UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

August 24, 2017, at 10:30 a.m.

1.	**16-90500-E-11** **HSM-12**	**ELENA DELGADILLO** **Len ReidReynoso**	**MOTION FOR ADMINISTRATIVE EXPENSES** **7-21-17 [205]**

Final Ruling: No appearance at the August 24, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Administrative Expenses is granted.

Irma Edmonds, the Chapter 11 Trustee ("Movant"), requests payment of administrative expenses in the amount of $77,060.00 for the Estate's 2017 federal and state income taxes.

DISCUSSION

Movant argues that she employed a certified public accountant to prepare income tax returns for the Estate. Movant reports that the Estate's tax liability for the fiscal year ending May 31, 2017, is $72,041.00 owed to the Internal Revenue service for federal income tax and $5,019.00 owed to the Franchise Tax Board for California income tax.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant has shown that the Estate has incurred income tax liabilities that must be paid to preserve the Estate.

Movant having demonstrated that the expenses were necessary, the court finds that Movant paying income tax is necessary and provides benefit to the Estate. The Motion is granted, and Movant is authorized to pay administrative expenses in the amounts of $72,041.00 to the Internal Revenue Service and $5,019.00 to the Franchise Tax Board.

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.
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> The Motion for Allowance of Administrative Expense filed by Movant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Chapter 11 Trustee is authorized to pay the Internal Revenue Service $72,041.00 and the Franchise Tax Board $5,019.00 each as an administrative expense of the Chapter 11 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

2. **11-92905-E-7** **GUSTAVO/MARIA CLAROS** **MOTION TO AVOID LIEN OF CAPITAL ONE BANK N.A.**
RKW-3 **Randall Walton** **8-8-17 [26]**

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, and Office of the United States Trustee on August 4, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is dismissed without prejudice.

This Motion requests an order avoiding the judicial lien of Capital One Bank N.A. ("Creditor") against property of Gustavo Claros and Maria Claros ("Debtor") commonly known as 1526 Inyo Avenue, Newman, California ("Property").

INSUFFICIENT NOTICE PROVIDED

The Proof of Service indicates that Creditor has not been served with notice of this Motion. Debtor is required to provide notice to Creditor. Rather, it appears that the pleadings have been served only on a person who was an attorney in the state court action, not Creditor or an agent for Creditor. FED. R. BANKR. P. 7004(b)(8) & 9014(b).

Service by Certified Mail Required

Federal Rule of Bankruptcy Procedure 9014(b) requires that motions and their contested matter-initiating documents (such as objections and applications) must be served in the same manner as a summons in an adversary proceeding. Federal Rule of Bankruptcy Procedure 7004(h) [emphasis added] requires:

> "h) **Service** of process **on an insured depository institution**. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding **shall be made by certified mail addressed to an officer** of the institution unless–
>
> (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
>
> (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
>
> (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

The correct address for service can be confirmed at the FDIC webpage for federally insured financial institutions. Either service was not made to those addresses, or service was not addressed to an officer by name or "Attn: Officer for Service of Process." Service was not made by certified mail. Service has not been adequately made on the federally insured financial institutions in this case.

Additionally, for seven years this court has made it clear that parties, be they debtors or creditors, must comply with the requirements under the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, Federal Rules of Evidence, the Bankruptcy Code, and other applicable laws. As part of this, the court has provided parties and counsel with the following quote:

> Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92–93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

No Basis for Relief Shown

The Motion on its face asserts the following grounds with particularity (Federal Rule of Bankruptcy Procedure 9013) upon which the requested relief "avoiding a judicial lien" is based:

A. Debtor filed bankruptcy on August 14, 2011.

B. Debtor obtained a discharge in this Chapter 7 case on November 28, 2011.

C. In June 2015, after this bankruptcy case was closed, Debtor purchased real property commonly known as 1526 Inyo Avenue, Newman, California.

D. Creditor filed an abstract of judgment (judicial lien) on February 18, 2010 (prior to the commencement of this bankruptcy case).

E. Creditor's claim and lien were scheduled in the bankruptcy case.

F. Though Debtor has purchased the Inyo Avenue property after having obtained a discharge of the obligation evidenced by the judgment for which the abstract was recorded, it is asserted:

> "However, Debtors' title company refuses to allow refinance or sell of the debtors' home absent an order from the court clarifying the status of the discharged lien."

Motion, Dckt. 26.

Therefore, Debtor requests that the court "avoid the security interest" of Creditor.

As phrased by the title company and stated in the Motion, these parties conflate several different legal concepts and appear to ask the court to issue an order that may not properly be issued.

First, Debtor has obtained a discharge in this bankruptcy case. Discharge Order, Dckt. 17. Congress provides in 11 U.S.C. § 524(a) the effect of such discharge, which includes:

> (1) rendering void the judgment to the extent that such judgment is being used to assert that Debtor has any personal liability for the obligation under said judgment. 11 U.S.C. § 524(a)(1).
>
> (2) operating as an injunction of any effort to enforce such debt personally against Debtor. 11 U.S.C. § 524(a)(2).
>
> (3) operating as an injunction to collect or recover from any property of Debtor that is community property acquired after the August 14, 2011 commencement of this bankruptcy case.

Here, the evidence presented is that the real property at issue was not acquired until June 2015. Debtor obtained a discharge of pre-petition obligations. By operation of law, if the judgment obligation is subject to the discharge, then the statutory voiding of personal liability precludes there being an obligation for any post-discharge abstract to attach to such post-petition property.

This issue was addressed in detail in this district almost thirty-years ago by the Honorable David E. Russell in the consolidated decisions for *In re Thomas* and *In re Blades*. 102 B.R. 199 (Bankr. E.D. Cal. 1989). In *Thomas* and *Blades*, Judge Russell reviewed the basic California law of what is necessary to support creating a judgment lien (a non-void judgment determining a personal obligation for monetary obligation of the judgment debtor) and the effect of a bankruptcy discharge that voids a judgment from having prospective effect in determining such personal obligation. In pertinent part, Judge Russell's analysis includes:

> 1) Validity, Extent, and Enforceability of FTC Judgment Lien
>
> In California, a money judgment creditor may obtain an abstract of that judgment from the clerk of the court issuing the judgment pursuant to California Code of Civil Procedure (hereinafter "C.C.P.") § 674. When the abstract is recorded with a county recorder it creates a lien on all of the judgment debtor's real property in that county (C.C.P. §§ 697.310(a), [FN.1.] 697.340(a)) [FN.2.] as well as upon "any interest in real property in the county on which a judgment lien could be created under subdivision (a) . . . . acquired after the judgment lien was created . . . ." (C.C.P. § 697.340(b)). [FN.3.]
>
> FN.1. C.C.P. § 697.310 provides in pertinent part that a "judgment lien on real property is created . . . by recording an abstract of a money judgment with the county recorder."
>
> FN. 2. § 697.340(a) provides in pertinent part that "[a] judgment lien on real property attaches to all interest in real property in the county where the lien is created . . . ."
>
> FN.3. The section furthermore provides that "the judgment lien attaches to such interest at the time it is acquired." (C.C.P. § 697.340(b) (emphasis added)). Although the plain language of the Code defines a lien as "a charge imposed upon specific property by which it is made security for the performance of an act" (C.C.P. § 1180, emphasis added) thereby suggesting that a lien can exist only if there is a res to which the lien can attach, the Code is riddled with references such as the one noted in §§ 697.340(b) above which create the anomalous impression that a lien could actually exist despite the absence of attachable property. This court is inclined to adopt the California Code's unambiguous definition of a "lien" as the proper manifestation of legislative intent and draw its own conclusions in accordance therewith. (See also 11 U.S.C. § 101(33) ("'lien' means charge against or interest in property to secure payment of a debt or performance of an obligation." (Emphasis added)).
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> . . .
>
> The problem with FTC's argument [pre-petition filed abstract of judgment for a discharged judgment can attach to post-bankruptcy property acquired by the debtor], however, is that it is based upon the false premise that a "lien" actually

> exists. The California courts have long recognized the maxim that a lien cannot survive (much less be created in the first place) absent the existence of an enforceable underlying obligation. (*Gostin v. State Farm Insurance Co.*, 224 Cal. App. 2d 319, 325, 36 Cal. Rptr. 596 (citing *East Bay Municipal Utility District v. Garrision*, 191 Cal. 680, 692, 218 P. 43; *Pacific Finance Corporation v. Hendley*, 119 Cal App. 697, 704)). Furthermore, as was noted above, a lien cannot exist in the absence of an underlying attachable "res".
>
> Working chronologically, this court finds that no lien could have existed as a matter of law on the date the Debtors filed their respective petitions in bankruptcy because of the absence of attachable property at that date. Conversely, no judgment lien could have been created post-discharge even though the Debtors had acquired attachable property because the underlying judgment was previously discharged and rendered void. Consequently, this court must find that the FTC lien currently encumbering the proceeds from sale of the Debtors' residence is void and unenforceable. (See e.g., *In re Yates*, 47 B.R. 460, 462 (D.Colo. 1985) (when underlying judgment is discharged before "*res*" exists upon which the "lien" could attach, no subsequent basis for a lien exists).

In re Thomas, 102 B.R. 199, 200–01, (Bankr. E.D. Cal. 1989)

As more recently discussed, the recording of a pre-petition judgment "creates a valid, enforceable judicial lien if either (1) a *res* exists at the time the judgment is recorded, or (2) assuming the lien may properly attach to after-acquired property, such property is obtained prior to bankruptcy." *Williams-Mechling v. Bonner County (In re Mechling)*, 284 B.R. 127, 132–33 (Bankr. D. Idaho 2002) (citing *In re Thomas*, 102 B.R. 199, 200–01 (Bankr. E.D. Cal. 1989) (also stating that "a lien cannot exist in the absence of an underlying attachable '*res*.'"); *In re Clowney*, 19 B.R. 349, 352 (Bankr. M.D.N.C. 1982)).

The *Williams-Mechling* court continued its analysis in 2002 by summarizing the proper application of the Bankruptcy Code and state law, stating:

> [t]he reach of both [real property and personal property] liens is circumscribed when a bankruptcy is filed. If properly asserted and perfected prior to bankruptcy, the liens are limited to the real or personal property that existed as of the petition date. "The lien does *not* attach to property or a right to property acquired by a debtor after a petition in bankruptcy has been filed and [where] the underlying tax liability is discharged against the debtor personally."

Id. at 132. (quoting *Pansier v. United States*, 225 B.R. 657, 661 (E.D. Wisc. 1998)).

Finally, the United States Supreme Court has written on this issue concerning the effect of a discharge and a pre-petition lien, concluding:

> An adjudication [a concept under the prior Bankruptcy Act] of bankruptcy, followed by a discharge, releases a debtor from all previously incurred debts, with certain

> exceptions not pertinent here; and it logically cannot be supposed that the [Bankruptcy Act] nevertheless intended to keep such debts alive for the purpose of permitting the creation of an enforceable lien upon a subject not existent when the bankruptcy became effective or even arising from, or connected with, preexisting property, but brought into being solely as the fruit of the subsequent labor of the bankrupt.

Local Loan Co. v. Hunt, 292 U.S. 234, 243 (1934).

Here, if Debtor is correct that this debt has been discharged, by operation of federal law, Creditor's judgment is "void" as a personal determination of personal liability of Debtor. When Debtor, post-bankruptcy filing and post-discharge acquired 1526 Inyo Avenue, Newman, California, there was no judgment for which the pre-petition abstract of judgment could create a lien on the Inyo Avenue Property.

It appears that even though the court is dismissing this Motion without prejudice, the title company and Debtor have this ruling to review, consider, present to the title company legal department, and have the title company make a determination based upon the proper application of bankruptcy law regarding discharged judgments.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice, the Chapter 7 discharge rendering a pre-petition judgment "void" as a personal liability of Debtor for purposes of the post-petition assets acquired by Debtor. *See* 11 U.S.C. § 524(a)(1); *Local Loan Co. v. Hunt*, 292 U.S. 234, 243 (1934); *In re Thomas*, 102 B.R. 199, 200–01, (Bankr. E.D. Cal. 1989); and *Williams-Mechling v. Bonner County (In re Mechling)*, 284 B.R. 127, 132–33 (Bankr. D. Idaho 2002).

3.	**11-92905-E-7** **RKW-4**	**GUSTAVO/MARIA CLAROS** **Randall Walton**	**MOTION TO AVOID LIEN OF HSBC BANK NEVADA, N.A.** **8-8-17 [30]**

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, and Office of the United States Trustee on August 4, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is dismissed without prejudice.

This Motion requests an order avoiding the judicial lien of HSBC Bank Nevada, N.A. ("Creditor") against property of Gustavo Claros and Maria Claros ("Debtor") commonly known as 1526 Inyo Avenue, Newman, California ("Property").

INSUFFICIENT NOTICE PROVIDED

The Proof of Service indicates that Creditor has not been served with notice of this Motion. Debtor is required to provide notice to Creditor. Rather, it appears that the pleadings have been served only on a person who was an attorney in the state court action, not Creditor or an agent for Creditor. FED. R. BANKR. P. 7004(b)(8) & 9014(b).

Service by Certified Mail Required

Federal Rule of Bankruptcy Procedure 9014(b) requires that motions and their contested matter-initiating documents (such as objections and applications) must be served in the same manner as a summons in an adversary proceeding. Federal Rule of Bankruptcy Procedure 7004(h) [emphasis added] requires:

> "h) **Service** of process **on an insured depository institution**. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding **shall be made by certified mail addressed to an officer** of the institution unless–
>
> (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
>
> (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
>
> (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

The correct address for service can be confirmed at the FDIC webpage for federally insured financial institutions. Either service was not made to those addresses, or service was not addressed to an officer by name or "Attn: Officer for Service of Process." Service was not made by certified mail. Service has not been adequately made on the federally insured financial institutions in this case.

Additionally, for seven years this court has made it clear that parties, be they debtors or creditors, must comply with the requirements under the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, Federal Rules of Evidence, the Bankruptcy Code, and other applicable laws. As part of this, the court has provided parties and counsel with the following quote:

> Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92–93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

No Basis for Relief Shown

The Motion on its face asserts the following grounds with particularity (Federal Rule of Bankruptcy Procedure 9013) upon which the requested relief "avoiding a judicial lien" is based:

A. Debtor filed bankruptcy on August 14, 2011.

B. Debtor obtained a discharge in this Chapter 7 case on November 28, 2011.

C. In June 2015, after this bankruptcy case was closed, Debtor purchased real property commonly known as 1526 Inyo Avenue, Newman, California.

D. Creditor filed an abstract of judgment (judicial lien) on December 11, 2009 (prior to the commencement of this bankruptcy case).

E. Creditor's claim and lien were scheduled in the bankruptcy case.

F. Though Debtor has purchased the Inyo Avenue property after having obtained a discharge of the obligation evidenced by the judgment for which the abstract was recorded, it is asserted:

> "However, Debtors' title company refuses to allow refinance or sell of the debtors' home absent an order from the court clarifying the status of the discharged lien."

Motion, Dckt. 30.

Therefore, Debtor requests that the court "avoid the security interest" of Creditor.

As phrased by the title company and stated in the Motion, these parties conflate several different legal concepts and appear to ask the court to issue an order that may not properly be issued.

First, Debtor has obtained a discharge in this bankruptcy case. Discharge Order, Dckt. 17. Congress provides in 11 U.S.C. § 524(a) the effect of such discharge, which includes:

> (1) rendering void the judgment to the extent that such judgment is being used to assert that Debtor has any personal liability for the obligation under said judgment. 11 U.S.C. § 524(a)(1).
>
> (2) operating as an injunction of any effort to enforce such debt personally against Debtor. 11 U.S.C. § 524(a)(2).
>
> (3) operating as an injunction to collect or recover from any property of Debtor that is community property acquired after the August 14, 2011 commencement of this bankruptcy case.

Here, the evidence presented is that the real property at issue was not acquired until June 2015. Debtor obtained a discharge of pre-petition obligations. By operation of law, if the judgment obligation is subject to the discharge, then the statutory voiding of personal liability precludes there being an obligation for any post-discharge abstract to attach to such post-petition property.

This issue was addressed in detail in this district almost thirty-years ago by the Honorable David E. Russell in the consolidated decisions for *In re Thomas* and *In re Blades*. 102 B.R. 199 (Bankr. E.D. Cal. 1989). In *Thomas* and *Blades*, Judge Russell reviewed the basic California law of what is necessary to support creating a judgment lien (a non-void judgment determining a personal obligation for monetary obligation of the judgment debtor) and the effect of a bankruptcy discharge that voids a judgment from having prospective effect in determining such personal obligation. In pertinent part, Judge Russell's analysis includes:

> 1) Validity, Extent, and Enforceability of FTC Judgment Lien
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> In California, a money judgment creditor may obtain an abstract of that judgment from the clerk of the court issuing the judgment pursuant to California Code of Civil Procedure (hereinafter "C.C.P.") § 674. When the abstract is recorded with a county recorder it creates a lien on all of the judgment debtor's real property in that county (C.C.P. §§ 697.310(a), [FN.1.] 697.340(a)) [FN.2.] as well as upon "any interest in real property in the county on which a judgment lien could be created under subdivision (a) . . . . acquired after the judgment lien was created . . . ." (C.C.P. § 697.340(b)). [FN.3.]
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> FN.1. C.C.P. § 697.310 provides in pertinent part that a "judgment lien on real property is created . . . by recording an abstract of a money judgment with the county recorder."
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> FN. 2. § 697.340(a) provides in pertinent part that "[a] judgment lien on real property attaches to all interest in real property in the county where the lien is created . . . ."
>
> FN.3. The section furthermore provides that "the judgment lien attaches to such interest at the time it is acquired." (C.C.P. § 697.340(b) (emphasis added)). Although the plain language of the Code defines a lien as "a charge imposed upon specific property by which it is made security for the performance of an act" (C.C.P. § 1180, emphasis added) thereby suggesting that a lien can exist only if there is a res to which the lien can attach, the Code is riddled with references such as the one noted in §§ 697.340(b) above which create the anomalous impression that a lien could actually exist despite the absence of attachable property. This court is inclined to adopt the California Code's unambiguous definition of a "lien" as the proper manifestation of legislative intent and draw its own conclusions in accordance therewith. (See also 11 U.S.C. § 101(33) ("'lien' means charge against or interest in property to secure payment of a debt or performance of an obligation." (Emphasis added)).
>
> . . .
>
> The problem with FTC's argument [pre-petition filed abstract of judgment for a discharged judgment can attach to post-bankruptcy property acquired by the debtor], however, is that it is based upon the false premise that a "lien" actually

> exists. The California courts have long recognized the maxim that a lien cannot survive (much less be created in the first place) absent the existence of an enforceable underlying obligation. (*Gostin v. State Farm Insurance Co.*, 224 Cal. App. 2d 319, 325, 36 Cal. Rptr. 596 (citing *East Bay Municipal Utility District v. Garrision*, 191 Cal. 680, 692, 218 P. 43; *Pacific Finance Corporation v. Hendley*, 119 Cal App. 697, 704)). Furthermore, as was noted above, a lien cannot exist in the absence of an underlying attachable "res".
>
> Working chronologically, this court finds that no lien could have existed as a matter of law on the date the Debtors filed their respective petitions in bankruptcy because of the absence of attachable property at that date. Conversely, no judgment lien could have been created post-discharge even though the Debtors had acquired attachable property because the underlying judgment was previously discharged and rendered void. Consequently, this court must find that the FTC lien currently encumbering the proceeds from sale of the Debtors' residence is void and unenforceable. (See e.g., *In re Yates*, 47 B.R. 460, 462 (D.Colo. 1985) (when underlying judgment is discharged before "*res*" exists upon which the "lien" could attach, no subsequent basis for a lien exists).

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The *Williams-Mechling* court continued its analysis in 2002 by summarizing the proper application of the Bankruptcy Code and state law, stating:

> [t]he reach of both [real property and personal property] liens is circumscribed when a bankruptcy is filed. If properly asserted and perfected prior to bankruptcy, the liens are limited to the real or personal property that existed as of the petition date. "The lien does *not* attach to property or a right to property acquired by a debtor after a petition in bankruptcy has been filed and [where] the underlying tax liability is discharged against the debtor personally."

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Finally, the United States Supreme Court has written on this issue concerning the effect of a discharge and a pre-petition lien, concluding:

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Local Loan Co. v. Hunt, 292 U.S. 234, 243 (1934).

Here, if Debtor is correct that this debt has been discharged, by operation of federal law, Creditor's judgment is "void" as a personal determination of personal liability of Debtor. When Debtor, post-bankruptcy filing and post-discharge acquired 1526 Inyo Avenue, Newman, California, there was no judgment for which the pre-petition abstract of judgment could create a lien on the Inyo Avenue Property.

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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.
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> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice, the Chapter 7 discharge rendering a pre-petition judgment "void" as a personal liability of Debtor for purposes of the post-petition assets acquired by Debtor. *See* 11 U.S.C. § 524(a)(1); *Local Loan Co. v. Hunt*, 292 U.S. 234, 243 (1934); *In re Thomas*, 102 B.R. 199, 200–01, (Bankr. E.D. Cal. 1989); and *Williams-Mechling v. Bonner County (In re Mechling)*, 284 B.R. 127, 132–33 (Bankr. D. Idaho 2002).

4. **11-92905-E-7** **GUSTAVO/MARIA CLAROS** **MOTION TO AVOID LIEN OF ARROW FINANCIAL SERVICES, LLC**
RKW-5 **Randall Walton** **8-8-17 [34]**

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, and Office of the United States Trustee on August 4, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is dismissed without prejudice.

This Motion requests an order avoiding the judicial lien of Arrow Financial Services, LLC ("Creditor") against property of Gustavo Claros and Maria Claros ("Debtor") commonly known as 1526 Inyo Avenue, Newman, California ("Property").

INSUFFICIENT NOTICE PROVIDED

The Proof of Service indicates that Creditor has not been served with notice of this Motion. Debtor is required to provide notice to Creditor. Rather, it appears that the pleadings have been served only on a person who was an attorney in the state court action, not Creditor or an agent for Creditor. FED. R. BANKR. P. 7004(b)(8) & 9014(b).

Service by Certified Mail Required

Federal Rule of Bankruptcy Procedure 9014(b) requires that motions and their contested matter-initiating documents (such as objections and applications) must be served in the same manner as a summons in an adversary proceeding. Federal Rule of Bankruptcy Procedure 7004(h) [emphasis added] requires:

> "h) **Service** of process **on an insured depository institution**. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding **shall be made by certified mail addressed to an officer** of the institution unless–
>
> (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
>
> (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
>
> (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

The correct address for service can be confirmed at the FDIC webpage for federally insured financial institutions. Either service was not made to those addresses, or service was not addressed to an officer by name or "Attn: Officer for Service of Process." Service was not made by certified mail. Service has not been adequately made on the federally insured financial institutions in this case.

Additionally, for seven years this court has made it clear that parties, be they debtors or creditors, must comply with the requirements under the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, Federal Rules of Evidence, the Bankruptcy Code, and other applicable laws. As part of this, the court has provided parties and counsel with the following quote:

> Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92–93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

No Basis for Relief Shown

The Motion on its face asserts the following grounds with particularity (Federal Rule of Bankruptcy Procedure 9013) upon which the requested relief "avoiding a judicial lien" is based:

A. Debtor filed bankruptcy on August 14, 2011.

B. Debtor obtained a discharge in this Chapter 7 case on November 28, 2011.

C. In June 2015, after this bankruptcy case was closed, Debtor purchased real property commonly known as 1526 Inyo Avenue, Newman, California.

D. Creditor filed an abstract of judgment (judicial lien) on August 2, 2011 (prior to the commencement of this bankruptcy case).

E. Creditor's claim and lien were scheduled in the bankruptcy case.

F. Though Debtor has purchased the Inyo Avenue property after having obtained a discharge of the obligation evidenced by the judgment for which the abstract was recorded, it is asserted:

> "However, Debtors' title company refuses to allow refinance or sell of the debtors' home absent an order from the court clarifying the status of the discharged lien."

Motion, Dckt. 34.

Therefore, Debtor requests that the court "avoid the security interest" of Creditor.

As phrased by the title company and stated in the Motion, these parties conflate several different legal concepts and appear to ask the court to issue an order that may not properly be issued.

First, Debtor has obtained a discharge in this bankruptcy case. Discharge Order, Dckt. 17. Congress provides in 11 U.S.C. § 524(a) the effect of such discharge, which includes:

> (1) rendering void the judgment to the extent that such judgment is being used to assert that Debtor has any personal liability for the obligation under said judgment. 11 U.S.C. § 524(a)(1).
>
> (2) operating as an injunction of any effort to enforce such debt personally against Debtor. 11 U.S.C. § 524(a)(2).
>
> (3) operating as an injunction to collect or recover from any property of Debtor that is community property acquired after the August 14, 2011 commencement of this bankruptcy case.

Here, the evidence presented is that the real property at issue was not acquired until June 2015. Debtor obtained a discharge of pre-petition obligations. By operation of law, if the judgment obligation is subject to the discharge, then the statutory voiding of personal liability precludes there being an obligation for any post-discharge abstract to attach to such post-petition property.

This issue was addressed in detail in this district almost thirty-years ago by the Honorable David E. Russell in the consolidated decisions for *In re Thomas* and *In re Blades*. 102 B.R. 199 (Bankr. E.D. Cal. 1989). In *Thomas* and *Blades*, Judge Russell reviewed the basic California law of what is necessary to support creating a judgment lien (a non-void judgment determining a personal obligation for monetary obligation of the judgment debtor) and the effect of a bankruptcy discharge that voids a judgment from having prospective effect in determining such personal obligation. In pertinent part, Judge Russell's analysis includes:

> 1) Validity, Extent, and Enforceability of FTC Judgment Lien
>
> In California, a money judgment creditor may obtain an abstract of that judgment from the clerk of the court issuing the judgment pursuant to California Code of Civil Procedure (hereinafter "C.C.P.") § 674. When the abstract is recorded with a county recorder it creates a lien on all of the judgment debtor's real property in that county (C.C.P. §§ 697.310(a), [FN.1.] 697.340(a)) [FN.2.] as well as upon "any interest in real property in the county on which a judgment lien could be created under subdivision (a) . . . . acquired after the judgment lien was created . . . ." (C.C.P. § 697.340(b)). [FN.3.]
>
> FN.1. C.C.P. § 697.310 provides in pertinent part that a "judgment lien on real property is created . . . by recording an abstract of a money judgment with the county recorder."
>
> FN. 2. § 697.340(a) provides in pertinent part that "[a] judgment lien on real property attaches to all interest in real property in the county where the lien is created . . . ."
>
> FN.3. The section furthermore provides that "the judgment lien attaches to such interest at the time it is acquired." (C.C.P. § 697.340(b) (emphasis added)). Although the plain language of the Code defines a lien as "a charge imposed upon specific property by which it is made security for the performance of an act" (C.C.P. § 1180, emphasis added) thereby suggesting that a lien can exist only if there is a res to which the lien can attach, the Code is riddled with references such as the one noted in §§ 697.340(b) above which create the anomalous impression that a lien could actually exist despite the absence of attachable property. This court is inclined to adopt the California Code's unambiguous definition of a "lien" as the proper manifestation of legislative intent and draw its own conclusions in accordance therewith. (See also 11 U.S.C. § 101(33) ("'lien' means charge against or interest in property to secure payment of a debt or performance of an obligation." (Emphasis added)).
>
> . . .
>
> The problem with FTC's argument [pre-petition filed abstract of judgment for a discharged judgment can attach to post-bankruptcy property acquired by the debtor], however, is that it is based upon the false premise that a "lien" actually

> exists. The California courts have long recognized the maxim that a lien cannot survive (much less be created in the first place) absent the existence of an enforceable underlying obligation. (*Gostin v. State Farm Insurance Co.*, 224 Cal. App. 2d 319, 325, 36 Cal. Rptr. 596 (citing *East Bay Municipal Utility District v. Garrision*, 191 Cal. 680, 692, 218 P. 43; *Pacific Finance Corporation v. Hendley*, 119 Cal App. 697, 704)). Furthermore, as was noted above, a lien cannot exist in the absence of an underlying attachable "res".
>
> Working chronologically, this court finds that no lien could have existed as a matter of law on the date the Debtors filed their respective petitions in bankruptcy because of the absence of attachable property at that date. Conversely, no judgment lien could have been created post-discharge even though the Debtors had acquired attachable property because the underlying judgment was previously discharged and rendered void. Consequently, this court must find that the FTC lien currently encumbering the proceeds from sale of the Debtors' residence is void and unenforceable. (See e.g., *In re Yates*, 47 B.R. 460, 462 (D.Colo. 1985) (when underlying judgment is discharged before "*res*" exists upon which the "lien" could attach, no subsequent basis for a lien exists).

In re Thomas, 102 B.R. 199, 200–01, (Bankr. E.D. Cal. 1989)

As more recently discussed, the recording of a pre-petition judgment "creates a valid, enforceable judicial lien if either (1) a *res* exists at the time the judgment is recorded, or (2) assuming the lien may properly attach to after-acquired property, such property is obtained prior to bankruptcy." *Williams-Mechling v. Bonner County (In re Mechling)*, 284 B.R. 127, 132–33 (Bankr. D. Idaho 2002) (citing *In re Thomas*, 102 B.R. 199, 200–01 (Bankr. E.D. Cal. 1989) (also stating that "a lien cannot exist in the absence of an underlying attachable '*res*.'"); *In re Clowney*, 19 B.R. 349, 352 (Bankr. M.D.N.C. 1982)).

The *Williams-Mechling* court continued its analysis in 2002 by summarizing the proper application of the Bankruptcy Code and state law, stating:

> [t]he reach of both [real property and personal property] liens is circumscribed when a bankruptcy is filed. If properly asserted and perfected prior to bankruptcy, the liens are limited to the real or personal property that existed as of the petition date. "The lien does *not* attach to property or a right to property acquired by a debtor after a petition in bankruptcy has been filed and [where] the underlying tax liability is discharged against the debtor personally."

Id. at 132. (quoting *Pansier v. United States*, 225 B.R. 657, 661 (E.D. Wisc. 1998)).

Finally, the United States Supreme Court has written on this issue concerning the effect of a discharge and a pre-petition lien, concluding:

> An adjudication [a concept under the prior Bankruptcy Act] of bankruptcy, followed by a discharge, releases a debtor from all previously incurred debts, with certain

> exceptions not pertinent here; and it logically cannot be supposed that the [Bankruptcy Act] nevertheless intended to keep such debts alive for the purpose of permitting the creation of an enforceable lien upon a subject not existent when the bankruptcy became effective or even arising from, or connected with, preexisting property, but brought into being solely as the fruit of the subsequent labor of the bankrupt.

Local Loan Co. v. Hunt, 292 U.S. 234, 243 (1934).

Here, if Debtor is correct that this debt has been discharged, by operation of federal law, Creditor's judgment is "void" as a personal determination of personal liability of Debtor. When Debtor, post-bankruptcy filing and post-discharge acquired 1526 Inyo Avenue, Newman, California, there was no judgment for which the pre-petition abstract of judgment could create a lien on the Inyo Avenue Property.

It appears that even though the court is dismissing this Motion without prejudice, the title company and Debtor have this ruling to review, consider, present to the title company legal department, and have the title company make a determination based upon the proper application of bankruptcy law regarding discharged judgments.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice, the Chapter 7 discharge rendering a pre-petition judgment "void" as a personal liability of Debtor for purposes of the post-petition assets acquired by Debtor. *See* 11 U.S.C. § 524(a)(1); *Local Loan Co. v. Hunt*, 292 U.S. 234, 243 (1934); *In re Thomas*, 102 B.R. 199, 200–01, (Bankr. E.D. Cal. 1989); and *Williams-Mechling v. Bonner County (In re Mechling)*, 284 B.R. 127, 132–33 (Bankr. D. Idaho 2002).

5.	**08-91106-E-7** **SDM-2**	**CLIFF/GLENNA ROGERS** **Scott Mitchell**	**MOTION TO AVOID LIEN OF PACIFIC BELL DIRECTORY** **7-14-17 [32]**

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

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

Sufficient Notice Not 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 14, 2017. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has not been set properly for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion to Avoid Judicial Lien is continued to 10:30 a.m. on xxxxxx, 2017. Supplemental Opposition shall be filed and served on or before xxxxxxxx, 2017, and Replies, if any, filed and served on or before xxxxxxxxx, 2017.

This Motion requests an order avoiding the judicial lien of Pacific Bell Directory ("Creditor") against property of Clifford Rogers, Jr., and Glenna Rogers ("Debtor") commonly known as 7550 Gilbert Road, Oakdale, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $41,161.26. An abstract of judgment was recorded with Stanislaus County on February 17, 2005, that encumbers the Property, which was renewed with the Stanislaus County Reporter on January 23, 2015.

In the Motion, Debtor asserts that the Property has a value of $500,000.00, with Debtor claiming a $75,000.00 homestead exemption in the Property. Motion, ¶¶ 4, 5; Dckt. 32. Debtor further asserts in the Motion that the Property is subject to a lien securing a debt in the amount of $371,519.00 owed to American General and $42,500.00 owed to Infinity Funding and Reality, Inc. *Id.* ¶ 6.

The Motion does not allege (state with particularity) the perfection dates for the above two liens and the judicial lien at issue. In Debtor's Declaration, testimony is provided that Creditor's judicial lien at issue was "registered" February 17, 2005. Declaration ¶ 2, Dckt. 34.

As evidence of the secured obligations, Debtor provides copies of Schedule D filed in this case. Exhibit 3, Dckt. 35. A copy of Creditor's abstract of judgment is filed as Exhibit 5. *Id.* The Renewal of Abstract of Judgment is authenticated by Debtor in his declaration and appears to bear a January 12, 2015 certification stamp. The Renewal of Abstract of Judgment states that the original Abstract was recorded February 17, 2005.

On Schedule D, no date for the debt or lien for American General is provided. However, for Infinity Funding and Realty, Inc. the date November 29, 2006, is provided for when that obligation was incurred (and presumably the lien date is at or about the same time).

INSUFFICIENT NOTICE PROVIDED—WAIVER OF DEFECT IN NOTICE

The Proof of Service indicates that Debtor served Creditor's attorney, not Creditor itself. That is insufficient. Creditor must be served directly with notice of this Motion.

Nevertheless, Creditor has responded to the Motion. The court will therefore address the merits of the Motion.

CREDITOR'S OPPOSITION

Creditor (YP Advertising & Publishing LLC, fka Pacific Bell Directory) filed an Objection on August 10, 2017. Dckt. 42. Creditor argues that $10,981.00 of its lien does not impair Debtor's claimed exemption based upon a property valuation of $500,000.00.

Creditor requests time for a property appraisal to be conducted.

DISCUSSION

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $500,000.00 as of the date of the petition. The unavoidable consensual liens senior to that of Creditor are $371,519.00. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $75,000.00 on Schedule C.

Congress provides in 11 U.S.C. § 522(f) that a debtor may protect exempt value in property from a judicial lien, stating:

> "(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is–

> (A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5); . . . .

After addressing some disagreement between courts in various Circuits, Congress amended 11 U.S.C. § 522 to provide a mathematical formula to compute when a judicial lien impairs and exemption.

> (2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of--
>
> (i) the lien;
>
> (ii) all other liens on the property; and
>
> (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;
>
> exceeds the value that the debtor's interest in the property would have in the absence of any liens.

11 U.S.C. § 522(f)(2).

Applying the value of the property as alleged, the asserted claims secured by the Property, and the homestead exemption to the above formula, the computation is made as follows:

FMV	$500,000.00
Deed of Trust 1	($371,519.00)
Abstract of Judgment	($ 41,161.26)
Deed of Trust 2	($ 42,500.00)
Homestead Exemption	($ 75,000.00)

(Impairment)/Non-Impairment of Homestead Exemption.....($30,180.26).

Based on Debtor's stated grounds, reducing Creditor's judgment lien amount to provide for the ($30,180.26) impairment results in a determination that only for amounts in excess of $10,981.00 does Creditor's judgment lien impair the homestead exemption.

Continuance for Discovery

Creditor requests that the court provide further time in this Contested Matter so that Creditor may conduct discovery as to the value of the Property at issue. The rules for discovery are applicable in Contested Matters. FED. R. BANKR. P. 9014(c) (applying FED. R. BANKR. P. 7028–37 to Contested Matters).

In conducting discovery, it appears that both Debtor and Creditor will need to engage in a forensic appraisal exercise given that the filing of this bankruptcy case dates back to June 4, 2008.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is continued to 10:30 a.m. on **xxxxxx, 2017.** Supplemental Opposition shall be filed and served on or before **xxxxxxxx, 2017**, and Replies, if any, filed and served on or before **xxxxxxxxx, 2017**.

6. **14-91520-E-7** **JOANN TEEM**
WFH-5 **Gilbert Vega**

CONTINUED MOTION FOR ORDER CLOSING CASE WITHOUT ABANDONING ASSETS TO DEBTOR
4-20-17 [58]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 20, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Order Closing Case Without Abandoning Assets to Debtor has been has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion for Order Closing Case Without Abandoning Assets to Debtor is continued to 10:30 a.m. on xxxxxxxxxxxxx, 2017.

JoAnn Teem ("Debtor") received a discharge in this case on March 16, 2015. Dckt. 26. On April 20, 2017, Michael McGranahan, the Chapter 7 Trustee, filed this Motion for Order Closing Case Without

Abandoning Assets to Debtor pursuant to 11 U.S.C. § 554(c) on the basis that the Estate holds an interest in shares of a corporation for which the Trustee has sought offers, but no offers have materialized. The Trustee believes that the Estate's interest has significant value, but it is not liquid at this time.

NOTICE OF CONTINUED HEARING

On May 5, 2017, the Trustee filed a Notice of Continued Hearing for this matter. Dckt. 63. The Notice states that the hearing is continued to 10:30 a.m. on June 8, 2017.

MAY 18, 2017 HEARING

At the hearing, the court continued the hearing to 10:30 a.m. on June 8, 2017.

INTERESTED PARTY'S OPPOSITION

Albert Pinasco ("Interested Party") filed an Opposition on May 23, 2017. Dckt. 71. He is the President of Varni Corporation, a member of the corporation's Board of Directors, and he is the Trustee of the Varni Trust. Interested Party states that he "does not care whether the assets in question are abandoned or sold," but he objects to the Trustee's proposition that they should be part of the Estate indefinitely because the Trustee has not received an offer he likes.

Interested Party argues that he will be harmed by granting this Motion because he will not be able to execute his fiduciary duties to shareholders and to the trust fully. For example, Debtor's shares of the Corporation are voting shares, and without someone to exercise voting rights, the balance of power in the corporation will shift. Additionally, Interested Party does not know where dividends would be sent. The corporation's share value will also be damaged by having 2% of the corporation's shares remain in an inactive bankruptcy case.

Interested Party argues that the Trustee has had almost three years to value and sell the shares. Interested Party argues that the Trustee has not attempted to sell the shares in a reasonably expeditious manner.

***EX PARTE* MOTION TO CONTINUE HEARING**

The Trustee filed an *Ex Parte* Motion to Continue the Hearing on June 1, 2017. Dckt. 73. The Trustee requests that the hearing be continued to August 24, 2017, because the parties have reached a settlement regarding the Motion.

JUNE 8, 2017 HEARING

At the hearing, the parties reported that a settlement had been reached that needed to be documented and filed, and they requested that the hearing be continued. The court continued the hearing on to 10:30 a.m. on August 24, 2017. Dckt. 78.

SECOND *EX PARTE* MOTION TO CONTINUE HEARING

The Trustee filed an *Ex Parte* Motion to Continue the Hearing on August 17, 2017. Dckt. 79. As addressed by the court in the order to conduct a Status Conference in this Contested Matter, rather than just continuing it, the Parties need to address for the court what "difficulties" exist in documenting a "settlement" that the Parties have represented since early June 2017 has been reached. Additionally, the Parties need to address the status of Albert Pinasco to be litigating individually these issues and the absence of Varni Corporation and the Trustee of the Varni Trustee (in his capacity as trustee to bind the Varni Trust) appearing in this Contested Matter.

At the hearing, counsel for Albert Pinasco explained **xxxxxxxxxxxxxxx**.

At the hearing, counsel for the Chapter 7 Trustee explained **xxxxxxxxxxxxx**.

The Parties also addressed when and how Debtor has properly scheduled and disclosed any interest in the Varni Trust and the status of the post-petition payments made on any interests in the Varni Trust and distributions on the Varni Corporation stock that is property of the bankruptcy estate. **Xxxxxxxxxxxx**.

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 Order Closing Case Without Abandoning Assets to Debtor filed by Michael McGranahan, the Chapter 7 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is continued to 10:30 a.m. on **xxxxxxxxxxxxxx, 2017**.

7. **16-90924-E-7** **RUDY/MARCIA MESA** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES MACKO, INC. FOR ANTHONY D. JOHNSTON, TRUSTEES ATTORNEY(S)**
ADJ-4 **Martha Lynn Passalaqua** **8-3-17 [46]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 3, 2017. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Anthony D. Johnston and Fores Macko, a Professional Law Corporation, the Attorney ("Applicant") for Michael McGranahan, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 2, 2017, through August 3, 2017. The order of the court approving employment of Applicant was entered on February 21, 2017. Dckt. 35. Applicant requests fees in the amount of $2,257.00 and costs in the amount of $32.64.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including selling a 1940 Ford Coupe that Debtor had not claimed as exempt. The estate has $15,300.00 of unencumbered monies to be administered as of the filing of the application. Dckt. 48. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 3.40 hours in this category. Applicant prepared employment applications and compensation applications.

Asset Disposition: Applicant spent 5.20 hours in this category. Applicant prepared a motion to employ an auctioneer and prepared a motion to sell a vehicle at public auction.

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**
Anthony Johnston, shareholder	7.40	$275.00	$2,035.00

Kaitlin Showerman, associate	1.20	$185.00	$222.00
	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			$2,257.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $32.64 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying		$20.85
Postage		$11.79
		$0.00
		$0.00
Total Costs Requested in Application		$32.64

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,257.00 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.

Costs & Expenses

First and Final Costs in the amount of $32.64 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	$2,257.00
Costs and Expenses	$32.64

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 Anthony D. Johnston and Fores Macko, a Professional Law Corporation ("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 Anthony D. Johnston and Fores Macko, a Professional Law Corporation is allowed the following fees and expenses as a professional of the Estate:
>
> Anthony D. Johnston and Fores Macko, a Professional Law Corporation, Professional employed by the Trustee
>
> Fees in the amount of $2,257.00
> Expenses in the amount of $32.64,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Trustee.
>
> **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.

8. **11-93728-E-12** **JOE/DELMA CARMO** **MOTION FOR ENTRY OF DISCHARGE**
TOG-15 **Thomas Gillis** **7-5-17 [137]**

Final Ruling: No appearance at the August 24, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 5, 2017. By the court's calculation, 50 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Entry of Discharge is granted.

The Motion for Entry of Discharge has been filed by Joe Carmo and Delma Carmo ("Debtor"). With some exceptions, 11 U.S.C. § 1228 permits the discharge of debts provided for in a 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 7, 2017, and no objection was filed within the specified thirty-day period. *See* FED. R. BANKR. P. 5009. The order approving final report and discharging the trustee was entered on July 13, 2017. Dckt. 141. The entry of an order approving the final report is evidence that the estate has been fully administered. *See In re Avery*, 272 B.R. 718, 729 (Bankr. E.D. Cal. 2002).

Debtor's Declaration (Dckt. 139) certifies that Debtor:

A. has completed the plan payments;

B. does not have any delinquent domestic support obligations;

C. 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;

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

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

There being no objection, 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 Joe Carmo and Delma Carmo ("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 Joe Carmo and Delma Carmo in this case.

9. **17-90344-E-7** **ERNESTO ORTEGA** **MOTION TO AVOID LIEN OF GMAC LLC**
TPH-1 **Thomas Hogan** **8-8-17 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2017. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of GMAC LLC fka General Motors Acceptance Corporation ("Creditor") against property of Ernesto Ortega ("Debtor") commonly known as 2441 Carnival Drive, Turlock, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $43,187.44. An abstract of judgment was recorded with Stanislaus County on April 8, 2016, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $268,000.00 as of the date of the petition. The unavoidable consensual liens that total $208,699.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 12. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $100,000.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of GMAC LLC fka General Motors Acceptance Corporation, California Superior Court for Stanislaus County Case No. 638643, recorded on April 8, 2016, Document No. 2016-0025228-00, with the Stanislaus County Recorder, against the real property commonly known as 2441 Carnival Drive, 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.

10. **17-90251-E-7** **WAREN/BARBARA SMITH** **MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR COLDWELL BANKER AND HADLEY REAL ESTATE SERVICES, REALTOR(S)**
SCB-3 **Patrick Greenwell** **8-3-17 [29]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on August 3, 2017. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Gary Farrar, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 6075 Crackerjack Creek Road, Portola, California ("Property").

The proposed purchaser of the Property is Joseph Couto, and the terms of the sale are:

A. $25,000.00 purchase price;

B. All cash offer;

C. Initial deposit of $1,000.00;

D. Buyer and Seller to pay equally for escrow fee and owner's title insurance policy;

E. Seller to pay county transfer tax;

F. Closing costs of $500.00;

G. Ten percent realtors' commission to be split as follows—

1. Coldwell Banker—Bob Lindquist $1,250.00, and

2. Hadley Real Estate Services $1,250; and

H. Balance of $22,000.00 to the Estate.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the agreed-upon purchase price is equal to the amount that the Property was valued at by Bob Lindquist, the Trustee's realtor. Dckt. 32 at 2:8.

Movant has estimated that a ten percent broker's commission from the sale of the Property will equal approximately $2,500.00, half of which will go to Bob Lindquist, the realtor employed by the court for the Estate. *See* Dckt. 24. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a five percent commission of $1,250.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Gary Farrar, the Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gary Farrar, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Joseph Couto or nominee ("Buyer"), the Property commonly known as 6075 Crackerjack Creek Road, Portola, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $25,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibits C & D, Dckt. 33, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

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

D. The Trustee is authorized to pay a real estate broker's commission in an amount equal to five percent of the actual purchase price upon consummation of the sale. The five percent commission shall be paid to the Trustee's broker, Bob Lindquist.

11. **14-91565-E-7** **RICHARD SINCLAIR** **MOTION FOR COMPENSATION FOR**
HSM-14 **Pro Se** **PMZ REAL ESTATE, REALTOR(S)**
7-27-17 [657]

Final Ruling: No appearance at the August 24, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (**requiring twenty-one days' notice being applicable only when requested fees exceed $1,000.00**); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

PMZ Real Estate, the Real Estate Consultant ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 16, 2016, through June 20, 2016. The order of the court approving employment of Applicant was entered on February 11, 2016. Dckt. 396. Applicant requests fees in the amount of $935.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature,

the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including providing professional consulting services about property value. The estate has $53,252.13 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 were reasonable.

FEES REQUESTED

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

Real Estate Consulting: Applicant spent 8.5 hours in this category. Applicant consulted with the Trustee about the value of 8212 Oak View Drive, Oakdale, California; inspected the property; performed transaction and valuation research; advised the Trustee about the property's value; and researched transaction and valuation information concerning comparable properties.

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**
Bob Brazeal	8.50	$110.00	$935.00
	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			$935.00

FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $935.00 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.

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 PMZ Real Estate ("Applicant"), Real Estate Consultant 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 PMZ Real Estate is allowed the following fees and expenses as a professional of the Estate:
>
> PMZ Real Estate, Professional employed by the Trustee
>
> Fees in the amount of $935.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Trustee
>
> **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.

12. **14-91565-E-7** **RICHARD SINCLAIR** **MOTION FOR COMPENSATION FOR**
HSM-15 **Pro Se** **SUGAR PINE REALTY, INC., REALTOR(S)**
7-27-17 [663]

Final Ruling: No appearance at the August 24, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (**requiring twenty-one days' notice being applicable only when requested fees exceed $1,000.00**); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Sugar Pine Realty Inc., the Real Estate Consultant ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 4, 2016, through February 15, 2016. The order of the court approving employment of Applicant was entered on March 3, 2016. Dckt. 411. Applicant requests fees in the amount of $495.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature,

the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including consulting with the Trustee about the value of real property located at 22734 Black Hawk Drive, Twain Harte, California. The estate has $53,252.13 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 were reasonable.

FEES REQUESTED

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

Real Estate Consulting: Applicant spent 4.5 hours in this category. Applicant inspected the real property, performed transaction and valuation research, and prepared an opinion letter for the Trustee about the real property's value.

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**
Brenda Ernst	4.5	$110.00	$495.00
	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			$495.00

FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $495.00 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.

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 Sugar Pine Realty Inc. ("Applicant"), Real Estate Consultant 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 Sugar Pine Realty Inc. is allowed the following fees and expenses as a professional of the Estate:
>
> Sugar Pine Realty Inc., Professional employed by the Trustee
>
> Fees in the amount of $495.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Trustee.
>
> **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.

13. **14-91565-E-7** **RICHARD SINCLAIR** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK AND MAROIS, LLP FOR AARON A. AVERY, TRUSTEE'S ATTORNEY(S)**
HSM-13 **Pro Se** **7-27-17 [651]**

Final Ruling: No appearance at the August 24, 2017 hearing is required.

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

Sufficient Notice Not 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 July 27, 2017. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) **(requiring twenty-one days' notice when requested fees exceed $1,000.00**); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is denied without prejudice.

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

Fees are requested for the period December 18, 2015, through August 24, 2017. The order of the court approving employment of Applicant was entered on January 7, 2016. Dckt. 358. Applicant requests fees in the amount of $144,848.50 and costs in the amount of $411.45. *See* Dckt. 670 (reducing requested costs to $411.45). Applicant anticipates receiving a distribution from the Trustee that is limited to residual funds after full payment to the Trustee and real estate professionals (approximately $45,799.39 before United States Trustee fees and bank fees).

INSUFFICIENT NOTICE PROVIDED

Applicant provided twenty-eight days' notice of the hearing on the Motion. Federal Rule of Bankruptcy Procedure 2002(a)(6) requires a minimum of twenty-one days' notice for a hearing to request compensation that exceeds $1,000.00, and Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days for parties to file written opposition, if any. Applicant provided seven fewer days than the minimum. Therefore, the Motion is denied without prejudice.

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 the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF APPLICANT PROVIDES SUFFICIENT NOTICE

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

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

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including investigating assets, disposing assets, litigating, analyzing claims, and performing general case administration. The estate has $45,799.39 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 were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 234.40 hours in this category, including 41.65 hours billed at no charge. Applicant performed case initiation activities, including conflicts analysis, and drafting of employment applications for Applicant and other professionals; advised the Trustee in connection with Debtor's initial non-appearance at the First Meeting of Creditors; attended the First Meeting of Creditors and questioned Debtor; reviewed various dates and deadlines in the case and related cases; evaluated the case, assets, schedules, and claims; arranged for recording a bankruptcy petition; reviewed the court's ruling concerning Debtor's alleged disability; reviewed transcripts, including Rule 2004 examination transcripts; analyzed issues concerning an Order to Show Cause about dismissal of the case and prepared the Trustee's response; analyzed legal, factual, and procedural issues related to executory contracts and potential executory contracts, and drafted and prosecuted a motion to reject lease and extend assumption/rejection deadline for other contracts; reviewed issues with the Trustee related to his inspection of numerous real property assets; analyzed issues concerning Debtor's defective claims of exemptions; drafted motions to extend deadlines to object to exemptions and to discharge; drafted and prosecuted objections to Debtor's claim of exemption covering alleged personal injury claims; advised and represented the Trustee in his development of case strategy for asset administration, including in review of pre-petition transfers; and advised and represented the Trustee in connection with contested bankruptcy case status conference, attended personally.

Asset Investigation: Applicant spent 46.50 hours in this category, including 1.25 hours billed at no charge. Applicant performed an initial review of documents and information concerning the case and assets; attended meetings in Modesto with interested parties; advised the Trustee concerning a lack of documentation produced by Debtor; performed research concerning litigation assets; research issues about executory contracts; advised the Trustee about lack of cooperation from Debtor throughout the case; analyzed pre-petition real estate transactions; advised the Trustee in connection with Rule 2004 examination of Debtor scheduled in Sacramento; advised and represented the Trustee regarding settlement negotiations; analyzed issues concerning Debtor's dissolution case; and researched and advised the Trustee in connection with malpractice and receivable claims.

Asset Disposition: Applicant spent 103.80 hours in this category. Applicant analyzed executory contracts and lease issues; analyzed legal and factual issues related to Chinese Camp ranch, and various transfers; advised and represented the Trustee in connection with Debtor's legal practice receivables, including in communications with counsel for Debtor's sister; analyzed various settlement issues in the case; drafted settlement agreements with CEMG/Katakis and Deutsche Bank; drafted and prosecuted motions to approve settlement agreements; advised the Trustee concerning non-bankruptcy litigation related to settlements; represented the Trustee in connection with Debtor's efforts to compel abandonment of assets; advised and represented the Trustee in connection with performance matters related to settlement agreements; limited

exemption-related activities relevant to asset disposition; and advised and represented the Trustee concerning Debtor's motion for reconsideration of compromise motion.

Litigation: Applicant spent 123.80 hours in this category, including 6.70 hours billed at no charge. Applicant analyzed legal, procedural, and factual issues related to matters involving Debtor, including actions in bankruptcy court, district court, superior court, and court of appeals; advised the Trustee concerning litigation matters, estate's interests in litigation, and positions of interested parties; monitored relevant litigation; represented the Trustee in negotiations with adverse parties; prepared stipulations to extend dates and deadlines in Deutsche Bank appeal pending in the Third District Court of Appeals; and reviewed pleadings filed by Debtor concerning the appeal.

Discovery: Applicant spent 0.20 hours in this category. Applicant e-mailed the Trustee regarding Debtor's failure to attend hearing on contempt motion or Rule 2004 examination.

Claims: Applicant spent 1.50 hours in this category, including 0.40 hours billed at no charge. Applicant analyzed issues regarding proofs of claims, including claims of Katakis/CEMG, Deutsche Bank, and the United States Trustee, among others.

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:

Category	**Names of Professionals and Experience**	**Time**	**Amount**	**No Charge**
Asset Investigation	Aaron Avery	42.70	$12,833.50	1.00
	Howard Nevins	3.80	$1,520.00	0.00
Asset Disposition	Aaron Avery	95.00	$27,732.00	6.70
	Howard Nevins	8.80	$3,400.00	0.30
Litigation	Aaron Avery	108.10	$31,516.00	6.70
	Howard Nevins	10.10	$4,040.00	0.00
	M. William	5.60	$1,820.00	0.00
Discovery	Aaron Avery	0.20	$62.00	0.00

General	Aaron Avery	208.90	$54,121.00	34.65
	Howard Nevins	25.50	$7,400.00	7.00
Claims	Aaron Avery	0.80	$124.00	0.40
	Howard Nevins	0.70	$280.00	0.00
	Total Fees for Period of Application			$144,848.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $411.45 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Mileage		$290.38
Parking		$4.00
Certified Copy of Chapter 11 Petition		$37.50
Stanislaus County Recording Fee		$26.00
Tuolomne County Recording Fee		$23.00
Postage		$30.57
Total Costs Requested in Application		$411.45

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $144,848.50 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.

Costs & Expenses

First and Final Costs in the amount of $411.45 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	$144,848.50
Costs and Expenses	$411.45

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 the Trustee
>
> Fees in the amount of $144,848.50
> Expenses in the amount of $411.45,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Trustee.
>
> **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.

14. 16-90770-E-7 ADJ-4 | **RICHARD/JOAN WINTER** **Patrick Greenwell** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES - MACKO A PROFESSIONAL LAW CORPORATION FOR ANTHONY D. JOHNSTON, TRUSTEES ATTORNEY(S)** **8-2-17 [47]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 2, 2017. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

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

Fees are requested for the period January 5, 2017, through August 2, 2017. The order of the court approving employment of Applicant was entered on January 7, 2017. Dckt. 19. Applicant requests fees in the amount of $1,842.50 and costs in the amount of $53.37.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preparing employment and compensation applications and moving successfully to sell personal property at a public auction. The estate has $4,457.00 of unencumbered monies to be administered as of the filing of the application. Dckt. 49 at 2:9–10. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 3.20 hours in this category. Applicant prepared employment and compensation applications.

Asset Disposition: Applicant spent 3.50 hours in this category. Applicant prepared an application to employ an auctioneer and prepared a motion to sell a vehicle at a public auction.

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**
Anthony Johnston	6.70	$275.00	$1,842.50
	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			$1,842.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $53.37 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.10 / page	$16.95
Postage		$32.57
Preparation of motion to employ auctioneer		$3.85
		$0.00
Total Costs Requested in Application		$53.37

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $1,842.50 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.

Costs & Expenses

Part of Applicant's request for reimbursement of costs includes $3.85 for "Preparation of motion to employ auctioneer." Exhibit C, Dckt. 54. The court cannot determine from Applicant's vague description what cost was actually incurred that may be reimbursable. The court disallows $3.85 of the requested costs.

First and Final Costs in the amount of $49.52 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	$1,842.50
Costs and Expenses	$49.52

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 Anthony Johnston ("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 Anthony Johnston is allowed the following fees and expenses as a professional of the Estate:
>
> Anthony Johnston, Professional employed by the Trustee
>
> Fees in the amount of $1,842.50
> Expenses in the amount of $49.52,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Trustee.
>
> **IT IS FURTHER ORDERED** that costs of $3.85 are not allowed by the court.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

15. **16-90083-E-7** **VALLEY DISTRIBUTORS, INC.** **MOTION TO PAY**
SSA-16 **Iain Macdonald** **7-19-17 [312]**

Final Ruling: No appearance at the August 24, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2017. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Administrative Expenses is granted.

Irma Edmonds, the Chapter 7 Trustee, ("Movant") requests payment of administrative expenses in the amount of $4,000.00 to Pension Management Consultants, Inc., to process and terminate Debtor's pension plan.

DISCUSSION

Movant argues that she discovered that Debtor had an ongoing pension plan (401(K) Profit Sharing Plan and Trust) through John Hancock that was being administered by Pension Management Consultants. Movant states that Debtor is not operating, and the Trustee is winding up financial affairs. Movant wants to terminate the pension plan and pay any closing costs.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant is winding up administering the Estate, and Debtor has no need for a pension plan now that it is not operating.

Movant having demonstrated that the expenses are necessary, the court finds that Movant paying to terminate Debtor's pension plan is necessary and provides benefit to the Estate. The Motion is granted, and Movant is authorized to pay Pension Management Consultants, Inc., its administrative expenses in the amount of $4,000.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by Movant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Trustee is authorized to pay Pension Management Consultants, Inc. $4,000.00 as an administrative expense of the Chapter 13 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

16.	**16-90083-E-7 SSA-17**	**VALLEY DISTRIBUTORS, INC. Iain Macdonald**	**MOTION FOR ADMINISTRATIVE EXPENSES 7-19-17 [317]**

Final Ruling: No appearance at the August 24, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2017. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Administrative Expenses is granted.

Irma Edmonds, the Chapter 7 Trustee ("Movant"), requests payment of administrative expenses for the following:

A. $822.00 minimum due to the Franchise Tax Board ("FTB") for 2015 return, and

B. $824.00 minimum due to the FTB for 2016 return.

Movant also requests authority to pay future minimum taxes of $824.00 per year through the remaining term of this case.

DISCUSSION

Movant argues that the Ninth Circuit has ruled that administrative expenses for post-petition tax liabilities of an estate shall be allowed after notice and hearing. Dckt. 317 at 2:17.5–21.5 (citing *Dreyfuss v. Cory (In re Cloobeck)*, 788 F.3d 1243 (9th Cir. 2015).

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant has established that there are tax liabilities that the Estate owes for the 2015 and 2016 tax returns. Additionally, Movant states in her Declaration that paying at least $824.00 per year for the remainder of this case "will maintain the corporation in good standing, [and] avoid penalties and future interest charges." Dckt. 319 at 3:3–4.

Movant having demonstrated that the expenses were necessary, the court finds that Movant paying tax liabilities is necessary for Debtor and provides benefit to the Estate. The Motion is granted, and Movant is authorized to pay the FTB its administrative expenses in the amounts of $822.00 for the 2015 tax return and $824.00 for the 2016 tax return. Additionally, Movant is authorized through the remainder of this case to pay future tax liabilities to the FTB in the minimum amount of $824.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by Movant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Movant is authorized to pay the Franchise Tax Board $822.00 for 2015 tax liabilities and $824.00 for 2016 tax liabilities as administrative expenses of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).
>
> **IT IS FURTHER ORDERED** that Movant is authorized to pay future tax liabilities that become due to the Franchise Tax Board in the minimum amount of $824.00.

17. **10-93085-E-7** **SUSAN SAVAGE** **MOTION TO AVOID LIEN OF BATISTA S. VIEIRA & DOLORES M. VIEIRA, TRUSTEE UNDER THE BATISTA AND DOLORES VIEIRA REVOCABLE LIVING TRUST**
TOG-2 **Thomas Gillis** **7-20-17 [37]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on July 20, 2017. By the court's calculation, 35 days' notice was provided. 28 days' notice is required. However, as discussed below, it does appear that the pleadings have been served on the Creditor, but only on an attorney who represented the Creditor in the state court action.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Batista S. Vieira and Dolores M. Vieira, trustee under the Batista and Dolores Vieira Revocable Living Trust ("Creditor") against property of Susan Savage ("Debtor") commonly known as 1828 Margate Way, Modesto, California ("Property").

CONFLICTING PROPERTY ADDRESSES

The Motion, judgment lien, and Debtor's Declaration reference a property address of 1828 Margate Way, Modesto, California. Dckt. 37 at 22.5; Exhibit A, Dckt. 40; Dckt. 39 at 26.

However, Debtor's Schedule A lists Debtor having an interest in real property identified as 1824 Margate Way, Modesto, California. Dckt. 1 at 8. On her Petition, Debtor lists her street address as 1828 Margate Way, Modesto, California.

On Schedule B Debtor lists having personal property consisting of "Furniture & Household Goods," "Clothing," "Jewelry," and a "2003 Chevy Tahoe," located at 1824 Margate Way. *Id.* at 9–11. Debtor also states on Schedule B having a "2008 Kia" and a "2001 Mits" (identified as "Daughter's Car") located at 1828 Margate Way. *Id.* at 11.

On Schedule C, Debtor claims an exemption under California Code of Civil Procedure § 703.140(b)(5) for "Single Family Home" but fails to identify the property in which the homestead exemption is claimed. *Id.* at 13. The only real property identified on Schedule A is 1824 Margate Way, stated to be a "Single Family Home." *Id.* at 8. No interest in and claim of exemption for 1828 Margate Way is listed on Schedule C. Therefore, no exemption of Debtor's has been impaired, and Debtor cannot use the provisions of 11 U.S.C. § 522(f) according to her schedules.

It also appears that the service of the Motion and supporting pleadings is not sufficient. The Certificate of Service states that the Motion and supporting pleadings have been served only on Mark S. Carlquist, Esq., the attorney for Creditor in the state court action in which the judgment at issue was entered. Federal Rule of Bankruptcy Procedure 7004(b)(1) requires that if service is to be by mail, that it be sent to the individual at that individual's dwelling or regular place of business. FN.1. There is no showing that Mr. Carlquist is the agent for service of process for Creditor. FED. R. BANKR. P. 7004(b)(8).

FN.1. Federal Rule of Bankruptcy Procedure 9014(b) makes the service provisions of Rule 7004 applicable for Contested Matters.

Absent effective service, any order of the court purporting to avoid the judgment lien would itself be void, failing the basic requirements of Due Process.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.