UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

August 4, 2016 at 10:30 a.m.

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1. 11-94400-E-12 SAC-4 **RAYMOND/BONITA LOPEZ** **MOTION FOR ENTRY OF DISCHARGE 6-13-16 [70]**

Final Ruling: No appearance at the August 4, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 13, 2016. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion For Entry of Discharge is granted.

The Motion for Entry of Discharge has been filed by Raymond Provencio Lopez and Bonita Lynn Lopez ("Debtor"). With some exceptions, 11 U.S.C. § 1228 permits the discharge of debts provided for in the Plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. The Chapter 12 Trustee's final report was filed on June 8, 2016, and no objection was filed within the specified 30 day period. *See* Fed. R. Bankr. P. 5009.

The Debtor's Declaration certifies that the Debtor:

1. has completed the plan payments,

2. does not have any delinquent domestic support obligations,

3. has completed a financial management course and filed the certificate with the court,

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

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

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

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

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 Entry of Discharge filed by the Raymond Provencio Lopez and Bonita Lynn Lopez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the court shall enter the discharge for Raymond Provencio Lopez and Bonita Lynn Lopez in this case.

2. **11-94410-E-7** **SAWTANTRA/ARUNA CHOPRA** **CONTINUED MOTION FOR LEAVE TO FILE THIRD PARTY COMPLAINT AGAINST MID VALLEY SERVICES, INC.**
14-9033 **RMY-1**
NORTH AMERICAN TITLE INSURANCE COMPANY V. CHOPRA
6-4-15 [19]

Final Ruling: No appearance at the August 4, 2016 hearing is required.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney, Chapter 7 Trustee's Attorney, and Office of the United States Trustee on June 4, 2015. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Motion for Leave to File Third Party Complaint Against MID Valley Services, Inc. was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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.

The Motion for Leave to File Third Party Complaint Against MID Valley Services, Inc. is dismissed as moot.

Aruna Chopra ("Defendant-Debtor") filed the instant Motion for Leave to file Third Party Complaint Against MID Valley Services, Inc. on June 6, 2015. Dckt. 19.

The Defendant-Debtor seeks leave from the court to file a third party complaint against Mid Valley Services, Inc. alleging the following causes of action: (1) implied indemnity; (2) equitable indemnity; (3) contribution; and (4) declaratory relief. The Defendant-Debtor states that these claims are based upon the Defendant-Debtor's contentions that the acts and omissions of MID Valley Services, Inc. were a superseding cause of any purported damages suffered by Plaintiffs.

STIPULATION

On April 25, 2016, (three days before this hearing), the Parties filed their sixth stipulation to continue this hearing. Dckt. 62. In it, the Parties represent (and certify to the court) that:

> "3. This is the sixth request for the requested relief. This requested extension is not being sought for purposed of delay. Rather, while the **Parties have executed the Settlement Agreement and Mutual Release** ("Settlement Agreement"), they are in the process of finalizing the conditions for the effectiveness of the Settlement Agreement...The Parties believe that **with additional time they can finalize the conditions for effectiveness of the Settlement Agreement.**"

Motion, Dckt. 62.

On January 27, 2016, the Parties filed their fifth stipulation to continue the hearing. Dckt. 56. In the fifth stipulation, the Parties represented (and certified to the court) that:

> "3. This is the fifth request for the requested relief. This requested extension is not being sought for purposed of delay. Rather, the **Parties are still in the process of negotiating and documenting a settlement** and have exchanged drafts of a settlement agreement...The Parties believe that **with additional time they can finalize the conditions for effectiveness of the Settlement Agreement.**"

Motion, Dckt. 56 (emphasis added).

On December 14, 2015, the Parties filed their fourth stipulation to continue the hearing. Dckt. 51. In the fourth stipulation, the Parties represented (and certified to the court) that:

> "3. This is the fourth request for the requested relief. This requested extension is not being sought for purposed of delay. Rather, **the Parties are in the process of negotiating and documenting a settlement**...The Parties believe that **with additional time they can finalize the terms of a settlement agreement.**"

Motion, Dckt. 51 (emphasis added).

It appears that the Parties, if they can settle the disputes, will settle the disputes by the June 16, 2016, final continued hearing date. That will be 185 days since the December 14, 2015 Motion to Continue based upon the parties advising the court that they were documenting a settlement and finalizing the terms. If not settled, then it appears that the Parties will need to have their disputes resolved by the court.

STIPULATION

On June 24, 2015, the Plaintiffs and Defendant-Debtor filed an *ex parte* Application to Approve Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 34. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on August 20, 2015.

The court approved the stipulation on June 25, 2015, approving the requested continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion was continued to 10:00 a.m. on August 20, 2015.

STIPULATION

On August 14, 2015, the parties filed an ex-parte Application to Approve Second Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 39. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on October 22, 2015.

The court approved and granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion was continued to 10:00 a.m. on October 22, 2015.

STIPULATION

On October 15, 2015, the parties filed an ex-parte Application to Approve Third Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 44. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on December 17, 2015.

The court approved and granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion is continued to 10:00 a.m. on December 17, 2015.

STIPULATION

On December 14, 2015, the parties filed an ex-parte Application to Approve Third Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 51. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on February 4, 2016.

The court approved and granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion is continued to 10:00 a.m. on February 4, 2016.

STIPULATION

On April 26, 2016, the parties filed an ex-parte Application to Approve Sixth Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 62. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:30 a.m. on April 28, 2016.

The court approved and granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion is continued to 10:30 a.m. on April. 28, 2016. Dckt. 59.

STIPULATION

On January 27, 2016, the parties filed an ex-parte Application to Approve Third Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 56. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:30 a.m. on June 16, 2016.

The court approved and granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the hearing on the instant Motion is continued to 10:30 a.m. on June 16, 2016. Dckt. 66.

JUNE 16, 2016 HEARING

To date, no supplemental papers have been filed in connection with the instant Motion.

At the hearing, Counsel for Defendant-Debtor reported that the parties have signed a settlement agreement which contains provisions that requires the approval of the judge handling the criminal case against Mrs. Chopra. That hearing was held in mid-April 2016, but the state court stated that it would not rule on the settlement, but would not interfere with the settlement.

The Parties have amended the settlement agreement to have it be consistent with what the state court judge did, which is now out for signature.

Once the first amended agreement is signed, then it can be presented to the court and the stipulated judgment entered.

RULING

Pursuant to the parties stipulation (Dckt. 76) and judgment being entered on July 24, 2016 in accordance with the stipulation (Dckt. 83), the Motion is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Leave to File Third Party Complaint Against MID Valley Services, Inc. having been presented to the court, the court having entered judgment in the case, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot.

3. **15-90811-E-7** **ASSN., GOLD STRIKE**

15-9061 **HEIGHTS HOMEOWNERS**
INDIAN VILLAGE ESTATES, LLC V.
GOLD STRIKE HEIGHTS

MOTION FOR SUMMARY JUDGMENT OR
ALTERNATIVELY FOR PARTIAL SUMMARY JUDGMENT
7-1-16 [33]

Tentative Ruling: The Motion for Summary Judgment must be has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Attorney for Plaintiff Indian Village Estates, LLC, Attorney for Defendant Community Assessment Recovery Services, and Attorney for Gold Strike Heights Homeowners Association on July 1, 2016. By the court's calculation, 34 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

The Motion for Summary Judgment is granted.

Indian Village Estates, LLC ("Plaintiff" or "I'VE") initiated this adversary proceeding against Gold Strike Heights Association et al ("Defendant") by filing a complaint with the Calaveras County Superior Court on September 7, 2015 (the "Complaint"). In its Complaint, Plaintiff requests a judgment for the following:

1. For a Declaration that the 2002 and the 2007 corporate entities are now and have always been separate and distinctive corporate entities and that have not been merged either by official action

or by operation of law.

2. For a Declaration that the non-judicial foreclosure of Plaintiff's 31 lots was wrongful.

3. For an order vacating any and all Trustee's Deeds that may have been recorded.

4. For an order vacating and setting aside the foreclosure sale.

5. For an order quieting title in favor of Plaintiff Indian Village and against all Defendants.

6. For compensatory, special, general, and punitive damages according to proof against all Defendants.

7. For civil penalties pursuant to the applicable statutes and reasonable attorneys fees according to proof.

8. For costs of suit herein incurred, and

9. For such other and further relief as the Court may deem proper and just.

Gold Strike Heights Homeowners Association filed a bankruptcy petition with this court on August 20, 2015. Gary Farrar, the Chapter 7 Trustee removed the instant case to the United States Bankruptcy Court, Eastern District of California on November 18, 2015.

On June 9, 2016, Clifford W. Stevens, Attorney for the Chapter 7 Trustee filed the instant Motion for Summary Judgment or alternatively for Partial Summary Judgment (the "Motion"). The Motion requests that the court grant summary judgment in his favor and against Plaintiff on each of the six causes of action in the complaint, or alternatively, the Trustee requests the court grant partial summary judgment in his favor and against Plaintiff as to any individual causes of action or specific requested relief that involves validating the foreclosure, setting aside the sale of the Property, or cancelling the trustee's deeds upon sale.

FACTS

The parties have proffered the following information as to disputed and undisputed facts:

MOVING DEFENDANT-TRUSTEE'S UNDISPUTED FACTS	MOVING DEFENDANT-TRUSTEE'S SUPPORTING AUTHORITY	PLAINTIFF'S RESPONSE AND SUPPORTING EVIDENCE

1. The subject property in this case consists of thirty-one (31) lots in the Gold Strike Heights Subdivision in Calaveras County, California that were previously owned by Plaintiff Indian Village Estates, LLC ("I'VE"). (Collectively "the Property")	Complaint at ¶ 13 (Request for Judicial Notice, Exhibit A)	Undisputed.
2. In 2013, Gold Strike, through its designated agent Community Assessment Recovery Services ("CARS"), initiated non-judicial foreclosure proceedings against I'VE for delinquent assessments on each of the lots of the Property.	Complaint ¶ 31 (Exhibit A)	Disputed. The non-judicial foreclosure was initiated and carried out by the Gold Strike Heights Association ("Gold Strike 1") and not the Debtor. Plaintiff's Request for Judicial Notice, Exhibits.
3. On September 30, 2014, Gold Strike purchased all of the lots of the Property at public auction.	Complaint at ¶ 51 (Exhibit A) Trustee's Deeds (Request for Judicial Notice, Exhibit D)	Disputed. Non-debtor "GOLD STRIKE 1" made a full credit bid at the foreclosure sale held on September 30, 2014 and was the only bidder. Declaration of Mark Weiner at ¶ 17 Declaration of Don Lee at ¶ 9 Plaintiffs' Request for Judicial Notice, Exhibits
4. The purchase is reflected in each of the thirty-one (31) Trustee's Deeds Upon Sale in favor of Gold Strike which were all recorded in Calaveras county on January 12, 2015.	Complaint at ¶ 51 (Exhibit A) Trustee's Deeds (Exhibit D)	Disputed. After the foreclosure sale conducted in September 2014 had concluded, GOLD STRIKE 1 recorded 31 separate notices with Calaveras County Recorder that stated that non-debtor GOLD STRIKE 1 had purchased all 31 lots at the sale conducted on September 30, 2014. Plaintiffs' Request for Judicial Notice, Exhibits

5. Each of the 31 Trustee's Deeds contains the following recitals: "All requirements of law regarding the mailing of copies of notices or the publication of the notice of Default or the personal delivery of the copy of the Notice of Default and the posting and publication of copies of Notice of Sale have been complied with. The 90 day redemption period pursuant to California Code of Civil Procedure §5715 has passed and the prior owner of the property has not exercised the right of redemption."	Trustee's Deeds (Exhibit D)	Undisputed.
6. I'VE filed this lawsuit in the Superior Court of California, Calaveras County on March 20, 2015, alleging causes of action for wrongful foreclosure of the property, quiet title and slander of title with regard to the Property.	Complaint at pp. 11-16 (Exhibit A)	Undisputed.
7. I'VE also seeks to set aside the trustee's sale and cancel the trustee's deeds that resulted from the foreclosure.	Complaint at ¶ 16 (Exhibit A)	Undisputed.
8. There is no record that I'VE recorded a Notice of Pendency of Action (or lis pendens) in Calaveras County with regard to its real property claims.	Declaration of Clifford Stevens ¶ 5.	Undisputed.
9. Gold Strike filed its Chapter 7 Bankruptcy Petition on August 20, 2015.	Declaration of Clifford Stevens ¶ 3.	Undisputed.
10. Gary Farrar is the Chapter 7 Trustee.	Declaration of Clifford Stevens ¶ 3.	Undisputed.

11. On March 8, 2016, the parties filed a Joint Discovery Plan designating March 24, 2016 as the last day for the parties to complete their Initial Disclosures.	Joint Discovery Plan (Request for Judicial Notice, Exhibit E).	Undisputed.
12. After the March 17, 2016 status conference, the court issued a Scheduling Order establishing that the last date to make initial disclosures was March 24, 2016.	Scheduling Order (Request for Judicial Notice, Exhibit F)	Undisputed.
13. I'VE never served its Rule 26(a) Initial Disclosures.	Declaration of Clifford Stevens ¶ 8.	Undisputed. However, while the Trustee filed his initial disclosures on March 24, 2016, he withdrew them the following day and has never filed any new disclosures. Dckt. 28, 29, 30, and 31.

Dckt. 44 and 49

PLAINTIFF'S OPPOSITION

Plaintiff also submitted the following statements of additional material facts that raise a triable issue. Dckt. 47.

Plaintiff filed a Response to Defendant Chapter 7 Trustee's Motion for Summary Judgement, or Alternatively, For Partial Summary Judgment on July 21, 2016. Dckt. 47.

The Plaintiff asserts that there are material facts in dispute that preclude summary judgment. According to the Plaintiff, although the Trustee claims that the Debtor ("Gold Strike 2") initiated the non-judicial foreclosure that is the subject of this dispute, all documentary evidence, which includes all the recorded foreclosure notices issued prior to and subsequent to the foreclosure, state that it is non-debtor and suspended corporation "Gold Strike 1" that initiated this foreclosure.

Second, the Trustee claims that the debtor purchased all the lots at a public auction on September 30, 2014. However, the recorded notices entitled "Certificate of Foreclosure Sale Subject to Redemption" state that non-debtor Gold Strike 1 was the purchaser of the 31 lots.

Third, although the trustee claims that the purchase of the 31 lots is reflected in each of the 31 "Trustee's Deeds" in favor of the Debtor (recorded in Calaveras County on January 12, 2015), the purchaser at the public auction was non-debtor "Gold Strike 1." These deeds were prepared so as to act as a transfer of the real property from "Gold Strike 1" to "Gold Strike 2" in violation of California Revenue and Taxation Code §23302, which prohibits a suspended corporation from transferring any interest in real property while under suspension.

Plaintiff asserts that a non-debtor purchased the lots at issue. The Plaintiff states that after the foreclosure sale conducted in September 2014 had concluded, Gold Strike 1 recorded 31 separate notices with Calaveras County recorder that stated that Gold Strike 1 had purchased all 31 lots at the sale Conducted on September 30, 2014. The Declarations of Don Lee and Mark Weiner corroborate that it was in fact Gold Strike 1 who made a full-credit bid on each of the 31 lots and that there were no other bidders for any of the 31 lots. Dckt. 45 and 46.

Plaintiff asserts that non-debtor Gold Strike 1 never transferred any rights, assets, or liabilities to the debtor. Within the declarations of Don Lee and Mark Weiner are first-hand factual statements that establish that Gold Strike 1 never entered into any transfer of its assets, liabilities or rights to Gold Strike 2.

Plaintiff asserts that California Revenue and Taxation Code §23301 states that a suspended corporation may not initiate a non-judicial foreclosure while under suspension. Furthermore, Plaintiff contends that California Revenue and Taxation Code §23302 states that a suspended corporation may not transfer any interests it may have in real property while suspended.

Lastly, the Plaintiff argues that although Plaintiff Indian Village failed to file its initial discovery disclosures, it is also true that the trustee filed his initial disclosures on March 24, 2016 and withdrew them the following day on March 25, 2016. See Dckt. 28, 29 and 30.

The Plaintiff more generally argues that the Trustee had constructive notice that Gold Strike 1 foreclosed on the 31 lots and yet the trustees deeds were to Gold Strike 2 and all of the documents of foreclosure were recorded in Calaveras County. The Plaintiff seems to view this discrepancy as proof that no notice was given at all.

In support of all of these contentions, the Plaintiff filed the Declarations of Mark Weiner and Don Lee. Dckt. 45 and 46.

TRUSTEE'S RESPONSE

The Trustee reiterated many of the same arguments and points that were made in the initial Motion for Summary Judgment. The following are additional arguments:

1. Any claims I'VE may have had against the Debtor, prior to bankruptcy, to rescind the foreclosure are now moot because Mr. Farrar has the protection of a bona fide purchaser. In the absence of a lis pendens, his interest in the subject property is free and clear of I'VE's claims.

2. As bona fide purchaser, Mr. Farrar is entitled to the conclusive presumption under California

Civil Code section 2924(c) that there was no defect in the notices of default and the sale that issued in the foreclosure process. Nothing in I'VE's Opposition shows that there are disputed material facts.

3. The identity of the initiating and purchasing party at the foreclosure sale and any information, other than what is stated in the Trustee's Deeds Upon Sale, are immaterial in this case because the property has been later conveyed to a bona fide purchaser without notice of the dispute.

4. Constructive notice of a lawsuit affecting title or possession of real property is given by filing a Notice of pendency of Action pursuant to California Code of Civil Procedure sections 405-405.24. The failure to file a lis pendens means that no constructive notice of the lawsuit is given and, in a quiet title action, any judgment is non-binding against persons with a recorded interest. Cal. Code Civ. Proc. Section 764.045(a). Even if the Chapter 7 Trustee should have "researched" the status of the entity he was purchasing from, in this case that entity would have bee Debtor Gold Strike 2, not Gold Strike 1.

5. Mr. Farrar as the bona fide purchaser of the subject property has an independent right to rely on the recitals in the trustee's deeds of sale that the foreclosure was valid. Cal Civ. Code Section 2924(c). This presumption, coupled with I'VE's failure to provide constructive notice via a lis pendens means that the Trustee's interest in the subject property is free of the claims by I'VE.

6. Mr. Farrar complied with Rule 26, I'VE has not and I'VE alone should be bared from introducing evidence.

TRUSTEE'S OBJECTION TO PLAINTIFF'S EVIDENCE IN RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Mr. Farrar objects to the declarations of Don Lee and Mark Weiner in their entirety on the ground that they are irrelevant. Fed. R. Evid. 401(b). In order to be relevant, a fact must be "of consequence in determining the action." The contents of the declarations of Mr. Lee and Mr. Weiner all refer to the alleged dispute regarding the relationship between Gold Strike Heights Association and Gold Strike Heights Homeowners Association. These facts fail to establish that the Chapter 7 Trustee had constructive notice of the dispute in light of I'VE's failure to file and record a Notice of Pendency of Action and because they are not apparent on the face of the Trustee's Deeds Upon Sale Which contain recitals that establish a conclusive presumption that there are no defects in the foreclosure documents.

Mr. Farrar objects to the documents contained in I'VE's Request for Judicial Notice on the ground that they are irrelevant. Fed. R. Evid. 401(b). Under California Civil Code section 2924(c) the Chapter 7 Trustee as a bona fide purchaser is entitled to rely on the Trustee's Deeds as conclusive evidence against the defects alleged in the other foreclosure documents. The Certificate of Status of Gold Strike Heights Association and Gold Strike Heights Homeowners Association filed as Exhibit A of I'VE's original complaint is irrelevant to the recorded foreclosure document.

SUMMARY JUDGMENT STANDARD

In an adversary proceeding, summary judgment is proper when "the movant shows that there is

no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), *incorporated by* Fed. R. Bankr. P. 7056. The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P. 56(c), *incorporated by* Fed. R. Bankr. P. 7056; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-50 (1986); 11 James Wm. Moore et al., Moore's Federal Practice § 56.11[1][b] (3d ed. 2000) ("Moore").

"[A dispute] is 'genuine' only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is 'material' only if it could affect the outcome of the suit under the governing law." *Barboza v. New Form, Inc. (In re Barboza*), 545 F.3d 702, 707 (9th Cir. 2008) (*citing Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that a fact cannot be genuinely disputed, the moving party must "cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A), *incorporated by* Fed. R. Bankr. P. 7056.

In response to a properly submitted motion for summary judgment, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial. *Barboza*, 545 F.3d at 707 (*citing Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055–56 (9th Cir. 2002)). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists. *Id.* (*citing Bhan v. NME Hosps., Inc*., 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (*citing Cnty. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court "generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented." *Agosto v. INS*, 436 U.S. 748, 756 (1978). "[A]t the summary judgment stage[,] the judge's function is not himself to weigh the evidence and determine the truth of the matter[,] but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249.

DISCUSSION

This adversary proceeding is merely another step in a long, drawn out, and ongoing legal and personal battle between Mark Weiner, the Home Owners Association for that development controlled by local residents, and Don Lee. Gold Strike Heights Homeowners Association filed for bankruptcy on August 20, 2015 and this case was removed to be heard by the Bankruptcy Court in November of 2015.

First Cause of Action: Declaratory Relief

The First Cause of Action is titled as Declaratory Relief - seeking a determination from the court:

A. Whether Gold Strike 2002 and Gold Strike 2007 are separate entities, or Gold Strike 2007 is the successor entity to Gold Strike 2002;

B. Whether Gold Strike 2002 could conduct a non-judicial foreclosure sale on the 31 lots when it was a suspended corporation;

C. Whether Gold Strike 2007 conducted the non-judicial foreclosure sale; and

D. Whether Gold Strike 2002 could transfer title to the 31 Lots, when its corporate powers were suspended to Gold Strike 2007.

While the Plaintiff is enamored with wanting to address these issues for purposes of obtaining a declaration from the court, they do not state grounds upon which declaratory relief may be sought.

Declaratory relief is an equitable remedy distinctive in that it allows adjudication of rights and obligations on disputes regardless of whether claims for damages or injunction have arisen. See Declaratory Relief Act, 28 U.S.C. § 2201. FN.1. "In effect, it brings to the present a litigable controversy, which otherwise might only be tried in the future." *Societe de Conditionnement v. Hunter Eng. Co., Inc.*, 655 F.2d 938, 943 (9th Cir. 1981). The party seeking declaratory relief must show (1) an actual controversy and (2) a matter within federal court subject matter jurisdiction. *Calderon v. Ashmus*, 523 U.S. 740, 745 (1998). There is an implicit requirement that the actual controversy relate to a claim upon which relief can be granted. *Earnest v. Lowentritt*, 690 F.2d 1198, 1203 (5th Cir. 1982).

FN.1. 28 U.S.C. §2201,

§ 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

The court may only grant declaratory relief where there is an actual controversy within its jurisdiction. *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994). The controversy must be definite and concrete. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937). However, it is a

controversy in which the litigation may not yet require the award of damages. *Id.*

Here, the shots have been fired and battlefield set. It is the actual rights and interests in the 31 Lots which must be adjudicated, not what might be the rights of the parties in the future, if in the future Gold Strike 2002 were to conduct a sale or was to record deeds. These issues, and the determination thereof, are elements of a quite title action or other claim, not an independent claim for declaratory relief.

Second Cause of Action: to Set Aside Trustee's Sale

In the Second Cause of Action I'VE asserts that Gold Strike 2002, Gold Strike 2007, and CARS did not have the right and power to conduct a sale of the 31 Lots. This was because: (1) Gold Strike 2002 had it corporate powers suspended; and (2) No assessment for fees, upon which the alleged foreclosure was based, had been set by Gold Strike 2002 or Gold Strike 2007.

I'VE alleges that it acquired title to the 31 Lots in 2004. Thus, this Second Cause of Action, titled to "set aside" the sale is actually one to quite title, asserting that the foreclosure deed are of no force and effect. This is contrasted with admitting that a sale occurred, but that the sale may be "unwound."

Third Cause of Action: To Cancel Trustee's Deed

The Third Cause of Action seeks to "cancel" the Trustee's Deeds for the 31 lots. However, it is alleged that the deeds are void and did not work to transfer any interest in the 31 Lots. Rather than "cancelling" the Trustee's Deeds, this appears to be a restated version of the Second Cause of Action, which is to determine that the Trustee's Deeds are void and quite title as between the estate and I'VE.

Fourth Cause of Action: Wrongful Foreclosure

In this Fourth Cause of Action, the general allegation is made that Gold Strike 2007 engaged in a "fraudulent foreclosure" on the 31 Lots. It is asserted that none of the Defendants had the right and ability to declare a default and foreclose on the Lots. It is asserted that there are some damages which flow from the foreclosure.

Fifth Cause of Action: Quiet Title

In the Fifth Cause of Action, I'VE requests that the court quite title to the 31 Lots as between the Plaintiff and the Defendants. It is alleged that none of the Defendants did, or could have, acquired any interest in the 31 Lots by virtue of the non-judicial foreclosure sales.

Sixth Cause of Action: Slander of Title

In the Sixth Cause of Action I'VE asserts that the deeds recorded for the 31 Lots has clouded I'VE's title, and that such recorded non-judicial foreclosure deeds are actionable for damages arising therefrom.

Basis for Summary Judgment

The Defendant-Trustee's basis for summary judgment is quite simple - the bankruptcy trustee is clothed in the purity of a statutory *bona fide* purchaser for value of real property as provided in 11 U.S.C. § 544(a)(3). Though the state court action was filed, no lis pendens was recorded by Plaintiff as of the commencement of this bankruptcy case. The Plaintiff-Trustee further argues that pursuant to California Civil Code § 1214, a bona fide purchaser for value takes title to real property free and clear of all unrecorded interests. It is further contended that the presumptions in California Civil Code § 2924(c) place the non-judicial foreclosure deeds beyond question.

I'VE's Opposition to the Motion is devoid of any discussion of the bona fide purchaser for value status of the bankruptcy trustee, the rights of a bona fide purchaser for value set forth in California Civil Code § 1214, or the statutory presumptions provided in California Civil Code § 2924(c). I'VE ignores these arguments and the recorded deeds, but attacks the non-real property record foreclosure process and the corporate status of Gold Strike 2002.

11 U.S.C. §544. 11 U.S.C. §544(a)(3) provides that:

> The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by...
>
> ...a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

The court next turns to California Civil Code 1214, which is one of the key foundations of the Motion of the Defendant-Trustee, states:

> § 1214. Unrecorded conveyance void as to subsequent purchaser or mortgagee
>
> Every conveyance of real property or an estate for years therein, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded, and as against any judgment affecting the title, unless the conveyance shall have been duly recorded prior to the record of notice of action.

There does not appear to be any dispute that the transfer of interest to I'VE was recorded, leaving the court at a bit of a loss as to why or how this section is applicable to the dispute. The Defendant-Trustee cannot assert that I'VE is asserting an interest based on an unrecorded deed. In the Motion, the Defendant-Trustee too broadly states the effect of California Civil Code § 1214, paraphrasing it as, "California law provides that a bona fide purchaser without notice of the dispute takes title free and clear of the competing interest. Cal. Civil Code § 1214...." It is unrecorded competing interests, not any and all competing interests.

The Defendant-Trustee next builds his BFP argument on California Civil Code § 2924(c),

asserting that the trustee's deed from the non-judicial foreclosure sale are irrefutable proof that the foreclosure sale properly occurred for the purposes of a bona fide purchaser for value asserting its interest in property. California Civil Code §2924(c) [emphasis added] provides:

> (c) A recital in the deed executed pursuant to **the power of sale of compliance with all requirements of law regarding the mailing of copies of notices** or **the publication of a copy of the notice of default** or the **personal delivery of the copy of the notice of default** or the **posting of copies of the notice of sale** or **the publication a copy** shall constitute **prima facie evidence of compliance with these requirements** and **conclusive evidence thereof in favor of bona fide purchases and encumbrancers for value and without notice**.

The core of the dispute in this Adversary Proceeding is the contention that Gold Strike 2007 had the right and power to conduct a non-judicial foreclosure sale, and that CARS could properly exercise that power. The issue is not whether notices were mailed, publications made, personal delivery completed, notices posted, or notices published - the statutory presumptions. The Defendant-Trustee overstates this statutory provision, asserting, "However, Mr. Farrar, as the bona fide purchaser of the subject property has an independent right to rely on the recitals in the trustee's deeds of sale that the foreclosure was valid." In substance, the Defendant-Trustee argues that a forged, fraudulent trustee's deed is made valid merely because the thief is able to seel the property to an innocent, bona fide purchaser for value.

Who purported to conduct the sale is the issue. The Trustee asserts that it was Gold Strike 2007, and cites the court to the amendment to the Declaration of Restrictions for the Gold Strike Heights Homeowners Association, which states,

> WHEREAS, on May 15, 2007 **a new corporation was formed to succeed In Interest** the suspended corporation formed by WESTWIND DEVELOPMENT, INC., and
>
> WHEREAS, the new corporation formed in May of 2007 identified as the **GOLD STRIKE HEIGHTS HOMEOWNERS ASSOCIATION is the full successor in Interest to the old corporation** Identified as the GOLD STRIKE HEIGHTS ASSOCIATION formed in March of 2002 by WESTWIND DEVELOPMENT, INC" and
> ...
> NOW, THEREFORE, said "DECLARANT" hereby certifies and declares the following amendments to the heretofore recorded restrictions:
>
> Article 1, Section 1.3, page 2, the following changes are to be made:
>
> "GOLD STRIKE HEIGHTS ASSOCIATION, a California nonprofit benefit corporation" shall be changed to read: "GOLD STRIKE HEIGHTS HOMEOWNERS ASSOCIATION, a California nonprofit benefit corporation".

> This amendment shall become a part and portion of said heretofore recorded "Declaration of Restrictions" (CC&Rs) recorded in the County of Calaveras on March 13, 2002."

Exhibit C, Dckt. 35.

Countering this document is the testimony under penalty of perjury Mark Weiner (Dckt. 45) and Don Lee (Dckt. 46) which state that the two of them formed Gold Strike Heights Homeowners Association. That each have remained members of the Gold Strike Heights Association and that no rights were transferred to Gold Strike Heights Homeowners Association. Neither testifies to how and what they mean by saying no rights were transferred, when the Amendment to Declaration of Restrictions was filed which state that Gold Strike Homeowners Association is the "full successor in interest" to Gold Strike Heights Association or that the name Gold Strike Heights Homeowners Association replaces Gold Strike Heights Association in the Restrictions.

While the testimony under penalty of perjury by Mr. Weiner and Mr. Lee may appear suspect, such requires a credibility determination by the court. There is some evidence presented by these two witnesses. The court reserves, and must determine, the credibility of this testimony at trial.

Denial of Motion for Summary Judgment

The court denies the Motion for Summary Judgment. Pursuant to Federal Rule of Civil Procedure 56(g) the court shall enter an order on the motion determining all of the undisputed facts set forth in the motion and opposition as determined for purposes of this Adversary Proceeding.

CHAMBERS PREPARED ORDER

The court shall issue an order consistent with the above ruling.

4. **15-90811-E-7** **ASSN., GOLD STRIKE** **MOTION FOR COMPENSATION BY THE**
15-9062 **HEIGHTS HOMEOWNERS NB-2** **LAW OFFICE OF NEUMILLER &**
LEE V. GOLD STRIKE HEIGHTS **BEARDSLEE FOR CLIFFORD W.**
ASSOCIATION ET AL **STEVENS, TRUSTEE'S ATTORNEY(S)**
6-15-16 [60]

No Tentative Ruling: The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff (*pro se*), and Defendant's Attorney on June 15, 2016. By the court's calculation, 50 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

The Motion for Allowance of Professional Fees is granted and Gary Farrar, the prevailing party, is awarded $11, 236.00 in attorneys' fees against Don Lee.

Neumiller & Beardslee, the Attorney ("Applicant") for Gary Farrar the Chapter 7 Trustee-Defendant ("Client"), makes a Request for Prevailing Party Fees in the amount of $11,236.00 (including $1,500.00 for replying to the opposition and preparing for and attending the instant matter). Dckt. 60.

On March 20, 2015, Don Lee ("Plaintiff") to enforce the governing documents of Gold Strike Heights Association ("Gold Strike 1") and Gold Strikes Homeowners Association ("Gold Strike 2"). The Complaint alleges the following:

1. Gold Strike 1 was incorporated on March 5, 2002 and subject to a declaration of covenants, conditions, and restrictions ("Governing Documents") recorded on March 13, 2002. Dckt. 5, Exhibit A, ¶ 9-10.

2. Gold Strike 2 was incorporated on May 15, 2007. Dckt. 5, Exhibit A, ¶ 18.

3. Gold Strike 2 had no right under the Governing Documents to collect any assessments. Dckt. 5, Exhibit A, ¶ 34.

4. Gold Strike 2 initiated foreclosure proceedings under Gold Strike 1's Governing Documents on the property located at 145 Jasper Way ("Property") without any authority under the Governing Documents. Dckt. 5, Exhibit A, ¶ 34-40, 43.

5. Gold Strike 1, names as the foreclosing entity, did not have the authority to charge assessments or foreclose on the Property pursuant to the Governing Documents because it was a suspended corporation. Dckt. 5, Exhibit A, ¶ 41-42; 44-48

6. Prayer for declaratory relief that Gold Strike 1 could not pursue non-judicial foreclosure pursuant to its authority under the Governing Documents. Dckt. 5, Exhibit A, Prayer.

7. Plaintiff is entitled to attorney's fees. Dckt. 5, Exhibit A, Prayer.

The Trustee removed the Complaint to the Bankruptcy Court, Adversary No. 15-09062, and filed a Motion for Judgment on the Pleadings asserting that Plaintiff did not have standing to file the action to enforce the Governing Documents.

On May 26, 2016, the court entered a judgment in favor of Trustee-Defendant on all claims in the Complaint and against Plaintiff Don Lee, and no relief or recovery on any and all claims in the Complaint awarded Don Lee. Dckt. 47. The order also required that motions for attorneys' fees be filed and served on or before June 15, 2016.

The Trustee-Defendant asserts that pursuant to Fed. R. Bankr. P. 7054 and Cal. Civ. Code § 5975, the Trustee-Defendant is entitled to attorney's fees on the grounds that he prevailed in Plaintiff's action to enforce the Governing Documents.

The Trustee-Defendant provides the following break down of tasks:

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

Removal: Trustee-Defendant spent 2.7 hours in this category. The fees in this category include reviewing the Complaint filed in state court, correspondence regarding removal of the case to Bankruptcy Court, research and strategy sessions regarding removal of the case to Bankruptcy Court, drafting the notices to remove and other pleadings filed in support of removal of the case.

Status Conferences and Misc. Case Issues: Trustee-Defendant spent 2.2 hours in this category. The fees include compliance with the order to confer and attendance at status conferences.

Judgment on the Pleadings: Trustee-Defendant spent 19 hours in this category. The fees in this category include correspondence regarding Trustee-Defendant's motion for judgment on the pleadings, research and strategy sessions regarding Trustee-Defendant's motion for judgment on the pleadings, drafting the motion for judgment on the pleadings and other pleadings in support of the motion, preparing for, travel to, and appearing at the hearing.

Motion for Attorney's Fees: Trustee-Defendant spent 15 hours in this category. The fees in this category include correspondence regarding Trustee-Defendant's Motion for Attorney's fees, research and strategy, drafting the motion and exhibits. The Trustee-Defendant estimates it will incur approximately $1,500.00 in attorney's fees to litigate this motion, which it anticipates will include preparing for, travel to, and appearing at the hearing on the Motion and filing any additional pleadings.

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**
C. Stevens (2015)	1.2	$335.00	$402.00
C. Stevens (2016)	8.1	$340.00	$2,754.00
J. Hunsucker (2016)	28.6	$225.00	$6,435.00
K. Abdallah (paralegal)(2016)	1	$145.00	$145.00
ANTICIPATED FEES IN CONNECTION WITH INSTANT MOTION	0	$0.00	$1,500.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$11,236.00

PLAINTIFF'S OPPOSITION

The Plaintiff filed an opposition to the instant Motion on July 21, 2016. Dckt. 75.

The Plaintiff asserts that the Trustee-Defendant's Motion is inadequate and not properly

supported, citing the following:

1. The Trustee-Defendant filed a request for judicial notice in support . The only document that the Trustee requests notice of, that is relevant, is the judgment entered by this court on May 26, 2016. "Exhibit 'A' is the complaint in another unrelated case that this court may not consider.

2. The Trustee Defendant fails to establish what specific HOA governing documents were being enforced and in what manner. While the Trustee-Defendant claims in a general sense that the Plaintiff is attempting to enforce governing documents, the actual documents are never identified.

3. The Trustee-Defendant changed his position from alleging that the Plaintiff has no standing to set aside a wrongful foreclosure to one where the Trustee-Defendant asserts that the Complaint was to enforce HOA governing documents..

4. The Trustee-Defendant is attempting to allege claims on behalf of Gold Strike 1 in order to facilitate an award of fees to Gold Strike 2.

5. The Trustee-Defendant is attempting to enforce the rights of a suspended corporation, Gold Strike 1.

TRUSTEE-DEFENDANT'S RESPONSE

The Trustee-Defendant filed a response on July 28, 2016. Dckt. 79. The Trustee-Defendant asserts that the standing argument in the Motion for Judgment on the Pleadings and the attorney's fees request are separate and distinct. The Trustee-Defendant argues that even if an action to enforce the governing documents is not adjudicated on its merits, the prevailing party is still entitled to reasonable attorney's fees.

The Trustee-Defendant states that the Complaint alleges that the Gold Strike 1 and 2 does not have the right to exercise its powers under the governing documents and that Gold Strike 2 conducted a non-judicial foreclosure, under the governing documents without any authority under the governing documents. Dckt. 5, Exhibit A, Complaint. As an example, the Trustee-Defendant points to the prayer in the Complaint:

> For a declaration that defendant Gold Strike 2002 as a suspended California corporation could not exercise its corporate rights and powers and thus was barred from first initiating and then concluding the non-judicial foreclosure of the 31 lots owned by Indian Village Estates, including the lot upon which Plaintiff LEE has resided since late 2008

Dckt. 5, Complaint, Prayer. The Trustee asserts that the term "exercise its corporate rights and powers" is directly related to the governing documents. In sum, the Trustee-Defendant highlights that the basis for the declaratory relief sought by the Plaintiff is directly related to the governing documents which triggers § 5975.

Additionally, the Trustee-Defendant highlights that he is not attempting to enforce the rights of an alleged suspended company but rather enforce the rights of the estate.

APPLICABLE LAW

California Civil Code § 5975, entitled "Covenants and restrictions in declaration as equitable servitudes; enforcement; alternative dispute resolution," states: FN.1.

> (a) The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both.
>
> (b) A governing document other than the declaration may be enforced by the association against an owner of a separate interest or by an owner of a separate interest against the association.
>
> (c) In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs.

FN.1. Of note, Civil Code § 5975 continues former § 1354 under the new section.

"The mandatory attorney's fees and costs award under section [5975], applies when a plaintiff brings an action to enforce such governing documents, but is unsuccessful because he or she does not have standing to do so." *Martin v. Bridgeport Cmty. Ass'n, Inc.*, 173 Cal. App. 4th 1024, 1039, 93 Cal. Rptr. 3d 405, 417-18 (2009) (citing *Farber v. Bay View Terrace Homeowners Assn.* (2006) 141 Cal.App.4th 1007, 1014 (2006).

Prevailing Party Attorneys' Fees

Unless authorized by statute or contractual provision, attorney fees ordinarily are not recoverable as costs. Cal. Code Civ. Proc. § 1021; *International Industries, Inc. v. Olen*, 21 Cal. 3d 218, 221 (Cal. 1978). The prevailing party must establish that a contractual provision exists for attorneys' fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the loadstar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably

low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

DISCUSSION

It is significant Plaintiff believed, presumably in good faith, that he was entitled to attorneys' fees for prosecuting this litigation. The Second and Third Causes of Action for Negligent and Intentional Infliction of Emotional Distress could not be the basis for attorneys' fees. Thus, it must be that the Plaintiff believes the issues in the First Cause of Action are ones in which a right to attorneys' fees exist.

The Defendant-Trustee characterizes the basis for attorneys fees as arising under statute, California Civil Code § 5975. As discussed above, in an action relating to the enforcement of covenants and restrictions in a declaration for a common interest development, the prevailing party **shall** (not may) be awarded attorneys' fees. The First Cause of Action turns on who may exercise the powers under the covenants and restrictions for the real property at the core of this dispute.

The Defendant-Trustee is the prevailing party in this litigation, having obtained a judgment against the Plaintiff. The $11,236.00 in legal fees is reasonable for the prevailing party. Due to Plaintiff's prosecution of this Complaint, Defendant-Trustee incurred fees and expenses in removing the action to federal court, participate in the proceedings concerning the management of the action, prevailing on the motion for judgment on the pleadings, and now seeking the recovery of the attorneys' fees which **shall** be awarded to the prevailing party under California Civil Code § 5975.

The Trustee and counsel have reasonably managed the legal expenses in this Adversary Proceeding.

At the hearing, xxxx

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 Prevailing Party Attorneys' Fees filed by Modesto Irrigation District, the prevailing Plaintiff in this Adversary Proceeding, ("Plaintiff") 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 Motion is granted and Gary Farrar, the Chapter 7 Trustee for the Gold Strike Heights Homeowners Association, and the prevailing party is awarded $11,236.00 in attorneys' fees in the Adversary Proceeding against

Don Lee, the Plaintiff. This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014), as part of the judgment entered in this Adversary Proceeding.

5. 15-90411-E-7 JOHN/MONICA BERGMAN MOTION FOR COMPENSATION FOR
HSM-7 CHAPTER 7 TRUSTEE'S COUNSEL
7-14-16 [86]

Tentative Ruling: The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct 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 July 14, 2016. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. At the hearing **----------.**

The Motion for Allowance of Professional Fees is granted.

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

The period for which the fees are requested is for the period August 4, 2015 through August 4, 2016. The order of the court approving employment of Applicant was entered on August 24, 2015, Dckt. 34. Applicant requests fees in the amount of $8,0000.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). 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.

Benefit to the Estate

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including assets investigation, asset disposition including property in Modesto and Texas, and performed necessary daily tasks.. The estate has $15,152.78 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Investigation: Applicant spent 1.9 hours in this category. Applicant assisted Client with researching issues related to diverse assets, including rental real property and retirement account.

Asset Disposition: Applicant spent 11.6 hours in this category. Applicant advised Trustee in connection with the motion for relief, drafted and obtained approval of mpotion to abandon, advised Trustee in connection with the marketing and sale of rental real property in Texas..

General Administration: Applicant spent 27.70 hours in this category. Applicant performed case initiation services, including determining that no conflicts existed, drafted and prosecuted motions to extend discharge and exemptions deadlines, and drafted Motion for compensation

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**

A. Avery	40.70	$300.00	$12,210.00
H. Nevins	.5	$390.00	$195.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$8,000.00 FN.1

FN.1. The Applicant is requesting a reduced single compensation of $8,000.00 based on the unencumbered monies left in the estate and the remaining distribution.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $8,000.00 for its fees incurred for the Client. First and Final Fees in the amount of $8,000.00 are approved pursuant to 11 U.S.C. § 330 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 $8,000.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Hefner, Stark & Marois, LLP ("Applicant"), Attorney for 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 Hefner, Stark & Marois, LLP is allowed the following fees and expenses as a professional of the Estate:

Hefner, Stark & Marois, LLP, Professional Employed by Trustee

Fees in the amount of $8,000.00

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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.

6. **15-90811-E-7** **ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS** **MOTION FOR SANCTIONS**
NB-3 **7-7-16 [129]**

No Tentative Ruling: The Motion for Civil Contempt Sanctions has been set for hearing on the notice require by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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 courts resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on

The Motion for Civil Contempt Sanctions has been set for hearing on the notice require by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The courts decision is to grant the Motion for Civil Contempt Sanctions, and award the Trustee $7,244.00 in civil sanctions against Indian Village Estates, LLC, and Don Parker, and each of them, jointly and severally.

The Trustee moves the Court to issue civil contempt sanctions against Indian Village Estates, LLC and Don Lee ("Plaintiffs") for actual damages including attorneys' fees and costs incurred by the Trustee under 11 U.S.C. § 105(a). The Trustee seeks actual damages on the grounds that Plaintiff's willfully violated the automatic stay by filing the Action in violation of the automatic stay; failed to dismiss the action despite knowledge of the automatic stay; and forced the Trustee to dismiss the action because of the Plaintiffs failure to do so.

The Trustee alleges that Plaintiffs knowingly and willfully violated the automatic stay by filing a complaint in state court after the Debtor filed the Voluntary Petition and that Plaintiffs took no affirmative action to remedy the violation for nine months. During this time, the Trustee has incurred the following costs and attorneys' fees.

Category	Attorney Name	Time	Total Fees Computed Based on Time and Hourly Rate
Removal	Stevens, Cliff	8.50	$2,870.50
Status Conferences & Misc. Case Issues	Stevens, Cliff	6.60	$2,244.00
Motion to Dismiss	Stevens, Cliff	3.00	$1,020.00
	Hunsucker, Joshua P.	5.10	$1,147.50
Motion for Sanctions	Stevens, Cliff	1.10	$374.00
	Hunsucker, Joshua P.	16.40	$3,720.00
	Tener, Michael	0.20	$59.00
Total Fees			$11,435.00

The Trustee anticipates that an estimated $1,500.00 in additional fees will be incurred in replying to the opposition and preparing for a contested hearing.

Evidence

1. Debtor's filed the Voluntary Petition on August 20, 2015. Dckt. 1.

2. Plaintiff's were served with the Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, and Deadlines to Plaintiffs on August 23, 2015.

3. Plaintiffs filed a complaint against Debtor in state court ("the Action") on August 24, 2015 (Case No. 15CV41092). Dckt. 134 Exhibit "C".

4. Plaintiffs received actual notice of the Voluntary Petition on or about August 25, 2015.

5. After receiving actual notice of the Voluntary Petition on or About August 25, 2015, Plaintiffs failed to voluntarily dismiss the Action in state court.

6. The Trustee removed the Action to this Court on November 18, 2015. Dckt. 134 Exhibit "D".

7. Plaintiffs' counsel was served with the notice of removal on November 18, 2015 and December 4, 2015. Dckt. 134 Exhibits "E" and "F".

8. The Trustee filed a Motion to Dismiss the Action on April 6, 2016. Dckt 134. Exhibit

"K".

9. On May 16, 2016, the Court granted the Trustee's Motion to Dismiss the Action without prejudice. Dckt 134. Exhibit "M".

Plaintiff's Response

The Plaintiffs filed a response in which they assert that while the Action was filed several days after the Debtor filed for bankruptcy on August 20, 2015, the Action was filed before the Plaintiffs and their attorney received any notice that a petition has been filed. After filing the initial complaint in state court, Plaintiffs have taken no steps to continue the litigation since receiving notice of the bankruptcy filing. The Plaintiffs did not file an answer and the only additional filings in this case have been by the Trustee.

The Plaintiffs and their attorney have always been prepared to dismiss the case as soon as they knew that it had been inadvertently filed in violation of the automatic stay. The Trustee's attorney offered to prepare a simple stipulation and dismissal to end the case, but failed to do so. The Trustee filed a motion to dismiss that went unopposed. This lack of opposition was well-known in advance of the motion.

Trustee's Reply

The Trustee filed a reply to the Plaintiff's Response stating that Plaintiff's Response is an admission of a willful violation of the stay. The Plaintiff's Response admits the action was filed in violation of the automatic stay; admits Plaintiff had knowledge of the automatic stay as of August 26 & 27, 2015; and admits that the Plaintiff never took any affirmative action to remedy their violation of the automatic stay by voluntarily dismissing the Action.

Standard

Motion for Contempt

For debtors who are not "individuals", contempt proceedings are the proper means of compensation for willful violations of the automatic stay. *In re Goodman*, 991 F.2d 613, 620. While 11 U.S.C. § 105 does not itself create a private right of action, it does provide a bankruptcy court with statutory contempt powers in addition to whatever inherent contempt powers the court may have. Because these powers inherently include the ability to sanction a party, a bankruptcy court is authorized to invoke § 105 to impose sanctions for contempt. *Goodman*, 991 F.2d. 613, 620. A trustee can recover damages in the form of costs and attorney's fees under § 105(a) as a sanction for ordinary civil contempt. *See United States v. Arkison (In re Cascade Roads, Inc.)*, 34 F.3d 756, 767 (9th Cir. 1994). An award of damages under § 105(a) is discretionary. *Havelock v Taxel (In re Pace)*, 67 F.3d 187, 193 (9th Cir. 1995).

A contempt proceeding by the United States Trustee or a party in interest in bankruptcy is considered a contested matter. *Barrientos v. Wells Fargo Bank, N.A.*, 663 F.3d 1186, 1189 (9th Cir. 2011). Contempt proceedings are not listed under Bankruptcy Rule 7001 and are therefore contested matters not qualifying as adversary proceedings. *Id.* Contempt proceedings for a violation of § 362 must be initiated by motion in the bankruptcy case under Rule 9014 and not by adversary proceeding. *Id.*

Civil Contempt

The party seeking civil contempt sanctions has the burden of proving by clear and convincing evidence that the contempnors violated a specific and definite order of the court. *Bennet*, 298 F.3d at 1069. The burden then shifts to the contempnors to demonstrate why they were unable to comply. *Id.* The movant must prove that the creditor willfully violated the automatic stay. *In re Bloom*, 875, F.2d 224, 227 (9th Cir. 1989). Violation of the stay is considered willful when (1) the creditor knew of the automatic stay and (2) the creditor's actions which violated the stay were intentional. *Id.* Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was "willful" or whether compensation must be awarded. *Id.*

Violation of the automatic stay when a trustee is involved (as opposed to an individual who may also seek relief pursuant to 11 U.S.C. § 362(k)) may be address as "ordinary civil contempt" by the bankruptcy judge. *Dyer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1190-91 (9th Cir. 2003). The basic analysis for considering civil contempt is stated as follows:

> "'The standard for finding a party in civil contempt is well settled: The [*1191] moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court.' *Bennett*, 298 F.3d at 1069. Because the "metes and bounds of the automatic stay are provided by statute and systematically applied to all cases," *Jove Eng'g v. IRS (In re Jove Eng'g)*, 92 F.3d 1539, 1546 (11th Cir. 1996), there can be no doubt that the automatic stay qualifies as a specific and definite court order.
>
> In determining whether the contemnor violated the stay, the focus 'is not on the subjective beliefs or intent of the contemnors in complying with the order, but whether in fact their conduct complied with the order at issue.' *Hardy v. United States (In re Hardy)*, 97 F.3d 1384, 1390 (11th Cir. 1996) (internal citations omitted); accord *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191, 93 L. Ed. 599, 69 S. Ct. 497 (1949). (Because civil contempt serves a remedial purpose, "it matters not with what intent the defendant did the prohibited act.").
>
> The threshold standard for imposing a civil contempt sanction in the context of an automatic stay violation therefore dovetails with the threshold standard for awarding damages under § 362(h). *Pace*, 67 F.3d at 191 (incorporating the willfulness standard of § 362(h) as explicated by *Pinkstaff v. United States (In re Pinkstaff)*, 974 F.2d 113, 115 (9th Cir. 1992)). Under both statutes, the threshold question regarding the propriety of an award turns not on a finding of 'bad faith' or subjective intent, but rather on a finding of 'willfulness,' where willfulness has a particularized meaning in this context:
>
> > '[W]illful violation' does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional.

Pace, 67 F.3d at 191; see also *Pinkstaff*, 974 F.2d at 115; *Hardy*, 97 F.3d at 1390; cf.

> *Bennett*, 298 F.3d at 1069 (describing standard for imposing civil contempt sanctions under § 105(a) for violation of discharge injunction)."

Id.

DISCUSSION

The automatic stay imposes an affirmative duty on compliance on the nondebtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151-52 (9th Cir. 1996). A party which takes an action in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191-92 (9th Cir. 2003).

Here, there is no question that the Plaintiff had knowledge of the bankruptcy as of August 24, 2016. Dckt. 137, Plaintiff's Response. There is no question that:

> 2) Other than filing the complaint in state court, the plaintiffs and their attorneys have taken no other steps since August 24, 2015 to continue the litigation since receiving notice of the bankruptcy filing. . .
>
> 3) The Plaintiffs and their attorney have always been prepared to dismiss this case once they know that it had been inadvertently filed in violation of the automatic stay.
>
> 4) The Trustee's attorney offered to prepare a simple stipulation and dismissal that would end this case but failed to do so.
>
> 5) The Trustee filed a motion to dismiss that was unopposed and this lack of opposition was well-known in advance of the motion.

Dckt. 137, Plaintiff's response.

Fundamentally, the Plaintiff misses the standard. As stated supra, a party which takes an action in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191-92 (9th Cir. 2003). The duty is "affirmative" and the violating party must take "affirmative" steps to remedy the violation. The Plaintiff admits that there was a recognition of a violation of the automatic stay as of August 24, 2016 – 4 days after the Debtor filed the instant case.

Rather than taking the affirmative steps to dismiss the state court action; rather than taking the affirmative steps to file a stipulation dismissing the case; rather than requesting a stay on the state court litigation, the Plaintiff stepped back and essentially attempted to switch the burden onto the Trustee to "remedy the violation." That is simply not the standard.

The Plaintiff admits that they "have taken no steps since August 24, 2015" to rectify the violation of the stay. Dckt. 137. This admission is sufficient to find that there was a wilful violation of the automatic stay and was a violation that the Plaintiff did not remedy. The Trustee has shown that the Plaintiff willfully violated the automatic stay by failing to dismiss the Action. Because Plaintiff received actual notice of the bankruptcy filing when they were served with the Notice of Chapter 7 Bankruptcy Case, Meeting of

Creditors, and Deadlines on or about August 24, 2015, Plaintiff knew of the automatic stay. Despite this knowledge, Plaintiff took no action, causing the Trustee to incur additional fees.

However, the amount of sanctions becomes a question when the Trustee appears to have taken additional, possibly unnecessary steps, in dealing with the violation. The Trustee states in the Motion that he spent 8.5 hours in the removal of the state court action to the bankruptcy court. However, the Trustee does not explain or provide justification why removal was more efficient and proper when the Trustee could have filed a Motion for Violation of the Automatic Stay, got the Motion granted, and then submit to the state court to stay the proceedings.

Additionally, the Trustee, who argues throughout the Motion how all the parties were in agreement to dismiss the pleading, why 8.1 hours of work was necessary on a Motion to Dismiss. The court recognizes that the amount of work done by the Trustee has been mostly due to the failure of the Plaintiff to remedy the violation of the automatic stay by attempting to shift the burden to the Trustee to rectify. The concern, though, is whether the fees sought were reasonable and necessary to rectify the violation.

COMPUTATION OF REASONABLE ATTORNEYS' FEES AND DAMAGES

Plaintiffs, by their continued violation of the automatic stay, caused the Trustee to incur otherwise unnecessary attorneys' fees and expenses by failing to fulfill their basic obligations once their learned of the bankruptcy case being filed. It is clear from the totality of the circumstances that the Plaintiffs are locked in a death spiral battle with the Trustee and Debtor. Unfortunately for Plaintiffs, what may have been a litigation, burn to the ground, practices in state court, violation of the automatic stay is a violation which is not ignored.

If Plaintiffs had taken 5 minutes, they could have unilaterally filed a dismissal of the state court action. Cal. C.C.P. § 581(b). Plaintiffs chose not to, but instead continue to have the state court action hang over the Trustee's head. Having chosen that strategy, Plaintiffs must now answer in the form of sanctions for strategy election.

In considering these sanctions, the court determines what is necessary to compensate the estate for the harm done and what additional amounts, if any, is necessary to correct the behavior of these parties and discourage such conduct by not only these parties, but similarity situated persons.

Possibly egged on by the Plaintiffs, the Trustee has managed to have his attorneys expend 40.90 hours in addressing the sate court compliant and this motion for sanctions. The fact that Plaintiffs chose to ignore their obligations related to the knowing violation of the automatic stay does not create a blank check for the Trustee. The billing rates for the Trustee's attorneys are from $240.00 an hour to $340.00 an hour. These are rates for experienced senior associates and partners with bankruptcy experience or expertise.

Plaintiffs cannot be reasonably heard to complain that the Bankruptcy Trustee removed the action to this court, rather than wandering off to state court to try and unwind the mess created by Plaintiffs. Plaintiffs cannot be heard to complain that the Trustee had to file a motion to dismiss the void complaint, rather than let it sit. Plaintiffs stated that they "intended" to dismiss the adversary, would not oppose the dismissal – but were unwilling to lift a finger to rectify their continuing violation of the automatic stay.

The "Opposition" filed by Plaintiffs demonstrates that they intentionally continued in violation of the automatic stay, placing the burden on the Trustee to address this continuing violation. These statements in the "Opposition" include the following:

A. "2) Other than filing the complaint in state court, **the plaintiffs and their attorneys have taken no other steps since August 24, 2015** to continue the litigation since receiving notice of the bankruptcy filing. No answer has ever been filed. **The only further filings in this case have been by Trustee.**

B. "3) The Plaintiffs and their attorney **have always been prepared** to dismiss this case once they knew that it had been inadvertently filed in violation of the automatic stay."

C. "5) The Trustee filed a motion to dismiss that was unopposed and this lack of opposition was well-known in advance of the motion."

D. "3. The Trustee never requested that the complaint be dismissed in state court before it was removed to federal court. The Trustee did not request that the complaint be dismissed in federal court until early March 2016 and there was no opposition of any kind expressed to this request."

Opposition, Dckt. 137. Plaintiffs assert that the Trustee offered to prepare a stipulation but never did. Presumably, Plaintiffs believe that if true, this exonerates them from failing to act. They are wrong. Plaintiffs state that they told the Trustee they would not oppose a dismissal - putting the burden on the Trustee to unwind the Plaintiff's continuing wrongs.

While Plaintiffs argue that the filing of the complaint was "innocent," without knowledge of the bankruptcy case being filed, they fail to address (or own up) to failing to undertake any action to dismiss the state court complaint. Though they failed to act, Plaintiffs feel that all of the acts taken by the Trustee because of Plaintiff's inaction were unnecessary. They would have been unnecessary if the Plaintiffs had lifted a finger and properly acted to correct their knowing, continuing violation of the automatic stay.

To determine the reasonable attorneys' fees which should be awarded as compensatory sanctions, the court uses a standard loadstar analysis. What reasonable amount of time, at a reasonable billing rate for the services provided were incurred by the prevailing party.

The court allows the follows attorneys fees and expenses as the reasonable attorneys' fees and costs cause by the Plaintiff's knowing continuing violation of the automatic stay:

Removal	$1,050
Status Conferences and Case Issues	$2,244
Motion to Dismiss	$1,500
Motion for Sanctions	$2,450

Total	$7,244

Trustee's counsel has spent more time, which may well relate to necessary work concerning the underlying dispute, possible rights and interests asserted by Plaintiffs, and rights of the estate. The court computes that $7,244.00 in attorneys' fees relates directly to, and were caused by, Plaintiffs, and each of their failure to correct their continuing violation of the automatic stay.

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 hearing on the Motion for Civil Contempt Sanctions having been conducted by the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Civil Contempt Sanctions is granted and the court awards $7,244.00 to Gary Farrar, the Chapter 7 Trustee, and against Indian Village Estates, LLC, and Don Lee, and each of them, jointly and severally.

This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

7. 15-91013-E-7 NOEMI BARBOZA OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
SCB-4 6-17-16 [54]

Tentative Ruling: The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct 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 June 17, 2016. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

Objection is sustained as to the claim of exemption of the property commonly known as 6101 Tennessee Avenue, Riverbank, California pursuant to California Code of Civil Procedure § 704.730 is sustained and the claimed exemption is disallowed in their entirety, and overruled as to the 2005 Mustang vehicle. No other relief granted.

Gary Farrar, the Chapter 7 Trustee, filed the instant Objection to Claimed Exemptions on June 17, 2016. Dckt. 54. FN.2. The Trustee asserts that the exemptions claimed on real property located at 6101 Tennessee Avenue, Riverbank, California ("Property") and on 2005 Ford Mustang ("Vehicle") should be disallowed. Specifically, the Trustee argues that the Debtor has failed to establish by a preponderance of the evidence that she is entitled to claim a homestead exemption on the Property under California Code of Civil Procedure § 704.730 and that under equitable estoppel the Debtor should be barred from exemptions claimed in the Property and Vehicle.

FN.2. The court is very surprised that the Trustee and his counsel have chosen to ignore the Local Bankruptcy Rules and Revised Guidelines for Preparation of Documents and have chosen to mush together the Objection and Points and Authorities into one document. The Motion, Objection, Points and Authorities, each Declaration, and the Exhibits documents (with all of the exhibits permitted to be combined into one pleading filed with the court) filed separately. Sticking extensive citations, quotations, arguments, speculation, and conjecture in a motion or objection only dilutes the motion or objection and leaves the court confused as to what grounds are actually being asserted.

On November 20, 2015, the Debtor filed her original Schedules. On Schedule A, the Debtor lists the following:

> Single Family Home (Debtor is 3rd owner with Parents)(House Value is $162,786.00)
> Location: 6101 Tennessee Avenue, Riverbank CA
> 95367

Dckt. 24. The Debtor state's her interest in the Property is $54,262.00 and that the amount of the secured claim is $76,174.00 held by Everhome Mortgage Co.

On Schedule B, included in the personal property which the Debtor disclosed is the following:

> 2005 Ford Mustang (195K miles/Fair)
> Location: 6101 Tennessee Avenue, Riverbank CA
> 95367

Dckt. 24. The Debtor valued the Vehicle at $4,595.00.

On Schedule C, the Debtor fails to exempt the Property but does claim an exemption in the Vehicle pursuant to California Code of Civil Procedure § 703.140(b)(2) in the full amount of $4,595.00.

The Debtor failed to appear at five separate Meeting of Creditors, without giving any notice to the Trustee. It was not until the sixth continued Meeting of Creditors on April 12, 2016 that the Debtor appeared. At the Seventh Meeting of Creditors, the Debtor testified that she owns the Property with her mother and father. When the Trustee informed the Debtor that upon his own research that the Debtor and her father own the Property jointly which is contrary to the Debtor's testimony and schedules, the Debtor did not provide an explanation. As to the Property, the Trustee also requested that the Debtor provide evidence that she resided at the Property at the time of the petition. The Debtor failed to provide such proof.

On April 18, 2016, the Debtor filed amended Schedules B and C. Dckt. 36. On Schedule B, the Debtor amended the Vehicle description as follows:

> 2005 Ford Mustang (195K miles/Fair) ½ owner
> with father Cesar Barbosa (VEHICLE APPRAISAL
> REPORT ON HAND)
> Location: 6101 Tennessee Avenue, Riverbank CA

95367

Dckt. 36. The Debtor also changed her interest value in the Vehicle to $1,000.00.

Of note, the Debtor did not amend Schedule A to correctly identify the ownership interest of just the Debtor and Debtor's father.

The Trustee states that he consulted a realtor on the ownership and value of the Property. The realtor confirmed that the Property is owned jointly between the Debtor and Debtors father and states that the value of the Property is between $170,000.00-$174,000.00 and suggested a list price of $179,950.00. Dckt. 58.

The Trustee's counsel contacted Debtor's counsel's office to inform them of the Trustee's intent to liquidate the Property and to inquire whether the Debtor's father would have an interest in purchasing the estate's interest.

On May 19, 2016, the Debtor filed another set of amended Schedules A, B, C, and D. Dckt. 46. On Schedule A, the Debtor amended the Property description to:

> Single Family Home (Debtor is half owner with father Cesar Barboza)(House Value is $185,000.00 Debtor has an appraisal as of May 5, 2016)
> Location: 6101 Tennessee Avenue, Riverbank CA
> 95367

Dckt. 46. The Debtor state's her interest in the Property is $92,500.00 and that the amount of the secured claim is $75,444.61.

On second Amended Schedule B, the Debtor amended the description of the Vehicle as follows:

> 2005 Ford Mustang (195K miles/Fair) ½ owner with father Cesar Barbosa (VEHICLE APPRAISAL REPORT ON HAND as of April 14, 2016)
> Location: 6101 Tennessee Avenue, Riverbank CA
> 95367

On second Amended Schedule C, the Debtor amended all of the exemptions as follows:

Property	Exemption	Exemption Amount	Value of Property

Single Family Home (Debtor is half owner with father Cesar Barboza)(House Value is $185,000.00 Debtor has an appraisal as of May 5, 2016) Location: 6101 Tennessee Avenue, Riverbank CA 95367	California Code of Civil Procedure § 704.730	$17,055.39	$92,500.00
Checking Account, Bank of America	California Code of Civil Procedure § 704.070	$131.25	$175.00
Household Goods	California Code of Civil Procedure § 704.020	$2,000.00	$2,000.00
Clothing	California Code of Civil Procedure § 704.020	$500.00	$500.00
Jewelry	California Code of Civil Procedure § 704.040	$600.00	$600.00
2005 Ford Mustang (195K miles/Fair) ½ owner with father Cesar Barbosa (VEHICLE APPRISAL REPORT ON HAND as of April 14, 2016)	California Code of Civil Procedure § 704.010	$1,000.00	$1,000.00

As to the homestead exemption, the Trustee argues that the Debtor has failed to prove that she is entitled to such exemption, given that she has not provided evidence that she was residing in the Property at the time of filing, failed to properly disclose the ownership interest in the Property, and did not attempt to claim an exemption until the Trustee informed Debtor of the intent to sell the Property.

As to the Vehicle and Property, the Trustee argues that equitable estoppel bars the Debtor from claiming an exemption in both. The Trustee argues equitable estoppel applies because: (1) the Debtor concealed the fact of the ½ ownership interest and failed to originally claim an exemption and the Debtor failed to disclose that she owned the Vehicle jointly with her father; (2) The Debtor knew of her right to claim a homestead exemption in the Property and chose not to in the original and second amended Schedules

and failed to disclose the joint interest in the Vehicle; (3) the Trustee did not have knowledge that the Debtor was going to file amended schedules to change the ownership of the Vehicle or the exemptions; (4) the Trustee relied on the Debtor not claiming an exemption in the Property and relied on the representation of the Debtor's schedules; and (5) the Trustee relied on the Debtor's representation that she was not going to claim a homestead exemption and had begun pursuing the sale of the Property and that the Debtor was the sole owner of the Vehicle.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on July 21, 2016. Dckt. 64. FN.2.

FN.2. Unfortunately, the Debtor failed to properly lay foundation and authenticate the attached exhibits. As with repeatedly failing to attend the First Meeting of Creditors, Debtor again appears to be insulating herself from making any statements under penalty of perjury - leaving it merely for attorney to make arguments without evidentiary basis.

First, Debtor's counsel argues that Debtor was not aware that her mother is not on the deed. Debtor let her parents use her credit when her parents purchased the home. The attorney argues that Debtor's parents are the ones that have always made the payment on the Property. The Debtor attorney further argues that Debtor was able to pay rent occasionally.

The Debtor alleges that due to the appraisals she had done on both the Property and Vehicle, that she advised the Trustee's counsel that she was amending the Schedules.

TRUSTEE'S REPLY

The Trustee filed a reply on July 28, 2016. Dckt. 67. The Trustee reiterates that the Debtor has failed to show that the Debtor is entitled to a homestead exemption under California Code of Civil Procedure § 704.730. The Trustee asserts that he was not aware that the Debtor intended to file any amended schedules.

As to the equitable estoppel argument, the Trustee argues that the Debtor did not address her failure to list the Property and Vehicle with accurate values, her failure to disclose that she owns the Vehicle with her father, her failure to claim the homestead exemption in the Property in the First Amended Schedules, or Trustee's assertion that the Debtor intended that he rely on the Original Schedules and the First Amended Schedules.

APPLICABLE LAW

California Homestead Exemption

California Code of Civil Procedure § §704.730(a)(3)(A) states:

> "For purposes of the instant Objection, California law provides the following homestead exemption:

(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars ($25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars ($35,000) and the sale is an involuntary sale.

(b) Notwithstanding any other provision of this section, the combined homestead exemptions of spouses on the same judgment shall not exceed the amount specified in paragraph (2) or (3), whichever is applicable, of subdivision (a), regardless of whether the spouses are jointly obligated on the judgment and regardless of whether the homestead consists of community or separate property or both. Notwithstanding any other provision of this article, if both spouses are entitled to a homestead exemption, the exemption of proceeds of the homestead shall be apportioned between the spouses on the basis of their proportionate interests in the homestead."

The term "homestead" is defined by the California Legislature as follows:

> "(c) 'Homestead' means the **principal dwelling** (1) in which the **judgment debtor or the judgment debtor's spouse resided** on the date the judgment creditor's lien attached to the dwelling, **and** (2) in which the **judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead....**"

Cal. C.C.P. § 704.710(c) (emphasis added).

The term "dwelling" is provided a non-exclusive definition by the California Legislature as follows:

As used in this article:

> "(a) 'Dwelling' means a place where a person resides and may include but is not limited to the following:
>
> (1) A house together with the outbuildings and the land upon which they are situated.
>
> (2) A mobilehome together with the outbuildings and the land upon which they are situated.
>
> (3) A boat or other waterborne vessel.
>
> (4) A condominium, as defined in Section 783 of the Civil Code.
>
> (5) A planned development, as defined in Section 11003 of the Business and Professions Code.
>
> (6) A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code.
>
> (7) A community apartment project, as defined in Section 11004 of the Business and Professions Code.

Cal. C.C.P. § 704.710(a).

Under California law, the factors a court should consider in determining residency, for homestead purposes, are physical occupancy of the property and the intention with which the property is occupied. *In re Kelley*, 300 B.R. 11 (B.A.P. 9th Cir. 2003). California Government Code specifies what should be considered when determining the place of residence:

> In determining the place of residence the following rules shall be observed:
>
> (a) It is the place where one remains when not called elsewhere for labor or other

special or temporary purpose, and to which he or she returns in seasons of repose.

(b) There can only be one residence.

(c) A residence cannot be lost until another is gained.

(d) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of such unmarried minor child.

(e) The residence of an unmarried minor who has a parent living cannot be changed by his or her own act.

(f) The residence can be changed only by the union of act and intent.

(g) A married person shall have the right to retain his or her legal residence in the State of California notwithstanding the legal residence or domicile of his or her spouse.

Cal. Govt. Code § 244.

Under California law, debtor or debtor's spouse must reside in dwelling when bankruptcy petition is filed in order to be entitled to homestead exemption, whether homestead is claimed under article on homestead exemption or under article on declared homesteads. Cal. C.C.P. §§ 697.710, 704.710 et seq., 704.910 et seq; *see, e.g. In re Dodge*, 138 B.R. 602 (Bankr. E.D. Cal. 1992) (under California law, debtors' claim of homestead exemption was valid, even though debtors did not physically occupy house all the time, where debtors were only temporarily absent for a few days at a time for employment away from home).

California courts have discussed the requirements in order to claim a homestead exemption:

> "In *Tromans v. Mahlman*, 92 Cal. 1, 8 [27 P. 1094, 28 P. 579], it is said: 'To effect its purpose, the [homestead] statute has been liberally construed in some respects, but the requirement as to residence at the time the declaration is filed has been strictly construed. Thus this court has many times used and emphasized the word 'actually,' to show that the residence must be real, and not sham or pretended. ... Here it clearly appears from the evidence that the respondents went to Haywards, not to make their home or place of abode there, but only to spend a night or two, and then return to their home in San Francisco. ...'"

Ellsworth v. Marshall, 196 Cal. App. 2d 471, 474, (Dist. Ct. App. 1961).

Bankruptcy courts in the Eastern District have grappled with the proper burden of proof as to proving that applicability of an exemption. Specifically,

> "Because California law mandates the use of state exemptions, prohibits the use of federal exemptions, and allocates the burden of proof to the exemption claimant, the court further concludes that California Code of Civil Procedure § 703.580(b) is a

> substantive element of a California exemption and California exemption law that must be applied inside bankruptcy the same as it would outside bankruptcy."

In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015).

Equitable Estoppel

Equitable doctrines, such as equitable and judicial estoppel focus upon *conduct*. *Alary Corp. v. Sims (In re Associated Vintage Group, Inc.)*, 283 B.R. 549, 565 (B.A.P. 9th Cir. 2002). Courts have found that "a valid claim for equitable estoppel requires: (a) a representation or concealment of material facts; (b) made with knowledge, actual or virtual, of the facts; (c) to a party ignorant, actually and permissibly, of the truth; (d) with the intention, actual or virtual, that the ignorant party act on it; and (e) that party was induced to act on it." *Simmons v. Ghaderi*, 44 Cal. 4th 570, 584, 187 P.3d 934, 943 (2008)(citing 13 Witkin, Summary of Cal. Law (10th ed. 2005) Equity, § 191, pp. 527-528.)

Since estoppel is an equitable doctrine, it should be applied "where justice and fair play require it." *United States v. Ruby Co.*, 588 F.2d 697, 703 (9th Cir. 1978).

The Ninth Circuit has discussed post-*Law v. Siegel* effects on objections to debtor's exemptions. In *In re Elliott*, the Ninth Circuit stated the following:

> A debtor's bad faith is not a statutorily created exception to the exemption but rather is a judge-made exception under Ninth Circuit authority. The Supreme Court has now mandated in *Law v. Siegel* that "[t]he Code's meticulous ... enumeration of exemptions and exceptions to those exemptions confirms that courts are not authorized to create additional exceptions." *Id.* Accordingly, courts can no longer deny claimed exemptions or bar amendments to exemptions on the ground that the debtor acted in bad faith, when no statutory basis exists for doing so. As such, despite Elliott's apparent bad faith, his claimed homestead exemption must stand absent some statutory basis for its denial.

In re Elliott, 523 B.R. 188, 194 (B.A.P. 9th Cir. 2014).

DISCUSSION

The court will first address the Trustee's basis of objection that the Debtor has failed to establish that she is entitled to a homestead exemption pursuant to California Code of Civil Procedure § 704.740. As discussed supra, California law states that in determining whether a property is a "homestead,"

> "(c) 'Homestead' means the **principal dwelling** (1) in which the **judgment debtor or the judgment debtor's spouse resided** on the date the judgment creditor's lien attached to the dwelling, **and** (2) in which the **judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead....**"

Cal. C.C.P. § 704.710(c) (emphasis added).

Here, the Debtor testified at the sixth Meeting of Creditors that she had only resided in the Property for about five months which would put her moving into the property after the case was filed. The Trustee then states that the Debtor states that she then estimated that she moved into the Property one month prior to the case being filed. When asked to provide proof of residence at the time of filing, the Debtor failed to provide evidence and continues to fail to provide evidence.

The Debtor appears to be focusing on the equitable estoppel argument of the Trustee's objection, stating that it was not until the appraisals and Meeting of Creditor that she learned she and her father were the only ownership interests. This, however, does not establish that the Debtor is entitled to the homestead exemption.

Therefore, the objection as to the homestead exemption pursuant to California Code of Civil Procedure § 704.730 is disallowed in its entirety.

Now, turning to the Trustee's argument that equitable estoppel bars the Debtor from claiming an exemption in the Property or Vehicle due to the Debtor's failure to properly list values, interests, and exemption in the original and first amended Schedules. The court is not persuaded by the Trustee's argument.

While the court understands that the Trustee relies on the Schedules for accurate information as to the Debtor's interests in property as well as the Debtor's financial information, mistakes do happen. The Debtor's failure to appear at the Meeting of Creditors five times and failing to properly amend the Schedules following the Meeting of Creditors does not appear to have the overly nefarious purpose that the Trustee proposes.

More significantly, the assets were disclosed and the Trustee could readily verify the estate's interest in both the car and the real property. The Trustee was not mislead into taking a series of actions, with the Debtor now attempting to trap the Trustee and cause the estate to incur a significant loss after having relied upon the position of the Debtor.

The delay in filing accurate schedules, while frustrating, does not justify implementing equitable estoppel in claiming an exemption.

Therefore, the request to disallow exemptions in the Property and Vehicle on the basis of equitable estoppel is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Exemptions filed by 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 Objection is sustained as to the claim of exemption of the property commonly known as 6101 Tennessee Avenue, Riverbank, California pursuant to California Code of Civil Procedure § 704.730 is sustained and the claimed exemption is disallowed in their entirety.

IT IS FURTHER ORDERED that the Objection to the claim of the exemption in the 2005 Mustang is overruled.

No other relief granted.

8. **14-91520-E-7** **JOANN TEEM** **MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS**
WFH-2 **7-21-16 [37]**

Tentative Ruling: The Motion for Examination and for Production of Documents was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct 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 July 21, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Examination and for Production of Documents was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. At the hearing ----------.

The Motion For Examination and for Production of Documents is granted.

Michael McGranahan, the Chapter 7 Trustee, filed the instant Motion for Authorization to Conduct Rule 2004 Examination on July 21, 2016. Dckt. 37.

The Trustee states that the Debtor listed ownership of 169.54 shares of Varni Corporation. The shares in the corporation appear to be the only non-exempt assets of the estate listed in the Schedules. The Trustee states that he has learned that Debtor also has an interest as a beneficiary of an entity known as the Varni Trust.

The Trustee has communicated with Albert Pinasco, President of Varni Corporation. Mr. Pinasco has provided the Trustee with some of the documents Trustee has requested. However, the Trustee now seeks to take a 2004 examination of Varni Corporation to obtain additional information on Varni Corporation.

The Trustee requests an order of examination of Varni Corporation in order to determine the value of the estate's interest in Varni Corporation and to obtain information necessary to market and sell the estate's interest in Varni Corporation.

APPLICABLE LAW

Fed. R. Bankr. P. 2004, entitled "Examinations," provides for the following:

(a) Examination on motion

On motion of any party in interest, the court may order the examination of any entity.

(b) Scope of examination

The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

(c) Compelling attendance and production of documents

The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

(d) Time and place of examination of debtor

The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.

(e) Mileage

An entity other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first petition commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.

The scope of a 2004 examination is "unfettered and broad" and has been compared to "a fishing exhibition." *See In re GHR Energy Corp.*, 33 B.R. 451, 453-54 (Cankr. D. Mass. 1983). A Rule 2004 examination allows for the discovery or assets and "unearthing frauds." Id.

DISCUSSION

The Trustee has provided sufficient information as to the potential interest of the estate in Varni Corporation.

Not only is it imperative for the estate and Trustee for the Trustee to be able to conduct Rule 2004 examination. Here, the Trustee seeks to determine the value, if any, the estate may have in the Varni Corporation and to obtain all the information necessary to sell the estate's interest.

As such, the court orders that the Rule 2004 examination and production of Varni Corporation shall be made on xxxxx.

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

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

The Motion for Authorization to Conduct Rule 2004 Examination filed by 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 for Authorization to Conduct Rule 2004 Examination pursuant to Fed. R. Bankr. P. 2004 is granted and Varni Corporation, through an authorized agent, shall attend the Rule 2004 examination and production on xxxxx.

9. 14-91520-E-7 JOANN TEEM
WFH-3

MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS
7-21-16 [41]

Tentative Ruling: The Motion for Examination and for Production of Documents was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct 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 July 21, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Examination and for Production of Documents was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. At the hearing ----------.

The Motion For Examination and for Production of Documents is granted.

Michael McGranahan, the Chapter 7 Trustee, filed the instant Motion for Authorization to Conduct Rule 2004 Examination on July 21, 2016. Dckt. 41.

The Trustee states that the Debtor listed ownership of 169.54 shares of Varni Corporation. The shares in the corporation appear to be the only non-exempt assets of the estate listed in the Schedules. The Trustee states that he has learned that Debtor also has an interest as a beneficiary of an entity known as the Varni Trust.

The Trustee has communicated with Albert Pinasco, President of Varni Corporation. Mr. Pinasco

has provided the Trustee with some of the documents Trustee has requested. However, the Trustee now seeks to take a 2004 examination of Albert Pinasco, the Trustee of the Varni Trust to obtain additional information on Varni Trust.

The Trustee requests an order of examination of Albert Pinasco, as Trustee of the Varni Trust in order to determine the value of the estate's interest in Varni Trust and to obtain information necessary to market and sell the estate's interest in Varni Trust.

APPLICABLE LAW

Fed. R. Bankr. P. 2004, entitled "Examinations," provides for the following:

(a) Examination on motion

On motion of any party in interest, the court may order the examination of any entity.

(b) Scope of examination

The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

(c) Compelling attendance and production of documents

The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

(d) Time and place of examination of debtor

The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.

(e) Mileage

An entity other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first petition commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.

The scope of a 2004 examination is "unfettered and broad" and has been compared to "a fishing exhibition." *See In re GHR Energy Corp.*, 33 B.R. 451, 453-54 (Cankr. D. Mass. 1983). A Rule 2004 examination allows for the discovery or assets and "unearthing frauds." Id.

DISCUSSION

The Trustee has provided sufficient information as to the potential interest of the estate in Varni Trust.

Not only is it imperative for the estate and Trustee for the Trustee to be able to conduct Rule 2004 examination. Here, the Trustee seeks to determine the value, if any, the estate may have in the Varni Trustee and to obtain all the information necessary to sell the estate's interest.

As such, the court orders that the Rule 2004 examination and production of Albert Pinasco, as Trustee of Varni Trust shall be made on xxxxx.

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

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

The Motion for Authorization to Conduct Rule 2004 Examination filed by 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 for Authorization to Conduct Rule 2004 Examination pursuant to Fed. R. Bankr. P. 2004 is granted and Albert Pinasco, as Trustee of the Varni Trust, shall attend the Rule 2004 examination and production on xxxxx.

10. 14-91520-E-7 JOANN TEEM
WFH-4

MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS
7-21-16 [45]

Tentative Ruling: The Motion for Examination and for Production of Documents was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct 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 July 21, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Examination and for Production of Documents was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. At the hearing ----------.

The Motion For Examination and for Production of Documents is granted.

Michael McGranahan, the Chapter 7 Trustee, filed the instant Motion for Authorization to Conduct Rule 2004 Examination on July 21, 2016. Dckt. 45.

The Trustee states that the Debtor listed ownership of 169.54 shares of Varni Corporation. The shares in the corporation appear to be the only non-exempt assets of the estate listed in the Schedules. The Trustee states that he has learned that Debtor also has an interest as a beneficiary of an entity known as the Varni Trust.

The Debtor also disclosed, on her schedules, a claim for "Back pay from SDI", and asserted an exemption in the amount of $15,000.00 under California Code of Civil Procedure § 703(b)(5).

The Trustee requests an order of examination of Debtor in order to determine how much, if anything, was received by the Debtor on account of the back pay claim in order to determine if Debtor has the right to attempt to amend her exemptions and exempt more value on account of Varni Corporation or Varni Trust.

APPLICABLE LAW

Fed. R. Bankr. P. 2004, entitled "Examinations," provides for the following:

(a) Examination on motion

On motion of any party in interest, the court may order the examination of any entity.

(b) Scope of examination

The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

(c) Compelling attendance and production of documents

The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

(d) Time and place of examination of debtor

The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.

(e) Mileage

An entity other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first petition commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.

The scope of a 2004 examination is "unfettered and broad" and has been compared to "a fishing exhibition." *See In re GHR Energy Corp.*, 33 B.R. 451, 453-54 (Cankr. D. Mass. 1983). A Rule 2004 examination allows for the discovery or assets and "unearthing frauds." Id.

DISCUSSION

The Trustee has provided sufficient information as to the potential interest of the estate in Varni Trust and Varni Corporation.

Not only is it imperative for the estate and Trustee for the Trustee to be able to conduct Rule 2004 examination. Here, the Trustee seeks to determine the value, if any, the estate may have in the Varni Trustee and Corporation and to obtain all the information necessary to sell the estate's interest. The Debtor's examination is essential to determine this information.

As such, the court orders that the Rule 2004 examination and production of Joann Mary Teem, the Debtor, shall be made on xxxxx.

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

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

The Motion for Authorization to Conduct Rule 2004 Examination filed by 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 for Authorization to Conduct Rule 2004 Examination pursuant to Fed. R. Bankr. P. 2004 is granted and Joann Mary Teem, the Debtor, shall attend the Rule 2004 examination and production on xxxxx.

11. **13-91030-E-7** **HARPAL KUKA** **MOTION TO AVOID LIEN OF CITIBANK, N.A.**
CJY-2 **7-6-16 [24]**

Final Ruling: No appearance at the August 4, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Citibank, N.A., Citibank (South Dakota) N.A., and Office of the United States Trustee on July 6, 2016. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against property of Harpal Singh Kuka ("Debtor") commonly known as 1601 Radcliffe Avenue, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $18,189.91. An abstract of judgment was recorded with **Stanislaus** County on June 3, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $149,293.00 as of the date of the petition. The unavoidable consensual liens total $180,064.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $100.00 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 this judicial lien impairs the 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 the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Citibank, N.A., California Superior Court for Stanislaus County Case No. 654103, recorded on June 3, 2011, Document No. 2011-0046941-00 with the Stanislaus County Recorder, against the real property commonly known as 1601 Radcliffe Avenue, 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.

12. 08-91933-E-7 SSA-4 **BULMARO/MARIA PALAFOX** **MOTION FOR COMPENSATION FOR ATHERTON AND ASSOCIATES, LLP, ACCOUNTANT(S)**
6-22-16 [111]

Final Ruling: No appearance at the August 4, 2016 hearing is required.

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

Correct 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 June 22, 2016. By the court's calculation, 43 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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.

Atherton and Associates, LLP, the Accountant ("Applicant") for Michael D. McGranahan the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period January 20, 2016 through May 5, 2016. The order of the court approving employment of Applicant was entered on February 25, 2016, Dckt. 110. Applicant requests fees in the amount of $1,219.00.

The Trustee also requests that the fee be allowed as a Chapter 7 administrative expense pursuant to 11 U.S.C. § 503(b)(1).

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). 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.

Benefit to the Estate

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood),* 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preparing final tax returns, preparing application for compensation and reviewed agreement with the Trustee. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

Administrative Expense

> In relevant part, 11 U.S.C. § 503 provides:
>
> (a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.
>
> (b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including--
>
> > (1)(A) the actual, necessary costs and expenses of preserving the estate including--
> >
> > > (i) wages, salaries, and commissions for services rendered after the commencement of the case; and
> > >
> > > (ii) wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after commencement of the case under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of layoff or termination of current employees, or of nonpayment of domestic support obligations, during the case under this title;

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.

Correspondence: Applicant spent 1.7 hours in this category. Applicant assisted Client with responding to correspondences from Client; review agreement. Provided by Client and send response.

Tax Analysis and Preparation of Returns: Applicant spent 3.2 hours in this category. Applicant worded on preparation of final tax returns; completion of final tax returns for year ended April 20, 2016..

Fee Application: Applicant spent .4 hours in this category. Applicant prepared the fee application.

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**
Maria Stokman	5.3	$230.00	$1,219.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$1,219.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $1,219.00 are approved pursuant to 11 U.S.C. § 330 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 $1,219.00

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

Furthermore, the court determines that the final request of fees are an allowed administrative expense pursuant to 11 U.S.C. § 503(b)(1).

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 Atherton and Associates, LLP ("Applicant"), Accountant for 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 Atherton and Associates, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Atherton and Associates, LLP, Professional Employed by Trustee
>
> Fees in the amount of $1,219.00,
>
> The Fees and Costs pursuant to this Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **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.
>
> **IT IS FURTHER ORDERED** that the allowed fees of $1,219.00 are determined to be an allowed administrative expense pursuant to 11 U.S.C. § 503(b)(1).

13. 08-91933-E-7 BULMARO/MARIA PALAFOX

SSA-5

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STEVEN ALTMAN, PC FOR STEVEN S. ALTMAN, , TRUSTEE'S ATTORNEY
6-22-16 [117]

Final Ruling: No appearance at the August 4, 2016 hearing is required.

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

Correct 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 June 22, 2016. By the court's calculation, 43 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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.

Steven S. Altman, the Attorney ("Applicant") for Michael D. McGranahan the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period October 14, 2014 through August 4, 2016. The order of the court approving employment of Applicant was entered on October 27, 2014, Dckt. 65. Applicant requests fees and costs in the reduced amount of $7,500.00.

The Trustee also requests that the fee be allowed as a Chapter 7 administrative expense pursuant to 11 U.S.C. § 503(b)(1).

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). 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.

Benefit to the Estate

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including reopening the case due to possible assets found by state counsel, communications with multiple parties concerning the possible additional assets, initiated and settled adversary proceedings, and prepared fee application. The estate has $19,164.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Analysis and Recovery: Applicant spent 3.3 hours in this category. Applicant assisted Client with reopening the case and employing special counsel to pursue asset recovery; analyzed funds held by State Controllers Office relative to Debtor and third parties and discussion of merits of case with proposed special counsel and Trustee..

Case Administration: Applicant spent 4.2 hours in this category. Applicant reviewed correspondences relative to recovery of assets disclosed by out of state counsel; discuss with special counsel benefits of pursuing assets and reviewed draft complaint; review motion to dismiss; transmitted case research and articles relative to assessment of counsel's Marrs claimed contentions against the estate..

Claims Administration and Objection: Applicant spent .4 hours in this category. Applicant negotiated and discussed the treatment of Mi Hogar's claim in context of the estate and administration; proposed resolution..

Fee/Employment Application: Applicant spent 6.1 hours in this category. Applicant reviewed all necessary paperwork for the appointment of special counsel, filed necessary motions and appeared at required hearings; prepared motions for compensation.

Litigation: Applicant spent 24.90 hours in this category. Applicant reviewed and revised initial complaint with special counsel; review draft of motion to dismiss; attended multiple phone conferences to negotiate; reviewed Defendant's answer; followed of on Order to Show Cause to sanction counsel for

Defendant for failure to adequately plead; followed up case discussion with counsel and special counsel; settled case in principal with parties

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**
Steven Altman, Attorney	41.50	$300.00	$12,450.00
Dawn Darwin	.5	$90.00	$45.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$7,500.00

FN.1. The Applicant requests a reduced sum of $7,500.00, including fees and costs.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $7,500.00 for its fees and expenses incurred for the Client. First and Final Fees and Costs in the amount of $7,500.00 are approved pursuant to 11 U.S.C. § 330 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, Costs and Expenses $7,500.00

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

Furthermore, the court determines that the final request of fees are an allowed administrative expense pursuant to 11 U.S.C. § 503(b)(1).

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 Steven S. Altman ("Applicant"), Attorney for 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 Steven S. Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Steven S. Altman, Professional Employed by Trustee
>
> Fees in the amount of $7,500.00,
>
> The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **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.
>
> **IT IS FURTHER ORDERED** that the allowed fees of $1,219.00 are determined to be an allowed administrative expense pursuant to 11 U.S.C. § 503(b)(1).

14. 12-91839-E-7 MICHAEL/DAWN AVILA
TOG-2

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
7-5-16 [20]

Tentative Ruling: The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 5, 2016. By the court's calculation, 30 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). The 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. At the hearing ----------.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Portfolio Recovery Associates, LLC ("Creditor") against property of Michael Duarte Avila and Dawn Renee Avila ("Debtor") commonly known as 1100 Lillian Drive, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,628.00. An abstract of judgment was recorded with Stanislaus County on June 4, 2012, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $115,000.00 as of the date of the petition. The unavoidable consensual liens total $169,374.00 as of the

commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code §703.140(b)(1) and (b)(5) in the amount of $ 21,900.00 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 this judicial lien impairs the 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 the Debtor(s) 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 Portfolio Recovery Associates, LLC, California Superior Court for Stanislaus County Case No. 671652, recorded on June 4, 2012, Document No. 2012-0049172-00 with the Stanislaus County Recorder, against the real property commonly known as 1100 Lillian Drive, 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.

15. 16-90539-E-7 DAVID MUNOZ

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-5-16 [13]

Final Ruling: No appearance at the August 4, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on David Munoz ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on July 5, 2016. The court computes that 30 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 20, 2016).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

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 discharged, no sanctions ordered, and the case shall proceed in this court.

16. 12-93049-E-11 JB-1 **MARK/ANGELA GARCIA** **MOTION FOR COMPENSATION FOR JOHN BELL, CHAPTER 11 TRUSTEE(S)**
7-8-16 [812]

Final Ruling: No appearance at the August 4, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on July 7, 2016. By the court's calculation, 28 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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.

John Bell ("Applicant"), the Chapter 11 Trustee for debtor in possession, Mark Anthony Garcia and Angela Marie Garcia ("Debtors"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period November 14, 2013 through May 20, 2016. The order of the court approving employment of Applicant was entered on November 14, 2013, Dckt. 269. Applicant requests additional fees in the amount of $15,000.00. Further, the Applicant seeks final approval of the interim fee award of $23,250.00 for fees and $770.39 for costs.

Trustee requests the following fees:

25% of the first $5,000.00	$1,250.00

10% of the next $45,000.00	$4,500.00
5% of the next $725,302.82	$36,265.14
Calculated Total Compensation	$42,015.14
Plus Adjustment - Discount by Trustee	$2,744.75
Total Maximum Allowable Compensation	$39,270.39
Less Previously Paid	$24,262.39
Total First Interim Fees Requested	$15,008.00

The Fees are computed on the total sales generated $775,902.82 of net monies (exclusive of these requested fees and costs) was recovery for Client.

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). 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.

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 a trustee must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee 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 as the court's authorization to employ a trustee to work in a bankruptcy case does not give that a trustee "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including employing broker to list and market the residential property; entered into a stipulation for the consent of sale, worked out a carve out for creditor to confirm the plan; manage the estate; make all necessary court appearances; prepare all necessary reporting documents; and confirmed a plan. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES ALLOWED

The court finds that the requested fees reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. Second and Final Interim Fees in the amount of $15,008.00 and prior Interim Fees in the amount of $24,262.39 are approved pursuant to 11

U.S.C. § 330 are authorized to be paid by the Plan Administrator from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed plan.

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 11 Trustee.

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

Fees $15,008.00

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 John Bell ("Applicant"), Chapter 11 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 John Bell is allowed the following Second Interim fees and expenses as the Trustee of the Estate:
>
> John Bell, Chapter 11 Trustee
>
> Fees in the amount of $15,008.00,
>
> The above Fees and Costs pursuant to this Order and Fees and Costs in the amount of $24,262.39 approved pursuant to prior Interim Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Plan Administrator under the confirmed plan is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution

17. 12-93049-E-11 MARK/ANGELA GARCIA ORDER TO SHOW CAUSE WHY OBJECTION TO CLAIM SHOULD NOT BE DISMISSED
MJH-13
6-17-16 [800]

Final Ruling: No appearance at the August 4, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Mark Anthony Garcia and Angela Marie Garcia ("Debtor"), Debtor's Attorney, Trustee, and other such other parties in interest as stated on the Certificate of Service on June 20, 2016. The court computes that 45 day's notice has been provided.

The court's decision is to dismiss without prejudice the Objection to Claim of United States Fire Insurance Company. The Order to Show Cause is sustained and the Objection to Claim is dismissed.

The Order to Show Cause was issued due to Mark Anthony Garcia and Angela Marie Garcia ("Debtors") failed to prosecute the Objection to Claim of United States Fire Insurance Company ("Creditor"), Claim Number 19 (dckt. 509). Dckt. 800.

CREDITOR'S RESPONSE

The Creditor filed a response on July 15, 2016. Dckt. 821. The Creditor states that the Debtor and Creditor entered into a stipulation for the allowance and payment of Claim No. 19-3 filed by Creditor. The stipulation was incorporated into the Plan of Reorganization and the signed Stipulation was attached to the Amended Disclosure Statement for the Amended Plan. The Amended Disclosure Statement was approved on January 22, 2016. Dckt. 745.

The Amended Plan was approved by the order confirming entered on May 6, 2016. Dckt. 781.

The Creditor states that it consents to the dismissal of the Objection, requests the Objection be dismissed and that the Order to Show Cause Discharged.

DISCUSSION

In light of the Creditor's response, the approval of the Disclosure Statement (Dckt. 745), the confirmation of the Plan (Dckt. 781), and the Plan incorporating the Creditor's claim, the Objection to Claim is dismissed without prejudice and the instant Order to Show Cause is discharged.

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 and the Objection to Claim (Dckt. 509) is dismissed without prejudice, based on the stipulation of the parties and confirmation of Plan.

IT IS FURTHER ORDERED that the no sanctions or other relief is ordered pursuant to the Order to Show Cause.

18. 12-93049-E-11 MJH-16 **MARK/ANGELA GARCIA** **MOTION FOR COMPENSATION FOR MARK J. HANNON, DEBTORS' ATTORNEY**
6-13-16 [793]

Tentative Ruling: The Motion for Compensation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 13, 2016. By the court's calculation, 52 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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 denied.

Mark J. Hannon, the Attorney ("Applicant") for Mark A. and Angela M. Garcia ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period December 1, 2012 through September 26, 2013. The order of the court approving employment of Applicant was entered on February 11, 2013, Dckt. 80. Applicant requests fees and expenses in the amount of $22,785.00.

On October 3, 2013, the court entered an order for the appointment of a Chapter 11 Trustee in this case. Order, Dckt. 256. In determining that appointment of a Trustee was necessary, the court made the following determinations as to the conduct of the then Debtors in Possession, working with the assistance of Applicant:

A. "The U.S. Trustee and creditors are correct in asserting that the Monthly Operating Reports filed in this case are so inconsistent and inadequate that they expose the inability of the Debtors in Possession to fulfill their fiduciary duties. The court in independently reviewing the Monthly Operating Reports is struck by inconsistencies between the reported income, reported expenses, and bank account balances."

B. "First, bank accounts appear and then disappear. Second, substantial amounts of monies each month are not tracked through the bank accounts of the estate."

C. "The financial reporting and handling of estate assets by the Debtors in Possession demonstrate a continuing loss to the estate, gross mismanagement of the estate, and failure to fill clear and accurate monthly operating reports."

Civil Minutes, Dckt. 254.

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). 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.

Benefit to the Estate

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including filing successful motions to value collateral and objections to claims. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Plan Statement: Applicant spent 4.2 hours in this category. Applicant assisted Client with preparing the Plan, Disclosure Statement, Notice, as reviewing opposition to the Plan.

Case Administration: Applicant spent 30.5 hours in this category. Applicant assisted client with filing and reviewing Monthly Operating Reports, status reports, and status conferences.

Meeting of Creditors: Applicant spent 5.0 hours in this category. Applicant assisted Client with preparing for, traveling to, and attending the 341 Meeting of Creditors..

Litigation: Applicant spent 39.9 hours in this category. Applicant assisted Client with filing Motions to Value and objecting to claims.

Claims: Applicant spent 5.1 hours in this category. Applicant assisted Client with communication with claimants.

Fee Application: Applicant spent 8.3 hours in this category. Applicant assisted Client with.

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**
Mark J. Hannon	93	$245.00	$22,785.00
Total Fees For Period of Application			$22,785.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rate for Applicant is reasonable for the services provided. However, with respect to the amount of time expended, the court makes several adjustments.

First, Applicant seeks to be paid for 4.2 hours of time for working on a plan and disclosure statement – $1,029.00. The court denied approval of the disclosure statement and the plan never was advanced. Civil Minutes, Dckt. 258. The disclosure statement was missing basic information. While the plan and disclosure statement may have caused the court and Parties in Interest to consume (waste) time and money, it is not legal work for which value was rendered to the estate or Debtor in Possession.

The court does not allow $1,029.00 for services relating to the plan and disclosure statement.

Second, Applicant seeks to be paid for 8.3 hours of time purportedly expended on June 8 2013 for preparation of a fee application. The court cannot find any entry on the docket for anything work done on or about June 8, 2013 for any fee applications. One might think that this entry is for June 8, 2016, which was just days before the current fee application was prepared. The court does not allow $2,033.50 for work purported to have been done in 2013 for which there is no identifiable action to be taken by counsel for the then Debtor in Possession in 2013.

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

Fees $19,722.50

pursuant to this Application 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 Mark J. Hannon ("Applicant"), Attorney for the 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 Mark J. Hannon is allowed the following fees and expenses as a professional of the Estate:
>
> Mark H. Hannon, Professional Employed by the Debtor:
>
> Fees in the amount of $19,722.50
>
> and all other requested fees are denied.
>
> **IT IS FURTHER ORDERED** that the Plan Administrator is authorized to pay the fees allowed by this Order from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 11 under the confirmed Plan.

19. 12-93049-E-11 PA-9 MARK/ANGELA GARCIA

MOTION FOR COMPENSATION FOR KRISTIN KIRCHNER, ACCOUNTANT 7-7-16 [804]

Final Ruling: No appearance at the August 4, 2016 hearing is required.

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

Correct 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 July 8, 2016. By the court's calculation, 28 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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.

Kristin Kirchner, the Accountant ("Applicant") for John Bell the 11 Trustee ("Client"), makes a Third Interim and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period November 18, 2013 through May 20, 2016. The order of the court approving employment of Applicant was entered on January 11, 2014, Dckt. 298. Applicant requests fees in the amount of $70,281.81 and costs in the amount of $1,287.73.

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). 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.

Benefit to the Estate

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional] to work in a bankruptcy case does not give that professional] "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including organizing the books of the estate. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Accounting Services: Applicant spent 195.85 hours in this category. Applicant assisted Client with monthly examinations of banking records; reconciliation of bank statements; meetings and communications with the Trustee, Debtors, and Debtors' agents; preparation of monthly operating reports; preparation of tax documents; and matters relating to Plan, including projections.

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**
Kristin L. Kirchner	195.85	$175.00	$34,273.75
Professional Courtesy Discount	0	$0.00	($6,373.19)
Total Fees For Period of Application			$27,900.56

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	$10,938.75	$10,938.75
Second Interim	$31,880.79	$31,880.79
	$0.00	
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$42,819.54	

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $849.44 pursuant to this applicant. Pursuant to prior interim applications, the court has allowed costs of $438.29.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
1099 forms and envelopes		$17.44
Tax return processing fees		$832.00
		$0.00
		$0.00
Total Costs Requested in Application		$849.44

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Third and Final Interim Fees in the amount of $27,900.56 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and prior Interim Fees in the amount of $42,819.54 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case.

Costs and Expenses

The Third and Final Costs in the amount of $849.44 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 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 11 case.

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

Fees	$27,900.56
Costs and Expenses	$849.44

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 and prior interim fees of $42,819.54 and interim costs of $438.29 as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Kristin L. Kirchner ("Applicant"), Accountant for 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 Kristin L. Kirchner is allowed the following fees and expenses as a professional of the Estate:
>
> Kristin L. Kirchner, Professional Employed by Trustee
>
> Fees in the amount of $27,900.56
> Expenses in the amount of $849.44,
>
> The Fees and Costs pursuant to this Applicant, and Fees in the amount of $42,819.54 and costs of $438.29 approved pursuant to prior Interim Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Plan Administrator is authorized to pay the fees allowed by this Order from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 11 under the confirmed Plan.

20. **12-93049-E-11** **MARK/ANGELA GARCIA** **ORDER TO SHOW CAUSE WHY ADVERSARY PROCEEDING SHOULD NOT BE DISMISSED**
13-9029

UNITED STATES FIRE INSURANCE COMPANY V. GARCIA ET AL

6-17-16 [84]

Final Ruling: No appearance at the August 4, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Mark Anthony Garcia and Angela Marie Garcia ("Debtor"), Debtor's Attorney, Trustee, Plaintiff's Attorney, and other such other parties in interest as stated on the Certificate of Service on June 20, 2016. The court computes that 45 day's notice has been provided.

The Order to Show Cause is discharged, no sanctions ordered, a judgment having previously been entered.

The Order to Show Cause was issued due to United States Fire Insurance Company ("Plaintiff") failed to prosecute the Adversary Proceeding.

On July 18, 2016, the court entered a Judgment for Non-Dischargeability of Debt based upon the Stipulation of the parties. Dckt. 90.

With judgment been entered, the instant Order to Show Cause is discharged, no sanctions ordered.

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 discharged, no sanctions ordered.

21. 15-90358-E-11 LAWRENCE/JUDITH SOUZA
MHK-13

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MEEGAN, HANSCHU AND KASSENBROCK FOR ANTHONY ASEBEDO, DEBTORS' ATTORNEY(S)
7-7-16 [352]

Final Ruling: No appearance at the August 4, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 11 Trustee, Creditors, the Internal Revenue Service, Committee of Creditors Holding General Unsecured Claims or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on July 7, 2016. By the court's calculation, 28 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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.

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

The period for which the fees are requested is for the period April 10, 2015 through June 30, 2016. The order of the court approving employment of Applicant was entered on April 30, 2015, Dckt. 44. Applicant requests fees in the amount of $184,357.00 and costs in the amount of $3,502.62.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). 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.

Benefit to the Estate

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including performing all legal services necessary to prosecute the chapter 11 case and to assist with the Souzas' reorganization efforts. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Case Administration: Applicant spent 147.4 hours in this category. Applicant filed the application, represented the Souzas at the Initial Debtor Interview and at the Meeting of Creditors, assisted the Souzas in preparation, filing, and service of needed amendments to the Chapter 11 schedules as well as in regards to the periodic reports concerning entities the debtors owned, drafted disclosure statements and initial form for plan of reorganization, and reviewed emails and communicated with the Souzas regarding numerous matters pertaining to the estate.

Asset Analysis and Recovery: Applicant spent 12.3 hours in this category. Applicant filed an application for a Rule 2004 examination of Turlock Air Park, Inc ("Tap"), an entity with which Lawrence Souza had disputes regarding payment of certain promissory notes and payment of proceeds of Lawrence Souza's interest in TAP. Applicant also assisted their Client with filing a state-court action against Tap and its other shareholders in an action seeking a determination of Lawrence Souza's interest in certain sale proceeds held by Tap and resolution of related issues; prepared motion for appointment of a state-court receiver over assets of Tap, but did not request such relief when settlement negotiations were ultimately pursued an completed.

Asset Disposition: Applicant spent 165.6 hours in this category. Applicant filed motions and obtained orders authorizing the Souzas to sell their real property at 87 W. Canal Drive, 121 W. Syracuse Avenue, and 87 W. Canal Drive, Turlock, California. Applicant also responded to inquiries from and negotiated as necessary with various creditors, their agents and attorneys.

Business Operations: Applicant spent 42 hours in this category. Applicant reviewed, filed, and served Monthly Operating Reports; and responded as necessary to inquiries from the U.S. Trustee, the Souzas, and their bookkeeper regarding these reports.

Cash Collateral: Applicant spent 37.8 hours in this category. Applicant filed motions and obtained (4) court orders authorizing the Souzas to use cash collateral from their various residential rental properties and filed motions and obtained court orders authorizing the Souzas to use cash collateral to pay specific tax installments for rental properties at 121 W. Syracuse Avenue, 235 W. Syracuse Avenue, 87 W. Canal Drive, and 97 W. Canal Drive, Turlock, California.

Claims Issues: Applicant spent 8.2 hours in this category. Applicant reviewed and investigated relief-from-stay motions filed by Provident Credit Union, Seterus, Inc., and Curtis Family Trust. The Applicant filed and prosecuted opposition to these motions and where authorized filed statements of non-opposition.

Employment/Fee Applications: Applicant spent 19.2 hours in this category. Applicant obtained court order authorizing employment of counsel, filed application and obtained court order authorizing the Souzas to employ Keller Williams Realty as their real estate broker for sale of their various residential rental properties after dismissal of prior broker.

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**
David M. Meegan	128.5	$400.00	$51,400.00
Anthony Asebedo	335.6	$350.00	$117,460.00
Mary Gillis	43.3	$125.00	$5,412.50
Peter Pullen	43.5	$350.00	$15,225.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$189,497.50

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $3,502.62 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Mileage	$0.50 per mile; 198 miles	$71.28
PACER online document fee		$20.50
Court Filing Fee		$1,533.80
Postage		$1,079.79
Parking charges	$1 per hour	$36.50
Photocopy charges	$.05 per copy, 15215 copies	$760.75
Total Costs Requested in Application		$3,502.62

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $184,357 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Debtor in Possession from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case .

Costs and Expenses

The First Interim Costs in the amount of $3,502.62 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Debtor in Possession from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case. The court is authorizing that Debtor in Possession pay 80% of the fees and costs allowed by the court.

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

Fees $184,357.00
Costs and Expenses $3,502.62

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 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 Meegan, Hanschu, & Kassenbrock ("Applicant"), Attorney for the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Meegan, Hanschu, & Kassenbrock is allowed the following fees and expenses as a professional of the Estate:
>
> Fees in the amount of $184,357.00
> Expenses in the amount of $3,502.62,
>
> The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Debtor in Possession is authorized to pay 80% the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case and the Applicant is allowed to first apply the $23,268.34 retainer amount to the fees to be paid.

22. 15-90358-E-11 LAWRENCE/JUDITH SOUZA MOTION TO SELL AND/OR MOTION TO PAY

MHK-14 7-13-16 [359]

Tentative Ruling: The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 offers 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.

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 whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the 20 largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on July 13, 2016. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. At the hearing **----------.**

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Debtor in Possession ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

A. 235 West Syracuse Avenue, Turlock, California.

The proposed purchaser of the Property is Susana Deol and the terms of the sale are:

1. Purchase price of $145,000.00 cash, plus $10,000.00 outside escrow to the secured lien holder for title of the Property;

2. The Buyers are to pay a $5,000.00 earnest money deposit;

3. The sale is subject to approval of all existing lien holders and Internal Revenue Service as a "short sale," with amounts to be paid to lien holders pursuant to the chart referenced in the Motion.

4. The Debtor-in-Possession is to pay from the sale escrow specific costs of sale such as notary fees, title insurance, and transfer taxes

5. The Debtor-in-Possession are to pay the real estate sales commission in an amount consisting of 6% of the sale price paid from escrow, totaling $8,700.00;

6. The sale escrow is to close within 10 days of entry of the court approving the sale; and

7. The Property is sold as is with no representations or warranties from the Debtor-in-Possession or estate.

The Debtor-in-Possession further requests authorization to pay the real estate broker, Keller Williams, in the amount of 6% of the sale, or $8,700.00.

At the time of the hearing the court announced the proposed sale an 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: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Debtor-in-Possession has negotiated with the numerous lenders short sale terms which will free the estate from the burden of the Property. The Buyers and creditors have accepted the terms of the short sale and allows for the clearing of estate encumbrances without further financial consequence.

Additionally, based on the time sensitive nature of the sale and the cooperation of the creditors and the Internal Revenue Service, the court finds cause to waive the 14-day stay of enforcement pursuant to Fed. R. Bankr. P. 6004(h).

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 Lawrence James Souza and Judith Louise Souza the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Lawrence James Souza and Judith Louise Souza, the Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b)

to Susana Deol or nominee ("Buyer"), the Property commonly known as 235 West Syracuse Avenue, Turlock, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for $155,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 363, and as further provided in this Order.

2. 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.

3. The Debtor in Possession be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. The Debtor in Possession be and hereby is authorized to pay a real estate broker's commission in an amount not more than six percent (6%) of the actual purchase price upon consummation of the sale. The broker's commission shall be paid to the Debtor's in Possession broker, Keller Williams Realty.

IT IS FURTHER ORDERED that the net sales proceeds, if any, after payment of the above authorized secured claims, costs, and expenses, shall be deposited in a segregated bank account maintained by the Debtor in Possession and not disbursed except upon further order of the court.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 6004(h), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

23. 15-90358-E-11 LAWRENCE/JUDITH SOUZA MOTION TO SELL AND/OR MOTION TO PAY
MHK-15
7-13-16 [366]

Tentative Ruling: The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 offers 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.

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 whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the 20 largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on July 13, 2016. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. At the hearing **----------.**

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Debtor in Possession ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to short sell the "Property" described as follows:

A. 201 West Syracuse Avenue, Turlock, California.

The proposed purchaser of the Property is Clayton Dickman and Natalie Dickman and the terms of the sale are:

1. Purchase price of $80,500.00

a. The Buyers are to pay $70,500.00 from escrow, plus $10,000.00 outside escrow to the third lien holder (the Internal Revenue Service), for title to the Property.

2. The Buyers are to pay a $5,000.00 earnest money deposit;

3. The sale is subject to approval of all existing lien holders, as a "short sale," with amounts to be paid to lien holders.

4. The Debtor-in-Possession are to pay from the sale escrow specific costs of sale such as notary fees, title insurance, and transfer taxes

5. The Debtor-in-Possession are to pay the real estate sales commission in an amount consisting of 6% of the sale price paid from escrow, totaling $4,253.00;

6. The sale escrow is to close within 10 days of entry of the court approving the sale, but under the applicable short sale agreement must close no later than August 23, 2016; and

7. The Property is sold as is with no representations or warranties from the Debtor-in-Possession or estate.

The Debtor-in-Possession further requests authorization to pay the real estate broker, Keller Williams, in the amount of 6% of the sale, or $4,230.00.

At the time of the hearing the court announced the proposed sale an 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: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Debtor-in-Possession has negotiated with the numerous lenders short sale terms which will free the estate from the burden of the Property. The Buyers and creditors have accepted the terms of the short sale and allows for the clearing of estate encumbrances without further financial consequence.

Additionally, based on the time sensitive nature of the sale and the cooperation of the creditors and the Internal Revenue Service, the court finds cause to waive the 14-day stay of enforcement pursuant to Fed. R. Bankr. P. 6004(h).

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 Lawrence James Souza and Judith Louise Souza the Debtor in Possession having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Lawrence James Souza and Judith Louise Souza, the Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Clayton Dickman and Natalie Dickman or nominee ("Buyer"), the Property commonly known as 201 West Syracuse Avenue, Turlock, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for $80,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 369, and as further provided in this Order.

2. 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.

3. The Debtor in Possession be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. The Debtor in Possession be and hereby is authorized to pay a real estate broker's commission in an amount not to exceed six percent (6%) of the actual purchase price upon consummation of the sale. The broker's commission shall be paid to the Debtor in Possession's broker, Keller Williams Realty.

IT IS FURTHER ORDERED that the net sales proceeds, if any, after payment of the above authorized secured claims, costs, and expenses, shall be deposited in a segregated bank account maintained by the Debtor in Possession and not disbursed except upon further order of the court.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 6004(h), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

24. **15-90470-E-7** **SUSAN FISCOE** **MOTION TO CONVERT TO CHAPTER 11 CASE**
DCJ-2 **7-14-16 [100]**

Tentative Ruling: The Motion to Convert the Bankruptcy Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct 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 14, 2016. By the court's calculation, 21 days' notice was provided. Fed. R. Bank. P. 2002(a)(4) 21-day notice for Chapter 7, 11, and 12 cases.

The Motion to Convert the Bankruptcy Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. At the hearing ----------.

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 11 is denied.

This Motion to Convert the Chapter 7 bankruptcy case of Susan J. Fiscoe, ("Debtor") has been filed by the Debtor on July 14, 2016. Dckt. 100. Movant asserts that the case should be converted based on the following grounds.

A. "The case has not previously been converted under 11 U.S.C. § 1112, 1208, or 1307."

B. "The Debtor is eligible to be a debtor under Chapter 11 pursuant to 11 U.S.C. § 109(d). She is an individual residing in the United States, she is not stockbroker, commodity broker, or entity described in 11 U.S.C. § 109(a)(2) and (3), she completed her pre-petition credit counseling, and she was not a debtor in a prior case within the 10 days preceding the petition date."

C. "All the statutory requirements set forth in 11 U.S.C. § 706(a) and (d) for conversion of the case to Chapter 11 have been met."

D. "The Debtor understands her obligations as a debtor in possession if this motion is granted and is capable and qualified to perform her fiduciary duties."

E. "The Debtor has been truthful in all respects in this case, has fully disclosed all of her assets, and has acted in good faith. The Debtor has vacated her home and paid to Gary R. Farrar, Chapter 7 Trustee, the sum of $5,925.81 representing post-petition payments received on the Pacific Life Insurance Company annuity.

F. "This motion is supported by the declaration of the Debtor."

Dckt. 100.

The Debtor also filed a Declaration in support. Dckt. 102. In her Declaration, Debtor testified as to her legal opinion that the case has not been previously converted under 11 U.S.C. §§ 1112, 1208, or 1307; she is eligible to be a debtor under Chapter 11; (3) all of the statutory requirements set forth in 11 U.S.C. § 706 for conversion of her case to Chapter 11 have been met; and (4) that the cases cited by the court are distinguishable from the instant facts.. The Declaration provides no basis for Debtor to have a legal education or knowledge to testify to the above legal conclusions.

BACKGROUND

Susan Fiscoe, the Chapter 7 Debtor, voluntarily commenced this bankruptcy case on May 14, 2015.

Prior Motion to Convert

On June 27, 2016, Debtor filed an *ex parte* Motion to convert the case to one under Chapter 11. Dckt. 91. In the Motion, Debtor asserts that a motion to convert a case by Debtor pursuant to 11 U.S.C. § 706(a) is not a contested matter, does not require a hearing as provided by Federal Rule of Bankruptcy Procedure 1017(f)(2), and is governed by Federal Rule of Bankruptcy Procedure 9013. Motion, ¶ 6, *Id.*

The Debtor provided her declaration under penalty of perjury. Dckt. 92. In her Declaration, Debtor testified as to her legal opinion that: (1) the case has not been previously converted under 11 U.S.C. §§ 1112, 1208, or 1307; (2) she is eligible to be a debtor under Chapter 11; and (3) all of the statutory requirements set forth in 11 U.S.C. § 706 for conversion of her case to Chapter 11 have been met." The Declaration provides no basis for Debtor to have a legal education or knowledge to testify to the above legal

conclusions. The only other testimony provided by Debtor is the date she commenced her voluntary Chapter 7 case.

Gary Farrar, the Chapter 7 Trustee, filed an Opposition to the *ex parte* Motion. Dckt. 94. The first part of the Opposition is that Debtor failed to properly state grounds for the relief in the Motion. Further, the Trustee asserts that Debtor's testimony as to legal conclusions is improper and should be stricken. Further, that Debtor has failed to comply with the prior orders of this court and there is pending an adversary proceeding filed by the Trustee to deny Debtor her discharge.

Court's Order on Prior Motion to Convert

On July 18, 2016, the court issued an order denying without prejudice the ex parte Motion. In part, the order stated:

> Debtor's assertion that conversion of a case from Chapter 7 to another Chapter is not a *contested matter*, is to be done *ex parte*, and is not the subject of any opposition of parties in interest and determination by the court is incorrect. . .
>
> The court, based on the record presented, cannot determine that the Debtor's decision to convert this case to a Chapter 11 reorganization, on the eve of the deadline to turn over the property of the estate to the Trustee, is in good faith. Debtor offers no explanation as to why and how she can prosecute a Chapter 11 case nor why she has not elected to convert the case to one under Chapter 13 (for which the Chapter 13 trustee has an active role), which is a much more simple, less expensive process.
>
> The court denies the Motion without prejudice. If Debtor has a *bona fide*, good faith intention in converting the case, she can so provide competent, admissible evidence so the court can make such determination, as well as demonstrate how she can and intends to fulfill her fiduciary duties as a debtor in possession to the bankruptcy estate.
>
> Therefore, upon review of the *ex parte* Motion to Convert this Chapter 7 case to one under Chapter 11, the supporting pleadings, the files in this case, the Opposition of the Chapter 7 Trustee, and good cause appearing;
>
> **IT IS ORDERED** that the Motion is denied without prejudice.
>
> **IT IS FURTHER ORDERED** that Debtor shall properly set for hearing and serve on all parties in interest in this case, including the Chapter 7 Trustee and his counsel, notice of the hearing and the motion (as required by the Federal Rules of Bankruptcy Procedure) of any future motion to convert this case to any other Chapter of the Bankruptcy Code.

RULING

In 2007 the Supreme Court determined that a conversion under 11 U.S.C. § 706(a) is not an absolute right of a debtor, but must be exercised in good faith. *Marrama v. Citizens Bank*, 549 U.S. 365 (2007).

> While recognizing that a debtor cannot waive the right to convert, the Supreme Court held that such right cannot be used to abuse the bankruptcy laws or in bad faith.
>
> > A statutory provision protecting a borrower from waiver is not a shield against forfeiture. Nothing in the text of either § 706 or § 1307(c) (or the legislative history of either provision) limits the authority of the court to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor. On the contrary, the broad authority granted to bankruptcy judges to take any action that is necessary or appropriate "to prevent an abuse of process" described in § 105(a) of the Code, is surely adequate to authorize an immediate denial of a motion to convert filed under § 706 in lieu of a conversion order that merely postpones the allowance of equivalent relief and may provide a debtor with an opportunity to take action prejudicial to creditors.

Id., 374-375.

As generally referenced by the Trustee, there have been multiple hearings and final orders issued by the court, including sustaining objections to exemptions and ordering Debtor to turnover possession of property to the Trustee. The Trustee is proceeding to enforce those final orders and rights of the estate, which must be enforced and exercised by any fiduciary - whether a trustee or debtor in possession.

The most recent Order for Debtor to turn over property of the estate was filed on June 19, 2016. Dckt. 89. The court's findings of fact and conclusions of law upon which said Order is based are set forth in the Civil Minutes for the June 16, 2016 hearing. Dckt. 87. The court noted that Debtor has been attempting to reargue prior final orders disallowing exemptions by filing new amended schedules C, contending that the exemption could now be claimed on an amended schedule C which overrode the prior final order.

This decision to convert her case to one under Chapter 11, a very complex process for an individual debtor, in now being made on the eve of the deadline to turnover the property of the estate to the Trustee.

As this court has previously determined, there are significant non-exempt assets which need to be administered by the fiduciary of the bankruptcy estate.

In her most recent declaration, the Debtor states:

> My attorney and I have not fully formulated a plan of reorganization, but we have both investigated my ability to obtain a reverse mortgage on my home and I meet the criteria. I am old enough, the home has no encumbrances, and no repayment of the loan would be required during my lifetime. More money would be generated for creditors through this approach than by the Trustee selling the home, paying the expenses of sale and maintenance, and paying my allowed homestead exemption of $75,000. I also have the ability to borrow money from friends if necessary to provide additional funds for creditors under a plan. Creditors would not have to wait for monthly payments over a number of years with this approach. The Court has indicated that my attorney is knowledgeable and experienced and I believe a plan of reorganization is feasible and can be confirmed if the case is converted to Chapter 11.

Dckt. 102

The Debtor is correct that the court has recognized that the Debtor has been represented by knowledgeable, experienced bankruptcy counsel. This is not a situation where an unsophisticated *pro se* consumer has stumbled through this case. Rather, Debtor chose to file Chapter 7, has asserted exemptions, has litigated multiple objections to exemptions, and has actively participated in the proceedings which have rendered the final orders determining the exemptions.

The Debtor's declaration does not provide cause as to why the case should be converted to one under Chapter 11. No explanation has been provided as to why a Chapter 13, a less costly method of reorganization, would not be a more proper chapter.

What the court draws from Debtor's desire to convert the case to one under Chapter 11 is to be given free reign as a debtor in possession to plunder the bankruptcy estate. If the case were converted to one under Chapter 13, Debtor would have the oversight of the Chapter 13 Trustee and be held to an established structure for the bankruptcy case.

The court does not concur with counsel's arguments that Debtor has been truthful in this case and has acted in good faith. To the contrary, she has failed to follow orders of the court, diverted assets from the Trustee, and refused to turn over property of the estate to the Trustee. She has demonstrated that she cannot fulfill the fiduciary duties of a Chapter 11 debtor in possession.

The Debtor's lack of good faith is further demonstrated by her attempts to provide legal opinions and analysis in her layperson declaration. She cites to and provides her "legal analysis" of Florida statutes, a fifteen year old 11th Circuit Court of Appeals ruling, and the *Marrama* decision from the United States Supreme Court. A debtor, acting in good faith, has his or her attorney provide the legal arguments and analysis.

Debtor asserts that there has been *only* one order of this court with which she has failed to comply. Further, she states under penalty of perjury that she has timely performed the acts required of her. This is false.

Debtor commenced this bankruptcy case on May 14, 2015. On October 6, 2015 the Trustee filed an objection to the claim of exemption in the Pacific Life Insurance Company Annuity. Dckt. 26. The Debtor's response was to file an Amended Schedule C, Dckt. 33, changing the Florida Statute under which she asserted the exemption - contending that this rendered the Trustee's Objection Moot. Response, Dckt. 34. The court sustained the objection of the Trustee, and allowing the Debtor to file the Amended Schedule C, setting a deadline for the Trustee to file an objection, if any, to the Amended Schedule C. Order, Dckt. 38.

On November 19, 2015, the Trustee filed an objection to the Amended Exemptions, which objected to the use of Florida exemptions by this Debtor. Dckt. 39. After considering the Debtor's arguments and testimony asserting the right to use Florida exemptions, the court sustained the objection. Order, filed January 19, 2016; Dckt. 56. The court also expressly granted the Debtor leave to file, on or before February 16, 2016, a Second Amended Schedule C. *Id.*

On February 15, 2016, Debtor filed the Third Amended Schedule C. Dckt. 59. The Trustee filed his objection to the exemption for the Annuity and her increased homestead exemption from $75,000.00 to $150,000.00. Dckt. 61. The court sustained the objection, again disallowing the exemption claimed in the Annuity and all homestead amounts in excess of $75,000.00.

Though a final order disallowing the asserted exemptions, on May 19, 2016 (more than a month after entry of the order disallowing the exemptions), the Chapter 7 Trustee filed a motion for an order compelling the Debtor to turnover to the Trustee property of the bankruptcy estate. Dckt. 75. The Trustee sought turnover of the 421 S.w. Fairway Landing Property, in which Debtor holds only a $75,000.00 exemption and Annuity proceeds received by the Debtor post-petition and not delivered to the Trustee.

Rather then fulfilling her obligation to deliver property of the bankruptcy estate to the Trustee, Debtor continued to withhold that property from the Trustee. She proceeded with filing an opposition on June 3, 2016, asserting that notwithstanding the court having disallowed the homestead exemption for all amounts in excess of $75,000.00 (Order, filed April 13, 2016; Dckt. 68). Notwithstanding there being a final order disallowing the homestead exemption for all amount in excess of $175,000.00, Debtor demanded that she be allowed a $175,000.00 homestead exemption. Additionally, notwithstanding the court having filed its order on April 13, 2016, disallowing an exemption in the Annuity, Debtor asserted that the Annuity monies she received post-petition were exempt. Opposition, Dckt. 84.

The court addresses the fallacy of Debtor's arguments in the findings of facts and conclusions of law in granting the Motion to Compel Turnover Property of the Estate to the Trustee. Civil Minutes, Dckt. 87. As the court referenced, and Debtor now attempts to trumpet, she is represented by experienced counsel. Debtor, nor counsel, can contend that asserting baseless claims of exemption were mere error or mistake. Rather, they demonstrate that this Debtor is not proceeding in good faith, cannot be trusted to fulfill the duties of a Chapter 11 debtor in possession, and that an independent fiduciary in the form of a Chapter 7 Trustee is necessary.

While Debtor, and her experienced counsel, now tries to hide behind a contention that, "well, when you really ordered me to turn over a couple dollars to the Trustee I did, so now order the Trustee to turn it back over to me and don't make me turn over the Florida real property by making me a debtor in possession," she demonstrates her bad faith.

Pending Adversary Proceeding

On October 6, 2015, the Chapter 7 Trustee commenced an Adversary Proceeding against the Debtor. Adv. No. 15-09056. In the Adversary Proceeding the Chapter 7 Trustee is asserting that Debtor should be denied her discharge in this bankruptcy case. Discovery in the Adversary Proceeding will close on September 30, 2016, and the Pretrial Conference and trial setting will occur on January 5, 2017.

Debtor fails to address how she intends to prosecute such claims against herself if the case were converted to one under Chapter 11 and she undertook to serve as the fiduciary of the bankruptcy estate in the place of the current Trustee.

Debtor has failed to demonstrate that she can, and will, fulfill the obligations of a fiduciary as a debtor in possession. Rather, her arguments ring hollow and demonstrate an intention to further abuse the Bankruptcy Code and divert assets from the bankruptcy estate. If Debtor actually intended to obtain a reverse mortgage and borrow from friends to immediately cash out creditors, she can do so in the context of this Chapter 7 case. Nothing prevents from lining up the "friend loans" and a reverse mortgage, taking that cash source to the Chapter 7 Trustee and settling her disputes.

Rather, Debtor only makes vague references to paying creditors. Further, Debtor seems to state that going through the substantial cost and expense of a Chapter 11 case, which could easily run $20,000.00 and be dependant on getting creditors to vote for a plan is more cost effective than doing it through a Chapter 7 case. No economic basis is shown for such a contention.

Grounds have not been shown to warrant converting the case to one under Chapter 11, dispossessing the Chapter 7 Trustee, and turn over all of the property of the estate to the Debtor to do as she wills – in her own interests without regard to her duties and obligations under the Bankruptcy Code and orders of this court. The court is convinced that the Debtor is not proceeding in good faith, does not intend to proceed in good faith, and is attempting to mislead the court and abuse the Bankruptcy Code.

Though the court denies the Motion and will not turn over the assets of the estate to the Debtor, she can quickly accomplish what she vaguely alludes to in the Motion. She can arrange for a reverse mortgage, line up the loans from friends, and stick in the Trustee's face a better financial alternative for the estate than liquidating the assets which the Debtor has desperately fought up to this point to keep from the Trustee.

The motion is denied.

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 7 case filed by the 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 Convert is denied.

25. 16-90474-E-7 CJY-1 **MARIO/LIDIA ROMO** **MOTION TO AVOID LIEN OF BANK OF AMERICA**
6-17-16 [13]

Final Ruling: No appearance at the August 4, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 7 Trustee, Bank of America, and Office of the United States Trustee on June 17, 2016. By the court's calculation, 48 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Bank of America ("Creditor") against property of Mario V. Romo and Lidia Carmona Romo("Debtor") commonly known as 771 Azores Lane, Ceres, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $26,655.55. An abstract of judgment was recorded with Stanislaus County on May 31, 2016, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $234,000.00 as of the date of the petition. The unavoidable consensual liens total $173,525.77 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 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 no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the 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 the Debtor(s) 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 Bank of America, California Superior Court for Stanislaus County Case No. 2018307, recorded on May 31, 2016, Document No. 2016-0039581-00 with the Stanislaus County Recorder, against the real property commonly known as 771 Azores Lane, Ceres, 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.

26. 15-91178-E-7 DCJ-3 **MICHAEL TOBIN** **MOTION TO AVOID LIEN OF GEOFFREY C. HUTCHESON 7-21-16 [77]**

Tentative Ruling: The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 21, 2016. 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). The 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. At the hearing ----------.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Geoffrey C. Hutcheson ("Creditor") against property of Michael Patrick Tobin("Debtor") commonly known as 1717 East Hawkeye Avenue, Turlock, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $11,816.58. An abstract of judgment was recorded with Stanislaus County on November 2, 2015, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $700,000.00 as of the date of the petition. The unavoidable consensual liens total $611,035.58 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 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 no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the 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 the Debtor(s) 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 Geoffrey C. Hutcheson, California Superior Court for Stanislaus County Case No. 2015192, recorded on November 2, 2015, Document No. 2015-0086597-00 with the Stanislaus County Recorder, against the real property commonly known as 1717 East Hawkeye Avenue, Turlock, 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.

27. 15-91178-E-7 DCJ-4 **MICHAEL TOBIN** **MOTION TO AVOID LIEN OF BOB VANELLA**
7-21-16 [82]

Tentative Ruling: The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 21, 2016. 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). The 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. At the hearing ----------.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Bob Vanella ("Creditor") against property of Michael Patrick Tobin("Debtor") commonly known as 1717 East Hawkeye Avenue, Turlock, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $118,630.00. An abstract of judgment was recorded with Stanislaus County on August 5, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $700,000.00 as of the date of the petition. The unavoidable consensual liens total $611,035.58 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 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 no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the 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 the Debtor(s) 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 Bob Vanella, California Superior Court for Butte County Case No. 149986, recorded on August 5, 2011, Document No. 2011-0064919-00 with the Stanislaus County Recorder, against the real property commonly known as 1717 East Hawkeye Avenue, Turlock, 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.

28. 16-90179-E-7 NJP-1 | **PRAVINKUMAR/MADHUKANTA GANDHI** | **MOTION TO DISMISS CASE 6-27-16 [56]**

Final Ruling: No appearance at the August 4, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 27, 2016. By the court's calculation, 38 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Dismiss Case is granted and the case is dismissed.

This Motion to Dismiss the Chapter 7 bankruptcy case of Pravinkumar R. Gandhi and Madhukanta P. Gandhi ("Debtor") has been filed by the Patel Law Firm P.C. ("Movant"), a creditor. Movant asserts that the case should be dismissed based on the following grounds.

Movant seeks dismissal of the case on the basis that the Debtor intentionally and willfully disobeyed this court's Order Granting Application for Order of Examination under Federal Rule of Bankruptcy Procedure 2004(a). Pursuant to the Court's May 5, 2016 Order, the Creditors issued and personally served upon the Debtors Subpoenas for Rule 2004 Examination and Production of Documents. Dckt. 59, Exhibit A. The Subpoenas required the Debtors to produce documents, including but in no way limited to, bank account statements for the past two to four years and documents evidencing the organization, capitalization, and value of Chirag, LLC, Sisidhi Vinayk, Inc. and Siesta Motel.

According to the Movant, Debtors production of documents was grossly deficient. The Movant filed Exhibit A in support of the Motion to Dismiss, which is the Order commanding the Debtor to produce 65 separate types of documents. However, the Movant claims that the Debtors only produced documents for 5 of the requests. Movant states that on June 15, 2016, counsel for the Debtors emailed copies of the Debtors' State and Federal tax returns for the years 2010 through 2015, along with various identification, title, automobile, and insurance documents. Included in this was a single page of a Chase Bank Account Savings Summary for the Month of April 2016 showing a $300.00 balance. Movant attempted to meet and

confer with the Debtors' counsel in writing on June 16, 2016 , but as of the date of this Motion, the Creditor has not received any further responses or document production responsive to the Order, the Subpoenas, or the Meet and Confer Letter, other than the incomplete documents e-mailed by the Debtors' counsel on June 15, 2016.

Furthermore, the Movant argues that the Debtor has filed 4 cases since March 5, 2015, (2) two of which have been dismissed within the past year:

1. Case No. 15-90219

    a. Chapter 7
    b. Filed March 5, 2015
    c. Dismissed March 16, 2015 for failure to timely file documents

2. Case No. 15-90459

    a. Chapter 7
    b. Filed May 12, 2015
    c. Dismissed October 7, 2015 for failure to produce documents.

3. Case No. 15-91196

    a. Chapter 7
    b. Filed December 14, 2015
    c. Dismissed December 28, 2015 for failure to timely file documents.

OPPOSITION OF DEBTOR

No opposition was filed by the Debtor

RULING

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)).

Section 707(a) provides three examples of "cause" that would justify dismissal of a chapter 7 case:

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees or charges required under chapter 123 of title 28; and

(3) failure of the debtor in a voluntary case to file, within 15 days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by section 521(a)(1), but only on a motion by the United States trustee.

11 U.S.C. § 707(a). However, these examples are merely illustrative, and the court may dismiss the case on other grounds when cause is found to exist. 6 COLLIER ON BANKRUPTCY ¶ 707.03 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) The court has substantial discretion in ruling on a motion to dismiss under section 707(a). *Id.*

Furthermore, 11 U.S.C. § 349(a) provides that, "[u]nless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed..." Therefore, the court has discretion, when there is cause, to deny the debtor the benefits of the general rule, i.e., to dismiss the case with prejudice thereby preventing the debtor from obtaining a discharge with regard to the debts existing at the time of the dismissed case. *See Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1223 (9th Cir. 1999); 3 COLLIER ON BANKRUPTCY ¶ 349.02 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). Dismissal with prejudice is a drastic remedy reserved for extreme situations. *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 922 (B.A.P. 9th Cir. 2011). This usually is permitted "only in the face of a clear record of delay or contumacious conduct." *Durham v. Fla. E. Coast Ry. Co.*, 385 F.2d 366, 368 (5th Cir. 1967).

DISCUSSION

The court has discretion, when there is cause, to deny the debtor the benefits of the general rule, i.e., to dismiss the case **with prejudice** thereby preventing the debtor from obtaining a discharge with regard to the debts existing at the time of the dismissed case. *See In re Leavitt*, 171 F.3d 1219. Dismissal with prejudice is a drastic remedy reserved for extreme situations. *In re Ellsworth*, 455 B.R. 904. This usually is permitted "only in the face of a **clear record of delay or contumacious conduct**." *Durham v. Fla. E. Coast Ry. Co.*, 385 F.2d 366.

Movant asserts that the case should be dismissed or converted based on the following grounds.

a. The Debtors failed to adequately respond to this court's Order Granting Application for Order of Examination under Federal Rule of Bankruptcy Procedure 2004(a).

b. The Creditor reached out to Mr. Johnston to work out a schedule for compliance with the order that gave the Debtors more time to provide the required documents. However, the Debtors failed to respond. Disobedience of this Court's orders, and the failure to show common courtesy to their creditors as their creditors attempt to piece together the assets of the Debtors and their pre-petition conduct all show that the Debtors deserve dismissal of this case.

c. This is not the first time the Debtors are refusing to comply with the order of the court with respect to production of documents. This is Debtors' fourth bankruptcy filing in the U.S. Bankruptcy Court for the Eastern District of California since 2015. The Debtors' repeated failure to perform their court-ordered responsibilities constitutes a

"willful failure of the debtor to abide by orders of the court" under 11 U.S.C. 109(g)(1)

While the Movant offers plenty instances, namely the failure of the Debtor to comply with the court's Order Granting Application for Order of Examination Under Federal Rule of Bankruptcy Procedure 2004(a), the Movant fails to argue why, pursuant to § 349 the case should be dismissed with prejudice.

Therefore, due to the failure of the Debtor to completely comply with the court's two orders for Rule 2004 examination, cause exists to dismiss this case pursuant to 11 U.S.C. § 707.

The motion is granted and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted and the case is dismissed

29. 16-90386-E-7 RUBEN/SOFIA AMAYA MOTION TO CONVERT CASE TO CHAPTER 13
6-20-16 [27]

Tentative Ruling: The Motion to Convert the Bankruptcy Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

The Motion to Convert Case to Chapter 13 was served by the Clerk of the Court on Debtor's, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, and Office of the United States Trustee on June 23, 2016. The court computes that 42 days' notice has been provided.

The Motion to Convert the Bankruptcy Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. At the hearing ----------.

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is denied.

Ruben Amaya and Sofia Amaya, the Chapter 7 Debtors ("Debtors"), filed an *ex parte* notice of conversion of the bankruptcy case from Chapter 7 to one under Chapter 13. Dckt. 27. No reason is given for the conversion. Generally, the court will readily grant such requests to allow a good faith debtor to prosecute a good faith reorganization of their finances.

TRUSTEE'S OPPOSITION

The Chapter 7 Trustee has filed an Opposition, which allegations include that the conversion is sought because the Trustee is administering what heretofore were undisclosed assets of the Debtors. Dckt. 28. The Trustee asserts that Debtors affirmatively misrepresented their assets and income not only on the Schedules, but also at the First Meeting of Creditors.

The Trustee asserts that while disclosing ownership of one residence, the Debtors owned a second residence they failed to disclose on the Schedules and at the First Meeting of Creditors.

The Trustee notes that the Debtors have failed to amend their schedules to correct their failure to disclose the formerly non-disclosed property or the rental income.

On June 23, 2016, the court issued an Order Setting Hearing, ordering:

> The Trustee has raised significant issues of whether conversion of this Chapter 7 case is proper. Therefore, upon review of the request to convert, opposition, files in this case, and good cause appearing;
>
> **IT IS ORDERED** that the request to convert this case as set forth in the Debtors' Notice of Conversion from Chapter 7 to Chapter 13 filed June 20, 2016, docket entry no. 27, is set for hearing on **August 4, 2016, at 10:30 a.m.** in the United States Courthouse, 1200 I Street, Second Floor, Modesto, California.
>
> **IT IS FURTHER ORDERED** that Ruben Amaya and Sofia Amaya, and each of them, the Chapter 7 Debtors, shall appear in person at the August 4, 2016 hearing, no telephonic appearance permitted.

Dckt. 32.

DEBTOR'S REPLY

The Debtor filed a reply on July 29, 2016. Dckt. 38. The Debtor states that they listed their primary residence in the petition and exempted their equity. The exempt equity was up to $175,000.00 because Debtor Ruben Amaya's total disability. No rental income or rental property was listed.

Debtor states that they testified truthfully that they did not have a rental on the property and received no rental income.

A Report of No Distribution was filed on May 27, 2016. Dckt. 9

The Trustee arranged for his realtor to visit the Debtors' residence. The Debtor asserts that the Trustee's realtor valued the home at approximately $100,000.00 more than the Debtor's value based upon a unit being available to act as a rental. The Trustee filed a Notice of Possible Recovery of Assets on May 31, 2016. Dckt. 11.

The Debtor's filed a Notice of Conversion from Chapter 7 to Chapter 13 on June 20, 2016. Dckt. 27.

The Debtor argues that the Trustee is incorrect that there are two residence and that the Debtor's rent out one of them. The Debtor have considered this property as one residence, not two. Debtor Ruben Amaya's parents lived in the second living quarters until their death several years ago. After that, Debtor Ruben Amay's brother lived there. The Debtor asserts that neither the parents nor the brother ever paid rent, it was a family home. The Debtor argue that various family members have stayed there over the last few years from a couple of nights to a couple of months. None have ever paid rent. The second living quarters have never produced an income and have never been rented to anyone.

When Debtors filed their petition, the Debtor was of the opinion that their real property was valued at $170,000.00 which is the amount listed in their Schedules.

The Debtor admits that the current Schedule J shows a current deficit of $3.00 per month. However, the Debtor states that there is future rental value of the second living quarters and would generate enough additional income to make up the existing deficit and fund a Chapter 13 Plan.

The Debtor states that once a conversion takes place the Debtor will amend their schedules to list the anticipated income from the second living quarters.

Finally, the Debtors state that they do not have any "education, training or experience in real estate or rentals." Dckt. 38.

DISCUSSION

The Bankruptcy Code authorizes a one-time, *near* absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

However, such a right is not an absolute right in and or itself.

The Debtor seems to be asserting that a Chapter 13 is feasible when the Debtor's Schedule J reflects a negative income of $3.00 per month. In response, the Debtor argues that the supplemental income from the rental property will be sufficient to fund any proposed plan. However, in the same response, the Debtor admits to not having any knowledge or history of renting any property or the necessary requirements.

While the Debtor makes these assertions that a plan can be funded through a budget including rental income, the Debtor will not provide updated Schedules to determine if a plan is even possible or even if the Debtor qualifies for a Chapter 13.

The Debtor cannot have its cakes and eat it too. The Debtor cannot seek to have the residence considered both a single residence and a rental property when Debtor seeks to defeat the Trustee.

In their response, Debtor admits that the property has multiple units and that they were using the multiple units to house (for free) other family members. While charity starts at home and helping family members is a show of character, choosing to do so at the expense of one's creditors is not a great charitable act.

In looking at Schedule J, it appears that the ability to prosecute any plan is illusory - even with $800.00 a month rent from what the Debtor states is not "rental property." Some of the shortcomings in the Debtor's expenses include:

A. Homeowners Insurance.....$ 0.00
B. Transportation.....$75.00
C. Vehicle Insurance.....$30.00

Dckt 1 at 32-33. On Schedule B Debtor lists owning a 2002 Toyota Sienna. The vehicle is listed as having 290,000 miles. It is not reasonable that the cost of gas, registration, and maintenance on this vehicle totals only $75.00 a month. Assuming a 15 gallon tank and gas costs of $2.50 a gallon, each tank of gas would cost $37.50.

More significantly, while purporting to have a house and now possible, in the future, rental property, Debtor maintains no insurance on the property.

Therefore, no cause appears to convert the case. The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert filed by Ruben Rodriguez Amaya and Sofia Amaya 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 denied.

30. 16-90386-E-7 RUBEN/SOFIA AMAYA MOTION TO EMPLOY PMZ REAL ESTATE AS REALTOR(S)
HCS-2 6-17-16 [22]

Tentative Ruling: The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

The Motion to Employ was served by the Clerk of the Court on Debtor's, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, and Office of the United States Trustee on June 23, 2016. The court computes that 42 days' notice has been provided.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. At the hearing ----------.

The Motion to Employ is granted.

Chapter 7 Trustee, Gary Farrar, seeks to employ Realtor PMZ Real Estate, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Realtor to assist the Trustee in valuing, marketing, and possibly listing for sale real property commonly known as 308 Orange Avenue, Modesto, California ("Property").

The court set the matter for hearing in light of the Motion to Convert. Dckt. 33.

The Trustee argues that Realtor's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present formerly unreported assets to be valued, and potentially sold, for the benefit of the estate.

Bob Brazeal, an associate of PMZ Real Estate, testifies that he is representing the Trustee in valuing and possibly selling the Property. Bob Brazeal testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, 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 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 PMZ Real Estate as Realtor for the Chapter 7 estate. The 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 PMZ Real Estate as Realtor for the Chapter 7 Trustee on the terms and condition for a commercially reasonable residential real estate Contingency Fee not to exceed 6% of the gross sales price, or in the alternative, $110.00 for real estate consulting services.
>
> **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.