

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 30, 2019 at 10:30

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- | | | | |
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| 1. | <u>11-43166-E-7</u>
<u>ADR-2</u> | GEORGE FERDINAND AND
DARSHAN BAJWA
Justin Kuney | MOTION TO AVOID LIEN OF FIRST
AMERICAN TITLE INSURANCE
COMPANY
7-15-19 [<u>24</u>] |
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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 Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 14, 2019. By the court’s calculation, 16 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Avoid Judicial Lien is XXXXXXXXXX.
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This Motion requests an order avoiding the judicial lien of First American Title Insurance Company (“Creditor”) against property of the debtor, George Lincoln Ferdinand and Darshan Kaur

Bajwa (“Debtor”) commonly known as 1309 Eastern Ave, Sacramento, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$75,000.00. Exhibit A, Dckt. 27. An abstract of judgment was recorded with Sacramento County on April 15, 2010, that encumbers the Property. *Id.*

RIGHT TO AMEND SCHEDULES

Federal Rule of Bankruptcy Procedure 1009(a) provides the following with respect to amending schedules:

A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby. On motion of a party in interest, after notice and a hearing, the court may order any voluntary petition, list, schedule, or statement to be amended and the clerk shall give notice of the amendment to entities designated by the court.

Here, Debtor filed an Amended Schedule C on July 15, 2019. Dckt. 29. This was several years after the case was closed on January 6, 2012. Dckt. 19.

Debtor did not file a motion, or give notice and set a hearing for the amendment of Debtor’s Schedule C, which is dispositive for this Motion (Debtor previously claiming no exemption which could be impaired).

At the hearing, ~~xxxxxxxxxxxxxxxx~~.

DISCUSSION

~~Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$250,000.00 as of the petition date. Dckt. 1. The unavoidable and senior liens that total \$318,239.00 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$14,350.00 on Amended Schedule C. Dckt. 29.~~

~~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 George Lincoln Ferdinand and Darshan Kaur Bajwa (“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 First American Title Insurance Company, a California Corporation, California Superior Court for Sacramento County Case No. 34-2009-00058323, recorded on April 15, 2010, Book 20100415 and Page 0473, with the Sacramento County Recorder, against the real property commonly known as 1309 Eastern Ave, Sacramento, 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.~~

2. [14-29361-E-7](#) **WALTER SCHAEFER** **ORDER TO SHOW CAUSE**
[17-2178](#) **DNL-4 Russ Cunninham** **6-14-19 [76]**
HUSTED V. PECHBRENNER

ADVERSARY PROCEEDING CLOSED:
02/20/2018

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 Defendant as stated on the Certificate of Service on June 17, 2019. Dckt. 77. The court computes that 43 days’ notice has been provided.

The Order to Show Cause is ~~XXXXXXXXXX~~.

This Adversary Proceeding relates to persons and assets in multiple judicial systems and law - the United States and Costa Rica. There have been prior extensive proceedings in the related bankruptcy case concerning the real property of the Bankruptcy Estate, 184 Los Delfines, Tambor, Costa Rica (the “Property”), that is the subject of this Adversary Proceeding.

As discussed more fully, *infra*, Kimberley Husted, the Chapter 7 Trustee and plaintiff in this Adversary Proceeding (“Plaintiff-Trustee”) initiated contempt motions to enforce a judgment received against Defendant.

After the most recent hearing on a contempt motion, the court issued an Order granting the contempt motion, and providing the following corrective sanctions:

1. That Defendant shall deliver possession of the Property to Plaintiff by June 23, 2019.
2. That if Defendant fails to deliver possession, corrective sanctions in the amount of \$500.00 per diem shall be entered against Defendant for failure to comply with this Order until possession of the Property is delivered.
3. That the \$500.00 per day corrective sanction for failure to turn over the property shall commence on June 24, 2019, and continue through and including September 30, 2019.
4. That the Trustee is awarded \$17,455.00 in compensatory sanctions for attorney's fees and costs.

Order, Dckt. 76. The Order also continued the hearing on the contempt motion to July 30, 2019, and required the following:

1. That Defendant appear in person at the continued hearing.
2. That Supplemental Pleadings, if any, shall be filed by Plaintiff-Trustee on or before June 27, 2019, Reply by Defendant filed on or before July 11, 2019, and Additional Response by Plaintiff-Trustee, if any, on or before July 18, 2019.
3. That the court shall also consider at the continued hearing the referral of this matter to the Chief Judge of the United States District Court for the Eastern District of California for consideration of withdrawal of reference for the limited issue of the exercise of the district court judge's Article III civil and criminal contempt powers in the event that Defendant, or his agents or representatives, fails to comply with this court's order for turnover of the Property to the Trustee corrective sanctions.

Id.

REVIEW OF ADVERSARY PROCEEDING

The instant Adversary Proceeding was commenced on September 20, 2017. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on September 20, 2017. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 66.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on November 30, 2017. Dckt. 10. Plaintiff filed its initial Motion for Default Judgement on December 12, 2017. Dckt. 12.

At the January 25, 2018, hearing, the court found Defendant was served personally in

accordance with the Federal Rules of Civil Procedure and the Hague Convention, and sufficient time has elapsed for Defendant to appear in this case. Dckt. 20.

In granting the Motion for Entry of Default Judgement on January 31, 2018, the court issued the following order:

IT IS ORDERED, ADJUDGED, AND DECREED that judgment is granted for Kimberly Husted, the Plaintiff Chapter 7 Trustee, and against Michael Pechbrenner, the Defendant; determining that Kimberly Husted, the Plaintiff Chapter 7 Trustee, through ABC Trustee of California Sociedad Anonima, a Costa Rican Entity, by which Plaintiff Chapter 7 Trustee holds title to property commonly known as 184 Los Delfines, Tambor, Costa Rica, has all the right, title, and interest to said property, and that Michael Pechbrenner, the Defendant, has no right, title, or interest to said property, and that Defendant does not have any lien against said property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Michael Pechbrenner, and his agents and representatives, shall immediately vacate and turnover possession of the real property commonly known as 184 Los Delfines, Tambor, Costa Rica, to Kimberly Husted, the Plaintiff Chapter 7 Trustee, and her agents and representatives, as directed by Ms. Husted.

Further, that if Plaintiff Chapter 7 Trustee subsequently determines that the physical turnover of the Property is not in the best interests of the Bankruptcy Estate, Plaintiff Chapter 7 Trustee may seek a supplemental or amended judgment for a monetary judgment for the value of the Property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the request for the issuance of a prospective corrective sanction in the event of the failure of Defendant Michael Pechbrenner, and his agents and representatives' failure, to forthwith comply with the above mandatory injunction, is reserved for consideration by post-judgment motion for the entry of an order imposing compensatory and corrective sanctions or incarceration (to induce compliance with the mandatory injunction).

Additionally, the court reserves for post-judgment determination of the referral of this Adversary Proceeding to the United States District Court for the exercise of the district court judge's Article III civil and criminal contempt powers in the event that Defendant Michael Pechbrenner, or his agents or representatives, fail to comply with the mandatory injunction after the issuance of this court's order for compensatory and corrective sanctions. The referral to the District Court may include a recommendation for the issuance of a punitive criminal monetary sanction and/or incarceration.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that no claims for damages arising from the violation of the automatic stay are presented in the Complaint before the court, and any such claims shall properly be brought pursuant to a motion for contempt in the Bankruptcy Case, No. 14-29361,

or as permitted by the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure, in an adversary proceeding if jointed with other claims for which such adversary proceeding is required. Kimberly Husted, the Plaintiff Chapter 7 Trustee, as the prevailing party shall file and set for hearing as appropriate a costs bill and a post-judgment motion for attorney's fees as provided by Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054. Any award of costs or attorney's fees shall be enforced as part of this judgment.

Judgement, Dckt. 26.

First Motion for Contempt

Plaintiff-Trustee filed a motion seeking an order holding Defendant in contempt for violating the court's Judgment and granting compensatory and corrective sanctions on February 22, 2018. Dckt. 31. The court granted the motion on March 22, 2018, noting that Defendant not only failed to comply with the court's judgement, but apparently had filed a lawsuit in Costa Rica contradicting what this court has adjudged already. Dckts. 36 and 37.

The court issued an Order holding Defendant in contempt, requiring Defendant to deliver possession of the Property by April 10, 2018, at 12:30 p.m. or have judgement entered against Defendant in the amount of \$15,000.00 in corrective sanctions. Order, Dckt. 37. The Order also notified Defendant that further noncompliance with the court's January 31, 2018, judgment may result in referral of this Adversary Proceeding to the United States District Court for the exercise of the district court judge's Article III civil and criminal contempt powers. *Id.*

As discussed below, the Defendant failed to deliver the Property and Judgement was entered in the amount of \$15,000.00 against Defendant on October 26, 2018. Dckt. 64.

Application for Amended Default Judgement

On August 8, 2018, the Plaintiff-Trustee filed a Motion for Amended Judgement seeking to amend the prior Judgement to include a monetary judgement of \$190,000.00 and for additional sanctions. Dckt. 40.

At the September 20, 2018 hearing the court noted that no legal authority for issuing a dual turnover order and monetary judgment had been provided. Civil Minutes, Dckt. 49; *See also*, 11 U.S.C. § 542(a). Additionally, no authority had been provided for the joinder of motions for amended judgement and contempt sanctions.

At the continued hearing on August 4, 2018, the Defendant appeared and represented an openness to out of court resolution. Civil Minutes, Dckt. 57. Plaintiff-Trustee clarified at that hearing it no longer sought a monetary judgement or imposition of sanctions at that time, and the motion was therefore denied.

The court also noted at the continued hearing that the court's prior Order holding Defendant in contempt provided that delivery of the Property shall be made, or a corrective sanction would be entered. Plaintiff-Trustee subsequently sought and the court issued an Order in the amount of \$15,000.00

against Defendant on October 26, 2018 for his failure to deliver the property as provided in the prior contempt order. Dckt. 64.

Second Motion For Contempt

On May 16, 2019, the Plaintiff-Trustee filed the present Motion seeking further contempt sanctions for Defendant's failure to comply with this court's Order. Dckt. 65. The Motion states the following with particularity (FED. R. BANKR. P. 9013) providing an overview of events since the last hearing in this Adversary Proceeding:

1. On December 17, 2018, the Trustee's general counsel- having received no communication from the Defendant since October 25, 2018- emailed the Defendant to advise him of the Trustee's intent to seek additional relief for his continuing violation of the Court's Order. Motion ¶ 23, Dckt. 65.
2. On December 19, 2018, the Defendant responded claiming he had consulted with an attorney who would be "filing the necessary documents" and would no longer be negotiating. *Id.*, ¶ 24.
3. Defendant has to date refused to turnover the Property and sought further relief under Costa Rica law. Defendant ultimately perfected a lien which prevents Plaintiff-Trustee from selling the Property. *Id.*, ¶ 25.
4. Plaintiff-Trustee has not received communications with Defendant since December 19, 2018. *Id.*, ¶ 26.
5. Plaintiff-Trustee has incurred attorney's fees and loss of use damages due to Defendant's conduct. *Id.*, ¶ 27.

The Motion goes on to make several requests for relief, including that:

- A. Defendant be found in civil contempt of court;
- B. Plaintiff-Trustee be awarded loss of use damages in the amount of \$60,000.00;
- C. Plaintiff-Trustee be awarded \$39,955.00 for attorney's fees and costs;
- D. Defendant be sanctioned \$1,000.00 per day until he complies with this court's Order for turnover of the Property; and
- E. the court issue a writ of bodily detention and detain Defendant until he complies with this court's Order for turnover of the Property.

Motion, Dckt. 65 at p. 8:15-9:7.

LEGAL STANDARD

A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996). The primary purpose of a civil contempt sanction is to compensate losses sustained by another’s disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. *Id.*

Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see In re Lehtinen*, 564 F.3d at 1058.

DISCUSSION

The court’s Order to Show Cause upon which today’s hearing is being conducted which placed Defendant on notice that the following determinations had been made and sanctions were at issue:

- A. Defendant was found to be in contempt of this court’s judgment of January 31, 2018 (Dckt. 26) and the prior contempt Order of March 22, 2018 (Dckt. 37).
- B. Defendant was expressly ordered to comply with the prior judgment of this court and deliver possession of the 184 Los Delfines, Tambor, Costa Rica Property to the Plaintiff by Jun 23, 2019.
- C. Corrective Sanctions in the amount of \$500.00 would be paid commencing June 24, 2019, and for each day thereafter through September 30, 2019, if Defendant failed to turn over the Property.
- D. Defendant was ordered to appear in person at he July 30, 2019 continued hearing.

Defendant has appeared in prior proceedings in this court. He has professed to have a lien on the Property for construction services provided and merely wants to make sure that his lien is respected and secured claim paid. As the court addressed with him, the Bankruptcy Code respects lien claims, protects security, and the court is able to issue orders expressly stating such protections even though they are otherwise provided for by law.

Additionally, a creditor merely seeking to get paid for a claim can in good faith turnover the collateral to the Trustee to sell and then be paid immediately for the secured claim. The court cannot identify, and Defendant has not stated, any reason for not following the Bankruptcy laws, not turning over the property to the Trustee, and not getting paid when the Trustee sells the Property.

- E. Further, Defendant was put on notice that if he fails to comply with the order to

turnover the Property and cannot explain a good faith reason for not complying with this order, the matter would be referred to the U.S. District Court for it to conduct punitive sanction proceeds, which include both economic and incarceration sanctions.

Order, Dckt. 76.

Nothing has been filed by Defendant in this Matter to confirm that the prior order has been complied with and the Property turned over, or the Defendant's good faith reason for not complying with the orders of this court.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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 **XXXXXXXXXX**.

3. [14-29361-E-7](#) [17-2178](#) WALTER SCHAEFER
DNL-4 Russ Cunningham
HUSTED V. PECHBRENNER

CONTINUED MOTION FOR ISSUANCE
OF ORDER TO SHOW CAUSE, MOTION
FOR JUDGMENT OF CIVIL
CONTEMPT AND/OR MOTION FOR
SANCTIONS
5-16-19 [65]

**ADVERSARY PROCEEDING CLOSED:
02/20/2018**

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.

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 Defendant and Chapter 7 Trustee on May 16, 2019. By the court’s calculation, 28 days’ notice was provided. 14 days’ notice is required.

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

The Motion for Sanctions is XXXXXXXXXX.

Kimberly Husted, the Chapter 7 Trustee (“Plaintiff-Trustee”), filed this motion seeking an order holding the defendant in this Adversary Proceeding, Michael Pechbrenner (“Defendant”), in civil contempt for willful violation of court order.

This Adversary Proceeding relates to persons and assets in multiple judicial systems and law - the United States and Costa Rica. There have been prior extensive proceedings in the related bankruptcy case concerning the real property of the Bankruptcy Estate, 184 Los Delfines, Tambor, Costa

Rica (the “Property”), that is the subject of this Adversary Proceeding.

REVIEW OF ADVERSARY PROCEEDING

The instant Adversary Proceeding was commenced on September 20, 2017. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on September 20, 2017. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 66.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on November 30, 2017. Dckt. 10. Plaintiff filed its initial Motion for Default Judgement on December 12, 2017. Dckt. 12.

At the January 25, 2018, hearing, the court found Defendant was served personally in accordance with the Federal Rules of Civil Procedure and the Hague Convention, and sufficient time has elapsed for Defendant to appear in this case. Dckt. 20.

In granting the Motion for Entry of Default Judgement on January 31, 2018, the court issued the following order:

IT IS ORDERED, ADJUDGED, AND DECREED that judgment is granted for Kimberly Husted, the Plaintiff Chapter 7 Trustee, and against Michael Pechbrenner, the Defendant; determining that Kimberly Husted, the Plaintiff Chapter 7 Trustee, through ABC Trustee of California Sociedad Anonima, a Costa Rican Entity, by which Plaintiff Chapter 7 Trustee holds title to property commonly known as 184 Los Delfines, Tambor, Costa Rica, has all the right, title, and interest to said property, and that Michael Pechbrenner, the Defendant, has no right, title, or interest to said property, and that Defendant does not have any lien against said property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Michael Pechbrenner, and his agents and representatives, shall immediately vacate and turnover possession of the real property commonly known as 184 Los Delfines, Tambor, Costa Rica, to Kimberly Husted, the Plaintiff Chapter 7 Trustee, and her agents and representatives, as directed by Ms. Husted.

Further, that if Plaintiff Chapter 7 Trustee subsequently determines that the physical turnover of the Property is not in the best interests of the Bankruptcy Estate, Plaintiff Chapter 7 Trustee may seek a supplemental or amended judgment for a monetary judgment for the value of the Property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the request for the issuance of a prospective corrective sanction in the event of the failure of Defendant Michael Pechbrenner, and his agents and representatives’ failure, to forthwith comply with the above mandatory injunction, is reserved for consideration by post-judgment motion for the entry of an order imposing compensatory and corrective sanctions or incarceration (to induce compliance with the mandatory injunction).

Additionally, the court reserves for post-judgment determination of the referral of this Adversary Proceeding to the United States District Court for the exercise of the district court judge's Article III civil and criminal contempt powers in the event that Defendant Michael Pechbrenner, or his agents or representatives, fail to comply with the mandatory injunction after the issuance of this court's order for compensatory and corrective sanctions. The referral to the District Court may include a recommendation for the issuance of a punitive criminal monetary sanction and/or incarceration.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that no claims for damages arising from the violation of the automatic stay are presented in the Complaint before the court, and any such claims shall properly be brought pursuant to a motion for contempt in the Bankruptcy Case, No. 14-29361, or as permitted by the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure, in an adversary proceeding if jointed with other claims for which such adversary proceeding is required. Kimberly Husted, the Plaintiff Chapter 7 Trustee, as the prevailing party shall file and set for hearing as appropriate a costs bill and a post-judgment motion for attorney's fees as provided by Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054. Any award of costs or attorney's fees shall be enforced as part of this judgment.

Judgement, Dckt. 26.

First Motion for Contempt

Plaintiff-Trustee filed a motion seeking an order holding Defendant in contempt for violating the court's Judgment and granting compensatory and corrective sanctions on February 22, 2018. Dckt. 31. The court granted the motion on March 22, 2018, noting that Defendant not only failed to comply with the court's judgement, but apparently had filed a lawsuit in Costa Rica contradicting what this court has adjudged already. Dckts. 36 and 37.

The court issued an Order holding Defendant in contempt, requiring Defendant to deliver possession of the Property by April 10, 2018, at 12:30 p.m. or have judgement entered against Defendant in the amount of \$15,000.00 in corrective sanctions. Order, Dckt. 37. The Order also notified Defendant that further noncompliance with the court's January 31, 2018, judgment may result in referral of this Adversary Proceeding to the United States District Court for the exercise of the district court judge's Article III civil and criminal contempt powers. *Id.*

As discussed below, the Defendant failed to deliver the Property and Judgement was entered in the amount of \$15,000.00 against Defendant on October 26, 2018. Dckt. 64.

Application for Amended Default Judgement

On August 8, 2018, the Plaintiff-Trustee filed a Motion for Amended Judgement seeking to amend the prior Judgement to include a monetary judgement of \$190,000.00 and for additional sanctions. Dckt. 40.

At the September 20, 2018 hearing the court noted that no legal authority for issuing a dual turnover order and monetary judgment had been provided. Civil Minutes, Dckt. 49; *See also*, 11 U.S.C. § 542(a). Additionally, no authority had been provided for the joinder of motions for amended judgement and contempt sanctions.

At the continued hearing on August 4, 2018, the Defendant appeared and represented an openness to out of court resolution. Civil Minutes, Dckt. 57. Plaintiff-Trustee clarified at that hearing it no longer sought a monetary judgement or imposition of sanctions at that time, and the motion was therefore denied.

The court also noted at the continued hearing that the court's prior Order holding Defendant in contempt provided that delivery of the Property shall be made, or a corrective sanction would be entered. Plaintiff-Trustee subsequently sought and the court issued an Order in the amount of \$15,000.00 against Defendant on October 26, 2018 for his failure to deliver the property as provided in the prior contempt order. Dckt. 64.

Second Motion For Contempt

On May 16, 2019, the Plaintiff-Trustee filed the present Motion seeking further contempt sanctions for Defendant's failure to comply with this court's Order. Dckt. 65. The Motion states the following with particularity (FED. R. BANKR. P. 9013) providing an overview of events since the last hearing in this Adversary Proceeding:

1. On December 17, 2018, the Trustee's general counsel- having received no communication from the Defendant since October 25, 2018- emailed the Defendant to advise him of the Trustee's intent to seek additional relief for his continuing violation of the Court's Order. Motion ¶ 23, Dckt. 65.
2. On December 19, 2018, the Defendant responded claiming he had consulted with an attorney who would be "filing the necessary documents" and would no longer be negotiating. *Id.*, ¶ 24.
3. Defendant has to date refused to turnover the Property and sought further relief under Costa Rica law. Defendant ultimately perfected a lien which prevents Plaintiff-Trustee from selling the Property. *Id.*, ¶ 25.
4. Plaintiff-Trustee has not received communications with Defendant since December 19, 2018. *Id.*, ¶ 26.
5. Plaintiff-Trustee has incurred attorney's fees and loss of use damages due to Defendant's conduct. *Id.*, ¶ 27.

The Motion goes on to make several requests for relief, including that:

- A. Defendant be found in civil contempt of court;
- B. Plaintiff-Trustee be awarded loss of use damages in the amount of

\$60,000.00;

- C. Plaintiff-Trustee be awarded \$39,955.00 for attorney's fees and costs;
- D. Defendant be sanctioned \$1,000.00 per day until he complies with this court's Order for turnover of the Property; and
- E. the court issue a writ of bodily detention and detain Defendant until he complies with this court's Order for turnover of the Property.

Motion, Dckt. 65 at p. 8:15-9:7.

Filed in support of the Motion are the Declarations of Kimberly Husted, J. Russel Cunningham, Luis Carballo, and Joseph Callahan. Dckt. 67-69, 73. Several Exhibits have also been filed, named "A" through "V," which consists of several emails and other various documents related to this Adversary Proceeding. Dckts. 70, 71.

In reviewing the plethora of evidence provided, most of it is testimony and documents relating to less than recent events in this Adversary Proceeding. Exhibit T is an email from Defendant (properly authenticated (Declaration ¶ 29, Dckt. 67)) which indicates Defendant's position that he needs to be compensated for his work, that negotiations will not be continued, and that he will continue to seek relief through Costa Rica law. Exhibit T, Dckt. 71 at p. 84.

The Cunningham Declaration indicates Plaintiff-Trustee has not received a "direct response" from Defendant since January 6, 2017. Declaration ¶ 35, Dckt. 67. Cunningham also testifies Plaintiff-Trustee has incurred \$17,455.00 in attorney's fees and suffered loss of use of the Property valued at \$60,000.00. Declaration ¶¶ 33-34, Dckt. 67.

It is not explained how the loss of use damages were calculated by Cunningham, or whether he is a competent expert witness to testify as to such damages, or why the attorney's fee testified to is lower than the amount requested in the Motion. *See* FED. R. EVID 601, 602, 701, and 702.

The Husted Declaration provides testimony Defendant presently occupies and controls the Property. Declaration ¶ 14, Dckt. 69.

JUNE 13, 2019 HEARING

At the June 14, 2019 hearing, the Defendant failed to appear. Civil Minutes, Dckt. 75. The court issued an Order granting the Motion, imposing corrective sanctions, and continuing the hearing on this Motion. Dckt. 76.

SUPPLEMENTAL PLEADINGS

Plaintiff-Trustee filed a Supplement to the Motion on June 26, 2019. Dckt. 80. Plaintiff-Trustee asserts Defendant failed to deliver possession of the Property, and argues she is entitled to \$66,000.00 in compensatory damages for loss of use of the Property, based on the fair market monthly rental value of \$1,500.00.

Plaintiff-Trustee also requests compensatory damages in the amount of \$32,455.00 for attorney's fees and costs, \$17,455.00 to Plaintiff-Trustee's general counsel and \$15,000.00 to special counsel Carballo in Costa Rica.

Along with the Supplement, Plaintiff-Trustee filed several declaration. The Declaration of Joseph Callahan (which is signed but not dated), a real estate professional in Costa Rica, provides testimony that the Property has a fair market monthly rental value of \$1,500.00. Declaration, Dckt. 81.

The Declaration of Luis Carballo (which is signed but not dated), special counsel for Plaintiff-Trustee, provides testimony that \$15,000.00 in flat legal fees have been incurred pursuant to the employment agreement. Declaration, Dckt. 82.

The Declaration of J. Russel Cunningham, counsel for the Plaintiff-Trustee, provides testimony that \$17,455.00 in attorney's fees have been incurred due to Defendant's continued occupation of the Property. Declaration, Dckt. 83.

LEGAL STANDARD

A request for an order of contempt by a debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. FED. R. BANKR. P. 9020; *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189 (9th Cir. 2011).

A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996). The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. *Id.*

Bankruptcy courts have jurisdiction and authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548–49 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *In re Lehtinen*, 564 F.3d at 1058.

The party seeking contempt sanctions has the burden of proving by clear and convincing evidence that the contemnors violated a specific and definite order of the court. *Bennett*, 298 F.3d at 1069. The burden then shifts to the contemnors to demonstrate why they were unable to comply. *Id.* The movant must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions that violated the injunction. *Id.* For the second prong, the court employs an objective test, and the focus of the inquiry is not on the subjective beliefs or intent of the alleged contemnor in complying with the order, but whether in fact the conduct complied with the order at issue. *Bassett v. Am. Gen. Fin., Inc. (In re Bassett)*, 255 B.R. 747, 758 (9th Cir. B.A.P. 2000), *rev'd on other grounds*, 285 F.3d 882 (9th Cir. 2002).

DISCUSSION

Nothing has been filed by Defendant in this Matter to confirm that the prior order has been complied with and the Property turned over, or the Defendant's good faith reason for not complying with the orders of this court.

Plaintiff-Trustee has now provided expert testimony as to the amount of damages for the loss of use of the Property and the failure to deliver possession of the Property, establishing the following compensatory amounts due:

\$66,000.00 in compensatory damages for loss of use of the Property, based on the fair market monthly rental value of \$1,500.00.

\$15,000.00 in legal fees and expenses for special counsel to the Trustee Joseph Carballo in Costa Rica in attempting to obtain possession of the Property and the Trustee asserting the Bankruptcy Estate's rights and interests therein and the judgment against Defendant for possession of the Property..

The court has previously awarded compensatory sanctions of \$17,455.00 against the Defendant in favor of the Trustee for legal fees and expenses incurred for Trustee's counsel in this Adversary Proceeding and underlying bankruptcy case relating to the judgment against Debtor and to recover the Property which is property of the Bankruptcy Estate.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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 Sanctions for Violation of the Automatic Stay by Kimberly Husted, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that **XXXXXXXXXXXXXXXXXX**.

FINAL RULINGS

4. [15-28797-E-7](#) NATALIE GEOFFROY MOTION TO FILE CLAIM AFTER
Pro Se CLAIMS BAR DATE
7-3-19 [47]

Final Ruling: No appearance at the July 30, 2019 hearing is required.

The Motion is granted, and the claim of Two Jinn, Inc., dba Aladdin Bail Bonds is allowed in the amount of \$2,215.00.

On July 3, 2019, Two Jinn, Inc., dba Aladdin Bail Bonds (“Creditor”), filed Proof of Claim No. 1-1 in this case. Creditor also filed an *Ex Parte* Motion for Review and Allowance of Late Filed Proof of Claim. Dckt. 47.

The court issued an Order setting a hearing on the *Ex Parte* Motion for July 30, 2019, noting that Creditor was a corporation attempting to appear in *Pro Se*. Dckt. 48. The Order also provided the following:

If counsel for the Trustee and the creditor have agreed to the relief requested and have documented such in writing filed with the court, Two Jinn, Inc. will not be required to employ counsel for the hearing. If no such agreement is documented and filed by counsel for the Trustee, then Two Jinn, Inc., a corporation, will have to be represented by counsel for the relief it seeks from the court.

Id.

On July 22, 2019, the Chapter 7 Trustee, Geoffrey Richards (“Trustee”), filed a Non-Opposition indicating that an Agreement had been entered providing for Creditor’s debt to be an allowed claim. Dckt. 50. The Agreement was filed as Exhibit A. Dckt. 52.

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 Allow Late Claim filed by Two Jinn, Inc., dba Aladdin Bail Bonds (“Creditor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the claim of Two Jinn, Inc., dba Aladdin Bail Bonds is allowed in the amount of \$2,215.00.

5. [14-29391-E-7](#)
[EJS-2](#)

ENRIQUE QUILES
Eric Schwab

MOTION TO COMPEL
ABANDONMENT
5-23-19 [145]

Final Ruling: No appearance at the July 30, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 31, 2019. By the court’s calculation, 60 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Compel Abandonment is granted.

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

The Motion filed by the debtor, Enrique Quiles (“Debtor”), requests the court to order the Chapter 7 Trustee, Michael Hooper (“Trustee”), to abandon the Estate’s interest in property commonly known as 5227 Pavilion Court, Fairfield, California (“Property”). Debtor argues the Estate’s interest in the Property is valued at \$0.00.

The Property is encumbered by the liens of American Home Mortgage, Us Bank and First National Insurance Company, securing claims in the aggregate amount of \$1,497,305.00. Amended Schedule D, Dckt. 47. The Declaration of Enrique Quiles has been filed in support of the Motion and, along with Amended Schedule A/B (Dckt. 44), values the Property at \$600,000.00. Declaration, Dckt. 148. Amended Schedule C claims a \$1.00 exemption in the Property pursuant to California Code of Civil Procedure section 703.140(b)(1).

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

CHAMBERS PREPARED ORDER

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

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

The Motion to Compel Abandonment filed by the debtor, Enrique Quiles (“Debtor”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted, and the Property identified as 5227 Pavilion Court, Fairfield, California and listed on Amended Schedule A by Debtor is abandoned by the Chapter 7 Trustee, Michael Hooper (“Trustee”), to Enrique Quiles by this order, with no further act of the Trustee required.

Final Ruling: No appearance at the July 30, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 2, 2019. By the court’s calculation, 28 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.

Alan Fukushima (“Trustee”) seeks to employ as special counsel, the Law Offices of Goodwin & Alexander (“Counsel”), pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel retroactively for representing the Estate’s interests in Sutter County Superior Court, Case No. CVCS 17-1413 (“State Court Litigation”), as well as for the purpose of defending any appeal of the State Court Litigation.

Counsel’s contingency fee agreement for State Court Litigation already completed provided for a fee of 25%. For any appeal of the State Court Litigation, Counsel would bill at an hourly rate of \$400.00.

Harrison L. Goodwin, an attorney of Counsel, testifies that while judgment was entered in the State Court Litigation, a motion for a new trial is pending. Declaration, Dckt. 48. Goodwin testifies further he and Counsel 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. *Id.*

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

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ the Law Offices of Goodwin & Alexander as special counsel for the Chapter 7 Estate on the terms and conditions set forth in the Fee Agreements filed as Exhibits A and C, Dckt. 49. Approval of any 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 Alan Fukushima, the Chapter 7 Trustee (“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 Trustee is authorized to employ the Law Offices of Goodwin & Alexander as special counsel for Trustee on the terms and conditions as set forth in the Fee Agreements filed as Exhibits A and C, Dckt. 49.

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.

7. [18-27501-E-7](#) VAN NORTWICK
[DMW-3](#) INVESTMENTS, INC.
Seth Hanson

MOTION FOR COMPENSATION FOR
NORTHSTATE AUCTIONS INC.,
AUCTIONEER(S)
6-18-19 [15]

Final Ruling: No appearance at the July 30, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on June 18, 2019. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Douglas M. Whatley, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case for the Trustee’s Auctioneer, Northstate Auctions.

Fees are requested for the period March 30, 2019, through April 3, 2019. The order of the court approving employment of Applicant was entered on January 25, 2019. Dckt. 12. The employment agreement provided for a 12% commission to be computed on the sales price, plus costs. Applicant requests fees in the amount of \$1,043.91 (12% commission) and costs in the amount of \$552.50.

APPLICABLE LAW

Reasonable Fees

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Fees are also permitted as a contingent amount, as in this case, for an auctioneer.

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant’s services for the Estate include conducting an auction of the sale of personal property of the Debtor. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in the marketing and sale of personal property described as a plumbing truck and tools (“Property”). The Property was sold at public auction. The sale generated \$8,699.27 of net monies (exclusive of these requested fees and costs) as recovery for Client.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$552.50 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Truck and (3) driver time for removal of tools and transportation	\$85.00 per hour	\$552.50
Total Costs Requested in Application		\$552.50

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows First and Final Fees of \$1043.91 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant.

Costs & Expenses

First and Final Costs in the amount of \$552.50 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$1043.91
Costs and Expenses	\$552.50

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

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

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

The Motion for Allowance of Fees and Expenses filed by Northstate Auctions, Inc. (“Applicant”), Auctioneer for Douglas M. Whatley, the Chapter 7 Trustee (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Northstate Auctions, Inc. is allowed the following fees and expenses as a professional of the Estate:

Northstate Auctions, Inc., Professional employed by the Chapter 7 Trustee

Fees in the amount of \$1043.91
Expenses in the amount of \$552.50,

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

8. [19-23392-E-11](#) **HERBERT MILLER**
[ARF-1](#) **Allen Hassan**
DEBTOR DISMISSED: 7/15/2019

MOTION TO DISMISS CASE
6-25-19 [25]

Final Ruling: No appearance at the July 30, 2019 hearing is required.

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

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

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

The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been previously dismissed.