UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 3, 2020 at 10:30 a.m.

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1. **10-27435-E-7** **THOMAS GASSNER** — **CONTINUED STATUS CONFERENCE**
19-2038 — **RE: AMENDED COMPLAINT**
GASSNER V. GASSNER ET AL — **7-12-19 [20]**

THIS STATUS CONFERENCE WILL BE HEARD ON THE COURT'S 11:00 CALENDAR IN CONJUNCTION WITH THE OTHER MATTERS IN THE GASSNER CASE ON THAT CALENDAR

Plaintiff's Atty: Holly A. Estioko
Defendant's Atty:
Scott G. Beattie [Carol L. Gassner; Alfred M. Gassner]
Charles L. Hastings [Laura Strombom]

Adv. Filed: 3/12/19
Answer: 4/11/19 [Laura Strombom]
4/11/19 [Alfred M. Gassner; Carol L. Gassner]
Amd. Cmplt. Filed: 7/12/19
Answer: 8/5/19 [Alfred M. Gassner; Carol L. Gassner]
8/13/19 [Laura Strombom]
Amd. Answer: 8/13/19 [Alfred M. Gassner; Carol L. Gassner]
8/26/19 [Alfred M. Gassner; Carol L. Gassner]

Nature of Action:
Sanctions for willful violation of automatic stay (against Settlors and Strombom)
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
Declaratory judgment
Injunctive relief - other

Notes:
Continued from 8/13/20

2. **10-27435-E-7 THOMAS GASSNER**
19-2006 RHS-1
HUSTED V. MEPCO LABEL SYSTEMS

CONTINUED ORDER FOR DETERMINATION OF CORE OR NON-CORE STATUS OF COUNTS 1 AND 2 OF COUNTERCLAIM RELATING TO STOCK ASSERTED TO BE PROPERTY OF THE BANKRUPTCY ESTATE, ETC.
7-10-20 [129]

THIS MOTION WILL BE HEARD ON THE COURT'S 11:00 CALENDAR IN CONJUNCTION WITH THE OTHER MATTERS IN THE GASSNER CASE ON THAT CALENDAR

Due to the length of and it being in process at the time this calendar is posted, the tentative ruling on this matter will be send directly to counsel for the parties.

3.	**16-21585-E-11 FWP-40**	**AIAD/HODA SAMUEL Pro Se**	**CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES 11-9-18 [1292]**

The Motion for Administrative Expenses is xxxxxx.

SEPTEMBER 3, 2020 HEARING

Chapter 11 Trustee filed a Status Report on August 27, 2020. Dckt. 1488. As a preliminary matter, neither the Trustee nor the Plan Administrator are aware of any new items to be addressed although the Trustee intends to file a new motion to help bring resolution to the Debtors' litigation and delay. *Id.*, p. 3:18-20.

Trustee the following updates regarding the status of several of the open items as the Plan Administrator continues to diligently work on the administration of Debtor's estate since the court was last updated in April 2020:

A. Completing Final Tax Returns and Potential Tax Refunds- Due to delays in closing the case, the Plan administrator is currently working with his professionals to prepare the Estate's tax returns for 2019. *Id.*, p. 4:24-26.

B. Resolving the Brake Masters Class 3A Claim- However, the Superior Court has entered a final order allowing $79,052.10 in additional attorneys' fees and costs on appeal. Brake Masters served a Notice of Entry of this Order on June 5, 2020. Since the time period for the Debtors to appeal the latest Superior Court ruling, the Plan Administrator expects to pay Brake Masters the $79,052.10 additional attorneys' fees and costs for the appeal from the remaining balance of the funds reserved for the Brake Masters' claim pursuant to the Plan. *Id.,* p. 5:16-18; 20-24.

C. Resolving the USA Class 2A Secured Claim- While Hoda Samuel's challenges to the USA's enforcement of its judgment have been denied, she has now filed a motion challenging her criminal conviction, which continues to delay resolution of the USA Claim. *Id.,* p. 7:14-17.

D. Administering Final Assets: Residential rental properties located at 209 Prairie Circle and 148 Estes Way, in Sacramento, California- The tenants of the two properties have experienced hardship and loss of income due to the Covid19 pandemic. The Plan Administrator is working diligently to collect rent from these tenants by setting up deferred payment plans. Both tenants are cooperating and currently paying additional monthly rent amounts to catch up on delinquent rent payments that were missed earlier in the year. *Id.,* p. 8:17-23.

Counsel for the Plan Administrator requested that in light of the continuing litigation in the District Court and the Ninth Circuit, this matter be further continued.

At the September 3, 2020 Status Conference, **xxxxxxxxx**

APRIL 30, 2020 HEARING

This Chapter 11 Case has continued forward, with a series of status reports filed by the Plan Administrator, former Chapter 11 Trustee in this case. The court reviews them below collectively, as the issues overlap.

At the April 30, 2020 Status Conference, Counsel for the Plan Administrator requested that in light of the continuing litigation in the District Court and the Ninth Circuit, this matter be further continued.

In light of the ongoing litigation in other courts that impact the expenses sought, the hearing is continued.

Status Conference re: Debtor Aiad Samuel filed document titled "Failure, False, and Fake Bankruptcy Services and More, See Record." Order, Dckt. 1456

On March 10, 2020, the court issued its order for a status conference concerning documents filed by Aiad Samuel. While the Document does not rise to the level of a pleading that could be construed as a motion under the Federal Rules of Bankruptcy Procedure, it set the Status Conference to afford Debtor Aiad Samuel to address the court.

Plan Administrator Status Report

The Plan Administrator has filed a Status Report for the April 30, 2020 Conference. Dckt. 1462. The Plan Administrator states that he was not provided with a copy of the notice by the Debtor, it having been sent to the Debtor's residence. Having notice, the Plaintiff Administrator reports as to the actions he has taken with respect to these mattes.

In December 2019, the Plan Administrator went to the property and met with the tenant. The tenant stated that the car was his son's and it would be removed.

The Plan Administrator returned in January 2020. The car had not been moved, but the tenant again stated it would be moved and she was "working to get the key." Additionally, that tenant would get the damaged fence fixed. The Plan Administrator had a handyman go to the property to inspect the fence.

In March 2020, the vehicle still had not been removed and the tenant had not met with the handyman. This is when the Plan Administrator first learned of the City notice. On March 23, 2020, the Plan Administrator received confirmation that the vehicle had been removed.

In April 2020, the handyman advised the Plan Administrator that he was quarantined. The

Plan Administrator made arrangements with the neighbor to have the fence fixed, with the neighbor splitting the costs. The Plan estate's share is $617.00.

Debtor Aiad Samuel Status Report

On April 29, 2020, a Status Report from Debtor Aiad Samuel was filed. In the Report Mr. Samuel makes a number of statements asserting misconduct by the Chapter 11 Trustee, that Trustee's counsel, and the court (appearing to reference the prior judge to whom this case was assigned). It is asserted that properties were intentionally damaged to get the insurance monies, that properties have not been properly maintained, and that bills and taxes relating to properties were not paid.

Mr. Samuel also makes reference to the court not taking action to protect the property, not taking action on the wrongs he identified. He states that no action was taken because "the court (J) want to destroyed all my properties to buy it to themself, and this prvite plan at Sacramento, Ca. And now you know WHY? [sic]."

He continues, asserting that the Debtors' assets were sold for pennies on the dollar, that the Trustee and his attorney are deleting records, and that he and witnesses are suffering retaliation, harassment, discrimination, and harm. He then states:

> This is part of evidence until YOU and Chief Judge handle my case investigation for my safety and witness safety and no more harm.

Debtor Report, p. 3. Through the Report he makes reference to as shown in the court record and files, as if he is directing the court to investigate, assemble, and advocate for Debtors.

In a prior hearing, the court had a long discussion with Mr. Samuel that the court was not the "administrator" or cases, did not undertake investigations, and did not prosecute cases for one party or the other. That is was necessary for the Debtors to obtain counsel to represent their interests, since they believe that they have been "thwarted by the system" and unable to so do. The court cannot undertake such representation or investigation.

Mr. Samuel states he has the right to go to "a different court, media and more - - - - -." *Id.* He may so properly exercise his rights.

Debtor concludes, stating that he is requesting to dismiss the bankruptcy case, have all of his assets returned. He is request to get the Trustee and Trustee's attorney thrown out of the case.

Updated Status Report on Motion for Allowance of Administrative Expense For Scott Sackett, Pre-Confirmation Chapter 11 Trustee

The Pre-Confirmation Trustee reports that the District Court Action to which the expenses relate continues. At this time, the amount of the expense cannot be determined.

Additionally, the Debtor continues with the appeal of a state court action, which may result in the increase in the claim of the creditor in that proceeding. There is also an action in the District Court effecting the United States' claim this case, which will be in favor of the United States. The Plan

Administrator anticipates further appears by Debtor, which will delay the payment on the claim of the United States.

The report discusses the management of the Plan estate's assets.

Updated Status Report on Motion for Allowance of Administrative Expense For Counsel to the Pre-Confirmation Chapter 11 Trustee

Counsel's report parallels the report of the Pre-Confirmation Trustee.

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

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

The hearing on the Motion for Administrative Expense having been presented to court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxxx**.

4.	**16-21585-E-11 FWP-41**	**AIAD/HODA SAMUEL Pro Se**	**CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES 11-9-18 [1298]**

The Motion for Administrative Expenses is xxxxx.

SEPTEMBER 3, 2020 HEARING

Chapter 11 Trustee filed a Status Report on August 27, 2020. Dckt. 1490. As a preliminary matter, neither the Trustee nor the Plan Administrator are aware of any new items to be addressed although the Trustee intends to file a new motion to help bring resolution to the Debtors' litigation and delay. *Id.*, p. 3:18-20.

Trustee the following updates regarding the status of several of the open items as the Plan Administrator continues to diligently work on the administration of Debtor's estate since the court was last updated in April 2020:

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paying additional monthly rent amounts to catch up on delinquent rent payments that were missed earlier in the year. *Id.,* p. 8:17-23.

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At the September 3, 2020 Status Conference, **xxxxxxxxx**

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Mr. Samuel also makes reference to the court not taking action to protect the property, not taking action on the wrongs he identified. He states that no action was taken because "the court (J) want to destroyed all my properties to buy it to themself, and this prvite plan at Sacramento, Ca. And now you know WHY? [sic]."

He continues, asserting that the Debtors' assets were sold for pennies on the dollar, that the Trustee and his attorney are deleting records, and that he and witnesses are suffering retaliation, harassment, discrimination, and harm. He then states:

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Debtor Report, p. 3. Through the Report he makes reference to as shown in the court record and files, as if he is directing the court to investigate, assemble, and advocate for Debtors.

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Mr. Samuel states he has the right to go to "a different court, media and more - - - - -." *Id.* He may so properly exercise his rights.

Debtor concludes, stating that he is requesting to dismiss the bankruptcy case, have all of his assets returned. He is request to get the Trustee and Trustee's attorney thrown out of the case.

Updated Status Report on Motion for Allowance of Administrative Expense For Scott Sackett, Pre-Confirmation Chapter 11 Trustee

The Pre-Confirmation Trustee reports that the District Court Action to which the expenses relate continues. At this time, the amount of the expense cannot be determined.

Additionally, the Debtor continues with the appeal of a state court action, which may result in the increase in the claim of the creditor in that proceeding. There is also an action in the District Court effecting the United States' claim this case, which will be in favor of the United States. The Plan

Administrator anticipates further appears by Debtor, which will delay the payment on the claim of the United States.

The report discusses the management of the Plan estate's assets.

Updated Status Report on Motion for Allowance of Administrative Expense For Counsel to the Pre-Confirmation Chapter 11 Trustee

Counsel's report parallels the report of the Pre-Confirmation Trustee.

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

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

The hearing on the Motion for Administrative Expense having been presented to court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxx**.

5. **20-20175-E-11 UST-1** **HERBERT MILLER** **Judson Henry**

MOTION TO DISMISS CASE AND/OR MOTION FOR IMPOSITION OF A ONE-YEAR BAR AGAINST THE FILING OF A NEW CASE
7-28-20 [108]

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 in possession, Debtor in possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice on July 28, 2020. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Case 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 Dismiss Case is xxxxxx.

The United States Trustee, Tracy Hope Davis ("U.S. Trustee"), filed this Motion seeking dismissal of the Chapter 11 case pursuant to 11 U.S.C. § 1112(b)(1) and the imposition of a one-year bar against filing a new case pursuant to 11 U.S.C. § 349(a).

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. U.S. Trustee states she has established cause to dismiss this chapter 11 case because Debtor appears to have filed the case in bad faith under the totality of the circumstances, due to inaccurate and misleading schedules and statements, serial filings and dismissals, and egregious behavior. *See In re Prometheus Health Imaging, Inc.*, 2015 WL 6719804, at *4 (citing *In re Welsh*, 711 F.3d 1120, 1129 n.45 (9th Cir. 2013) and *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999)).

2. U.S. Trustee states Debtor is a serial filer of bankruptcy with twelve prior bankruptcy cases filed by Debtor or entities owned by Debtor since

2009, ten of which were dismissed with no confirmed plan.

3. U.S. Trustee states Debtor failed to accurately disclose income or expenses, implicating bad faith acting. *See In re Cortez*, 349 B.R. 608, 614-15 (Bankr. N.D. Cal. 2006). Debtor stated he owned three real properties on his amended Schedule A/B. He also stated on his amended Schedule J that he pays insurance on these properties. However, at the Meeting of Creditors, Debtor admitted that they were each foreclosed in 2018 and he does not have insurance on the properties.

   U.S. Trustee states Debtor did not disclose any interest or connection to two separate companies (Hillside Holdings, Inc. or M. D. & A. Holding Company, Inc.) on his amended Schedule A/B or amended Statement of Financial Affairs despite claiming to be CEO of the entities in 2018 bankruptcy case filings. Debtor did not disclose any interest or connection to Finley and Diamond, Inc. on his amended Schedule A/B or amended Statement of Financial Affairs. Debtor claims his son owns the entity and he is a "manager-jeweler" and "independent jewelry contractor" for the company. However, documents obtained from the California Secretary of State indicate Debtor is an officer and director of the entity.

   Debtor has claimed monthly income of $8,500 on his amended Schedule I for the instant case, yet his total income in 2019 was $14,000.

   U.S. Trustee states Debtor did not budget any amounts on his amended Schedule J for rent or home mortgage payments, or secured payments on his two vehicles.

4. At the Meeting of Creditors, Debtor testified that real estate business was premised upon locating distressed properties and attempting to obtain concessions from the mortgage holders, by challenging the validity of the related deeds of trust and assignments.

   Debtor further admitted that Debtor's business entities filed for bankruptcy merely for the purpose of "get[ting] them on their automatic stay for that the banks would have to prove how they became a creditor or got it and what they paid for it."

5. U.S. Trustee states Debtor's pre- and post-petition conduct constitutes egregious behavior, indicating bad faith acting. *See In re Luxford*, 368 B.R. 63, 74 (Bankr. D. Mont. 2007). Debtor's testimony at the 341 Meeting and his serial filing of unproductive bankruptcy cases indicate Debtor is using bankruptcy as a tool in negotiations with mortgage holders. In addition, Debtor has failed to pay quarterly fees of $651.10 for first quarter of 2020.

6. Dismissal of the case is in the best interest of the creditors because

Debtor has used bankruptcy in bad faith to avoid foreclosure to the detriment of secured creditors with liens on mortgage properties.

Motion, Dckt. 108.

U.S. Trustee filed the Declaration of Carla K. Cordero, U.S. Trustee's Bankruptcy Auditor/Analyst, to provide testimony to properly authenticate the various exhibits presented by the U.S. Trustee in support of the factual grounds asserted. Declaration, Dckt. 110.

Debtor-in-Possession's Opposition

On August 20, 2020, Debtor-in-Possession ("DIP") filed an Opposition. Dckt. 126. Debtor in Possession asserts the following:

A. DIP argues that U.S. Trustee failed to assert grounds, facts, or legal authority in support of the dismissal, as required by 11 U.S.C. 1112(b). The *In re Leavitt* case cited by the U.S. Trustee states a rule regarding bad faith as cause for dismissal specifically under chapter 13 cases. 171 F.3d 1219, 1224 (9th Cir. 1999). *In re Welsh*, also cited by the U.S. Trustee, considers dismissal for bad faith in a chapter 13 case as well. 711 F.3d 1120, 1122 (9th Cir. 2013). While the U.S. Trustee cites *In re Prometheus Health Imaging, Inc.* in order to apply the totality of the circumstances test to a chapter 11 case, the opinion of that case states that it is not appropriate for publication and has "no precedential value." 2015 WL 6719804. Therefore, the U.S. Trustee has not provided a legal basis for the relief it requests.

B. DIP further argues the facts of the case do not demonstrate bad faith. Debtor asserts that the instant case is in essence nothing more than an extension of two of the most recent prior cases he has filed as an individual, in that the claims, assets, and issues are essentially the same.

Regarding the eight bankruptcy cases filed as entities, DIP asserts that he was not involved in causing the commencement of three of them. DIP states that of the remaining five, three of them relating to Abacus Investment Group are essentially one case, which is why they were all from 2017. DIP further states that he does not recall causing the filing of the case with Hillside Holdings, Inc. but he may have. He asserts that this case and the case with M D & A Holding Company, Inc. were both in attempts to reorganize the same condominium property in Las Vegas, Nevada. DIP claims these business cases were most likely filed by third parties and did not authorize the filings or his signature on said filings. Therefore, DIP argues his conduct does not constitute that of a serial filer and he has not acted in bad faith.

C. DIP argues that his schedules and statements of financial affairs were not incomplete or inaccurate. DIP states that the discrepancy of his income for 2019 was based on Debtor's income limited to Social Security.

Where as Debtor's projected income includes Social Security, monthly take home pay and net income from rental property/operating a business. DIP then adds that the discrepancy and changes in expenses are due to the outbreak of COVID-19. DIP then asserts that U.S. Trustee is aware of this as it has been previously discussed in various status conferences.

DIP contends that the U.S. Trustee cannot assert he does not own three of the properties listed on his schedule because two of them are currently the subject of adversary proceedings regarding title. DIP also states that he truthfully believed the properties had insurance placed on them but only later learned insurance companies would not place insurance on properties due to DIP not being on title per the recorder's office. DIP adds that the U.S. Trustee is aware of the adversary proceedings.

DIP asserts that his schedule and statements of financial affairs did not disclose his connection to Finley and Diamond, Inc because this did not come into existence until February 2020, after his petition date. In addition, DIP states that as a director, he does not now and did not pre-petition have an ownership interest in the company.

D. Lastly, DIP states that he has paid his fees from the first quarter of 2020.

DISCUSSION

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

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1).

In reviewing the file in this Chapter 11 case, the court has a fundamental question for Counsel for the Chapter 11 Debtor in Possession - what is going to be the plan of reorganization in this case? In response, counsel explained **xxxxxxxxxx**

~~Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is dismissed.~~

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

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

~~The Motion To Dismiss filed by Tracy Hope Davis ("U.S. 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 granted, and the case is dismissed.~~

FINAL RULINGS

6.	**19-26625-E-7** **STC-1**	**PATRICK/SUSAN HARRINGTON** **Stephen Cammack**	**MOTION TO AVOID LIEN OF TRI-ED DISTRIBUTION** **8-6-20 [60]**

Final Ruling: No appearance at the September 3, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on August 6, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Tri-Ed Distribution ("Creditor") against property of the debtor, Patrick James Harrington and Susan Elizabeth ("Debtor") commonly known as 1815 Venus Drive, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $43,260.06. Exhibit 4, Dckt. 64. An abstract of judgment was recorded with Sacramento County on October 11, 2017, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $329,000.00 as of the petition date. Dckt. 14. The unavoidable consensual liens that total $260,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 16. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $52,711.00 on

Amended Schedule C. Dckt. 40.

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 Patrick James Harrington and Susan Elizabeth ("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 Tri-Ed Distribution, California Superior Court for Sacramento County Case No. 34-2015-00174697, recorded on October 11, 2017, Document No. 201710112045, with the Sacramento County Recorder, against the real property commonly known as 1815 Venus Drive, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

7. **19-25248-E-7** **COACT DESIGNWORKS** **MOTION FOR COMPENSATION FOR**
ASF-2 **Jason Rios** **MICHAEL R. GABRIELSON,**
ACCOUNTANT(S)
7-27-20 [60]

Final Ruling: No appearance at the September 3, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 27, 2020. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Gabrielson & Company, the Accountant ("Applicant") for Alan S. Fukushima, the Chapter 7 Trustee ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 13, 2019, through July 23, 2020. The order of the court approving employment of Applicant was entered on September 20, 2019. Dckt. 35. Applicant requests fees in the amount of $29,111.50 and costs in the amount of $746.79.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that Applicant's services for the Estate include securing and examining Debtor financial records, preparing Federal and State corporation income tax returns, assisting Trustee in Workers Compensation audit, preparing W-2 forms, and administrative functions.

These services in going through the records and preparing amended and original tax returns resulted in the estate obtaining a federal tax refund of $82,159, utilizing CARES Act provisions.

The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Secured and Examined Debtor Financial, Tax, and Accounting Records: Applicant spent 29.3 hours in this category. Applicant assisted Trustee in reviewing and securing debtor financial and accounting records, visited debtor's storage locations to obtain and review financial, tax, and accounting documents; communicated with debtor CFO to discuss existing records and status of receivable collections.

Preparation of Federal and State Corporate Income Tax Returns: Applicant spent 27.0 hours in this category. Applicant prepared 2018 and 2019 federal and California corporation income tax returns; prepared Form 1139 and 2013 and 2015 tax returns to obtain $892,159 federal income tax refund under CARES Act.

Workers Compensation Audit: Applicant spent 9.3 hours in this category. Applicant assisted Trustee by preparing payroll, retirement plan, and other requested financial information and analyses for ongoing workers compensation auditor.

W-2 Forms: Applicant spent 4.9 hours in this category. Applicant prepared federal Forms W-2 for employee wages and withholding taxes, including review and reconciliation of payroll records and employee wage payments to bank statement to confirm actual wage payments and withholding.

Administrative Functions: Applicant spent 3.2 hours in this category. Applicant prepared accountant declaration and related employment documents for Trustee review; prepared first interim fee application with description of tax and accounting services

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Michael Gabrielson	73.7	$395.00	$29,111.50
	0	$0.00	$0.00
Total Fees for Period of Application			$29,111.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $746.79 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying Charges	$0.20	$126.80
Storage Rent to Access Records		$516.10
Postage		$103.89
		$0.00
Total Costs Requested in Application,		$746.79

In looking at the costs, Applicant states that they charge clients $0.20 a page for photocopies. Commonly, a cost of $0.10 per page is allowed. Applicant has not provided the court with evidene that his actual costs of photocopies is $0.20 a page in 2020. The Court reduces the photo copy charge to $0.10 a page, thus reducing costs to $63.40. This is without prejudice to Applicant documenting that t he actual cost for photocopies is more than $0.10 a page and that such higher amount is reasonable. [FN. 1]

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

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided.

First Interim Fees in the amount of $29,111.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First Interim Costs in the amount of $683.39 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$29,111.50
Costs and Expenses	$683.39

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gabrielson & Company ("Applicant"), Accountant for Alan S. Fukushima, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:
>
> Gabrielson & Company, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $29,111.50
> Expenses in the amount of $683.39,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

8. **20-21850-E-7** **ERIC/SUSIE TARGOWSKI**
Ryan Keenan

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAKKEN LAW FIRM FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)
7-28-20 [31]

Final Ruling: No appearance at the September 3, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 28, 2020. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Loris L. Bakken, 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 June 1, 2020, through September 3, 2020. The order of the court approving employment of Applicant was entered on June 7, 2020. Dckt. 20. Applicant requests fees in the amount of $3,360.00 and costs in the amount of $34.40.

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 can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by 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 Applicant's services for the Estate include general case administration and sale of property. Through the sale motion Applicant obtained an order allowing for the private sale of several vehicles, which generated overbids at the hearing, with approximately $12,000.00 (after the Debtor's exemptions) for the Estate. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 3.1 hours in this category. Applicant prepared fee agreement and employment application; reviewed deadlines to file motion, file a compaint objecting to Debtor's discharge, and to object Debtor's exemptions; prepared fee application.

Sale of Property: Applicant spent 8.1 hours in this category. Applicant reviewed valuations of Debtor's vehicles and reviewed communications with Debtor's counsel regarding interest in purchasing the nonexempt value of the vehicles; reviewed Nation Fleet's offer to purchase vehicles; prepared a sale agreement and communicated with Nationwide Fleet regarding agreement, at Trustee's direction; prepared an filed a motion for approval of sale and appeared at hearing by telephone.

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**
Loris L. Bakken	11.2	$300.00	$3,360.00
	0	$0.00	$0.00
Total Fees for Period of Application			$3,360.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $34.40 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$20.80
Copying	$0.10	$13.60
		$0.00
Total Costs Requested in Application		$34.40

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 $3,360.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $34.40 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7case.

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

Fees $3,360.00
Costs and Expenses $34.40

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Loris L Bakken ("Applicant"), Attorney for Gary Farrar, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence,

arguments of counsel, and good cause appearing,

IT IS ORDERED that Loris L. Bakken is allowed the following fees and expenses as a professional of the Estate:

Loris L. Bakken, Professional employed by the Chapter 7 Trustee

Fees in the amount of $3,360.00
Expenses in the amount of $34.40,

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

9. **09-35876-E-7 JLK-2** **ABDUL/THIRA FAROOQ** **James Keenan** **MOTION TO AVOID LIEN OF CALIFORNIA FUEL SUPPLY, INC. 7-27-20 [23]**

Final Ruling: No appearance at the September 3, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 27, 2020. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of California Fuel Supply, Inc. ("Creditor") against property of the debtor, Abdul Farooq and Thira Farooq ("Debtor") commonly known as 1329 Monroe Ct., Woodland, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $55,356.46. Exhibit A, Dckt. 26. An abstract of judgment was recorded with Yolo County on June 25, 2009, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $172,500.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $274,391.78 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $10.00 on Amended Schedule C. Dckt. 22.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Abdul Farooq and Thira Farooq ("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 California Fuel Supply, Inc., California Superior Court for Contra Costa County Case No. C09-00393, recorded on June 25, 2009, Document No. 2009-0020278-00, with the Yolo County Recorder, against the real property commonly known as 1329 Monroe Ct., Woodland, 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. **12-31680-E-7** **CHARLES LEMLEY** **MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A.**
HAW-1 **Helga White** **7-25-20 [27]**

Final Ruling: No appearance at the September 3, 2020hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 25, 2020. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capitol One Bank (USA) N.A. ("Creditor") against property of the debtor, Charles R. Lemley ("Debtor") commonly known as 22785 Placer Hills Road, Colfax, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $11,339.57. Exhibit A, Dckt. 30. An abstract of judgment was recorded with Placer County on January 26, 2012, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $144,714.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $272,151.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $12,000.00 on Amended Schedule C. Dckt. 26.

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 Charles R. Lemley ("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 Capitol One Bank (USA) N.A., California Superior Court for Placer County Case No. MCV0051901, recorded on January 26, 2012, Document No. 2012-0006683-00 with the Placer County Recorder, against the real property commonly known as 22785 Placer Hills Road, Colfax, 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.