UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

June 29, 2017, at 10:30 a.m.

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1. **16-90500-E-11** **ELENA DELGADILLO** **MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO PAY**
HSM-10 **Len ReidReynoso** **5-30-17 [182]**

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 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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 Irma Edmonds, the Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1920 82nd Avenue, Oakland, California ("Property").

The proposed purchaser of the Property is Sajnil Shah and Marin Kemnec, and the terms of the sale are:

A. Purchase price of $430,000.00, including a down payment of $97,500.00 and contingent on Buyer obtaining a loan of $322,500.00 at an interest rate not to exceed five percent.

B. Property sold "as is," "where is," and "with all faults."

C. Fifteen-day closing period from the date on which the court approves the sale; twenty-one day contingency period for Buyer to obtain financing; ten-day contingency period for Buyer to complete all investigations and either waive all contingencies or cancel the Purchase Agreement.

D. All residual sale proceeds to be paid to judgment lienholder Sacramento Lopez.

E. Brokers for the sale will receive $25,800.00.

F. Seller shall pay the county transfer tax fee.

G. Buyer and Seller shall each pay fifty percent of the city transfer tax fee.

H. Seller shall pay for a natural hazard zone disclosure report

I. Buyer does not intend to occupy the Property as a primary residence.

J. Overbidding is to be allowed, at increments no less than $2,000.00.

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 because it allows Debtor to partially pay down the secured lien held by Sacramento Lopez.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately $28,500.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a six percent commission.

REQUEST TO SELL FREE AND CLEAR OF LIENS

The title of the Motion states that it is a request to sell the property "free and clear of liens." The bankruptcy judge may issue such an order pursuant to 11 U.S.C. § 363(f), but may do so only if specified statutory conditions are met. While the Motion clearly states many grounds with particularity for which

relief is requested, it does not state what grounds exist for the court ordering the sale "free and clear of liens."

At the hearing, Counsel for the Trustee addressed this point, advising the court **xxxxxxxxxxx.**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Irma Edmonds, the Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Irma Edmonds, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Sajnil Shah and Marin Kemnec or nominee ("Buyer"), the Property commonly known as 1920 82nd Avenue, Oakland, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $430,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 186, 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 in order to effectuate the sale.
>
> C. The Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> D. The Trustee is authorized to pay a real estate broker's commission in an amount equal to six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to the Trustee's agent, Stephanie Davis of Coldwell Banker Residential Brokerage.

2.	**16-90401-E-11** **WFH-8**	**NATIONAL EMERGENCY MEDICAL SERVICES** **David Johnston**	**MOTION TO CONVERT CASE TO CHAPTER 7** **6-8-17 [178]**

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 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 8, 2017. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANK. P. 2002(a)(4) (requiring twenty-one-days' notice).

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

The Motion to Convert the Chapter 11 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.

This Motion to Convert the Chapter 11 bankruptcy case of National Emergency Medical Services Association ("Debtor") has been filed by Russell Burbank ("Movant"), the Chapter 11 Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

A. Debtor no longer has employees and its remaining obligations to its four collective bargaining units are being satisfied by a third party.

B. Distribution to creditors can be more efficiently achieved through a Chapter 7 liquidation than through a Chapter 11 confirmation process.

C. Any Chapter 11 distribution would mirror the results of a Chapter 7 distribution.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

DISCUSSION

A Chapter 11 case may only be dismissed or converted by a party in interest for cause. 11 U.S.C. § 1112(b)(1). The Bankruptcy Code provides a list of causes, which are sufficient to support dismissal or conversion. *Id.* at § 1112(b)(4). Generally, such lists are viewed as illustrative rather than exhaustive. In assessing whether cause exists, the court should "consider other factors as they arise, and use its equitable powers to reach the appropriate result in individual cases." *Pioneer Liquidating Corp. v. U.S. Trustee (In re Consol. Pioneer Mortg. Entities)*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (citation omitted). A bankruptcy court is given wide discretion to convert a chapter 11 case to a chapter 7 for "cause." *Id.* at 375 (citing *In re Greenfield Drive Storage Park*, 207 B.R. 913, 916 (9th Cir. B.A.P. 1997)).

The Trustee has demonstrated that the same economic result will be achieved for creditors through Chapter 7 as they would receive in Chapter 11, but by converting, the case will be administered more effectively. Additionally, no party has opposed the Trustee's Motion. The court determines that conversion to Chapter 7 is in the best interest of Debtor and creditors.

Cause exists to convert this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is converted to a case under Chapter 7.

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 Convert the Chapter 11 case filed by Russell Burbank, 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 Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

3.	**16-90103-E-7** **MDM-1**	**JOSE MERCADO** **Nelson Gomez**	**MOTION FOR COMPENSATION FOR MICHAEL D. MCGRANAHAN, CHAPTER 7 TRUSTEE** **5-22-17 [99]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on May 22, 2017 By the court's calculation, 38 days' notice was provided. 14 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Michael McGranahan, the Trustee ("Applicant") for Debtor Jose Mercado ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period March 18, 2016, through June 15, 2017.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing

judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including successfully seeking turnover of a portion of Debtor's attorney's retainer fees believed to be in excess. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES REQUESTED

General Case Administration: Applicant successfully received judgment from the court that Debtor's attorney's retainer was excessive for a case which was incorrectly filed under the wrong chapter, resulting in turnover of a portion of the retainer ($2,500.00) to the Estate.

Trustee requests the following fees:

25% of the first $5,000.00 (only $2,500.00)	$625.00
Calculated Total Compensation	**$625.00**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$625.00
Less Previously Paid	$0.00
Total First Fees Requested	$625.00

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 $625.00 pursuant to 11 U.S.C. § 330 are authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The Chapter 7 Trustee successfully sought turnover of a portion of Debtor's attorney's retainer fee. Applicant's efforts have resulted in a realized gross of $2,500.00 recovered for the estate. Dckt. 101.

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

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

Fees	$625.00
Costs and Expenses	$39.45

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 Michael McGranahan ("Applicant"), the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Michael McGranahan is allowed the following fees and expenses as a professional of the Estate:
>
> Michael McGranahan, the Chapter 7 Trustee
>
> Fees in the amount of $625.00
> Expenses in the amount of $39.45,
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

4. **10-90613-E-7** **SERGIO/PATRICIA ROSALES** **MOTION TO AVOID LIEN OF VALLEY FIRST CREDIT UNION**
TOG-2 **Thomas Gillis** **5-31-17 [35]**

Final Ruling: No appearance at the June 29, 2017 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, Creditor, creditors, and Office of the United States Trustee on May 31, 2017. By the court's calculation, 29 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 Valley First Credit Union ("Creditor") against property of Sergio Rosales and Patricia Rosales ("Debtor") commonly known as 4220 Green Knoll Drive, Salida, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $8,156.50. An abstract of judgment was recorded with Stanislaus County on December 29, 2009, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $130,000.00 as of the date of the petition. The unavoidable consensual liens that total $169,600.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor indicates in this Motion that an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $100,000.00 has been claimed on Schedule C. Dckt. 35. In review of Debtor's amended Schedule C, an exemption of $8,156.50 pursuant to California Code of Civil Procedure § 703.140(b)(5) has been claimed. Dckt. 41.

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 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 Valley First Credit Union, California Superior Court for Stanislaus County Case No. 643689, recorded on December 29, 2009, Document No. 2009-0123869-00, with the Stanislaus County Recorder, against the real property commonly known as 4220 Green Knoll Drive, Salida, 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.

5. **16-91014-E-7** **KENNETH/WENDY MILLER** **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH KENNETH A. MILLER AND WENDY ANNE MILLER**
ADJ-3 **Matthew Olson** **5-30-17 [104]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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.

Michael McGranahan, the Trustee ("Movant"), requests that the court approve a compromise and settle competing claims and defenses with Kenneth Miller and Wendy Miller ("Settlor"), the Debtors. The claims and disputes to be resolved by the proposed settlement are four claims related to Settlor's property commonly known as 6736 Lynch Avenue, Riverbank, California: 1) J.P. Morgan Chase holds a first deed of trust with an approximate outstanding balance of $24,070.00; 2) J.P. Morgan Chase holds a second deed of trust with an approximate outstanding balance of $56,244.55; 3) J.P. Morgan Chase holds a third deed of trust with an approximate outstanding balance of $243,193.63; 4) American Express Bank, FSB holds a judgment lien with an approximate outstanding balance of $15,605.64.

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. 108):

A. Within seven days following the court's approval of this motion, Settlor agrees to pay $20,000.00 to the Trustee in full satisfaction of any claims and interests the estate and the Trustee have in Settlor's property commonly known as 6736 Lynch Avenue, Riverbank, California.

B. Settlor's failure to comply with the terms of the Compromise will result in termination of the Compromise.

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).

Probability of Success

There is no pending action in the instant matter. The court entered a turn over order for the Debtor's property commonly known as 6736 Lynch Avenue, Riverbank, California on April 14, 2017.

Difficulties in Collection

This Compromise would likely provide a higher recovery than would a sale of the property. Bob Brazeal, the Trustee's real estate broker, estimates the property could sell for between $490,000.00 and $510,000.00. A sale on the low end of that estimate, $490,000.00, would only recover approximately $11,686.18. A sale on the high end of that estimate, $510,000.00, would recover approximately $30,086.18; however, if the property sells for Settlor/Debtor's valuation of $425,000.00, then no recovery would be made for the estate. Because there is no guarantee of any recovery through a sale of the property, the Compromise is the only way to ensure recovery for the estate.

Expense, Inconvenience, and Delay of Continued Litigation

A sale of the property would incur additional expenses on the bankruptcy estate with no guarantee of a recovery.

Paramount Interest of Creditors

It is preferable for creditors to have the certainty of a recovery through this Compromise, as opposed to the uncertainty and added expense of an attempt to sell the property on the market. No creditors have made their opinions known on the matter, but the Trustee is confident that the creditors would support this Compromise.

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 this Compromise ensures that some recovery will be made to the bankruptcy 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 Michael McGranahan, the 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 Kenneth Miller and Wendy Miller ("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. 108).

6. **16-91014-E-7** **KENNETH/WENDY MILLER** **MOTION TO AVOID LIEN OF**
MF-3 **Matthew Olson** **AMERICAN EXPRESS BANK, FSB**
6-1-17 [112]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 1, 2017. 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 denied without prejudice.

This Motion requests an order avoiding the judicial lien of American Express Bank, FSB ("Creditor") against property of Kenneth Miller and Wendy Miller ("Debtor") commonly known as 6736 Lynch Avenue, Riverbank, California ("Property").

ABSTRACT OF JUDGMENT NOT PROVIDED

Movant did not attach a copy of the judicial lien as part of the Motion. Without proof of the judicial lien, the court does not have sufficient information to grant the Motion.

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

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

The Motion to Avoid Judicial Lien of American Express Bank, FSB , against property of Kenneth Miller and Wendy Miller commonly known as 6736 Lynch Avenue, Riverbank, California ("Property") 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 Avoid Judicial Lien is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT FILES THE PURPORTED JUDICIAL LIEN TO BE AVOIDED

A judgment was entered against Debtor in favor of Creditor in the amount of $15,604.64. An abstract of judgment was recorded with Stanislaus County on August 5, 2016, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $425,000.00 as of the date of the petition. The unavoidable consensual liens that total $323,508.18 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $100,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is not sufficient equity to support the entire judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided in excess of $1,491.82 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 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of American Express Bank, FSB, California Superior Court for xxxx County Case No. xxxx, recorded on August 5, 2016, Document No. 2016-0059628-00 with the Stanislaus County Recorder, against the real property commonly known as 6736 Lynch Avenue, Riverbank, California, is avoided for all amounts in excess of $1,491.82 pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

7. **17-90430-E-7** **ROBERT/JAMIE COFFMAN** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Pro Se **6-9-17 [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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 7 Trustee as stated on the Certificate of Service on June 11, 2017. The court computes that 18 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on June 6, 2017.

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

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $335.00.

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

8. **11-91931-E-7** **GEORGE/NINEVEH KHANISHIAN** **MOTION TO AVOID LIEN OF DISCOVER BANK**
MSN-1 **Mark Nelson** **5-16-17 [19]**

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—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 16, 2017. By the court's calculation, 44 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 denied without prejudice.

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of George Khanishian and Nineveh Khanishian ("Debtor") commonly known as 2613 Tradition Way, Modesto, California ("Property").

Unfortunately for Debtor, a copy of the recorded judgment in favor of Discover Bank has not been provided. Therefore, the court has no information about the purported judgment lien that Debtor asks the court to avoid. 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 filed by 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 denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF DEBTOR PROVIDES A COPY OF THE PURPORTED AND RECORDED JUDGMENT LIEN

A judgment was entered against Debtor in favor of Creditor in the amount of $8,403.10. An abstract of judgment was recorded with Stanislaus County on January 12, 2011, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $152,000.00 as of the date of the petition. The unavoidable consensual liens that total $258,973.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $5,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of 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 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Discover Bank, California Superior Court for xxxx County Case No. xxxx, recorded on January 12, 2011, Document No. xxxx, with the Stanislaus County Recorder, against the real property commonly known as 2613 Tradition Way, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

9. **16-90139-E-7** **AJAVA SYSTEMS, INC.** **CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF HUGHES LAW CORPORATION FOR GREGORY J. HUGHES, CREDITORS ATTORNEY(S)**
CDH-6 **David Johnston** **4-19-17 [151]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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 as Administrative Expense is granted.

Hughes Law Corporation, the Attorney ("Applicant") for Schreiber Foods, Inc., Agri-Dairy Products, Inc., and Ball Metal Food Container, LLC, Creditors ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 4, 2016, through April 12, 2017. Applicant requests fees in the amount of $16,493.00 and costs in the amount of $355.00.

STIPULATION TO CONTINUE HEARING

On May 4, 2017, the parties filed a "Stipulation" to continue the hearing on the matter to 10:30 a.m. on June 29, 2017, because both parties are unavailable for the May 18, 2017 hearing. Dckt. 156. The court deemed the "Stipulation" to be a joint "motion" as required by Federal Rule of Bankruptcy Procedure 9013 and Local Bankruptcy Rule 9014-1(j).

ORDER CONTINUING HEARING

On May 9, 2017, the court entered an order continuing the hearing to 10:30 a.m. on June 29, 2017. Dckt. 157.

TRUSTEE'S OPPOSITION

Michael McGranahan, the Chapter 7 Trustee, filed an Opposition on June 13, 2017. Dckt. 159. The Trustee objects to Applicant's charge for January 4, 2016, totaling 0.4 hours for $118.00 because it concerns the collection of a creditor's claim. *See* 4 Alan N. Resnick & Henry J. Somner eds., *Collier on Bankruptcy* ¶ 503.10[2][b] (16th ed. 2017). The Trustee objects to the remainder of the pre-petition fees of $3,451.50 to the extent that the court determines those fees are not directly related to the involuntary petition. The Trustee objects to the following post-relief claims because they concern the collection of a creditor's claim:

A. the charge for May 3, 2016, totaling 0.9 hours for $265.50,

B. the charge for May 17, 2016, totaling 0.2 hours for $59.00, and the

C. charge for May 27, 2016, totaling 0.2 hours for $59.00.

The Trustee objects to the remainder of the post-relief fees of $9,771.50 to the extent that the court determines those fees are not allowed because they are post-relief or because they are not a substantial contribution.

According to the Supreme Court's recent decision *Baker Botts L.L.P. v. ASARCO LLC*, 135 S.Ct. 2158 (2015), counsel cannot seek additional compensation for defending the Fee Motion. The Trustee does not object to the allowance of requested costs of $355.00 or to the fees for the gap period of $2,768.50.

APPLICANT'S REPLY

Applicant filed a Reply to Trustee's Opposition on June 22, 2017. Dckt. 163. Applicant argues that all of the services provided by Applicant "were either the standard services provided in the context of an involuntary petition or services incurred while complying with orders issued by the Court . . . [such that] the Court has no reason not to approve the fees as administrative expenses." As to the four time entries that the Trustee argues represent collection work and are thus not compensable, Applicant asserts that "reasonable minds could disagree as to whether these exact services directly benefitted the Estate . . . [and that] Applicant was willing to stipulate to withdrawing or disallowing the four time entries." This "withdrawal" is for $501.00 of the requested fees.

STATUTORY BASIS FOR PROFESSIONAL FEES

Reasonable compensation for professional services rendered by an attorney of a creditor who files an involuntary petition under 11 U.S.C. § 303 is allowable as an administrative expense pursuant to 11 U.S.C. § 503(b)(4).

An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

Reimbursing a Petitioning Creditor

A bankruptcy court may allow a petitioning creditor to be reimbursed from the estate when the petitioning creditor's actions benefitted the estate and other creditors. 4 Alan N. Resnick & Henry J. Somner eds., *Collier on Bankruptcy* ¶ 503.10[2][a] (16th ed. 2017). However, "efforts undertaken by creditors primarily to further their own interests [such as collection work] are not compensable under § 503(b)." *In re Keeley & Grabanski Land P'Ship*, No. 10-31482, 2013 Bankr. LEXIS 3326, at *19 (Bankr. D. N.D. Aug. 15, 2013).

If a debtor fails to comply with a court order to file a list, schedule, or statement of financial affairs, the court may order a petitioning creditor to prepare and file those papers. *See* 11 U.S.C. § 521, Bankruptcy Rule 1007(k). Pursuant to Rule 1007(k), "the court may approve reimbursement of the cost incurred in complying with such an order as an administrative expense."

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.

Contact with Creditors and Preparation of Involuntary Petition: Applicant spent 13.4 hours in this category. Applicant examined the Debtor's affairs, advised creditors of the requirements to join as a petitioning creditor, and spoke with other creditors about potentially joining the involuntary petition as a petitioning creditor.

Appointment of Trustee and Order for Relief: Applicant spent 8.1 hours in this category. Applicant sought immediate appointment of a trustee and prepared and filed a motion to appoint a trustee, and entered into a stipulation for the appointment of Mr. McGranahan and entry of the order for relief.

Compliance with Court Orders and Efforts to Prevent Bankruptcy Case from being Dismissed due to Debtor's Lack of Compliance: Applicant spent 26.7 hours in this category. Applicant filed an Objection to Dismissal of Case Due to Debtor's Failure to File Required Documents; Applicant sought and obtained an order authorizing a Rule 2004 examination of Debtor's accountant; Applicant prepared and filed a motion to designate Prithvi Raj Chauhan as the Individual Responsible to Perform Acts Required of the Debtor; Applicant prepared a status report in anticipation of the June 2, 2016, status conference; Applicant prepared and filed a motion for an order directing Debtor's representative to prepare and file the required documents; Applicant had numerous conversations with counsel for the Trustee, counsel for various creditors, and counsel for the Debtor and the Petitioning Creditors related to sharing or obtaining information to comply with the orders of the court.

Miscellaneous Activity After Debtor Filed Schedules: Applicant spent 1.1 hours in this category. Applicant reviewed the Schedules, Statement of Financial Affairs, and the Mailing Matrix provided by the Debtor, including Debtor's QuickBooks accounting; Applicant prepared an email to the Petitioning Creditors about the status of the case and proofs of claim.

Motion to Approve Fees: Applicant spent 5.7 hours in this category. Applicant reviewed and filed its time records and prepared the instant Motion for Compensation, including additional research on requesting authorization and payment for fees incurred after the Order for Relief was entered.

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**
Christopher Hughes	54.20	$295.00	$15,989.00
Gregory Hughes	1.20	$420.00	$504.00
Total Fees for Period of Application			$16,493.00

In considering this situation, the court notes several things. First, the petitioning creditors have used one attorney, rather than a team of attorneys to "kibitz" on the prosecution of the involuntary bankruptcy petition and then the enforcement of the order for relief. While one experienced counsel is not

inexpensive, one is less expensive than three experienced attorneys from three different law firms prosecuting such relief.

The Order for Relief in this case was filed on March 11, 2016. Dckt. 38. On March 21, 2016, the court ordered the Petitioning Creditors to prepare and file the required schedules, statement of financial affairs, and master address list. Order, Dckt. 50. That was ordered after Debtor failed to do so as previously ordered by the court. March 9, 2016 Order, Dckt. 38. While not "opposing" the Involuntary Petition, Debtor was not acting to facilitate the prosecution of this case.

On April 12, 2017, the Trustee filed his Motion to employ counsel. Dckt. 55. On May 13, 2016, the Chapter 7 Trustee filed his Status Report indicating that he was proceeding with obtaining possession of the property of the estate and making arrangements to liquidate such property. Dckt. 75.

On May 20, 2016, Petitioning Creditors filed motions to conduct 2004 Examinations relating to obtaining information to complete the schedules and statement of financial affairs. Dckt. 79. Petitioning Creditors also sought orders to identify Prithvi Raj Chauhan as the responsible person for Debtor and for Mr. Chauhan to prepare the schedules and statement of financial affairs. Dckts. 60 & 98.

In considering the work done by Applicant, the court notes that the imposition of the duties to do much of this work on the Petitioning Creditors was done to allocate the responsibility for such expense if there were not monies in the estate to pay such expenses on the Petitioning Creditors, not the Trustee or counsel employed by the Trustee who would be working for free. Second, the court notes that the Trustee, the Trustee's counsel, and Applicant are all experienced bankruptcy professionals who are addressing issues to ensure the transparency of the bankruptcy process and to ensure that proper administrative expenses are paid. That is not "vindictive" fee litigation.

Backing out the fee application fees, the Application seeks payment of $14,568.50 in fees relating to prosecution of the involuntary bankruptcy case. Applicant has agreed to reduce that amount by $501.00—reducing the amount (exclusive of fee application fees) to $14,067.50.

The court has reviewed the time records in support of the Application to consider whether other amounts objected to are proper to be awarded Applicant as counsel for Petitioning Creditors. In reading the time entries, line by line, the court cannot conclude that they relate to creditor-specific matters rather than the prosecution of the involuntary petition, including getting the schedules and statement of financial affairs filed as ordered by the court. The work being done by Applicant (other than this fee application) winds down in June 2016, which coincides with the filing of the Schedules and Statement of Financial Affairs.

The court is satisfied that the $14,067.50 in fees for the services provided in prosecuting the Involuntary Petition and orders of this court in getting schedules and statement of financial affairs filed are reasonable and necessary fees. Additionally, the fees of $1,924.00 for preparing the initial documents for the fee application are reasonable.

The court allows Applicant $15,991.50 in attorneys' fees as an administrative expense as the attorney for the Petitioning Creditors in this Involuntary Bankruptcy Case.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $355.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Filing Fee for Involuntary Chapter 7 Petition	$355.00	$355.00
Total Costs Requested in Application		$355.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided, with the exception of the four contested time entries totaling $501.50, which appear to represent collection work that is not compensable under 11 U.S.C. § 503(b)(4). First and Final Fees in the amount of $15,991.50 pursuant to 11 U.S.C. § 503(b)(4) are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $355.00 pursuant to 11 U.S.C. § 503(b)(4) are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$15,991.50
Costs and Expenses	$355.00

pursuant to this Application as administrative fees pursuant to 11 U.S.C. § 503(b)(4) 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 Hughes Law Corporation ("Applicant"), Attorney for Petitioning Creditors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Hughes Law Corporation is allowed the following fees and expenses as a professional of the Estate:

Hughes Law Corporation, Professional employed by Petitioning Creditors

Fees in the amount of $15,991.50
Expenses in the amount of $355.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 503(b)(4) as counsel for Petitioning Creditors.

IT IS FURTHER ORDERED that the fees of $501.10 are not allowed by the court.

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

10. **14-91456-E-7** **DAVID/IDAMAY EVANS** **MOTION TO AVOID LIEN OF HSBC**
JAD-2 **Joseph Manning, Jr.** **BANK, USA, N.A.**
6-15-17 [28]

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, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 15, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of HSBC Bank Nevada, N.A. ("Creditor") against property of David Evans and Idamay Evans ("Debtor") commonly known as 20311 Turner Court, Sonora, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $16,996.39. An abstract of judgment was recorded with Tuolumne County on May 6, 2011, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $229,900.00 as of the date of the petition. The unavoidable consensual liens that total $266,018.00 as of the commencement of this case are stated on Debtor's Schedule D. 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.

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 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 HSBC Bank Nevada, N.A., California Superior Court for Tuolumne County Case No. CVL56183, recorded on May 16, 2011, Document No. 2011005552, with the Tuolumne County Recorder, against the real property commonly known as 20311 Turner Court, Sonora, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

11. **11-94258-E-7** **DONNA/ERIC MEGEE**
SCB-2 **Richard Schneider**

MOTION TO EMPLOY HENINGER GARRISON DAVIS, LLC AS SPECIAL COUNSEL, MOTION TO EMPLOY SOKOLOVE LAW AS SPECIAL COUNSEL, MOTION TO EMPLOY FREESE AND GOSS, PLLC AS SPECIAL COUNSEL AND/OR MOTION TO EMPLOY MATHEWS AND ASSOCIATES AS SPECIAL COUNSEL
5-30-17 [147]

Final Ruling: No appearance at the June 29, 2017 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, creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is granted.

Gary Farrar, the Chapter 7 Trustee, seeks to employ Heninger Garrison Davis, LLC ("Heninger"), Sokolove Law ("Sokolove"), Freese & Goss, PLLC ("F&G"), and Mathews & Associates ("Mathews"), Special Counsel, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. The Trustee seeks the employment of Special Counsel to continue litigating a multi-district product liability lawsuit in the United States District Court for the Southern District of West Virginia, Charleston Division, entitled *In re Boston Scientific, Corp. Pelvic Repair Systems Products Liability Litigation*, MDL No. 2326.

The Trustee argues that Special Counsel's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding the lawsuit. This case was closed on September 28, 2012. Dckt 109. On October 7, 2016, the Court reopened the case to allow for administration of the lawsuit for the benefit of the creditors of Debtor's estate. Dckt 134. Under the Fee Agreement, legal fees are 45% of all amounts collected from the lawsuit and reimbursement of costs, only if there is a recovery. Under the Fee Agreement, Heninger will receive 67.5% of the legal fees collected, Sokolove will receive 20% of the legal fees collected, F&G will receive 6.25% of the legal fees collected, and Mathews will receive 6.25% of the legal fees collected. If there is no recovery, Special Counsel will not receive any fees or costs.

William Bross, a Partner of Heninger Garrison Davis, LLC, testifies that he currently represents Debtor in her ongoing litigation, and that the parties have reached a proposed settlement. William Bross testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Special Counsel, considering the declaration demonstrating that Special Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Heninger Garrison Davis, LLC, Sokolove Law, Freese & Goss, PLLC, and Mathews & Associates as Special Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Exhibits in Support of Chapter 7 Trustee Gary Farrar's Motion to Employ Special Litigation Counsel filed as Exhibit B, Dckt. 151. Approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

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

IT IS ORDERED that the Motion to Employ is granted, and the Chapter 7 Trustee is authorized to employ Heninger Garrison Davis, LLC, Sokolove Law, Freese & Goss, PLLC, and Mathews & Associates as Special Counsel for the Chapter 7 Trustee on the terms and conditions as set forth in the Exhibits in Support of Chapter 7 Trustee Gary Farrar's Motion to Employ Special Litigation Counsel filed as Exhibit B, Dckt. 151.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

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

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

12. **15-90358-E-11** **LAWRENCE/JUDITH SOUZA** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF MEEGAN, HANSCHU AND KASSENBROCK FOR ANTHONY ASEBEDO, DEBTORS' ATTORNEY(S)**
MHK-28 **David Johnston** **5-16-17 [589]**

Final Ruling: No appearance at the June 29, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, creditors, parties requesting special notice, and Office of the United States Trustee on May 16, 2017. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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 hearing on the Motion for Allowance of Professional Fees is continued to 10:30 a.m. on July 13, 2017, to afford the new Chapter 7 Trustee the opportunity to review the fee application. That also affords Applicant time to file supplemental pleadings addressing the deficiencies stated below.

Meegan, Hanschu & Kassenbrock, the Attorney ("Applicant") for Lawrence Souza and Judith Souza, Debtor in Possession ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period July 1, 2016, through May 12, 2017 ("Second Period"). Additionally, final approval of compensation is requested for the period of April 10, 2015, through June 30, 2016 ("First Period"). The order of the court approving employment of Applicant was entered on April 30, 2015. Dckt. 44. Applicant requests fees in the amount of $61,490.00 and costs in the amount of $2,886.92.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). 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)).

NO TASK BILLING PROVIDED

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Included with the Motion is Applicant's raw time and billing records, which have not been organized into categories. The Motion contains twenty-six categories of services provided and legal work done, but it does not include the amount of time spent on each task. Dckt 589. Exhibits 1 through 4 to Declaration of Anthony Asebedo in Support of Motion contain the raw billing records, with a summary of time spent and total costs and fees. Dckt 592. There is a disconnect between the twenty-six categories provided in the Motion and the summary of hours provided in the exhibits. Rather than organizing the activities that are best known to Applicant, it is left for the court, U.S. Trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information. FN.1.

FN.1. The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than twenty years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number, the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report that separates the activities into the different tasks.

The court continues the hearing, rather than denying the Application without prejudice, to afford Applicant the opportunity to provide the court, U.S. Trustee, and other parties in interest requesting the information with the necessary task billing analysis.

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 Professional Fees filed by Meegan, Hanschu & Kassenbrock ("Applicant"), Attorney for Debtor in Possession having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion for Allowance of Professional Fees is continued to 10:30 a.m. on July 13, 2017. Applicant shall file a supplemental declaration and supporting documents as necessary, to provide the court, U.S. Trustee, and other parties in interest requesting copies of such supplemental pleadings, with an explanation of the fees requested and a task billing analysis that specifically groups the time and charges by the various task areas for such services.

13. 17-90063-E-7 JAMES FRITZ MOTION TO SELL
HCS-3 Steven Altman 5-30-17 [58]

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, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on May 30, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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 Gary Farrar, the 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 interest in real property commonly known as 2315 Brockway Drive, Modesto, California ("Property").

The proposed purchaser of the Property is James Fritz ("Debtor"), and the terms of the sale are:

A. Debtor agreed to purchase the Estate's interest in the Property for $17,672 in exchange for the Trustee not administering the Property. Dckt. 62. The Estate's interest was calculated using the maximum valuation of the Property by Trustee's realtor minus the deed of trust, costs of sale (estimated at 8% the sale price), and Debtor's $175,000 exemption. Dckt. 60.

B. The Sale Agreement is conditional on the Bankruptcy Court granting the motion to approve the sale. The Sale Agreement is subsequently subject to overbidding in the Court's discretion.

C. If the court does not grant the motion or the court does grant the motion but Debtor is not the successful buyer and another buyer is the successful buyer, the Trustee shall return the Settlement Funds to Debtor.

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 because it will allow the Estate to immediately obtain a substantial recovery amount equivalent to what the Trustee believes might be obtained in a third-party sale if the Property were to be sold in the high range of his estimates. It appears the price is fair and reasonable and that the sale is in good faith.

Additionally, Movant requests that the fourteen-day stay of enforcement from Federal Rule of Bankruptcy Procedure 6004(h) be waived because Debtor and any prospective overbidders can be assured of the fairness of the sale at the hearing. Movant has adequately pled that the stay be waived.

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 Gary Farrar, the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gary Farrar, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to James Fritz or nominee ("Buyer"), the Estate's interest in property commonly known as 2315 Brockway Drive, Modesto, California, ("Property"), on the following terms:
>
> A. The Estate's interest shall be sold to Buyer for $17,672.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 62, and as further provided in this Order.
>
> B. The Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause shown.

14. 14-91565-E-7 **RICHARD SINCLAIR** **CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Pro Se **2-8-16 [382]**

Final Ruling: No appearance at the June 29, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Richard Carroll Sinclair ("Debtor"), Trustee, and other parties in interest on February 8, 2016. The court computes that 38 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case ($30.00 due on January 25, 2016).

The hearing on the Order to Show Cause is continued to 10:30 a.m. on November 30, 2017.

JUNE 29, 2017 STATUS CONFERENCE

The court's files reflect that this fee has not been paid by Debtor. However, there are sufficient monies in the estate, and possibly exempt assets, with which to pay the fees. Alternatively, the court may strike the document for which the fee has not been paid.

MARCH 17, 2016 HEARING

At the hearing, the court continued the matter to January 26, 2017, for a status conference.

JANUARY 26, 2017 HEARING

At the hearing, the court continued the matter to June 29, 2017, for a status conference. Dckt. 543.

DISCUSSION

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $30.00.

Gary Farrar, the Chapter 7 Trustee, filed a response to the instant Order to Show Cause on March 3, 2016. Dckt. 403. The Trustee states that, since the conversion to one under Chapter 7, the Trustee has worked diligently to evaluate Debtor's business affairs, assets, and other property interests. The Trustee states that due to the complex state of Debtor's affairs, the Trustee requests the case not be dismissed.

It appears that there are substantial assets that are to be administered by the Trustee, from which the fee can be paid from Debtor's possible surplus estate, if one exists, or from Debtor if he desires to obtain a discharge if there is not a surplus estate.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Order to Show Cause is continued to 10:30 a.m. on November 30, 2017, for a continued status conference.

15. 14-91565-E-7 RICHARD SINCLAIR — MOTION FOR SUMMARY JUDGMENT AND/OR MOTION FOR SUMMARY ADJUDICATION
15-9008 HAR-2
CALIFORNIA EQUITY MANAGEMENT GROUP, INC. ET AL V. SINCLAIR
5-22-17 [70]

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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 Defendant, Chapter 7 Trustee, and Office of the United States Trustee on May 22, 2017. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion for Summary Judgment 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 Summary Judgment is xxxxxxxxxxxxx.

No tentative ruling posted. The court shall conduct oral argument at the June 29, 2017 hearing.

16. **14-91565-E-7** **RICHARD SINCLAIR** **MOTION TO AMEND AND/OR MOTION**
15-9009 **HAR-3** **FOR JUDGMENT TO BE SET OUT IN**
KATAKIS ET AL V. SINCLAIR **SEPARATE DOCUMENT AND ENTERED**
5-31-17 [112]

Final Ruling: No appearance at the June 29, 2017 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 Defendant, Chapter 7 Trustee, and Office of the United States Trustee on May 31, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Leave to File Amended Complaint 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 Leave to File Amended Complaint is granted.

California Equity Management Group, Inc., Fox Hollow of Turlock Owners' Association, and Andrew Katakis ("Plaintiffs") filed a Motion for Leave to File Amended Complaint pursuant to Federal Rule of Bankruptcy Procedure 7015 and Federal Rule of Civil Procedure 15(a)(2) on May 31, 2017. Plaintiffs assert that filing an amended complaint to remove grounds for non-dischargeability will bring this Adversary Proceeding to a close.

REVIEW OF MOTION

Plaintiffs assert that removing 11 U.S.C. § 523(a)(2) & (4) from the Complaint will leave 11 U.S.C. § 523(a)(6) as the only ground for non-dischargeability. Dckt. 112 at 2:4–6. Plaintiffs assert that the court granted a summary judgment motion on May 2, 2017, on the grounds asserted by Plaintiffs under 11 U.S.C. § 523(a)(6). *Id.* at 2:23–27 (quoting Dckt. 107 at 67:28–68:2).

Plaintiffs assert that the court deferred "entry of judgment on the 11 U.S.C. § 523(a)(6) claims until the other claims are litigated or dismissed and enter one final judgment resolving all claims being asserted in the adversary proceeding." *Id.* at 2:27–3:2 (quoting Dckt. 107 at 68:5–7). Now, Plaintiffs want

to amend the Complaint to remove grounds and leave only the ground that the court has already granted summary judgment on at the May 2, 2017 hearing.

Plaintiffs argue that Richard Sinclair ("Defendant") has not responded to Plaintiffs' request for consent to amending the Complaint as proposed to the court, pursuant to Federal Rule of Bankruptcy Procedure 7015 and Federal Rule of Civil Procedure 15(a)(2). *Id.* at 3:7–8.

The Motion also includes a request for the court to issue a separate judgment pursuant to Federal Rule of Bankruptcy Procedure 7058, which applies Federal Rule of Civil Procedure 58 to adversary proceedings. *Id.* at 3:24–27.

APPLICABLE LAW

Federal Rule of Civil Procedure 15(a)(2) states that "a party may amend its pleading only with the opposing party's written consent or the court's leave" and directs the court to "freely give leave when justice so requires." Leave to amend pleadings is freely given unless the opposing party makes a showing of undue prejudice, bad faith, or dilatory motive on the part of the moving party. *Sonoma County Ass'n of Retired Employees v. Sonoma County*, 708 F.3d 1109 (9th Cir. 2013).

Moore's Federal Practice provides insight as to how this 1962 cornerstone of federal pleading practice is to be applied:

> In determining whether justice requires granting leave to amend, a court should balance the factors set forth by the Supreme Court in *Foman v. Davis*, especially **prejudice to the non-moving party (see [2], below), against any harm to the movant if leave is not granted**. Prejudice to the moving party if leave is denied should be considered, even if there is substantial reason to deny leave based on the other factors.
>
> A court should also consider judicial economy and its ability to manage the case. In determining the impact of granting leave on judicial economy, **a court should consider how the amendment would affect the use of judicial resources and the impact on the judicial system.** The court should also temper the favoring freely granting leave to amend with consideration of the ability of the district court to manage the case adequately if amendment is allowed. **Another factor occasionally considered by a court is whether a party previously amended or had the opportunity to amend the pleading**.
>
> One of the key factors considered by a court in ruling on a motion for leave to amend is whether permitting the amendment would result in undue prejudice to the non-moving party. Prejudice may result from delay by the movant in requesting leave to amend, but the passage of time alone is usually not enough to deny leave to amend; in most cases, a court will deny leave to amend only if the non-moving party is in fact prejudiced by the delay. **Prejudice is especially likely to exist if the amendment involves new theories of recovery or would require additional**

> **discovery.** Whether a defendant would be prejudiced by a "new" theory of recovery does not depend on whether the earlier pleading formally pleaded the theory, but on whether the earlier pleading put defendant on sufficient notice of the potential claim. **If delay is unduly excessive, however, the court may deny leave based on that factor alone**.
>
> **If the delay is particularly egregious, some decisions shift the burden to the moving party to show that its delay was due to oversight, inadvertence, or excusable neglect before the court will allow the amendment.** These decisions do not explicitly explain the initial allocation of a burden of production in amendment cases. Presumably, the liberal ethos of amendment means that the party opposing amendment bears a burden of production to come forward with reasons or evidence to deny leave to amend. These decisions would then shift the burden to the movant to come forward with reasons justifying an especially lengthy delay in moving to amend.

Moore's Federal Practice, Civil § 15.15[1]–[2] (emphasis added).

DISCUSSION

On May 2, 2017, the court issued an Order Granting in Part and Denying in Part Plaintiffs' Motion for Summary Judgment. Dckt. 108. The court granted Plaintiffs' motion for summary judgment, "determining that all obligations owed by Defendant to Plaintiffs on the judgment entered in *Mauctrst, LLC et al. v. Katakis et al.*, California Superior Court, County of Stanislaus Case No. 332233 . . . , including interest, attorney's fees, and costs, are nondischargeable pursuant to 11 U.S.C. § 523(a)(6)." *Id.* at 2:4–8.

The court denied without prejudice as to all other causes of action. *Id.* at 2:9–10. Now, Plaintiffs seek to remove the grounds that the court has denied without prejudice in Plaintiff's motion for summary judgment, leaving Plaintiffs to proceed on one ground—the 11 U.S.C. § 523(a)(6) ground that the court has granted summary judgment for already.

Defendant has not opposed this Motion, and the court sees no reason why he would be prejudiced by allowing Plaintiffs to amend the Complaint to remove grounds. Plaintiffs want to conclude this Adversary Proceeding and have proposed to do so by reducing the causes of action to one on which the court has entered judgment. Plaintiffs' request prevents any delay in litigation, and Defendant has not made any showing of undue prejudice, bad faith, or dilatory motive caused by the present Motion to Amend.

Additionally, Plaintiffs move for the court to enter a separate judgment pursuant to Federal Rule of Bankruptcy Procedure 7058 and Federal Rule of Civil Procedure 58—assuming that the court permits Plaintiffs to amend the Complaint to reflect only the 11 U.S.C. § 523(a)(6) ground. The court grants leave for Plaintiffs to amend the Complaint by striking references to 11 U.S.C. § 523(a)(2) & (4), leaving 11 U.S.C. § 523(a)(6) as the remaining ground asserted. With only one ground remaining being asserted by Plaintiffs, and with the court having already granted summary judgment on that ground, the court grants Plaintiffs request for a separate judgment to be entered.

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 Leave to File Amended Complaint filed by Plaintiff having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Plaintiffs are granted leave to amend the Complaint to strike references to 11 U.S.C. § 523(a)(2) & (4), leaving 11 U.S.C. § 523(a)(6) as the one ground asserted in the Complaint.
>
> **IT IS FURTHER ORDERED** that the court shall enter judgment for California Equity Management Group, Inc., Fox Hollow of Turlock Owners' Association, and Andrew Katakis, Plaintiffs ("Katakis Plaintiffs"), and against Richard Sinclair, Defendant, pursuant to the prior order of this court granting Katakis Plaintiffs summary judgment on the remaining claims in the Complaint, there being no other claims being prosecuted in this Adversary Proceeding.

17. **17-90214-E-7** **EMIDIO RAMIREZ** **TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING AND MOTION TO EXTEND THE DEADLINES FOR FILING OBJECTIONS TO DISCHARGE AND MOTIONS TO DISMISS, DEBTOR DID NOT APPEAR**
GRF-1 **Pro Se** **5-26-17 [23]**

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2017. By the court's calculation, 32 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 (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The hearing on the Motion to Dismiss is continued to 10:30 a.m. on September 7, 2017.

The Trustee alleges that Emidio Ramirez ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Based on Debtor's failure to attend the First Meeting of Creditors, the Trustee requests that this case be dismissed.

Alternatively, if Debtor's case is not dismissed, the 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 1:00 p.m. on July 7, 2017. If Debtor fails to appear at the continued Meeting of Creditors, the Trustee requests that the case be dismissed without further hearing.

CREDITOR'S OPPOSITION

CitiMortgage, Inc. ("Creditor"), holder of a secured claim, filed an Opposition on June 15, 2017. Dckt. 26. Creditor argues that Debtor has engaged in a scheme of multiple bankruptcy filings that has prevented Creditor from enforcing its state court rights against real property commonly known as 3636

Fallview Avenue, Ceres, California ("Property"). Creditor argues that Debtor and other individuals have filed three prior bankruptcy cases since December 2015 that have been dismissed for either failure to file documents or for failure to appear at the Meeting of Creditors. Creditor states that it will be bringing a motion for relief from the automatic stay under 11 U.S.C. § 362(d)(4) and requests that the court continue the hearing on this Motion by sixty days to allow Creditor time to file, serve, set for hearing, and hear that motion for relief from the automatic stay.

DISCUSSION

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). For this matter, though, Creditor has argued that the case should not be dismissed because of an alleged bankruptcy filing scheme that Debtor has engaged in over the past few years to prevent Creditor from exercising its rights in state court.

The court has reviewed the cases asserted by Creditor to be part of a fraudulent scheme and has noticed the following property listed in each case that Creditor cites, plus two additional ones for the debtor in this case:

A. Justino Quiles, Case No. 15-91168

1. Chapter 7 Case filed on December 2, 2015, *in pro se.*

2. Property listed on the voluntary petition as the debtor's current address. Dckt. 1.

3. A request for extension of time to file the documents was filed and granted. Dckt. 15.

4. Case dismissed on December 31, 2015, for failure to file documents including Schedules and Statement of Financial Affairs.. Dckt. 21.

B. Emidio Ramirez, Case No. 16-90439

1. Chapter 7 Case filed on May 23, 2016, *in pro se*.

2. Debtor listed the Property as his current address on the voluntary petition. Dckt. 1.

3. A request for extension of time to file the documents was filed and granted. Dckt. 14. This motion to extend is identical to the one filed in the Quiles Case, no. 15-91168, down to the line spacing, line breaks, spelling errors, and spacing errors in the lines.

4. Case dismissed on June 21, 2016, for failure to file documents, including Schedules and Statement of Financial Affairs. Dckt. 19.

C. Justino Sandoval, Case No. 16-90789

1. Chapter 7 Case filed on August 29, 2016, *in pro se*.

2. Property listed on the voluntary petition as the debtor's current address. 16-90789, Dckt. 1.

3. A request for extension of time to file the documents was filed and granted. *Id.*, Dckt. 14. This motion to extend is identical to the one filed in the Quiles Case, no. 15-91168, down to the line spacing, line breaks, spelling errors, and spacing errors in the lines.

4. Case dismissed on September 20, 2016, for failure to file documents, including Schedules and Statement of Financial Affairs. *Id.*, Dckt. 20.

D. Justino Quiles, Case No. 16-90881

1. Chapter 7 Case filed on September 26, 2016, *in pro se*.

2. Property listed on the voluntary petition as the debtor's current address. 16-90881, Dckt. 1.

3. On Schedule A/B filed in Case No. 16-90881 no interest in the Property. *Id.*, Dckt. 14 at 3.

4. On Schedule D filed in Case No. 16-90881, Justino Quiles states under penalty of perjury that there are no creditors with any secured claims. *Id.*, Dckt. 14 at 15.

5. Case dismissed on January 16, 2017, for failure to appear at the Meeting of Creditors. *Id.*, Dckt. 29.

E. Emidio Ramirez, Case No. 16-91019

1. Chapter 7 Case filed on November 7, 2016, *in pro se*.

2. Debtor listed the Property as his current address on the voluntary petition. 16-91019, Dckt. 1.

3. Case dismissed November 28, 2016, for failure to file document, including Schedules and Statement of Financial Affairs. *Id.*, Dckt. 14.

F. Emidio Ramirez, Case No. 17-90214 (Current Bankruptcy Case)

1. Chapter 7 Case filed on March 17, 2017, *in pro se*.

2. Debtor listed the Property as his current address on the voluntary petition. 17-90214, Dckt. 1.

3. Debtor states under penalty of perjury on Schedule A/B that he does not have any interest in the Property. *Id.*, Dckt. 21 at 1. On Schedule D Debtor states under penalty of perjury that he has no creditors with any secured claims. *Id.* at 13. On Schedule H Debtor states under penalty of perjury that he has no unexpired leases. *Id.* at 22.

No declaration or evidence, other than this court's own files, has been provided by Creditor as to why or how the bankruptcy filings have impaired its ability to proceed with a foreclosure sale. The Opposition merely states that it has. Creditor does not identify any demands or contentions by any of the debtors in the six cases in which they asserted that a non-judicial foreclosure sale could not be conducted to the non-productive Chapter 7 bankruptcy case filings.

It is asserted in the Opposition that Debtor executed a promissory note, which note is secured by the Property.

Presumably, the detail underlying the general contention of there being bad faith filings as part of a scheme to warrant the relief under 11 U.S.C. § 362(d)(4) will be provided to the court—with such detail supported by competent testimony and properly authenticated documentary evidence. Creditor will properly document its security interest that it has been prevented from enforcing.

Creditor has presented sufficient evidence to support its argument that it wants to seek a motion for relief from the automatic stay. Therefore, the court affords Creditor, as well as the U.S. Trustee and other parties in interest, time to present a motion for relief from the automatic stay or commence other proceedings they deem appropriate by continuing the hearing on this Motion to 10:30 a.m. on September 7, 2017.

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 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 hearing on the Motion to Dismiss is continued to 10:30 a.m. on September 7, 2017.