UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

May 9, 2019 at 10:30 a.m.

1.	**19-21976-E-7** **DNL-2**	**CONQUIP, INC.** **Eric Nyberg**	**CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT** **4-10-19 [14]**

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 Lease Parties, Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on April 10, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Reject Lease or Executory Contract is granted.

J. Michael Hopper, the Chapter 7 Trustee ("Movant"), moves to reject the debtor, ConQuip, Inc.'s ("Debtor"), lease with William Cummings for nonresidential property commonly known as 11255 Pyrites Way, Suite 100, Gold River, California (the "Lease").

Federal Rule of Bankruptcy Procedure 1007(b)(1)(C) requires a debtor to file a schedule of executory contracts and unexpired leases. A review of the docket shows that the executory contract is disclosed on Official Form 206G at Line 2.14. Dckt. 1.

APPLICABLE LAW

11 U.S.C. § 365 deals with executory contracts and unexpired leases. For the purpose of this Motion, Section 365 provides in relevant part:

> (1) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

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

DISCUSSION

Here, Movant has demonstrated several sound business judgment reasons for rejecting the Lease. Trustee testifies that Debtor previously manufactured machines at the property subject to the Lease, but ceased operations there on March 1, 2019, and has not conducted business there since. Declaration ¶ 4, Dckt. 16. The Lease provides for base rent of $22,316.03 per month plus operating expenses. *Id.*, ¶ 3. Trustee argues the Lease is no longer necessary and offers no benefit to the Estate either through assumption or assignment.

Upon review of Movant's request and cause shown, the court finds that it is in the best interest of Debtor, creditors, and the Estate to authorize Movant to reject the nonresidential property lease. Therefore, the Motion is granted, and Movant is authorized to reject the Lease pursuant to 11 U.S.C. § 365(a).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Reject Lease or Executory Contract 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 is granted, and Movant is authorized to reject the debtor, ConQuip, Inc.'s ("Debtor"), lease with William Cummings for nonresidential property commonly known as 11255 Pyrites Way, Suite 100, Gold River, California (the "Lease") listed on Official Form 206G at Line 2.14. Dckt. 1.

The rejection of the above Lease is effective upon issuance of this order, no further act of the Chapter 7 Trustee required.

2. **19-22566-E-11 AF-1** **JUANITO COPERO STAY O.S.T.** **MOTION TO EXTEND AUTOMATIC**

4-26-19 [6]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors and Office of the United States Trustee on April 30, 2019. By the court's calculation, 9 days' notice was provided. The court set the hearing for May 9, 2019. Dckt. 12.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Extend the Automatic Stay is granted.

Juanito W. Copero ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-23639) was dismissed on February 11,

2019, pursuant to Debtor's Motion To Dismiss after the requested conversion to Chapter 11 was not granted. *See* Order, Bankr. E.D. Cal. No. 18-23639, Dckt. 95, February 11, 2019. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains he dismissed the Chapter 13 case after an unexpected death in his family caused defaults in payments under the confirmed Chapter 13 Plan. Declaration ¶ 7, Dckt. 7. Debtor determined a Chapter 11 is better suited for his financial situation as Debtor intends to continue running his business while paying off creditors over a longer period than 5 years. *Id*.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. In Debtor's prior case, Debtor fell delinquent in Chapter 13 Plan payments before realizing the case would be better suited for a Chapter 11. Debtor sought conversion to Chapter 11, which was not granted, and voluntarily sought dismissal of the Chapter 13 case to pursue a case under Chapter 11.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by Juanito W. Copero ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

3. **19-21976-E-7 DNL-3** **CONQUIP, INC. Eric Nyberg**

MOTION TO EMPLOY TRANZON ASSET STRATEGIES AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZINGPAYMENT OF AUCTIONEER FEES AND EXPENSES AND/OR MOTION FOR AUTHORITY TO DISPOSE OF ESTATE PROPERTY
4-18-19 [24]

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, and Office of the United States Trustee on April 18, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion To Sell is ~~granted~~.

The Chapter 7 Trustee, J. Michael Hopper ("Trustee") filed this Motion primarily seeking to sell the debtor, ConQuip, Inc.'s ("Debtor") property identified as various office furniture, fixtures, and equipment ("Office Furniture"); a server and associated equipment ("Server"); and industrial and manufacturing machinery and equipment, forklifts, material handling equipment, tools, pallet racks, and miscellaneous parts ("Manufacturing Assets") (collectively the "Property").

Trustee proposes the sale be made by auction, and proposes (and requests authority) to employ Tranzon Asset Strategies ("TAS") as auctioneer on the following terms:

1. Commission of 10 percent of the gross sale proceeds and an additional buyer's premium of 10 percent of the gross proceeds charged to the successful buyer.

2. TAS shall be reimbursed for any expenses incurred in preparing for and conducting the auction in an amount not to exceed $28,500 (the anticipated expenses being: (1) $18,500 for marketing and auction labor expenses; (2) $5,000 for post-auction site clean-up; and (3) $5,000.00 for disposal of hazardous materials).

3. The Estate shall be paid all net proceeds of the sale due the Estate within 30 working days of any auction.

4. All gross proceeds of the sale shall be maintained separate from TAS' personal or general funds and accounts.

Debtor valued the Office Furniture at $10,000.00; the Server at $0.00; and Manufacturing Assets at $49,000.00. However, Trustee asserts (based on the advice of TAS) that at auction the Property would likely realize sale proceeds of $150,000-$200,000.00.

The Property is located at nonresidential property leased by the Debtor commonly known as 11255 Pyrites Way, Suite 100, Gold River, California (the "Leased Property").

Trustee asserts the Leased Property contains hazardous materials, with TAS agreeing to provide necessary toxic and environmental clean-up at an estimated expense of $5,000.00. Trustee further requests approval of a reimbursement to the Trustee of $5,000.00 as an expense for restoring power to the Leased Property because the auction cannot proceed without power at the Leased Property.

Trustee also requests authority to abandon, and then dispose of the business records of Debtor, using the sale proceeds to fund the disposal.

Trustee anticipates net sale proceeds of $48,500.00 calculated as follows:

Gross Sales	**$150,000.00**
TAS Commission	($15,000.00)
Marketing and Auction Labor Expenses	($18,500.00)
Post-Auction Site Clean-Up	($5,000.00)
Disposal of Hazardous Materials	($5,000.00)
Rent ($26,500/month for 2 months)	($53,000.00)
Power Utility	($5,000.00)

Net to Estate	**$48,500.00**

DISCUSSION

The court notes that this Motion attempts to join several claims for relief in one motion.

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

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

Movant has improperly joined several motions, including a motion to sell, use property of the Estate, employ, approve compensation, and abandon property of the Estate.

Here, the court finds the combination of the motion to sell the Property, employ the auctioneer to effectuate that sale, approve of compensation for the auctioneer reasonable in this instance given the nature of the proposed sale.

For reasons discussed below, the requests to abandon and sell the Debtor's business records are denied without prejudice.

Sale of Property of the Estate

The Bankruptcy Code permits the Trustee to sell the property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Trustee proposes auctioning the Property, which Trustee argues would achieve the highest fair market value in a quick and efficient manner. Declaration, Dckt. 26.

However, Trustee also notes that the Server may be encumbered by liens, with Trustee proposing to possibly abandon that property in liue of sale.

At the hearing, xxxxxxxxxxxxxx.

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it is the most efficient way to market the Property and will allow Trustee to obtain estimated net sale proceeds of over $48,500.00 for the Estate.~~

Authority to Employ Auctioneer &
Requested Fees

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the

professional must not hold or represent an interest adverse to the estate and be a disinterested person.

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

Here, Trustee requests authority to employ TAS for the preparation for sale and auction of the Property. The Motion is supported by the Declaration of Mike Walters, the president of TAS. Declaration, Dckt. 27. The Walters Declaration provides testimony that TAS has experience working with bankruptcy trustees in other auctions, that TAS has no agreement to share in the proposed compensation from the sale, that TAS is aware any compensation is subject to 11 U.S.C. § 328, and that TAS has no connection to or conflicts with Debtor or other interested parties.

Also filed in support of the Motion is an engagement agreement providing an overview of the services provided and the employment terms. Exhibit A, Dckt. 28.

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ TAS as Auctioneer for the Chapter 7 Estate.

Requested Fees

Several fees and expenses are requested to be approved, including a 10 percent commission ($15,000.00-$20,000.00); a 10 percent buyer's fee ($15,000.00-$20,000.00); $28,500 in anticipated expenses ((1) $18,500 for marketing and auction labor expenses; (2) $5,000 for post-auction site clean-up; and (3) $5,000.00 for disposal of hazardous materials)); and (though not stated in the Motion) an unspecified buyer's surcharge for online bidders. Exhibit A, Dckt. 28.

While professed to be a "buyer's fee" and not paid by the Trustee, an additional surcharge of 10% that must be paid by any buyer necessarily reduces the price to be paid for the item purchased. In reality, the commission sought is 20%.

All together, the aforementioned fees are estimated (assuming a gross sale price of $150,000.00) to be in the ball park of $58,500.00, with all fees coming from the gross sale price of the Property (as discussed above, the buyer's fees and surcharges are constructively deducted from the gross sale price because any buyer will consider those determining a potential bid).

Trustee has not demonstrated why fees totaling roughly a third of the sale price for the property is necessary or reasonable. The court initially approves only the 10 percent commission to TAS as auctioneer for the Estate, and permits any subsequent request for fees (including buyer's fees) or expenses by subsequent motion.

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

Payment of Expenses Necessary for the Sale of the Property

Trustee requests authority to pay various expenses necessary for the sale of the Property, including two months of rent for the Lease Property where the Property is located (in the amount of $53,000.00) and electricity costs (in the amount of $5,000.00) which Trustee argues is necessary to be able to hold the auction.

Trustee does not specify authority for paying 2 months' rent of the Lease Property through the sale proceeds. Furthermore, Trustee notes Trustee is seeking either reimbursement of the electricity expenses or to use funds of the Estate pursuant to 11 U.S.C. § 363 if they are found to be available.

At the hearing, xxxxxxxxxxxxxx.

Abandonment & Disposal of Business Records

Trustee requests authority to abandon the business records of the Debtor pursuant to 11 U.S.C. § 554 as property of the estate that is burdensome to or of inconsequential value and benefit to the estate. However, Trustee further requests authority to dispose of the business records, and seeks reimbursement from the sale proceeds of the expenses associated with disposal.

This latter request is curious. Once the property is abandoned pursuant to 11 U.S.C. § 554, it then reverts to be property of the Debtor. At that juncture, it is unclear what authority the court could give for the Trustee to dispose of the business records, or to charge the Estate the expense for the disposal of the business records.

In light of the foregoing, and in light of the request to abandon and pay disposal expenses being consolidated in this Motion, the court shall deny the request for abandonment without prejudice.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Trustee does not anticipate opposition to the Motion.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell filed by the Chapter 7 Trustee, J. Michael Hopper

("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Trustee is authorized to sell at auction pursuant to 11 U.S.C. § 363(b) the property of the Estate identified as identified as various office furniture, fixtures, and equipment ("Office Furniture"); a server and associated equipment ("Server"); and industrial and manufacturing machinery and equipment, forklifts, material handling equipment, tools, pallet racks, and miscellaneous parts ("Manufacturing Assets") (collectively the "Property"), which is located at nonresidential property leased by the debtor, ConQuip, Inc. ("Debtor") commonly known as 11255 Pyrites Way, Suite 100, Gold River, California (the "Leased Property").

IT IS ORDERED that the Trustee is authorized to employ Tranzon Asset Strategies ("TAS") as auctioneer for the Trustee

IT IS FURTHER ORDERED that TAS is allowed, and Trustee is authorized to pay, a 10 percent commission of the gross sale proceeds of the Property. No further compensation for fees or expenses is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that the request to abandon and dispose of business records of the Debtor is denied without prejudice.

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

4. **12-30911-E-7** **VILLAGE CONCEPTS, INC.**
James Brunello

OBJECTION TO TRUSTEE'S FINAL REPORT AND APPLICATION FOR COMPENSATION
3-14-19 [395]

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 Chapter 7 Trustee and Office of the United States Trustee on April 1, 2019. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Objection to Trustee's Final Report is overruled.

Creditor, Don Lee holding an unsecured claim ("Creditor") filed this Objection To Trustee's Final Report And Applications For Final Compensation on April 2, 2019. Dckt. 400. Creditor filed Proof of Claim No. 34 in this case, asserting a $6,000.00 general unsecured claim for "services performed." Attached to Proof of Claim No. 34 is a letter dated September 11, 2011, from Village Concepts stating that it memorializes the understanding that Creditor will: (1) conduct an investigation of the properties and interview witnesses; (2) conduct "legal research" that Adam Weiner and/or Brian Cullen (the California State Bar lists attorneys with these names licensed to practice law in the State of California) will need prior to a February 2012 trial; (3) prepare documents for Adam Weiner and/or Brian Cullen will need prior to and for trial; (4) prepare defense exhibits and exhibit blow-ups that Brian Cullen will need at trial; and (5) attend the trial and assist Brian Cullen with administrative tasks at trial. For the above services, Creditor was to "collect" $6,000.00 from the Debtor.

Summary of Final Report

The Trustee's Final Report was filed on March 14, 2019. The information provided in the Final Report (Dckt. 395) is summarized as follows:

Total Monies for Disbursements Other Than to Debtor	$324,003.25	**Trustee Fees Computed Pursuant to 11 U.S.C. § 327 Maximum Percentages and Expenses**	
Disbursement for Administrative Expenses (other than Trustee and Professionals) and Creditor Claims		**Trustee Susan Smith** (Allowed - April 7, 2019 Order, Dckt. 412).	
		Trustee Fees	($6,613.06)
Administrative Expenses (including post-petition taxes, costs of sale, bond)	($23,201.96)		
		Former Chapter 11 and Chapter 7 Trustee David Flemmer (Allowed - April 7, 2019 Order, Dckt. 412).	
Priority Claims	($100.00)	Trustee Fees	($12,837.12)
($1,708,135.98) of General Unsecured Distribution	($54,864.07)	Expenses	($57.00)
Secured Claims Paid	($125,100.00)	**Professional Fees**	
		Gonzales & Sisco, LLP; Accountant For Trustee (Allowed - April 7, 2019 Order, Dckt. 411)	
		Fees	($8,140.00)
		Expenses	($21.00)
		Desmond, Nolan, Livaich, and Cunningham; Attorney for Chapter 7 Trustee (Allowed - April 7, 2019 Order, Dckt. 410)	

		Fees	($77,524.58)
		Expenses	($7,029.82)
Total Claims Paid	($180,064.07)	55.6% of Total Estate Funds	
Total Non-Professional and Trustee Fees Administrative Expenses	($23,201.96)	7.2% of Total Estate Funds	
Attorney's Fees and Expenses	($84,554.40)	26% of Total Estate Funds	
Accountant Fees and Expenses	($8,161.00)	2.5% of Total Estate Funds	
Susan Smith Trustee Fees and Expenses	($6,613.06)	2% of Total Estate Funds	
David Flemmer Trustee Fees and Expenses	($12,894.12)	4% of Total Estate Funds	

As stated above, Proof of Claim No. 34 filed by Debtor is for a $6,000.00 general unsecured claim. That is 00.35% of the total unsecured claims. For every $10,000 in increase of distribution on general unsecured claims, Creditor's portion would be $35.12.

The Objection states the following grounds with particularity (FED. R. BANKR. P. 9013) as the basis of objecting to the Trustee's Final Report:

1. The administrative fees and costs in this case are unreasonable given the scope of this Chapter 7 bankruptcy proceeding and the proposed distribution to the unsecured creditors which is approximately one-third of the total administrative fees and costs that have been previously paid.

2. The certifications submitted in support of the administrative fees and costs sought by the Chapter 7 Trustee, Susan K. Smith's ("Current Trustee"), professionals are inadequate to support the fees being sought.

3. The former Chapter 7 Trustee, David Flemmer ("Former Trustee"), improperly sought conversion of this case to Chapter 7 on the basis there were fraudulent transfers that needed to be unwound. However, Debtor prevailed in that Adversary Proceeding. But for the improper conversion of the case to Chapter 7 by Former Trustee, unsecured creditors would have received more than 3.2 percent on their claims. The unreasonable

> administrative fees and expenses are two-thirds of the estate funds collected by the Former and Current Trustees.

Objection, Dckt. 400.

Along with the Objection, Creditor filed a Memorandum of Points and Authorities ("Creditor's Memo"). Dckt. 403. In addition to what is argued in the Objection, Creditor argues that the Trustee's Final Report does not establish that administrative expenses for Former Trustee and Former Trustee's counsel were reasonable because only Former Trustee, whom has passed away, could certify those fees.

The Objection asserts that for the now more than six years since the case was converted to Chapter 7 the spending "years of fee churning in an attempt to make up for the lucrative opportunities lost when this court ruled in favor over the Debtor . . . that no fraudulent transfer of assets had ever taken place."

The remainder of what is argued in Creditor's Memo is essentially two points: (1) the Former Trustee and other professionals of the Estate worked to intentionally generate administrative expenses, and (2) the administrative expenses in this case are unreasonable in light of the recovery received on unsecured claims.

TRUSTEE'S RESPONSE

On April 23, 2019 the Current Trustee filed an Opposition to the Objection. Dckt. 421. Trustee argues that Creditor has not established that the Trustee's Final Report fails to meet the requirements of law.

Trustee argues further that Creditor's objection to administrative fees in this case is untimely, as the various motions for compensation (Dckts. 378, 384, and 389) were set on 28 days' notice and pursuant to Local Bankruptcy Rule 9014(f)(1) a written opposition was required to be filed by March 21, 2019 (14 days prior to the hearing). Trustee notes a timely appeal of those motions was required to be filed within 14 days (FED. R. BANKR. P. 8002(a)(1)), and therefore those motions are final.

CREDITOR'S REPLY

On May 1, 2019 Creditor filed his Reply and Objection to the Declaration of Current Trustee. Dckts. 424, 426. Creditor argues that because Current Trustee only opposes the Objection on alleged procedural grounds, that the substantive grounds for objection have been conceded.

Creditor also argues (in the Reply and Objection to Declaration) that he did not receive notice of the motions for compensation, and that Current Trustee's following testimony:

> It is my understanding that the applications were set on 28 days' notice and [Creditor] was served with the applications, notices of hearing, and accompanying declarations and exhibits.

(Declaration ¶ 2, Dckt. 422) is inadmissable hearsay and does not meet the requirement for personal knowledge testimony.

DISCUSSION

While the present matter is entitled "Objection To Trustee's Final Report And Applications For Final Compensation," the Objection is substantially an opposition to various motions for compensation which have already been heard and granted.

Creditor's primary argument is that the administrative expenses in this case were unreasonably high, a result of the professionals of the Estate pursuing an unsuccessful avoidance claim and intentionally driving up fees, which is made more unreasonable in light of the small distribution to unsecured claims (3.2 percent, or $54,864.07). Creditor also argues that Former Trustee failed to certify various administrative expenses as reasonable, and that Creditor was never served notice of the motions for compensation.

Conversion of the Chapter 11 Case

This bankruptcy case was filed on June 8, 2012, as a voluntary Chapter 11 case for the Debtor corporation. It was converted to one under Chapter 7 by Order of this court filed on April 24, 2013. Dckt. 131.

The findings and conclusions of the court in determining that conversion was proper include the following:

> The court agrees with the movants that the debtor's principals, President Mark Weiner and Secretary Nancy Weiner, have serious conflicts of interest in managing the debtor's business and administering the debtor's estate for the benefit of the debtor's creditors. Mark and Nancy Weiner are also the trustors, trustees and beneficiaries of the revocable Kopp Family Trust, which is listed as the sole shareholder of the debtor. Docket 32, Amended SFA, question 21b; Ex. A to Motion at 67-68.
>
> The majority of the debtor's income is generated from the management of six mobile home parks. Post-petition management income totals approximately $183,515, while post-petition sales of manufactured homes - the other major source of income for the debtor - totals approximately $76,928 plus a $29,000 promissory note. Motion at 8; Opposition at 2.
>
> In addition to principals and shareholders of the debtor, via the trust the Weiners own 100% interest in two LLCs (Calaveras Valley Village LLC and Susanville Village LLC), which in turn own two of the mobile home parks the debtor is managing, one in Railroad Flat, California and the other in Susanville, California.
>
> The debtor manages the Railroad Flat and Susanville parks pursuant to an oral agreement with the owners of the parks. As of the time this motion was filed, the debtor had reported to having collected management fees from the Railroad Flat park only for five of the last eight post-petition months and it had reported to having collected management fees from the Susanville park only for six of the last eight post-petition months.

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

Park Village Corporation owns 100% in Castle Village LLC, which in turn owns 50% interest in a park in Ione, California. The other 50% interest in that park is owned by an unrelated entity, Fujinaka Properties LP. Park Village Corporation owns also 70% in Redding Riverside Village LLC, which in turn owns 100% interest in a park in Redding, California. The other 30% of Redding Riverside Village LLC is owned by Indian Village Estate LLC.

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

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

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

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

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

See Docket 88, Ex. B to Motion.

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

The debtor did not receive any cash for the transfer of those assets. Instead, for the Castle Village LLC transfer, the trust assumed approximately $2 million debt the debtor owed to Union Bank and forgave $1 million in debt the debtor owed to the

trust. Approximately $1.9 million of the Union Bank claim is still outstanding. As to the Redding Riverside Village LLC transfer, the trust assumed approximately $1.3 million in debt for the debtor. $1.06 million of this debt is still outstanding. None of the creditors whose debt was assumed by the trust released the debtor from liability when the trust assumed the debt. Ex. A to Motion at 70-77.

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

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

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

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

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

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

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

B to Motion.

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

. . .

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

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

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

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

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

In connection with the debtor's advocation that the Weiners should continue to manage its affairs and administer this estate, the court reminds the debtor's

> counsel that he represents the debtor as a debtor in possession, in charge of the debtor's bankruptcy estate, an entity with fiduciary obligations to its creditors that is separate and distinct from the debtor, the Weiners and their other entities. He does not represent the debtor aside from the estate, and does not represent the Weiners, their trust, or other entities. Thus, he must advance solely the estate's best interests. "[T]he debtor in possession has the same fiduciary duties and liabilities as a Trustee. When the debtor is a corporation, corporate officers and directors are considered to be fiduciaries both to the corporate debtor in possession and to the creditors." *Holta v. Zurbetz (In re Anchorage Nautical Tours, Inc.)*, 145 B.R. 637, 643 (B.A.P. 9th Cir. 1992); see also 11 U.S.C. § 1107(a).
>
> The Weiners' conflict of interest is further bolstered by the failure of three of their parks to pay all post-petition management fees to the debtor. According to the motion, three of the parks have not been paying management fees to the debtor regularly. As noted above, as of the time this motion was filed, the debtor had reported to having collected management fees from the Railroad Flat park only for five of the last eight post-petition months, it had reported to having collected management fees from the Susanville park only for six of the last eight post-petition months, and it had reported to having collected management fees from the Forest Ranch park only for two of the last eight post-petition months. This is concerning especially because the Weiners own 100% interest in the Railroad Flat and Susanville parks and 50% interest in the Forest Ranch park, with the other 50% owned by the Weiners' son, Samuel Weiner.
>
> The opposition does not address the missing management fee payments. It focuses solely on the park management fee rates. Opposition at 3-4. Because of opposition's failure to address the missing payments issue, the court concludes that the Weiners are not disputing the missing management fee payments as identified by the motion. From the missing management fee payments, the court infers that the Weiners have no intention of honoring all contracts with the debtor, via their trust and/or other entities, including their interests in the Railroad Flat, Susanville, and Forest Ranch parks. This is another manifestation of the Weiners' actual conflict of interest in failing to enforce the debtor's management fee agreements with the
> Weiners' other entities.

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

Motions For Compensation

On March 6, 2019, three motions for approval of compensation were filed seeking approval of (1) $77,524.58 in fees and $7,029.82 in expenses for Desmond, Nolan, Livaich, and Cunningham; (2) $6,613.06 in fees for Current Trustee; (3) $12,837.12 in fees and $57.00 in expenses for Former Trustee; and (4) $8,140.00 in fees and $21.00 in expenses for Gonzalez & Associates, Inc., fka Gonzales & Sisto, LLP. Dckts. 378, 384, and 389.

Each of those motions was set for hearing on 28 days' notice. Dckts. 379, 385, and 390. Each motion was served properly on Creditor. Dckts. 383, 387, 394. Local Bankruptcy Rule 9014(f)(1) required a written opposition to be filed by March 21, 2019 (14 days prior to the hearing).

At the April 4, 2019, hearing on each motion, the court found that notice was properly provided and that the fees requested were reasonable in light of the services performed in the case. Dckts. 406-408. The court subsequently issued an Order granting each motion and awarded the requested fees and expenses. Dckts. 410-412.

Creditor did not present written or oral opposition to any of those three motions. Rather, Creditor set this Objection for its own hearing.

Creditor argues that he was never served notice of the motions. The Certificates of Service for each of the Motions states that the notices, motions, and supporting pleadings were served on all parties in interest, with a copy of the Master Address List of parties in interest attached to show the persons served, which includes Creditor, Don Lee, 145 Jasper Way, San Andreas, California 95249-9490. Dckts. 383, 388, and 394. This is the same address stated by Creditor on Proof of Claim No. 34 as his address.

However, Federal Rule of Bankruptcy Procedure 7004(b)(1) requires only mailing, and not actual receipt of notice. *In re Safadi*, 431 B.R. 478, 481 (Bankr. D. Ariz. 2010)(citing *In re Peralta*, 317 B.R. 381, 387 (B.A.P. 9th Cir. 2004)). A proof of service can only be overcome by clear and convincing evidence–an allegation no notice was received is not enough. *In re Bucknum,* 951 F.2d 204, 207 (9th Cir. 1991).

Furthermore, Creditor provided testimony that "a few days" after March 20, 2019, Current Trustee provided him notice of the application for fees and costs by Desmond, Nolan, Livaich, and Cunningham. *See* Declaration ¶¶ 3-5, Dckt. 402. Despite having admitted to notice of that motion, Creditor did appear at the April 4, 2019 hearing to oppose it.

In addition to Creditor's Objection being untimely as to administrative fees, little argument is made as to why the fees in this case are unreasonable. Creditor argues the conversion from Chapter 11 to 7 was improper, that the avoidance actions were unsuccessful, and that the professionals of the Estate acted to increase the expenses in the case.

The court in granting the various motions for compensation has already reviewed the services performed, including those relating to the conversion of the case to Chapter 7 and avoidance actions, and found the fees and expenses requested reasonable. Dckts. 406-408. Nothing has been added in Creditor's Objection which was not already considered during the hearing on those motions.

Further, Creditor merely concludes that less fees should be awarded in light of their exceeding the unsecured claim distribution because, if successful, such an argument would result in a greater recovery for Creditor. However, Creditor does not analyze the hours billed, services rendered, or point to specific fees and expenses as unreasonable.

Requirements For Trustee's Final Report

11 U.S.C. § 704 requires a trustee to make a final report and file a final account of the administration of the estate with the court and with the United States trustee. The Code of Federal Regulations requires that the Final Report contain the trustee's certification, under penalty of perjury, that all assets have been liquidated or properly accounted for and that funds of the estate are available for distribution. 28 C.F.R. § 58.7(a). That rule also incorporates 28 U.S.C. 589b(d) in requiring the Final Report include:

> (1) Summary of the trustee's case administration;
> (2) Copies of the estate's financial records;
> (3) List of allowed claims;
> (4) Fees and administrative expenses; and
> (5) Proposed dividend distribution to creditors.

Id.

Creditor argues that the Final Report was improper because Former Trustee never "certified" his own fees and the fees of Former Trustee's counsel to be reasonable. However, there is no such requirement.

The Trustee's Final Report states all scheduled and known assets of the estate have been reduced to cash and that remaining funds are available for distribution. Dckt. 395.Therefore, the Final Report meets the requirement of 28 C.F.R. § 58.7(a).

Conclusion

Based on the foregoing discussion, the Creditor's Objection is overruled. Creditor does not contend that the Trustee's Final Report is not correct, but wants to collaterally attack the court's prior final orders granting fees and expenses for professionals in this bankruptcy case, notwithstanding Creditor having actual notice of the motions sufficiently in advance to either file an opposition or requested a continuance based on his alleged non-receipt of the fee motions, notices, and supporting pleadings.

Such contention of not having received the notices, motions, and supporting documents does not ring credible. First, if Creditor wanted to attack such orders, he would have to move to have them vacated under Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024.

Second, Creditor provides evidence that he had actual notice of the fee motions weeks in advance of the hearings, but took no action. The current Objection is a carefully crafted, legally sophisticated pleading, supported by a declaration and points and authorities. The points and authorities contains extensive argument and provides legal citations. If Creditor intended to pursue a good faith opposition to the fees requested, he clearly had the ability to so do for the motions requesting such fees.

Creditor then filed a Reply (Dckt. 424) to the Current Trustee's Response that Creditor was attempting to litigate in a Trustee's Final Report Objection fees allowed by other final orders of the court. He replies with extensive legal argument and authorities. He presents Ninth Circuit authority for

the proposition that the "Mail Box Rule" is a rebuttable presumption.

Creditor then launches back into his arguments that the fees approved by the prior orders should not be allowed and the conduct of the prior trustee and counsel were a waste of resources. He then requests the court take judicial notice of a Bankruptcy Appellate Panel decision denying the prior Trustee's appeal of the judgment for Mark and Nancy Weiner, and related entities denying the prior Trustee's attempt to have a transfer made to them avoided as a fraudulent conveyance.

While arguing that the Current Trustee makes only "procedural opposition" to his Objection, that is not accurate. The Opposition is that Creditor wants to re-litigate final fee award determinations made in other orders. Creditor offers no legal authority for the proposition that he can relitigate fees awarded by other orders of the court by objecting to the Trustee's Final Report to pay such allowed fees.

A question arises as to why a creditor with an unsecured claim of only $6,000, which is only 00.35% of the total general unsecured claims and for which Creditor would receive .35 cents for every dollar reduced, would file this Objection. A hint is given in the Objection when Creditor argues:

> The unsecured creditors, including LEE, have been the victims of these unreasonable fees and costs that comprise approximately two-thirds of the estate funds collected by the prior and current Chapter 7 Trustees. Had the Chapter 11 proceeding simply been allowed to continue more than five (5) years ago, rather than be converted, these unsecured creditors would have been paid far closer to the value of their claims rather than the 3.2% that they are now being forced to accept.

Objection, p. 2: 19-24; Dckt. 400. The event more than five years ago in 2013 was not the conversion of the case to Chapter 7, but the appointment of a Chapter 11 trustee for cause by order filed on April 24, 2013. Dckt. 131. As Judge McManus made clear in his ruling, the appointment of a trustee was required for multiple reasons, not only the conflict that existed with respect to a transfer made from the Debtor to the principals who are in control of the Debtor, but the principals failing to recover management fees from other related entities they controlled.

Creditor argues that instead of appointing a Chapter 11 trustee, the court should have allowed the insiders, with their conflicts, to continue in running the business. That the insiders having ultimately prevailed in the fraudulent conveyance action does not diminish the conflict determination made by Judge McManus. He advocates that appointment of a trustee and then conversion was a mistake, and that Mark Weiner and the other insiders should have been left to prosecute the bankruptcy case.

On this point, though a Chapter 11 trustee is appointed, the Debtor is not excluded from the bankruptcy process. The Debtor and its principals were free to develop a plan, negotiate with creditors, and act responsibly to move the case forward if they believed that the Chapter 11 Trustee and conversion to Chapter 7 was not in the best interests of the Debtor and creditors. The Debtor and its insiders did not come up with such plan with creditors.

Creditor argues that the Order sent out by the court fixing the Deadline for Filing Objection to Trustee's Final Report and Application for Final Compensation "tells" Creditor that he can object to fee applications, which are separately filed and noticed, within an Objection to Trustee's Final Report.

Though not stated in the pleadings, Creditor is well known to the court and inexorably intertwined with Mark Weiner, the principal of the Debtor whose conflicts resulted in the appointment of a trustee. This affiliation with the principal may explain why Creditor appears to be undertaking this litigation for the principle of it (not having any significant financial interest in the outcome from reducing the administrative expenses).

While Creditor focuses just on the unsecured claim dividend, the estate was administered to generate a recovery of $324,003.25. A portion went to pay secured claims, totaling ($125,100.00) rather than allowing them to foreclose, which required the administration of those assets, and the legal work that went with it. There was work required to generate those monies.

At the end of the day, there remains, if the fees allowed pursuant to the fee applications are paid, $54,864.07 to be disbursed to creditor's holding general unsecured claims that total $1,708,135.98. Though the legal fees exceed that amount, such is not an automatic disqualifier.

As shown in the chart above the claims paid consume 55% of the monies of the estate go to pay claims. When the non-fee expenses of the estate necessary to generate that money are added in, it is 62.8% that goes for claims and the non-fee expenses. That leaves just over one-third of the money for two trustees, attorney's fees – which fees span the Chapter 11 case and then the Chapter 7 case after conversion.

Creditor's Objection is broad in scope, saying that generally the work of the Former Trustee and the attorney were non-productive and the file was churned over the past six years. Creditor does not object to the $30,000 contingent fee for the Trustee's attorney, leaving the "churning" to relate to the remaining $47,524 in fees. For the Former Trustee, the fees total $12,837.12.

The sweeping allegations are that the litigation to set side the alleged fraudulent conveyance was lost, and thus it shows a waste of time and fee churning. Focusing on the litigation related to this Bankruptcy Case, the attorney fee motion provides the following information:

A. Adv Pro. 13-2212, action to recover amounts on usurious loans. This is the action in which there was a contingent fee award of $30,589.58, plus costs, while Creditor does not contest. Motion, ¶¶ 15, 16; Dckt. 378.

B. Adv Pro 14-2054, action to recover fraudulent conveyance in which the prior Trustee did not prevail. *Id.* ¶ 14.

In the fee motion the attorney for the Trustee expressly states with respect to the legal fees relating to the fraudulent conveyance action:

> "18. DNLC [attorneys] is not seeking any fees associated with its representation of David Flemmer in the Transfer Avoidance Case. DNLC only seeks the costs incurred in such representation pursuant to the hybrid fee agreement."

Id. ¶ 18.

The non-contingent fee portion of the fees requested are stated in the Motion by attorneys for the Current Trustee as:

Category	Hours Billed	Total
Case Administration	34.7	$10,572.00
Asset Analysis, Recovery, and Disposition	84.6	$21,095.00
Claims Administration and Objections	27 .7	$6,330.00
Fee/Employment Applications	52 .6	$8,937.50
TOTAL	199 .6	$46,935 .00

In connection with the noticed hearing on the fee application and order entered thereon, the court found the above fees to be reasonable and necessary. After subtracting out the $90,000 amount for the compromise for which the contingent fee is based, that leave an estate with $254,000.25 in monies generated. The legal fees requested are 18% of the assets generated. No an unusually high percentage of legal services to money in play.

These fees span the period from May 5, 2013 though March 4, 2019 - a six year period. This averages $7,822.50 a year, for which the payment has been substantially delayed. This modest amount of attorney's fees on an annual basis is not indicative of attorneys actively churning a file.

At the end of the day, Creditor's objection is that the Debtor and its principal, Mark Weiner, should have been left in control to run the show. One thing that Creditor does not disclose in the Objection is that he is a business associate and ally of Mark Weiner in other business ventures for which bankruptcy cases have been filed, litigation pursued, and attorney's fees and costs awarded (for which judgments and orders have been entered against Mr. Lee and Mr. Weiner's entities). These include: *Lee v. Gold Strike Heights Association et al*, Adv. 15-9062 (judgement and attorney's fees against Mr. Lee affirmed on appeal); *Gold Strike Heights Homeowners Association*, 15-90811; *Indian Village Estates v. Gold strike Heights Association*, Adv. 15-9061 (judgment against Indian Village Estates, a Mark Weiner entity in which Mr. Lee was closely involved), affirmed on appeal. This business affiliation with Mark Weiner may explain why Creditor wants to generate *pro se* litigation with the people who took over this case when Judge McManus concluded that Mark Weiner had disqualifying conflicts.

To the extent that the court may properly consider a collateral attack on its prior order allowing the attorney's fees, Creditor's arguments for the principle (given that he has no meaningful economic interest in any additional monies that would go to creditors that have unsecured claims) that $46,935 in fees for six years of legal services in a case generating the additional $254,000.25 of the $324,003.25 in monies for the estate is not borne out by the facts.

This case was a long slog for the Former Trustee and the Current Trustee. For the Former Trustee who has caught Creditor's ire, there is only ($12,837.12) for his portion of the maximum compensation that could be awarded. Creditor has not provided the court to conclude that such fees are

unreasonable for a Chapter 11 trustee and Chapter 7 trustee over a four year period (May 2013 - February 2017)

This judge does not concur with Creditor's assertion that all would have been well if Judge McManus had not identified and rule on the disqualifying conflict for Mr. Weiner and associates. The court does not agree that Judge McManus was misled to improperly convert this case to one under Chapter 7. In concluding conversion was proper, Judge McManus' findings and conclusions include:

> The debtor opposes the motion, stating that the debtor's "principal is prepared to fund a plan with a substantial cash contribution and requests the opportunity to do so." Docket 178 at 6.
> . . .
> The declaration of the debtor's principal filed in opposition to the motion, offering to fund a plan with a substantial cash contribution, is not helpful in persuading the court that chapter 11 reorganization is viable.
> . . .
> The income the debtor generates is barely sufficient to pay only the debtor's ten employees, let alone paying the debtor's manager (also known as the debtor's principal), professionals and ultimately creditors. Docket 167 at 2.
>
> The declaration of the debtor's principal filed in opposition to the motion, offering to fund a plan with a substantial cash contribution, is not helpful in persuading the court that chapter 11 reorganization is viable.
>
> First, the court reminds the debtor's counsel, James Brunello, who filed the declaration in opposition to the motion, that he was retained to represent the debtor's bankruptcy estate. He was not retained to represent the debtor, aside from the entity charged to administer the bankruptcy estate, or the debtor's principal.
>
> Second, the court appointed a chapter 11 trustee precisely because it found that the debtor's principal had
> a serious conflict of interest in administering the debtor's bankruptcy estate.
> . . .
> Given the foregoing, the court is not convinced that the debtor's principal can be trusted on his promise to make "a substantial cash contribution."
>
> Third, even if this court had not concluded that the debtor's principal has a conflict of interest in administering the debtor's estate, the debtor's principal had the opportunity to make a cash contribution to fund a plan in this case for approximately 11 months prior to the appointment of the chapter 11 trustee. This case was filed on June 8, 2012. The motion for the appointment of the chapter 11 trustee was heard on April 19, 2013. The order appointing the trustee was entered on April 24, 2013. Dockets 130 & 131.
>
> Finally, the debtor's principal will not be deprived of the opportunity of making a cash contribution to the debtor's estate to pay creditors, if the case is converted to chapter 7. A chapter 7 trustee may seek substantive consolidation of the assets and liabilities of the debtor and the debtor's principal.

Civil Minutes, Dckt. 187.

Contrary to Creditor's belief that there is a common place abuse of the bankruptcy process and federal judicial by Chapter 7 trustee's and their attorneys, such is not the case in this District. The trustees know that the judges do not just routinely sign off on whatever fees are sought. There is no "only what the creditors get is what the trustee and professionals can be paid" rule exists. Such would encourage persons who seek to engage in non-productive, baseless, litigation to drive up the costs that trustees and their professionals have to capitulate to such "professional litigators." Also, the court does not ignore secured claims and those creditors, slaving trustees and professionals of the bankruptcy to the "ship of the unsecured claims."

The trustees and professionals do not guaranty any specific recovery for any party. Here, while Creditor has a very small return on his very, very, very small claim (00.35% of the total unsecured claims), it is a function of his very, very, very small percentage of the total. Even if there was an additional $20,000.00 for unsecured claims, Creditor would receive only an additional $70.00 - nothing meaningful.

The Objection to the Trustee's Final Report and, to the extent proper an Objection to the trustee fees and professional fees can be made collaterally to the orders approving such fees, are overruled.

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

The Objection To Trustee's Final Report And Applications For Final Compensation filed by creditor, Don Lee, holding an unsecured claim ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled.

5. **09-23465-E-7** **MOORE EPITAXIAL, INC.** **MOTION TO ABANDON**
WFH-8 **George Hollister** **4-18-19 [308]**

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 April 18, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon is granted.

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

The Motion filed by the Chapter 7 Trustee, Michael D. McGranahan ("Trustee") requests that the court authorize him to abandon property identified as (1) 28,000 common shares in Silicon Genesis Corporation (the "Stocks"), and (2) an eZEN machine (collectively the "Property").

The Motion is supported by the Trustee's Declaration. Dckt. 310. Trustee presents testimony the Stocks are in a privately held California Corporation which has 13,448,844 common shares and 82,533,843 preferred shares outstanding. *Id.*, ¶ 4. The Stocks therefore represent only a 0.208 percent interest.

Trustee believes the Stocks are burdensome and inconsequential to the Estate in part based on the advice of SiGen's President and Chief Executive Officer, Ted Fong, who pointed out that if SiGen is valued at $100 million the Stocks would be worth only $8,750.00. *Id.* Trustee also argues the Stocks would be difficult to market as SiGen is a privately held company.

As to the eZEN machine, Trustee testifies (1) the machine is located in Shanghai, China; (2) the eZEN machine has technical issues discussed in the Debtor's Chapter 11 Disclosure Statement; (3) shipping the machine back to the United States would be very costly. *Id.*, ¶ 7. Trustee believes these factors make the eZEN machine burdensome and inconsequential to the Estate.

The court finds that the cost of liquidating the Property would likely outweigh the sale proceeds generated, therefore there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes Trustee to abandon the Property.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by Chapter 7 Trustee, Michael D. McGranahan ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the property identified as (1) 28,000 common shares in Silicon Genesis Corporation (the "Stocks"), and (2) an eZEN machine (collectively the "Property") is abandoned to the debtor, Moore Epitaxial, Inc., by this order, with no further act of the Chapter 7 Trustee required.

FINAL RULINGS

6.	**18-26021-E-7 KJH-2**	**KENNETH/SUSAN RODGER Gerald White**	**MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY, ACCOUNTANT(S) 4-5-19 [45]**

Final Ruling: No appearance at the May 9, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 5, 2019. By the court's calculation, 34 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.

Gabrielson & Company , the Accountant ("Applicant") for Kimberly Husted, 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 October 30, 2018, through March 4, 2019. The order of the court approving employment of Applicant was entered on November 14, 2018. Dckt. 30. Applicant requests fees in the amount of $2,906.50 and costs in the amount of $124.89.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

(a) Is the burden of the probable cost of legal [or other professional] services

disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

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

A review of the application shows that Applicant's services for the Estate include preparation of income tax returns and general case administration. 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.

Preparation of Federal and California Estate Income Tax Returns: Applicant spent 6.2 hours in this category. Applicant prepared first and final December 31, 2018 federal and California estate income tax returns for the separate estates of Kenneth Rodger and Susan Rodger, including analyzing tax impact of selling real estate assets

General Case Admnistration: Applicant spent 1.3 hours in this category. Applicant prepared an accountant declaration and related employment documents for trustee review, as well as documents for this Application, including detailed description of tax services.

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**
Michael Gabrielson	2.8	$375.00	$1,050.00
Michael Gabrielson	4.7	$395.00	$1,856.50
Total Fees for Period of Application			$2,906.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of

$124.89 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Cost**
Copying	$77.60
Postage	$47.29
Total Costs Requested in Application	$124.89

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,906.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $124.89 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 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	$2,906.50
Costs and Expenses	$124.89,

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 Gabrielson & Company ("Applicant"), Accountant for Kimberly, 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 Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:

Gabrielson & Company, Professional employed by the Chapter 7 Trustee

Fees in the amount of $2,906.50
Expenses in the amount of $124.89,

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

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

7. **17-28324-E-7 GMR-2** **MORTIMER/ARLENE JARVIS** **Walter Dahl** **MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY, ACCOUNTANT(S)** **4-4-19 [126]**

Final Ruling: No appearance at the May 9, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 3, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Gabrielson & Company , the Accountant ("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 March 18, 2019, through April 2, 2019. The order of the court approving employment of Applicant was entered on March 19, 2019. Dckt. 123. Applicant requests a reduced fee in the amount of $1,200.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

1987)).

A review of the application shows that Applicant's services for the Estate include preparation of tax returns and general case administration. 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.

Preparation of Federal and California Estate Income Tax Returns: Applicant spent 2.9 hours in this category. Applicant prepared first and final 2018 federal and California estate income tax returns for the separate estates of Mortimer Jarvis and Arlene Jarvis.

General Case Admnistration: Applicant spent 1.3 hours in this category. Applicant prepared an accountant declaration and related employment documents for trustee review, as well as documents for this Application, including detailed description of tax services.

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**
Michael Gabrielson	4.2	$395.00	$1,659.00
Total Fees for Period of Application			$1,659.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $1,200.00 (the requested reduced fee amount) 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 the fees 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 $1,200.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gabrielson & Company ("Applicant"), Accountant 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 Gabrielson & Company is allowed the following fees as a professional of the Estate:
>
> Gabrielson & Company, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $1,200.00
>
> as the final allowance of fees pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

8. **19-20325-E-7** **CAROLYN VILLAVERDE** **MOTION TO AVOID LIEN OF THE**
HLG-1 **Kristy Hernandez** **BEST SERVICE CO, INC.**
4-2-19 [16]

Final Ruling: No appearance at the May 9, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on April 2, 2019. By the court's calculation, 37 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 the Best Service Co Inc ("Creditor") against property of Carolyn Ann Villaverde ("Debtor") commonly known as 7565 Watson Way Citrus Heights, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $17,862.73. Exhibit C, Dckt. 19. An abstract of judgment was recorded with Sacramento County on May 29, 2018, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $415,326.00 as of the petition date. Dckt. 1. [FN.1.] The unavoidable consensual liens that total $287,986.00, from a First Deed of Trust, as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. [FN.2.] Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $175,000.00 on Amended Schedule C. Dckt. 12.

FN.1. Debtor argues in the Motion 50 percent of the Property is net equity owed to a separate spouse. No testimony is provided as to this point in Debtor's Declaration (Dckt. 18), and Debtor's Schedule A does not reflect a divided interest. However, the First DOT and Debtor's claimed exemption

exceed the value of the Property, and Creditor's judgment lien would therefore impair Debtor's exemption notwithstanding whether Debtor has a fractional interest in the Property.

FN.2. In Debtor's Motion and Declaration filed in support, Debtor states there is one voluntary lien. Dckts. 16, 18. However, Schedule D also lists Capital One with a claim of $7,555.16 secured by the Property, which is identified as "An agreement [Debtor] made (such as mortgage or secured car loan)." Dckt. 1.

In another motion set for hearing the same day (Dckt. 21), Debtor attaches a copy of Capital One's recorded abstract of judgment demonstrating the basis of this secured claim was a judgment lien. Exhibit C, Dckt. 24.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Carolyn Ann Villaverde ("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 the Best Service Co Inc , California Superior Court for Sacramento County Case No. 34-2017-00209150, recorded on May 29, 2018, Document No. 201805290101, with the Sacramento County Recorder, against the real property commonly known as 7565 Watson Way Citrus Heights, 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.

9. **19-20325-E-7** **CAROLYN VILLAVERDE** **MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.**
HLG-2 **Kristy Hernandez** **4-2-19 [21]**

Final Ruling: No appearance at the May 9, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on April 2, 2019. By the court's calculation, 37 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 Capitol One Bank (USA), N.A. ("Creditor") against property of Carolyn Ann Villaverde ("Debtor") commonly known as 7565 Watson Way Citrus Heights, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,555.16. Exhibit C, Dckt. 24. An abstract of judgment was recorded with Sacramento County on November 19, 2018, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $415,326.00 as of the petition date. Dckt. 1. [FN.1.] The unavoidable consensual liens that total $287,986.00, from a First Deed of Trust, as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. [FN.2.] Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $175,000.00 on Amended Schedule C. Dckt. 12.

FN.1. Debtor argues in the Motion 50 percent of the Property is net equity owed to a separate spouse. No testimony is provided as to this point in Debtor's Declaration (Dckt. 23), and Debtor's Schedule A does not reflect a divided interest. However, the First DOT and Debtor's claimed exemption exceed the value of the Property, and Creditor's judgment lien would therefore impair Debtor's

exemption notwithstanding whether Debtor has a fractional interest in the Property.

FN.2. In Debtor's Motion and Declaration filed in support, Debtor states there is one voluntary lien. Dckts. 16, 18. However, Schedule D also lists Creditor with a claim of $7,555.16 secured by the Property, which is identified as "An agreement [Debtor] made (such as mortgage or secured car loan)." Dckt. 1.

The present Motion and Abstract of Judgment filed as Exhibit C (Dckt. 24) demonstrate Creditor's secured claim is based on judgment lien and is not a consensual lien.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Carolyn Ann Villaverde ("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 Capitol One Bank (USA), N.A., California Superior Court for Sacramento County Case No. 34-2018-00233156, recorded on November 19, 2018, Document No. 201811190896, with the Sacramento County Recorder, against the real property commonly known as 7565 Watson Way Citrus Heights, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

10. **18-27846-E-7 WSS-2** | **BERNARD/CYNTHIA CHODERA** **W. Steven Shumway** | **MOTION TO AVOID LIEN OF CITIBANK** **4-3-19 [25]**

Final Ruling: No appearance at the May 9, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on April 4, 2019. By the court's calculation, 35 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 (South Dakota) N.A. ("Creditor"), against property of Bernard William Chodera and Cynthia Laurann Chodera ("Debtor") commonly known as 1845 Tuscan grove Circle, Roseville, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $14,003.50. Exhibit, Dckt. 28. An abstract of judgment was recorded with Placer County on March 18, 2009, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $675,000.00 as of the petition date. Dckt. 25. The unavoidable consensual liens that total $654,476.94 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 $23,956.00 on Amended Schedule C. Dckt. 24.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Bernard William Chodera and Cynthia Laurann Chodera ("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 (South Dakota) N.A., California Superior Court for Placer County Case No. MCV-32569, recorded on March 18, 2009, Document No. 2009-0021617, with the Placer County Recorder, against the real property commonly known as 1845 Tuscan grove Circle, Roseville, 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.

11. **18-27846-E-7 WSS-3** | **BERNARD/CYNTHIA CHODERA** **W. Steven Shumway** | **MOTION TO AVOID LIEN OF AMERICAN EXPRESS CENTURION BANK** **4-3-19 [30]**

Final Ruling: No appearance at the May 9, 2019, hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on April 4, 2019. By the court's calculation, 35 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 Centurion Bank ("Creditor"), against property of Bernard William Chodera and Cynthia Laurann Chodera ("Debtor") commonly known as 1845 Tuscan grove Circle, Roseville, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $51,022.96. Exhibit, Dckt. 33. An abstract of judgment was recorded with Placer County on June 8, 2018, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $675,000.00 as of the petition date. Dckt. 25. The unavoidable consensual liens that total $654,476.94 as of the commencement of this case are stated on Debtor's Schedule D [FN.1.]. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $23,956.00 on Amended Schedule C. Dckt. 24.

FN.1. In this Motion, Debtor states there is a Second Deed of Trust in the amount of $14,249.00 on the Property. Dckt. 30. In Debtor's other motion to avoid lien set to be heard the same day and regarding

the same Property, no reference to this Second DOT is made. Motion, Dckt. 25.

It is unclear from Schedule D who the creditor holding the Second DOT is. Keep Your Home California is listed as a creditor with a deed of trust, but the claim is listed as "unknown." Schedule D, Dckt. 1. Wells Fargo Bank, N.A. is also listed on Schedule D, but the nature of the secured claim is not identified. *Id.*

Notwithstanding the failure to clarify this debt, the Property has no equity even considering only the First DOT and Debtor's claimed exemption.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Bernard William Chodera and Cynthia Laurann Chodera ("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 Centurion Bank, California Superior Court for Placer County Case No. S-CV-0028415, recorded on June 8, 2018, Document No. 2018-0040955-00, with the Placer County Recorder, against the real property commonly known as 1845 Tuscan grove Circle, Roseville, 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.