

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

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

**April 4, 2019 at 10:30 a.m.**

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1. [19-20079-E-7](#)      **DAYMAN HICKISON**      **MOTION TO REDEEM**  
[MJD-2](#)              **Matthew DeCaminada**      **3-19-19 [20]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 19, 2019. By the court’s calculation, 16 days’ notice was provided. 14 days’ notice is required.

The Motion to Redeem 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, -----

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**The Motion to Redeem is granted.**

Dayman Deon Hickson (“Debtor”) seeks to redeem a vehicle identified as a 2001 Mercedes-Benz CL-55 AMG with 144,807 miles (the “Property”) from the claim of OneMain Financial Group, LLC (“Creditor”) pursuant to 11 U.S.C. § 722. Under that provision of the Bankruptcy Code, Debtor is

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

Debtor accompanied this Motion with his own Declaration. Debtor seeks to value the Property at a replacement value of \$1,400.00 as of the petition filing date. Declaration ¶ 2, Dckt. 22; Schedule B, Dckt. 1. As the owner, Debtor's opinion of value is evidence of the Property's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien perfected on the Property secures Creditor's claim with a balance of approximately \$6,500.72. Schedule D, Dckt. 1. Therefore, Creditor's claim secured by the lien is under-collateralized, and pursuant to 11 U.S.C. § 506(a), the court determines Creditor's secured claim to be in the amount of \$1,400.00.

Debtor has claimed an exemption in the amount of \$4,344.13 in the Property pursuant to California Code of Civil Procedure § 703.140(b)(2). Amended Schedule C, Dckt. 19. Because Debtor claims an exemption in the Property, Debtor is permitted to redeem the Property by paying Creditor \$1,400.00 at the time of redemption, which payment is in full satisfaction of the secured claim.

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

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

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

The Motion to Redeem filed by Dayman Deon Hickson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor is authorized and allowed pursuant to 11 U.S.C. § 722 to redeem the vehicle identified as a 2001 Mercedes-Benz CL-55 AMG with 144,807 miles ("Property") by paying OneMain Financial Group, LLC, the creditor holding the claim secured by the Property, the total amount of \$1,400.00 in full at the time of redemption, which must be paid on or before May 6, 2019.

2. [18-21577-E-7](#)  
[RLG-3](#)

CONSTANCE CHERRONE  
Robert Goldstein

MOTION TO AVOID LIEN OF  
PATRICIA A. TURNAGE  
3-7-19 [35]

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 7, 2019. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

**The Motion to Avoid Judicial Lien of Patricia A. Turnage is XXXXX.**

This Motion requests an order avoiding the judicial lien of Patricia Turnage (“Creditor”) against property of Constance Lou Cherrone (“Debtor”) commonly known as 1611 Hearthsong Drive, Manteca, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$37,978.36. An abstract of judgment was recorded with Alameda County on September 26, 2009, that encumbers the Property.

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$350,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$223,000 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §704.730 in the amount of \$175,000.00 on Schedule C. Dckt. 1.

Applying the arithmetic formula and Debtor’s valuation and liens:

FMV.....	\$350,000
Unavoidable Liens.....	(\$223,000.00)
Homestead Exemption.....	(\$175,000.00)
Judgment Lien.....	<u>(\$ 37,978.36)</u>

Amount Liens and Homestead Exemption Exceed Value of Property.....(\$85,978.36

## **Incorrect Identification As Chapter 13 Case**

In the Motion Debtor states that she filed a “Chapter 13 Case” on March 19, 2018. Creditor restates this reference to this being a Chapter 13 case in her opposition pleadings. While this case was filed on March 19, 2018, it was filed as a Chapter 7 case and has been prosecuted as a Chapter 7 case, with Debtor obtaining her Discharge on July 23, 2018. Discharge, Dckt. 28.

## **CREDITOR’S MOTION FOR CONTINUANCE & AMENDED NOTICES**

Creditor filed a Notice of Motion and Motion To Continue the hearing date on March 25, 2019. Dckt 41. Creditor asserts in the Motion that she requires additional time to oppose Debtor’s Motion due to staffing issues, and requests the hearing on the Motion be continued to May 30, 2019 at 11:00 a.m. Creditor asserts further that Debtor does not oppose the continuance, and Creditor would be irreparably harmed without the continuance.

After the clerk of the court filed a Memo To File Re: Calendar Correction (Dckt. 44), Creditor filed a Corrected Notice of Hearing seeking to continue the hearing on the Motion to May 30, 2019 at 10:30. a.m. Dckt. 45.

Creditor also filed her Declaration in support of the requested continuance. Dckt. 42. Creditor states under penalty of perjury she is a personal injury and civil litigation attorney with no bankruptcy experience. Creditor states further that her daughter, working as Creditor’s front desk legal assistant, was hospitalized on March 11, 2019, and forgot to inform Creditor about notice of this Contested Matter.

## **CREDITOR’S OBJECTION**

Creditor filed a combined “Objection” to the Motion and Declaration of Creditor on March 27, 2019. Dckt. 47.

The Objection portion of the pleading states the following:

1. There has been insufficient time for Creditor to obtain an appraisal due to inadvertently late discovery of the Contested Matter.
2. Counsel for Debtor agreed to a continuance of the hearing.
3. Debtor passed a bad check twice in relation to fees and costs at trial during a civil case; therefore fraud was involved.
4. Debtor initially filed a Chapter 7 case and the Trustee advised Creditor there were no assets to pay her claim.
5. Creditor understands Debtor converted the case to one under Chapter 13.

6. Debtor should not be allowed to avoid Creditor's lien because monies owed to Creditor were due to fraud and check kiting.

The Creditor's Declaration portion of the joint pleading states that Creditor sought to file the Objection/Declaration on March 21, 2019, but her Northern California Pacer registration was not recognized by the Eastern District of California. Nonetheless, Creditor argues the Debtor was served with the Objection by mail that day.

## **DISCUSSION**

### **Untimely Opposition**

Creditor filed her Motion To Continue Hearing on March 25, 2019, and her Objection/Declaration on March 27, 2019. Dckts. 41, 47. By the court's calculation, 10 and 8 days' notice was provided, respectively.

On the notice provided pursuant to Local Bankruptcy Rule 9014-1(f)(1), written opposition is required 14 days prior to the hearing. Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

Creditor has not addressed for the court the failure to file a timely opposition. Creditor merely requests a continuance—a request made only 10 days prior to the hearing on the motion.

In reviewing Creditor's supporting Declarations, the court could possibly find good cause to hear the opposition. However, Creditor's statements under penalty of perjury seem conflicting.

In her first Declaration, Creditor states she learned of this Contested Matter March 17, 2019. Declaration ¶ 6, Dckt. 42. After speaking with Debtor's attorney on March 21, 2019, Creditor believed a stipulation would not be filed and that she needed to file a motion for continuance. *Id.*, ¶ 10. However, that Motion was not filed until March 25, 2019. Dckt. 42.

In her second Declaration, Creditor states she attempted unsuccessfully to file the Objection/Declaration on March 21, 2019—fourteen days before the hearing date. Declaration ¶ 5, Dckt. 47. The next day, Creditor learned she was not registered to access the Eastern District Pacer System, but the Motion To Continue was not filed until another 3 days later on March 25, 2019. *Id.*, ¶ 6.

Purportedly, Creditor then filed the Objection/Declaration on March 26, 2019. *Id.*, ¶ 8. However, the court's records indicate the pleading was filed March 27, 2019. Dckt. 47.

Creditor does not explain why, if the Objection/Declaration was ready to file March 21, 2019, she did not file that pleading along with the Motion To Continue, or why the Objection/Declaration was not referenced at all. The statements given under penalty of perjury give the impression they were manufactured to show that Creditor “tried” to file her Objection/Declaration 14 days before the hearing,

thus meeting the Local Bankruptcy Rules.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

### **Failure To Meet Local Rules**

Creditor's "Objection/Declaration pleading, two merged documents, is not permitted under the Local Bankruptcy Rules for the Eastern District of California. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

### **Lien Avoidance**

Creditor requests a continuance to obtain a valuation of the Property.

Creditor also argues the case was converted to Chapter 13 (which the docket does not so reflect), and that the basis of the judicial lien was fraudulent check kiting. No evidence is presented as to check kiting or any other fraud. Furthermore, no legal authority is cited to supporting the argument that a lien securing a debt based on fraud is not avoidable. Finally, Debtor obtained her discharge in this case on July 23, 2018. To the extent that "fraud" is being advanced as a basis for granting relief to Creditor, such would have been a possible issue in determining a debt to be nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), but is not a factor for a determination under 11 U.S.C. § 522(f) lien avoidances.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

An order substantially in the following form shall be prepared and issued by the court:

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

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



Modena Way, Elk Grove, California (“Property”).

Movant and Settlor have resolved the claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Stipulation are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 137):

- A. Settlor shall cooperate with the Trustee’s efforts to sell the Property including executing any and all escrow documents necessary to transfer title to a buyer;
- B. Settlor shall be allowed a \$59,000.00 exemption against the Property, pursuant to California Code of Civil Procedure § 704.730, payable to the Trustee immediately upon close of escrow;
- C. Movant waives the homestead reinvestment requirement of California Code of Civil Procedure § 704.720(b).

## DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat’l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the stipulation is appropriate. *Protective Comm. for Indep. S’holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

- 1. The probability of success in the litigation;
- 2. Any difficulties expected in collection;
- 3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
- 4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

### Probability of Success

The Movant assert that the Stipulation ensures that the bankruptcy estate will receive some proceeds for the benefit of unsecured creditors on account of the sale of the Property, and without the



Stipulation, the Property would be abandoned by the Trustee and foreclosed on.

Here, Debtor's claimed exemption is not contested. Rather, Debtor is releasing a portion of his exemption to ensure the Property is sold and not foreclosed on. Also through this stipulation, unsecured claims will receive some proceeds.

### **Difficulties in Collection**

The Movant assert that this factor is neutral because Trustee is in a defensive position with respect to the Debtor's claim of exemption.

Movant does not seek to recover on any claim here. However, here some of the sale proceeds will be preserved for unsecured claims only pursuant to this stipulation.

### **Expense, Inconvenience, and Delay of Continued Litigation**

The Movant assert that this factor weighs in favor of the Stipulation, for the allowance of the exemption avoids expense and delay and allows the Trustee to move forward with selling the Property.

Here, it is unclear what additional delay, expense, or inconvenience exists. Movant does not dispute Debtor's claimed exemption. Further, Movant states the Property would be left to foreclosure in the event the stipulation is not approved. No added delay, expense, or inconvenience is apparent.

### **Paramount Interest of Creditors**

The Movant assert that this factor weighs in favor of the Stipulation as well because the sale of the Property will provide for a return to the unsecured creditors that would otherwise receive nothing if not for the sale.

Movant's argument here is well-taken, and this factor is most applicable to the current stipulation. Without the stipulation, the Property would be left to foreclosure—the liens totaling \$300,000.00, Debtor's exemption totaling \$100,000.00, the costs of sale estimated to be \$40,000.00, and the proposed sale price being only \$410,000.00.

With the stipulation, the Property will be sold, benefitting Debtor and providing a carve-out from the exemption in the amount of \$41,000.00 to put towards unsecured claims.

### **Consideration of Additional Offers**

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it allows the Movant to

move forward with the sale of the Property, benefitting Debtor, creditors, and the Estate. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Susan K. Smith, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and the Debtor, Ranjit Singh (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Stipulation filed as Exhibit A in support of the Motion (Dckt. 137).

4. [17-23793-E-7](#)  
[DNL-5](#)

**RANJIT SINGH**  
**Peter Cianchetta**

**MOTION TO SELL AND/OR MOTION  
FOR COMPENSATION FOR  
COLDWELL BANKER, BROKER(S)  
3-14-19 [139]**

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 14, 2019. By the court's calculation, 21 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, -----

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**The Motion to Sell Property is **granted**.**

The Bankruptcy Code permits Susan K. Smith, the Chapter 7 Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 8621 Modena Way, Elk Grove, California ("Property").

The proposed purchaser of the Property is Minh Van To, and the terms of the sale (as stated in the Motion) are:

- A. The Property shall be sold for a purchase price of \$410,000.00
- B. Gina Crane ("Broker") shall receive a sales commission of \$24,600, approximately 6 percent of the gross sales price

- C. The purchase price shall be paid with an initial \$5,000 deposit, followed by the balance of \$405,000.00 paid prior to the close of escrow;
- C. The transfer of the Property shall be “as is” and “where is” without representation or warranty;
- D. The estate shall pay for a natural hazard zone disclosure report, county, and city transfer taxes, smoke alarm and carbon monoxide installation, owner’s title insurance, and a one-year warranty at a cost not to exceed \$435.00; and
- E. The estate and Buyer shall split escrow fees

**Terms in Agreement**

In reviewing the Sale Agreement and Addendum filed as Exhibit A, the court has noted some discrepancies between the terms stated in the Motion and the actual Agreement terms.

Most glaring, is the agreed upon purchase price of \$429,000.00. Exhibit A, Dckt. 144 at pp. 6, 18.

At the hearing, ~~xxxxxxxxxxxxxxxx~~.

**Compensation for Broker**

The Movant requests that the court approve compensation for Coldwell Banker as a broker for the bankruptcy estate (“Broker”) of 6% of the gross sales price. The court authorized such employment of the Broker by order filed on October 25, 2018. Dckt. 130.

**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: ~~xxxxxxxxxxxxxxxx~~.

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it achieves a fair market value for the Property, with the sale proceeds to go to the Estate.~~

**Broker’s Fee**

Movant has estimated that a 6 percent broker’s commission from the sale of the Property will equal approximately \$24,600.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a 6 percent commission.

**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 so that the sale can move forward immediately upon entry of Bankruptcy Court order approving the sale.

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 not granted.

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

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

~~The Motion to Sell Property filed by Susan K. Smith, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~**IT IS ORDERED** that Susan K. Smith, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Min Van To (“Buyer”), the Property commonly known as 8621 Modena Way, Elk Grove, California (“Property”), on the following terms:~~

- ~~A. The Property shall be sold to Buyer for \$xxxxxxx, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 144, and as further provided in this Order.~~
- ~~B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.~~
- ~~C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.~~
- ~~D. The Chapter 7 Trustee is authorized to pay a real estate broker’s commission in an amount equal to 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 Gina Crane.~~

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

5. [18-26585](#)-E-13 JULIAN PEREZ  
[RHS-1](#) Pro Se

CONTINUED ORDER TO SHOW CAUSE  
12-6-18 [40]

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:  
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The Order to Show Cause was served by the Clerk of the Court on Debtor (*Pro se*), Hong and Qui Vo, Patric Kelley, Ana Alvarez, Chapter 13 Trustee, and Office of the U.S. Trustee, and other parties in interest as stated on the Certificate of Service on December 9, 2018. The court computes that 51 days' notice has been provided.

**The Order to Show Cause is XXXXXXXXXXXXXXXXXX.**

On October 19, 2018, Julian Perez commenced this Chapter 13 case, in pro se. On his Bankruptcy Petition Mr. Perez states that he has also used the name "AKA TKC TRUST" in the eight years preceding the commencement of this case. Petition, p. 1, Dckt. 1. Debtor states that his residence is 4412 Pinckney Way, Rancho Cordova, California. Id., p. 2. Debtor states that he had filed one prior bankruptcy case in the prior eight years, Case No. 18-24429 in the Eastern District of California.

#### **Debtor's Prior Chapter 13 Case**

Debtor commenced Chapter 13 Case No. 18-24429 on July 16, 2018. That case was dismissed on August 17, 2018. 18-24429; Order, Dckt. 22. On the Petition, Debtor lists his residence as 4412 Pinckney Way, Rancho Cordova, CA. On the Verification of Master Mailing List of Creditors, Debtor listed only two possible creditors:

QUALITY LOAN SERVICE CORP  
411 IVY ST  
SAN DIEGO, CA 92101

MIDFIRST PLAZA  
501 NW GRAND BLVD  
OKLAHOMA CITY, OK 73118

*Id.*, Dckt. 9.

The case was dismissed, notwithstanding the court having granted Debtor an extension of

time to file a Chapter 13 Plan, Schedules, and Statement of Financial Affairs. *Id.*; Notice of Incomplete Filing, Dckt. 3, and Order Extending Time, Dckt. 14. Debtor filed his Motion to Extend Time to File Documents using the Central District of California motion form (*Id.*, Dckt. 12), to which he attaches an application for the Extension prepared on lined pleading paper. In the attached Application, which is incorporated into the form motion, Debtor expressly represents to the court and promises:

3. JULIAN PEREZ is an individual and resident of Rancho Cordova, California. Facing foreclosure from property in which he resides, JULIAN PEREZ filed this bankruptcy petition on an emergency basis.

...

6. JULIAN PEREZ is in the process of compiling and organizing the information required to complete the Schedules and Chapter 13 Plan, but finalization of these documents will extend beyond the fifteen day period ending Aug 30, 2018. Due to the press of business and matters incident to the commencement of this case, it has been impracticable for JULIAN PEREZ to assemble all of the information necessary to complete the Schedules and the Chapter 13, and the fifteen (15) day period does not provide sufficient time to accurately complete the Schedules.

7. JULIAN PEREZ believes the extension herein requested will be sufficient time within which to compile all necessary information and accurately complete the Schedules. Good cause exists sufficient to grant this Application. *Id.*; Motion, Dckt. 12, pp. 5-6. The last two pages of the Motion for Extension are a proof of service.

*Id.*; Motion, Dckt. 12, pp. 5-6.

The last two pages of the Motion for Extension are a proof of service. The proof of service is not signed by the pro se Debtor, but by a “Jay Wilson” (with what is obviously a digital signature stamp). *Id.*, p. 7. On the list of persons served, there is obviously a cut and past of the Debtor’s name into the name of the case at the top of the page. *Id.*, p. 8. Then, the Debtor purports to have served himself with his own Motion. This is a curious act.

Mr. Wilson lists his address as “8291 Main St Apt # 31, CA.” *Id.*, p. 7. Conspicuously absent is the town in which Mr. Wilson’s apartment exists. In conducting a simple internet search the court was unable to identify any such Jay Wilson tied to a 8291 Main St Apt #31 address or a general 8291 Main St address.

Debtor then failed to fulfill his promises and did not file a Plan, Schedules, or Statement of Financial Affairs.

### **Current Bankruptcy Case Pleadings and Action by Debtor**

When Debtor filed the current case he filed a petition, but failed to file a Plan, Form 122C-1

Statement of Monthly Income, Schedules, Statement of Financial Affairs, and Summary of Assets and Liabilities. Notice of Incomplete Filing, Dckt. 3. Debtor filed an Application for Order Extending Time to file the missing documents. Dckt. 11. Debtor, in pro se, again used the Central District of California form motion and attached to it his uniquely created Application on pleading paper. This appears to be identical to the Application in the prior case, with the exception of changing dates for the requested extension. Debtor's representations and promises in the Application for Extension include:

3. Julian Perez is an individual and resident of Mather, California. Facing foreclosure from property in which she <sup>FN.1.</sup> resides, Julian Perez filed this bankruptcy petition on an emergency basis.

...

6. Julian Perez is in the process of compiling and organizing the information required to complete the Schedules and Chapter 13 Plan, but finalization of these documents will extend beyond the fifteen day period ending Dec 1, 2018. Due to the press of business and matters incident to the commencement of this case, it has been impracticable for Julian Perez to assemble all of the information necessary to complete the Schedules and the Chapter 13, and the fifteen (15) day period does not provide sufficient time to accurately complete the Schedules.

7. Julian Perez believes the extension herein requested will be sufficient time within which to compile all necessary information and accurately complete the Schedules. Good cause exists sufficient to grant this Application.

Application, pp. 5-6.

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FN.1. The court notes a gender confusion point, with Debtor now using the female gender.

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A Certificate of Service is attached to the Application. *Id.*, pp. 8-9. On the Certificate, Debtor again lists on the following two potential creditors:

QUALITY LOAN SERVICE CORP  
411 IVY ST  
SAN DIEGO, CA 92101

MIDFIRST PLAZA  
501 NW GRAND BLVD.  
OKLAHOMA CITY, OK 73118

*Id.*, p. 9. This Certificate of Service is executed by Jose Lavarez, who lists his address as "7388 Main st #100, Mather, CA 95655." *Id.*, p. 8.



A Google Maps search states that there is no “Main Street” address in Mather, California.<sup>FN.2.</sup> The same is true for a Yahoo search for “Main Street, Mather, California.”

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FN.2. [www.google.com/maps/search/7388+Main+St+%23+100,+Mather+CA+95655/@38.5502775,-121.2816616,105m/data=!3m1!1e3](http://www.google.com/maps/search/7388+Main+St+%23+100,+Mather+CA+95655/@38.5502775,-121.2816616,105m/data=!3m1!1e3)  
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It appears that the person or persons who have executed the Certificates of Service may be fictional “persons” or are deliberately misstating their identifies or addresses.

As to the substance of the Motion, in the prior Chapter 13 case Debtor stated that he would have the documents completed by early September 2018. Now, in the present case he states that he needs through mid-December 2018. Though 133 days have passed since the first bankruptcy case has been filed, Debtor has failed to file any Chapter 13 Plan, any one of the Schedules, and no Statement of Financial Affairs. In both cases, other than filing the case and a motion to extend deadline to file documents, the Debtor has been missing in action.

### **Motion for Relief From Stay**

On November 6, 2018, Mary Jenkins, Raymond Cordeiro, and Terese Cordeiro, as Trustees of the Cordeiro Trust, filed a Motion for Relief From the Automatic Stay. Dckt. 17. Debtor chose not to or failed to file any opposition or response to the Motion for Relief From the Automatic Stay. The Motion makes some very concerning allegations concerning the conduct of Debtor and third parties.

The court issued its ruling on the Motion for Relief as stated in the Civil Minutes for the November 20, 2018 hearing. Those findings and conclusions include that Debtor’s bankruptcy case is part of a fraudulent scheme for which relief pursuant to 11 U.S.C. § 362(c)(4)(d) is proper.

The fraudulent scheme relates to real property commonly known as 311 Bromley Cross Drive, San Jose, California ("Property") which is stated to be owned by Hong Xuan Vo (the "True Owner") and her husband Qui Vo. It is alleged that these two owners have been debtors in numerous other bankruptcies (See Exhibits J, K, and L, Dckt. 19) and have caused three additional bankruptcies (including this one) to be filed with three different debtors, to hinder the Cordeiro Trustees from foreclosing on the Property.

The scheme has included recording junior deeds of trust in the names of third parties and then having the third parties file bankruptcy, with the bankruptcy filings of the purported “third party creditor” preventing the Cordeiro Trustees from foreclosing. Exhibit C is identified as a facsimile sent to PLM Loan Management Services (conducting the foreclosure sale for the Cordeiro Trustees) by Hong Vo, one of the two owners of the 311 Bromley Cross Drive property. In it, Hong Vo states:

I have filed a Short Form Deed of Trust which the trust is In a Chapter 13 Bankruptcy fled in the Eastern District. The Trust Name is TKC Trust case No: 18-26585 assigned to Judge Ronald H Sargis. Please Cancel My Auction.

Exhibit C, Dckt. 19 at 18. This contention by Hong Vo is a bit curious. There can be no “trust” that files Chapter 13. 11 U.S.C. § 109(e), limiting Chapter 13 to “individuals.” It is unclear how a “short form deed of trust” is a trust in a Chapter 13 case.

Attached to the facsimile is a copy of the Short Form Deed of Trust. The beneficiary of the deed of trust is stated to be “TKC Trust, Hong Vo, Co-Trustee.” *Id.*, p. 19.

**ORDER TO SHOW CAUSE  
AND ORDER TO APPEAR**

The conduct of Julian Perez, Debtor in the current and prior bankruptcy case raises significant issues as to the good faith, accuracy of information provided under penalty of perjury, and conduct of Mr. Perez in the prior and current bankruptcy cases. Additionally, the purported conduct of Hong Vo in apparently highjacking the Julian Perez bankruptcy case to forestall the foreclosure of the San Jose property appears to be a further abuse of the federal judicial system and the Bankruptcy Code.

Therefore, the court issued an Order To Show Cause on December 6, 2018. Order, Dckt. 40. The court summarizes some of Order’s primary requirements (for the full Order, *See* Dckt. 40) as follows:

1. Julian Perez, the Chapter 13 Debtor in this case shall appear in person at 1:30 p.m. on January 29, 2019, NO TELEPHONIC APPEARANCE PERMITTED.
2. Hong Vo, who purports to have filed or have an interest in this case shall appear in person at 1:30 p.m. on January 29, 2019, NO TELEPHONIC APPEARANCE PERMITTED.
3. Julian Perez shall Show Cause why the court does not impose corrective sanctions and refer this matter to the Chief Judge of the United States District Court for the exercise of that court’s Article III punitive sanction power for Debtor’s conduct in the current and his prior Chapter 13 cases, including:

I. Filing bankruptcy case 18-24429, and:

- a. Failing to take any action to prosecute the case;
- b. Filing the request for extension of time to file Schedules, Statement of Financial Affairs, obtaining such relief, and then failing to file any of the missing documents;
- c. Using a person with an incomplete or unidentifiable address for service of process; and
- d. Not listing the Cordeiro Trustees as creditors to be given notice on the Master Mailing List.

- II. Filing the current bankruptcy case, 18-26585, and:
- a. Failing to take any action to prosecute the case;
  - b. Filing the request for extension of time to file Schedules, Statement of Financial Affairs, obtaining such relief, and then failing to file any of the missing documents;
  - c. Using a person with an incomplete or unidentifiable address for service of process;
  - d. Listing “TKC Trust” as a name that Debtor used in the eight years prior to the commencement of the bankruptcy case (which was not listed on the Petition in the prior Chapter 13 case); and
  - e. Not listing the Cordeiro Trustees as creditors to be given notice on the Master Mailing List.
4. Julian Perez shall file and serve on the Chapter 13 Trustee and U.S. Trustee written responses on or before January 8, 2019.
5. Julian Perez shall present properly authenticated evidence conforming with the Federal Rules of Evidence of the following:
- a. Documentation of who the persons are that purport to have served documents for the Debtor, their business addresses, and what Debtor paid them for the services provided.
  - b. Copies of all documents by which Debtor did business using the AKA “TKC Trust.”
  - c. Documentation (both testimony and documentary evidence) of “the press of business and matters incident to the commencement of this case, it has been impracticable for Julian Perez to assemble all of the information necessary to complete the Schedules and the Chapter 13” that has precluded Debtor from filing these basic documents since July 16, 2018, when he filed the prior Chapter 13 case through the November 26, 2018 issuance of this Order.
  - d. Documentation of any interests in the property commonly known as 311 Bromley Cross Drive, San Jose, California, including ownership, present or future interests, liens, encumbrances, or other interests.
  - e. Present in court at the hearing originals of all of the copies of documents

which were filed in response to this Order to Show Cause.

6. Hong Vo shall file and serve on the Chapter 13 Trustee and U.S. Trustee written responses on or before January 8, 2019.
7. Hong Vo shall present properly authenticated evidence conforming with the Federal Rules of Evidence of the following:
  - a. Copies of the documents establishing the TKC Trust, appointment of Hong Vo as trustee of said trust, all deeds and deed of trust by which TKC Trust is an owner of beneficiary under a deed of trust or mortgage relating to real property, security agreements, and the notes for the obligations secured by the deeds of trust, mortgages, or security agreement.
  - b. The meaning of the statement in Hong Vo's Fax to PLM Loan Management Services (with a fax date of October 24, 2018) sent to "Please Cancel My Auction" of:

I have filed a Short Form Deed of Trust which the trust is In a Chapter 13 Bankruptcy filed in the Eastern District. The Trust Name is TKC Trust case No: 18-26585 assigned to Judge Ronald H Sargis. Please Cancel My Auction. Dckt. 19, p. 18. The explanation shall include how the TKC Trust, for which Hong Vo is stated to be a co-trustee is a debtor in the Julian Perez Chapter 13 Case, No. 18-26585, filed in the Eastern District of California.
  - c. Copies of the bank records and other documentation of and by which the TKC Trust advanced the \$63,000.00 or any portion thereof to Hong Vo as the Trustor and borrower from TKC Trust (Hong Vo as co-trustee) set forth in the Short Form Deed of Trust (October 24, 2018 recording date, Santa Clara County Recorder No. 24049115) and Note which is purported to be secured by the Deed of Trust.
  - d. Copies of the three most recent federal and state tax returns filed for the TKC Trust; and
  - e. Present in court at the hearing originals of all of the copies of documents which were filed in response to this Order to Show Cause.
8. Any responsive pleadings to those filed by Julian Perez or Hong Vo shall be filed and served on or before January 22, 2019.
9. The failure of any of the persons to appear in court as ordered above shall result in the court issuing an order for the U.S. Marshal to take the person or persons failing to appear into

custody and present then in open court at the continued hearing date. The U.S. Marshal will have to take the person or persons into custody sufficiently in advance of the continued hearing date, and hold them in appropriate incarceration, to be able to present them at the continued hearing.

**TRUSTEE’S RESPONSE**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response in Support of the court’s Order on January 15, 2019. Dckt. 45. Trustee states the following:

1. Debtor has made no payments since filing the case.
2. Debtor did not appear at the December 6, 2018, Meeting of Creditors or the January 10, 2019, Continued Meeting of Creditors.
3. The Motion For Relief From Automatic Stay of Mary Jenkins, Raymond Cordeiro, and Teresa Cordeiro (Dckt. 30) was heard and granted.
4. The Motion For Relief From Automatic Stay of Creditor Ocean Point Townhouse Association (Dckt. 44) was heard and granted.

**FAILURE OF DEBTOR AND HONG VO TO COMPLY WITH ORDER TO APPEAR BY JANUARY 29, 2019 HEARING**

At the January 29, 2019 hearing, the court reviewed the docket and found that no written responses or evidence had been filed by either Debtor or Hong Vo.

furthermore, both the Debtor and Hong Vo failed to appear at the hearing as ordered by the court.

**Hong Vo Norther District Bankruptcy Cases**

Hong Vo failing to appear, the court reviewed the case filings in the Northern District of California Bankruptcy Court involving a party named “Hong Vo.” These cases include:

- A. N.D. Cal. Bankruptcy Case No. 18-51485
  1. Filed.....July 3, 2018
  2. Dismissed.....October 15, 2018
  3. Debtors
    - a. Hong Vo
    - b. Qui Vo

4. Assets Listed Under Penalty of Perjury on Schedule A/B
  - a. 311 Bromley Cross Drive, San Jose, California (N.D. Bankr. 18-51485; Dckt. 15 at 3).
  - b. Ownership is stated under penalty of perjury to be only in the two debtors Hong Vo and Qui Vo. *Id.*
  - c. On the Petition debtor Hong Vo and Qui Vo state under penalty of perjury that the Bromley Cross Drive property is the residence of Hong Vo and Qui Vo. *Id.*; Petition, Dckt. 1 at 2.
  - d. On the Petition debtors Hong Vo and Qui Vo state under penalty of perjury that the Bromley Cross Drive Property is the business address of Hong Vo's real estate business. *Id.* at 4.
  - e. On the Statement of Financial Affairs debtors Hong Vo and Qui Vo state under penalty of perjury that they have lived at the Bromley Cross Drive Property for at least the three years preceding the July 3, 2018 filing of N.D. Cal. Bankr. Case No. 18-51485. *Id.*; Statement of Financial Affairs Question 2, Dckt. 16 at 1.
  
5. On Schedule D, signed under penalty of perjury, debtors Hong Vo and Qui Vo do not list Julian Perez and the TCK Trust as having a deed of trust encumbering the 311 Bromley Cross Dr property. *Id.*; Schedule D, Dckt. 15 at 11-12.
  - a. The copy of the Deed of Trust purported to be included in the Julian Perez bankruptcy case is dated November 17, 2017. Julian Perez E.D. Bankr. No. 18-26585; Exhibit C, Dckt. 19 at 20-23.
    - (1) While dated November 17, 2017, it bears a County Recorder stamp stating that it was recorded on October 24, 2018. *Id.* at 20.
    - (2) Even if not recorded, if given in November 27, 2017, then debtors Hong Vo and Qui Vo were required to include it on their Schedule D which is stated under penalty of perjury.
    - (3) Additionally, the purported Notary Certificate of execution of the Deed of Trust by Hong Vo is dated October 24, 2018.

- b. The Deed of Trust states that is secured a note which is dated the same date as the Deed of Trust – November 17, 2017, which well predates the filing of the Northern District Bankruptcy Case.
6. The attorney for Qui Vo and Hong Vo listed on the petition is Michael D. Lee, Lee & Li, Attorneys at law, 333 West Santa Clara Street, Suite 6110, San Jose, California. *Id.* at 7.
- a. Attorney Michael Lee filed a motion to withdraw as counsel for debtors Hong Vo and Qui Vo in the Northern District Bankruptcy Case. N.D. Cal. Bankr. No. 18-51485; Motion, Dckt. 37.
  - b. The grounds stated in the Motion to Withdraw include:
    - (1) “8. On September 12, 2018, Patric Kelly counsel to secured creditors Mary Jenkins, Raymond L. Cordeiro, and Terese M. Cordeiro transmitted to Counsel evidence that Debtor Hong Vo had recorded a Short Form Deed of Trust and Assignment of Rents (“Deed of Trust”) on her property 311 Bromley Cross Drive, San Jose, California 95119 on September 5, 2018.”
    - (2) “9. Further, based on the documents provided by Mr. Kelly, it appeared that the Deed of Trust is implicated in the bankruptcy case of Arif Pasha case number 18-52019 MEH.”
    - (3) 10. Counsel was completely unaware of the Deed of Trust and surrounding activity until informed by Mr. Kelly.”

*Id.*; Motion to Withdraw, Dckt. 37. The Motion is stated by attorney Michael Lee’s declaration. As stated, Debtor Hong Vo was recording deeds of trust during the Northern District Bankruptcy case in apparent violation of the automatic stay in that case.

B. N.D. Cal. Bankruptcy Case No. 17-51938

- 1. Filed.....August 14, 2017
- 2. Dismissed.....November 6, 2018
- 3. Debtor
  - a. Hong Vo
- 4. Assets Listed Under Penalty of Perjury on Schedule A/B

- a. 311 Bromley Cross Drive, San Jose, California (N.D. Bankr. 17-51938; Dckt. 16 at 3).
  - b. Ownership is stated under penalty of perjury to be only in debtor Hong Vo. *Id.*
  - c. On the Petition debtor Hong Vo states under penalty of perjury that the Bromley Cross Drive property is the residence of Hong Vo and Qui Vo. *Id.*; Petition, Dckt. 1 at 2.
  - d. On the Statement of Financial Affairs debtors Hong Vo and Qui Vo state under penalty of perjury that they have lived at the Bromley Cross Drive Property for at least the three years preceding the August 14, 2017 filing of N.D. Cal. Bankr. Case No. 17-51938. *Id.*; Statement of Financial Affairs Question 2, Dckt. 16 at 1.
5. The attorney for Hong Vo listed on the petition is David Boone, Law Offices of David Boone, 1611 The Alameda, San Jose, California 95126. *Id.* at 7.
  6. Debtor Hong Vo confirmed a Chapter 13 Plan on May 31, 2018. *Id.*; Order, Dckt. 56.
  7. On August 30, 2017, th Chapter 13 Trustee filed a Notice of Default in Plan Payments. *Id.*; Notice, Dckt. 60. The Trustee also filed a Motion to Dismiss based on the default. *Id.*; Dckt. 61. The defaults cited by the Trustee were for the June and July 2017 payments, which indicates that debtor Hong Vo defaulted immediately after the order confirming the Plan was filed by the court.
- C. Debtors Hong Vo and Qui Vo obtained Chapter 7 discharges in N.D. Cal. Bankr. Case No. 11-59464; and filed and had dismissed N.D. Bankr. Cal. Cases Nos. 13-52060, 15-50599,

This further review of the filings in the Norther District of California further raises this court's concerns that there is a multi-district scheme of fraudulent filings, documents filed under penalty of perjury which are known to be false, and an abuse of the Bankruptcy Laws and the United States Courts.

Therefore, the court shall issue its order continuing the hearing to afford the U.S. Attorney for the Eastern District of California and the U.S. Trustee for Region 17 to review, coordinate, and determine what action, if any, they determine appropriate.



Debtor Julian Perez and Hong Vo, and each of them, having elected to not comply with the order of this court to appear at the January 29, 2019 hearing as ordered, the court shall order:

- A. The payment of a corrective sanction of \$5,000 each if there is a failure to appear at the continued hearing,
- B. Service of a copy of this Order and the Civil Minutes from the January 29, 2019 hearing on Tracy Hope Davis, U.S. Trustee Region 17; Gregory Powell, Asst. U.S. Trustee; and McGregor Scott, U.S. Attorney for the Eastern District of California, attn: Michelle Beckwith, Executive Assistant U.S. Attorney.
- C. Service of the Order and these Civil Minutes on Debtor Julian Perez and Hong Vo by United States Mail (Fed. R. Bankr. P. 7004(b)) at the following addresses:

Julian Perez  
4412 Pinckney Way  
Rancho Cordova, CA 95655

Julian Perez  
4412 Pinckney Way  
Mather, CA 95655

Hong Vo  
Silvercreek Realty  
4997 Gardenside Place  
San Jose, CA 95138

Hong Vo  
311 Bromley Cross Drive  
San Jose, CA 95119

- D. In addition to the service provided above, the court shall forward the order and Civil Minutes to the U.S. Marshal so that Marshal may serve additional copies of the Order and Civil Minutes on Julian Peterson and Hong Vo as a courtesy so that they can appreciate the need to comply with the court's order and appear, and thereby they can avoid the U.S. Marshal having to take a non-complying party into custody to be presented in court.
- E. If Hong Vo or Julian Perez fails to appear at the continued hearing, then for the person failing to appear the court will issue an order for the U.S. Marshal to take the non-complying party into custody and present such non-complying party in court at the further continued hearing date. Additionally, the court will refer the person(s) failing to appear to the Chief Judge of the United States District Court for consideration of that Judge's exercise of the contempt punitive power for the imposition of punitive monetary and possible incarceration sanctions.

## **ORDER CONTINUING HEARING ON ORDER TO SHOW CAUSE AND ORDER TO APPEAR**

On February 4, 2019, the court issued an Order continuing the hearing on the Order to Show Cause to April 4, 2019. The court further order Julian Perez and Hong Vo, and each of them, to appear in person, with a corrective sanction in the amount of \$5,000.00 to be paid by each for their respective failure to appear.

Additionally, the court ordered the following:

1. Julian Perez shall Show Cause why the court does not impose corrective sanctions and refer this matter to the Chief Judge of the United States District Court for the exercise of that court's Article III punitive sanction power for his conduct in the current and prior Chapter 13 cases (with the conduct explained fully in the Order). Order, Dckt. 51.
2. Julian Perez shall file with the court and serve written responses on or before March 14, 2019, with evidence provided in conformity of the Federal Rules of Evidence and properly authenticated (and shall include specific documentation as described fully in the Order). *Id.*
3. Hong Vo, the self-identified trustee of the TKC Trust, shall file with the court and serve written responses on or before March 14, 2019 with evidence provided in conformity of the Federal Rules of Evidence and properly authenticated (and shall include specific documentation as described fully in the Order). *Id.*
4. Any responsive pleadings to those filed by Julian Perez or Hong Vo shall be filed and served on or before March 28, 2019. *Id.*
5. The failure of any of the persons to appear in court as ordered above shall result in the court issuing an order for the U.S. Marshal to take the person or persons failing to appear into custody and present them in open court at the continued hearing date. The U.S. Marshal will have to take the person or persons into custody sufficiently in advance of the continued hearing date, and hold them in appropriate incarceration, to be able to present them at the continued hearing.

## **DEBTOR'S RESPONSE**

The Debtor *pro per*, Julian Perez, filed a Memorandum of Points and Authorities on March 29, 2019. Dckt. 59. The Points and Authorities assert several sophisticated (though not accurate as discussed below) legal issues.

Debtor first asserts that since his bankruptcy cases, Nos. 18-24429 and 18-26585 were dismissed, it is impossible for him to take action because the court lacks jurisdiction. Debtor's Points and Authorities does not address the federal court jurisdiction arising under the applicable statutes enacted by Congress pursuant to the Article 1, Sec. 8, grant of exclusive authority to Congress to enact an uniform bankruptcy law for the United States.

At the hearing, Debtor addressed this issue of jurisdiction advising the court **XXXXXXX**

Next, Debtor argues that some other individual used his case number and facts to advance said other unidentified person's own interests. Debtor states that he does not have any knowledge of any individual or entity that recorded the Short Form of Deed of Trust and Assignment of Rents. A copy of the Short Form of Deed of Trust and Assignment of Rents is filed with the Memorandum as Exhibit A.

In his Points and Authorities it appears that Debtor is stating that he is the possible victim of identity theft or the highjacking of his federal court proceedings. At the hearing **XXXXXXXXXXXX**

Debtor then provides the court with a detailed discussion of the application of 11 U.S.C. § 362(d)(4), providing citations from a bankruptcy case from the Northern District of Ohio, *In re Poissant*, 405 B.R. 267, 271 (Bankr. N.D. Ohio 2009). In addition to demonstrating some level of legal sophistication, Debtor also demonstrates a knowledge of correctly citing cases, and including pin cites, in federal court.

Debtor contends that since his two bankruptcy cases have been dismissed, no creditor can seek relief pursuant to 11 U.S.C. § 362(d)(4). Further, that since this was filing in *pro se*, he could not have the requisite intent to hinder, delay, or defraud.

## **DISCUSSION**

Debtor states in his Points and Authorities that the current bankruptcy case was dismissed on November 19, 2018. Points and Authorities, p. 2:5.5-6.5. No order dismissing the current bankruptcy case has been entered by the court. While on the Docket there is an entry on November 19, 2018, with a description of "Order Dismissing Case for Failure to Timely File Document," the actual entry states:

ENTERED ON DOCKET IN ERROR - NOTICE DELETED REQUESTED IN  
ERROR - NO IMAGE AVAILABLE Bankruptcy Case dismissed. Order  
Dismissing Case for Failure to Timely File Documents as transmitted to BNC for  
Service. (dpas) Modified on 11/19/2018 (dpas).

This bankruptcy case has not been dismissed. No order of dismissal was entered and no notice of dismissal was sent to any person, including the Debtor.

Even if dismissed, federal courts are not deprived of jurisdiction to address issues and matters arising in and related to the prosecution of the cases before it. 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.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

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

**IT IS ORDERED** that the Order to Show Cause is **XXXXXXXXXX**.



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

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

The Motion for Allowance of Administrative Expense filed by Susan K. Smith (“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 Chapter 7 Trustee is authorized to pay Franchise Tax Board \$810.59 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

7. [12-30911-E-7](#) **VILLAGE CONCEPTS, INC.** **MOTION FOR COMPENSATION BY**  
[DNL-23](#) **James Brunello** **THE LAW OFFICE OF DESMOND,**  
**NOLAN, LIVAICH & CUNNINGHAM**  
**FOR J. RUSSELL CUNNINGHAM,**  
**TRUSTEE'S ATTORNEY(S)**  
**3-6-19 [378]**

**Final Ruling:** No appearance at the April 4, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 6, 2019. By the court’s calculation, 29 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.**

Desmond, Nolan, Livaich & Cunningham, counsel (“Applicant”), for Susan K. Smith, 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 May 5, 2013 through March 4, 2019. Applicant was hired in the initial Chapter 11 case (Order, Dckt. 189), after conversion to the Chapter 7 case (Order, Dckt. 223), and after appointment of Client as the current Trustee after the previous trustee, David Flemmer (“Former Trustee”), passed away. Dckt. 331. Applicant requests contingency fees in the amount of \$30,589.58, hourly fees of \$46,935.00, and costs in the amount of \$7,029.82, totaling \$84,554.40.

## 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 Brunswick 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 can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign

to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant’s services for the Estate include general case administration; asset analysis, recovery, and disposition; claims administration and objections; and applications for employment and fees.

The Estate has \$185,192.64 of unencumbered monies to be administered as of the filing of the application.

This bankruptcy case was filed on June 8, 2012, as a voluntary Chapter 11 case for the Debtor corporation. It was converted to one under Chapter 7 by Order of this court filed on April 24, 2013. Dckt. 131. The findings and conclusions of the court in determining that conversion was proper include the following:

The court agrees with the movants that the debtor's principals, President Mark Weiner and Secretary Nancy Weiner, have serious conflicts of interest in managing the debtor's business and administering the debtor's estate for the benefit of the debtor's creditors. Mark and Nancy Weiner are also the trustors, trustees and beneficiaries of the revocable Kopp Family Trust, which is listed as the sole shareholder of the debtor. Docket 32, Amended SFA, question 21b; Ex. A to Motion at 67-68.

The majority of the debtor's income is generated from the management of six mobile home parks. Post-petition management income totals approximately \$183,515, while post-petition sales of manufactured homes - the other major source of income for the debtor - totals approximately \$76,928 plus a \$29,000 promissory note. Motion at 8; Opposition at 2.

In addition to principals and shareholders of the debtor, via the trust the Weiners

own 100% interest in two LLCs (Calaveras Valley Village LLC and Susanville Village LLC), which in turn own two of the mobile home parks the debtor is managing, one in Railroad Flat, California and the other in Susanville, California.

The debtor manages the Railroad Flat and Susanville parks pursuant to an oral agreement with the owners of the parks. As of the time this motion was filed, the debtor had reported to having collected management fees from the Railroad Flat park only for five of the last eight post-petition months and it had reported to having collected management fees from the Susanville park only for six of the last eight post-petition months.

Via their trust, the Weiners own 100% in two other entities, Park Village Corporation and Indian Villages Estates LLC, which in turn own 50% in one and 100% in another park.

Park Village Corporation owns 100% in Castle Village LLC, which in turn owns 50% interest in a park in Ione, California. The other 50% interest in that park is owned by an unrelated entity, Fujinaka Properties LP.

Park Village Corporation owns also 70% in Redding Riverside Village LLC, which in turn owns 100% interest in a park in Redding, California. The other 30% of Redding Riverside Village LLC is owned by Indian Village Estate LLC.

The debtor manages the Redding park pursuant to an oral agreement with the owners of the park. The debtor manages the Ione park pursuant to a written agreement with the owners of the park. As of the time this motion was filed, the debtor had reported to having collected management fees from the two parks for all eight months of the post-petition period since the petition filing.

Via their trust, the Weiners own 50% in two other entities, Lassen West Village LLC and Forest Village LLC, which in turn own 100% in two other parks, in Forest Ranch, California and Westwood, California.

The other 50% interest in the Forest Ranch park is owned by Samuel Weiner, the son of the Weiners. The other 50% interest in the Westwood park is owned by an unrelated entity, Burt Douglas Trust.

The debtor manages the Forest Ranch park pursuant to an oral agreement with the owners of the park. The debtor manages the Westwood park pursuant to a written agreement with the owners of the park.

As of the time this motion was filed, the debtor had reported to having collected management fees from the Forest Ranch park only for two of the last eight post-petition months and it had reported to having collected management fees from the Westwood park for all eight months of the post-petition period since the petition filing.

See Docket 88, Ex. B to Motion.

In addition to the foregoing, in June 2009, when the debtor found out about the movants' claims, it transferred, at the prompting of the Weiners, assets with a value of approximately \$4.2 million, to the Weiners' revocable family trust. Those assets consisted of the debtor's 100% interest in the Castle Village LLC (valued at about \$3 million at time of transfer) which owns 50% in the Ione park and the debtor's 70% interest in the Redding Riverside Village LLC (valued at about \$1.2 million at time of transfer) which owns the Redding park.

The debtor did not receive any cash for the transfer of those assets. Instead, for the Castle Village LLC transfer, the trust assumed approximately \$2 million debt the debtor owed to Union Bank and forgave \$1 million in debt the debtor owed to the trust. Approximately \$1.9 million of the Union Bank claim is still outstanding. As to the Redding Riverside Village LLC transfer, the trust assumed approximately \$1.3 million in debt for the debtor. \$1.06 million of this debt is still outstanding. None of the creditors whose debt was assumed by the trust released the debtor from liability when the trust assumed the debt. Ex. A to Motion at 70-77.

The bankruptcy schedules reflect that the debtor's real property assets have a value of \$80,000 and its personal property assets have a value of \$761,673. Schedule D lists \$840,925 of secured claims, Schedule E lists \$6,766 in priority claims, and Schedule F lists \$4,107,745 of general unsecured claims, approximately \$2.07 million of which are represented by a note payable to the Weiners' trust. Dockets 26 and 50.

Notably, while the court does not know the identity of the creditor(s) holding the still outstanding \$1.06 million claim assumed by the trust, the still outstanding approximately \$1.9 million claim of Union Bank is not listed in the debtor's schedules. See Docket 50, Amended Schedule F.

The court also notes that the debtor has generated more management fees from the Ione and Redding parks than from any of the other parks. From the Ione park, the debtor has reported generating approximately \$98,083 in post-petition management fees. From the Redding park, the debtor has reported generating approximately \$55,241 in post-petition management fees. The third most-profitable park is the Westwood park, with only approximately \$19,313 in post-petition management fees. Motion at 8.

The appointment of a trustee is in the best interest of the estate's creditors. The Weiners have a substantial conflict of interest in operating the debtor's business, given that they own and control the businesses from which the debtor generates revenue. This conflict is not merely a potential conflict, it is an actual conflict of

interest.

The Weiners' pre-petition transfer of \$4.2 million in debtor assets to the debtor's 100% shareholder, a trust controlled and owned solely by the Weiners, without the debtor receiving consideration, except for the assumption of still unpaid debt in the amount of nearly \$3 million (\$1.9 million owed to Union Bank plus \$1.06 million other debt) and the forgiveness of unidentified debt of approximately \$1 million owed to the trust, indicates to the court that the Weiners have no regard for the debtor's creditors.

The Weiners transferred 83% or \$4.2 million of the debtor's \$5.041 million in pre-transfer assets to themselves and promised to pay over \$3 million in debt for the debtor by assuming it, but they did not pay it despite collecting the profits generated from the transferred mobile home parks.

More, after the Weiners received the transfer of the debtor's interest in the Ione and Redding parks, the Weiners' once again transferred that interest in the parks to other entities, Park Village Corporation and Indian Villages Estates LLC. See Ex. B to Motion.

The timing of the transfers is highly suspect as they occurred in the same month and year the debtor was apprised of the movants' claims, June 2009. Although the court cannot decide whether, as the debtor contends, the transfer was beneficial to the debtor, the terms and timing of the transfer raise serious questions about the Weiners' regard for the debtor's creditors, i.e., whether they are conducting the debtor's affairs and administering the debtor's bankruptcy estate with the interest of the debtor's creditors in mind.

...

The debtor has decided not to pursue avoidance of the transfer. Instead, the debtor is proposing to provide its creditors with opportunity to evaluate avoidance of the transfer and seek court permission to prosecute it. But, this does not justify the debtor's unwillingness to prosecute avoidance of the transfer, when, as demonstrated below, the debtor has not evaluated avoidance of the transfer fairly and adequately.

The opposition says that the transfer was beneficial to the debtor at the time it was made. Yet, the opposition offers no facts to support such a conclusion. The facts in the record could easily support a conclusion to the contrary. The debtor has not been released from the debt assumed by the trust and Mr. Weiner has admitted that most of that debt is still outstanding, while the opposition says nothing about the profits from the Ione and Redding parks from June 2009 until today. One possible scenario is that the Weiners have not been using the profits from the two parks to pay the debt they assumed in the June 2009 transfer, forcing the administration of such debt in this case.

In addition, the opposition says nothing about the purported \$1 million claim of the Weiners against the debtor, allegedly forgiven in the 2009 transfer. There may have never been a basis for that claim.

The opposition also ignores the possibility that, if there is a successful avoidance action, the debtor may recover the property transferred or the value of such property, including the profits generated by the transferred parks from June 2009 until today. The opposition does not factor this into its contention that avoidance of the transfer is not in the best interest of the estate. The court does not have evidence about the profitability of the transferred Ione and Redding parks since the 2009 transfer. The opposition makes no effort to address this issue. The court cannot conclude that the 2009 transfer was indeed beneficial to the debtor when it was made and that avoiding the transfer today would not be beneficial to the debtor's estate and creditors.

The court rejects the debtor's assessment of avoidance of the transfer, concluding that the Weiners cannot continue to manage the debtor while carrying out the debtor's fiduciary obligations as a trustee to the estate and creditors of the estate.

In connection with the debtor's advocacy that the Weiners should continue to manage its affairs and administer this estate, the court reminds the debtor's counsel that he represents the debtor as a debtor in possession, in charge of the debtor's bankruptcy estate, an entity with fiduciary obligations to its creditors that is separate and distinct from the debtor, the Weiners and their other entities. He does not represent the debtor aside from the estate, and does not represent the Weiners, their trust, or other entities. Thus, he must advance solely the estate's best interests. "[T]he debtor in possession has the same fiduciary duties and liabilities as a Trustee. When the debtor is a corporation, corporate officers and directors are considered to be fiduciaries both to the corporate debtor in possession and to the creditors." *Holta v. Zurbetz (In re Anchorage Nautical Tours, Inc.)*, 145 B.R. 637, 643 (B.A.P. 9th Cir. 1992); see also 11 U.S.C. § 1107(a).

The Weiners' conflict of interest is further bolstered by the failure of three of their parks to pay all post-petition management fees to the debtor. According to the motion, three of the parks have not been paying management fees to the debtor regularly. As noted above, as of the time this motion was filed, the debtor had reported to having collected management fees from the Railroad Flat park only for five of the last eight post-petition months, it had reported to having collected management fees from the Susanville park only for six of the last eight post-petition months, and it had reported to having collected management fees from the Forest Ranch park only for two of the last eight post-petition months. This is concerning especially because the Weiners own 100% interest in the Railroad Flat and Susanville parks and 50% interest in the Forest Ranch park, with the other 50% owned by the Weiners' son, Samuel Weiner.

The opposition does not address the missing management fee payments. It focuses solely on the park management fee rates. Opposition at 3-4. Because of opposition's failure to address the missing payments issue, the court concludes that the Weiners are not disputing the missing management fee payments as identified by the motion. From the missing management fee payments, the court infers that the Weiners have no intention of honoring all contracts with the debtor, via their trust and/or other entities, including their interests in the Railroad Flat, Susanville, and Forest Ranch parks. This is another manifestation of the Weiners' actual conflict of interest in failing to enforce the debtor's management fee agreements with the Weiners' other entities.

Civil Minutes, Dckt. 130. The detailed finding and conclusions of the judge to whom this case was previously assigned clearly show that this was not a "simple Chapter 7 liquidation," but one in which the Trustee and Trustee's Counsel would face major challenges.

The Motion states with particularity (Fed. R. Bankr. P. 9013) various grounds and events of the Trustee, with Applicant's assistance, liquidating assets of the estate and recovering assets for the estate. An adversary proceeding was commenced against the principals of the Debtor to recovery fraudulent conveyances. Judgment was entered for the Trustee, which was then affirmed on appeal.

The Trustee was represented in a second adversary proceeding asserting Usury and Avoidance Claims, for which recovery was obtained for the Trustee by a settlement that was approved by the court.

While the fees requested are greater than in the "normal" Chapter 7 liquidation, as stated by the prior judge and the docket in this and the related adversary proceedings, this was a financially complex, litigation rich "non-normal" case in which the services resulted in significant recoveries for the bankruptcy estate.

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

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

### **Services Based on Hourly 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 34.7 hours in this category. Applicant performed services related to the administration of the bankruptcy case, including review of Debtor's filing documents; communicating with and advising the current and former trustee regarding claims

against and administration of administering the estate; and preparation of the opposition and attendance of the hearing on the motion to convert the Debtor's case from Chapter 11 to Chapter 7.

Efforts to Assess and Recover Property of the Estate: Applicant spent 84.6 hours in this category. Applicant performed asset investigation for the former trustee, communicated with the former trustee regarding issues related to asset disposition, and prepared multiple motions, and attended the hearings, for approval of sale of estate assets.

Claims Administration and Objections: Applicant spent 27.7 hours in this category. Applicant prepared a motion to pay administrative taxes; reviewed, prepared objections to, and communicated with the trustee regarding the proofs of claim; and prepared the motion for allowance of administrative claims.

Fee/Employment Application: Applicant spent 52.6 hours in this category. Applicant prepared several applications to employ professionals of the estate, as well as fee applications.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
J. Russel Cunningham	27.9	\$375.00/ \$400.00/ \$425.00	\$11,142.50
J. Luke Hendrix	66.7	\$225.00/ \$275.00/ \$325.00	\$20,347.50
Nicholas L. Kohlmeyer	14.5	\$200.00/ \$225.00	\$3,175.00
Ryan J. Ivanusich	38.9	\$175.00	\$6,807.50
Gabriel P. Herrera	9.2	\$175.00	\$1,610.00
Nabeel Zuberi	33.1	\$75.00/ \$150.00/ \$175.00	\$2,847.50
Anne Badasci	7.8	\$100.00/ \$175.00	\$930.00
Courier	1.5	\$50.00	<u>\$75.00</u>



<b>Total Hourly Fees for Period of Application</b>	\$46,935.00
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**Services Based on Contingency Fees**

Applicant computes part of the fees for the services provided as a percentage of the monies recovered in their representation of former and deceased Trustee, David Flemmer. In approving the employment of applicant, the court approved the contingent fee pursuant to a hybrid fee agreement effective March 21, 2017, subject to further review pursuant to 11 U.S.C. § 328(a). Order, Dckt. 189; Order, Dckt. 223; Dckt. 331.

Applicant represented Former Trustee in Adversary Proceeding No. 13-02212 seeking recovery on account of alleged usurious loans paid by Debtor. The total amount recovered in that Adversary Proceeding, inclusive of interest, was \$92,698.71. Order, Dckt. 283; Exhibit B, Dckt. 280.

Pursuant to the hybrid agreement, Applicant is entitled to 33 percent of the recovery, or \$30,589.58.

Applicant represented Former Trustee in another adversary proceeding, but is not seeking those fees.

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$7,029.82 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Photocopies	\$0.10 per page	\$632.48
Postage	Variable	\$979.22
Fax Charges	\$3.00	\$3.00
Advances (these are actually reimbursement of expenses, not “advances”)	Variable	\$5,415.12
<b>Total Costs Requested in Application</b>		<b>\$7,029.82</b>

## **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 \$46,935.00 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.

### **Percentage Fees**

The court finds that the fees computed on a percentage basis recovery for Debtor's bankruptcy estate are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of \$30,589.58 pursuant to 11 U.S.C. § 330 for these services provided to Debtor's bankruptcy estate by Applicant. The Chapter 7 Trustee is authorized to pay 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 \$7,029.82 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	\$77,524.58
Costs and Expenses	\$ 7,029.82

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 Desmond, Nolan, Livaich, and Cunningham, counsel for ("Applicant") Susan K. Smith, Chapter 7 Trustee, and the Estate ("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 Applicant is allowed the following fees and expenses as a counsel for the current and former trustee, and the Estate:

Applicant, counsel employed by Client:

Fees in the amount of \$77,524.58  
Expenses in the amount of \$7,029.82,

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

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

8. [12-30911-E-7](#) **VILLAGE CONCEPTS, INC.**  
[DNL-24](#) **James Brunello**

**MOTION FOR COMPENSATION FOR  
DAVID FLEMMER, CHAPTER 11  
TRUSTEE, MOTION FOR  
COMPENSATION FOR DAVID  
FLEMMER, CHAPTER 7 TRUSTEE  
AND/OR MOTION FOR  
COMPENSATION FOR SUSAN K.  
SMITH, CHAPTER 7 TRUSTEE  
3-6-19 [384]**

**Final Ruling: No appearance at the April 4, 2019 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 6, 2019. By the court’s calculation, 29 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.**

Susan K. Smith, the Chapter 7 Trustee, (“Applicant”) for the Debtor, Village Concepts, Inc. (“Client”), makes a Request for the Allowance of Fees and Expenses in this case for her and the former Chapter 11 and 7 trustee in this case, David Flemmer (“Former Trustee”). Fees are requested for the period May 11, 2013 through February 6, 2019.

In this unique instance, Former Trustee represented the Estate in the initial Chapter 11 case, and in the Chapter 7 case after conversion. On March 20, 2017, Former Trustee passed away. Thereafter,

Applicant represented the Estate.

Applicant filed the first and final application to approve compensation to Former Trustee in the amount of \$12,837.12 for fees and \$57.00 for expenses, and to Applicant in the amount of \$6,613.06 for fees. The aforementioned fee breakdown is based on the respective hours expended for services—Former Trustee accounted for 66 percent of the hours expended for services, and Applicant 34 percent. The total fees sought is \$19,450.18.

## **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 Brunswick 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.

### **Benefit to the Estate**

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According 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 and Former Trustee’s services for the Estate include general case administration, prosecution of adversary proceedings, claims administration, tax analysis, and asset analysis, recovery, and disposition. The Estate has \$185,192.64 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **FEES REQUESTED**

#### **Task Billing**

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 49.35 hours in this category. Applicant performed typical trustee duties, including reviewing the filing documents, conducting the 341 meeting, employing professionals for the Estate, and accounting for assets and claims.

Efforts to Assess and Recover Property of the Estate: Applicant spent 6.55 hours in this category. Applicant communicated with creditors regarding liquidation strategy, and reviewed and attended the hearing on motions to sell assets of the Estate.

Adversary Proceedings: Applicant spent 37.7 hours in this category. Applicant assisted in litigating and attended depositions for adversary proceedings in this case.

Claim Administration: Applicant spent 17.1 hours in this category. Applicant reviewed claims in this case and assisted with objections to claims.

Tax Issues: Applicant spent 11.15 hours in this category. Applicant communicated with a CPA regarding tax matters of the Estate, and reviewed and signed off on filed tax returns.

Applicant states that of the services performed, Former Trustee accounted for 66 percent of the hours expended for services, and Applicant 34 percent.

## **Trustee Fees**

### **Applicant requests the following fees:**

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$274,003.53	\$13,7700.18
<b>Calculated Total Compensation</b>	<b>\$19,450.18</b>
<b><u>Total First and Final Fees Requested</u></b>	<b>\$19,450.18</b>

The fees are computed on the total sales generated \$324,003.53 of net monies (exclusive of these requested fees and costs).

## **FEES ALLOWED**

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant and Former Trustee effectively used appropriate rates for the services provided. First and Final Fees for Former Trustee in the amount of \$12,837.12 and Applicant in the amount of \$6,613.06 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Additionally, First and Final Costs in the amount of \$57.00 pursuant to 11 U.S.C. § 330 are

approved 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.

In this case, the Chapter 7 Trustee currently has \$185,192.64 of unencumbered monies to be administered. The Chapter 7 Trustee services included general case administration, prosecution of adversary proceedings, claims administration, tax analysis, and asset analysis, recovery, and disposition. Applicant's efforts have resulted in a realized gross of \$324,003.53 recovered for the estate. Declaration ¶ 6, Dckt. 386.

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

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

Susan Smith, the Chapter 7 Trustee

Fees in the amount of \$6,613.06,

and,

David Flemmer, the former Chapter 11 and 7 Trustee,

Fees in the amount of \$12,837.12

Expenses in the amount of \$57.00.

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

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

The Motion for Allowance of Fees and Expenses filed by Susan Smith, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Applicant is allowed the following fees and expenses as a professional of the Estate:

Susan Smith, the Chapter 7 Trustee

Fees in the amount of \$6,613.06,

are approved as final fees pursuant to 11 U.S.C. § 330.



**IT IS FURTHER ORDERED** that David Flemmer, the former Chapter 11 and 7 trustee (“Former Trustee”) is allowed the following fees and expenses as a professional of the Estate:

David Flemmer, the former Chapter 11 and 7 Trustee

Fees in the amount of \$12,837.12

Expenses in the amount of \$57.00,

are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

9. [12-30911-E-7](#)  
[DNL-25](#)

VILLAGE CONCEPTS, INC.  
James Brunello

MOTION FOR COMPENSATION FOR  
GONZALES & ASSOCIATES, INC.,  
ACCOUNTANT(S)  
3-6-19 [389]

**Final Ruling:** No appearance at the April 4, 2019 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 6, 2019. By the court’s calculation, 29 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.**

Gonzales & Associates, Inc., fka Gonzales & Sisto, LLP the account for (“Applicant”) Susan K. Smith, the Chapter 7 Trustee and the bankruptcy Estate (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 28, 2015, through January 31, 2019. The order of the court approving employment of Applicant was entered on January 27, 2015. Dckt. 274. Applicant requests fees in the amount of \$8,140.00 and costs in the amount of \$21.00.

#### 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 can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by 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 the preparation of tax returns for the years 2014-2018 and documents related to the matters and as correspondence with and advising the Trustee. The Estate has \$185,192.64 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.

Tax Advice: Applicant spent 32.6 hours in this category. Applicant performed services related to tax advice, including preparation of several years of the Estate’s returns, analysis of tax implications of asset disposition, and communication with the former and current trustee regarding general tax related issues throughout the case.

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

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Gene Gonzalez	4.4	\$330.00	\$1,452.00
Gene Gonzalez	2.8	\$340.00	\$952.00
Gene Gonzalez	1.5	\$350.00	\$525.00
Gene Gonzalez	1.2	\$355.00	\$426.00

Lori A. Cima	8.5	\$200.00	\$1,700.00
Lori A. Cima	5.8	\$210.00	\$1,218.00
Lori A. Cima	5.0	\$215.00	\$1,075.00
Lori A. Cima	3.6	\$220.00	<u>\$792.00</u>
<b>Total Fees for Period of Application</b>			\$8,140.00

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$21.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage	\$21.00	\$21.00
<b>Total Costs Requested in Application</b>		\$21.00

**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 \$8,140.00 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 \$21.00 pursuant to 11 U.S.C. § 330 are approved 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.

Gonzales & Associates, Inc., fka Gonzales & Sisto, LLP, is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$8,140.00
Costs and Expenses	\$21.00

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 Gonzales & Associates, Inc., fka Gonzales & Sisto, LLP the accountant (“Applicant”) for Susan Smith, Chapter 7 Trustee, and the bankruptcy Estate (“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 Gonzalez & Associates is allowed the following fees and expenses as a professional of the Estate:

Gonzalez & Associates, Inc., fka Gonzales & Sisto, LLP, Professional employed by the Susan Smith, Chapter 7 Trustee, and the bankruptcy Estate:

Fees in the amount of \$8,140.00

Expenses in the amount of \$21.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as a Professional employed by the Susan Smith, Chapter 7 Trustee, and the bankruptcy Estate.

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

10. [19-21314-E-7](#) JOY KIM  
Chinonye Ugorji

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
3-18-19 [11]**

**Final Ruling:** No appearance at the April 4, 2019 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on March 20, 2019. The court computes that 15 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$335.00 due on March 2, 2019.

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

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

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

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

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

**IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.