UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

March 28, 2019 at 10:30 a.m.

---

1. **18-90600-E-7**
MF-3

CORAZON HERNANDEZ
Brian Haddix

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
3-4-19 [37]

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, creditors, and Office of the United States Trustee on March 4, 2019. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

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

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") moves to extend the deadline to file a complaint objecting to Corazon Maria Hernandez's ("Debtor") discharge because Debtor has not been

properly examined under Federal Rule of Bankruptcy Procedure 2004 by failing to produce certain documents necessary for the examination.

The deadline for filing a complaint objecting to discharge was March 4, 2019. Dckt. 36. The Motion requests that the deadline to object to Debtor's discharge be extended to May 3, 2019.

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.*

The instant Motion was filed on March 4, 2019, before 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 May 3, 2019.

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 filed by Michael D. McGranahan, 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 the Motion is granted, and the deadline for Movant to object to Corazon Maria Hernandez's ("Debtor") discharge is extended to May 3, 2019.

2.	**18-90847-E-7** **MF-1**	**IMELDA PADILLA** **Thomas Gillis**	**CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **1-16-19 [25]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se), parties requesting special notice, and Office of the United States Trustee on January 16, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is sustained.

Michael D. McGranahan ("the Chapter 7 Trustee") objects to Imelda Padilla's ("Debtor") claimed exemptions under California law as to two assets: Debtor's residence, commonly known as 3912 Pheasant Lane in Modesto, California (the "Property") and Debtor's vehicle commonly known as a 2016 Toyota Highlander (the "Vehicle").

Exemption Claimed in the Property

On Debtor's Schedule C, Debtor claims an exemption pursuant to California Code of Civil Procedure § 703.140 in the Property up to 100 percent of fair market value up to any applicable statutory limit." Schedule C, Dckt. 21. The Property has a fair market value of $300,000.00 as stated on Debtor's Schedule A/B, and is encumbered by a single deed of trust totaling $105,000.00 as stated on Schedule D.

Trustee argues the statutory limit of California Code of Civil Procedure section 703.140 is $26,800.00. Trustee also notes that if Debtor claimed an exemption pursuant to California Code of Civil Procedure section 704.730(a)(2), the statutory limit would be $100,000.00.

Trustee requests the court determine the applicable statutory limit to be either $26,800.00 or $100,000.00.

Exemption Claimed in the Vehicle

On Debtor's Schedule C, Debtor claims an exemption in the Vehicle up to 100 percent of fair market value up to any applicable statutory limit." Schedule C, Dckt. 21.

The Vehicle has a fair market value of $26,250.00 as stated on Debtor's Schedule A/B. Dckt. 1. No secured claim is listed on Schedule D.

Trustee argues the statutory limit of California Code of Civil Procedure section 703.140(b)(5) is $1,425.00 assuming all Debtor's homestead . Trustee also notes that if Debtor claimed an exemption pursuant to California Code of Civil Procedure section 703.140(b)(2) or 704.010, the statutory limit would be $5,350.00 or $3,050.00, respectively.

Trustee requests the court determine the applicable statutory limit to be either $1,425, $3,050 or $5,350.

FEBRUARY 14, 2018 HEARING

At the February 14, 2019 hearing, the court continued the hearing on the Objection to allow sufficient notice.

DISCUSSION

On Schedule C, Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts. Dckt. 21. California Code of Civil Procedure § 703.140(b)(1)–(5) does not allow claiming 100% of fair market value and requires the claimant to list actual values. Therefore, the Chapter 7 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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 hearing on the Objection to Claim of Exemptions having been presented to the court, the court having directing Movant to renotice the hearing for the Modesto Division Courthouse, and good cause appearing;

IT IS ORDERED that the Objection to Claim of Exemptions is sustained, and the claimed exemptions for Debtor's residence, commonly known as 3912 Pheasant Lane in

Modesto, California and Debtor's vehicle commonly known as a 2016 Toyota Highlander under California Code of Civil Procedure §§ 703.140(b)(1) and (b)(5) are disallowed.

3.	**18-90339-E-7** **ADJ-4**	**KIMBERLY SOLARIO** **Pro Se**	**MOTION FOR COMPENSATION FOR ATHERTON & ASSOCIATES, LLP, ACCOUNTANT(S)** **3-6-19 [74]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), parties requesting special notice, and Office of the United States Trustee on March 6, 2019. By the court's calculation, days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion for Allowance of Professional Fees is granted.

Atherton & Associates, LLP, the Accountant ("Applicant") for Michael D. McGranahan, 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 18, 2018, through February 5, 2019. The order of the court approving employment of Applicant was entered on August 8, 2018. Order, Dckt. 36. Applicant requests fees in the amount of $1,600.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include various tax services, correspondence, and fee application preparation. The Estate has $35,000.00 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.

Correspondence: Applicant spent 1 hour in this category. Applicant corresponded with the trustee regarding tax consequences on the sale of real property.

Tax Services: Applicant spent 4.9 hours in this category. Applicant prepared federal and state income tax returns, and performed various tax planning services, including a 2018 tax projection.

Fee Application: Applicant spent 0.5 hours in this category. Applicant prepared the time records and drafted the fee application.

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**
Maria Stokman	6.4	$250.00	$1,600.00
Total Fees for Period of Application			$1,600.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $1,600.00 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.

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

Fees $1,600.00

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 Atherton & Associates, LLP ("Applicant"), Accountant for Michael D. McGranahan, 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 Atherton & Associates, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Atherton & Associates, LLC, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $1,600.00.

4. 18-90339-E-7 ADJ-5 | **KIMBERLY SOLARIO** Pro Se | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES-MACKO-JOHNSTON, INC. FOR ANTHONY D. JOHNSTON, TRUSTEE'S ATTORNEY(S)** **3-6-19 [81]**

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 (*pro se*), parties requesting special notice, and Office of the United States Trustee on March 6, 2019. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion for Allowance of Professional Fees is granted.

Fores-Macko-Johnston, Inc., a Professional Law Corporation, counsel ("Applicant") for Michael D. McGranahan, 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 June 21, 2018, through March 5, 2019. The order of the court approving employment of Applicant was entered on June 29, 2018. Order, Dckt. 27. Applicant requests fees in the amount of $6,270.00 and costs in the amount of $168.25.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913

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

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

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

A review of the application shows that Applicant's services for the Estate include litigation, case administration, and fee application preparation. The Estate has $35,000.00 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 3.8 hours in this category. Applicant negotiated and prepared an agreement between the Debtors and Trustee to allocate income taxes based upon settlement proceeds that were to be added to the Estate, including preparing a motion for the Trustee to pay income taxes, and various other administrative matters.

Litigation: Applicant spent 13.9 hours in this category. Applicant investigated state court claims of the Debtor to determine their merit and thereafter negotiated a settlement which resulted in the recovery of $35,000.00 for the Estate.

Fee Application Preparation: Applicant spent 5.1 hours in this category. Applicant prepared the application and supporting documents for employment, prepared the motion for compensation for Trustee's accountant, and prepared this Application and supporting documents.

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
Anthony Johnston	22.8	$275.00	$6,270.00
Total Fees for Period of Application			$6,270.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $168.26 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies for Motion to Employ	$0.10	$1.00
Postage for Motion to Employ	N/A	$1.36
Copies for Motion for Approval of Settlement	$0.10	$65.00
Copies for Application n for Authority to Pay Taxes and Accompanying Documents	$0.10	$9.60
Copies for Motion for Compensation of Accountant	$0.10	$11.70
Copies for Motion for Compensation of Attorney	$0.10	$12.30
Postage for Authority to Pay Taxes, Motions for Compensation	N/A	$21.30
Postage for Motion for Approval of Settlement	N/A	$46.00

Total Costs Requested in Application	$168.26

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $6,270.00 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 $168.26 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.

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

Fees	$6,270.00
Costs and Expenses	$168.26

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 Fores-Macko-Johnston, Inc., a Professional Law Corporation("Applicant"), Attorney for Michael D. McGranahan, 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 Fores-Macko-Johnston, Inc., a Professional Law Corporation is allowed the following fees and expenses as a professional of the Estate:
>
> Fores-Macko-Johnston, Inc., a Professional Law Corporation, a professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $6,270.00
> Expenses in the amount of $168.28,

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

5.	**18-90339-E-7** **ADJ-3**	**KIMBERLY SOLARIO** **Pro Se**	**MOTION TO PAY** **3-6-19 [69]**

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 (*pro se*), Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 6, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Pay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 Pay is granted.

The Chapter 7 Trustee, Michael D. McGranahan ("Trustee"), filed this Motion To Pay on March 6, 2019, seeking authority to pay taxes in the amount of $1,403.00 to the United States Department of

Treasury ("USDT") and $227.00 to the California Franchise Tax Board ("FTB"). Dckt. 69. Trustee filed his own Declaration in support of the Motion. Declaration, Dckt. 71.

Trustee asserts that the taxes owing resulted from the debtor, Kimberly Rose Solario's ("Debtor"), and the Estate's receipt of $35,000.00 for settlement of Debtor's state court claims. Debtor claims an exemption of $17,805.00 in the settlement funds pursuant to California Code of Civil Procedure section 140(b)(5).

Agreement Allocating Recovery and Tax Obligations

On August 30, 2018, Trustee and Debtor entered into an agreement specifying responsibility for payment between Debtor and the Estate (the "Agreement"). In the Agreement the parties agree Debtor will be charged against her exemption in the settlement funds 50.07 percent of the Taxes, while the bankruptcy estate will pay 49.13 percent of the Taxes. The Agreement specifies payment of the following amounts by each party: [FN. 1]

	USTD	**FTB**
Debtor	$702.48	$113.66
Trustee	$700.52	$113.34
Total:	$1,403.00	$227.00

FN. 1. It is not clear from the Motion whether the respective tax obligations are computed based on the respective portions of the recover the Debtor and the Trustee receive, and their respective tax rates, or it assumes there is one tax rate applicable to both. It appears from Exhibit B that the Trustee is treating the income as being all obtained by the bankruptcy estate, paying taxes on it based on the estate tax rate, and then allocating that to the portion of the recovery that the Debtor has exempted and that the estate will retain. Given the modest amount of taxes, such process appears to be reasonable and in the best interests of everyone involved.

DISCUSSION

Grounds Stated in Support of Motion

Within the Motion, Trustee makes the following statements in support of and demonstrating authority for the present requested relief:

> Michael D. McGranahan, the trustee in bankruptcy for this case (the "Trustee"), by and through his attorney of record, Anthony D. Johnston, hereby applies to this Court for an order granting the Trustee authority to pay taxes in the amount of$ 1,403.00

> which are due and payable to the United States Department of Treasury and $227.00 to the California Franchise Tax Board (collectively, the "Taxes") on behalf of the bankruptcy estate. **Such application is made pursuant to 11 U.S.C. §§ 105(a) and 346.**
>
> . . .
>
> **A court has power to issue any order that is necessary or appropriate to carry out the provisions of the code pertaining to bankruptcies. (11 U.S.C. §105(a).) The Trustee has an obligation to pay taxes due on behalf of the bankruptcy estate. (11 U.S.C. §346.)** Failure to pay taxes could result in penalties which then reduce the amounts available to be paid to creditors.
>
> An order authorizing the payment of the Taxes is necessary and appropriate so that the Trustee can properly administer the bankruptcy estate. Absent authority to pay the Taxes, the estate may incur fees, penalties, and other fines that will impact the payment to creditors.

Motion, Dckt. 69 (emphasis added).

In the above stated grounds, very little is provided as to authority for the requested relief. Rather, the court is referred generally to two provisions of the Bankruptcy Code, one purportedly providing that the court has the power to issue any order, and the other that Trustee has an obligation to pay taxes on behalf of the Estate.

No analysis is provided as to either statute. No case law or other authority has been provided explaining the applicability and limits of the cited statutory provisions.

As a beginning point, it is now well known that 11 U.S.C. § 105(a) is not a free wheeling authority for a bankruptcy judge to issue whatever order he or she thinks is "right." *See Law v. Siegel*, 571 U.S. 415 (2014), and the well established law in the Ninth Circuit in *Solidus Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations)*, 502 F.3d 1086 (9th Cir. 2007), which has made it abundantly clear that the court's equitable powers under 11 U.S.C. § 105 is not a carte blanche for the court to ignore specific code sections and rules based on the esoteric idea of "equity." [FN. 2]

FN. 2. The COLLIER ON BANKRUPTCY treatise provides further guidance as to this point:

> **Section 105 uses the term "provisions" and not the term "purposes"** in describing the bankruptcy court's power to effect the mandate of the Bankruptcy Code. **The statutory language thus suggests that an exercise of section 105 power be tied to another Bankruptcy Code section and not merely to a general bankruptcy concept or objective.**
>
> This distinction, however, is sometimes hard to draw. The text of chapter 11, for example, does not explicitly state that its goal or purpose is "reorganization," yet the

> Supreme Court is clear that it is the purpose of a chapter 11 case. As stated in United States v. Energy Resources Co.:
>
> The Code … states that bankruptcy courts may "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Code. § 105(a). Th[is] statutory directive [is] consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships.
>
> This "broad authority" is just one aspect of the bankruptcy court's "broad power," within the boundaries of the Code, to further its task. Efforts to construe this power consistent with this purpose have split the courts.

2 COLLIER ON BANKRUPTCY, P 105.01 [1] (16TH 2019). (Emphasis added.)

The Trustee states that 11 U.S.C. § 346 is a basis for this court to order and authorize the Trustee to pay state and federal taxes. That Bankruptcy Code section specifies a trustee shall file required tax returns, but does not address the payment of any such taxes:

> **Whenever the Internal Revenue Code of 1986 provides that a separate taxable estate or entity is created in a case concerning a debtor under this title**, and the income, gain, loss, deductions, and credits of such estate shall be taxed to or claimed by the estate, **a separate taxable estate is also created for purposes of any State and local law** imposing a tax on or measured by income and such income, gain, loss, deductions, and credits shall be taxed to or claimed by the estate and may not be taxed to or claimed by the debtor. The preceding sentence shall not apply if the case is dismissed. **The trustee shall make tax returns of income required under any such State or local law.**

11 U.S.C. § 346(a)(emphasis added). That section further provides that the Trustee comply with federal and tax withholding laws (such as wages, salaries) and collect such taxes (such as sales taxes) and then shall pay such withheld and collected taxes as required under applicable law. Such 11 U.S.C. § 346(a) withholding or sales taxes are not at issue before the court.

With the reference to 11 U.S.C. § 346 as the basis for an order, it appears that such an order would consist of: "**IT IS ORDERED** that the Trustee **SHALL** file tax returns of income for the Estate required under any such State or local law." But that is not what relief is requested.

Payment of Taxes

Congress has provided in the Bankruptcy Code for the payment of tax obligations of a bankruptcy estate, as opposed to a pre-petition claim, beginning with 11 U.S.C. § 728

> (a) Except as provided in section 510 of this title, **property of the estate shall be distributed**—
>
> > **(1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title,** proof of which is timely filed under section 501 of this title or tardily filed on or before the earlier of—
> >
> > > (A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or
> > >
> > > (B) the date on which the trustee commences final distribution under this section; . . . .

11 U.S.C. § 728 (emphasis added).

The items included in the second tier disbursements by a Chapter 7 Trustee include the administrative expenses allowed under 11 U.S.C. §§ 503(b) and 507(a)(2). Administrative expenses under 11 U.S.C. § 503(b) include any tax incurred by the bankruptcy estate. 11 U.S.C. § 502(b)(1)(B).

Therefore, a Chapter 7 Trustee seeking to pay income taxes timely and in advance of making the 11 U.S.C. § 728 Chapter 7 disbursement, could seek authorization to pay in advance the administrative taxes allowable under 11 U.S.C. § 503(b) which must be disbursed as provided in 11 U.S.C. § 728. Such Trustee would certify that there are sufficient funds to pay any and all § 728 senior in priority amounts. Here, the Trustee seeking relief pursuant to the present Motion testifies that:

> "Immediate payment of the taxes to the United States Department of Treasury and California Franchise Tax Board will prevent imposition of any penalties, fines, or interest which would otherwise reduce and diminish the amount of funds available to pay the creditors in this case."

Declaration ¶ 9, Dckt. 71.

Conclusion

Though the Motion on its face appears to be one in the nature of, "I ask for it and magically because I say 11 U.S.C. § 105(a) it shall be," there are proper grounds under the Bankruptcy Code. The Trustee and counsel have assembled the underlying evidence to warrant an order to effectuate the timely payment of the taxes and avoid interest and penalties.

With the "magical" reference above as part of a "teachable moment" as former President Barack Obama would phrase it, the Motion is granted, the administrative expense for the taxes is approved, and the Chapter 7 Trustee is authorized to immediate pay the taxes.

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 Pay filed by the Chapter 7 Trustee, Michael D. McGranahan ("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 Motion is granted, the administrative expense for taxes in the amounts of $1,402.00 for federal taxes and $227.00 for California state taxes are allowed.
>
> **IT IS FURTHER ORDERED** that Trustee is authorized to immediately pay these taxes and that the taxes paid be allocated to the Debtor's exempt property as provided in the Agreement to Pay Taxes which was included as part of the settlement previously approved by this court (Order, Dckt. 67).

6. **10-94467-E-7** **TINA BROWN** **MOTION TO APPROVE CARVEOUT**
MF-4 **Michael Germain** **FROM JUDGMENT LIEN**
3-5-19 [213]

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, creditors, parties requesting special notice, and Office of the United States Trustee on March 5, 2019. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Approve Carveout from Judgment Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 Approve Carveout from Judgment Lien is granted.

The Chapter 7 Trustee, Michael D. McGranahan ("Tina Trustee"), filed this Motion to Approve Carveout on March 5, 2019.

The assets of the Tina M. Brown Bankruptcy Estate includes a judgment in the amount of $80,499.34 that is secured by an abstract of judgment ("Judgement Lien") recorded against real property commonly known as 17480 High School Road in Jamestown, California ("Property") owned by Debtor Tina Brown's ex-husband, Timothy Brown ("Mr. Brown").

The Motion states Mr. Brown has filed his own bankruptcy case, with Garry Farrar serving as trustee in that case ("Tim Trustee"). The Motion states further Tim Trustee has expressed that sale of the Property would not result in any recovery for unsecured creditors due to the consensual liens, Judgement Lien, and cost of sale.

In an effort to create mutual economic benefits from the sale of the Property by the Tim Trustee, the Tina Trustee has entered into an Agreement whereby the Tina Trustee will proceed with to marketing and selling the Property in exchange for the Tim Brown bankruptcy estate receiving $20,000.00 from the sale of the Property that would otherwise be disbursed for the secured portion of the claim secured by the Judgement Lien, with that $20,000.00 portion of the claim Judgement Lien treated as an unsecured claim.

The Bankruptcy Code permits the Tina Trustee to use property of the bankruptcy estate outside the ordinary course of business as authorized by the court. 11 U.S.C. § 363.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed carveout is in the best interest of the Estate. By guaranteeing $20,000.00 to the estate of Mr. Brown notwithstanding the Judgement Lien, Mr. Farrar will have a greater incentive to sell the Property. The sale will achieve recovery for the Estate while avoiding the expense of Trustee taking control and selling the Property himself.

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. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Mr. Farrar intends to promptly sell the Property.

Movant has 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 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 Pay filed by the Chapter 7 Trustee, Michael D. McGranahan ("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 Approve Carveout is granted, and Trustee is authorized pursuant to 11 U.S.C. § 363(b) to enter into the Agreement filed as Exhibit A (Dckt. 216) with Garry Farrar (Mr. Farrar), Trustee of the Timothy Brown bankruptcy estate. The terms of said Agreement include, and are not limited to:

A. Mr. Farrar, as trustee for the Timothy Brown bankruptcy estate, shall market and sell (as permitted by subsequent order of the court in the Timothy Brown bankruptcy case) the real property of that estate commonly known as 17480 High School Road in Jamestown, California (the "Property").

B. From the sales proceeds Mr. Farrar shall use proceeds from the sale of the Property to:

(1) pay the claim of Wells Fargo, N.A. for which is secured by the Property;

(2) pay the costs of sale;

(3) disburse to Timothy Brown his claimed homestead exemption of $75,000.00;

(4) disburse the first $20,000.00 of the proceeds subject to the judgement lien of Michael McGranahan, Trustee of the Tina Brown bankruptcy estate to the Timothy Brown bankruptcy estate free and clear of all liens, encumbrances, and interests;

(5) pay the claim of Michael McGranahan, the Trustee of the Tina Brown bankruptcy estate his claim secured by an abstract of judgment recorded against the property, up to a remaining unpaid principal balance of $20,000.00;

(4) pay the next secured claim(s) in order of priority, and if no such other claims exist, continuing the Michael McGranahan, Trustee, claim until it is paid in full or the sales proceeds are exhausted. Any unpaid portion of the judgment is an unsecured claim in the Timothy Brown bankruptcy case.

C. 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 waived for cause.

7.	**18-90679-E-7** **BLF-5**	**TIMOTHY BROWN** **David Foyil**	**MOTION TO ABANDON** **3-5-19 [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).

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, creditors, parties requesting special notice, and Office of the United States Trustee on March 5, 2019. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Abandon was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Abandon is granted.

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Gary R. Farrar ("the Chapter 7 Trustee") requests that the court authorize him to abandon property commonly known as a solar photovoltaic system attached to real property commonly known as 17480 High School Road, Jamestown, California ("Property"). The Property is leased to the debtor Timothy Brown ("Debtor"), and encumbered by the lien of Sunrun, Inc.

The Declaration of Gary R. Farrar has been filed in support of the Motion and provides testimony that Debtor is not on title for the Property. Declaration ¶ 4, Dckt. 55.

The court finds that the Property is of inconsequential value for the Estate, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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

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

The Motion to Abandon Property filed by Gary R. Farrar ("the Chapter 7 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted, and the Property identified as a solar photovoltaic system attached to real property commonly known as 17480 High School Road, Jamestown, California is abandoned to Sunrun, Inc. by this order, with no further act of the Chapter 7 Trustee required.

8. **18-90679-E-7** **TIMOTHY BROWN**
BLF-6 **David Foyil**

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR COMPENSATION FOR SUGAR PINE REALTY, INC., REALTOR(S)
3-5-19 [58]

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, creditors, parties requesting special notice, and Office of the United States Trustee on March 5, 2019. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 Gary R. Farrar, the Chapter 7 Trustee, ("Movant" or "Trustee") 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 17480 High School Road, Jamestown, California ("Property").

The proposed purchaser of the Property is Joseph P. Griffith, Jr. and Lauren Griffith ("Buyer"). While the Motion states clearly that the sale price is $320,000.00, the rest of the terms are less clearly presented.

Trustee states the Agreement for which Trustee seeks approval of in this Motion is based on an initial offer, two counter offers, and an addendum.

The first offer provides:

A. Deposit of $2,000.00

B. FHA loan of $313,625.00 and cash in the amount of $9,375.00

C. All debris and personal property removed prior to escrow.

D. Debtor shall pay for natural hazard zone disclosure report and smoke alarm and carbon monoxide device installation and water heater bracing, if required by law.

E. Buyer and Debtor shall pay escrow and owner's title insurance fee 50/50.

F. Debtor shall pay county and city transfer taxes.

G. Woodburning stove and components are included in the sale.

H. Solar panels to be removed and resulting roof damage repaired.

Motion, Dckt. 58 at 3:16-27.5. The first counter offer (from Trustee) provides the following terms:

1. Purchase Price is $330,000.00;

2. Initial Deposit: $9,900.00;

3. Contingencies to be removed before Trustee applies for Court date;

4. Buyer to pay for any Government Requirements and Retrofit, including smoke detectors, carbon monoxide detectors, and bracing the hot water heater;

5. Refrigerator is not included;

6. Arbitration is not a part of this contract;

7. Trustee has the right to accept back up offers for final court approval;

8. Offer is subject to final Court approval.

Id. at 4:1-9. The second counter-offer (of Buyers) lowers the deposit amount to $5,000.00 within 3 days of acceptance. *Id.* at p. 4:11-13. Finally, the Addendum modifies the sale price from the first offer amount of $325,000.00 to $320,000.00. *Id*. at p. 5:4.5-7.5.

It is unclear why a moving party would in light of the requirement to state with particularity the grounds for relief (FED. R. BANKR. P. 9013) not collect the final agreement terms and present them clearly to the court, rather than have the court sift through offers and counter offers and the Agreement, AND history of the negotiations.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the liens of Wells Fargo, N.A. (holding a first deed of trust); Michael McGranahan (holding a judgement lien as trustee of the Estate of Tina Brown); SunRun (holding an interest in solar panels pursuant to a lease agreement); and MBO Harris Bank, N.A. (voided by a stipulation approved by the court).

The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> (f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant asserts that the following grounds exist for the court authorizing the sale free and clear of liens:

1. Trustee proposes to pay the lien of Wells Fargo, N.A. from the sale proceeds, meeting the requirement of 11 U.S.C. § 362(f)(3).

While "proposing" such a payment, the Trustee does not provide a clear and simple calculation as to how the proceeds exist for such payment and why the creditor cannot just release its lien through the normal escrow. In substance, the Trustee and counsel for the trustee are "guaranteeing" that there will be sufficient monies and that wells Fargo Bank, N.A. will be paid in full, without regard to how much it's demand for payment is from the sales proceeds. Given that there is no proof of claim for Wells Fargo Bank, N.A. on file, there is nothing before the court as to the amount of the secured claim. [FN. 1]

FN. 1. In the Motion, it appears that the Trustee and counsel are making such "guarantee" based on what the Debtor stated in his schedules as the obligation owed to Wells Fargo Bank, N.A.

---

2. Michael McGranahan consents to the release of the lien of Tina Brown, meeting the requirement of 11 U.S.C. § 362(f)(2).

3. The lien of SunRun attaches to a leased solar photovoltaic system; Trustee has a motion to abandon this property to the extent it is property of the Estate; and Trustee will seek consent from SunRun, but in the alternative SunRun's interest is in bona fide dispute, meeting the requirement of 11 U.S.C. § 362(f)(4).

4. Any lien of MBO Harris Bank, N.A. was avoided by prior Order of the court. Dckt. 48.

With respect to this point of the sale being made free and clear of the lien of MBO Harris Bank, N.A., the Motion accurately states that the lien has been avoided by prior order of the court. If the lien has been avoided, then what must the court order so that the property is sold free and clear of an avoided lien?

Additionally, in avoiding the lien the court also ordered that such avoided transfer was preserved for the benefit of the bankruptcy estate pursuant to 11 U.S.C. § 551. Is the Trustee requesting that the court order the sale be free and clear of the bankruptcy estate's rights in the avoided transfer? If so, then would the proceeds be paid to the Debtor?

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Sell would result in $20,000.00 in funds for the Estate beyond the secured claims and exemption of the Debtor, where the Property would otherwise be over encumbered.

Movant has estimated that a 6 percent broker's commission from the sale of the Property will equal approximately $19,200.00. [FN.1.] As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a 6 percent commission.

FN.1. The court notes that this Motion attempts to join multiple claims for relief in one motion. The first being a motion to sell pursuant to 11 U.S.C. § 363. The second motion is for approval of compensation as provided in 11 U.S.C. §§ 328, 330.

Though parties may join multiple claims in an adversary proceeding, with Federal Rule of Civil Procedure 18 being incorporated into Federal Rule of Bankruptcy Procedure 7018, Rule 18 has not been incorporated into bankruptcy contested matters (bankruptcy case motion, objection, application process). FED. R. BANKR. P. 9014(b).

Additionally, Local Bankruptcy Rule 9014-1(d)(5) states that "[e]very application, motion, contested matter or other request for an order, shall be filed separately from any other request, except (1) that relief in the alternative based on the same statute or rule may be filed in a single motion; and (2) as otherwise provided by these rules." Trustee has requested relief arising from two different sections of the Code.

Notwithstanding Trustee's failure to address this issue, the court recognizes a motion to sell and motion for approval of compensation for a broker are an instance where it makes sense to include the payment of the broker with the sale, and has allowed such to be done on an *ad hoc* basis even when such request is not expressly made in the motion.

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 Gary R. Farrar, the Chapter 7 Trustee, ("Movant" or "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 Gary R. Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f) to Joseph P. Griffith, Jr. and Lauren Griffith or nominee ("Buyer"), the Property commonly known as 17480 High School Road, Jamestown, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $320,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 62, 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 Property is sold pursuant to 11 U.S.C. § 363(f) free and clear of the liens of:

(1) The Judgment Lien of Michael McGranahan, Trustee, recorded **xxxxxxxxxxxxxxx**, Doc. **Xxxxxx**, which lien shall attach to the proceeds of the sale to the extent provided in the separate agreement between Trustee McGranahan and Movant; and

(2)) SunRun, Inc. on the Property sold, but not on the solar photovoltaic system attached to real property which the Movant has abandoned to SunRun, Inc. pursuant to a separate order of the court.

The Chapter 7 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.

D. By prior order of the Court, Dckt. 48, the court has avoided pursuant to 11 U.S.C. § 547(b) the judgement lien of BMO Harris Bank, N.A., recorded with the Tuolumne County Recorder on August 27, 2018, for the judgment in California Superior Court, for the County of Tuolumne, Case No. CV6114, with such avoided transfer preserved for the bankruptcy estate in this Timothy Brown bankruptcy case by operation of law (11 U.S.C. § 551).

E. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

F. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not to exceed 6 percent of the actual purchase price upon consummation of the sale. The 6 percent commission shall be paid to the Chapter 7 Trustee's broker, Sugar Pine Realty, Inc. and such other broker, if any, as provided in the Purchase Agreement.

9. **10-90080-E-7** **FRED EICHEL** **CONTINUED MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION**
JAD-2 **Jessica Dorn** **9-7-18 [31]**

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.

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—Final Hearing.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Respondent, and Office of the United States Trustee on September 7, 2018. By the court's calculation, 62 days' notice was provided. 14 days' notice is required.

The Motion for Sanctions for Violation of the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The briefing schedule was set by the court.

The Status Conference for the Motion for Sanctions for Violation of the Automatic Stay is xxxxxxxx.

March 28, 2019 Status Conference

The court issued its Status Conference Order following the December 11, 2018 hearing on this Motion. The Status Conference Order required the Parties to:

1. File a Joint Statement of Undisputed Facts and Issues on or before February 1, 2019.

2. File their respective Status Conference Statements on or before March 14, 2019.

Order, Dckt. 44.

On March 13, 2019, Movant Debtor Fred Eichel filed his Status Conference Statement which the court summarizes as follows:

A. Anticipated Discovery:

1. Scarlett Fiorini;

2. Request for Admissions and Interrogatories.

B. No discovery has been conducted.

C. Debtor will request a discovery deadline.

D. The family law proceeding was dismissed on May 18, 2018.

Dckt. 45.

Creditor Scarlett Fiorini filed a Status Conference Statement on March 26, 2019, which the court summarizes as follows:

A. Debtor Fred Eichel filed bankruptcy in 2010 and received his discharge shortly thereafter.

B. In 2013 Debtor entered into a marital termination agreement (presumably with Creditor) and got divorced.

C. Counsel for Creditor "sees no merit whatsoever in the position of attorney for debtor as simply more harassment."

Dckt. 47.

Though ordered to file a joint statement of undisputed facts and issues by February 1, 2019, neither party has complied with the court's order. Rather, what has been filed are Status Reports consisting of little more than "Uh-Huh," "Uh-Uh," "we just want to go to trial."

The court ordered (not requested, suggested, or made a passing thought about) the parties to generate a joint statement of undisputed facts. This was done to reduce the needless, waste of time and bickering that the court could see developing. Additionally, it was to bring both attorneys to the realization that they are in federal court, not family court where these battles have been brewing.

Over the years, both as a practicitioner and now as a judge, the court has observed that the nature of practice in family law court may be less than model practice by attorneys. One long time practicitioner has been heard to say, "rules? nobody enforces the rules in family court." Another, "there is a premium on lying in family court." This judge has noted that when family law disputes spill over from family law court, the parties appear to believe that they are living the War of the Roses. [FN. 1]

FN. 1. War of the Roses is a 1998 Moving directed by Danny DeVito which stars Michael Douglas, Kathleen Turner, and Danny DeVito. The storyline for the movie relates to the unrelenting campaign spouse's wage against the other in a divorce battle over who will be victorious in retaining their home, and successfully punishing the other. One description of the plot line is,

> "In an effort to win the house, Oliver offers his wife a considerable sum of cash in exchange for the house, but Barbara still refuses to settle. Realizing that his client is in a no-win situation, Gavin advises Oliver to leave Barbara and start a new life for himself. In return, Oliver fires Gavin and takes matters into his own hands. At this point, Oliver and Barbara begin spiting and humiliating each other in every way possible, even in front of friends and potential business clients. Both begin destroying the house furnishings; the stove, furniture, Staffordshire ornaments, and plates. Another fight results in a battle where Barbara nearly kills Oliver by using her monster truck to ram Oliver's antique automobile. In addition, Oliver accidentally runs over Barbara's cat in the driveway with his car. When Barbara finds out, she retaliates by trapping him inside his in-house sauna, where he nearly succumbs to heatstroke and dehydration."

Www.Wikipedia.org and www.imbd.com.

Such battles are not permitted to be transported to federal court.

As noted above, the joint statement of facts was not optional. No relief was sought from the Order. Both counsel having chosen not to comply with (or unilaterally overrule) the court's order, corrective sanctions are necessary and proper. Failure to impose corrective sanctions will just reenforce the belief of the parties and counsel that orders are optional and the federal court is their new "play area."

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate

the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

Here, to obtain compliance with current and further orders of the court and to deter repetition of such conduct as this family law dispute now unfolds in stated court, sanctions as follows are imposed,

Jessica Dorn, Esq., Counsel for Fred Eichel.....**$X,XXX.00**

Michael F. Babitzke, Esq., Counsel for Scarlett Fiorini.....**$X,XXX.00**;

which shall be paid to the Clerk of the Court on or before April 22, 2019, and deposited into the general funds of the United States of America.

At the Status Conference **xxxxxxxxxxxxxxxxxxxxxxxxxx**

REVIEW OF MOTION

The present Motion for Sanctions for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by the Debtor Fred Charles Eichel ("Movant" or "Debtor"). The claims are asserted against Scarlett Fiorini ("Respondent") and her attorney Michael Babitzke.

LEGAL STANDARD

A request for an order of contempt by a debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. FED. R. BANKR. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to willful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (a Congressionally-created injunction) pursuant to its inherent power as a federal court. *Sternberg v. Johnston*, 595 F.3d 937, 946 (9th Cir. 2009). FN.1.

FN.1. Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see In re Lehtinen*, 564 F.3d at 1058.

Attorneys' fees may be recovered for work involved in bringing about an end to the stay violation and for pursuing an award of damages. *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1101 (9th Cir. 2015). A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g)(2).

The automatic stay imposes an affirmative duty of compliance on the non-debtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151–52 (9th Cir. 1996). A party who acts in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191–92 (9th Cir. 2003).

In addition, Congress provides in 11 U.S.C. § 362(a) & (k) additional relief for violation of the automatic stay, which may be requested by an individual debtor.

REVIEW OF MOTION

In asserting this claim pursuant to 11 U.S.C. § 362(a) & (k), Movant states with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

A. Debtor filed this case on January 12, 2010. Motion, Dckt. 31a t ¶ 1. Debtor received a discharge on April 26, 2010. *Id* at ¶ 2. Respondent was listed on Debtor's Schedule F. *Id*. at ¶ 7.

B. On May 11, 2018, Respondent filed a Notice of Motion for Court Adjudicate Community Assets and Liability for the Marital Settlement Agreement signed by the Debtor on or about January 12, 2013. *Id.* at ¶ 3.

C. Debtor informed Respondent the debt pursued through the family court litigation was owed when Debtor filed his bankruptcy case and therefore was discharged. *Id*. at ¶ 4. Debtor has thereafter continued to instruct Respondent not to pursue collection. *Id*. at ¶¶ 8,10.

D. Despite Debtor providing notice of this case, Respondent continues to seek collection of a discharged debt, arguing the marital agreement was signed after discharge. *Id*. at ¶¶ 5,9-12.

E. Debtor filed an *Ex-Parte* Motion to reopen this case on September 7, 2018. *Id*. at ¶ 6.

Debtor requests the court find Respondent in civil contempt for willful violation of the Discharge pursuant to 11 U.S.C. § 524, impose sanctions, and order punitive damages and attorney's fees.

In Debtor's accompanying Memorandum of Points and Authorities, Debtor argues the debt was owed at the time Debtor filed this case and was not a debt listed within 11 U.S.C. § 523. Dckt. 34. Debtor argues further the Agreement, requiring Debtor to pay discharged obligations, was in the nature of a

reaffirmation agreement that, not having been entered into before discharge and or approved by the court, is void.

Review of Evidence

Movant has provided the Declaration of Jessica A. Dorn in support of the Motion. Dckt. 33. The Declaration states the Debtor was married to Respondent until 2007, with a Legal Separation filed Jun 12, 2008. Dckt. 33 at ¶ 1. Default judgement for legal separation was approved and entered by the Stanislaus County Superior Court on October 30, 2008. *Id.* A Judgement for Dissolution of Marriage was entered by the Superior Court County of San Joaquin, Case No. FL 374322 (the "First Judgment") terminating the Debtor and Respondent's marital status, which was later incorporated by a Stanislaus County Superior Court Judgment entered March 25, 2013 (the "Second Judgement"). *Id*. at ¶ 5-6.

The Second Judgment incorporated a Marital Settlement Agreement entered into January 12, 2013 (the "Agreement"), which included Debtor's agreement to pay debt owed by Respondent to Harry Kullijian that Respondent incurred purchasing sole and separate property. *Id.* at ¶¶ 2, 7.

Respondent filed a Request for Order in the Stanislaus Superior Court , Case no. 688421, seeking to enforce the Second Judgement on August 23, 2016. *Id*. at ¶ 8. In Debtor's response to the Request for Order, Debtor asserted that the debt sought to be enforced was included in the Debtor's bankruptcy case. *Id*. Respondent there argued that the debt was secured, and that liability for the debt did not arise until the Agreement was signed. *Id*. The court continued the hearing to resolve the issue of two competing judgments.

On February 17, 2018, Respondent sought to set aside the First Judgment. *Id*. at ¶ 10. The San Joaquin County court denied Respondent's request and found the First Judgement to be valid. *Id.*

On May 11, 2018, Respondent filed a Motion to Adjudicate Community Assets and Liabilities in the San Joaquin County court, Case no. FL374332, to enforce the Agreement. That matter is pending and waiting for resolution of this Contested Matter. *Id.* at ¶ 11.

Schedule F filed on February 8, 2010, lists as a creditor holding an unsecured claim Scarlett A. Von Eichel. Schedule F, Dckt. 17.The debt is identified as "possible claims," and marked as contingent, unliquidated, and disputed. *Id*.

RESPONDENT'S OPPOSITION

Respondent filed a Memorandum of Points and Authorities in Opposition on October 22, 2018. Dckt. 38. Respondent opposes the Motion on the following grounds:

A. There was no claim relation to 204 Orangeburg listed in this bankruptcy case. Dckt. 38 at 1:25-28. Respondent did no assert claims in this bankruptcy case. *Id*. at 1:28-2:1. "The dissolution, occurring years later resolved marital claims that existed at that time." *Id.* at 2:1-2. Debtor as a result paid no support, which would not be dischargeable. *Id.* at 2:3-4.

B. The parties here made efforts to get back together before the Agreement was entered into in 2013. *Id*. at 2:6-10.

C. Respondent would have been entitled to lifetime support, but in stead opted for the relief provided through the Agreement, including the assignment of a debt for her separate property to Debtor. *Id*. at 2:22-27.

D. Respondent did not violate the discharge injunction because the debt here was not a community debt. *Id.* at 4:2-21. The separation did not create any obligation for Debtor to pay Harry Kullijuan; that liability did not incur until the Agreement was entered in 2013. *Id.* at 5:2-11.

DECEMBER 11, 2018 HEARING

At the hearing the court addressed with the parties the issues relating to marital settlement agreements and obligations incurred in the course of a divorce or separation, or a separation agreement, divorce decree or other order of the court as provided in 11 U.S.C. § 523(a)(15).

Based on the Pleadings, the court has set a status conference for March 28, 2019, and required the parties to file a joint statement of undisputed facts and issues by February 1, 2019, as well as status reports by March 14, 2019.

DISCUSSION

Respondent's arguments are well-taken. Movant argues the debt incurred by Debtor in signing the Agreement was actually discharged in this bankruptcy case on April 26, 2010. However, the debt here was not one owed and discharged in the bankruptcy case.

The Agreement was entered into on January 12, 2013. Dckt. 33. That Agreement was entered into as part of a settlement agreement relating to the division of assets between Debtor and Respondent after dissolution of their marriage.

A reaffirmation agreement is a debt that is an agreement between a holder of a claim and a debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable. 11 U.S.C. § 524(c). The Agreement here was a new agreement entered into for new consideration. Both parties had rights to various assets after marital dissolution, and sought to resolve their disputes. The Agreement provides for the clean division of assets as consideration for the deal; as a pat of this deal Debtor incurred the debt that was previously the sole and separate property of the Respondent. Being separate property of Respondent, the debt was not included in the discharge.

Also possibly at play in the Agreement was the addressing of domestic support obligations, which would not have been discharged regardless of whether those claims were actively asserted in this case. 11 U.S.C. § 523(a)(5). Though no comprehensive explanation has been provided regarding the moving parts of the Agreement, Respondent argues and the court agrees that entitlement to domestic support obligations was a consideration in the Agreement. Any domestic support obligations would be an asset the Respondent

was entitled to; the Agreement instead assigns debt to the Movant as a way of paying tomorrow for money that otherwise would have been owed today.

Failure to Comply with Court Order

At the hearing, xxxxxxxxxxxxxx.

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 Status Conference for the Motion for Sanctions for Violation of the Automatic Stay 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 Status Conference for the Motion for Sanctions for Violation of the Automatic Stay is **xxxxxxxx**

10. 19-90122-E-11 MF-2

MIKE TAMANA FREIGHT LINES, LLC
Matt Olson

CONTINUED MOTION TO PAY AND/OR MOTION TO MAINTAIN EMPLOYEE BENEFITS PROGRAMS
2-12-19 [9]

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

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

Local Rule 9014-1(f)(3) Motion—Final Hearing.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on February 12, 2019. By the court's calculation, 2 days' notice was provided. The court set the hearing for February 14, 2019. Dckt. 27.

The Motion To Pay And/Or Motion To Maintain Employee Benefits Programs was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, 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.

The Motion to Pay and Maintain Pre-Petition Wages and Benefits For Employees is Granted and Payment is granted.

Mike Tamana Freight Lines, LLC, as the Debtor in Possession, filed an emergency Motion to pay a week of pre-petition wages and employees benefits. These payments are to non-insider employees and are for services provided shortly prior to the filing of this case.

The wages and withholdings to be paid are set forth in Exhibit C (Dckt. 40) filed in support of this Motion. In addition, there are the normal and regular employee benefits, such as insurance, vacation, and other regular benefits to be paid.

FEBRUARY 14, 2019 HEARING

At the February 14, 2019, the court granted the Motion on an interim basis. Civil Minutes, Dckt. 45.

The court issued an Order granting the Motion on an interim basis, continuing the hearing to March 28, 2019, requiring Opposition to the Motion shall be filed and served on or before March 14, 2019, and Replies, if any, filed and served on or before March 21, 2019. Order, Dckt. 48.

DISCUSSION

No opposition has been filed to the present Motion.

Additionally, Debtor in Possession represents and U.S. Trustee confirmed no individual shall be paid any amounts in excess of those specified in 11U.S.C. § 507(a)(4), and that no insiders would be paid for any pre-petition claims.

On the evidence presented, the court finds that the use of funds of the Estate to pay employee obligations is in the best interest of creditors and the Estate, employees being essential to a successful reorganization in this case. Thus, 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 Authority to Obtain Post-Petition Financing filed by Mike Tamana Freight Lines, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion To Pay And/Or Motion To Maintain Employee Benefits Programs is granted, and the Debtor in Possession is authorized to pay the employee obligations described in Exhibits A-C, Dckts. 11 and 40,, in addition to $280 per month per employee for medical insurance and $36 per month per employee for dental, vision, and basic life and accidental death insurance.
>
> **IT IS FURTHER ORDERED** that the Debtor in Possession is authorized to pay any cost or penalty incurred by its employees in the event that a check issued by the Debtor in Possession for payment of the employee obligations is inadvertently not honored because of the filing of the Debtor in Possession's bankruptcy cases.
>
> **IT IS FURTHER ORDERED** that notwithstanding the forgoing, in no case shall any Employee receive from the Debtor in Possession a sum which exceeds

the amount entitled to priority under 11 U.S.C. § 507(a)(4) and in no case shall an equity interest holder receive any payments under this order.

11.	**19-90122-E-11 MF-3**	**MIKE TAMANA FREIGHT LINES, LLC Matt Olson**	**CONTINUED MOTION FOR AUTHORITY TO OBTAIN FINANCING 2-12-19 [15]**

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.

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on February 12, 2019. By the court's calculation, 2 days' notice was provided. The court set the hearing for February 14, 2019. Dckt. 28.

The Motion For Authority To Obtain Financing was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, 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.

The Motion For Authority To Obtain Financing is xxxxxxxx

Debtor in Possession Mike Tamana Freight Lines, LLC filed this First Day Motion to Obtain Debtor in Possession Financing from Transportation Alliance Bank, Inc. which is styled as a Accounts Receivable Purchase and Sale Agreement so that the Debtor in Possession can continue to operate the estate's business. The terms of the financing are stated in the document titled "Debtor in Possession Accounts Receivable Purchase and Security Agreement." Exhibit C, Dckt. 17.

FEBRUARY 14, 2019 HEARING

At the February 14, 2019 hearing the court granted the Motion and authorized the requested financing on an interim basis through April 5, 2019 (making no determination if there is a sale of accounts receivable or secured financing). Civil Minutes, Dckt. 44.

The court further held Amajot Tamana, identified as the President and Manager of Mike Tamana Freight Lines, LLC, is the Responsible Representative to act for the Debtor in Possession and the person authorized to execute all documents for this authorized financing.

The court issued an Order providing the foregoing, continuing the hearing to March 28, 2019, and also requiring any opposition to the Motion be filed and served on or before March 14, 2019, and replies, if any, filed and served on or before March 21, 2019. Order, Dckt. 46.

CREDITOR'S OPPOSITION

Creditor Wells Fargo Equipment Finance, Inc. holding a secured claim ("WFEF") filed a Limited Opposition on March 13, 2019. Dckt. 93.

WFEF asserts it has a secured interest in equipment of the Debtor, including trucks and trailers, and their proceeds. WFEF opposes the Security Agreement to the extent it seeks to grant a security interest in already encumbered assets of the Debtor in Possession.

DEBTOR IN POSSESSION'S REPLY

Debtor in Possession filed an Omnibus Reply on March 21, 2019. Dckt. 108. Debtor in Possession states it does not oppose limiting the lien granted under the order approving agreement with TAB to the unencumbered assets of the estate, consistent with the request made in the Motion.

DISCUSSION

As WFEF comments, the financing to be provided seeks to encumber all of the personal property assets of the bankruptcy estate. The terms of the financing (see discussion below about the selling/financing issue) include:

A. The contract is between Transportation

1. Alliance Bank, Inc., dba TAB

and

2. Debtor Mike Tamana Freight Lines, LLC

The contract is clear that it is between the Debtor LLC and TAB, not the fiduciary Debtor in Possession and TAB. The signature block at the end of the agreement is equally clear that it is being signed by the Debtor individually and not in its fiduciary capacity as the Debtor in Possession.

Presumably a sophisticated lender has intentionally drafted this agreement to do business with the LLC shell entity and not the fiduciary Debtor in Possession.

B. The Debtor LLC is "required" to submit all of the Debtor, LLC's "Accounts" to TAB. Agreement ¶ 2; Exhibit C, Dckt. 17.

1. "Accounts" is a defined term to as defined in the Uniform Commercial Code (the agreement does not specify whether it is the Commercial Code as enacted by the State of California or the academic Uniform Commercial as developed by the National Conference of Commissioners on Uniform State Laws and the American Law Institute). Agreement *Id.* ¶ 1. Paragraph 19 of the agreement states that the agreement and transaction are to be governed by "internal laws of the State of Utah," so it is possible that the reference could be to that State's Commercial Code, or the specific reference is intended to be the academic Uniform Commercial Code.

a. This section goes further to state: "any and all amounts owing to Seller under any rental agreement or lease, payments on construction contracts, promissory notes or on any other indebtedness, any rights to payment customarily or for accounting purposes classified as accounts receivable, and all rights to payment, proceeds or distributions under any contract of Seller, presently existing or hereafter created, and all proceeds thereof."

C. TAB will consider (indicating no obligation to perform on TAB's part) purchasing only "Accounts" that meet a set of terms stated in a long paragraph that is 48 lines long and contains three periods and four hundred and fifty-six (456) words (excluding the two periods and two words used in the title). One sentence consists of fourteen (14 words) and a second sentence consists of thirty-five (35) words. That leave the third sentence of this one paragraph consisting of four hundred and seven (407) words. The paragraph is one large block, with no organization of subparagraphs, listed items, or other devices to make such a long string of words more easily readable. *Id.* ¶ 3.

D. The Debtor LLC will offer to sell "Accounts" to TAB, with TAB as the absolute owner. *Id.* ¶ 4. TAB's purchase of any "Accounts" is in its sole discretion. *Id.* TAB has no obligation to purchase any "Accounts."

E. During the term of this agreement in which TAB has no obligation to purchase any accounts, the Debtor LLC "shall not sell, factor or otherwise finance its accounts receivable except with Purchaser." *Id.*

Thus, it appears that TAB has drafted this agreement and the Debtor LLC seeks to enter into an agreement by which TAB controls the finances of the Debtor LLC, freezing the use of its "Accounts" (which is very broadly defined).

F. The purchase price is denied to be "the Face Amount of the Purchased Account." *Id.* ¶ 1. The term "Face Amount" is defined to be "the total amount due specified on an Account's invoice, at the time of Purchase, less any finance charges included therein." *Id.*

G. The Debtor LLC is obligated to pay various fees and expenses as stated in Paragraph 7 of the agreement. These are stated (in one long run on paragraph) to be

> (i) discount fees, at the Discount Fee Rate, on the Balance Subject to Discount Fee, from the date upon which an Account is purchased hereunder, with said discount fee being due and payable monthly on the last Business Day of the calendar month in which it accrues;
>
> (ii) the Administration Fee on each Purchased Account at the time each said Purchased Account is Closed;
>
> (iii) any Misdirected Payment Fee immediately upon its accrual;
>
> (iv) any Missing Notation Fee on any Invoice that is sent by Seller to an Account Debtor that does not contain the notice as required by Section 12 hereof;
>
> (v) any amount by which the sum of the fees and charges earned in any month (prorated for partial months) is less than the Minimum Monthly Fee, to be paid on the last Business Day of the calendar month in which it accrues;
>
> (vi) the Early Termination Fee if Seller terminates this Agreement or prepays the Obligations (whether by acceleration or otherwise) prior to the termination date set forth herein, computed from the date of termination to the date on which termination is requested by Seller pursuant to Section 18 hereof;
>
> (vii) the Late Charge on all past due amounts due from Seller to Purchaser hereunder, and on the amount of any Reserve Shortfall;

(viii) any and all other fees and charges referred to herein, at the earlier of the time required by the terms hereof or when billed by Purchaser; and

(ix) any expenses directly incurred by Purchaser in the administration of this Agreement such as wire transfer fees, postage, extra-ordinary collection costs, periodic UCC or tax lien searches, and audit fees, calculated at Purchaser's standard fee schedule, a copy of which will be provided to Seller upon request;

(x) in the event any applicable law, statute, rule or regulation shall subject Purchaser or any of its affiliates to any tax levy (other than taxes imposed on or measured by the overall net income of Purchaser), duty, impost, duty, charge, fee, deduction or withholding, or increase the cost to Purchaser of purchasing Accounts due to the application or use of the LIBOR Rate, then upon written demand therefor, Seller shall reimburse Purchaser for all such costs and expenses. Any amounts owed by Seller to Purchaser shall be paid by Seller, at Purchaser's option, by:

(a) charging said amounts to the Reserve Account;

(b) deducting said amounts from the Purchase Price otherwise directed by Seller to be deposited into Seller's Account;

(c) debiting said amounts from Seller's Account; or

(d) Seller's paying said amounts, in cash or other good funds acceptable to Purchaser, immediately upon demand made by Purchaser.

H. While structured as a "purchase" of accounts, TAB has the power to "require," on TAB's Demand, Debtor LLC to "repurchase" the purportedly "sold" "Accounts." *Id.* ¶ 8.

I. Debtor LLC grants a security interest in "Collateral" described as:

"Collateral" – any collateral now or hereafter described in any financing statement, continuation statement, financing change statement, or any other UCC-1 filing, or any other amendment, or similar security filing or registration statement filed against or executed by Seller naming Purchaser as the secured party, and all of Seller's right, title and interest in, to and under the following property, now owned or hereafter acquired:

(i) All Accounts (including any Exclusions and any Accounts purchased by Purchaser hereunder and repurchased by Seller), chattel paper, general

intangibles, including, but not limited to, tax refunds, registered and unregistered patents, trademarks, service marks, copyrights, trade names, trade secrets, customer lists, licenses, documents, instruments, deposit accounts, certificates of deposit, and all rights of Seller as a seller of goods, including rights of reclamation, replevin and stoppage in transit;

(ii) All Inventory as defined in the Uniform Commercial Code, wherever located, all goods, merchandise or other personal property held for sale or lease, names or marks affixed thereto for purposes of selling or identifying the same or the seller or manufacturer thereof and all related rights, title and interest, all raw materials, work or goods in process or materials or supplies of every nature used, consumed or to be used in Seller's business, all packaging and shipping materials, and all other goods customarily or for accounting purposes classified as inventory of Seller, now owned or hereafter acquired or created, all proceeds and products of the foregoing and all additions and accessions to, replacements of, insurance or condemnation proceeds of, and documents covering any of the foregoing, all property received wholly or partially in trade or exchange for any of the foregoing, all leases of any of the foregoing, and all rents, revenues, issues, profits and proceeds arising from the sale, lease, license, encumbrance, collection, or any other temporary or permanent disposition of any of the foregoing or any interest therein;

(iii) All Equipment and fixtures and goods, wherever located, and all additions, substitutions, replacements (including spare parts), and accessions thereof and thereto;

(iv) All books and records relating to all of the foregoing property and interests in property, including, without limitation, all computer programs, printed output and computer readable data in the possession or control of the Seller, any computer service bureau or other third party;

(v) All investment property; and

(vi) All proceeds of the foregoing, including but not limited to, all insurance proceeds, all claims against third parties for loss or destruction of or damage to any of the foregoing, and all income from the lease or rental of any of the foregoing. *Id.* ¶ 1.

J. The Exhibit A to the agreement contains the interest rate and other fee and expense terms, *Id.*, Dckt. 17 at 42,which include:

1. A "Discount Fee Rate" calculated at the LIBOR Rate plus 8.37%. Based on the current stated LIBOR Rate, the agreement identifies the interest rate to start at 11.46% on all "Obligations" of Debtor LLC under the agreement. However, the

Agreement also provides that notwithstanding the stated "Discount Fee Rate" calculation, at no time shall the LIBOR Rate used in the calculation be less than 8.73%.

This appears to be a drafting error. Likely the Agreement sought to make the minimum Discount Fee Rate 8.73% (the amount of the "plus" interest above the LIBOR Rate). Instead, the language seems to fix the LIBOR Rate at a minimum of 8.73%, which would make the minimum Discount Fee Rate 17.46%.

2. Origination Fee of $15,000.

3. Attorney Documentation Fee (for agreement between TAB and the Debtor LLC) of $7,500.

4. Administration fee of 0.10% per diem (.10% per day x 365 days = 36.5% per annum). This 36.5% fee is computed on:

   a. "the cumulative uncollected balance of the Purchase Price of all outstanding Purchased Accounts (which are not Closed) minus the balance in the Reserve Account" *Id.* ¶ 1.

5. Minimum Monthly Fee 0.40% (0.40% per month x 12 months = 4.8% per annum). This is a fee computed on the "Maximum Amount," $3,000,000, without regard to the account's purchased, which equals $144,000 a year to be paid for TAB having the discretion to "purchase" accounts.

RULING

The court begins with this being a contract between the Debtor, Mike Tamana Freight Lines, LLC and TAB. The agreement does not provide for Mike Tamana Freight Lines, LLC, as Debtor in Possession, to be the person entering into the agreement with TAB. If approved by the court, it appears that TAB would be lending money to a limited liability company shell, for which all of its assets have been transferred into the bankruptcy estate in the *In re Mike Tamana Freight Lines, LLC* bankruptcy case.

At the hearing, counsel for the Debtor in Possession and Counsel for TAB addressed this contracting issue, advising the court **xxxxxxxxxxxxxxxxxxxxx**

Next, it appears that for this discretionary purchase of accounts by TAB, for which the borrower has contracted away the right to sell or obtain financing using its assets, there will be a fee computed on a 36.5% annual interest rate based on the amount paid by TAB for accounts "purchased" but not yet "repurchased" by the borrower.

In addition, without regard to what has been "purchased" by TAB and not yet "repurchased" by the borrower, there will be an additional amount computed at a 4.8% annual rate on the $3,000,000 maximum possible amount that TAB, in its discretion, could purchase, which is an additional $144,000 a

year "fee." When added to the 36.5%, the borrower is paying 41.1% annually for allowing TAB to purchase its accounts.

At the hearing, counsel for the Debtor in Possession explained, **xxxxxxxxxxxxxxxx**

With respect to the collateral issue raised by WFEF, the Debtor in Possession has stated that it does not object to the financing terms being modified to allow TAB to encumber everything in the bankruptcy estate which is not already subject to a lien. TAB has not filed anything with the court on this issue and proposed modification to the agreement.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Authority to Obtain Post-Petition Financing filed by Mike Tamana Freight Lines, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Obtain Post-Petition Financing is **xxxxxxxx**.

12. 19-90122-E-11 MF-4

MIKE TAMANA FREIGHT LINES, LLC
Matt Olson

CONTINUED MOTION TO USE CASH COLLATERAL
2-12-19 [21]

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.

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on February 12, 2019. By the court's calculation, 2 days' notice was provided. The court set the hearing for February 14, 2019. Dckt. 29.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, 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.

The Motion for Authority to Use Cash Collateral is xxxxxxxxx.

Debtor in Possession Mike Tamana Freight Lines, LLC filed this First Day Motion to use cash collateral to pay necessary expenses for the estate to continue to operate the transportation business that is included in the estate. The Debtor in Possession is continuing to operate on interim post-petition financing terms.

The Expenses to be paid with cash collateral are set forth in Exhibit C (Dckt. 23) filed in support of this Motion.

FEBRUARY 14, 2019 HEARING

At the February 14, 2019 hearing creditor Transportation Alliance Bank, Inc., holding the senior lien on the collateral, which was represented to be over encumbered, represented non-opposition to the Motion to Use Cash Collateral. Dckt. 43.

To provide for any diminution in the value of the collateral to junior lien holders by the use of cash collateral (11U.S.C. § 506(a) secured claim), the court granted replacement liens to the creditors having liens on the cash collateral being used by the Debtor in Possession.

The court issued an Order providing the foregoing, continuing the hearing to March 28, 2019, and also requiring any opposition to the Motion be filed and served on or before March 14, 2019, and replies, if any, filed and served on or before March 21, 2019. Order, Dckt. 47.

WELL'S FARGO'S OPPOSITION

Creditor Wells Fargo Equipment Finance, Inc. holding a secured claim ("Wells Fargo") filed a Limited Opposition on March 13, 2019. Dckt. 95. Wells Fargo asserts an interest certain equipment of the Debtor, including trucks and trailers, and their proceeds.

While Wells Fargo does not oppose the proposed $100,000.00 weekly adequate protection payment, Wells Fargo argues the Motion is silent as to which creditors are to be paid, the amount of payment, and when payment will be provided.

Wells Fargo asserts that as of the filing of its Limited Opposition no payment had been received.

TCF'S OPPOSITION

Creditor TCF Equipment Finance, a division of TCF National Bank or its assigns, holding a secured claim ("TCF")filed a Limited Opposition on March 14, 2019. Dckt. 98. TCF asserts it has an interest in multiple trucks and trailers used by Debtor in the operation of its business.

While not opposing the use of its cash collateral, TCF asserts Debtor's Motion and budget fail to identify which secured creditors will be paid or the amounts of such payments. TCF argues Debtor in Possession should be required, as a form of adequate protection, to specify to whom payments will be made, the amount of the payments, and the dates that the payments will be made.

TCF asserts it has received one adequate protection payment totaling $12,789.89.

DEBTOR IN POSSESSION'S REPLY

Debtor in Possession filed an Omnibus Reply on March 21, 2019. Dckt. 110. Debtor in Possession states Wells Fargo and TCF oppose the motion to the extent that the underlying agreement purports to prime their liens on certain equipment assets of the Debtor in Possession. Debtor in Possession

states further it does not oppose limiting any replacement lien granted under the order approving the use of cash collateral.

DISCUSSION

Debtor in Possession has not addressed the identity of creditors entitled to the weekly $100,000.00 adequate protection payment, amounts paid, or time for payment.

At the hearing, xxxxxxxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Authority to Use Cash Collateral filed by Mike Tamana Freight Lines, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Use Cash Collateral is **xxxxxxxx**.

13.	**19-90122-E-11** **MF-9**	**MIKE TAMANA FREIGHT LINES, LLC** **Matthew Olson**	**MOTION TO ASSUME EXECUTORY CONTRACTS O.S.T.** **3-25-19 [116]**

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

The court set the hearing for March 28, 2019. Order, Dckt. 126. The Order required service by overnight delivery. *Id.*

The Omnibus Motion To Assume Executory Contracts was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, 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 interim Omnibus Motion To Assume Executory Contracts is xxxxxxxxxx.

Mike Tamana Freight Lines, LLC, as the Debtor in Possession, filed this emergency Motion seeking approval for the cure of arrearage and assumption of executory contracts pursuant to 11 U.S.C. §§ 105 and 365, and Federal Rule of Bankruptcy Procedure 6006.

Debtor in Possession has numerous executory contracts for freight delivery services both directly and through third party carriers. Brokering third party delivery contracts generates approximately $100,000.00 weekly in gross revenue. Declaration ¶ 5, Dckt. 118.

Debtor in Possession states payment since filing on executory contracts has been withheld, and argues the is problematic because:

1. The unpaid carriers are ceasing to do business with the Debtor in Possession despite assurances of prompt payment for future shipments.

2. The carriers are proceeding to collect unpaid amounts directly from the Debtor in Possession's customers, causing those customers to cease to do business with the Debtor in Possession either through carriers or directly.

3. Debtor in Possession's broker's license depends upon a bond being maintained with the Department of Transportation. The carriers have filed, severally, 18 claims against the Debtor in Possession's bond, which could therefore be cancelled as early as March 23, 2019.

Debtor in Possession provides the following list of executory contracts, and respective agreement execution dates and arrearages owing:

Counterparty	**Contract Identifier**	**Arrears**
A&A EXPRESS	Transportation Brokerage Agreement dated January 8, 2019	$4,100.00
ALL AMERICAN FREIGHT	Transportation Brokerage Agreement*****	$1,350.00
AMD EXPRESS LLC	Transportation Brokerage Agreement dated November 11, 2016	$1,200.00
BLUE HORSE TRUCKING INC	Transportation Brokerage Agreement dated July 26, 2017 (note contract purports to be dated in 2011, which is an error)	$1,700.00
BULLET EXPRESS LINE INC.	Transportation Brokerage Agreement dated December 12, 2017	$1,000.00
CAMPOS TRUCKING LLC	Transportation Brokerage Agreement dated October 19, 2017 (note contract purports to be dated in 2011, which is an error)	$1,164.00
CAPITAL CITY CARGO	Transportation Brokerage Agreement dated January 22, 2019 (note contract purports to be dated in 2011, which is an error)	$1,000.00

CAPITOL FREIGHTLINES INC.	Transportation Brokerage Agreement dated May 16, 2018 (note contract purports to be dated in 2011, which is an error)	$1,100.00
C GOMEZ TRUCKING INC	Transportation Brokerage Agreement *******	$2,100.00
CIMA TRANSPORTATION	Transportation Brokerage Agreement dated February 27, 2019 (note contract purports to be dated in 2011, which is an error)	$2,404.00
D&D EXPRESS LLC	Transportation Brokerage Agreement dated January 22, 2019	$3,500.00
DH CARRIERS INC	Transportation Brokerage Agreement dated October 30, 2019	$1,700.00
DUBLIN LOGISTICS	Transportation Brokerage Agreement dated January 17, 2019 (note contract purports to be dated in 2011, which is an error)	$5,000.00
DUQUE BROTHERS INC	Transportation Brokerage Agreement dated September 11, 2017	$1,100.00
GLOBAL CARRIER INC.	Transportation Brokerage Agreement dated March 27, 2015	$1,100.00
GLOBAL TRANS SOLUTION INC	Transportation Brokerage Agreement dated May 30, 2017 (note contract purports to be dated in 2011, which is an error)	$950.00
GS TRANSPORT	Transportation Brokerage Agreement dated November 5, 2018	$1,900.00

HARMAN TRUCKING INC	Transportation Brokerage Agreement dated October 3, 2018	$1,050.00
H&H TRANSPORTATION INC	Transportation Brokerage Agreement dated August 22, 2018 (note contract purports to be dated in 2011, which is an error)	$900.00
HP TRANS INC	Transportation Brokerage Agreement dated January 16, 2018	$1,693.00
HS CARRIER LLC	Transportation Brokerage Agreement dated May 29, 2017	$31,600.00
HS TRUCKLINES INC	Transportation Brokerage Agreement dated January 19, 2019 (note contract purports to be dated in 2011, which is an error)	$850.00
JB CARRIER INC	Transportation Brokerage Agreement dated April 24, 2017	$4,916.00
JFS EXPRESS INC	Transportation Brokerage Agreement dated December 3, 2018	$5,000.00
KANG EXPRESS LLC	Transportation Brokerage Agreement dated January 28, 2019	$900.00
LYONS TRANS INC	Transportation Brokerage Agreement dated August 23, 2018 (note contract purports to be dated in 2011, which is an error)	$2,500.00
MOYA SERVICES INC	Transportation Brokerage Agreement dated December 18, 2017	$28,490.00

NEW SOURCE TRANSPORTATION INC	Transportation Brokerage Agreement dated September 26, 2017	$1,500.00
NST LLC	Transportation Brokerage Agreement dated July 20, 2017 (note contract purports to be dated in 2011, which is an error)	$1,000.00
OSCAR PEREZ TRUCKING	Transportation Brokerage Agreement dated September 16, 2017	$1,500.00
PIB, INC.	Transportation Brokerage Agreement dated February 5, 2019	$1,700.00
PLATINUM EXPRESS INC	Transportation Brokerage Agreement dated December 14, 2017 (note contract purports to be dated in 2011, which is an error)	$1,600.00
S & J TRUCKING	Transportation Brokerage Agreement dated March 3, 2017	$850.00
S & M TRANSPORT	Transportation Brokerage Agreement dated December 27, 2017 (note contract purports to be dated in 2011, which is an error)	$1,600.00
SOUTH GREAT TRUCKLINE INC	Transportation Brokerage Agreement dated January 7, 2019	$2,100.00
SPRINT CARRIERS INC	Transportation Brokerage Agreement ********	$1,800.00
SPS TRANSPORTATION INC	Transportation Brokerage Agreement dated January 7, 2019	$4,400.00
USA EXPRESS INC	Transportation Brokerage Agreement dated June 26, 2018	$3,400.00

TOTAL		**$131,717.00**

Review of Agreements

Debtor in Possession states the numerous carrier executory contracts ("Agreements") are identical. Debtor in Possession summarizes the essential terms as follows:

> a. The carrier agrees to timely ship goods as may be required by the Debtor (Agreement, § 3(a)); and
>
> b. The Debtor agrees to pay the carrier within thirty (30) days of receipt of the carrier's invoice (Agreement, § 2(d)).

The complete terms of the agreements are provided in full in the respective agreements, filed as Exhibits 1-35, Dckts. 120-124.

Cure of Arrearages

The Motion proposes to pay $97,967.00 to cure arrearages pursuant to 11 U.S.C. § 365(b). Debtor in Possession states that creditor Transportation Alliance Bank has consented to the use of $200,000.00 in proceeds of pre-petition receivables that are its cash collateral in support of this Motion.

Debtor in Possession states further there additional executory contracts which will be brought in subsequent motion.

DISCUSSION

A debtor in possession, subject to the court's approval, may assume or reject any executory contract or unexpired lease. 11 U.S.C. §§ 365, 1107.

In the Ninth Circuit, courts apply the business judgment rule when reviewing a decision to reject an executory contract or lease. *See Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665 (9th Cir. 2007). In reviewing a rejection motion, the bankruptcy court should presume that the trustee "acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate" and should approve rejection unless the "conclusion that rejection would be 'advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.'" *Id.* at 670 (quoting *Lubrizol Enter. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985). Adverse effects upon the other contract party are not relevant, unless the effect is so disproportionate to the estate's prospective advantage that it shows rejection could not be a sound exercise of business judgment. *See id.* at 671; *In re Old Carco LLC*, 406 B.R. 180, 192 (Bankr. S.D.N.Y. 2009).

Additionally, where the executory contracts are in default, the debtor in possession must (1) cure or provide adequate assurance of prompt cure for the default(s), (2) compensate or provide adequate

assurance of prompt compensation for pecuniary loss resulting from default, and (3) provide adequate assurance of future performance under such contract or lease. 11 U.S.C. § 365(b).

Here, Debtor in Possession has demonstrated several sound business judgment reasons for assuming the executory contracts, including the continuation and preservation of Debtor in Possession's business which is at the heart of this reorganization.

Additionally, Debtor in Possession has provided testimony that creditor Transportation Alliance Bank has consented to the use of $200,000.00 of its cash collateral to cure the arrearages as required by 11 U.S.C. § 365. This evidence is sufficient on this interim Motion.

Upon review of Debtor in Possession's request and cause shown, the court finds that it is in the best interest of Debtor, creditors, and the Estate to authorize Debtor in Possession to reject carrier executory contracts. Therefore, the Motion is granted, and Debtor in Possession is authorized to assume the executory leases, pursuant to 11 U.S.C. § 365(a).

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 Omnibus Motion To Assume Executory Contracts filed by Mike Tamana Freight Lines, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the interim Omnibus Motion To Assume Executory Contracts is xxxxxxxxx, and Debtor in Possession is authorized to assume on an interim basis to xxxxxxxxxxxxxxxxxx with respect to the executory contracts leases upon the terms provided in Exhibits 1-35, Dckts. 120-124.
>
> **IT IS FURTHER ORDERED** that the final hearing on the Omnibus Motion To Assume Executory Contracts shall be conducted at **xxxxxxx** on **xxxxxxx**. Opposition to the Motion shall be filed and served on or before **xxxxxxx** , and Replies, if any, filed and served on or before **xxxxxxx**.

FINAL RULINGS

14. 18-90511-E-7 ADJ-3	**CHARLES/PATRICIA WELLMAN Mary Anderson**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES, MACKO, JOHNSTON, INC. FOR ANTHONY D. JOHNSTON, TRUSTEE'S ATTORNEY(S) 2-14-19 [31]**

Final Ruling: No appearance at the March 28, 2019 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's, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on February 14, 2019. By the court's calculation, 42 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.

Fores-Macko-Johnston, Inc., a Professional Law Corporation, counsel ("Applicant") for Irma C. Edmonds, 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 August 31, 2018, through February 14, 2019. The order of the court approving employment of Applicant was entered on September 11, 2018. Order, Dckt. 14. Applicant requests fees in the amount of $2,200.00 and costs in the amount of $38.50.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney"free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913

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

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

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

A review of the application shows that Applicant's services for the Estate include drafting the Motion to Employ and reviewing Debtor's claim for exemption of the funds from their personal injury settlement.. The Estate has $6,200.00 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 3.7 hours in this category. Applicant prepared the necessary employment application and supporting documents to obtain approval for the Trustee to employ him, and prepared the Motion for Compensation, along with the other supportive pleadings.

Efforts to Assess and Recover Property of the Estate: Applicant spent 4.3 hours in this category. Applicant reviewed Debtor's 100 percent claimed exemption in the $50,000 personal injury settlement proceeds and analyzed the limit of the exemption pursuant to C.C.P. § 704.140. Based on Applicant's efforts, Debtor filed an Amended Schedule C resulting in $6,200.00 in non-exempt proceeds.

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**
Anthony Johnston	8.00	$275.00	$2,200.00

Total Fees for Period of Application	$2,200.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $38.50 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Fees for copies of Application to Employ Attorney and Accompanying Documents	$0.10	$2.00
Postage to mail Application to Employ Attorney and Accompanying Documents	N/A	$2.35
Fees for copies of Application of Final Compensation for Trustee's Attorney and Accompanying Documents	$0.10	$16.40
Postage to mail Application for Allowance of Final Compensation for Trustee's Attorney and Accompanying Documents	N/A	$17.75
Total Costs Requested in Application		$38.50

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,200.00 are approved 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 $38.50 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.

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

Fees	$2,200.00
Costs and Expenses	$38.50

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 Fores-Macko-Johnston, Inc., a Professional Law Corporation, counsel ("Applicant"), for Irma C. Edmonds, 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 Fores-Macko-Johnston, Inc., a Professional Law Corporation is allowed the following fees and expenses as a professional of the Estate:
>
> Fores-Macko-Johnston, Inc., a Professional Law Corporation employed by the Chapter 7 Trustee
>
> Fees in the amount of $2,200.00
> Expenses in the amount of $38.50,

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

15. 18-90851-E-7 MDM-1 | **JANICE MOORE** **Pro Se** | **MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR 2-15-19 [22]**

Final Ruling: No appearance at the March 28, 2019 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 (*pro se*), and Office of the United States Trustee on February 15, 2019. By the court's calculation, 41 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Michael D. McGranahan, Chapter 7 Trustee, ("Movant") moves to extend the deadline to file a complaint objecting to Janice Elaine Moore's ("Debtor") discharge to allow the trustee time investigate Debtor's financial affairs, to consult with Counsel and the U.S. Trustee, and to determine if a complaint objecting to the discharge is warranted.

The deadline for filing a complaint objecting to discharge was February 19, 2019. Dckt. 7. The Motion requests that the deadline to object to Debtor's discharge be extended to May 20, 2019.

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.*

The instant Motion was filed on February 15, 2019, before 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 May 20, 2019.

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 filed by Michael D. McGranahan, 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 the Motion is granted, and the deadline for Movant to object to Janice Elaine Moore's ("Debtor") discharge is extended to May 20, 2019.