dckt 1531. Hoda's Will states at Section V(1) that she designated her spouse as Executor of the Will. Exhibit A, Dckt. 1531 at 2. Moreover, the Samuel Revocable Trust provides on page 1, and again in Article IX (1) that both Aiad and Hoda Samuel are designated as the Trustees for the trust. Exhibit B, Dckt. 1531, at 11, 19. The Declaration of Jason E. Rios, counsel t the Plan Administrator, properly authenticates the copy of Hoda's Will and the copy of the Samuel Revocable Trust filed in support of the Motion as Exhibits A and B, respectively. Dckt. 1529.

Plan Administrator asserts that at the February 4, 2021 Status Conference it was represented to the court by the Samuel family that no probate has been opened for Hoda Samuel and Ms. Samuel's surviving spouse, Aiad Samuel wished to serve as the representative for Hoda Samuel's interests. Supplemental Motion, Dckt. 1529 at 2:10. A review of the Civil Minutes for the February 4, 2021 Status Conference reflects such representations.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*,

135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004

(emphasis added); *see also Hawkins v. Eads, supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether “[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.” FED. R. BANKR. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Plan Administrator has provided sufficient evidence to show that administration of the Chapter 11 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the ninety-day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 1496.

Based on the evidence provided, the court determines that further administration of this Chapter 11 case is in the best interests of all parties. However, no declaration or other pleadings have been filed by Joint Debtor, Aiad Samuel, as the Surviving Spouse of the deceased party and as the successor’s heir and lawful representative, wishing to continue to administer the case on behalf of the deceased debtor, Hoda Samuel.

~~The Motion to Substitute Party 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 Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Motion is granted, and Aiad Samuel is substituted as the successor-in-interest to Hoda Samuel and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.~~

Debtors' Atty: Pro Se

Notes:

Continued from 1/21/21. Neither Aida Samuel nor Richard Jare, Esq., an attorney who has been identified as possible counsel for the persons having interests in this case for debtor Aida Samuel and a successor to Hoda Samuel, appeared.

The Status Conference is ~~XXXXX~~.

JANUARY 21, 2021 STATUS CONFERENCE

On January 15, 2021, the Chapter 11 Plan Administrator Scott Sackett filed a Motion for a representative be substituted for the late Hoda Samuel, a co-debtor in this Bankruptcy Case or that such substitution be waived. Dckt. 1507. Unfortunately, Mrs. Samuel passed away on August 21, 2020. Notice of Death and Motion to Continue Administration and Order; Dckts. 1496, 1506.

The Motion for substitution of a representative for the late Mrs. Samuel states that no motion for appointment of a representative has been filed by co-debtor Aida Samuel (her husband) or other representative of her estate. The Motion requests the court appoint co-debtor Aiad Samuel, Peter Samuel (Mrs. Samuel's son), other representative of Mrs. Samuel's estate, or other person. Dckt. 1507. The Motion does not indicate that either of the two named persons (naturals to be the representative) have consented and join in the relief requested.

The Motion recounts that at the hearing on the Notice of Death and Motion to Continue Administration of the Hoda Samuel Chapter 11 case, attorney Richard Jare appeared and reported that the Samuel Family was in the process of engaging his services to represent the Family. It also states that Mr. Jare and counsel for the Plan Administrator communicated in writing at the end of December 2020 and early January 2021. *Id.*, ¶¶ 9, 11, 12.

At the January 21, 2021, Status Conference neither Aida Samuel nor Richard Jare, Esq., an attorney who has been identified as possible counsel for the persons having interests in this case for debtor Aida Samuel and a successor to Hoda Samuel appeared.

SEPTEMBER 3, 2020 HEARING

Chapter 11 Trustee filed a Status Report on August 27, 2020. Dckt. 1488. As a preliminary matter, neither the Trustee nor the Plan Administrator are aware of any new items to be addressed although

the Trustee intends to file a new motion to help bring resolution to the Debtors' litigation and delay. *Id.*, p. 3:18-20.

Trustee the following updates regarding the status of several of the open items as the Plan Administrator continues to diligently work on the administration of Debtor's estate since the court was last updated in April 2020:

- A. Completing Final Tax Returns and Potential Tax Refunds- Due to delays in closing the case, the Plan administrator is currently working with his professionals to prepare the Estate's tax returns for 2019. *Id.*, p. 4:24-26.
- B. Resolving the Brake Masters Class 3A Claim- However, the Superior Court has entered a final order allowing \$79,052.10 in additional attorneys' fees and costs on appeal. Brake Masters served a Notice of Entry of this Order on June 5, 2020. Since the time period for the Debtors to appeal the latest Superior Court ruling, the Plan Administrator expects to pay Brake Masters the \$79,052.10 additional attorneys' fees and costs for the appeal from the remaining balance of the funds reserved for the Brake Masters' claim pursuant to the Plan. *Id.*, p. 5:16-18; 20-24.
- C. Resolving the USA Class 2A Secured Claim- While Hoda Samuel's challenges to the USA's enforcement of its judgment have been denied, she has now filed a motion challenging her criminal conviction, which continues to delay resolution of the USA Claim. *Id.*, p. 7:14-17.
- D. Administering Final Assets: Residential rental properties located at 209 Prairie Circle and 148 Estes Way, in Sacramento, California- The tenants of the two properties have experienced hardship and loss of income due to the Covid19 pandemic. The Plan Administrator is working diligently to collect rent from these tenants by setting up deferred payment plans. Both tenants are cooperating and currently paying additional monthly rent amounts to catch up on delinquent rent payments that were missed earlier in the year. *Id.*, p. 8:17-23.

Counsel for the Plan Administrator requested that in light of the continuing litigation in the District Court and the Ninth Circuit, this matter be further continued. Counsel further reported that the litigation with Break Master was final and that claim has been paid.

APRIL 30, 2020 HEARING

This Chapter 11 Case has continued forward, with a series of status reports filed by the Plan Administrator, former Chapter 11 Trustee in this case. The court reviews them below collectively, as the issues overlap.

At the April 30, 2020 Status Conference, Counsel for the Plan Administrator requested that in light of the continuing litigation in the District Court and the Ninth Circuit, this matter be further continued.

In light of the ongoing litigation in other courts that impact the expenses sought, the hearing is continued.

Status Conference re: Debtor Aiad Samuel filed document titled “Failure, False, and Fake Bankruptcy Services and More, See Record.” Order, Dckt. 1456

On March 10, 2020, the court issued its order for a status conference concerning documents filed by Aiad Samuel. While the Document does not rise to the level of a pleading that could be construed as a motion under the Federal Rules of Bankruptcy Procedure, it set the Status Conference to afford Debtor Aiad Samuel to address the court.

Plan Administrator Status Report

The Plan Administrator has filed a Status Report for the April 30, 2020 Conference. Dckt. 1462. The Plan Administrator states that he was not provided with a copy of the notice by the Debtor, it having been sent to the Debtor’s residence. Having notice, the Plaintiff Administrator reports as to the actions he has taken with respect to these matters.

In December 2019, the Plan Administrator went to the property and met with the tenant. The tenant stated that the car was his son’s and it would be removed.

The Plan Administrator returned in January 2020. The car had not been moved, but the tenant again stated it would be moved and she was “working to get the key.” Additionally, that tenant would get the damaged fence fixed. The Plan Administrator had a handyman go to the property to inspect the fence.

In March 2020, the vehicle still had not been removed and the tenant had not met with the handyman. This is when the Plan Administrator first learned of the City notice. On March 23, 2020, the Plan Administrator received confirmation that the vehicle had been removed.

In April 2020, the handyman advised the Plan Administrator that he was quarantined. The Plan Administrator made arrangements with the neighbor to have the fence fixed, with the neighbor splitting the costs. The Plan estate’s share is \$617.00.

Debtor Aiad Samuel Status Report

On April 29, 2020, a Status Report from Debtor Aiad Samuel was filed. In the Report Mr. Samuel makes a number of statements asserting misconduct by the Chapter 11 Trustee, that Trustee’s counsel, and the court (appearing to reference the prior judge to whom this case was assigned). It is asserted that properties were intentionally damaged to get the insurance monies, that properties have not been properly maintained, and that bills and taxes relating to properties were not paid.

Mr. Samuel also makes reference to the court not taking action to protect the property, not taking action on the wrongs he identified. He states that no action was taken because “the court (J) want to destroyed all my properties to buy it to themself, and this prvite plan at Sacramento, Ca. And now you know WHY? [sic].”

He continues, asserting that the Debtors' assets were sold for pennies on the dollar, that the Trustee and his attorney are deleting records, and that he and witnesses are suffering retaliation, harassment, discrimination, and harm. He then states:

This is part of evidence until YOU and Chief Judge handle my case investigation for my safety and witness safety and no more harm.

Debtor Report, p. 3. Through the Report he makes reference to as shown in the court record and files, as if he is directing the court to investigate, assemble, and advocate for Debtors.

In a prior hearing, the court had a long discussion with Mr. Samuel that the court was not the "administrator" or cases, did not undertake investigations, and did not prosecute cases for one party or the other. That is was necessary for the Debtors to obtain counsel to represent their interests, since they believe that they have been "thwarted by the system" and unable to so do. The court cannot undertake such representation or investigation.

Mr. Samuel states he has the right to go to "a different court, media and more - - - -." *Id.* He may so properly exercise his rights.

Debtor concludes, stating that he is requesting to dismiss the bankruptcy case, have all of his assets returned. He is request to get the Trustee and Trustee's attorney thrown out of the case.

**Updated Status Report on Motion for Allowance of Administrative Expense
For Scott Sackett, Pre-Confirmation Chapter 11 Trustee**

The Pre-Confirmation Trustee reports that the District Court Action to which the expenses relate continues. At this time, the amount of the expense cannot be determined.

Additionally, the Debtor continues with the appeal of a state court action, which may result in the increase in the claim of the creditor in that proceeding. There is also an action in the District Court effecting the United States' claim this case, which will be in favor of the United States. The Plan Administrator anticipates further appears by Debtor, which will delay the payment on the claim of the United States.

The report discusses the management of the Plan estate's assets.

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For Counsel to the Pre-Confirmation Chapter 11 Trustee**

Counsel's report parallels the report of the Pre-Confirmation Trustee.

February 25, 2021 Hearing

At the hearing xxxxxxxx

Debtors' Atty: Pro Se

Notes:

Continued from 1/21/21. Neither Aida Samuel nor Richard Jare, Esq., an attorney who has been identified as possible counsel for the persons having interests in this case for debtor Aida Samuel and a successor to Hoda Samuel, appeared.

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For Counsel to the Pre-Confirmation Chapter 11 Trustee**

Counsel's report parallels the report of the Pre-Confirmation Trustee.

February 25, 2021 Hearing

At the hearing xxxxxxxx

Plaintiff-Debtor's reservation of rights with respect to the settlement and his right to object, if he so chooses, to the Plan Administrator's forthcoming motion seeking this court's approval of the settlement.

Thus, the parties have agreed to stay all aspects of the present litigation in this adversary proceeding pending presentation of the settlement for at least 14 days after the court hears and resolves the settlement motion to be filed by the Plan Administrator.

The order granting the parties request was entered on February 20, 2021. Dckt. 63.

Request for Continuance

LBA RV-Company XX.VII, LP ("Defendant") moves for the court to dismiss all claims against it in Jeffery Edward Arambel's ("Plaintiff-Debtor") Complaint according to Federal Rule of Civil Procedure 12(b)(6).

On February 1, 2021, Debtor filed an *Ex Parte* Application to Continue and Specially Set Hearing on Motion to Dismiss on the basis that counsel erroneously believed that the Motion to Dismiss had been continued to March 2021 and as such did not file a timely opposition which was due January 28, 2021. Dckt. 59. Plaintiff has received consent from Defendant to continue the hearing and suggests either February 25, 2021 or March 11, 2021. *Id.*

The court granted the *ex parte* request and entered the Order on February 2, 2021 and the hearing was continued to February 25, 2021 at 10:30 a.m. Dckt. 60.

11. [20-23653-E-7](#)
[UST-1](#)

KAYLA/MIGUEL PLATA
Julia Young

**MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR ,
AND/OR MOTION TO EXTEND TIME TO
FILE A MOTION TO DISMISS CASE
UNDER SEC. 707(B)
1-27-21 [\[21\]](#)**

Final Ruling: No appearance at the February 25, 2021 hearing is required.

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’s Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on January 26, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Extend Deadline to File a Complaint Objecting to Discharge and Motion to Dismiss is granted.

Tracy Hope Davis, the United States Trustee, (“Movant”) moves to extend the time to file a complaint objecting to Kayla Ranae Plata and Miguel Tovar Plata (“Debtor”) discharge under 11 U.S.C. § 727 and a motion to dismiss under 11 U.S.C. § 707(b) on the basis that Movant is investigating the veracity of the Debtor’s schedules, statement of financial affairs and the deductions taken by the Debtors on their means test.

This is the second extension of deadlines to file a complaint objecting to discharge or a motion to dismiss. Movant and Debtor had previously stipulated to an extension. Dckt. 14. The order approving the stipulation was entered by the court on October 2, 2020, which extended the deadlines to and including January 26, 2021. Dckt. 17.

Since then, Movant has made attempts to obtain the relevant information and stipulate to extend the deadlines again with only a return call recently received but with no information yet provided by Debtor or Debtor’s Attorney. Cordero Declaration, Dckt. 23. According to Movant, no information has been provided by the Debtors since the first order extending the deadlines entered on October 2, 2020.

DISCUSSION

The deadline for filing a complaint objecting to discharge and a motion to dismiss was January 26, 2021. Dckt. 21. The Motion requests that the deadline to object to Debtor's discharge or to file a motion to dismiss be extended to April 2, 2021.

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

When the motion is filed after the objection deadline but before discharge is granted, the underlying objection must be "based on facts that, if learned after the discharge, would provide a basis for revocation under" 11 U.S.C. § 727(d), and the moving party must not have had "knowledge of those facts in time to permit an objection." FED. R. BANKR. P. 4004(b)(2).

The instant Motion was filed on January 27, 2021, after the deadline to object to the discharge of Debtor.

The court finds that in the interest of Movant to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge is extended to April 2, 2021.

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

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

The Motion to Extend Deadline to File a Complaint Objecting to Discharge and Motion to Dismiss filed by Tracy Hope Davis, the United States 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 is granted, and the deadline for Movant to object to Kayla Ranae Plata and Miguel Tovar Plata ("Debtor") discharge and file a Motion to Dismiss is extended to April 2, 2021.

Final Ruling: No appearance at the February 25, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on January 20, 2021. By the court’s calculation, 36 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has 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 Alan S. Fukushima, the Chapter 7 Trustee (“Client”), makes this First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 14, 2019, through January 8, 2021. The order of the court approving employment of Applicant was entered on August 18, 2019. Dckt. 15. Applicant requests fees in the amount of \$14,500.00 and costs in the amount of \$203.20.

APPLICABLE LAW

Reasonable Fees

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that Applicant’s services for the Estate include providing general case administration and advice to the Trustee on legal issues and strategies with respect to the investigation and administration of the Debtor’s fractional interest in real property. The Estate has \$30,869.34 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the 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 13.9 hours in this category. Applicant provided general legal case administration, including preparing employment application and the instant application for compensation.

Sale of Fractional Interest in Real Estate: Applicant spent 59.9 hours in this category. Applicant communicated with Trustee, Debtor, co-owner, and other third parties regarding potential sale of the interest, investigated and provided advice related to administration of the asset, prepared a purchase and sale agreement, attended hearing on the motion to sell and closed the sale.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Dana A. Suntag	17.1 hours	\$375.00 (2019-2020)	\$6,412.50
Dana A. Suntag	1.7 hours	\$400.00 (2021)	\$680.00
Benjamin J. Codog	26.9 hours	\$200.00	\$5,380.00
Amy Seilliere	27.7 hours	\$225.00	\$6,232.50
Audrey A. Dutra	0.4 hours	\$90.00	\$36.00
	0	\$0.00	<u>\$0.00</u>

Total Fees for Period of Application	\$18,741.00
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Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$203.20 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$.10 per page	\$13.00
Postage		\$1.45
CourtCall		\$68.25
Recording Fee for Voluntary Petition		\$109.00
Certified Copy of Voluntary Petition		\$11.50
Total Costs Requested in Application		\$203.20

FEES AND COSTS & EXPENSES ALLOWED

Fees

Reduced Rate

Applicant seeks to be paid a single sum of \$14,500.00 for its fees incurred for Client. First and Final Fees in the amount of \$14,500.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$203.20 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$14,500.00
Costs and Expenses	\$203.20

pursuant to this Application as final fees and costs 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 Alan S. Fukushima, the Chapter 7 Trustee (“Client”) 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 Chapter 7 Trustee

Fees in the amount of \$14, 500.00
Expenses in the amount of \$203.20,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs 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.

Final Ruling: No appearance at the February 25, 2021 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 Chapter 7 Trustee and creditors on January 11, 2021. By the court’s calculation, 43 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has 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.

Kimberly J. Husted, the Chapter 7 Trustee, (“Applicant”) for the Estate of William Joseph Fernandez and Ellen Jean Fernandez (“Client”), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period August 30, 2019, through January 11, 2021.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a professional employed by a trustee, the professional must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may receive, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

Benefit to the Estate

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include investigating Debtor's personal and business records, determining that Debtor's real property had value above the exemptions and liens; preparing for the sale of said real property; interfacing with the Renter who occupied said real property; hiring a CPA to prepare the Estate tax return; and review and payment of Estate Professionals. The Estate has \$33,235.24 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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 investigated and addressed the complexities of selling renter occupied real property of the estate that included two dwellings with problematic financing issues; hiring a CPA to prepare the Estate tax return; and review and payment of Estate Professionals.

Applicant requests the following fees:

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$950,000.00	\$37,051.96
Calculated Total Compensation	\$42,801.96
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$42,801.96
Less Previously Paid	\$0.00
Total First and Final Fees Requested	\$28,625.60

The fees are computed on the total sales generated \$791,039.22 of net monies (exclusive of these requested fees and costs).

FEES ALLOWED

Applicant seeks to be paid a single sum of \$28,625.00 in fees. The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$28,625.60 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has \$33,235.24 of unencumbered monies to be administered. The Chapter 7 Trustee's services include investigating Debtor's personal and business records, determining that Debtor's real property had value above the exemptions and liens; preparing for the

sale of said real property; interfacing with the Renter who occupied said real property; hiring a CPA to prepare the Estate tax return; and review and payment of Estate Professionals. Applicant's efforts have resulted in a realized gross of \$791,039.22 recovered for the estate. Dckt. 76.

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

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$28,235.24
Costs and Expenses	\$390.36

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 Kimberly J. Husted, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Kimberly J. Husted is allowed the following fees and expenses as trustee of the Estate:

Kimberly J. Husted , the Chapter 7 Trustee

Fees in the amount of \$28,235.24
Expenses in the amount of \$390.36.

IT IS FURTHER ORDERED that the Chapter 7 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.