UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 22, 2021 at 10:30 a.m.

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1. 21-20448-E-7 **GEORGIA MILES** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Pro Se **4-5-21 [40]**

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on April 7, 2021. The court computes that 13 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $32.00 due on March 22, 2021.

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

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $32.20.

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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

2. **21-20257-E-7** **LESLIE CLASON** **MOTION TO COMPEL ABANDONMENT**
Stacie Power **3-24-21 [20]**

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

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

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

Sufficient Notice Not Provided. The Proof of Service is missing the attachment showing the parties served. Thus, the court is unable to determine whether the proper parties were served.

At the hearing xxxxxxxx

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

The Motion to Compel Abandonment is ~~granted~~.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is 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 Leslie Wayne Clason ("Debtor") requests the court to order Gary Farrar ("the Chapter 7 Trustee") to abandon property commonly known as Les' Plumbing, Debtor's plumbing business ("Property"). The Declaration of Debtor has been filed in support of the Motion, Debtor does not provide a valuation of the Property and simply declares that the Property "and all tools and equipment used therewith" are exempt. Dckt. 22.

The Chapter 7 Trustee has no opposition to the relief requested. Trustee's March 29, 2021 Docket Entry Statement.

The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

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

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

The Motion to Compel Abandonment filed by Leslie Wayne Clason ("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 the Property identified as Les Plumbing, Debtor's business and listed on Schedule A / B by Debtor is abandoned by Gary Farrar, ("Trustee") to Leslie Wayne Clason by this order, with no further act of the Trustee required.

3. **15-24664-E-7** **WILFRED DORAY**
HSM-5 **Scott De Bie**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK & MAROIS, LLP FOR AARON A. AVERY, TRUSTEES ATTORNEY(S)
4-1-21 [84]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on April 1, 2021. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Hefner, Stark & Marois, LLP, the Attorney ("Applicant") for Geoffrey Richards, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 18, 2017, through April 22, 2021. The order of the court approving employment of Applicant was entered on June 14, 2027. Dckt. 51. Applicant requests fees in the amount of $14,973.50 and costs in the amount of $152.70. However, to support administrative solvency of the estate, Applicant agrees to voluntarily reduce their requested distribution to $3,366.14, or such amount that will enable Trustee to be paid Trustee's $500.00 commission and pay unsecured creditors in this case $501.00. Motion, ¶3.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include standard case initiation activities, advising Trustee in developing and asset administration strategy, and advising and representing Trustee in estate asset disposition. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 16.3 hours, including 5.3 at no charge, in this category. Applicant performed standard case initiation activities, analyzed an exemption issue, and drafted application to employ Trustee's first real estate agent.

Efforts to Assess and Recover Property of the Estate: Applicant spent 5.1 hours, including 0.3 at no charge, in this category. Applicant assisted Trustee to develop an asset administration strategy, reviewed issues regarding discrepancies in property descriptions, and communicated with real estate auctioneer.

Efforts to Dispose of Property of the Estate: Applicant spent 38.9 hours, including 13.5 at no charge, in this category. Applicant advised and represented Trustee in long-term efforts to sell a real property asset, advised in sale negotiation issues, and reviewed property sale documentation.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. However, in this case, Applicant has provided for a reduced rate and the fees are broken down as follows:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Aaron A. Avery	38.60	N/A	$13,829.50
Howard S. Nevins	2.60	N/A	$1,144.00
	0	$0.00	$0.00
Total Fees for Period of Application			$14,973.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $0.00 pursuant to this application.

The related costs in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	$0.25	$56.50
Court Call		$63.70
Court Fees		$32.50
		$0.00
Total Costs Requested in Application		$0.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

Reduced Rate

Applicant seeks to be paid a single sum of $3,366.14 for its fees and costs incurred for Client. First and Final Fees and Costs in the amount of $3,366.14 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees, Costs and Expenses $3,366.14

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 Hefner, Stark & Marois, LLP ("Applicant"), Attorney for Geoffrey Richards, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Hefner, Stark & Marois, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Hefner, Stark & Marois, LLP, Professional employed by the Chapter 7 Trustee
>
> Fees, Costs and Expenses in the amount of $3,336.14,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay 100% of the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

4. **19-21976-E-7** **CONQUIP, INC.** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ALLIED MACHINING AND ENGINEERING, INC.**
DNL-15 **Eric Nyberg** **3-24-21 [160]**

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

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

Sufficient Notice Not 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 24, 2021. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

Movant did not provide sufficient notice as required by the Bankruptcy Code and the local rules. At the hearing xxxxxxxx

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

The Motion for Approval of Compromise is granted.

J. Michael Hopper, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Allied Machining and Engineering, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are in regards to Adversary Proceeding No. 20-02125 in which Movant seeks to avoid transfers of about $3.48 million in damages and disallowance of Settlor's Claims (the "AME Claim") against the Estate (Proof of Claim Nos. 23-1 and 23.2).

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 163):

A. Settlor shall pay Movant $75,000.00 ("Settlement Payment").

B. Adversary Proceeding no. 20-02125 and the AME Claim shall be disallowed with prejudice.

C. If there is an uncured default by Settlor to make timely payment of any portion of the Settlement Payment, or the Declaration by Settlor's CFO was materially inaccurate, a stipulated judgment may be entered in favor of Movant against Settlor in the amount of $3.48 million.

D. The parties shall exchange mutual releases.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

Under the terms of the settlement, all claims of the Estate, including any pre-petition claims of Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

This factor supports approving the agreement because Settlor has provided discovery responses that if proven at trial would support new value and ordinary course of business defenses to the preference claim and defeat the fraudulent transfer claim. Trustee's counsel has advised that the Settlement Agreement is a fair and equitable result, accounting for the risk of litigation.

Difficulties in Collection

This factor supports approval because the declaration by Settlor's CFO raises serious doubts about Movant's ability to make an affirmative recovery.

Expense, Inconvenience, and Delay of Continued Litigation

This factor supports approval because and continued litigation with Settlor will require time and expense that is avoidable by the Settlement Agreement.

Paramount Interest of Creditors

It is Movant's opinion (as Trustee) that the Settlement Agreement is in the best interest of the Estate. The $75,000.00 Settlement Payment and 66% claim pool reduction will assure return to other creditors. Thus, the Settlement Agreement is in the paramount interest of creditors.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the Settlement Agreement avoids expensive and time consuming litigation that even if successful in judgment for Movant, serious doubt exists as to Movant's ability to make an affirmative recovery. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by J. Michael Hopper, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Allied Machining and Engineering, Inc. ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 163).

5. **13-20890-E-7** **DIRK/KATHLEEN TRONE** **MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS**
TBG-3 **Pro Se**
5 thru 7 **4-6-21 [38]**

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

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

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

Sufficient Notice Not Provided. No Proof of Service filed. The court is unable to determine whether interested parties were properly served. At the hearing xxxxxxxx

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

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

This Motion requests an order avoiding the judicial lien of Unifund CCR Partners, a New York Partnership ("Creditor") against property of the surviving debtor, Kathleen Wyna Trone ("Debtor") commonly known as 7801 Slug Gulch Road, Somerset, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $27,053.53. Exhibit C, Dckt. 40. An abstract of judgment was recorded with El Dorado County on April 22, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $250,000 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $416,061 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 33. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Amended Schedule C. Dckt. 33.

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

ISSUANCE OF A COURT-DRAFTED ORDER

An order 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 surviving debtor Kathleen Wyna Trone ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Unifund CCR Partners, a New York Partnership, California Superior Court for El Dorado County Case No. PCL20101486, recorded on April 22, 2011, Document No. 2011-0018640-00, with the El Dorado County Recorder, against the real property commonly known as 7801 Slug Gulch Road, Somerset, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

6.	**13-20890-E-7** **TBG-4**	**DIRK/KATHLEEN TRONE** **Pro Se**	**MOTION TO AVOID LIEN OF DISCOVER BANK** **4-6-21 [43]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Co-Debtor, Co-Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2021. 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). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of the surviving debtor, Kathleen Wyna Trone ("Debtor") commonly known as 7801 Slug Gulch Road, Somerset, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $9,090.35. Exhibit C, Dckt. 46. An abstract of judgment was recorded with El Dorado County on December 21, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $250,000 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $416,061 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 33. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Amended Schedule C. Dckt. 33.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no

equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order 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 surviving debtor Kathleen Wyna Trone ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Discover Bank, California Superior Court for El Dorado County Case No. PCL20110604, recorded on December 21, 2011, Document No. 2011-0060895-00, with the El Dorado County Recorder, against the real property commonly known as 7801 Slug Gulch Road, Somerset, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

7. **13-20890-E-7** **DIRK/KATHLEEN TRONE** **MOTION TO AVOID LIEN OF**
TBG-5 **Pro Se** **PROFESSIONAL COLLECTION CONSULTANTS**
4-6-21 [48]

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on April 6, 2021. By the court's calculation, 16 days' notice was provided. 28 days' notice is required.

Movant did not provide the number of days for notice as required by the Bankruptcy Code and the local rules. At the hearing xxxxxxxx

The Motion to Avoid Judicial Lien has been not set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered. Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

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

This Motion requests an order avoiding the judicial lien of Professional Collection Consultants ("Creditor") against property of the surviving debtor, Kathleen Wyna Trone ("Debtor") commonly known as 7801 Slug Gulch Road, Somerset, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $11,122.50. Exhibit C, Dckt. 51. An abstract of judgment was recorded with El Dorado County on July 18, 2012, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of

$250,000 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $416,061 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 33. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Amended Schedule C. Dckt. 33.

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

ISSUANCE OF A COURT-DRAFTED ORDER

~~An order 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 surviving debtor Kathleen Wyna Trone ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the judgment lien of Professional Collection Consultants, California Superior Court for El Dorado County Case No. PCL20110971 recorded on July 18, 2012, Document No. 2012-0034929-00, with the El Dorado County Recorder, against the real property commonly known as 7801 Slug Gulch Road, Somerset, 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.~~

This Status Conference was set by Order of the Court, Docketed April 19, 2021 (Dckt. 208).

The Status Conference is xxxxxxx

APRIL 22, 2021 CHAPTER 7 STATUS CONFERENCE

In the review below, the court has copied verbatim what was stated by the court in the Order scheduling a second Chapter 7 Status Conference in this case. The court has done this so the parties can recognize that this portion of the court's Minutes (which are posted as part of the court's tentative and final rulings the day before the hearing for the parties to review) are materials they have already had the opportunity to review.

In reviewing the Docket, the court notes that the hearing on the Substitution of Counsel in which Peter Macaluso, Esq. seeks to withdraw and Shon and Jill Treanor (collectively "Debtor") desire to substitute in *pro se* to represent themselves is set for hearing on May 27, 2021. As addressed below, the court discussed this matter with the Debtor and Mr. Macaluso.

The court notes that also set for hearing on May 27, 2021, is an Objection to Claim #9-1 filed by Steven C. Sanders, of Sanders & Associates, former counsel for Debtor in a state court trust matter proceeding. The Objection is thirty-three (33) pages in length and addresses numerous federal and state law issues.

At the core of many pleadings filed by Debtor, including the Objection to Claim, is a desire (as discussed below) to have the bankruptcy court adjudicate the various rights and correct the various wrongs Debtor believes has been visited upon them by numerous persons, governmental officials, fiduciaries, and former (including allegedly their current) attorneys.

xxxxxxx

REVIEW OF BASIS FOR STATUS CONFERENCE ORDER
(Information stated in Status Conference Order)

On June 30, 2020, Shon Treanor and Jill Treanor ("Debtor") commenced this voluntary Chapter 7 case. They were represented by counsel. As has been expressed by Debtor, they believe that various state courts and state and county entities, along with attorneys who have represented them, the trustee and counsel hired by the trustee of the Cheryl Gortemiller Living Trust U/T/A have engaged in fraud, malpractice, and failure to perform their duties to the detriment of Debtor and related family members of Debtor. On November 3, 2020, the court granted the motion of Debtor's then counsel of record to withdraw from further representation based on a breakdown in the attorney-client relationship and what were presented as irreconcilable differences between that counsel and Debtor. Order and Civil Minutes; Dckts. 36, 35. On March 3, 2021, Debtor's current counsel of record substituted in to

represent Debtor. Dckt. 137.

Debtor's current counsel of record has filed various responses, oppositions, and other documents assisting Debtor in asserting their rights and interests in this Bankruptcy Case. Now, a substitution for that counsel to withdraw and Debtor to return to in *pro se* representation has been filed.

Pro Se Pleadings Filed by Debtor or by Debtor For Other _Pro Se_ Persons

On April 16, 2020, a series of pleadings were filed with the Clerk by Debtor. Some of these purport to be for the Debtor in *pro se* (representing themselves and not by counsel) and also by other persons in *pro se*. The court summarizes these pleadings below. As with earlier comments made by Debtor when in *pro se*, Debtor indicates a belief that a bankruptcy court is in the nature of a super powered "investigator-prosecutor-judge" in which all rights, interests, and disputes can be addressed from all jurisdictions in one central location. Such a belief is inconsistent with Article III of the United States Constitution which limits jurisdiction of federal courts, 28 U.S.C. § 1334, the bankruptcy jurisdiction statute enacted by Congress, and the exercise of federal judicial power by bankruptcy judges.

Summaries of the latest pleadings filed by Debtor in *pro se* are as follows.

A. **"Objection to Settlement Created to Defend Founded Fraud by Prior Legal Malpractice Contributed to Defrauding the Cheryl Gortemiller Estate Over the Treanor's Rights and Legal Wishes Officially,**" Docket Control No. DNL-10,[1] Dckt. 199.

B. This "Objection" appears to be to the Trustee's Motion for approval of a settlement with Karen Fisher, the former trustee of the Cheryl Gortemiller Living Trust U/T/A, and that trustee's counsel, Joseph Morrill.

C. This Objection reviews allegations of fraud and improper conduct by various persons, including the current Chapter 7 Trustee and his counsel in proposing the settlement, Debtor's former State Court counsel Steven Sanders, a Judge of the California Superior Court, Chery Gortemiller's counsel Stan Blyth, Debtor's current counsel, Jeffery Pape (former counsel for Mark Bandy, Debtor's cousin), Donna Standard, Terry Novack (former care giver for Wayne and Mary Bandy), Fresno Public Guardian Heather Kruthers, and Detective Larry Swain.

D. This Objection surveys many nonbankruptcy alleged transgressions and wrongs which Debtor seeks to have investigated and adjudicated in, and by, the federal

[1] In creating the docket control numbers, Debtor has used the "DNL" designation, which is that used by counsel for the Trustee. Debtor, not being attorneys, do not appear to understand the requirement of the Local Bankruptcy Rules that requires each party to use a unique letter designation for their motions, objections, and other pleadings. They have used unique numbers for each of the set of pleadings to go with the DNL designation, so no confusion as to what contested matter the pleadings relate, but some possible initial confusion thinking that it is the Trustee who is initiating the contested matters.

court.

E. This Objection also demonstrates a misunderstanding of the role of a judge in the federal court, and the limited jurisdiction of a bankruptcy judge exercising jurisdiction pursuant to 28 U.S.C. § 1334. The Objection includes the following:

1. "We both as filing parties of a Joint Bankruptcy 20-23267-E-7 were told to file a Bankruptcy under the Federal Rules to be used to expose the known fraud used to harm our Estate in State Court." Objection, p. 1:22.5-23; Dckt. 199.

2. "You Judge Sargis instructed Mr. Macaluso to help if needed to open a warranted criminal investigation that now has been deliberately side stepped by Hank Spacone and his private counsel Russell Cunningham." *Id*., p. 1:30-32.

3. "Now we are lied to again and told we do not deserve a real trial in Bankruptcy Court and will not have one. Pete Macaluso warned us that no Bankruptcy Court will allow us a Jury Trial and we are not entitled to one." *Id*., p. 3:4-5.5.

4. "I am attaching my prior filed petition again as evidence before you Judge Sargis since you know we filed once before on official records. Now I am using the correct Court Docket filing number designed for Federal Bankruptcy Court on our sole behalf as victims of continuous fraud over our entire family." *Id*., p. 3:20-23.

5. "This Federal Bankruptcy law [28 U.S.C. § 1334] exposes a Federal Bankruptcy Court can hold jurisdiction over lower Court if it is deemed necessary/required." *Id.,* p. 6:1-1.5.

6. "This is why we are now boldly demanding you order a criminal investigation for our family to seek justice for the known fraud and crimes used to harm us by designs directed to retaliate for Jill Treanor and I reporting Detective Larry Swain for falsifying a Crime Report to protect the known Elder Abuse produced solely by Terry Novack over the Bandy's." *Id*., p. 6:17-19.5.

7. "We want a real trial and ask you allow us one before you Judge Sargis for more than good cause. It is our Constitutional right to be heard and tell our truths on official Court records." *Id*., p. 7:17-18.5.

8. "Please help us seek justice for all fraud used to steal our rights and livelihood away from us by the known designed fraud from the start. Help us get our lives back where they deserve to be from our loving family's true wishes that never needed or deserved to be sabotaged in State Court." *Id*., p. 7:20-22.5.

9. "Wherefore, Jill D. Treanor and Shon J. Treanor, respectfully request to finally get a fair trial we deserve before a Federal Judge who will actually care about our lives and respect our rights to tell the real truth behind our story before him. We want a full jury trial before you Judge Sargis with our true evidence and witnesses who can tell our horrific nightmare of a story of willful malice used by every attorney to destroy our lives for the past 7 years straight." *Id*., p. 7:23.5-26, 8:1-2.

10. "We did and need help getting our stolen monies and properties returned to all rightful owners which also include Mark Bandy as well." *Id*., 8:5-6.

F. In reviewing the above, it appears Debtor does not understand the federal bankruptcy process, law, jurisdiction, and duties of a federal bankruptcy judge. The court address this below.

II. The **"Declaration of Pete Treanor to Expose Fraud Used By Sanders"** is filed using the Docket Control Number DNL-11. Dckt. 200. The Declaration recounts various events and alleged misconduct taken against Debtor and Debtor's extended family.

III. A **"Motion of Objection to Fraudulent Claims by Steven Sanders"** is filed by Debtor using Docket Control No. DNL-12. Dckt. 201. While titled as a Motion, it is a declaration by Mark Bandy. The Declaration recounts alleged misconduct and fraud by various persons against Debtor and Debtor's extended family.

IV. A **"Declaration of Dennis Gortemiller to Expose All Fraud Used"** is filed using Docket Control No. 14. Dckt. 202. The Declaration recounts alleged misconduct and fraud by various persons against Debtor and Debtor's extended family.

V. A **"Request for Automatic Stay Order Until Real Probate is [Held] for Warren and Mary Bandy Estate is Legally Corrected That Exposes Mark Bandy as Sole Heir Over His Rightful Estate to Confirm Intended Fraud Used Over Us All by Design"** is filed using Docket Control No. DNL-15. Dckt. 203.

A. In this "The Treanor family, Gortemiller Family, and Bandy family request the Probate of Wayne and Mary Bandy be reopened and the real Wills of Wayne and Mary Bandy be lodged officially so the truth behind the real fraud used to target the Cheryl Gortemiller Estate in Solano County Superior Court case FPR PR 046489 can be verified and set the records straight as they are legally required to be from the beginning on." Request for Automatic Stay, p. 1 23-25; Dckt. 203.

B. "Our case demands and stands for the proposition that 18 U.S.C. § 152 nor 11 U.S.C. § 105 create a private right of action against a creditor for filing a false claim." *Id*., p. 2:1-2.

C. The Request recites various wrongs done to Debtor and Debtor's extended family by various persons.

D. "Rule 9011 appropriately is deserved to be exposed and used in our direct case for

the sole purpose our entire family was defrauded by the same fraud used to harm us all from the very beginning." *Id*., p. 2:12-13.5.

E. "We are confident that Rule 9011 provides an adequate remedy for dealing with baseless proofs of claim. See In re Wingerter, 394 B.R. 859, 868 (6th Cir. BAP 2008) (Rule 9011 applies to proof of claim abuse and court "should test the signer's conduct by inquiring what was reasonable to believe at the time the [claim] was submitted."); Rogers v. BReal, L.L.C. (In re Rogers),391 B.R. 317, 323 (Bankr.M.D.La.2008) ("Rule 9011 can be used to sanction a creditor that files a proof of claim without proper prefiling investigation and support."); In re Dansereau, 274 B.R. 686, 68 8-89 (Bankr.W.D.Tex. 2002); In re McAllister, 123 B.R. 393, 395 (Bankr.D.Or.1991) Adair v. Sherman, 230 F.3d 890, 895 n. 8 (7th Cir.2000) (Rule 9011 applies to filing fraudulent proofs of claim)." In re Chaussee, 399 B.R. 225, 240 (B.A.P. 9th Cir. 2008)." *Id*., p. 2:16.5-21.5.

F. Debtor cites to 11 U.S.C. § 105(a) as the basis for the court exercising federal judicial power to sanction patterns of bad faith by imposing civil sanctions.[2]

G. That the Supreme Court decision in "Midland" is not a per se bar to a debtor asserting a violation of the Federal Fair Debt Collection Practices Act with respect to the filing of a proof of claim. *Id*., p. 3:20-25.5, p. 4:1.5-3.

H. "We are not only required to produce the real evidence, but now are required to take action in our own names again in PRO SE from Peter Macaluso's refusal to help us open a criminal investigation for the known fraud you Judge Ronald Sargis were promised would take place on our behalf." *Id*., p. 4:4-6.

I. "We respectfully ask you Judge Ronald Sargis to demand Peter Macaluso to release any evidence if held against its return and he be now investigated himself for aiding fraud over our family now. We want the legal Deposition Transcripts given to him submitted to the Court to expose the fraud produced by Karen Fisher herself and her attorney Joe Morrill to steal over 1 million in cash from our Estate on purpose. We want the video submitted as well because it exposes Joe Morrill using his pen to tap and get Karen Fisher to not answer a directed question that incriminates her and him. We want the multiple emails given to be now recorded and added to our evidence as well. We want Mark Bandy to be finally given his rightful ink copies to lodge with the Fresno Probate Court on his behalf to be ordered for him and us as direct parties with legal authority and heirs to the Bandy Estate." *Id*., p. 5:25.5, 6:1-6.

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[2] As this court has addressed on a number of occasions in unrelated cases, civil sanctions orders by the bankruptcy judge (as opposed to an Article III district court judge) must be corrective in nature and not punitive. Corrective includes not only compensation for damages caused, but also as may be reasonably necessary to deter such conduct in the future. *See Lee v. Farrar (In re Gold Strike Heights Homeowners Ass'n)*, 2017 Bankr. LEXIS 1115, *5 (B.A.P. 9th Cir. 2017).

VI. Filed as Docket Entry No. 204 is a pleading titled **"Exhibits of Evidence Requiring Mark Bandy's Fresno Probate to be Reopened to Validate Known Fraud Used and Seek Prosecution of Parties Who Willfully Aided Known Fraud Before the Courts,"** with Docket Control No. DNL-16.

A. The Exhibit is dated March 20, 2021, and is titled "Objection to Prior Probate Final Accounting and Closures Based on Founded Fraud Committed Against Me and Family Estates by Heather Kruthers, Jeffrey Pap, and Donna Standard." Exhibit, p. 1:14-15.5; Dckt. 204. This is signed by Mr. Bandy under penalty of perjury. There are a series of Exhibits attached to the Exhibit.

VII. The final pleading filed is document titled **"Substitution of Attorney for Debtor,"** which is consistent with the allegations made in the various other pleadings filed by Debtor on April 16, 2021. The Substitution is signed by Shon Treanor, Jill Treanor, and Peter Macaluso, the then attorney of record for Debtor. Dckt. 207.

Need For Chapter 7 Status Conference

Debtor's case was filed and has been prosecuted in the COVID-19 restricted access environment in which all proceedings have been conducted telephonically. From the pleadings filed, it does appear that Debtor has experience in multiple state court jurisdictions. It has been and is abundantly clear that Debtor has a firm belief that multiple attorneys, some judges, county heath services representative, investigators, and now the bankruptcy trustee and that trustee's counsel have all worked to steal assets and harm Debtor and Debtor's extended family.

From these pleadings, Debtor has also clearly stated the belief that every attorney, except possibly one, that has worked for them have defrauded and schemed against them, that Debtor now asks the court to undertake ordering an investigation and prosecution of Debtor's asserted claims of wrongs against Debtor and Debtor's extended family. In an earlier pleading, Debtor filed a "Motion to Demand Federal Investigation on Founded Fraud;" DCN-PGM-2 (renumbered after Debtor obtained counsel), Dckt. 111; in which Debtor states:

> Because of a jurisdictional game used to deny and refuse our family our due process rights, **we were told to file Bankruptcy with the Federal Courts by the Boston FBI field office**.
>
> The **Boston FBI field office instructed us to file this case before the Court and demand a full investigation by the Federal Judge who is assigned**. This gives our family direct jurisdiction of the known and validated fraud used to target us all. **This gives the Federal Court the right and privilege to protect our family** and **seek back any and all damages** once a criminal investigation by the FBI starts.

Demand, p. 2:13-20; Dckt. 111 (emphasis added).

This court is uncertain as to why an FBI field office in Boston would provide legal advice to Debtor to file bankruptcy. The court is also unaware of what legal basis exists for any "advice" given by

the FBI field office that by filing bankruptcy and demanding a federal judge to conduct an investigation, the federal judge would then investigate as demanded. Federal investigations are conducted by the investigatory branch of the government and by such agencies, departments, and bureaus as the Federal Bureau of Investigation. FBI agents should be aware that federal judges do not investigate and do not prosecute, but are the judges who adjudicate cases brought before the judges. The lead federal prosecutors are the U.S. Attorneys for the various federal districts throughout the country.

While Debtor may not be aware of the intricacies of the federal judiciary structure, bankruptcy judges are appointed as "Article I judges," meaning that they are judges created to adjudicate specific, Congressionally created federal law issues, and they are not Article III judges who exercise the full Constitutional power of the judiciary arising under Article III of the Constitution. Other Article I judges who readily come to mind are judges of the United States Tax Court and the United States Immigration Court.

As noted by Debtor, when Congress created federal court jurisdiction for bankruptcy cases, there is an unusually broad grant of authority pursuant to 28 U.S.C. § 1334 - all matters arising under the Bankruptcy Code, all matters arising in the bankruptcy case, and all matters related to the bankruptcy case. This last category drags in just about any and all state law issues and disputes into federal court - an exception to the normal strictures of Article III of the United States Constitution limiting the exercise of federal judicial power specified in Article III, § 2 of the Constitution:

> The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.
>
> In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.
>
> The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Using the Constitution mandate for Congress to create a uniform bankruptcy law throughout the nation, the "laws of the United States" provision above is the basis of bringing into federal court claims and disputes that are related to a bankruptcy case that could never constitutionally see the light of day in federal court.

In creating non-Article III bankruptcy judges, Congress has set off decades of Supreme Court

litigation over what the Article I bankruptcy judges could adjudicate as a matter of right, what they could adjudicate with the consent of the parties, and what requires final adjudication by *de novo* review has to be done by an Article III district court judge. This begins with the 1982 Supreme Court decision in *Northern Pipeline Construct Co. v. Marathon Pipe Line Co. et al.*, 458 U.S. 50 (1982), which is only about two and one-half years after the Bankruptcy Code went into effect on October 1, 1979, through (currently) *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665 (2015), addressing the scope of, limitations to, and the exercise of federal judicial power by Article I bankruptcy judges and Article III district court judges.

The federal judicial process, and the exercise of federal judicial powers by a bankruptcy judge is not a wide open, take on, review, investigate, and overturn decisions and rulings of other courts. It is not an open door for various non-debtor and non-creditor parties to come in to find a forum of convenience. It is not a "federal investigator" nor "director of investigations" of other federal branches of government.

The court has tried to explain this in earlier hearings, but it appears that Debtor has the belief that by filing bankruptcy, the federal bankruptcy judge takes over the assets of Debtor, controls the rights of Debtor, investigates and then prosecutes the rights and property of Debtor. This misconstrues the statutory roles, duties and powers of the federal judges, bankruptcy trustees, debtor, creditors, and the U.S. Trustee.

Debtor clearly believes that Debtor has been serious and systematically aggrieved. It appears that while perceiving such harm dating back to 2007, Debtor and Debtor's family have not been able to enforce those perceived rights. Debtor's engagements with attorneys have all, but possibly one case, have ended on sour notes and litigation.

The court has summarized the bankruptcy process, scope of a bankruptcy judge's powers and duties, and the federal judicial process above, and has not provided a treatise style citation of authorities. That can be addressed with respect to specific matters as appropriate.

At this juncture, the key matter to address is the need for Debtor to advocate, investigate, and prosecute Debtor's claims and rights – whether bankruptcy and bankruptcy related claims and rights in federal court, probate matters in state court, or non-bankruptcy litigation in state or district court (if a Constitutional bases for the exercise of federal judicial power exists).

If Debtor believes that crimes have been committed, then Debtor can contract the proper state and federal investigatory or prosecutorial authority – such as the state district attorney, state police or sheriff, the California Attorney General, the U.S. Attorney, and the U.S. Trustee as examples.

It appears that this may be a juncture in this case where the bankruptcy judge needs to "look" the Debtor in the eye (whether COVID virtually or in person) and Debtor needs to look the judge in the eye to communicate effectively. While Debtor may be passionate about the perceived wrongs, that passion must be properly channeled to be productive.

The court will conduct a telephonic status conference in this Chapter 7 case in conjunction with the hearings on various motions in this case that are set for hearing at 10:30 a.m. on April 22, 2021. The court will address these issues at that time and discuss with the parties whether they believe that conducting an in-person Status Conference, with COVID-19 procedures in place and no other matters or

persons for any other cases being in the courtroom, would be beneficial.

9.	**20-23267-E-7** **DNL-4**	**SHON/JILL TREANOR** **Peter Macaluso**	**CONTINUED MOTION TO COMPROMISE CONTROVERSY /APPROVE SETTLEMENT AGREEMENT WITH DEBTORS AND SANDERS & ASSOCIATES** **2-4-21 [85]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is xxxxx.

Hank Spacone, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Sanders & Associates ("Settlor"). The claims and disputes to be resolved by the proposed settlement are all related state court cases and adversary proceeding related to Debtor's 100% beneficial interest in the Cheryl Gortemiller Living Trust U/T/A March 12, 2014 ("CGLT ") and Settlor's attorney's fees in successfully representing Debtor in a probate court case.

March 8, 2021 Stipulation

On March 8, 2021, the parties filed a Stipulation agreeing to continue DNL-4, DNL-5, DNL-6, and DNL-7 to April 22, 2021 at 10:30 a.m. Dckt. 160. The court granted the motion stipulating to the

continuance on March 10, 2021. Dckt. 171.

Debtor's Opposition

On April 16, 2021, Debtor filed a "Motion of Objection to Fraudulent Claims by Steven Sanders," while titled as a Motion, it is a declaration by Mark Bandy. For purposes of this hearing, the court construes this to be an "Objection" to the instant compromise sought to be approved by Trustee with Sanders & Associates. Dckt. 201. Debtor objects on the basis that according to them Settlor engaged in fraud against them as it pertained to CGLT assets while he was acting as their counsel in probate court.

This "Objection" includes allegations of fraud and improper conduct by various persons, including Debtor's former State Court counsel Steven Sanders, Chery Gortemiller's counsel Stan Blyth, Debtor's current counsel, Jeffery Pape (former counsel for Mark Bandy, Debtor's cousin), Donna Standard, and Terry Novack (former care giver for Wayne and Mary Bandy).

REVIEW OF THE MOTION

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 89):

A. Sanders shall receive from all funds received by the bankruptcy estate on account of the Debtors' interest in the CGLT ("Post-Petition Recovery"), the sum of $245,005 plus 30% of the Post-Petition Recovery (collectively "Settlement Payment").

B. Upon Sanders' receipt of the entire Settlement Payment, the State Court Cases and AP #20-02160 shall be dismissed with prejudice, with the parties bearing their own attorney fees and costs.

C. The Trustee and Sanders will exchange broad mutual releases.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

Probability of Success

The proposed Settlement Amount's formula reflects a discount of the contingency attributable to the expected Post-Petition Recovery from the Fairfield Property (reduced from 35% to 30%). Together with the proposed settlement's waiver of loans, sanctions, attorney fees and costs aggregating about $75,000, the Settlement Amount is at least $100,000 less than the best result the Trustee could hope to achieve, assuming the approximate $1 million pre-petition award is set aside. Moreover, pursuit of the Debtor's asserted damage claims against Settlor based on his work on the CGLT matter and purchase of firearms from the Debtors in 2017 would likely result in undue consumption of legal and judicial resources and expose the estate to claims for malicious prosecution and abuse of process.

Difficulties in Collection

The proposed compromise establishes a clear path to administration of the estate's interest in the CGLT, and through that the Fairfield Property, for the benefit of creditors.

Expense, Inconvenience, and Delay of Continued Litigation

Any continued litigation with Settlor will require time and expense that is avoidable by the Agreement.

Paramount Interest of Creditors

It is the Trustee's opinion that the Agreement is in the best interest of the estate because the Agreement will result in an efficient administration of the Debtor's estate as well as ensure a return to creditors on account of the CGLT, while saving estate resources otherwise associated with continued litigation.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because xxxx. The Motion is xxxxx.

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

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

The Motion to Approve Compromise filed by Hank Spacone, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Sanders & Associates ("Settlor") is xxxxx.

10. 20-23267-E-7 DNL-5 — SHON/JILL TREANOR — Peter Macaluso — CONTINUED MOTION TO COMPROMISECONTROVERSY /APPROVE SETTLEMENT AGREEMENT WITH KAREN L. FISHER AND JOSEPH M. MORRILL — 2-4-21 [92]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is xxxxx.

Hank Spacone, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Karen L. Fisher and Joseph M. Morrill ("Settlor"). The claims and disputes to be resolved by the proposed settlement are final compensation

claims related to Debtor's interest in the Cheryl Gortemiller Living Trust U/T/A March 12, 2014. Movant states that the principal remaining asset of which is real property improved by a residence ("Fairfield Property") commonly known as 4390 Emerald Ridge Lane, Fairfield, CA 94534.

Karen L. Fisher acted as trustee of the CGLT from 2014 through 2018 and Joseph Morrill acted as her attorney in the probate court case. The Probate Court approved her final accounting and discharged her as trustee of the trust.

Debtor's Opposition

On March 3, 2021, Debtor filed an Opposition and Request for a continuance of this motion on the basis that Debtor had only recently obtained counsel and due to the complexity of the motion and the significant funds at issue, Debtor requested a 30 day continuance to allow for a comprehensive opposition.

March 8, 2021 Stipulation

On March 8, 2021, the parties filed a Stipulation agreeing to continue DNL-4, DNL-5, DNL-6, and DNL-7 to April 22, 2021 at 10:30 a.m. Dckt. 160. The court granted the motion stipulating to the continuance on March 10, 2021. Dckt. 171.

Debtor's Limited Opposition

On April 9, 2021 Debtor filed a Limited Opposition, stating that although not opposed to the settlement amount, Debtor requests a post-final order accounting of remaining assets, a post-petition accounting of expenses incurred by Fisher, the assignment of the "rights to the BP claim," and the G. Moretech, Inc. stocks which are additional assets to be distributed to Debtor so that the court can determine the "net" value in computing the contingency fee for Joseph Morrill. Dckt. 180.

Trustee's Reply

On April 13, 2021 Trustee filed a Reply. Dckt. 193. Trustee asserts that the probate court awarded Morrill $80,000 in fees, which the Trustee is compromised down to a combined $60,000, where Fisher receives $4,342.50 and Morrill receives $55,657.50. Moreover, Trustee contends that Debtor's request for accounting can be resolved through formal discovery for their objection to the Sanders & Associate claim.

The Reply does not address that Debtor asserts that if they succeed on the objection to claim it would require a change or denial, for some unstated reason, of the settlement.

Debtor's Motion of Objection

On April 16, 2021, Debtor filed a "Objection to Settlement Created to Defend Founded Fraud by Prior Legal Malpractice Contributed to Defrauding the Cheryl Gortemiller Estate Over the Treanor's Rights and Legal Wishes Officially," which motion the court has deemed to be an Objection to the instant compromise sought to be approved by Trustee with Settlor. Dckt. 199. Debtor objects on the basis that according to them Settlor engaged in fraud and improper conduct such as breach of duty and excessive attorney's fees charges as it pertained to CGLT assets.

This Objection reviews allegations of fraud and improper conduct by various persons, including the current Chapter 7 Trustee and his counsel in proposing the settlement, Debtor's former State Court counsel Steven Sanders, a Judge of the California Superior Court, Chery Gortemiller's counsel Stan Blyth, Debtor's current counsel, Jeffery Pape (former counsel for Mark Bandy, Debtor's cousin), Donna Standard, Terry Novack (former care giver for Wayne and Mary Bandy), Fresno Public Guardian Heather Kruthers, and Detective Larry Swain.

REVIEW OF THE MOTION

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 96):

A. Settlor shall: (a) consent to distribution of the Fairfield Property from the CGLT to the Trustee; and (b) from the funds recovered by the Trustee on account of the Fairfield Property, Fisher shall receive $4,342.50 and Morrill $55,657.50, for a total of $60,000.00 (collectively "Settlement Payment").

B. Upon receipt of the entire Settlement Payment, Settlor shall dismiss their final compensation applications from the Trust Case with prejudice, with the parties bearing their own attorney fees and costs.

C. The Trustee and Settlor will exchange broad mutual releases.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

Probability of Success

Trustee argues that Settlor would likely prevail on their $82,000 request pending before the State Court and the proposed $60,000 Settlement Payment reflects a $22,000 discount. Further, there is also little doubt that Settlor would successfully defend the Legal Malpractice Claim and Surcharge Claim because the claims are time barred as more than one year has passed since the Debtor discovered or reasonably should have discovered the cause of action.

Difficulties in Collection

The proposed compromise establishes a clear path to administration of the estate's interest in the CGLT, and through that the Fairfield Property, for the benefit of creditors.

Expense, Inconvenience, and Delay of Continued Litigation

Any continued litigation with Settlor will require time and expense that is avoidable by the Agreement.

Paramount Interest of Creditors

It is the Trustee's opinion that the Agreement is in the best interest of the estate because the Agreement will result in an efficient administration of the Debtor's estate as well as ensure a return to creditors on account of the CGLT, while saving estate resources otherwise associated with continued litigation.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because xxxx. The Motion is xxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Hank Spacone, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Karen L. Fisher and Joseph M. Morrill ("Settlor") is xxxxx.

11. **20-23267-E-7 DNL-7** **SHON/JILL TREANOR Peter Macaluso** **CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 3-8-21 [162]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 8, 2021. By the court's calculation, 45 days' notice was provided. 14 days' notice is required.

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

The Objection to Claimed Exemptions is xxxxx.

The Chapter 7 Trustee, Hank Spacone ("Trustee") objects to Shon Jason Treanor and Jill Diana Treanor's ("Debtor") claimed exemptions under California law on the basis that Debtor's claimed homestead exemption should be conditioned upon payment of $34,300 to Trustee and the claimed personal injury exemption is neither based on nor derivative of personal bodily injury.

California Code of Civil Procedure Section 704.730

California Code of Civil Procedure Section 704.730 provides in part:

(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.

C.C.P. § 704.730.

Debtor claimed $100,000 as exempt over the real property 4390 Emerald Ridge Lane, Fairfield, California valued at $1,100,000. Amended Schedule C, Dckt. 139.

California Code of Civil Procedure Section 704.140

California Code of Civil Procedure Section 704.140 allows a debtor to exempt a cause of action for personal injury without making a claim:

> (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for personal injury is exempt without making a claim.
>
> (b) Except as provided in subdivisions (c) and (d), an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.
>
> (c) Subdivision (b) does not apply if the judgment creditor is a provider of health care whose claim is based on the providing of health care for the personal injury for which the award or settlement was made.
>
> (d) Where an award of damages or a settlement arising out of personal injury is payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5.

C.C.P. § 704.140.

Debtor claimed as exempt $500,000 of a personal injury claim in the amount of $1,000,000. The claim is described as: "Malpractice claim against Steven Sanders." Amended Schedule C, Dckt. 139.

DISCUSSION

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir.

B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

The court begins with a review of the case as it pertains to the claimed exemptions. After employing attorney Peter Macaluso as their counsel, Debtor filed amended exemptions.

Review of Schedules C

Debtor's Original Schedule C filed June 30, 2020, while Mr. Gabe Liberman was serving as Debtor's attorney, the trailer related to Mr. Fraley was exempted under the Wildcard Exemption. Dckt. 1 at 19-21.

Debtor's First Amended Schedule C filed August 24, 2020, while Mr. Liberman was still serving as Debtor's attorney, did not claim a homestead exemption nor did it claim as exempt a malpractice claim. Dckt. 19 at 9-11. This time the Wildcard Exemption for the trailer was deleted but was used for claims against Mr. Gary Fraley.

The specific schedule at issue is the Second Amended Schedule C. This Second Amended schedule was filed on March 3, 2021 by Debtor's newly hired attorney, Peter Macaluso. The Schedule was amended to change all exemptions pursuant to § 704 rather than § 703. Dckt. 139 at 9-10.

Additionally, new assets disclosed and exemptions claimed are stated as follows:

> $1,100,000 interest in Gortemiller Trust
> $100,000 homestead exemption claimed
>
> $1,000,000 malpractice claim against Sanders
> $500,000 personal injury exemption claimed

Id.

The Homestead Exemption

With respect to the homestead exemption, the Objection only asserts that the homestead exemption should be conditioned on Debtor paying $34,300 to the estate or reduce the homestead exemption to $65,700 from the claimed $100,000.

The Personal Injury Exemption

For the personal injury exemption, Trustee argues that the malpractice claim is for a property dispute and is not a personal injury claim. However, Trustee notes that there can be personal injury, emotional distress, arising from malpractice.

Moreover, Trustee theorizes that this claiming of an exemption, which was in the original Schedule C, is an attempt to derail efforts by Trustee to settle with Sanders & Associates. *See* Dckt. 85.

Trustee's Declaration

Trustee filed his Declaration in support of the Objection. Dckt. 164. Trustee's declaration

provides very little information as well except for statements where Trustee "understands" and tells the court what is on the court's file and what he has read in state court files.

The Trustee's declaration (Dckt. 164) includes other "grounds"and basis for contending that the Debtor should not be allowed to amend the exemptions. It should be noted that this being an objection, and not a motion, the court is unable to use these materials for purposes of obtaining grounds for the relief requested. Nevertheless, the court lists the "grounds" included: (identified by declaration paragraph number):

> 2. Debtor consumed about $700,000 in trust assets pre-petition, with there being withdrawals by attorneys Matthew Bishop and Daniel Russo. Trustee "understands" that Sanders prevailed in protracted litigation. He further "understands" that the Debtor's interest in the trust estate was determined to be $2.6MM. He "understands" this by the Trustee's reading of the state court files and then proceeds to tell the court what he "hears" the documents he read say.
>
> 3. In reliance on the prior Schedules filed by Debtor, Trustee abandoned the estate's interest in the trailer to Debtor so they could prosecute and recover on the claim against Fraley.
>
> 4. In reliance on the prior Schedules filed by Debtor, Trustee entered into a settlement with Sanders. Trustee, in reliance on the prior Schedules, incurred $2,300 in attorney's fees relating to the Fraley abandonment and $10,400 in the Sanders settlement.
>
> [. . .]
>
> 6. On March 3, 2021, Debtor's amended the schedules to state the Sanders malpractice claim has a value of $1,000,000 and they claim a $500,000 exemption in it.

Declaration at 2.

Debtor's Response

Debtor asserts that there are emotional distress damages that are part of the malpractice claim. Dckt. 183. Specifically, Debtor states with respect to Sander's claim (POC 9-1), it is asserted that the "Decision" is not based on a final order. (The court is unsure as what Decision is being referenced.) It is also asserted that the Agreement with Sanders is void on the basis that the contingency fee of 35% was based on a gross value and not "net" value.

The court notes that the June 8, 2020 decision attached to POC 9-1 appears to be final, determining that Debtor owes Sanders $1,001,372.60 in attorney's fees and costs.

The Response also discusses the dispute with Mr. Fraley and because Fraley took the trailer, which was improper, Debtor should get a $100,000 homestead exemption.

Trustee filed a Reply asserting that no evidence in opposition has been presented, and is based on baseless arguments made in the objection to claim (PGM-3). Dckt. 194.

Decision

The Objection gives very little information or grounds for such objection. First, as it pertains to the objection to the homestead exemption, the Objection fails to state why such payment condition or reduction is proper. Though citing the court to a bankruptcy court decision in another District, the Trustee offers no legal analysis or authority for the court to "wack down" an exemption. *See Law v. Siegel*, 571 U.S. 415 (2014), relating to reducing monetary exemptions. While reduction or adjustment is not per se prohibited, it must be based on applicable law.

As to the personal injury exemption, the Trustee cites to and explains that the amounts must relate to a personal injury, which can include emotional distress. The issues and claims in connection with claims against Sanders are asset based, and not emotional distress or other physical injuries.

Moreover, no analysis is provided as to limitations on amending exemptions. Indeed while arguing that Debtor should not be allowed to amend, Trustee fails to provide any legal basis as to why Debtor should not be allowed to amend or should have an offset against the exemption. Trustee provides no state law analysis of when a debtor may be barred from claiming an exemption.

The Objection is **xxxxxxx**.

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 Objection to Claimed Exemptions filed by the Chapter 7 Trustee, Hank Spacone ("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 xxxxx.

12. **20-23267-E-7 DNL-6** **SHON/JILL TREANOR** **Peter Macaluso** **CONTINUED MOTION FOR TURNOVER OF PROPERTY 2-4-21 [99]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2021. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Turnover of Property is xxxxx.

Hank Spacone, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 4390 Emerald Ridge Lane, California ("Property").

March 8, 2021 Stipulation

On March 8, 2021, the parties filed a Stipulation agreeing to continue DNL-4, DNL-5, DNL-6, and DNL-7 to April 22, 2021 at 10:30 a.m. Dckt. 160. The court granted the motion stipulating to the continuance on March 10, 2021. Dckt. 171.

DISCUSSION

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

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

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

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

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

Debtor filed a Statement of Non-Opposition requesting that the Motion be granted. Dckt. 142. This was filed by Debtor's current counsel, for which a Substitution of Attorney is pending.

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

At the hearing xxxxxxxx

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

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

The Motion for Turnover of Property filed by Hank Spacone, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

~~**IT IS FURTHER ORDERED** that Shon Jason Treanor and Jill Diana Treanor ("Debtor"), and each of them, shall deliver on or before xxxx, 202x, possession of the real property commonly known as 4390 Emerald Ridge Lane, Fairfield, California ("Property"), with all of their personal property, personal property of any other persons that Debtor, and each of them, allowed access to the Property, and any other person or persons that Debtor, and each of them, allowed access to the Property removed from the Property.~~

FINAL RULINGS

13. **19-26574-E-7** **SEAN ALMEIDA** **CONTINUED MOTION FOR AN ORDER**
DNL-5 **Timothy Walsh** **TO SHOW CAUSE**
2-16-21 [47]

Final Ruling: No appearance at the April 22, 2021 hearing is required.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, Office of the United States Trustee on February 16, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

A review of the Certificate of Service states that this Federally Insured Credit Union was served in compliance with Federal Rule of Bankruptcy Procedure 7004 and 9014 by service as follows:

Bryan M. Grundon
Law Office of Bryan M. Grundon
Attorney for Navy Federal Credit Union
16870 West Bernardo Drive, Suite #400
San Diego, California 92127

Federal Rule of Bankruptcy Procedure 9014(b) provides that when commencing a contested matter, service of the motion, application, or objection shall be made in the manner required for a subpoena as provided in Federal Rule of Bankruptcy Procedure 7004.

For an FDIC insured financial institution, the Supreme Court provides in Federal Rule of Bankruptcy Procedure 7004(h):

> (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) [Fn.1.] 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.

FN. 1. The term "Insured Depository Institution" is defined in 12 U.S.C. § 1813(c)(2) as:

(2)Insured depository institution

The term "insured depository institution" means any bank or savings association the deposits of which are insured by the Corporation pursuant to this chapter.

The National Credit Union Administration website identifies Navy Federal Credit Union as a Federally Chartered credit union that is federally insured. [Fn.2.]

FN. 2. https://mapping.ncua.gov/SingleResult.aspx?ID=5536&IsCorpCU=0.

No appearance has been made by an attorney for Navy Federal Credit Union in this Contested Matter (or even in this case). It is not clear how Navy Federal Credit Union has been served as required by the Federal Rules of Bankruptcy Procedure with this Motion for sanctions.

At the hearing, counsel reported that this is being addressed.

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

The Motion for an Order to Show Cause having been dismissed by Movant without prejudice (Dckt. 53), **the matter is removed from the Calendar.**

J. Michael Hopper, the Chapter 7 Trustee ("Movant"), seeks an order to show cause why a contempt citation should not be issued against Navy Federal Credit Union for its failure to respond to

Trustee's subpoena. Movant requests this order on the basis of the following allegations:

A. Debtor has an interest in real property located at 22 Solano Drive, Dixon, California ("Property"). The interest was held as a joint tenancy with Debtor's wife, Becky Almeida.

B. Debtor's wife filed a petition for dissolution on May 3, 2016 and a judgment of dissolution was entered on February 7, 2019, with the state court reserving jurisdiction over unadjudicated issues including property division.

C. A preliminary title report for the Subject Property has identified that it is subject to an abstract of judgment in favor of Navy Federal CU, which was recorded on March 7, 2018 ("Abstract").

D. The judgment debtor in the Abstract is Becky individually. Debtor is not a named judgment debtor in the Abstract.

E. On December 16, 2020, Navy Federal CU was served with a subpoena to produce documents ("Subpoena") with a December 31, 2020 deadline to produce documents responsive to the Subpoena. Navy Federal CU filed no challenge to the Subpoena. Navy Federal CU failed to respond to the subpoena.

F. Trustee communicated with Navy's Counsel on two occasions. On January 4, 2021, Counsel Navy responded to Trustee's email that he would follow up. On January 20, 2021 Trustee again communicated with Navy's Counsel but received no response.

DISCUSSION

Failure to comply with a subpoena without adequate excuse is governed by Federal Rule of Civil Procedure 45. Specifically, FRCP 45(g) provides that

> (g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Fed. R. Civ. P. 45(g). Rule 45 of the Federal Rule of Civil Procedure has been incorporated as Federal Rule of Bankruptcy Procedure 9016, and applies in adversary proceedings, contested matters, contested or involuntary petitions, Rule 2004 examinations and all other matters in a bankruptcy case in which testimony may be compelled. Failure to obey a subpoena is punishable as a contempt of the issuing court. *Riley v. Sciaba (In re Sciaba)*, 334 B.R. 524, 526 (Bankr. D. Mass. 2005); Fed. R. Civ. P. 45(g).

This court has the authority to enforce its subpoenas and orders. *Fernos-Lopez v. U.S. Dist. Ct.*, 599 F.2d 1087, 1090 (1st Cir. 1979). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*,

564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a). The purposes of sanctions in a civil contempt proceeding are to coerce the contemnor into complying with an order of the court and to compensate the harmed party for losses sustained on account of the contempt. *Riley v. Sciaba (In re Sicaba)*, 334 B.R. 524, 526 (Bankr. D. Mass. 2005), citing to *In re Power Recovery Systems, Inc.*, 950 F.2d 798, 802 (1st Cir. 1991).

Here, Trustee argues that Trustee has engaged in good faith efforts to obtain documents related to the judgment as sought by the subpoena. Navy has failed to respond to the subpoena and no explanation has been provided as to its delay or lack of response. Thus, Trustee argues that Navy Federal Credit Union has no excuse for failing to respond to the subpoena and the court should issue an order for Navy Federal Credit Union to show cause why a contempt citation should not be issued.

Trustee served this motion to counsel for Navy Federal Credit Union. The subpoena was also served on Counsel for Navy Federal Credit Union. *See* Exhibit A, Dckt. 50.

Request for Dismissal

On March 19, 2021, the Trustee filed a Request for Dismissal without prejudice of the application for an order to show cause.

Trustee having filed a Request for Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion for an Order to Show Cause was dismissed without prejudice, and the matter is removed from the calendar.**

14. **14-22884-E-11 GEL-2** **RAYMOND/ROSA KING** **Gabriel Liberman** **MOTION FOR ENTRY OF DISCHARGE** **3-17-21 [154]**

Final Ruling: No appearance at the April 22, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 17, 2021. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Discharge is granted.

The Motion for Entry of Discharge has been filed by Raymond Donald King and Rosa Lina King ("Debtor"). 11 U.S.C. § 1141(d)(5)(A) permits the court's discharge of debts provided for in a plan when all payments have been made.

Debtor's Declaration (Dckt. 156) certifies that Debtor:

A. has completed the plan payments;

B. does not have any delinquent domestic support obligations;

C. has completed a financial management course and filed the certificate with the court;

D. has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case;

E. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and

F. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

There being no objection, Debtor in Possession is entitled to a discharge.

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 Entry of Discharge filed by Raymond Donald King and Rosa Lina King ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the court shall enter the discharge for Raymond Donald King and Rosa Lina King in this case.

15. **14-25184-E-7 LBG-2** **15 thru 16**

ALEXANDRA HASTINGS
Lucas Garcia

MOTION TO AVOID LIEN OF CITIBANK, N.A.
3-23-21 [21]

Final Ruling: No appearance at the April 22, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 23, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against property of the debtor, Alexandra Christina Hastings ("Debtor") commonly known as 105 Terrace Street, Auburn, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $11,031.09. Exhibit 2, Dckt. 24. An abstract of judgment was recorded with Placer County on January 26, 2012, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $165,000 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $312,064.21 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $8,967.90 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

An order 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 Alexandra Christina Hastings ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Citibank, N.A., California Superior Court for Placer County Case No. MCV0051707, recorded on January 26, 2012, Document No. 2012-0006682-00, with the Placer County Recorder, against the real property commonly known as 105 Terrace Street, Auburn, 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.

16. **14-25184-E-7 LBG-3** | **ALEXANDRA HASTINGS** **Lucas Garcia** | **MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB 3-23-21 [26]**

Final Ruling: No appearance at the April 22, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 23, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of American Express Bank, FSB ("Creditor") against property of the debtor, Alexandra Christina Hastings ("Debtor") commonly known as 105 Terrace Street, Auburn, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,912.64. Exhibit 2, Dckt. 29. An abstract of judgment was recorded with Placer County on October 10, 2012, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $165,000 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $312,064.21 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $8,967.90 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

An order 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 Alexandra Christina Hastings ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of American Express Bank, FSB, California Superior Court for Placer County Case No. MCV0052249, recorded on October 10, 2012, Document No. 2012-0094486-00, with the Placer County Recorder, against the real property commonly known as 105 Terrace Street, Auburn, 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.

17. **15-28797-E-7** **NATALIE GEOFFROY** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM, CRABTREE, SUNTAG FOR DANA A. SUNTAG, TRUSTEES ATTORNEY(S)**
HCS-4 **Pro Se** **3-16-21 [64]**

Final Ruling: No appearance at the April 22, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 16, 2021. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

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

Fees are requested for the period November 16, 2018, through February 10, 2021. The order of the court approving employment of Applicant was entered on February 25, 2019. Dckt. 40. Applicant requests reduced fees in the amount of $6,000.00 and costs in the amount of $313.23.

APPLICABLE LAW

Reasonable Fees

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

the services, by asking:

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include general case administration and analysis of legal issues in recovering unclaimed warrant funds and assets from State Controller. The Estate has $10,027.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 27.7 hours in this category. Applicant prepared Applicant's employment application and the instant application for compensation; reviewed and advised the Trustee about Mr. Elliott's proposed retainer agreement; and prepared and filed an application for authority to employ and for compensation of recovery specialist.

Analysis of Legal Issues in Recovering Unclaimed Warrant Funds: Applicant spent 19.6 hours in this category. Applicant prepared and sent a letter to the County of Sacramento, Department of Auditor-Controller, along with the required supporting documentation, requesting payment of the Warrant to the Trustee.

Analysis of Legal Issues in Recovering Unclaimed Assets from State Controller: Applicant spent 13.5 hours in this category. Applicant conducted an investigation into whether there was additional property belonging to the Debtor, and it identified three properties in the Debtor's name held by the California State Controller; engaged in legal research and communications with the Controller's Office regarding how to claim these assets on behalf of the Trustee; and prepared and sent a letter to the Controller's Office demanding turnover of the Unclaimed Assets.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Dana A. Suntag	5.0	$375.00	$1,875.00

Benjamin J. Codog	49.0	$200.00	$9,800.00
Amy N. Seilliere	4.2	$225.00	$945.00
Amy N. Seilliere	2.1	$150.00	$315.00
Jaismin Kaur	0.5	$245.00	$122.50
	0	$0.00	$0.00
Total Fees for Period of Application			$13,057.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $313.23 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copies	$.10 per page	$226.60
Postage		$45.43
CourtCall Hearing on HCS Fee Application		$41.20
		$0.00
Total Costs Requested in Application		$313.23

FEES AND COSTS & EXPENSES ALLOWED

Fees

Reduced Rate

Applicant seeks to be paid a single sum of $6,000.00 for its fees incurred for Client. First and Final Fees and Costs in the amount of $6,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $313.23 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	$6,000.00
Costs and Expenses	$313.23

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Herum\Crabtree\Suntag ("Applicant"), Attorney for Geoffrey Richards, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:
>
> Herum\Crabtree\Suntag, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $6,000.00
> Expenses in the amount of $313.23,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.