

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

April 7, 2016 at 10:30 a.m.

1. [15-90811](#)-E-7 ASSN., GOLD STRIKE MOTION FOR JUDGMENT ON
[15-9062](#) HEIGHTS HOMEOWNERS THE PLEADINGS
LEE V. GOLD STRIKE HEIGHTS 3-17-16 [[23](#)]
ASSOCIATION ET AL

Tentative Ruling: The Motion for Judgment on the Pleadings has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Plaintiff (*pro per*), Chapter 7 Trustee, and Office of the United States Trustee on March 10, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Judgment on the Pleadings has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Defendant-Trustee's Motion for Judgment on the Pleadings is granted.

Don Lee ("Plaintiff") filed the instant case on September 7, 2015, against Defendants Gold Strike Heights Association, Gold Strike Heights Homeowners Association, and DOES 1 through 25 (collectively as "Defendants")

April 7, 2016 at 10:30 a.m.

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in the Superior Court of California for the County of Calaveras, Case No. 15CV40732. On November 18, 2015, Gary Farrar, the Chapter 7 Trustee ("Trustee") for Debtor Gold Strike Heights Homeowners Association ("Debtor") removed this case to the United States Bankruptcy Court for the Eastern District to continue as an adversary proceeding. Dckt. 1.

Plaintiff seeks claims for declaratory relief, negligent infliction of emotional distress, and intentional infliction of emotional distress. Dckt. 5. The grounds upon which these claims are based are as follows:

1. There now exists a real and present controversy for which a declaration from this Court is required to declare several landlord-tenant issues.
2. Plaintiff is entitled under federal law to at least a 90 day notice of the termination of his tenancy and full recognition of his long-term lease, no matter who is the true owner of the property located at 145 Jasper Way, San Andreas, California,.
3. Plaintiff is also entitled under state law to at least a 90 day notice of the termination of his tenancy and full recognition of his long-term lease, no matter who is the true owner of the property located at 145 Jasper Way, San Andreas, California.
4. Despite the existence of both federal and state law that would require the Debtor to provide at least 90 days' notice as well as require the Debtor to recognize and honor the existing lease term that expires on December 31, 2016, the Debtor has continuously threatened to evict Plaintiff immediately if he will not pay the rent it has demanded.
5. Plaintiff has suffered substantial emotional distress and anguish when faced with the unreasonable and unlawful demands from a group of grossly incompetent and negligent officers and board members acting on behalf of [Gold Strike Height Homeowners Association] that are committed to driving Plaintiff out of the property located at 145 Jasper Way, San Andreas, California.

Plaintiff seeks the following relief:

1. For a declaration that the Debtor and Gold Strike Heights Association are separate and distinctive corporate entities and they have not merged either by official act or operation of law.
2. For a declaration that the non-judicial foreclosure was initiated and concluded by Gold Strike Heights Association, a suspended corporation, and thus could not have lawfully foreclosed on Indian Village Estates, LLC, including the lot upon which Plaintiff resides.
3. For a declaration that Gold Strike Heights Association could not transfer its interest in 145 Jasper Way, San Andreas, California, in 2016 to Debtor because a suspended corporation

may not transfer an interest in real property while in suspension, as a matter of law and in accord with a specific state statute.

4. For a declaration that the Debtor is not the true owner of 145 Jasper Way, San Andreas, California and thus may not exercise rights of a landlord, including evicting Plaintiff.
5. For a declaration that the senior deed of trust on the property at 145 Jasper Way, San Andreas, California, is in default and because such a deed of trust contains an "Assignment of Rents Clause," if Plaintiff owes any rent all such rent should be paid to the senior lien holder, not the Debtor.
6. For compensatory, special, general, and punitive damages according to proof against Defendants for the negligent infliction of emotional distress upon Plaintiff.
7. For compensatory, special, general, and punitive damages according to proof against Defendants for the [intentional] infliction of emotional distress upon Plaintiff. FN.1.
8. For civil penalties pursuant to the applicable statutes and reasonable attorneys fees according to proof.
9. For costs of suit herein incurred.
10. For such other and further relief as the Court may deem proper and just.

FN.1. The court notes that Plaintiff's fifth and sixth prayers for relief are identical on the face of the complaint. While both prayers ask for relief based on "negligent" infliction of emotional distress, it is clear from the complaint as a whole that this was a mere scrivener's error, and that Plaintiff meant to have one of the prayers based on "intentional" infliction of emotional distress.

Trustee's Motion for Judgment on the Pleadings

On March 3, 2016, Trustee filed the instant Motion for a Judgment on the Pleadings pursuant to Fed. R. Civ. P. 12(C). Dckt. 23. Trustee asserts that Plaintiff, as a tenant, is not the property owner of 145 Jasper Way, San Andreas, California, and therefore lacks proper standing to challenge a non-judicial foreclosure sale. Trustee asserts further that Plaintiff has not suffered injury-in-fact because Plaintiff does not have an actual protected legal interest.

Plaintiff's Opposition to Trustee's Motion

On March 17, 2016, Plaintiff filed an opposition to Trustee's Motion. Dckt. 29. The Plaintiff opposes Trustee's Motion on the following bases:

1. The Trustee has misrepresented material facts. While Trustee

states that Debtor initiated non-judicial foreclosure proceedings, the foreclosing entity was actually Gold Strike Heights Association. Furthermore, while Trustee states Debtor purchased the property at 145 Jasper Way, San Andreas, California, it was again Gold Strike Heights Association who made the purchase.

2. Trustee has misstated Plaintiff's claims. Plaintiff seeks declaratory relief as to several landlord-tenant issues (discussed infra).
3. Plaintiff has standing here. Plaintiff alleges that Debtor is not the true owner of the property and thus is not the true landlord; that if any rent is due, it should be paid to the senior lien holder; and that Plaintiff has been threatened with immediate eviction although he is entitled to no less than 90 days notice under both state and federal law as well as recognition that he has a long-term lease that expires on December 31, 2016.
4. The Trustee may not have standing if Debtor does not possess an ownership interest in the property at 145 Jasper Way, San Andreas, California.
5. Plaintiff's complaint can be amended if necessary to establish standing. Plaintiff and Indian Villages Estates, LLC entered into a 3-year lease agreement for the property at 145 Jasper Way, San Andreas, California, from January 1, 2009, through December 31, 2011. Subsequently, Plaintiff entered into a 5-year extension to that agreement from January 1, 2012, through December 31, 2016, which included an option to buy the property for \$125,000.00 at the end of the lease period or at anytime prior.

Trustee's Reply

Trustee filed a reply to Plaintiff's Opposition on March 31, 2016, asserting again that Plaintiff has no standing to bring a claim because there is no injury. Trustee asserts the Plaintiff is a lessee with an option to buy, and therefore only holds a contractual right to purchase the property. The Trustee states further that all of Plaintiff's arguments are irrelevant without standing.

Discussion

Fed. R. Civ. P. 12(c) Standard

The Trustee's arguments are well-taken. On a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), the allegations of the non-moving party must be accepted as true, while the allegations of the moving party which have been denied are assumed to be false. *Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1548 (9th Cir. 1989). Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law. *Id.* Dismissal is proper

only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of its claim which would entitle him to relief. *New.Net, Inc. V. Lavasoft*, 356 F.Supp.2d 1090, 1115 (C.D. Cal. 2004). While the court must construe the complaint and resolve all doubts in the light most favorable to the plaintiff, the court does not need to accept as true conclusory allegations or legal characterizations. *Id.* (citing *General Conference corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congretional Church*, 887 F.2d 228,230 (9th Cir. 1989); *McGlinchy v. Shell Chemical Co.*, 856 F.2d 802, 810 (9th Cir. 1988)).

A motion for judgment on the pleadings based on Federal Rule of Civil Procedure 12(c) is a functional equivalent of a motion to dismiss under Federal Rule of Civil Procedure 12(b), requiring the same underlying analysis. *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). Thus, for a complaint to withstand a Rule 12(c) motion for judgement on the pleadings, it must contain more detail than "bare assertions" that are "nothing more than a formulaic recitation of the elements" required for the claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009). Courts must draw upon their "experience and common sense" when evaluating the specific context of the complaint and whether it contains the necessary detail to state a plausible claim for relief. *Id.* at 679. The factual content on the face of the complaint – not conclusory statements in the pleading – and reasonable inferences drawn from those facts must plausibly suggest that the plaintiff could be entitled to relief for the pleading to survive a Rule 12(c) motion. See *id.* at 677. Although Rule 12(c) does not mention leave to amend, courts have the discretion in appropriate cases to grant a Rule 12(c) motion with leave to amend, or to simply grant dismissal of the action instead of entry of judgment. *Cagle v. C & S Wholesale Grocers Inc.*, 505 B.R. 534, 538 (E.D. Cal. 2014).

Constitutional and Prudential Standing

"In order to invoke the jurisdiction of the federal courts, a plaintiff must establish the irreducible constitutional minimum of standing, consisting of three elements: injury in fact, causation, and a likelihood that a favorable decision will redress the plaintiff's alleged injury." *Lopez v. Candaele*, 630 F.3d 775, 785 (9th Cir. 2010) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)) (internal quotation marks omitted).

The first element, an injury in fact, means that the plaintiff must have suffered "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992) (citations omitted).

The second element requires "a causal connection between the injury and the conduct complained of," meaning that "the injury has to be fairly trace[able] to the challenged action of the defendant, and not th[e] result [of] the independent action of some third party not before the court." *Id.* at 560.

Under the third element, "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* at 561.

In addition to satisfying constitutional standing, a plaintiff must also satisfy prudential standing principles. Prudential standing requires that

"a plaintiff . . . assert its own legal rights and . . . not assert the legal rights of others." *Veal v. Am. Home Mortg. Servicing, Inc. (In re Veal)*, 450 B.R. 897, 907 (B.A.P. 9th Cir. 2011).

The Ninth Circuit has described prudential standing as follows:

Standing doctrine involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise. The constitutional aspect inquires whether the plaintiff has made out a case or controversy between himself and the defendant within the meaning of Article III by demonstrating a sufficient personal stake in the outcome. The prudential limitations, in contrast, restrict the grounds a plaintiff may put forward in seeking to vindicate his personal stake. Most important for our purposes is that a litigant must normally assert his own legal interests rather than those of third parties.

McCullum v. California Dep't of Corr. & Rehab., 647 F.3d 870, 878 (9th Cir. 2011) (quoting *Fleck & Assocs., Inc. v. Phoenix*, 471 F.3d 1100, 1103-04 (9th Cir.2006)).

Standing Requirements for Non-Judicial Foreclosure

Under California law, a properly conducted nonjudicial foreclosure sale constitutes a final adjudication of the rights of the borrower and lender. *Cal. Civ. Code* § 2924; *Herrejon v. Ocwen Loan Servicing, LLC*, E.D. Cal. 2013, 980 F.Supp.2d 1186. The general rule is that only parties with an interest in a loan secured by real property or in the underlying property may attempt to set aside a nonjudicial foreclosure. See *Bank of America Leasing & Capital LLC v. 3 Arch Tr. Servs.*, 180 Cal.App. 4th 1090, 1103 (2009); *Royal Thrift and Loan Co. v. County Escrow, Inc.*, 123 Cal.App. 4th 24, 33 (2004). A contract conferring an option to purchase is an irrevocable and continuing offer to sell, and conveys no interest in land to the optionee, but vests in him only a right in personam to buy at his election. *Warner Bros. Pictures v. Brodel*, 31 Cal. 2d 766, 772, 192 P.2d 949, 952 (1948); *Shaugnessy v. Eidsmo*, 23 N.W.2d 362, 363, 166; *Wachovia Bank v. Lifetime Indus., Inc.*, 145 Cal. App. 4th 1039, 1049, 52 Cal. Rptr. 3d 168, 175 (2006).

Declaratory Relief

Declaratory relief is an equitable remedy distinctive in that it allows adjudication of rights and obligations on disputes regardless of whether claims for damages or injunction have arisen. See Declaratory Relief Act, 28 U.S.C. § 2201. FN.2. "In effect, it brings to the present a litigable controversy, which otherwise might only be tried in the future." *Societe de Conditionnement v. Hunter Eng. Co., Inc.*, 655 F.2d 938, 943 (9th Cir. 1981). The party seeking declaratory relief must show (1) an actual controversy and (2) a matter within federal court subject matter jurisdiction. *Calderon v. Ashmus*, 523 U.S. 740, 745 (1998). There is an implicit requirement that the actual controversy relate to a claim upon which relief can be granted. *Earnest v. Lowentritt*, 690 F.2d 1198, 1203 (5th Cir. 1982).

FN.2. 28 U.S.C. §2201,

§ 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

The court may only grant declaratory relief where there is an actual controversy within its jurisdiction. *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994). The controversy must be definite and concrete. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937). However, it is a controversy in which the litigation may not yet require the award of damages. *Id.*

Negligent Infliction of Emotional Distress

Negligent infliction of emotional distress is a form of the tort of negligence, to which the elements of duty, breach of duty, causation, and damages apply. *Huggins v. Longs Drug Stores California, Inc.*, 6 Cal. 4th 124, 129, 862 P.2d 148, 151 (1993); *Marlene F. v. Affiliated Psychiatric Med. Clinic, Inc.*, 48 Cal. 3d 583, 770 P.2d 278 (1989). A right to recover for emotional distress as a "direct victim" arises from the breach of a duty that is assumed by the defendant or imposed on the defendant as a matter of law, or that arises out of the defendant's preexisting relationship with the plaintiff. *Burgess v. Superior Court*, 2 Cal. 4th 1064, 1072, 831 P.2d 1197, 1200 (1992). With rare exceptions, a breach of the duty must threaten physical injury, not simply damage to property or financial interests. *Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 985, 863 P.2d 795, 807-08 (1993); *Erlich v. Menezes*, 21 Cal. 4th 543, 552, 981 P.2d 978, 983 (1999); *But see Erlach v. Sierra Asset Servicing, LLC*, 226 Cal. App. 4th 1281, 1299 (2014) (finding that negligent failure of a landlord to repair premises entitled plaintiff to prove emotional distress damages as an injury to his property right to habitable premises). The mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm-not yet realized-does not suffice to create a cause of action for negligence. *Budd v. Nixen*, 6 Cal. 3d 195, 200, 491 P.2d 433, 436 (1971).

The "serious emotional distress" required for negligent infliction of emotional distress is functionally the same as the "severe emotional distress" required for intentional infliction of emotional distress. *Wong v. Tai Jing*,

189 Cal. App. 4th 1354, 1378, 117 Cal. Rptr. 3d 747, 768 (2010). The California Supreme Court has set a "high bar" for what can constitute severe distress. *Hughes v. Pair*, 46 Cal. 4th 1035, 1051, 209 P.3d 963, 976 (2009). Severe emotional distress means emotional distress of such substantial quality or enduring quality that no reasonable person in civilized society should be expected to endure it. *Wong v. Tai Jing*, 189 Cal. App. 4th 1354, 1376, 117 Cal. Rptr. 3d 747, 766 (2010).

Intentional Infliction of Emotional Distress

Under California law, the elements of the tort of intentional infliction of emotional distress are: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. *Christensen v. Superior Court*, 54 Cal. 3d 868, 903, 820 P.2d 181, 202 (1991). The California Supreme Court has set a "high bar" for what can constitute severe distress. *Hughes v. Pair*, 46 Cal. 4th 1035, 1051, 209 P.3d 963, 976 (2009). Severe emotional distress means emotional distress of such substantial quality or enduring quality that no reasonable person in civilized society should be expected to endure it. *Wong v. Tai Jing*, 189 Cal. App. 4th 1354, 1376, 117 Cal. Rptr. 3d 747, 766 (2010).

Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community. *Christensen v. Superior Court*, 54 Cal. 3d 868, 903, 820 P.2d 181, 202 (1991). Ordinarily mere insulting language, without more, does not constitute outrageous conduct. *Ross v. Creel Printing & Publ'g Co.*, 100 Cal. App. 4th 736, 745, 122 Cal. Rptr. 2d 787, 793 (2002) (finding no outrageous conduct where creditor and its attorneys threatened Debtor with prosecution by the district attorney over bad checks); *Newby v. Alto Riviera Apartments*, 60 Cal. App. 3d 288, 297, 131 Cal. Rptr. 547, 553 (Ct. App. 1976) (finding outrageous conduct where landlord told tenant she was a troublemaker, shouted at her, ordered her out of the apartment on short notice, and threatened her life) *disapproved of on other grounds by Marina Point, Ltd. v. Wolfson*, 30 Cal. 3d 721, 640 P.2d 115 (1982); *Fowler v. Varian Associates, Inc.*, 196 Cal. App. 3d 34, 44, 241 Cal. Rptr. 539, 545 (Ct. App. 1987) (finding no outrageous conduct where an employer demanded an employee sign an addendum with boilerplate language, even though employee found the demand and some of the contract language to be offensive). The Restatement Second of Torts provides several illustrations of what may or may not constitute extreme and outrageous conduct:

4. A makes a telephone call but is unable to get his number. In the course of an altercation with the telephone operator, A calls her a God damned woman, a God damned liar, and says that if he were there he would break her God damned neck. B suffers severe emotional distress, broods over the incident, is unable to sleep, and is made ill. A's conduct, although insulting, is not so outrageous or extreme as to make A liable to B.

7. A, a creditor, seeking to collect a debt from B, sends B a series of letters in lurid envelopes bearing a picture of lightning about to strike, in which A repeatedly threatens suit without bringing it, reviles B as a deadbeat, a dishonest man, and a criminal, and

threatens to garnish his wages, to bother his employer so much that B will be discharged, and to "tie B up tight as a drum" if he does not pay. B suffers severe emotional distress. A is subject to liability to B.

8. A, a creditor, seeking to collect a debt, calls on B and demands payment in a rude and insolent manner. When B says that he cannot pay, A calls B a deadbeat, and says that he will never trust B again. A's conduct, although insulting, is not so extreme or outrageous as to make A liable to B.

14. A and her children are destitute, ill, and unable to pay their rent. B, their landlord, calls on A and threatens to evict her if the rent is not paid. Although B's conduct is heartless, he has done no more than the law permits him to do, and he is not liable to A for her emotional distress.

Restatement (Second) of Torts § 46 (1965)

DISCUSSION

As the complaint stands, there is no dispute that Plaintiff is a tenant with an option to purchase the property subject to this adversary proceeding. Because a lease with an option to buy does not convey any property interest, Plaintiff cannot demonstrate any injury which could serve the basis for relief. As discussed supra, the Plaintiff had to show standing in order to file the instant complaint. The Plaintiff, nowhere in the complaint, asserts an injury-in-fact. Instead, the Plaintiff appears to be asserting the rights and claims of third parties in which Plaintiff also has no interest in. For the court to exercise its jurisdiction to issue orders, the parties must have standing. Here, the Plaintiff does not. This is most obviously noted in the Plaintiff's negligent infliction of emotional distress and intentional infliction of emotional distress. The Plaintiff does not provide any information or allegations in the complaint or causes of action that shows how, in either of those claims, Plaintiff had an injury-in-fact to constitute standing and what duties the Defendant(s) had violated to create the unknown, alleged injury-in-fact.

Furthermore, under prudential standing, the Plaintiff once again fails to show that he has standing. The Plaintiff does not allege any injury-in-fact in which he has an interest in asserting. The Plaintiff appears to be stepping in the shoes of other parties, acting as the "strawman" for their claims. This is improper. The Plaintiff, himself, must have standing for a complaint to survive - not merely the existence of a claim in which the Plaintiff has no interest in.

Nothing as alleged in the complaint nor in the Plaintiff's response that provides evidence that it is the legal rights of the Plaintiff that the complaint is attempting to enforce.

Therefore, Plaintiff lacks standing and there exists cause for the Motion for Judgment on the Pleadings to be granted.

Assuming standing exists, arguendo, there is no actual controversy relating to a claim upon which relief can be granted for the same reasons.

Plaintiff, as a tenant, has no recourse against an unlawful non-judicial foreclosure. The declaratory relief sought appears equivalent to a quiet-title action between Debtor and Debtor Gold Strike Heights Homeowners Association, which has no bearing on Plaintiff's other claims. Therefore, the requirements for declaratory relief have not been met.

As to Plaintiff's claim for negligent infliction of emotional distress, Plaintiff has not pleaded that any defendant owes him a duty of any kind. Plaintiff has also failed to provide more than a bare legal assertion of harm, stating only that he has suffered "substantial emotional distress and anguish." A review of the lengthy correspondence between Debtor and Plaintiff does not hint at any emotional turmoil, and instead indicates an articulate, calm, litigious individual. Both of these elements are required for a claim of negligent infliction of emotional distress.

Plaintiff's claim for intentional infliction of emotional distress suffers the same defect, as Plaintiff has not pleaded any facts that may constitute "severe emotional distress." In addition, Plaintiff's complaint states only that "despite federal and state laws [requiring at least 90 days notice]. . . [Debtor has] threatened to immediately evict Plaintiff Lee if he will not pay the rent they have demanded." Plaintiff has not pleaded why a landlord's exercise of rights as a landlord would constitute outrageous conduct. Furthermore, correspondence by the Debtor states that they "have every intention of living up to [their] requirements dictated by the law," and that "[Plaintiff has] stated in the past [he] is not a renter . . . but it has never been made clear to [Debtor] what [Plaintiff's] status is with regards to this house." These statements illustrate a landlord who is attempting to work with and accommodate, rather than harass and humiliate his tenant.

Delving into Plaintiff's responses continues to demonstrate a lack of any outrageous conduct. In one reply, Plaintiff accuses Debtor of being "routinely ambiguous and inexact," states that such conduct "will not be acceptable in this matter," and then proceeds to make a list of demands. Most intriguing is that Plaintiff at one point concedes that "either the Gold Strike Heights Association or the "Gold Strike Heights Homeowners Association has become [Plaintiff's] new landlord," yet still does not pay rental fees or provide a copy of some other lease agreement. There are no facts pleaded demonstrating conduct so extreme as to exceed all bounds of that usually tolerated in a civilized community. In fact, based on the correspondences offered, it can be read that the Plaintiff may possibly have more clandestine and nefarious motives against third parties and, mostly, the Debtor. In either scenario, the conduct does not reach the level necessary to have sufficient grounds to state a claim.

Both extreme emotional distress and outrageous conduct are elements required for a claim of intentional infliction of emotional distress - both are not met here.

Therefore, as discussed supra, the Motion is granted and judgment is entered in favor of the Defendant.

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 Judgement on the Pleadings filed by Defendant Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and judgment shall be entered in favor of the Defendant-Trustee, Gary Farrar.

The court shall prepare judgment consistent with this ruling.

2. [15-90811](#)-E-7 ASSN., GOLD STRIKE
[15-9062](#) HEIGHTS HOMEOWNERS
LEE V. GOLD STRIKE HEIGHTS
ASSOCIATION ET AL

CONTINUED STATUS CONFERENCE RE:
NOTICE OF REMOVAL
11-18-15 [[1](#)]

Plaintiff's Atty: Pro Se
Defendant's Atty: Peter G. Macaluso; Karen Pine
Trustee's Atty: Clifford W. Stevens

Adv. Filed: 11/18/15
Answer: 1/14/16

Nature of Action:
Determination of removed claim or cause

Notes:
Continued from 3/17/16

3. [15-90811](#)-E-7 ASSN., GOLD STRIKE
[15-9063](#) HEIGHTS HOMEOWNERS
INDIAN VILLAGE ESTATES, LLC ET
AL V. GOLD STRIKE HEIGHTS

CONTINUED STATUS CONFERENCE RE:
NOTICE OF REMOVAL
11-18-15 [[1](#)]

Plaintiff's Atty: Adam Weiner
Defendant's Atty: Peter G. Macaluso
Trustee's Atty: Clifford W. Stevens

Adv. Filed: 11/18/15
Answer: none

Nature of Action:
Determination of removed claim or cause

Notes:
Continued from 3/17/16

4. [15-90211-E-7](#) SUKHPINDER BOYAL MOTION TO AVOID LIEN OF
DCJ-1 David C. Johnston COMMUNITY BUSINESS BANK
3-11-16 [[25](#)]

DISCHARGED: 7/2/15

Final Ruling: No appearance at the April 7, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Creditor, Chapter 7 Trustee, and Office of the United States Trustee on March 10, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Community Business Bank ("Creditor") against property of Sukhpinder Boyal ("Debtor") commonly known as 1840 Monica Court, Ceres, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$441,626.00. An abstract of judgment was recorded with Stanislaus County on November 7, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$350,000.00 as of the date of the petition. The unavoidable consensual liens total \$208,892.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.950 in the amount of \$100,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided in excess of \$41,108.00 subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Community Business Bank, California Superior Court for Stanislaus County Case No. 39-2012-00276034-CU-BC-STK, recorded on November 7, 2013, Document No. 2013-0092992-00 with the Stanislaus County Recorder, against the real property commonly known as 1840 Monica Court, Ceres, California, is avoided for all amounts in excess of \$41,108.00 pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

5. [13-91315-E-7](#) APPLGATE JOHNSTON, INC. MOTION TO EXTEND DEADLINES AND
[15-9038](#) WFH-1 CONTINUE PRETRIAL CONFERENCE
MCGRANAHAN V. ELECTRICAL 3-9-16 [[20](#)]
DISTRIBUTORS, CO.

Tentative Ruling: The Motion to Extend Deadlines and Continue Pretrial Conference has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant's Attorney on March 9, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadlines and Continue Pretrial Conference has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion to Extend Deadlines is granted and the Pretrial Conference is continued to 2:00 p.m. on xxxxxxxx, xxxx.</p>
--

Michael McGranahan, the Chapter 7 Trustee and Plaintiff, filed the instant Motion to Extend Deadlines and Continue Pretrial Conference on March 9, 2016. Dckt. 20.

The Trustee states that, commencing in late June 2015, Trustee commenced 30 adversary proceedings seeking recovery of alleged preferential transfers under 11 U.S.C. § 547. To date, 14 of those adversary proceedings have been resolved through compromise or dismissal. The other 16 remain outstanding. The Trustee states that the following adversary proceedings have scheduled pretrial conferences:

<u>September 15, 2016</u>	
Ace Automatic Garage Doors, Inc.	15-09030
Bay City Mechanical, Inc.	15-09021
C&T Welding, Inc./Skyline Erectors/Cal West Steel	15-09020
Ciari Plumbing and Heating, Inc.	15-09026
Electrical Distributors	15-09038
Granite Electrical Supply, Inc.	15-09044
Graybar Electric Company, Inc.	15-09032
I.C. Electronics, Inc.	15-09042
Independent Electric Supply, Inc.	15-09037
Integrated Communications Systems	15-09047
Rex Moore Integrated Systems	15-09023
SecureCom, Inc.	15-09046
The Struck Law Firm	15-09029
<u>October 6, 2016</u>	
Johnson Electronics	15-09049
<u>December 1, 2016</u>	
WPCS International	15-09048
<u>Remaining to be Set</u>	
Laguna Gold Mortgage	15-09052

As to the instant case, the Trustee states that Electrical Distributors is one of the more complex adversaries. The Trustee is seeking recovery of \$1,035,578.00. The complaint seeks to avoid and recover 32 separate payments. The Defendant asserts multiple defenses to the avoidance of each payment.

To evaluate the viability of the defenses, the Trustee asserts that both parties need access to a substantial amount of information. Trustee has been attempting to obtain information from the server but has been unsuccessful to date. The Trustee is seeking to hire an electronic information retrieval expert.

The Trustee states that the Defendant has subpoenaed 17 third-parties, including bonding companies and general contractors, in which one of the third-parties is already objecting to the request for production.

The Trustee requests that the court continue the pretrial conference from September 15, 2016 to December 1, 2016 and to extend the related deadlines accordingly. The Trustee notes that the Defendant has requested a longer delay.

The Trustee argues, that based on the complex nature of the adversary proceeding, the need for third-party discovery, and the hurdles in retrieving electronically stored information, the scheduling order should be amended as follows:

1. Schedule the Pretrial Conference for December 1, 2016.
2. Schedule the close of discovery for August 15, 2016.
3. Schedule the last day for dispositive motion for September 20, 2016.

DEFENDANT'S RESPONSE

Chester C. Lehmann, Inc. dba Electrical Distributions, Co. ("Defendant") filed a response on March 24, 2016. Dckt. 25. The Defendant asserts that it concurs that an extension of deadlines is appropriate but argues that a further extension is necessary given the case.

The Defendant asserts that the underlying issues in the adversary proceeding are more substantive and requires the parties to "recreate" the transaction and to investigate the terms of the transaction. The Defendant asserts that the Trustee has not shown how a further extension beyond the December 1, 2016 proposed date would prejudice any party.

The Defendant argues that the it has been diligently complying with the court's scheduling order. The Defendant states that the Trustee's responses to the Defendant's first request for document production, the Trustee responded with all objections and no documents were produced. The Defendant states that the parties have attempted to meet and confer multiple times to discuss the objections of the Trustee.

The Defendant notes that the Trustee has requested an electronically stored information specialist to obtain relevant documents. The Defendant has issued 17 third party subpoenas to bonding companies, general contractors, and to the City of San Jose. The Defendant states that not all the third parties have responded or some have gone out of business. Defendant states that it anticipates that more subpoenas will be necessary after Trustee gains access to Debtor's hard drive to supplement the documents.

Defendant arguments that its preparation should not be compromised due to the Trustee's earlier lack of attentiveness. The Defendant takes the position that the Trustee did not attempt to make efforts in progressing the adversaries. The Defendant asserts that the Trustee should have represented the fact that the Trustee needed additional time to analyze the hard drive earlier. The Defendant argues that the Trustee's failure to accurately and efficiently address these issues earlier should not lead to the Defendant being penalized by an unrealistic deadline.

Defendant argues that the case is already more than three months delayed allegedly due to the Trustee's conduct throughout the discovery

process. The Defendant states that there is currently no date certain as to when the Trustee will produce the documents on the Debtor's hard drive, nor any way to know where the documents are in the hard drive.

Lastly, the Defendant argues that the case against the Defendant is the most complex of those filed by the Trustee and requires additional time in order to adequately defend. The nature of the adversary proceeding involves issues around the varying projects and payments made, since each transaction may present a defense.

Defendant states that the parties have been unable to formalize a narrower scope of the issues and thus requires additional discovery and further examination.

The Defendant requests that the scheduling order be amended to reflect:

1. Last date of exchange expert reports: January 17, 2017
2. Close of discovery: March 17, 2017
3. Dispositive motions heard by: May 7, 2017
4. Pretrial Conference: July 2017

TRUSTEE'S REPLY

The Trustee filed a reply on March 31, 2016. Dckt. 28. The Trustee asserts that the Trustee has been working diligently in prosecuting all of the adversaries and have settled a number of them.

The Trustee asserts that the counsel for the parties engaged in settlement discussions and communicated for an extended period of time to attempt to reach a settlement. The Trustee states that the majority of the documents needed by the Defendant are in the control of the Defendant. As such, the Trustee does not believe that such substantial additional time is necessary.

The Trustee reasserts that the dates proposed in the Motion are proper for the instant case.

DISCUSSION

XXXX

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

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

The Motion to Extend Deadlines and Continue Pretrial Conference filed by Plaintiff having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

The Trustee states that, commencing in late June 2015, Trustee commenced 30 adversary proceedings seeking recovery of alleged preferential transfers under 11 U.S.C. § 547. To date, 14 of those adversary proceedings have been resolved through compromise or dismissal. The other 16 remain outstanding. The Trustee states that the following adversary proceedings have scheduled pretrial conferences:

<u>September 15, 2016</u>	
Ace Automatic Garage Doors, Inc.	15-09030
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Ciari Plumbing and Heating, Inc.	15-09026
Electrical Distributors	15-09038
Granite Electrical Supply, Inc.	15-09044
Graybar Electric Company, Inc.	15-09032
I.C. Electronics, Inc.	15-09042
Independent Electric Supply, Inc.	15-09037
Integrated Communications Systems	15-09047
Rex Moore Integrated Systems	15-09023
SecureCom, Inc.	15-09046
The Struck Law Firm	15-09029
<u>October 6, 2016</u>	
Johnson Electronics	15-09049
<u>December 1, 2016</u>	
WPCS International	15-09048
<u>Remaining to be Set</u>	
Laguna Gold Mortgage	15-09052

As to the instant case, the Trustee states that Electrical Distributors is one of the more complex adversaries. The Trustee is seeking recovery of \$1,035,578.00. The complaint seeks to avoid and recover 32 separate payments. The Defendant asserts multiple defenses to the avoidance of each payment.

To evaluate the viability of the defenses, the Trustee asserts that both parties need access to a substantial amount of information. Trustee has

been attempting to obtain information from the server but has been unsuccessful to date. The Trustee is seeking to hire an electronic information retrieval expert.

The Trustee states that the Defendant has subpoenaed 17 third-parties, including bonding companies and general contractors, in which one of the third-parties is already objecting to the request for production.

The Trustee requests that the court continue the pretrial conference from September 15, 2016 to December 1, 2016 and to extend the related deadlines accordingly. The Trustee notes that the Defendant has requested a longer delay.

The Trustee argues, that based on the complex nature of the adversary proceeding, the need for third-party discovery, and the hurdles in retrieving electronically stored information, the scheduling order should be amended as follows:

1. Schedule the Pretrial Conference for December 1, 2016.
2. Schedule the close of discovery for August 15, 2016.
3. Schedule the last day for dispositive motion for September 20, 2016.

DEFENDANT'S RESPONSE

Chester C. Lehmann, Inc. dba Electrical Distributions, Co. ("Defendant") filed a response on March 24, 2016. Dckt. 25. The Defendant asserts that he concurs that an extension of deadlines is appropriate but argues that a further extension is necessary given the case.

The Defendant asserts that the underlying issues in the adversary proceeding are more substantive and requires the parties to "recreate" the transaction and to investigate the terms of the transaction. The Defendant asserts that the Trustee has not shown how a further extension beyond the December 1, 2016 proposed date would prejudice any party.

The Defendant argues that the it has been diligently complying with the court's scheduling order. The Defendant states that the Trustee's responses to the Defendant's first request for document production, the Trustee responded with all objections and no documents were produced. The Defendant states that the parties have attempted to meet and confer multiple times to discuss the objections of the Trustee.

The Defendant notes that the Trustee has requested an electronically stored information specialist to obtain relevant documents. The Defendant has issued 17 third party subpoenas to bonding companies, general contractors, and to the City of San Jose. The Defendant states that not all the third parties have responded or some have gone out of business. Defendant states that it anticipates that more subpoenas will be necessary after Trustee gains access to Debtor's hard drive to supplement the documents.

Defendant arguments that its preparation should not be compromised due to the Trustee's earlier lack of attentiveness. The Defendant takes the position that the Trustee did not attempt to make efforts in progressing the

adversaries. The Defendant asserts that the Trustee should have represented the fact that the Trustee needed additional time to analyze the hard drive earlier. The Defendant argues that the Trustee's failure to accurately and efficiently address these issues earlier should not lead to the Defendant being penalized by an unrealistic deadline.

Defendant argues that the case is already more than three months delayed allegedly due to the Trustee's conduct throughout the discovery process. The Defendant states that there is currently no date certain as to when the Trustee will produce the documents on the Debtor's hard drive, nor any way to know where the documents are in the hard drive.

Lastly, the Defendant argues that the case against the Defendant is the most complex of those filed by the Trustee and requires additional time in order to adequately defend. The nature of the adversary proceeding involves issues around the varying projects and payments made, since each transaction may present a defense.

Defendant states that the parties have been unable to formalize a narrower scope of the issues and thus requires additional discovery and further examination.

The Defendant requests that the scheduling order be amended to reflect:

1. Last date of exchange expert reports: January 17, 2017
2. Close of discovery: March 17, 2017
3. Dispositive motions heard by: May 7, 2017
4. Pretrial Conference: July 2017

TRUSTEE'S REPLY

The Trustee filed a reply on March 31, 2016. Dckt. 27. The Trustee asserts that the Trustee has been working diligently in prosecuting all of the adversaries and have settled a number of them.

The Trustee asserts that the counsel for the parties engaged in settlement discussions and communicated for an extended period of time to attempt to reach a settlement. The Trustee states that the majority of the documents needed by the Defendant are in the control of the Defendant. As such, the Trustee does not believe that such substantial additional time is necessary.

The Trustee reasserts that the dates proposed in the Motion are proper for the instant case.

DISCUSSION

XXXX

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

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

The Motion to Extend Deadlines and Continue Pre-Trial Conference filed by Plaintiff 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 **xxxx**.

7. 11-93722-E-7 KENNETH/CYNTHIA SEAVER
Pro Se

MOTION TO AVOID LIEN OF
AMERICAN EXPRESS
3-18-16 [[28](#)]

Tentative Ruling: The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and American Express on March 18, 2016. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of American Express ("Creditor") against property of Kenneth and Cynthia Seaver ("Debtor"), in pro se, seeks an order to "set aside judgment lien" and for the "Removal of Lien." Motion, p. 1:15-17.5. In the Motion, Debtor alleges:

- A. On October 24, 2011, Debtor filed a Chapter 7 Petition.
- B. Debtor received a discharge in this case, which was then closed on February 6, 2012.
- C. American Express is a creditor which was listed in the bankruptcy case (and presumably whose debt has been discharged).

D. American Express obtained a judgment against Debtor Cynthia Seaver and recorded an abstract of judgment in Stanislaus County on June 16, 2011.

E. The judgement lien continues to remain of record. Debtor has requested that the lien be removed, but American Express has declined.

F. The only property to which the judgment lien had attached was in Oakdale, California (Stanislaus County).

G. That property was "surrendered" by Debtor as part of the bankruptcy. A non-judicial foreclosure occurred in 2012 for that property.

H. 11 U.S.C. § 524(a)(3) states provides that creditors are enjoined from attempting to recover from property of the Debtor acquired after the bankruptcy for a debt which was discharged.

I. Because the debt has been discharged and the only possible property to which it could attached has be foreclosed upon, the judgment is "void and unenforceable."

J. Therefore, Debtor requests that the court issue an order to "avoid and remove this judgment lien."

Identification of Party Issue

The first issue for the court is that the Motion identifies the party against whom relief is requested as "American Express." The Proof of Service states that an entity named "American Express" was served at a post office box in Fort Lauderdale, Florida. Dckt. 30.

The California Secretary of State lists forty corporations and five limited liability companies with the phrase "American Express" in their names. <http://kepler.sos.ca.gov/>. The FDIC lists two federally insured financial institutions with the phrase "American Express" in their names. <https://www5.fdic.gov/idasp/main.asp>.

The court cannot tell which of these forty-five entities is the named party in the Motion.

Service of Process Issue

Service has not been effected as required by Fed. R. Bankr. P. 7004(h). Federal Rule of Bankruptcy Procedure 7004(h) and 9014 require that service be made on federally insured financial institutions by certified mail.

To the extent that th Motion seeks relief against an "American Express" which is a federally insured financial institution, the pleadings have not been properly served. Congress created a specific rule to provide for service of pleadings, including this contested matter, on federally insured financial institution, Federal Rule of Bankruptcy Procedure 7004(h), which provides

(h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless-

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Additionally, the only address served for creditor was a post office box. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

**MOTION DOES NOT SEEK RELIEF WHICH MAY BE GRANTED
PURSUANT TO 11 U.S.C. § 522(f)**

The Motion seeks to have the court avoid and remove the judgment lien as void, in and of itself, and not avoid it as to any specific property. The Bankruptcy Code provides for the avoiding of a judgment lien to the extent it impairs and exemption in property of the Debtor.

(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is-

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5);...

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of-

(I) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

11 U.S.C. § 522(f).

The judgment lien may be avoided only to the extent that it impairs an exemption in exempt property. Debtor does not allege any exemption is impaired, but argues that the lien is void, thus the abstract of judgment should be removed (apparently from the real property records).

The judgment lien may not be avoided to the extent it encumbers non-exempt property or does not impair the exemption. COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 522.11[2].

Here, Debtor does not assert that the judgment lien impairs an exemption.

Application of Discharge Injunction

The effect of a bankruptcy discharge includes the following:

(a) A discharge in a case under this title-

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

While rendering the judgment "void" as a determination of personal liability, it does not void the judgment as it may apply to any liens or right

to enforce the judgment against property. Johnson v. Home State Bank, 501 U.S. 78, 82-82 (1991); COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 514.02[1]. The discharge also enjoins against attempting to enforce the discharged judgment against the debtor personally. However, this does not render the lien, to the extent it exists as of the filing of the bankruptcy case void.

California Law

Debtor cites the court to California law for the proposition that once a foreclosure occurs, the junior liens and interests are terminated. That is true, and to the extent that a foreclosure occurred for the 866 Reinman Court property and the judgment lien was junior in priority to the foreclosing creditor, then the lien would be "wiped out" to the extent that there were no proceeds from the sale to which it attached. However, merely having the lien on that property foreclosed out does not destroy the abstract of judgment as it may apply to other properties. The issue of what happened to the judgment lien of "American Express" is between the foreclosing creditor, the purchaser of the Reinman Court Property at the sale, and "American Express." There is no exemption being asserted by the Debtor with respect the Reinman Court Property and no showing that the judgment lien impairs any such exemption.

Conclusion

It may be that Debtor is attempting to buy real property and the abstract of judgment comes up in a title search. The Debtor must assert its rights that (1) the judgment is void as to a determination of personal liability, (2) the judgment lien cannot attach to any new property acquired by Debtor, since it is void as a determination of personal liability of Debtor, and (3) the statutory injunction prevents the judgment lien from being enforced against any property acquired by Debtor after the filing of the bankruptcy case.

The Debtor cannot have the court order the abstract of judgment "void" and "remove it" from some unspecified place or property. If the judgment lien attached to property before the commencement of the bankruptcy case, even if it was not disclosed in the bankruptcy case, Debtor has not shown grounds to have the lien avoided.

Therefore, for the reasons detailed above, the Motion to Avoid Judicial Lien is denied without prejudice.

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) 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 denied without prejudice.

8. [15-91045-E-7](#) MATTHEW/GERALYN TRUBY MOTION FOR ORDER TO SHOW CAUSE
SJS-2 FOR CONTEMPT
2-16-16 [[41](#)]

Final Ruling: No appearance at the April 7, 2016 hearing is required.

The court having previously issued an order continuing the Motion to 10:30 on May 12, 2016 based on the stipulation of the parties (Dckt. 43), **the matter is removed from the calendar.**

9. [15-90662-E-7](#) GUSTAVO/SANDRA ALVAREZ MOTION TO AVOID LIEN OF
RLF-2 Shane Reich AMERICAN EXPRESS BANK, FSB
3-4-16 [[22](#)]

Final Ruling: No appearance at the April 7, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on American Express Bank, FSB and Michael and Associates, PC on March 4, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of American Express Bank, FSB ("Creditor") against property of American Express Bank, FSB ("Debtor") commonly known as 1121 Wildflower Drive, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$7,168.55. An abstract of judgment was recorded with **Stanislaus** County on March 17, 2015, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$234,777.00 as of the date of the petition. The unavoidable consensual liens total \$109,846.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$175,000.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of American Express Bank, FSB, California Superior Court for Stanislaus County Case No. 2007462, recorded on March 17, 2015 Document No. 2015-0018771-00 with the Stanislaus County Recorder, against the real property commonly known as 1121 Wildflower Drive, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

10. [15-90470-E-7](#) SUSAN FISCOE
HCS-6 David C. Johnston

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
3-10-16 [[61](#)]

Tentative Ruling: The Objection to Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 10, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The objection to debtor's claimed exemptions is sustained. The exemption in the asset identified as the "Pacific Life Insurance Company defined benefit retirement annuity" on amended Schedule C (Dckt. 59 at 2) is disallowed in its entirety. The exemption in the asset identified as "Residence and small subdivision lot at 421 S.W. Fairway Landing, Port Saint Lucie, Florida" on amended Schedule C (Dckt. 59 at 2) is disallowed for all amounts in excess of \$75,000.00.

Chapter 7 Trustee, Gary Farrar ("Trustee"), opposes Susan Fiscoe's ("Debtor") claim of exemption against: (1) annuity identified as Pacific Life Insurance Company benefit retirement annuity ("Annuity") claimed as exempt pursuant to California Code of Civil Procedure § 704.100(c); (2) real property identified as Residence and small subdivision lot at 421 S.W. Fairway Landing, Port Saint Lucie, Florida ("Property") claimed as exempt pursuant to California Code of Civil Procedure § 704.730(a)(3)(A).

Annuity Exemption

The Trustee argues the following points as to why the Debtor's exemption in the annuity should be disallowed:

1. Trustee claims Debtor's exemption should fail because Debtor carries the burden of proof to show the exemption is proper and Debtor has failed to meet that burden.
2. Trustee argues that Debtor is seeking an exemption for an annuity and not a life insurance policy and, therefore, Debtor's attempt to exempt the Annuity fails because §704.100(c) only applies to life insurance policies, not annuities.
3. Trustee additionally claims, even if Debtor met her burden and proved the Annuity exemption should be allowed, Debtor fails because it is not reasonably necessary for the Debtor's support.

Trustee maintains Debtor has the burden to prove the Annuity is exempt, including the burden of showing it is reasonably necessary. In the 9th Circuit, judges have agreed that when it comes to establishing the burden of proof regarding claim of exemption, under California law, it lies on the judgement debtor claiming it. Trustee argues Debtor has not, and cannot, meet the burden of proof that the exemption should be allowed.

The Trustee asserts that California Code of Civil Procedure § 704.100(c) does not apply to annuities and that Debtor has an annuity, not a life insurance policy. Dckt. 61.

Trustee argues Debtor possesses a true annuity and not life insurance. The annuity gives Debtor the right to receive a fixed payment over time, similar to an investment. Debtor purchased the annuity in September 2013 for \$100,000.00, and by doing so, reduced her immediate estate. The terms grants Debtor with 10 years guaranteed fixed payments of \$538.71 per month, with no contingencies. If Debtor lives longer than 10 years, she will still receive the monthly payment amounts. This is a prime example of an investment and not a form of life insurance, because it created no immediate estate for the benefit of others.

Lastly, the Trustee also argues if Debtor can meet her burden that the exemption should be allowed under a life insurance plan, she still fails because "it is not reasonably necessary for support." Section 704.100 limits the exemption to the amount reasonably necessary for "support of the judgement debtor and dependents." Debtor has no dependants that require support. Debtor

also requires no extra support. Debtor currently receives a monthly net income that is higher than her monthly expenses.

Real Property Exemption

Trustee maintains that Debtor's attempt to claim an exemption of \$175,000.00 on the Property fails because Debtor was not 65 years of age when she filed her petition.

APPLICABLE LAW

Cal. Code Civ. Proc. Section 704.100(c) states:

Benefits from matured life insurance policies (including endowment and annuity policies) are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

Cal. Code. Civ. Proc. §707.730(a)(3)(A) states:

For purposes of the instant Objection, California law provides the following homestead exemption:

(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars (\$75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars (\$100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under

Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars (\$25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars (\$35,000) and the sale is an involuntary sale.

(b) Notwithstanding any other provision of this section, the combined homestead exemptions of spouses on the same judgment shall not exceed the amount specified in paragraph (2) or (3), whichever is applicable, of subdivision (a), regardless of whether the spouses are jointly obligated on the judgment and regardless of whether the homestead consists of community or separate property or both. Notwithstanding any other provision of this article, if both spouses are entitled to a homestead exemption, the exemption of proceeds of the homestead shall be apportioned between the spouses on the basis of their proportionate interests in the homestead.

California Code of Civil Procedure § 704.730.

DISCUSSION

The court does not find that the Debtor has met his burden to justify the use of a exemption on the Annuity or the Property. The burden of proof in on the Debtor to show that the Debtor is entitled to an exemption. *In re Tallerico*, 532 B.R. 774, 778 (Bankr. E.D. Cal. 2015); *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015).

The Annuity

First, in order for Debtor to claim an exemption on the Annuity, Debtor must show that is not an investment and an actual life insurance policy. Here, the Debtor has failed on the first level to show that the annuity is an "actual" life insurance policy and not an investment. The crux of the difference between a life insurance and annuity is the timing of the benefit to the estate. The life insurance is a contract "whereby one undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event where the contingent of the unknown event is mortality." *Estate of Short v. Payne (In re Payne)*, 323 B.R. 723, 728 (B.A.P. 9th Cir. 2005). Annuities, on the other hand, are periodic set payments set for a specific time, which offers immediate benefit. *Id.*

Debtor offers no evidence to support the contention that the annuity can qualify under the life insurance exemption. Further, on Schedule C this asset is described as a "defined benefit retirement annuity," for which the exemption is claimed under California Code of Civil Procedure § 704.100(c); "(c) Benefits from **matured life insurance policies** (including endowment and

annuity policies) are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor." [Emphasis added]

Here, based on the evidence presented, Debtor is attempting to exempt an annuity, not benefits from a matured life insurance policy, which does not qualify under California Code of Civil Procedure § 704.100.

Furthermore, even if, *arguendo*, the Debtor's annuity qualified for the exemption, the Debtor has not met the burden to show why the annuity (if it were classified as a life insurance policy) is "reasonably necessary" for support. The Debtor has the burden of proving that the annuity would be reasonably necessary for support. However, as discussed *supra*, the Debtor failed to reach the burden of the annuity qualifying as a life insurance policy.

The Homestead Exemption

As to the homestead exemption, it is settled in the Ninth Circuit that the applicability and validity of exemptions is determined as of the petition date. *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 392 (B.A.P. 9th Cir. 2003); Citing *White v. Stump*, 266 U.S. 310 (1924), and *In re Herman*, 120 B.R. 127, 230 (B.A.P. 9th Cir. 1990). As stated in *White*,

"[t]he point of time which is to separate the old situation from the new in the bankrupt's affairs is the date when the petition is filed. This has been recognized in our decisions. Thus we have said that the law discloses a purpose 'to fix the line of cleavage' with special regard to the conditions existing when the petition is filed, *Everett v. Judson*, 228 U.S. 474, 479, and that -- 'It is then that the bankruptcy proceeding is initiated, that the hands of the bankrupt and of his creditors are stayed and that his estate passes actually or potentially into the control of the bankruptcy court.' *Bailey v. Baker Ice Machine Co.*, 239 U.S. 268, 275; *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U.S. 300, 307.

White v. Stump, 266 at 313.

The date the cleavage in this case occurred, by which the rights and interests of the estate were created, was May 14, 2015. 11 U.S.C. § 541(a). This effectuated the "sale" of whatever interests the Debtor had to the bankruptcy estate and cleaved away from the Estate is that portion of the value of the property is the Debtor's homestead exemption as of May 14, 2015. To claim a \$175,000.00 homestead exemption on the Property, Debtor had to be sixty-five years old as of May 14, 2015. She was not, but was only sixty-four years old.

The court disallows the exemption in the Property commonly known as 421 S.W. Fairway Landing, Port Saint Lucie, Florida for all amounts in excess of \$75,000.00.

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

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

The Objection to Debtor's Claim of Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained and:

- I. The exemption in the asset identified as the "Pacific Life Insurance Company defined benefit retirement annuity" on amended Schedule C (Dckt. 59 at 2) is disallowed in its entirety; and
- II. The exemption in the asset identified as "Residence and small subdivision lot at 421 S.W. Fairway Landing, Port Saint Lucie, Florida" on amended Schedule C (Dckt. 59 at 2) is disallowed for all amounts in excess of \$75,000.00.

11. [10-94580-E-7](#) INDER/KANCHAN WALIA
ICE-1 David C. Johnston

OBJECTION TO CLAIM OF ECAST
SETTLEMENT CORPORATION, CLAIM
NUMBER 5
2-29-16 [[90](#)]

Tentative Ruling: The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers 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.

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)(iii).

Local Rule 3007-1 Objection to Claim.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, eCast Settlement Corporation, creditors, and Office of the United States Trustee on February 29, 2016. By the court's calculation, 38 days' notice was provided. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.)

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007(d)(2). Creditor, Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Objection to Proof of Claim Number 5 of eCast Settlement Corporation is overruled without prejudice.

Irma Edmonds, the Trustee ("Objector") requests that the court disallow the claim of eCast Settlement Corporation ("Creditor"), Proof of Claim No. 5 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$91,117.96. Objector asserts that the Creditor did not provide sufficient documentation to determine the validity of the claim. Additionally, the Debtors have not scheduled the Creditor's claim.

CREDITOR'S OPPOSITION

The Creditor filed an opposition on March 24, 2016. Dckt. 94. The Creditor states that it is the assignee of Citibank (South Dakota), N.A. and filed the Proof of Claim No. 5 on January 25, 2011. The claim is based on pre-petition charges incurred on Debtor Inder Walia's credit card account ending in 7757.

The Creditor asserts that the Proof of Claim was filed in compliance with all rules. The Creditor asserts that the language of Fed. R. Bankr. P. 3001(c)(1) applies to the instant case. Specifically, the Creditor argues that the Proof of Claim attaches the Bill of Sale and Assignment of the account from the original creditor, Citibank, to Creditor, an Explanation of unavailable or Voluminous Documentation Not Attached and an account summary. The Account Summary reflects the labile Debtor's name, redacted account number, original creditor name, account type, open, charge off, and last payment dates, and balance due as of the Debtor's bankruptcy filing.

The Creditor argues that the claim has met its *prima facie* validity and that the Trustee has not sufficiently rebutted that presumption nor provided any grounds to show a basis for exception under 11 U.S.C. § 502(b).

DISCUSSION

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

Fed. R. Bankr. P. 3001 provides the following as to information requirements for a claim:

(c) Supporting information

(1) Claim based on a writing

Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim. . .

(3) Claim based on an open-end or revolving consumer credit agreement

(A) When a claim is based on an open-end or revolving consumer credit agreement--except one for which a security interest is claimed in the debtor's real

property--a statement shall be filed with the proof of claim, including all of the following information that applies to the account:

(I) the name of the entity from whom the creditor purchased the account;

(ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account;

(iii) the date of an account holder's last transaction;

(iv) the date of the last payment on the account; and

(v) the date on which the account was charged to profit and loss.

(B) On written request by a party in interest, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after the request is sent, provide the requesting party a copy of the writing specified in paragraph (1) of this subdivision.

A review of the Proof of Claim No. 5 and the attachments shows that the information necessary to satisfy Fed. R. Bankr. P. 3001 are present. The Trustee does not provide any specifics as to why the claim should be disallowed.

Since it appears that the Proof of Claim No. 5 contains all the information required to be a valid claim pursuant to Fed. R. Bankr. P. 3001, the Trustee must be arguing the real basis for the disallowance should be the fact the Debtor did not schedule the debt. However, the Debtor's failure to report the debt in the schedules does not preclude the Creditor from filing a proof of claim on a valid debt.

Here, the Trustee has not provided any competent evidence or argument that would justify the court disallowing the Proof of Claim No. 5.

Based on the evidence before the court, the objection to the Proof of Claim is overruled.

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

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

The Objection to Claim of eCast Settlement Corporation, Creditor filed in this case by Irma Edmonds, Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 5 of eCast Settlement Corporation is overruled without prejudice

12. [12-90380-E-7](#) PRASIT/SOMTAWIL MOTION TO AVOID LIEN OF
TOG-4 PROMSAWASDI CITIBANK (SOUTH DAKOTA), N.A.
Thomas O. Gillis 3-22-16 [[36](#)]

Tentative Ruling: The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on CitiBank, N.A., Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 22, 2016. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota), N.A. ("Creditor") against property of Prasit Promsawasdi and

Somtawil Konkayun ("Debtor") commonly known as 809 Snead Drive, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,246.63. An abstract of judgment was recorded with Stanislaus County on January 24, 2012, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$63,000.00 as of the date of the petition. The unavoidable consensual liens total \$186,622.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140 (b)(1) in the amount of \$175,000.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Citibank (South Dakota), N.A., California Superior Court for Stanislaus County Case No. 665839, recorded on January 24, 2012, Document No. 2012-0006241-00 with the Stanislaus County Recorder, against the real property commonly known as 809 Snead Drive, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

13. [16-90083](#)-E-7 VALLEY DISTRIBUTORS, MOTION FOR COURT APPROVAL OF
SSA-3 INC. STIPULATED AGREEMENTS FOR
Iain A. MacDonald CONTINUED OPERATION OF DEBTOR'S
BUSINESS, MOTION TO USE CASH
COLLATERAL AND MOTION FOR
ADMINISTRATIVE EXPENSES
3-16-16 [[49](#)]

Final Ruling: No appearance at the April 7, 2016 hearing is required.

The court having previously issued an order granting the use of cash collateral through June 30, 2016 continuing the Motion to 10:30 a.m. on June 16, 2016 (Dckt. 67), **the matter is removed from the calendar.**

14. 16-90083-E-7 VALLEY DISTRIBUTORS, MOTION TO EMPLOY HUISMAN
SSA-4 INC. AUCTIONS, INC. AS AUCTIONEER(S)
Iain A. MacDonald 3-16-16 [[55](#)]

Tentative Ruling: The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 16, 2016. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Employ is granted.

Chapter 7 Trustee, Irma Edmonds, seeks to employ Auctioneer Huisman Auctions Inc., pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel to assist the Trustee in marketing and selling the property of the estate by means of an online public auction with off-site participation in the bidding permitted. The terms of employment is for the Trustee to reimburse all costs and expenses as well as 15% commission on the proceeds of the auction.

The Trustee argues that Counsel's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate

regarding present assets of the estate in which the Trustee believes will bring the most value to the estate as well as establishing reserved prices for selected items to protect the estate's interest.

David Huisman, an associate of Huisman Auctions Inc., testifies that he is representing the Auctioneer will auction the assets identified in Exhibit 1 and 2. Dckt. 58. David Huisman testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

The Trustee is also requesting that the court authorize the Auctioneer to be reimbursed his actual expenses which include:

Expense	Amount
Set up and Check out	\$10,000.00
Administrative Paperwork for 10 days	\$4,000.00
\$100,000.00 bankruptcy bond	\$1,000.00
Advertising, Marketing, & Mailing	\$10,000.00
Internet fee for online auction	\$2,000.00
Credit car fees	\$4,000.00
DMV Costs	\$4,000.00
Liability Insurance	\$2,500.00

The Trustee is requesting that these expenses be authorized to be paid from the gross proceeds of sale, without the need for additional hearing in advance, but subject to final fee and court approval.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided,

the court grants the motion to employ Huisman Auctions Inc. as auctioneer for the Chapter 7 estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit 3, Dckt. 58.

Under the terms of the Auction Agreement, it states that the 15% shall be computed on the "value of all items offered for sale." The court interprets this phraseology to mean "15% of the gross sales price for each item sold by Auctioneer." The court does not authorize the computation of the 15% commission on the "value" of items not sold by the Auctioneer or a theoretical value and not the actual gross sales proceeds for the items sold.

The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

As to the expenses, the Trustee is seeking to have over \$1,000,000.00 worth of assets to be auctioned off. The Auctioneer states that the following expenses are necessary out of pocket expenses in which the Trustee has agreed to pay as part of the agreement.

Given the unique circumstances of the case, the substantial amount of assets being proposed to be auctioned, and the parties, the court will authorize the reimbursement of the following expenses:

Expense	Amount
Set up and Check out	\$10,000.00
Administrative Paperwork for 10 days	\$4,000.00
\$100,000.00 bankruptcy bond	\$1,000.00
Advertising, Marketing, & Mailing	\$10,000.00
Internet fee for online auction	\$2,000.00
Credit car fees	\$4,000.00
DMV Costs	\$4,000.00
Liability Insurance	\$2,500.00

The Trustee is authorized to reimburse the Auctioneer up to 100% of each expense amount specified above.

The fees and expenses are authorized pursuant to 11 U.S.C. § 328 and are subject to review and modification as provided therein.

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

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

The Motion to Employ filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted and the Chapter 7 Trustee is authorized to employ Huisman Auctions Inc. as auctioneer for the Chapter 7 Trustee on the terms and conditions as set forth in the Contingency Fee Employment Agreement filed as Exhibit 3, Dckt. 58; with the 15% Auctioneer's fee to be computed on the gross sales price of each item actually sold by the Auctioneer.

IT IS FURTHER ORDERED that the Trustee is authorized to pay up to 100% of the following expenses:

Expense	Amount
Set up and Check out	\$10,000.00
Administrative Paperwork for 10 days	\$4,000.00
\$100,000.00 bankruptcy bond	\$1,000.00
Advertising, Marketing, & Mailing	\$10,000.00
Internet fee for online auction	\$2,000.00
Credit car fees	\$4,000.00
DMV Costs	\$4,000.00
Liability Insurance	\$2,500.00

The above fees and expenses fees and expenses are authorized pursuant to 11 U.S.C. § 328 and are subject to review and modification as provided therein.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

15. 16-90083-E-7 VALLEY DISTRIBUTORS, MOTION TO SELL
SSA-5 INC. 3-16-16 [[60](#)]
Iain A. MacDonald

Tentative Ruling: The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers 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.

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 whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 16, 2016. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described specifically in Exhibits 1 and 2, Dckt. 63, which includes miscellaneous lumber, fencing material, siding, door interior, molding, fiberglass doors, special orders, tools, trucks, and motor vehicles.

The Movant seeks authority to sell the Property through auction. The Trustee believes that an auction will allow the Property to be exposed to a

large number of prospective purchasers which will result in the best possible price.

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: xxx.

After review of the Motion and supplemental documents, the court determines that papers show there is no conflict of interest and that the employment of David Huisman of Huisman Auctions, Inc. is proper. On April 7, 2016 the court authorized the employment David Huisman of Huisman Auctions, Inc.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The terms of the sale provides for the most value for the estate in the sale of the Property from the Debtor's closing business. An auction will provide for the highest amount for the benefit of the estate.

Additionally, the proposed compensation structure of David Huisman of Huisman Auctions, Inc. is standard and also in the best interest of the estate. It allows for the Auctioneer to perform the public auction and to receive compensation based on the success of said auction, and provides for the reasonable reimbursement of standard expenses.

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 Irma Edmonds the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Iain MacDonald, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) through David Huisman of Huisman Auctions, Inc. At public auction the Property referenced in Exhibits 1 and 2, Dckt. 63, on the following terms:

1. The Property shall be sold through public auction conducted by David Huisman of Huisman Auctions, Inc., and as further provided in this Order.
2. The Trustee is authorized to:
 - (1) pay David Huisman of Huisman Auctions, Inc. a 15% commission on the items actually sold by the Auctioneer; and
 - (2) to pay the following expenses:

Expense	Amount
Set up and Check out	\$10,000.00
Administrative Paperwork for 10 days	\$4,000.00
\$100,000.00 bankruptcy bond	\$1,000.00
Advertising, Marketing, & Mailing	\$10,000.00
Internet fee for online auction	\$2,000.00
Credit car fees	\$4,000.00
DMV Costs	\$4,000.00
Liability Insurance	\$2,500.00

The above fees and expenses fees and expenses are authorized to be paid pursuant to 11 U.S.C. § 328 and are subject to review and modification as provided therein.

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

16. [15-90689-E-7](#) EARLINE GARITSON
MSN-1 Mark S. Nelson

MOTION TO COMPEL ABANDONMENT
2-24-16 [[42](#)]

Final Ruling: No appearance at the April 7, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 24, 2016. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Abandon Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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 Motion to Abandon Property is granted.

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

The Motion filed by Earline Jeannette Garitson ("Debtor") requests the court to order the Trustee to abandon property commonly known as 1313 Floyd Avenue, #134, Modesto, California (the "Property"). This Property is encumbered by the liens of Bank of America, N.A. and Northlake Condominium Association, securing claims of \$75,401.10 and \$11,500.29, respectively. The Debtor also exempted \$16,543.65 in the Property pursuant to California Code of Civil Procedure § 704.730. The Declaration of Earline Jeannette Garitson has been filed in support of the motion and values the Property to be \$102,805.00.

The court finds that the debt secured by the Property exceeds the value of the Property, and that there are negative financial consequences to the Estate retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate, and orders the Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not 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 Abandon Property filed by Earline Jeannette Garitson ("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 to Compel Abandonment is granted and that the Property identified as:

1. 1313 Floyd Avenue, #134, Modesto, California

and listed on Schedule A by Debtor is abandoned to Earline Jeannette Garitson by this order, with no further act of the Trustee required.

17. [14-91197-E-7](#) NICOLAS PEREZ AND MARIA MOTION FOR COMPENSATION FOR
SSA-4 MOSQUEDA DEPEREZ STEVEN S. ALTMAN, TRUSTEES'
Thomas O. Gillis ATTORNEY
3-15-16 [[223](#)]

Tentative Ruling: The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Joint Debtor, Joint Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 15, 2016. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

The Motion for Allowance of Professional Fees is granted.

Steven S. Altman, the Attorney ("Applicant") for Michael D. McGranahan the Chapter 7 Trustee ("Client"), makes a First Interim and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period November 17, 2014 through April 14, 2016. The order of the court approving employment of Applicant was entered on December 2, 2014, Dckt. 22. Applicant requests fees in the amount of \$30,549.00 and costs in the amount of \$883.66.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work

in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including prosecuting adversary proceedings, preparation and attendance at the motion authorizing the Trustee to operate the business, monitoring order to show causes, motion to sell, analysis of claims, and preparation of employment and compensation motions. The estate has \$84,738.21 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

In making this determination, the court notes that the conduct of the Debtors necessitated a significant amount of the legal work in this case. The Trustee was forced to file a motion ordering Debtor to turnover property of the bankruptcy estate. Motion, Dckt. 59. The Motion sought not only turnover of the real properties, but rents and an accounting of rents from the property of the estate which had been taken by Debtor.

Debtor's response to the motion to turnover was to file a motion to dismiss the Chapter 7 case. Dckt. 7. The grounds stated by Debtor was that Debtor's disposable income exceeds the "eligibility requirements" for Chapter 7. Debtor also stated that the case should be dismissed because Modesto Irrigation District was pursuing a claim against Debtor for the illegal bypassing of the electric meter on the real property, the tenant using the property to cultivate marijuana. *Id.* In denying the Motion to Dismiss, the court stated the following:

"A review of the case shows that **the case has been riddled with Debtor's attempt to hide behind alleged misunderstanding of the bankruptcy process to hinder the Trustee** and the court from gaining not only a full understanding of the Debtor's estate but also hindering the Trustee from properly administering the estate. The prime example of this hindrance is seen in the Motion to Turnover filed by the Trustee on April 27, 2015. Dckt. 59. Based on the evidence and testimony given, the court issued a chambers prepared order that specifically required that the Debtor and co-Debtor turnover possession of tax returns, accounting of

rents, copies of keys for the properties and copies of insurance. Dckt. 81. In the civil minutes, the court specifically stated that "The Debtor and Debtor's counsel appear to have not responded to any of the Trustee's correspondences and instead requires that the court continue the hearing to be heard with the Debtor's Motion to Dismiss." Dckt. 84. **The failure of the Debtor and Debtor's counsel to communicate effectively with the Trustee raises concerns of the Debtor's good faith prosecution, especially in light of the properties having been transferred post-filing.**

... Both Debtors have demonstrated that they are incapable of providing for creditor claims or administering the assets which are now property of the bankruptcy estate. **Debtors have engaged in a sophisticated "game" of asset transfers to try and hide assets from creditors.** Recently Debtor DePerez who is represented by counsel, has provided the Trustee (pursuant to order of the court) with an accounting of rent monies received. Exhibit 2, Dckt. 108. On this accounting Debtor DePerez states that she has paid the paralegal \$2,000 for bankruptcy services during the period "Aug-Mar." This conflicts with her statement under penalty of perjury that only \$125 was paid to the paralegal for bankruptcy services. Statement of Financial Affairs, Question 9; Dckt. 9.

... **The court also does not find credible the testimony, now prepared with the assistance of counsel, that these two Debtors are uneducated, unsophisticated consumers** who have merely stumbled into bankruptcy by a bankruptcy petition preparer who was dealing from the bottom of the deck. The two Debtors have invested in residential real estate property. Unsophisticated debtors would likely have just deposited the \$100,000 and other monies in the bank instead of becoming landlords.

Then, when facing litigation with Modesto Irrigation District, these "unsophisticated" Debtors had deeds executed to place title to their real property in the name of another family member. **A truly unsophisticated debtor would not have hatched such a fraudulent conveyance scheme.** Then the Debtors sought out and obtained a bankruptcy petition preparer to file bankruptcy, having fraudulently transferred the real property to a family member, so that they could just discharge their debt and walk away from creditors, their real property hidden in the name of the family members. **This pattern of conduct not only shows a level of sophistication, but an intentional plan to defraud creditors and the court.**

... Even after the appointment of counsel, **Debtor and co-Debtor have refused to comply with orders of this court and turn over properties of the estate to the Trustee.** When pressed, they "assisted" the Trustee by having the family member reconvey title to the two real properties fraudulently conveyed. But when they did, it has been reported to the court

that title was not reconvened to the Trustee, who as the representative of the estate was entitled to the property, but back to Debtor DePerez, who is not entitled to the property of the estate. 11 U.S.C. §§ 541, 704.

Civil Minutes, Dckt. 110 [emphasis added].

The court's ruling on the Motion to Turnover property reviews the failure of the Debtor to respond to the Trustee's requests, and ultimate demands, to provide information and turnover the property. Civil Minutes, Dckt. 84.

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.

Adversary Proceedings: Applicant spent 8.2 hours in this category. Applicant assisted Client with engaging two separate adversary proceedings based on fraudulent conveyance of two properties and turnover and damages of the estate. Adversary Proceeding Case Nos. 14-09030 and 14-09031. Both properties were ultimately conveyed back to the estate and sold.

Asset Analysis and Recovery: Applicant spent 2.6 hours in this category. Applicant reviewed the potential assets of the estate and causes of action. The Applicant researched third party interest in property and county searches for liens. The Applicant prepared motions to authorize the Trustee to operate the business and to use cash collateral.

Asset Disposition: Applicant spent 14.5 hours in this category. Applicant prepared the Motion to sell the properties and reviewed the sale terms and escrow agreement. The Applicant monitored the closing and advised on the proper distribution of the sale proceeds. The Applicant also worked with Debtor's counsel and MID to resolve MID's claim.

Business Operation: Applicant spent 9 hours in this category. Applicant prepared a motion to authorize the Trustee to operate the business. The Applicant prepared 3/30 day notice to tenants for rental properties of the estate. The Applicant informed tenants that future rents should be forwarded to the Trustee or agent thereof.

Case Administration: Applicant spent 40.75 hours in this category. Applicant reviewed the filings of the Debtor, communicated with the Trustee on the employment. The Applicant reviewed the detailed and complex assets of the Debtor to determine any viable assets. The Applicant communicated with the Debtor's counsel and third parties concerning the assets of the estate. The Applicant monitored the case, as well as orders to show cause, to ensure the case is expeditiously and fruitfully proceeding.

Analysis of Claims: Applicant spent 14.8 hours in this category. Applicant reviewed the claims filed, specifically the Modesto Irrigation District Claim. The Applicant appeared at a 2004 examination along with MID. The Applicant discussed the basis of the claims with MID and continued

substantive negotiations to settle the claims. A Motion to Approve Compromise was filed and granted.

Preparation of Fee and Employment Applications: Applicant spent 9.3 hours in this category. Applicant prepared the initial motion for the appointment of the Applicant and broker. Filed First and Final Fee Applications for the Applicant, CPA and Bab Brazeal.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Steve Altman, Esq	101.65	\$300.00	\$30,495.00
Dawn Darwin, paralegal	.6	\$90.00	\$54.00

Total Fees For Period of Application			\$30,549.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$883.66 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$212.96
Photocopies	\$0.10	\$251.50
Certification Fee of Notice of Withdrawal of Les Pendens	\$12.00	\$12.00
Recording Fee for Notice of Les Pendens	\$23.00	\$23.00
Court Call	\$41.20	\$41.20
Filing Fee - Bankruptcy Court	\$176.00	\$176.00

Notice to Pay Rent or Quit - A Professional Process Service	\$90.00	\$90.00
Certification - Notice of Pendency (USCB)	\$12.50	\$12.50
Record Notice of Pendency (Stanislaus County Recorder)	\$26.00	\$26.00
Certification - Notice of Pendency (USCB)	\$12.50	\$12.50
Record Notice of Pendency (Stanislaus County Recorder)	\$26.00	\$26.00
Total Costs Requested in Application		\$883.66

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Interim Fees in the amount of \$30,594.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs and Expenses

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as on-line access to bankruptcy and state law and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include Court Call. No information has been provided to the court by Applicant that these cost items were extraordinary expenses than one would expect for Applicant providing professional services to Client to be changed in additional to the professional fees requested as compensation. The court disallows \$41.20 of the requested costs.

The First and Final Costs in the amount of \$842.46 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$30,594.00
Costs and Expenses	\$842.46

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

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

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

The Motion for Allowance of Fees and Expenses filed by Steven S. Altman ("Applicant"), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Steven S. Altman is allowed the following fees and expenses as a professional of the Estate:

Steven S. Altman, Professional Employed by Trustee

Fees in the amount of \$30,594.00
Expenses in the amount of \$842.46,

IT IS FURTHER ORDERED that the costs of \$41.20 are not allowed by the court.

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

18. [14-91197-E-7](#) NICOLAS PEREZ AND MARIA MOTION FOR COMPENSATION FOR
SSA-5 MOSQUEDA DEPEREZ ATHERTON AND ASSOCIATES, LLP,
 Thomas O. Gillis ACCOUNTANT(S)
 3-15-16 [[229](#)]

Tentative Ruling: The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Joint Debtor, Joint Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 15, 2016. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

The Motion for Allowance of Professional Fees is granted.

Atherton and Associates, LLP, the Accountant ("Applicant") for Michael D. McGranahan the Chapter 7 Trustee ("Client"), makes a First Interim and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period November 20, 214 through February 13, 2016. The order of the court approving employment of Applicant was entered on December 17, 2014, Dckt. 38. Applicant requests fees in the amount of \$3,088.00.

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). 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 professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work

in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including analyzing the tax liabilities of the Debtor, prepare the relevant tax documents, and file the Debtor's tax return. The estate has \$84,738.21 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and 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 Analysis and Preparation of the Returns: Applicant spent 15.9 hours in this category. Applicant assisted Client with discussing tax liabilities of the Debtor, corresponded with necessary parties to obtain all information, project incomes, and prepare and file 2016 tax return.

Fee and Employment Application: Applicant spent .6 hours in this category. Applicant prepared the information for the instant Application.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Maria Stockman, Partner	7.10	\$230.00	\$1,633.00

19. [14-91197-E-7](#) **NICOLAS PEREZ AND MARIA** **MOTION FOR COMPENSATION FOR PMZ**
SSA-6 **MOSQUEDA DEPEREZ** **REAL ESTATE, BROKER(S)**
3-15-16 [[235](#)]

Tentative Ruling: The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Joint Debtor, Joint Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 15, 2016. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

The Motion for Allowance of Professional Fees is granted.

Bob Brazeal, the Real Estate Broker ("Applicant") for Michael D. McGranahan the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period December 5, 2014 through July 2, 2015. The order of the court approving employment of Applicant was entered on July 27, 2015, Dckt. 117. Applicant requests fees in the amount of \$220.00.

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). 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 professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable

[as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including researching the public equity, determining any possible equity in the property, performed a physical inspection and reviewed comparable sales. The estate has \$84,738.21 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and 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.

Appraisal: Applicant spent 2.0 hours in this category. Applicant assisted Client with researching the public equity, determining any possible equity in the property, performed a physical inspection and reviewed comparable sales.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Bob Brazeal	2	\$110.00	\$220.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00

	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	<u>\$0.00</u>
Total Fees For Period of Application			\$220.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$220.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees \$220.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Bob Brazeal ("Applicant"), Real Estate Broker for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Bob Brazeal, Professional Employed by Trustee

Fees in the amount of \$ 220.00,

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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