UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, until further order of the Chief Judge of the District Court. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

June 25, 2020 at 10:30 a.m.

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1. **20-20512-E-7** **SLC-1** | **TIMOTHY/MICHELLE CARR** **Nikki Farris** | **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH TIMOTHY AND MICHELLE CARR 5-15-20 [15]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on May 15, 2020. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Sheri L. Carello, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Timothy Carr and Michelle Carr ("Settlor"). The claims and disputes to be resolved by the proposed settlement are transfers of funds in the sum amount of $7,700.00 to Susan Steed, Settlor's mother, as disclosed in Settlor's Statement of Financial Affairs filed on January 30, 2020. Dckt. 1.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the terms as set forth in the Motion, Dckt. 15):

A. Debtor will pay $6,600.00 to the bankruptcy estate, in monthly payments of $500.00.

B. Trustee will not pursue a preference action against Susan Steed.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Specifically, Trustee asserts that the settlement will avoid attorney's and filing fees necessary to litigate the matter through an adversary proceeding. Further, Trustee argues that the settlement serves the paramount interest of creditors because it will avoid the expense and delay of litigation and result in a quicker distribution to creditors.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the settlement resolves the dispute and avoids litigation that would result in additional delay and expense to the estate. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Sheri L. Carello, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Timothy Carr and Michelle Carr ("Settlor") is granted, and the respective rights and interests of the parties are settled according to the terms as set forth in the Motion (Dckt. 15).

2. **15-29890-A-7** **GRAIL SEMICONDUCTOR** **MOTION FOR ADMINISTRATIVE EXPENSES**
SLC-7 **Paul Pascuzzi**
6-3-20 [1422]

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 June 3, 2020. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion for Allowance of Administrative Expenses is granted.

Sheri L. Carello ("Movant") requests payment of administrative expenses in the aggregate amount of $14,500.00, resulting payment of a priority payroll claim for taxes that will become due and payable upon payment of said wage claim:

Claim	Amount
Department of Treasury- Federal Unemployment	$42.00
Department of Treasury- FICA	$8,537.40
Department of Treasury- Medicare	$5,483.29
Colorado Dept. of Labor and Employment	$231.20

DISCUSSION

Movant argues that these expenses must be allowed because they are administrative expenses resulting from payroll taxes during this case due to the payment of a wage claim by the Trustee.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant asserts that these expenses result from payroll taxes will become due and payable post-petition upon payment of the wage claims.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing for the payroll taxes coming due and payable post-petition upon payment of a wage claim for Debtor was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay the administrative expenses not to exceed $14,500.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by Sheri L. Carello ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Chapter 7 Trustee is authorized to pay not more than $14,500.00 in payroll tax claims as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1) resulting from the payment of a pre-petition priority wage claim.

3. **20-22335-A-7** **LOW SAELEE** **MOTION FOR RELIEF FROM**
VVF-1 **Marc Caraska** **AUTOMATIC STAY**
6-1-20 [11]

HONDA LEASE TRUST VS.

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, and Office of the United States Trustee on June 1, 2020. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Honda Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Honda Accord, VIN ending in #9616 ("Vehicle"). The moving party has provided the Declaration of James Rich to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Low Khouan Saelee ("Debtor"). Debtor is the Lessee of the Vehicle.

Movant argues Debtor has not made one (1) post-petition payment, with a total of $510.83 in post-petition payments past due. Declaration, Dckt. 13. Movant also provides evidence that there are four (4) pre-petition payments in default, with a pre-petition arrearage of $2,043.22. *Id*.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

The Chapter 7 Trustee has no opposition to the relief requested. Trustee's June 17, 2020 Docket Entry Statement.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $24,016.13 (Declaration, Dckt. 13). The value of the Vehicle is determined to be $19,825.00, as stated on the NADA Valuation Report.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay 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.

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 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the 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 for Relief from the Automatic Stay filed by Honda Lease Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2018 Honda Accord, VIN ending in #9616 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

4. 20-21345-A-7 DAVID CRAFT
Curtis Weber

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-20-20 [13]

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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and creditors on May 23,2020. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 7 Trustee, J. Michael Hopper ("Trustee"), seeks dismissal of the case on the grounds that David Charles Craft ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 4:00 p.m. on July 1, 2020. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION AND WITHDRAWAL

Debtor filed an Opposition on June 11, 2020. Dckt. 17. Debtor's Counsel states that Debtor was unable to attend the previously scheduled meeting because he is currently incarcerated, and that arrangements were being made for Debtor to attend telephonically at the next Meeting of Creditors on July 1, 2020.

On June 17, 2020, Debtor's counsel withdrew Debtor's Opposition on the basis that Debtor will not be able to produce the required 521 documents and Social Security identification card to Trustee, and appear at the next Meeting of Creditors due to incarceration. Dckt. 18.

DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

Moreover, as stated in the Notice of Withdrawal, Debtor is unable to attend any continued meeting of creditors or provide the required 521 documents due to incarceration.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 7 case 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 to Dismiss is granted, and the case is dismissed.

5.	**17-26125-E-7 HSM-17**	**FIRST CAPITAL RETAIL, LLC Gabriel Liberman**	**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH FIRST CAPITAL RETAIL, LLC, 13TH FLOOR/PILOT, LLC, MCA RECOVERY, LLC 5-28-20 [602]**

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 holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on May 29, 2020. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

The Motion for Approval of Compromise is granted.

Kimberly J. Husted, the Chapter 7 Trustee, and Settling Parties 13th Floor/Pilot, LLC, MCA Recovery, LLC, and West Coast Business Capital, LLC, Creditors ("Movant") request that the court approve a compromise and settle competing claims and defenses with First Capital Retail, LLC, 13th Floor/Pilot, LLC, MCA Recovery, LLC, and West Coast Business Capital, LLC ("Settlor"). The claims and disputes to be resolved by the proposed settlement are an Interpleader Action with both claims and cross-claims by the settling parties to disputed funds held in the registry of the court, with the settlement agreement dictating how the funds shall be distributed.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 605):

A. The Trustee shall receive $15,000.00 as a carve-out for the estate from the disputed funds.

B. MCA/Yellowstone shall receive $56,850.00 from the disputed funds.

C. Pilot shall receive $131,150.00 from the disputed funds plus the accrued interest on the remaining disputed funds if any.

D. The Interpleader Action will be dismissed with prejudice and each party will pay their own attorney's fees and costs.

E. The parties shall grant all other settling parties mutual releases from any claims, counterclaims, demands and liabilities arising from the Interpleader Action, except as limited per the Settlement Agreement. The release does not include any claims relating to the performance under this Settlement Agreement.

F. The Settlement Agreement is subject to the approval of the Bankruptcy Court.

E. The parties agree the Bankruptcy Court shall have jurisdiction to settle any disputes arising from the Settlement Agreement or any approval order.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Probability of Success

Movant argues that the risk of not reaching an agreement between the parties is significant as each parties believes that their entitlement to the disputed funds is superior to the other parties' asserted rights. Prolonged litigation and continued negotiations would have greatly depleted funds to be paid. Trustee believes while more could have been possibly recovered for the estate, the outcome agreed upon is most beneficial to each Settling Party.

Difficulties in Collection

This factor is neutral as the funds have been deposited into the registry of the court and are readily available to a prevailing party in the Interpleader Action. The Settling Parties agree that the instant stipulation is the best outcome for the allocation of the disputed funds.

Expense, Inconvenience, and Delay of Continued Litigation

The pre-trial and trial work involved in an adversary proceeding to determine the rights and claims of the parties would have been significantly costly for all parties and would have continued to cause delay. Because the outcome of litigation is uncertain, the settlement agreement provides the best solution for the parties involved.

Paramount Interest of Creditors

It is in Creditors' best interests that the settlement is reached for it avoids costly and protracted litigation, which in turn maximizes the recoverable amounts for each party.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate on the basis that it solves the adversary proceeding over the disputed funds and maximizes the amounts the parties will recover. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Kimberly J. Husted, the Chapter 7 Trustee, 13th Floor/Pilot, LLC, MCA Recovery, LLC, and West Coast Business Capital, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Chapter 7 Trustee and First Capital Retail, LLC, 13th Floor/Pilot, LLC, MCA Recovery, LLC, and West Coast Business Capital, LLC ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 605).

6.	**19-25449-E-7** **KJH-2**	**TIFFANY MONTEIRO** **Trevor Carson**	**MOTION TO SELL** **5-18-20 [21]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice and Office of the United States, on May 18, 2020. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here, Movant proposes to sell the estate's non-exempt interest in certain unscheduled property identified as: 2:15-CV-00977-TLN-AC Tiffany Ann Nichols v. Stewart Title of Placer Inc., a lawsuit filed with the United States District Court ("Property").

The proposed purchaser of the Property is Stewart Title of Place, Inc. ("Buyer"), and the terms of the sale are:

A. Sale amount is $3,000.00 to be paid in lump sum, subject to overbidding at the hearing.

B. The Parties shall bear their own attorneys' fees and costs incurred, unless either party must enforce the Agreement, in which case the prevailing party will be entitled to recover fees from the defaulting party.

C. Buyer has provided Trustee with a $3,000.00 full payment price, to serve as payment if Buyer is the successful Buyer.

D. Buyer will bear the legal costs involved to file the dismissal of the lawsuit after the sale is approved. Additionally, Buyer bears responsibility for all sales, transfer, use, and other taxes.

E. This sale is entirely "as is" with no warranties or representations, subject to all liens and encumbrances, known or unknown.

Proposed Overbidding Procedures

Trustee proposes the following overbidding procedures:

1. The initial overbid must be $3,500.00, with any subsequent overbids in minimum increments of $500.00.

2. Qualified overbidders must deliver a $3,500.00 deposit to Trustee beforehand.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate on the basis that the lawsuit has long been dormant and was supposed to be dismissed. The attorneys' firm dissolved before the final action was completed.

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

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

The Motion to Sell Property filed by Kimberly J. Husted, 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 Kimberly J. Husted, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Stewart Title of Place, Inc. ("Buyer"), the estate's non-exempt interest in certain unscheduled property identified as: 2:15-CV-00977-TLN-AC Tiffany Ann Nichols v. Stewart Title of Placer Inc., a

lawsuit filed with the United States District Court("Property"), on the following terms:

A. The Property shall be sold to Buyer for $3,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 24, and as further provided in this Order.

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

7. 15-29541-E-12 WW-13 | TIMOTHY WILSON, Mark Wolff | CONTINUED MOTION TO MODIFY CHAPTER 12 PLAN, 4-7-20 [156]

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 12 Trustee, creditors, and Office of the United States Trustee on April 7, 2020. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(8) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1) (requiring fourteen days' notice for opposition).

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

The Motion to Confirm the Plan is granted.

The debtor, Timothy C. Wilson ("Debtor") seeks confirmation of the Modified Plan because he is unable to make all of the plan payments required due to COVID-19 and the related stay at home orders. Declaration, Dckt. 158. The Modified Plan provides the following terms:

A. All missed payments through and including April 25, 2020 are hereby excused. Beginning July 1, 2020, Debtor shall pay the sum of $10,000, then beginning July 25, 2020 through December 25, 2020 Debtor shall pay $10,000 monthly. Debtor may complete this plan with a lump sum payment.

B. General unsecured creditors not listed in Class 5 or 6, and that are not secured by property belonging to the debtor, will receive no less than a one percent (1%) dividend pursuant to the plan.

Modified Plan, Dckt. 159. 11 U.S.C. § 1229 permits a debtor to modify a plan after confirmation.

CHAPTER 12 TRUSTEE'S OPPOSITION

The Chapter 12 Trustee, Michael Meyer ("Trustee"), filed an Opposition on April 16, 2020. Dckt. 164. Trustee opposes confirmation of the Plan on the basis that:

A. The Debtor ceased making payments in December 2019.

B. The Motion states that the Modified Plan merely delays payment, not reduce them. However, the Trustee computes that the Plan payments are reduced by $22,000.

C. The Modified Plan provides that creditors with unsecured claims will receive 1% dividend, which is less than the guaranteed funding of $17,027.70 for pro rata distribution. Given that here are "only" $414,634.21, then the 1% would provide only $4,146 for pro rata distribution.

D. The proposed funding by the Debtor is insufficient to pay the secured claims as provided in the current plan. (This could represent the "modification" that is necessary due to inability to make the payments under the current plan.)

E. The Debtor has chosen to use the Chapter 13 Plan form for a modified plan in this Chapter 12 case.

Looking at the proposed plan, it purports to be an Eastern District of California Form, with the form number EDC 3-080. Dckt. 158. The form is from Best Case, and has a Revised Date for the form of February 2, 2009 - Now more than 21 years ago.

A Chapter 12 bankruptcy case is not merely a farmer "Chapter 13."

The Additional Provisions in which the "real action" is disclosed is written in large, dense paragraphs. No headings are provided.

The Debtor is to make plan payments of $10,000 a month beginning in July 25, 2020 and continuing through December 25, 2020.

CREDITOR'S OPPOSITION

Janet Wright, Randy Wright, Jack Faraone ("Creditor") holding a secured claim filed an Opposition on May 2, 2020. Dckt. 168. Creditor opposes confirmation of the Plan on the basis that it does not adequately fund payment for Creditor's claim.

APPLICABLE LAW

Section 1229 permits a chapter 12 debtor to modify a plan after confirmation. 11 U.S.C. § 1229. However, as *Collier on Bankruptcy* points out,

> Although section 1229 explicitly authorizes modification of the plan, it contains no indication of the circumstances under which modification may be requested or the standards for determining whether to grant such a request other than the limitations imposed by section 1229(d). At a minimum, the party requesting modification ought to be able to show some change in circumstances from the date of the original confirmation hearing. If the debtor's net income was less than projected, and the debtor is not able to meet the debtor's payment obligations under the plan, the debtor may seek a modification to reduce the amount of the debtor's payments under the plan.

8 *Collier on Bankruptcy* P 1229.01 (16th 2020). Further sating that,

> In examining a request for modification, the court should be guided primarily by the disposable income requirement of section 1225(b). The proper amount to be paid by the debtor to unsecured creditors under that test is the debtor's net disposable income during the plan period. The court should not hesitate to approve modification of a plan to accomplish this goal.

8 *Collier on Bankruptcy* P 1229.01 (16th 2020).

If the trustee or the holder of an allowed unsecured claim objects to confirmation of the Plan, then the court may not approve the Plan unless, as of the effective date of the Plan–

> (A) the value of the property to be distributed under the Plan on account of such claim is not less than the amount of such claim;
>
> (B) the Plan provides that all of Debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the Plan will be applied to make payments under the Plan; or
>
> (C) the value of the property to be distributed under the Plan in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the Plan is not less than Debtor's projected disposable income for such period.
>
> (2) For purposes of this subsection, "disposable income" means income that is received by Debtor and that is not reasonably necessary to be expended–

(A) for the maintenance or support of Debtor or a dependent of Debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of Debtor's business.

DISCUSSION

On May 14, 2020, Debtor filed a Reply in which he addresses Trustee's and Creditor's concerns. Dckt. 172. Debtor reports that the lumber mills are not yet open and he cannot generate income from his lumber. Debtor states that he does not dispute the Trustee's computation of under-funding the plan, and proposes to modify the payments required by the Debtor.

At the hearing, the parties addressed amendments to the Plan, to be stated in the order confirming, that resolves the disputes and allows the modified Plan to be confirmed.

Statement of Proposed Amendments

On June 3, 2020, Debtor filed a Statement of Proposed Amendments, which proposes the following amendments to Debtor's Chapter 12 Plan (Dckt. 176):

A. Plan Payments remaining are as follows: $20,000 for July 2020; $52,533.66 for August 2020; and $10,000 for September 2020 through December 2020.

B. Distributions to the "The Wright Claims" by the Chapter 12 Trustee from payments into the Plan shall be as follows: $4,193.49 for July 2020; $9,886.51 for August 2020; and $760.00 for months September 2020 through November 2020, and $8,769.00 for December 2020.

C. Beginning February 2021 through June 1, 2023, Debtor will make direct payments in the amount of $1,695.00 to "the Wright Claim." Debtor will incur $100.00 late charge if not paid by the 10th of each month. At the end of this period, the remaining principal balance and other fees will be due and paid in full or the loan will be in default.

Based on the proposed amendments and the plan otherwise complying with 11 U.S.C. §§ 1222 and 1225, the Motion to Confirm is granted and the Modified Plan is confirmed.

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 Confirm the Modified Chapter 12 Plan filed by the debtor, Timothy C. Wilson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor's Modified Chapter 12 Plan filed on April 7, 2020, as amended with the following is confirmed:

A. Plan Payments remaining are as follows: $20,000 for July 2020; $52,533.66 for August 2020; and $10,000 for September 2020 through December 2020.

B. Distributions to the "The Wright Claims" by the Chapter 12 Trustee from payments into the Plan shall be as follows: $4,193.49 for July 2020; $9,886.51 for August 2020; and $760.00 for months September 2020 through November 2020, and $8,769.00 for December 2020.

C. Beginning February 2021 through June 1, 2023, Debtor will make direct payments in the amount of $1,695.00 to "the Wright Claim." Debtor will incur $100.00 late charge if not paid by the 10th of each month. At the end of this period, the remaining principal balance and other fees will be due and paid in full or the loan will be in default.

Debtor's Counsel shall prepare an appropriate order confirming the Chapter 12 Plan, including the above amendment, transmit the proposed order to the Chapter 12 Trustee, Michael Meyer ("Trustee"), for approval as to form, and if so approved, the Chapter 12 Trustee will submit the proposed order to the court.

8. **15-29541-E-12** **TIMOTHY WILSON** **CONTINUED STATUS CONFERENCE RE:**
MHM-1 **Mark Wolff** **MOTION TO DISMISS CASE**
1-17-20 [148]

Tentative Ruling:

Debtor's Atty: Mark Wolff

Notes:
Continued from 5/21/20 to be heard in conjunction with the continued Motion to Modify Chapter 12 Plan.

The court having granted the Motion to Modify the Chapter 12 Plan, **the Motion to Dismiss is denied.**

9.	**20-21481-E-7** **RLC-1**	**CAROL PAYNE** **Gary Fraley**	**OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **5-19-20 [24]**

Telephonic Appearances of
Stephen Reynolds, Esq., Atty for Creditors
Loris Bakken, Esq., Atty for Chapter 7 Trustee
Geoffrey Richards, Chapter 7 Trustee

Required for June 25, 2020 Hearing

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on May 20, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is denied, the Chapter 7 Trustee having admitted that the property in which the exemption is claimed is not property of the bankruptcy estate.

Cherie Robinson, as Trustee for the Arthur and Amrita Robinson Family Trust and the Arthur and Amrita Robinson Family Trust, ("Robinson Trust Trustee") objects to Carol Lydia Payne's ("Debtor") claimed exemptions under California law because the real property commonly known as 4405 Feather River Road, Olivehurst, California ("Property") which the Debtor claimed as exempt in the amount of $75,000 in her filed Schedule C (Dckt.13) is not property of the bankruptcy estate and therefore cannot be claimed as exempt.

Creditor asserts Debtor did not list the Arthur and Amrita Robinson Family Trust as a creditor on her Schedules, nor did she disclose an order from the State of California Contra Costa County Superior Court ("Superior Court"), a notice of the entry of judgment against her, the recording of the judgment, or the amended order from the Superior Court. The Superior Court entered an order on November 1, 2019 and an amended order on January 30, 2020 ordering Debtor to turn over the Property to Robinson Trust Trustee. State of California County of Contra Costa, Case. No. MSP19-01625, Exhibits 2, 5, Dckt. 26.

On June 3, 2020, Chapter 7 Trustee Geoffrey Richards ("Trustee") filed a Joinder to Creditor's Objection to Claim of Exemption. Dckt. 29. Trustee believes that, based on the Superior Court's orders, the Property is not property of the bankruptcy estate, and Debtor does not have a right to the claimed exemption.

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." Fed. R. Bankr. P. Rule 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

Denial of Objection to Claim of Exemption

Under the California Code of Civil Procedure §704.730(a) a Debtor may claim a homestead exemption in the amount of $75,000 if they are an owner or co-owner of the property. Debtor claimed an exemption in the amount of $75,000 in the Property. The Robinson Trust Trustee argues that the Olivehurst Property is not property of the bankruptcy estate and not property in which the Debtor may claim an exemption. The Chapter 7 Trustee has "joined" in this Objection, admitting that the Olivehurst Property is not property of the bankruptcy estate, and therefore he believes that Debtor does not have a right to possession of the property or a right to claim an exemption in it.

State Court Amended Order
Does Not Determine Property Rights

Exhibit 5 filed by Creditors is the Amended Order of the California Superior Court, for the County of Contra Costa which expressly states:

> 1. CAROL PAYNE is suspended as trustee of THE ARTHUR AND AMRITA ROBINSON FAMILY TRUST, under trust dated August 2, 2005, as Amended and Restated on August 4, 2014 ·effective immediately.
> . . .
> 4. REPONDENT [sic] CAROL PAYNE shall turn over all trust assets to the successor trustee within five (5) days of January 21, 2020; including the property commonly referred to and located at 4405 Feather River Blvd., Olivehurst, CA 95961 to THE ARTHUR AND AMRITA ROBINSON FAMILY TRUST, under trust dated August 2, 2005, A.P.N. No. 013-350-017, with legal description as follows:
>
> > The land described herein is situated in the State of California, County of Yuba, unincorporated area, described as follows:

> The Southwest quarter of Lot 4, in Block 7, as shown on the map entitled, "Farm Land Colony No. 1", filed in the office of the County Recorder of the County of Yuba, State of California, in Book 1 of Maps, Page 23.
>
> APN: 013-350-017.

Exhibit 5, Dckt. 26. [FN. 1]

FN. 1. The Objection states that the State Court determined that the Olivehurst Property was property of the Robinson Family Trust. The Amended Order provided by Creditors "merely" states that all of the property of the Trust is to be turned over, which turnover includes the Olivehurst Property. The Amended Order does not appear to be a quiet title judgment or other adjudication of competing ownership interests.

On Schedule A filed in this case, Docket 13 at 3, Debtor lists the Olivehurst Property as property in which she is the only owner. However, in the Amended Order, the Superior Court Judge states that it is property of the Robinson Family Trust. The interest, if any, of Debtor is not stated, nor is the Debtor's relationship to said trust, other than that Debtor is removed as the trustee of the Robinson Family Trust.

No declaration of the current trustee of the Robinson Family Trust is provided in support of the Objection. The only declaration is that of Creditor's counsel in which he seeks to authenticate the Schedules filed in this case (which are in this court's files) and the orders from the Superior Court (for which counsel does not show any personal knowledge with which to provide such authentication).

Chapter 7 Trustee's Admission
That the Olivehurst Property Is Not
Property of the Bankruptcy Estate

As stated above, the Chapter 7 Trustee concurs in Creditor's assertion and the Chapter 7 Trustee, as the fiduciary of the bankruptcy estate, has admitted in the "Joinder" that the Olivehurst Property is not property of the bankruptcy estate and ---"Pursuant to the Orders, Mr. Richards [the Chapter 7 Trustee] believes that the Property is not property of the [bankruptcy] estate . . . ." "Joinder," p. 1:26; Dckt. 29.

However, in a curious twist, while admitting that the bankruptcy estate has no interest in the Property, the Trustee makes a passing reference that "[the Trustee] and the Robinson Trust, through counsel, are discussing plans for the bankruptcy estate to sell the Property and distribute the net sale proceeds such that the bankruptcy estate may pay creditors with unsecured claims and administrative expenses (such as fees for the Trustee and Trustee's counsel). "Joinder," p. 2:1-4; Dckt. 29.

In the Objection, the Robinson Family Trust affirmatively states that the Olivehurst Property is not property of the bankruptcy estate. But then Robinson Trust Trustee states:

> As a matter of administrative convenience, the Robinson Family Trust contemplates entering into an agreement with the bankruptcy estate to allow the bankruptcy estate to market and sell the Olivehurst property. Even with the turnover of the Olivehurst

> property, the Robinson Family Trust is likely the largest creditor of the Payne estate and hopes for some recovery from the estate.

Objection, p. 4:3.5-8; Dckt. 24.

While Robinson Trust Trustee may find it "administratively convenient" to "hire" a bankruptcy trustee to market and sell real property that is not property of a bankruptcy estate, such "trustee for hire" services are not included in the powers, duties, and fiduciary responsibilities of a Chapter 7 trustee in the Bankruptcy Code.

The Chapter 7 trustee owes a fiduciary duty to the bankruptcy estate and to properly administer assets of the bankruptcy estate, including those in which a debtor may claim an exemption. The Chapter 7 trustee does not represent or advocate for a debtor or any creditor, but is responsible for properly administering property of the bankruptcy estate without regard as to whether the debtor claims an exemption or a creditor asserts a lien in the property.

Here, it could appear that the Robinson Trust Trustee has been negotiating a "deal" with the Chapter 7 Trustee to not oppose the Objection and not assert that the bankruptcy estate has an interest in the Property. With the Trustee not asserting an interest, then the Robinson Trust Trustee would obtain an order appearing to adjudicate and determine an exemption based on the Property premised on the Property not being property of the bankruptcy estate. Then, the Robinson Trust Trustee would slip the Property to the Trustee to then administer using powers of a bankruptcy trustee to administer property of the bankruptcy estate as if it were property of the bankruptcy estate, but ignore the exemption based on the assertion that it is not property of the bankruptcy estate. The exemption being ignored, the Trustee, Counsel for the Trustee, the Robinson Trust Trustee, and Counsel for the Robinson Trust Trustee maximize their personal returns from the sale of property that is not property of the bankruptcy estate that the Chapter 7 Trustee administers as if it were property of the bankruptcy estate.

<u>No Federal Case or Controversy</u>
<u>Exists, and the Court Abstains (if jurisdiction exists)</u>
<u>From Adjudication of the</u>
<u>Robinson Trust Trustee-Debtor Exemption Dispute</u>

Subject matter jurisdiction defines a court's power to hear cases. *Steel Co. v. Citizens for Better Env't*, 523 U.S. 83, 89 (1998). Before a federal court exercises its jurisdiction over parties, it must determine that there is a sufficient "case" or "controversy" as required by the United States Constitution, Article III, Section 2, Clause 1, which states,

> Sec. 2, Cl 1. Subjects of jurisdiction.
>
> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;–to all Cases affecting Ambassadors, other public Ministers and Consuls;–to all Cases of admiralty and maritime Jurisdiction;–to Controversies to which the United States shall be a Party;–to Controversies between two or more States;–between a State and Citizens of another State;–between Citizens of different States,–between Citizens of the same State claiming Lands under Grants

> of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

As stated by the Ninth Circuit Court of Appeals in *Southern Pacific Company v. McAdoo*,

> Unless this proceeding was within the original jurisdiction of the District Court, it could not be brought within that jurisdiction by removal. *In re Winn*, 213 U.S. 458, 464, 29 S. Ct. 515, 53 L. Ed. 873. Unless it presents a "case" or "controversy," within the meaning of section 2, art. 3 of the Constitution, it is not within the jurisdiction of any federal court. *Nashville, C. & St. L. Ry. Co. v. Wallace*, 288 U.S. 249, 259, 53 S. Ct. 345, 77 L. Ed. 730, 87 A.L.R. 1191; *Willing v. Chicago Auditorium Ass'n*, 277 U.S. 274, 289, 48 S. Ct. 507, 72 L. Ed. 880; *Liberty Warehouse Co. v. Grannis*, 273 U.S. 70, 74, 47 S. Ct. 282, 71 L. Ed. 541.

82 F.2d 121, 121–22 (9th Cir. 1936).

Bankruptcy courts are courts created by Congress under Article I of the United States Constitution to administer the federal Bankruptcy Code, found in Title 11 of the United States Code. A bankruptcy court is designated as "a unit of the district court," and, each district court is given the ability to refer all bankruptcy matters to a bankruptcy court. 28 U.S.C. § 151(a) (positioning bankruptcy court within district court); 28 U.S.C. § 157(a) (providing for referral to bankruptcy court). Bankruptcy judges are judicial officers of the district court. 28 U.S.C. § 157(a).

Here, there is no "federal" case or controversy in the Objection to Claim of Exemption. Both the Creditors and the Chapter 7 Trustee assert and admit, respectively, that the Property which the exemption is claimed is not property of the bankruptcy estate. The Chapter 7 Trustee is not administering the Property for the bankruptcy estate, and whether the Debtor claims an exemption is irrelevant to any federal bankruptcy court, bankruptcy estate, or bankruptcy related to proceedings. To the extent that there exists any issue, it is a non-bankruptcy dispute between Creditors and the Debtor, having nothing to do with this bankruptcy case.

The court determines that no proper basis exists for this federal court to exercise jurisdiction to adjudicate any possible dispute as between the Robinson Trust Trustee and the Debtor over any exemption the Debtor may have in the Olivehurst Property that the Chapter 7 Trustee admits is not property of the bankruptcy estate. To the extent that any sliver of a reed basis exists for the exercise of federal court jurisdiction exists, the court abstains as provided in 28 U.S.C. § 1334(c)(1) from adjudicating the issue of what and whether Debtor may claim an exemption in the Olivehurst Property, determining that such a determination is an issue properly determined in the state court.

The diametrically opposed statements and possible admissions by both the Robinson Trust Trustee and the Chapter 7 Trustee not only raises serious doubts in the court's mind not only with respect to the merits of the Objection, but raises issues relating to Federal Rule of Bankruptcy Procedure 9011 and the respective duties and obligations of the parties and their respective counsel. Such matters will be the subject of separate proceedings.

The Objection is overruled.

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

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

The Objection to Claimed Exemptions filed by Creditor Cherie Robinson Trustee for the Arthur and Amrita Robinson Family Trust, and the Arthur and Amrita Robinson Family Trust ("Robinson Trust Trustee") having been presented to the court, Chapter 7 Trustee Geoffrey Richards having affirmatively admitted (Dckt. 29) that the Property described below is not property of the bankruptcy estate in this case, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is overruled.

IT IS FURTHER ORDERED that in addition to the court determining that no federal jurisdiction existed for the Robinson Trustee to seek an adjudication of the dispute with the Debtor over whether Debtor may claim an exemption in the real property commonly known as 4405 Feather River Road, Olivehurst, California, the court abstains pursuant to 28 U.S.C. § 1334(c)(1) from adjudication of such dispute in the interests of comity and said determination not being part of any rights or interests of the bankruptcy estate or other proceedings under or related to the Bankruptcy Code or this case.

In denying this Objection, this court does not make any determination as to what interests the Debtor may have in the above Olivehurst Property (which the Chapter 7 Trustee admits is not property of this bankruptcy estate) which is not being administered in this bankruptcy case, and what exemptions she may claim in such Property outside of this bankruptcy estate.

10. 19-22653-E-7 REECE/RODINA VENTURA MOTION TO SELL
DNL-14 Peter Macaluso 5-20-20 [303]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the U.S. Trustee on May 20, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Geoffrey Richards, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the bankruptcy estate's interest in the estate of Rebecca Alda Cordero (deceased mother of Debtor Rodina Cordero Ventura) ("Inheritance Interest"), including the interest over five properties in the Phillippines held by Ms. Cordero at the time of her death ("Phillippines Property") (collectively "Property").

The proposed purchaser of the Property is Michael J. Harrington. Trustee's proposed sale, subject to approval by the court, on the following terms and conditions summarized by the court (the full terms of the Sale are set forth in the Settlement Agreement filed as Exhibit E in support of the Motion, Dckt. 306):

A. An initial deposit of $2,500.00 is due within seven days of executing the agreement, $7,500.00 is due within fourteen days of the court's approving the sale agreement, and net recoveries gained by Harrington from the Inheritance Interest on a sliding scale as follows:

Collection Incremental Amount	Estate Percentage	Estate Dollar Amount	Cumulative Collection	Cumulative Estate Dollar Amount*	Cumulative Estate Percentage**
$40,000	0%	$0	$40,000	$10,000	0%
$40,000	100%	$40,000	$80,000	$50,000	50%
$20,000	75%	$15,000	$100,000	$65,000	55%
$50,000	65%	$32,500	$150,000	$97,500	58%
$50,000	45%	$22,500	$200,000	$120,000	55%
$100,000	25%	$25,000	$300,000	$145,000	45%
$100,000	25%	$25,000	$400,000	$170,000	40%
$100,000	20%	$20,000	$500,000	$190,000	36%
$500,000	25%	$125,000	$1,000,000	$315,000	31%
$500,000	20%	$100,000	$1,500,000	$415,000	27%
$2,000,000	10%	$200,000	$3,500,000	$615,000	17%

* Includes initial $10,000 cash payment.

** Excludes initial $10,000 cash payment

B. After payment of the initial $10,000.00, the Bankruptcy Estate's right, title, and interest in the Inheritance Interest shall be assigned to Harrington. The Trustee shall execute documents reasonably required by Harrington to effectuate the assignment.

C. If and when the Phillippines Property Interest is sold, a full accounting of the sale will be prepared by Harrington for Trustee. Trustee's share will be maintained in the trust account for the agreed Philippine sales attorney or neutral escrow officer and sent directly to Trustee's account for the Estate of Ventura. There will be an accounting of sales, marshaling funds, deductions for normal payment of taxes, closing and other normal escrow expenses transmitted to Trustee along with the funds.

D. Fifty percent (50%) of Gaunia's Proof of Claim 2-1 and Villanueva's Proof of Claim 3-3 attributed to Harrington's attorney's fees in the amount of $23,000.00, and $94,782.50 will be subordinated to general unsecured claims and the portions not subordinated will receive distribution pursuant to 11 U.S.C. § 726.

E. Harrington to file with the court and serve on Trustee a report of sale and declaration every time Harrington realizes any proceeds on account of the Inheritance Interest beginning August 1, 2020 and by no later than the fifth day of every other month thereafter. Harrington will provide supporting documents to Trustee within ten days of Trustee's request for documents. In the event Harrington does not comply, Trustee shall give Harrington ten (10) days notice to comply with the provision or acknowledge lack of compliance and intent to not comply. Noncompliance shall terminate the agreement, rescind the assignment, and the Bankruptcy Estate will retain any funds received as liquidated damages.

F. Debtor Rodina will no longer have any power, right, or interest of any nature in any real estate, personal property, or other proceeds or benefits flowing from the Estate of Rebecca Alda Cordero.

G. The Agreement is conditioned upon court approval of the Sale Agreement.

Proposed Overbidding Procedure

The Chapter 7 Trustee proposes the following overbidding procedures:

A. A proposed overbidder must provide a cashier's check in the amount of $3,500.00 ($2,500.00 initial deposit + first overbid in the amount of $1,000.00) with proof of funds of an additional $15,000.00 prior to the hearing.

B. Further overbidding must be in increments of at least $1,000.00.

C. Prior to the hearing, an overbidder must provide a written declaration detailing overbidder's abilities to successfully liquidate the Inheritance Interest to Trustee and file it with the court.

Debtor's Opposition

Reece and Rodina Ventura ("Debtors") filed an Opposition to the Motion to Sell on June 11, 2020. Dckt. 315. The Declaration of Rodina C. Ventura was filed in support of the Opposition. Dckt. 316. Debtors argue that there is no valid business justification for the sale, the sale is not in the best interest of the estate, and the reduction of unsecured claims to the bidder is disputed.

Debtors state that the value of the interest is $406,697.07, making the asset's value greater than *de minimis* as allegedly argued by Trustee. *Id.* at 2. Further, Debtors argue that the sale is not in the best interest of the estate because it values the attorneys and creditors with unsecured claims over those with priority claims. *Id.* at 2-3. Additionally, the Trustee seeks to negotiate Buyer's unsecured as part of the sale, which puts Buyer in an improper priority position. *Id.* at 3.

Lastly, the Debtors include a comparative analysis of bids where they propose to overbid. *Id.* at 4. Debtors' overbid will include a $2,500.00 deposit within 7 days of execution of agreement, $7,500.00 within 14 calendar days of court approval, and a variable percentage of any gross recovery. *Id*. Further, Debtors argue that they are better equipped to handling the liquidation of the estate in the Phillippines on the basis that their family members in the Phillippines must cooperate and approve the sale, and tax and real estate laws in the Philippines are complex and less favorable to non-residents. *Id.*

In her Declaration, Debtor Rodina states that her "father and brother will only agree to sell any properties if available if I have control of my own share." *Id.* at 2. Moreover, Debtor Rodina asserts that "[c]urrently, none of the properties are even in my Mother's name. My father, my brother and I are the only ones who are legally getting the properties transferred over to our name through the courts." *Id.*

Creditor's Reply

Benjamin Villanueva and Adela Bon Guania ("Creditors") filed a Reply in support of the sale and assignment agreement on June 18, 2020. Dckt. 318. Creditors assert that Debtors' overbid proposal is essentially identical to the Bidder's proposal. *Id.* at ¶ 6. Additionally, Creditors allege that Debtors have a history of bad faith dealings, including avoiding payments, perjury, and fraud and concealment. *Id. See also* Declaration and Exhibits, Dckts. 287, 288. As such, Creditors argue, it is unlikely that the Trustee will be able to enforce the agreement against the Debtors if they succeed in their overbid proposal. *Id*., at 2-3, ¶¶ 7.

DISCUSSION

This is not the Trustee's, Buyer's, and Debtors' first "sale rodeo" for this property of the bankruptcy estate. The court previously addressed a proposed sale, and Debtors' objection thereto, in the detailed Civil Minutes from the April 30, 2020 hearing on that Motion, which Minutes include:

> The Trustee reports that the real properties have a high value of approximately $2.4 Million. Motion ¶ 14, Dckt. 273. Further, that 16.67% of this would be for the bankruptcy estate. On the gross number, the bankruptcy estate's interest has a value of $400,080. Assuming a 20% overstatement of value and expenses of sale, the court computes that would leave "only" $320,064 for the bankruptcy estate's interest.
>
> By selling the $320,064 interest, the Bankruptcy Estate would recover $10,000 now, and then an additional $70,016 (25% of amounts over $40,000). However, that $70,016 would not be paid until the Trustee would have otherwise received the full $320,064 (conservatively projected above).
>
> Thus, the benefit for the bankruptcy estate as advanced by the Trustee is that the estate can get $10,000 today, in exchange for giving away $240,048 (based on the conservative projection above).
>
> The Motion makes it clear that the bankruptcy estate will remain open, there will be extensive monthly accountings and reports provided by Harrington, and this case will remain open and active until all of the properties are sold and the monies disbursed.
>
> In effect, it appears that this is little more than a contingent fee collection contract, in which the contingent fee is 75%,
>
> $$\frac{\text{\$320,064 recovery - (\$10,000 paid up front + \$70,016 received as the property is sold)}}{\text{\$320,064 Total Recovery}}$$
>
> At the hearing, the Trustee attempted to explain the underpinnings of his "business judgement" for selling the estate's interest to be paid a discounted amount only when disbursements on those interests are made in the future. They did not correspond to the sales price proposed.

> The Buyer, an attorney, explained that the contingent fee amounts could be refined based on the amount collected, creating a fluctuating percentage.
>
> Debtor stated that they would secure their offer by providing the Estate with a deed of trust on their residence.
>
> The court denies the Motion without prejudice. As the Buyer (who is an attorney) explained, he will effectively be providing collection services, including having to advance costs of the "collection." He explained that he has business dealings in the Phillippines. While such services have a significant contingent fee value, is it not 80%. Counsel for creditors Benjamin Zamora Villanueva and Adela Bon Gaunia argued that they thought the interest would recover even more from the property, which undercut their assertion that the sale to Buyer as proposed should be approved.

Civil Minutes, Dckt. 297 at 5-6.

The Trustee has now presented the court with a refined deal with the Buyer. There is a sliding scale of what the Buyer and the Estate receive from the sale of the estate's interests, that are being sold to Buyer when Buyer is able to liquidate those interests. The larger the recovery, the larger the percentage for the Buyer. As opposed to the prior proposal, the bankruptcy estate recovers a significant percentage of the "easy money," the first $1,500,000 collected, and then it tapers down if Buyer is able to generate the "big bucks" after that.

The Debtor's Opposition first asserts that any recovery for the bankruptcy estate is *de minimis*. Dckt. 315. The court does not concur. The Trustee has presented the court with a recovery formula in which both the Buyer and the bankruptcy estate make more money as the property is sold - with both having the incentive to sell the property for as much as possible. The bankruptcy estate gets $10,000 up-front, which is applied to the first $40,000 of sales proceeds. If the Buyer is only able to generate $200,000 from the sale, the bankruptcy estate recovers $120,000 - not a *di minimis* amount. If the Buyer is able to generate $1,000,000 in sales proceeds, the estate's interest goes up to $315,000.

Debtor asserts that there are $70,000 in priority claims, with land valued at $406,697. Therefore, no priority claims are paid and the estate will net zero. Debtor's assertion on this point is unclear.

Debtor argues that the Trustee including as part of the negotiated terms reduction of the Buyer's asserted unsecured claim is improper, in effect putting that unsecured claim above the priority claims.

Debtor then seeks to substitute Debtor in place of Buyer to do the deal with the Trustee slightly tweaking the percentages, to allow, if $3,500,000 is generated from the sale of the estate's interests in the property, to recover 24% more ($763,500 vs. $615,000).

Debtor touts Debtor as the better person for the Trustee to get into financial bed with because:

> There are two reasons why the debtors are better equipped to liquidate this asset than the Bidder is the taxes for nonresidents and cooperation for Brother and Father. **It is with this bid being accepted that the cooperation of my Brother and Father must be attended and not fought in the**

> **Philippines.** As my Brother and Father hold controlling shares and the properties are in their name, not my deceased mother and transfers, and the law there requires all the parties to the property to agree, and partitioning the land is very difficult.
>
> In this instance, the Debtors would be the best candidate to liquidate the properties in a timely manner. **Here, Rodina** (one of the debtors) **has traveled to the area, probate counsel there has been retained, and the Court is proceeding**. After that is completed there is a matter of inheritance taxes, and taxes for non-residents. Given Rodina's status, the taxes to the estate will be significantly different.

Opposition, p. 4:18-26, 5:1-7; Dckt. 315 (emphasis added).

The above argument can be read two ways. First, the Debtor and family will work together, cooperate, and maximize the recovery for the bankruptcy estate. Or, that if the Trustee does not find what Debtor presents as an "offer that he cannot refuse," then the Debtor's father and brother will work to sabotage the efforts to recover the value for the bankruptcy estate. If interpreted the first way, then it will work for either buyer. If interpreted the latter, it would appear to be a continuing problem/threat/challenge for the Trustee.

In the Declaration, this "threat" is made clear, with debtor Rodina Ventura stating under penalty of perjury:

> 5. In the Philippines, the real estate law is whoever has majority shares will control the decisions of what will occur of the property.
>
> 6. My father and brother will only agree to sell any properties if available if I have control of my own share.

Declaration, Dckt. 316. While the court appreciates this debtor's candor, it does not weigh in Debtor's favor. The debtors stating that they will work with their family members to sabotage the Trustee liquidating and recovering the value of the property of the bankruptcy estate is not only inconsistent with their duties and obligations in having sought the extraordinary relief under the Bankruptcy Code, but other legal and financial problems they may face.

The Debtors also object to having part of what the Buyer recovers as his share subordinating Buyer's general unsecured claim, removing it from competing general unsecured claims. In most situations, a Trustee having negotiated a dollar for a subordination of a buyer's claim would be hailed as a success, freeing up more monies for creditors with general unsecured claims.

Debtor objects, stating that somehow this subordination gives Buyer a "priority position." This "priority by subordination" is not explained.

Debtor also states that Buyer is prosecuting two nondischargeability actions against Debtor, but those actions do not take into account the subordination.

As to the subordination being a priority, the contention is without merit (not merely meritless).

As to nondischargeability, those issues, if any, will be addressed in those Adversary Proceedings.

Opposition of Regina May Cordero Burnley

An opposition to the proposed sale has been filed by Regina May Cordero Burnley ("Burnley") who appears to be the co-owner sister of Debtor. Dckt. 323. Burnley first argues that any sale of the estate's interest to Harrington violates the Philippine Constitution which limits property ownership only to Filipino Citizens. Thus, any such sale will be void. Further, that this federal court does not have the enforcement powers to order the sale of the property in the Philippines.

She then continues, reviewing the marital and divorce history in the family, concluding that Regina owns 50% of the property, and debtor's father owns none of it. She provides a detailed argument of Philippine law.

Burnley then argues that she should be the successful purchaser, offering 10% more than Harrington.

Exercise of Trustee's Business Judgement and Granting of Motion

The Debtor's Opposition and the Burnley Opposition both essentially argue the same point - it would be a better exercise of business judgment for the Trustee to sell the property to them, but not the other or Harrington. The Trustee has not negotiated what appears to be a commercially reasonable sale with Harrington. The Trustee in exercising his business judgment has determined that the person he seeks to do business with in what appears to be a long process, which will include the intra-family fight between Debtor, Burley, and an Albert, Sr., and with whom he believes will take to turn the ownership interests in the dirt into dollars.

Nobody is offering the Trustee cash today to buy the estate's interests in the properties. They all require an ongoing business relationship. The Trustee has exercised his business judgment in choosing the buyer he wants to carry the day, and such is a proper exercise of business judgment.

The court notes that Debtor and Debtor's family could well have been in the driver's seat in showing the Trustee what a good faith, bona fide purchaser they could be. How they could move it forward to get the properties sold or buy out the estate's interests (likely at a good discount). But they apparently have been unable to show that to the Trustee. Possibly, the Trustee viewed their "deal you can't refuse" overtures as a threat (similar to how the court read's the declaration). It speaks volumes that who should be the frontrunner purchaser has fallen behind the Buyer.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Estate will recover some immediate cash and have a fair percentage recovery of the sales proceeds as the sale price increases. The potential significant costs of attorney's fees and difficulty of recovering from the Inheritance Interest make the sale the more expedient, if not more predictable, option.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Geoffrey Richards, 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 Geoffrey Richards, [the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Michael J. Harrington ("Buyer"), the the bankruptcy estate's interest in the estate of Rebecca Alda Cordero (deceased mother of Debtor Rodina Cordero Ventura) ("Inheritance Interest"), including the interest over five properties in the Phillippines held by Ms. Cordero at the time of her death ("Phillippines Property") (collectively "Property").
>
> A. The Property shall be sold to Buyer for $10,000.00 plus net recoveries on the Inheritance Interest on a sliding scale, on the terms and conditions set forth in the Purchase Agreement, Exhibit E, Dckt. 306, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

FINAL RULINGS

11. 16-21659-A-7 KJH-4 | **TRONG NGUYEN** Gary Zilaff | **MOTION FOR COMPENSATION FOR KIMBERLY HUSTED, CHAPTER 7 TRUSTEE(S)** 5-18-20 [229]

Final Ruling: No appearance at the June 25, 2020 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 May 18, 2020. By the court's calculation, 38 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 Trustee Fees is granted.

Kimberly J. Husted, the Chapter 7 Trustee, ("Applicant") for the Estate of Trong Dinh Nguyen ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period of March 18, 2016, through May 8, 2020.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

> (1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —
>
> > (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
> >
> > (B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a professional employed by a trustee, the 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)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

> (7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

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

A review of the application shows that Applicant's services for the Estate include case administration and business operations. The Estate has $72,003.11 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

General Case Administration: Applicant reviewed the petition and schedules, hired special counsel and accountant to manage Client's business affairs; reviewed case with CPA for potential tax liabilities; prepared bank statement reconciliations and proper accounting of assets and disbursements made; and prepared final accounting and maintained a proper bond.

Business Operation: Applicant worked with a Business broker and the business managers until new owner was approved by the court; attended shareholders meetings; communicated extensively and reviewed documents for the marketing of a remaining business asset; and assisted in the drafting and researching of the compromise and settlement for the sale of the asset.

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $950,000.00	$15,970.73
Calculated Total Compensation	**$21,720.73**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$21,720.73
Less Previously Paid	$0.00
Total First and Final Fees Requested	$21,720.73

The fees are computed on the total sales generated $369,414.60 of net monies (exclusive of these requested fees and costs).

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $21,720.73 are approved for Chapter 7 Trustee fees pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has $72,003.11 of unencumbered monies to be administered. The Chapter 7 Trustee reviewed and properly administered this case. Applicant's efforts have resulted in a realized gross of $408,000.00 recovered for the estate. Dckt. 224.

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

As addressed below, Applicant is the successor Chapter 7 trustee in this case and has also requested approval of Chapter 7 trustee fees for John Roberts, the original Chapter 7 trustee in this case. The periods of which each served being roughly equal in time and both having to actively administer the property of the bankruptcy estate, Applicant has requested that the fees be divided equally between the two trustees.

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

Fees	$10,860.36
Costs and Expenses	$1,203.36

Allocation of Fee Compensation for Previous Trustee

John R. Roberts ("Trustee Roberts") was first appointed as Chapter 7 trustee of the case on March 18, 2016. Declaration, Dckt. 231. Applicant was later appointed as Chapter 7 trustee to the case on June 15, 2018 because Trustee Roberts resigned due to retirement. Applicant and Trustee Roberts conducted all of the activities necessary to properly administer this case. Applicant proposes dividing the fees equally between the two trustees, with $10,860.37 to be paid to Trustee Roberts and $10,860.36 to Applicant, in addition to her identified expenses of $1,203.36.

The allowance of $10,860.37 to John Roberts as the original Chapter 7 trustee in this case is reasonable.

This requested allocation provides for the total fees remaining under the maximum amount permitted by law in a bankruptcy case and is a fair allocation between the two trustees.

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 Kimberly J. Husted, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Kimberly J. Husted, the successor Chapter 7 Trustee in this case is allowed the following fees and expenses as trustee of the Estate:

Kimberly J. Husted, the Chapter 7 Trustee

Fees in the amount of $10,860.36,
Expenses in the amount of $1,203.36.

IT IS FURTHER ORDERED that John Roberts, the original Chapter 7 trustee in this case is allowed the following fees as the trustee of the Estate:

John R. Roberts, the original former Chapter 7 Trustee

Fees in the amount of $10,860.37.

IT IS FURTHER ORDERED that Chapter 7 Trustee Kimberly J. Husted 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.

12. 11-32583-A-7 LBG-2 | **ESTHER ZUCCO**
Lucas Zucco | **MOTION TO AVOID LIEN OF SIERRA CENTRAL CREDIT UNION**
5-28-20 [25]

Final Ruling: No appearance at the June 25, 2020 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, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on May 28, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Sierra Central Credit Union ("Creditor") against property of the debtor, Esther Zucco ("Debtor") commonly known as 871 Jewell Avenue, Yuba City, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $23,993.12. Exhibit 2, Dckt. 27. An abstract of judgment was recorded with Sutter County on March 11, 2011, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $103,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $125,000.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 23. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $1.00 on Amended Schedule C. Dckt. 22.

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 Esther Zucco ("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 Sierra Central Credit Union, California Superior Court for Sutter County Case No. CVCM 11-0066, recorded on March 11, 2011, with the Sutter County Recorder, against the real property commonly known as 871 Jewell Avenue, Yuba City, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

13. 20-21328-A-7 UST-1 | **BARNEY/ALVA PICKARD** | **Gary Fraley** | **MOTION FOR DENIAL OF DISCHARGE OF BOTH DEBTORS UNDER 11 U.S.C. SECTION 727(A)** | **5-6-20 [18]**

Final Ruling: No appearance at the June 25, 2020 hearing is required.

> The case having previously been dismissed, the Motion is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Denial of Discharge Pursuant to 11 U.S.C. § 727(a)(8) having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the bankruptcy case having been dismissed.

14. 17-22333-E-7 KJH-2 | **THOMAS WARREN** Lucas Garcia | **MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY, ACCOUNTANT(S)** **5-21-20 [190]**

Final Ruling: No appearance at the June 25, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 12, 2020. By the court's calculation, 44 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Professional Fees is granted.

Gabrielson & Company, the Accountant ("Applicant") for Kimberly J. 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 April 15, 2020, through May 12, 2020. The order of the court approving employment of Applicant was entered on April 27, 2020. Dckt. 188. Applicant requests fees in the amount of $1,461.50 and costs in the amount of $102.60.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include preparation of Federal and California Estate Income Tax Returns, employment documents for Trustee, and the application for compensation and detail of tax services. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 1.3 hours in this category. Applicant prepared employment application documents for Trustee's review and prepared the first and final request for compensation.

Tax Return Preparation: Applicant spent 2.4 hours in this category. Applicant prepared the federal and state income tax returns for the Estate as well as reviewed past tax filings to determine if the Estate would be receiving any tax refunds.

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	3.7	$395.00	$1,461.50
	0	$0.00	$0.00
Total Fees for Period of Application			$1,461.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $102.60 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copies	$0.20	$62.40
Postage		$40.20

		$0.00
Total Costs Requested in Application		$102.60

In looking at the costs, Applicant states that they charge clients $0.20 a page for photocopies. Commonly, a cost of $0.10 per page is allowed. Applicant has not provided the court with evidence that his actual cost of photocopies is $0.20 a page in 2020.

The court reduces the photocopy charge to $0.10 a page, thus reducing costs to $71.40. This is without prejudice to Applicant documenting that the actual cost for photocopies is more than $0.10 a page and that such higher amount is reasonable. [FN.1]

FN. 1. The court recalls a case from a few years back where the attorney asserted that the $0.25 a page copy fee was the actual cost he paid a third party to generate the copies. The third-party was the attorney's wife, who would come into the attorney's office, use the attorney's copy machine and paper, and then "bill" the attorney $0.25 a page for her time and effort in operating the copy machine. Not surprisingly, that $0.25 a page expense was not approved. Though the court has no belief that such is the situation with the current applicant, the rules regarding fees are applied across the board to all applicants.

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 $1,461.50 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 $71.40 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$1,461.50
Costs and Expenses	$71.40,

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 Husted, 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 $1,461.50
Expenses in the amount of $71.40,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as Accountant for the Chapter7 Trustee.

15. 20-22086-A-7 MABEL LEWIS MOTION TO COMPEL ABANDONMENT
WW-1 Mark Wolff 5-28-20 [16]

Final Ruling: No appearance at the June 25, 2020 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, creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment 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 Compel Abandonment is granted.

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

The Motion filed by Mabel Christina Lewis ("Debtor") requests the court to order J. Michael Hopper ("the Chapter 7 Trustee") to abandon property commonly known as 8800 Tiogawoods Drive, Sacramento, California ("Property"). The Property is encumbered by the lien of Sun West Mortgage, securing a claim of $434,749.00. The Declaration of Mabel Christina Lewis has been filed in support of the Motion and values the Property at $450,000.

The Chapter 7 Trustee has no opposition to the relief requested. Trustee's May 30, 2020 Docket Entry Statement.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not a minute order) substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Mabel Christina Lewis ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 8800 Tiogawoods Drive, Sacramento, California listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, J. Michael Hopper ("Trustee") to Mabel Christina Lewis by this order, with no further act of the Trustee required.

16. 18-27699-E-7 DBJ-9 | **WALTER ZWALD AND CYNTHIA RAITT-ZWALD** | **MOTION TO AVOID LIEN OF DSD FINANCIAL INC.**
Douglas Jacobs | **5-11-20 [141]**

Final Ruling: No appearance at the June 25, 2020 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, parties requesting special notice, and Office of the United States Trustee on May 11, 2020. By the court's calculation, 45 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 DSD Financial Inc. ("Creditor") against property of the debtors, Walter A. Zwald Jr. and Cynthia Ann Raitt-Zwald ("Debtors") commonly known as 9480 Van Ness Way, Durham, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $174,133.86. Exhibit A, Dckt. 143. An abstract of judgment was recorded with Butte County on September 30, 2015, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $472,000.00 as of the petition date. Dckt. 111. The unavoidable consensual liens that total $542,517.13 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 111. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $1.00 on Amended Schedule C. Dckt. 125.

The Chapter 7 Trustee has no opposition to the relief requested. Trustee's May 19, 2020 Docket Entry Statement.

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 Walter Andrew Zwald, Jr. And Cynthia Ann Raitt-Zwald ("Debtors") 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 DSD Financial Inc., California Superior Court for Sutter County Case No. CVCS 15-0392, recorded on September 30, 2015, with the Butte County Recorder, against the real property commonly known as 9480 Van Ness Way, Durham, California, is avoided in its entirety to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

17. 20-21584-E-7 **ANTRANICK HARRENTSIAN**
Pro Se

CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-4-20 [17]

Final Ruling: No appearance at the June 25, 2020 Hearing is required.

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, and parties requesting special notice and on April 25, 2020. By the court's calculation, 26 days' notice was provided. 28 days' notice is required.

In light of the court continuing the hearing and Debtor having responded, the notice is sufficient.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice.

The Chapter 7 Trustee, Susan K. Smith ("Trustee"), seeks dismissal of the case on the grounds that Antranick Jean Harrentsian ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 3:30 p.m. on June 10, 2020. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 4, 2020. Dckt. 17. Debtor asserts that he did not receive the notice for the missed meeting of creditors. Opposition, at 2. They were inadvertently delivered to the wrong house. *Id*. The neighbor did not give him the mail until four days after the meeting had passed. *Id*. Once Debtor received the letter, he began gathering his documents and emailed them to the Trustee. *Id*. See also Email at 3. Debtor requests the court allow him to continue his bankruptcy, and guarantees to be present at the June 10, 2020 Meeting of Creditors. *Id.* at 2.

DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

Debtor argues that he did not receive the notice for the meeting of creditors in time due to delivery of his mail to the wrong residence. Debtor shows that he has already communicated with Trustee and that he is ready to prosecute this case. Debtor is aware of the next meeting of creditors and guarantees to be there.

Trustee's Report

On June 11, 2020, Trustee reported that Debtor appeared *Pro Se* to the June 10, 2020 Meeting of Creditors. Trustee's June 11, 2020 Report. The Meeting was continued to 3:30 p.m. on June 24, 2020. *Id*.

The Debtor having appeared, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Susan K. Smith ("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 Dismiss is denied without prejudice.
>
> The deadlines to file complaints for nondischargeability and objections to discharge have been extended as provided in Bankruptcy Court General Order 20-02 (Amended April 16, 2020).

18. **20-20908-A-7** **MANUEL/NORMA VALIM**
SKS-1 **Gilbert Vega**

CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-5-20 [19]

Final Ruling: No appearance at the June 25, 2020 Hearing is required.

Local Rule 9014-1(f)(2) Motion—No 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, parties requesting special notice, creditors, and Office of the United States Trustee on May 7, 2020. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss 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.

The Motion to Dismiss is denied without prejudice.

The Chapter 7 Trustee, Susan K. Smith ("Trustee"), seeks dismissal of the case on the grounds that Manuel M. Valim and Norma Cecilia Valim ("Debtors") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 3:30 p.m. on June 10, 2020. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 18, 2020. Dckt. 21. Debtor's Counsel asserts that his office was closed due to the "stay at home" order and the continued hearing date for the meeting of creditors was overlooked by his office. *Id*., ¶ 2. Debtor requests the motion be denied and the debtor and counsel will be available at the continued meeting of creditors. *Id*., ¶ 3.

DISCUSSION

The First Meeting of Creditors has been continued to June 10, 2020. The court continues the hearing on this Motion to afford the Debtor the opportunity to appear at the continued meeting, and provide additional time to address any issues that may arise without requiring an appearance at the June 11, 2020 hearing.

As provided in General Order 20-02 (Amended April 16, 2020),

> 2. For bankruptcy cases with a Continued Initial 341 Meeting, the following **deadlines** set under the Federal Rules of Bankruptcy Procedure are **extended to 60 days after the date the Continued Initial 341 meeting**, whether it is the first announced continued date or an announced subsequent continued date, **is actually first conducted with the debtor(s) present:**[1]
> . . .
>
> b. The deadline under Rule 1017(e) for the United States Trustee to file a motion to dismiss for abuse.
>
> c. The deadline under Rule 4004(a) for the filing of objections to the debtor's discharge under 11 U.S.C. § 727.
>
> d. The deadline under Rule 4007(c) for filing complaints to determine the dischargeability of certain debts under 11 U.S.C. § 523(c). . . .

Trustee's Report of No Distribution

On June 10, 2020, Trustee reported that Debtor appeared to the June 10, 2020 Meeting of Creditors and that it was concluded. Trustee's June 10, 2020 Report. Trustee also reports that she has neither received any property nor paid any money on account of this estate and certifies that the estate has been fully administered. *Id.*

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 Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Susan K. Smith ("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 Dismiss is denied without prejudice.
>
> The deadlines to file complaints for nondischargeability and objections to discharge have been extended as provided in Bankruptcy Court General Order 20-02 (Amended April 16, 2020).

19. 20-20909-A-7 SKS-1

OSCAR PEREZ GARCIA
Gilbert Vega

CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
5-5-20 [15]

Final Ruling: No appearance at the June 25, 2020 Hearing is required.

Local Rule 9014-1(f)(2) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 7, 2020. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss 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.

The Motion to Dismiss is denied without prejudice.

The Chapter 7 Trustee, Susan K. Smith ("Trustee"), seeks dismissal of the case on the grounds that Oscar Fernando Perez Garcia ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 3:30 p.m. on June 10, 2020. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 18, 2020. Dckt. 17. Debtor's Counsel asserts that his office was closed due to the "stay at home" order and the continued hearing date for the meeting of creditors was overlooked by his office. *Id*., ¶ 2. Debtor requests the motion be denied and the debtor and counsel will be available at the continued meeting of creditors. *Id*., ¶ 3.

DISCUSSION

The First Meeting of Creditors has been continued to June 10, 2020. The court continues the hearing on this Motion to afford the Debtor the opportunity to appear at the continued meeting, and provide additional time to address any issues that may arise without requiring an appearance at the June 11, 2020 hearing.

As provided in General Order 20-02 (Amended April 16, 2020),

> 2. For bankruptcy cases with a Continued Initial 341 Meeting, the following **deadlines** set under the Federal Rules of Bankruptcy Procedure are **extended to 60 days after the date the Continued Initial 341 meeting**, whether it is the first announced continued date or an announced subsequent continued date, **is actually first conducted with the debtor(s) present:**[1]
> . . .
>
> b. The deadline under Rule 1017(e) for the United States Trustee to file a motion to dismiss for abuse.
>
> c. The deadline under Rule 4004(a) for the filing of objections to the debtor's discharge under 11 U.S.C. § 727.
>
> d. The deadline under Rule 4007(c) for filing complaints to determine the dischargeability of certain debts under 11 U.S.C. § 523(c). . . .

Trustee's Report of No Distribution

On June 10, 2020, Trustee reported that Debtor appeared to the June 10, 2020 Meeting of Creditors and that it was concluded. Trustee's June 10, 2020 Report. Trustee also reports that she has neither received any property nor paid any money on account of this estate and certifies that the estate has been fully administered. *Id.*

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 Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Susan K. Smith ("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 Dismiss is denied without prejudice.
>
> The deadlines to file complaints for nondischargeability and objections to discharge have been extended as provided in Bankruptcy Court General Order 20-02 (Amended April 16, 2020).