UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

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

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1. **20-90210-E-11 AF-3** | **JOHN YAP AND IRENE LOKE** **Arasto Farsad** | **CONTINUED MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON AND/OR MOTION TO VALUE COLLATERAL OF THE PNC FINANCIAL SERVICES GROUP, INC., AND MOTION TO VALUE COLLATERAL OF PERSOLVE, LLC**
4-9-20 [33]

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's in Possession, Creditor, parties requesting special notice, and Office of the United States Trustee on April 9, 2020. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim 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 Value Collateral and Secured Claim of Bank of New York Mellon, PNC Financial Services Group, Inc., Dreambuilder Investment, LLC, and Persolve, LLC is xxxxx.

Joinder of Multiple Parties One Contested Matter

The present Motion (a Contested Matter as provided in Federal Rule of Bankruptcy Procedure 9014) seeks relief pursuant to 11 U.S.C. § 506(a) against two different persons concerning two different claims. While in an adversary proceeding Federal Rule of Civil Procedure 20, as incorporated into Federal Rule of Bankruptcy Procedure 7020) permits the joinder of multiple parties in one adversary proceeding if there is a common question of law or fact to all defendants, Federal Rule of Bankruptcy Procedure 7020 is not automatically incorporated into contested matter practice. Fed. R. Bankr. P. 9014(c).

However, the court may, and does in this Contested Matter, make Federal Rule of Bankruptcy Procedure 7020 and thereby Federal Rule of Civil Procedure 20 applicable to allow for the permissive joinder of Creditors Bank of New York Mellon, PNC Financial Services Group, Inc., Dreambuilder Investment, LLC, and Persolve, LLC as respondent parties herein.

REVIEW OF MOTION

The Motion to Value filed by John Hst Yap and Irene Laiwah Loke ("Debtor in Possession") to value two secured claims. The Motion is accompanied by Debtor in Possession's declaration. Declaration, Dckt. 35.

Debtor is the owner of the subject real property commonly known as 1106 Lovell Avenue, Campbell, California ("Property"). Debtor seeks to value the Property at a fair market value of $900,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of

the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

IDENTITY OF CREDITORS TO HAVE SECURED CLAIMS VALUED

The Motion states that there are two mortgages/deeds of trust recorded against the Property and a judgment lien. These encumbrances are identified by the Debtor in Possession as follows.

Senior Deed of Trust

The First Deed of Trust is stated to have originated with Countrywide Home Loans, Inc. in the amount of $565,000.00. A copy of the Countrywide Deed of Trust is provided as Exhibit 1. Dckt. 36. The Motion then states that this note and deed of trust were assigned to The Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificate Holders of CWALT, Inc., Alternative loan Trust 2007-OH2, Mortgage Pass-Through Certificates, Series 2007, and that Mellon NewRez LLC, dba Shellpoint Mortgage Servicing for Bank of New York Mellon, as trustee.

No proof of claim has been filed by Bank of New York Mellon, as Trustee.

Second Deed of Trust

The Motion then identifies a Second Deed of Trust securing an obligation originally owed to National City Bank in the original amount of ($154,950.00). The Motion then states PNC Financial Services Group, Inc. acquired National City Bank.

The Motion then goes further, stating that a company named Dreambuilder Investments, LLC claims to hold ownership of the note secured by the Second Deed of Trust.

Debtor in Possession asserts that this claim is at least ($131,152.00).

No documents showing any assignments or transfers of the deed of trust have been filed.

No proof of claim has been filed for this debt.

The identity of the actual creditor whose claim is to be valued has not been made by the Debtor in Possession.

Judgment Lien

The third obligation encumbering the Property is identified as the judgment lien of Persolve, LLC, which is stated to be in the approximate amount of ($36,670.64). This judgment lien is junior in priority to the two deeds of trust, having been recorded on December 31, 2014.

Proof of Claim No. 1-1 has been filed by Persolve, LLC, asserting an unsecured claim in the amount of ($53,535.09).

OPPOSITION

Creditor Bank of New York Mellon ("Mellon") filed an Opposition. Dckt. 59. First, Creditor opposes on the basis that Debtor's valuation amount is based on a verbal price opinion after review of the Property, without including a formal written broker's Price Opinion or Appraisal. *Id*. at p. 2. Creditor has obtained a Broker's Price Opinion ("BPO") valuing the Property at $1,280,000 as of April 2, 2020. *Id*. Thus, Creditor argues the value of the Property is a material fact in dispute, and requests the opportunity to have an interior inspection verified appraisal. *Id*.

Next, Creditor opposes to the extent that the motion seems to improperly value the Property as of the bankruptcy filing date as opposed to at or near confirmation. *Id*. at p. 3. Debtor's value does not include an "as of" date, and Debtor has not filed a proposed Chapter 11 Plan. *Id*. Creditor points out that a valuation in a Chapter 11 case should be done at or near the time of confirmation. *Id*.

Third, Creditor reserves its right to object to any subsequently filed Chapter 11 Plan based on the Absolute Priority Rule, the violation of 11 U.S.C. 1123(b)(5), lack of feasibility, bad faith, and any other grounds that may exist to object to the Plan.

Lastly, Creditor also reserves the right to make an election under 11 U.S.C. 1111(b). *Id*.

DISCUSSION

Creditor Bank of New York Mellon, as trustee, the senior in priority first deed of trust, secures a claim with a balance of approximately $978,867.00. Schedule D, Dckt. 22. Creditor PNC's second deed of trust secures a claim with a balance of approximately $154,950.00. *Id*. Creditor Persolve, LLC has a judgment lien against the Property in the amount of $32,671.00.

The Motion states that Debtor in Possession requested that a local Realtor provide an opinion as to value of the Property. The Realtor, Regina Zabarte, stated (to an unidentified person) that the property has a value of $900,000. The Debtor in Possession believes that Ms. Zabarte's opinion is accurate. The Debtor in Possession conducted additional research from other third parties identified as Zillow.com and Redfin.com.

There is a significant missing piece to the puzzle - who is the creditor who actually holds the note secured by the second deed of trust. It could be PNC Financial Services Group, Inc. Or, it could be Dreambuilder Investments, LLC. No evidence of the record title is provided and it appears that no discovery has been done for Debtor in Possession to identify the real party in interest.

Declaration of Nancy Weng

On May 29, 2020, Debtor filed the Declaration of Nancy Weng, Esq. Dckt. 74. Ms. Weng testifies that both National City Bank and The PNC Financial Services Group, Inc. were properly served. She further testifies that she spoke with Attorney for PNC, Ms. Jennifer Wong, who acknowledged that while her office represented PNC in several cases, it was impossible for her or the client to identify whether

they owned the particular note in the instant case without counsel being assigned. Ms. Weng testifies that thus far no counsel has been assigned to this case to represent the second lienholder and no proof of claim has been filed.

Ms. Weng has done her due diligence and has reviewed title, the recorder's office and Debtor's billing statements. She has also researched the FDIC website showing that PNC acquired National City Bank without government assistance and a copy of this information is filed as Exhibit A (Dckt. 75). Ms. Weng has also researched the Federal Research showing that PNC Bank is a "wholly-owned indirect subsidiary of the PNC Financial Services Group, Inc., and a copy of the research is attached as Exhibit B (Dckt. 75). While the title report Ms. Weng reviewed only lists National City Bank as the originating lender with no recorded assignments to PNC or any other entity, her research indicates that National City Bank merged with PNC Bank in 2009. Thus, she caused service to both via certified mail. She has not received any correspondence or heard from either National City Bank or PNC.

JULY 16, 2020 HEARING

At the July 16, 2020 hearing, the Debtor in Possession and Bank of New York Mellon reported that they have worked out a stipulation resolving this matter and specifying agreed plan treatment terms. They requested a continuance so they could finalize the terms and documentation.

SEPTEMBER 10, 2020 HEARING

At the hearing, **xxxxxx**

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 Value Secured Claim filed by John Yap & Irene Loke, the Debtors, 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 **xxxxx**.

2. 19-91119-E-7 BSH-2 — ERIK/ILIANA CLAROS — Brian Haddix — MOTION TO COMPEL ABANDONMENT — 8-7-20 [5]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and parties requesting special notice on August 7, 2020. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Motion to Compel Abandonment is granted.

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

The Motion filed by Erik Alfredo Claros and Iliana Claros ("Debtors") requests the court to order Michael D. McGranahan ("the Chapter 7 Trustee") to abandon the following property. The Declaration of Erik Alfredo Claros has been filed in support of the Motion.

Asset	Value	Exemption
1708 Pantaleo Dr., Modesto, CA	$314,500.00	C.C.P. § 704.730
1999 Honda Civic LX	$3,000.00	C.C.P. § 704.010

1988 Honda Civic	$300.00	C.C.P. § 704.010
Household Goods and Furnishings	$5,625.00	C.C.P. § 704.020
Personal Consumer Electronics	$3,025.00	C.C.P. § 704.020
Golf clubs, fishing gear, carpentry tools	$425.00	C.C.P. § 704.020
Colt 1911, Windham Weaponry AR 15, Spikes Tactical AR 15, Sikkens Lower Receiver	$1,850.00	C.C.P. § 704.020
Clothing	$1,650.00	C.C.P. § 704.020
One dog	$1	C.C.P. § 704.020
US Bank Checking (7181)	$215.07	C.C.P. § 704.070
US Bank Savings (8551)	$150.00	C.C.P. § 704.070
401(k) through Tesla	$38,231.13	C.C.P. § 704.115(a)(1) & (2)

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Erik Alfredo Claros and Iliana Claros ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified in the table above and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Michael D. McGranahan ("Trustee") to Erik Alfredo Claros and Iliana Claros by this order, with no further act of the Trustee required.

3. 19-91120-E-7 WF-3 | **TIMOTHY ERICKSON** **Brian Haddix** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE FLEURY LLP FOR DANIEL L. EGAN, TRUSTEES ATTORNEY(S)** **8-20-20 [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, Chapter 7 Trustee, creditors, and Office of the United States Trustee on August 20, 2020. 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 Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion for Allowance of Professional Fees is granted.

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

Fees are requested for the period February 10, 2020, through July 20, 2020. The order of the court approving employment of Applicant was entered on April 14, 2020. Dckt. 17. Applicant requests fees in the amount of $6,897.50 and costs in the amount of $60.65.

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 settlement negotiation and approval. 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 1.3 hours in this category. Applicant communicated with Trustee and Debtor's counsel, and reviewed documents.

Efforts to Assess and Recover Property of the Estate: Applicant spent 13.7 hours in this category. Applicant represented the Trustee in negotiating and documenting a settlement, and obtained court approval of the settlement.

Fee/Employment Applications: Applicant spent 0.50 hours in this category. Applicant prepared the application for the approval of its employment.

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**
Daniel L. Egan, Partner	15.50	$445.00	$6,897.50
	0	$0.00	$0.00
Total Fees for Period of Application			$6,897.50

Applicant requests an additional $1,000 for the preparation of this fee application. Applicant estimates 2.3 hours for time and expenses in preparing and prosecuting this fee application.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $60.65 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$22.85
Photocopies		$15.30
CourtCall		$22.50
		$0.00
Total Costs Requested in Application		$60.65

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 $7,897.50 (including the $1,000 for the preparation and prosecution of this fee application) 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 $60.65 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	$7,897.50
Costs and Expenses	$60.65

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 Wilke Fleury LLP ("Applicant"), Attorney for Michael D. McGranahan, 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 Wilke Fleury LLP is allowed the following fees and expenses as a professional of the Estate:

Wilke Fleury LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of $7,897.50
Expenses in the amount of $60.65,

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

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

4. 19-91122-E-7 MARIBEL SOTO RIVERA
Thomas Sands

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
8-5-20 [77]

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.[FN.1] The Proof of Service states that the Motion and supporting pleadings were served on Trustee's Attorney and Office of the United States Trustee on August 5, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

FN.1. Debtor filed the Notice and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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

Maribel Soto Rivera ("Debtor") seeks to convert this case from one under Chapter 7 to one under Chapter 13. Debtor did not submit a declaration providing testimony as to why this Chapter 7 case should be converted to one under Chapter 13.

The pleading titled Motion is a check-the-box form. It appears to be a form from the Central District of California Bankruptcy Court.

DISCUSSION

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

Trustee filed an Opposition on August 27, 2020. Dckt. 80. Trustee opposes on the basis that Debtor cannot propose a feasible Chapter 13 plan and she does not qualify to be a debtor under Chapter 13. Trustee argues that:

A. The Debtor is not seeking conversion in good faith as such conversion was only after Trustee had filed a motion for turnover of the real property commonly known as 6225 Howard Avenue, Riverbank, CA ("Property") after discovering that the Property is valued at a much higher value than as disclosed by Debtor on her Schedule C and after failing to cooperate with Trustee in connection with the efforts to sell the Property.

B. This is Debtor's third filing, where the first filed on August 28, 2019 and the second case filed on November 7, 2019 were both dismissed for failure to timely file necessary documents.

C. The Debtor cannot propose a confirmable Chapter 13 plan because Debtor has non-exempt assets, namely the Property, available for distribution to creditors with general unsecured creditors and in order to meet the liquidation test pursuant to 11 U.S.C. 1325(a)(4), Debtor's plan must pay 100% of Debtor's general unsecured claims.

D. Further, as required under 11 U.S.C. Section 109(e), Debtor does not have sufficient income to fund a plan since according to Schedules I and J, Debtor has an income of $3,103.00 and expenses of $3,043, leaving a monthly net income of $60.00. Trustee asserting that $60.00 is clearly insufficient to fund a Chapter 13 plan to pay in full the scheduled claims in the amount of $58,850.00.

The Debtor offers no Reply to the Trustee's opposition.

Looking at Schedule I, under penalty of perjury, Debtor states that her net income from a business is $1,752 a month. Dckt. 20 at 26-27. Debtor further discloses receiving an additional $752 in alimony or other support or property settlement and $600 from renting out a room in the home. *Id.* The pre-tax total for Debtor is $3,103.00 a month.

Moving to Schedule J, Debtor states under penalty of perjury having a family unit of four persons - Debtor and three minor children. *Id.* at 28-29. For this family unit of four persons, Debtor states having expenses of $3,043.00 a month. This include $605 a month for food and housekeeping supplies for the four persons. After deducting $50 a month for housekeeping supplies, there would remain $555 a month for food for four persons. Over a thirty (30) day month, that averages $1.54 per person per meal. Such does not appear to be a sustainable food budget.

Next, Debtor budgets only $50 a month for clothing, which averages to be $12.50 per person per month. *Id.* That does not appear reasonable for an adult and three growing children.

Absent from the budget are any amounts for personal care expenses such as hair cuts, shampoo, soap, toothpaste and the like. Also missing from the budget are any medical or dental out of pocket expense amount for the adult and three minors. Neither of these omissions appear reasonable.

While Debtor's counsel has checked the box saying that the Debtor wants to convert, Debtor has offered nothing for the court to conclude that the request to convert is made for a proper purpose under the bankruptcy law, and not being made to cause undue delay or derail the Trustee in doing his duty for the bankruptcy estate.

The uncontradicted testimony is that the property of the bankruptcy estate has a value of in excess of $250,000 (see Declaration, Dckt. 82) and the Debtor is working to defeat the Trustee from liquidating the property. By Debtor's Amended Schedule C, she now states under penalty of perjury that the Property is worth $350,000. Dckt. 76. Even after allowing for a $100,000 homestead exemption, the Trustee's calculation is that there is sufficient non-exempt equity for a 100% dividend for creditors holding general unsecured claims.

From the Motion presented, the court cannot identify any good faith basis for Debtor seeking to convert the case to one under Chapter 13.

Although Debtor's case has not been converted previously, the court finds that Debtor does not qualify for relief under Chapter 13. Moreover, the court agrees with Trustee in that it seems unlikely that Debtor will be able to propose a confirmable plan.

For the reasons above, the Motion to Convert is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert filed by Maribel Soto Rivera ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is denied.

5. 19-91122-E-7 MARIBEL SOTO RIVERA CONTINUED MOTION TO COMPEL
BLF-3 Thomas Sands 6-3-20 [59]

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 (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2020. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion for Turnover is granted.

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 6225 Howard Avenue, Riverbank, California ("Property"). Movant requests the Debtor immediately turn over the Property to Movant and vacate the Property within five (5) days of the entry of the order.

July 16, 2020 Hearing

At the July 16, 2020 hearing, the court continued the hearing to afford the Debtor the opportunity to obtain counsel and obtain a family member, friend, or other person to provide her with a translation of what is occurring and that she needs to act to protect her right.

August 6, 2020 Hearing

At the hearing, Counsel for the Trustee reported that counsel for the Debtor has substituted in and has filed amended Schedules stating an exemption.

The Trustee requested a continuance to September 10, 2020 at 10:30 a.m., to be heard in conjunction with a motion by the Debtor to convert it to one under Chapter 13.

September 10, 2020 Hearing

Debtor's Motion to Convert the Case from Chapter 7 to Chapter 13 was denied.

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

> (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Maribel Soto Rivera ("Debtor") to deliver property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

While a review of the Docket shows Debtor claimed the Property as exempt in her Schedule C as "100% of fair market value," (Dckt. 20), the court entered an order on April 6, 2020 sustaining Trustee's objection due to Debtor failing to specify the code section for the exemption and alternatively, if the exemption is claimed under Section 703.140(b)(5) of the California Code of Civil Procedure, Debtor would exceed the permitted exemption amount (Dckt. 48). Since then, Debtor has "hindered and delayed" Trustee's efforts by failing to cooperate with the Trustee and his realtor to list and market the Property. Motion, Dckt. 59.

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017).

Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

Conclusion

The Motion for Turnover is granted, and Debtor must vacate the Property and deliver possession of the Property to Trustee by noon on Xxxxxxx xx, 2020.

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 Turnover of Property filed by Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Turnover of Property is granted.
>
> **IT IS FURTHER ORDERED** that Maribel Soto Rivera ("Debtor") shall deliver on or before noon on Xxxxxxx xx, 2020, possession of the real property commonly known as 6225 Howard Avenue, Riverbank, California ("Property"), with all of her personal property, personal property of any other persons that Debtor has allowed access to the Property; and any other person or persons that Debtor, and each of them, allowed access to the Property removed from the Property.

6. **18-90765-E-7** **MIGUEL ORTEGA**
20-9003 **ADJ-2**
EDMONDS V. ORTEGA ET AL

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MIGUEL ANGEL ORTEGA, SOCORRO G. ORTEGA, AND MIGUEL A. ORTEGA, ADMINISTRATOR OF THE ESTATE OF MANUEL GARCIA OLMEDO, AKA MANUEL GARCIA
7-17-20 [36]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant-Debtor, Debtor's Attorney, Plaintiff-Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2020. By the court's calculation, 24 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Irma C. Edmonds, the Chapter 7 Trustee, ("Plaintiff-Trustee") requests that the court approve a compromise and settle competing claims and defenses with Miguel Angel Ortega, Socorro G. Ortega, and Miguel A. Ortega, Administrator of the estate of Manuel Garcia Olmedo (deceased) ("Settlors"). The claims and disputes to be resolved by the proposed settlement are Chapter 7 Trustee's claims in the adversary proceeding (Case No. 20-09003) seeking a determination that real property commonly known as 1464 Angus Street, Patterson, CA ("Property") is part of Debtor's bankruptcy estate, avoidance of transfer of Property, and for turnover of Property.

Movant and Settlors have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 39):

A. Trustee's claims related to the Property will be fully settled for $18,153.00.

B. Trustee releases Settlors from any and all claims except those created under this agreement.

C. In case of breach, prevailing party shall be entitled to recover all attorneys' fees and costs from non-prevailing party.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

Although Plaintiff-Trustee believes that there is a high probability of success at trial, the outcome of any trial is not guaranteed.

Difficulties in Collection

Plaintiff-Trustee asserts that if the Court were to confirm the Real Property is the property of the bankruptcy estate, the Trustee would incur expenses to sell the property and to evict debtor and debtor's spouse if they refuse to vacate the property.

Expense, Inconvenience, and Delay of Continued Litigation

Without the settlement, the bankruptcy estate would be incurring additional legal fees by continuing to litigate. Moreover, even if the Property were to be confirmed as property of the estate, the Trustee would have to incur costs of selling the Property which creates additional expenses in an estate with no funds. Thus, Plaintiff-Trustee contends the settlement avoids expense, inconvenience, uncertainty, and delay.

Paramount Interest of Creditors

Plaintiff-Trustee argues that creditors would support the Settlement Agreement because it renders the bankruptcy estate solvent, receiving an amount equal to 100% of the total claims, plus sufficient funds to pay the trustee's attorney and the trustee's fee.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it will avoid continued litigation and creditors will be paid in full. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Irma C. Edmonds, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Miguel Angel Ortega, Socorro G. Ortega, and Miguel A. Ortega ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 39).

7. **18-90765-E-7** **MIGUEL ORTEGA** **CONTINUED STATUS CONFERENCE RE: COMPLAINT**
20-9003
EDMONDS V. ORTEGA ET AL **4-21-20 [1]**

Plaintiff's Atty: Anthony D. Johnston
Defendants' Atty: Pro Se

Adv. Filed: 4/21/20
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Recovery of money/property - other
Injunctive relief - other

Notes:
Continued from 8/6/20 to be conducted in conjunction with the hearing on the Plaintiff-Trustee's Motion to Approve Compromise that resolves this Adversary Proceeding.

The Status Conference is xxxxxxxxxx

8. 19-90989-E-7 WF-10 | **JAMIE/MELISSA BILLMAN** **Walter Dahl** | **MOTION TO SELL AND/OR MOTION TO PAY** **8-20-20 [211]**

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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2020. 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 Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Michael D. McGranahan, 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 6494 Garner Place, Valley Springs, California ("Property"). Trustee also seeks authority to pay a 6% broker's commission to Bob Brazeal and ReMax Executive from escrow.

The proposed purchaser of the Property is Martin F. Cotta and Diane C. Cotta ("Buyer"), and a summaryof the terms of the sale are (the complete terms of the sale are found in Exhibit A, Dckt. 214):

A. Buyer to pay the sum of $360,000.

B. Closing to occur within 15 days after entry of court order approving sale.

C. Buyer to provide an initial deposit of $5,000.

Overbidding Procedures

Trustee has proposed the following overbidding procedures:

1. Competing overbids be limited to offers on the same terms, other than price as set forth on the purchase agreement.

2. Any overbidder be required to provide Trustee with a good faith deposit, in advance of the hearing, in the amount of $5,000.

3. Trustee further recommends a minimum bidding increment of $2,500.

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 sale will generate approximately $115,800 in unencumbered proceeds for the estate.

Movant has estimated that a six (6) percent broker's commission from the sale of the Property will equal approximately $21,600. The Broker's employment was approved on March 26, 2020. Dckt. 138. The court entered an order approving the employment of broker and that the court may allow compensation different from compensation provided in the Trustee's application for employment if the terms and conditions of the application would dictate compensation in excess of reasonable compensation. *Id.* As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six (6) percent commission.

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 Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Michael D. McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Martin F. Cotta and Diane C. Cotta or nominee ("Buyer"), the Property commonly known as 6494 Garner Place, Valley Springs, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $360,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 214, 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 to effectuate the sale.

C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

D. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than 6 percent of the actual purchase price upon consummation of the sale. The 6 percent commission shall be paid to the Chapter 7 Trustee's broker, Bob Brazeal, of ReMax Executive.

9. 19-90989-E-7 WF-11 — JAMIE/MELISSA BILLMAN — Walter Dahl — MOTION FOR COMPENSATION FOR WFS, INC., AUCTIONEER(S) 8-20-20 [216]

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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2020. 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 Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion for Allowance of Professional Fees is granted.

WFS, Inc. dba Tranzon Asset Strategies, the Auctioneer ("Applicant") for Michael D. McGranahan, the Chapter 7 Trustee ("Client"), makes a Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period July 6, 2020, through July 20, 2020. The order of the court approving employment of Applicant was entered on June 8, 2020. Dckt. 177. Applicant requests fees in the amount of $5,600.00 and costs in the amount of $2,367.00.

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 auctioning three vehicles and a utility tractor 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 computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in the marketing and sale of personal property described as 1951 Jeep AMC; 2010 Harley Davidson; 2009 Arlen Ness; 2010 Kubota B 2630 Utility Tractor ("Property"). The Property was sold via a public auction. The sale generated gross proceeds of $33,000 plus an additional $3,300 from the buyer's premium.

Applicant was employed as the auctioneer of estate property with proposed compensation of 10% of the gross proceeds, reimbursement of expenses, and the ability to collect and retain a buyer's premium, up to $1,000.00. Dckt. 161. (Applicant has already received this previously approved buyer's premium of $1,000.)

Applicant submitted an invoice seeking payment of a 10% commission in the amount of $3,300. Additionally, Applicant requests an allowance of the remaining buyer's premium in the amount of $2,300. In total, Applicant requests commission of $5,600.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $2,367.00 pursuant to this application. (The amount of actual expenses is less than the estimated $4,500 set forth in the agreement with Applicant.)

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Rock and Dirt		$333.00
SRI Advertising		$300.00

Craig's List Ads	$5.00 per ad	$60.00
Event Fee		$100.00
Auction Setup and Checkout		$500.00
Auction Clerk		$375.00
Precision Equipment Transport		$600.00
DMV Expenses-Title Searches		$24.00
DMV Coordinator and Document Preparation	$25.00 per vehicle	$75.00
Total Costs Requested in Application		$2,367.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

Percentage Fees

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $5,600.00 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Chapter 7 Trustee is authorized to pay 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 $2,367.00 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.

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

Fees	$5,600.00
Costs and Expenses	$2,367.00

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 WFS, Inc. dba Tranzon Asset Strategies ("Applicant"), Auctioneer for Michael D. McGranahan, 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 WFS, Inc. dba Tranzon Asset Strategies is allowed the following fees and expenses as a professional of the Estate:

WFS, Inc. dba Tranzon Asset Strategies, Professional employed by the Chapter 7 Trustee

Fees in the amount of $5,600.00
Expenses in the amount of $2,367.00,

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

10. 19-90989-E-7 JAMIE/MELISSA BILLMAN MOTION TO ESTABLISH CHAPTER 11 ADMINISTRATIVE CLAIMS BAR DATE 8-20-20 [221]
WF-12 Walter Dahl

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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Establish a Chapter 11 Administrative Claims Bar Date was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Establish a Chapter 11 Administrative Claims Bar Date is granted.

Chapter 7 Trustee, Michael D. McGranahan ("Trustee") as trustee for the bankruptcy estate of Jamie Benjamin Billman and Melissa Marnell Billman ("Debtor"), requests an order establishing November 15, 2020 as the last date for any claimant to file a Chapter 11 administrative expense claim against the estate and January 15, 2021 as the last date to set for hearing any such claim.

DISCUSSION

Trustee argues that such dates are necessary due the particular facts in this case. After the instant case was converted from a Chapter 11 to a Chapter 7 case, Trustee liquidated certain of Debtor's equipment and is in the process of selling one piece of real estate. Once all the asserts are liquidated, Trustee will make a distribution, but must first identify and evaluate the creditors' claims, including holders of unpaid Chapter 11 administrative claims.

The deadlines will not apply to any Chapter 11 administrative claims already paid during the Chapter 11 portion of the case, or any claims by professional whose claims have been previously allowed under Section 330 of the bankruptcy code.

Trustee proposes that he provide notice to all persons on Debtor's mailing matrix of such deadline on or before September 18, 2020, arguing that in effect, the deadlines will give claimants nearly two months to prepare and file their claims, and another two months to set them for hearing.

This bankruptcy case was converted to one under Chapter 7 on February 17, 2020. The Trustee is nearing the conclusion of this case and requests that the court set the deadline so that any remaining possible Chapter 11 administrative expenses are flushed out, to the extent that such administrative expenses are to be asserted.

Based on the evidence before the court, the court determines that the proposed deadlines establishing a Chapter 11 administrative claims bar date is reasonable and necessary. A review of the Creditors listed in this case can be estimated at over 175 creditors. Thus, the court finds that the proposed deadlines will allow Trustee the time to evaluate the claims, make a distribution, and efficiently complete the case.

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 set a Chapter 11 Administrative Expense bar date 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 Motion is granted, and:
>
> A. The last date for filing a motion for allowance of a Chapter 11 administrative expense in this case is November 15, 2020; and
>
> B. The last date for a person prosecuting a motion for the allowance of a Chapter 11 administrative expense to have a hearing on such motion is January 15, 2021.

11. 11-92291-E-7 MJH-2 | **JESUS/MARTHA ESPINOZA** Mark Hannon | **MOTION TO AVOID LIEN OF DISCOVER BANK** 8-19-20 [23]

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

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, and Office of the United States Trustee on August 19, 2020. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of the debtor, Jesus Espinoza and Martha Espinoza ("Debtors") commonly known as 1306 Canyon Creek Drive, Newman, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $8,508.82. Exhibit A, Dckt. 27. An abstract of judgment was recorded with Stanislaus County on April 21, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $125,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $249,700.00 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 $8,508.82 on Amended Schedule C. Dckt. 21.

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 Jesus Espinoza and Martha Espinoza ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Discover Bank, California Superior Court for Stanislaus County Case No. 656272, recorded on April 21, 2011, Document No. DOC-2011-0034895-00, with the Stanislaus County Recorder, against the real property commonly known as 1306 Canyon Creek Drive, Newman, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

12. 18-90494-E-7 MELINDA BROOME
18-9015
BILLINGTON WELDING & MFG., INC. V. BROOME

APPLICATION FOR ORDER TO APPEAR FOR EXAMINATION AND ORDER TO APPEAR FOR EXAMINATION
8-16-20 [120]

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on August 27, 2020. By the court's calculation, 14 days' notice was provided.

The Application for Order to Appear for Examination and Order to Appear for Examination was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing **----------**.

Pursuant to the Order signed on August 16, 2020, the Application for Order to Appear for Examination has been granted. The matter is set for the examination to be conducted at 10:30 a.m. on September 10, 2020.

At the hearing, **xxxxxxxxxx**

FINAL RULINGS

13.	**13-92200-E-7** **HCS-6**	**WILLIAM CAVANAGH** **Amanda Billyard**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM/CRABTREE/SUNTAG FOR DANA A. SUNTAG, TRUSTEES ATTORNEY(S)** **8-6-20 [134]**

Final Ruling: No appearance at the September 10, 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 August 6, 2020. By the court's calculation, 35 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.

Herum, Crabtree, Suntag, 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 July 2, 2014, through July 21, 2020. The order of the court approving employment of Applicant was entered on July 23, 2014. Dckt. 36. Applicant requests fees in the amount of $17,500.00 and costs in the amount of $715.63.

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 providing general legal case administration and assisting in the prosecution and settlement of an insurance lawsuit, for which the estate has recovered $100,000. 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 38.45 hours in this category. Applicant prepared the application for the Trustee to employ special counsel, drafted the motion to reopen the case, prepared the general counsel employment application, and prepared the instant application for compensation.

Adversary Proceedings: Applicant spent 249.70 hours in this category. Applicant assisted in the prosecution and settlement of an insurance lawsuit filed by the Debtor post-filing after prevailing on an undisclosed personal injury lawsuit related to a helicopter accident.

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**
Dana A. Suntag, Shareholder	22.4	$325.00 per hour in 2014-2015	$7,280.00
Dana A. Suntag, Shareholder	43.6	$345.00 per hour in 2016-2017	$15,042.00

Dana A. Suntag, Shareholder	36	$375.00 per hour in 2018-2020	$13,500.00
Loris L. Bakken, Associate	2.9	$295.00	$855.50 FN.1
Wendy A. Locke, Associate	13.6	$225.00	$3,060.00
Benjamin J. Codog, Associate	47.6	$185.00 per hour in 2015	$8,806.00
Benjamin J. Codog, Associate	80.2	$175.00 per hour in 2016	$14,035.00
Benjamin J. Codog, Associate	22.8	$200.00 per hour in 2018-2020	$4,560.00
Jaismin Kaur, Associate	8.1	$125.00 per hour in 2018	$1,012.50
Jaismin Kaur, Associate	7.7	$150.00 per hour in 2020	$1,155.00
Audrey A. Dutra, Paralegal	1.70	$90.00	$153.00
Total Fees for Period of Application			$69,459.00

FN.1. The court notes there seems to have been a clerical error in calculating the fees for Loris L. Bakken. The motion stated a total of $797.50 for 2.9 hours at a $295.00 rate. The corrected calculation of these hours at that hourly rate equals $855.50, and the court applies that amount above.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $715.63 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.10 per page	$301.10
Postage		$192.30

CourtCall		$222.23
Total Costs Requested in Application		$715.63

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $17,500.00 for its fees incurred for Client. First and Final Fees and Costs in the amount of $17,500.00 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 $715.63 pursuant to 11 U.S.C. § 330 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	$17,500.00
Costs and Expenses	$715.63

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 Herum, Crabtree, Suntag ("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 Herum, Crabtree, Suntag is allowed the following fees and expenses as a professional of the Estate:
>
> Herum, Crabtree, Suntag, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $17,500.00
> Expenses in the amount of $715.63,

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

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees and costs 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. 12-92479-E-12 NFG-6 | **DAVID/ESPERANZA AGUILAR** **Nelson Gomez** | **CONTINUED MOTION TO ENFORCE TERMS OF CONFIRMED AMENDED CHAPTER 12 PLAN AND FOR ADDITIONAL RELIEF** **6-1-20 [150]**

Final Ruling: No appearance at the September 10, 2020 Hearing is required.

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's, Chapter 12 Trustee, Creditor, and Office of the United States Trustee on June 1, 2020. By the court's calculation, 66 days' notice was provided. 28 days' notice is required.

The Motion to Enforce Terms of Confirmed Amended Chapter 12 Plan 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 to Enforce Terms of Confirmed Amended Chapter 12 plan is continued to 10:30 a.m. on October 1, 2020, to afford the Parties the opportunity to conclude their settlement.

The present Motion to Enforce Terms of the Confirmed Amended Chapter 12 Plan was filed by the debtors, David Tafolla Aguilar and Esperanza Aguilar ("Debtors"), against creditor OneWest Bank ("Creditor"), asserting that Creditor has violated the terms of the Confirmed Amended Chapter 12 Plan ("Plan") by, through its current service, proceeding with a pending foreclosure of Debtors' business property.

SEPTEMBER 4, 2020 JOINT STATUS REPORT (Dckt. 162)

The Parties have provided a Joint Status Report informing the court that counsel for Debtors and for LoanCare have finalized the settlement terms and requesting the court continue the hearing to October 1, 2020 at 10:30 a.m. to afford additional time for review and signature of the settlement.

The court continues the hearing.

REVIEW OF JOINT STATUS REPORT (Dckt. 158)

The Parties have provided the court with a Joint Status Report in advance of the continued hearing. The Parties report that they are continuing in their good faith settlement discussions and request that the court continue the hearing to September 10, 2020 to afford them additional time in their efforts.

The court so continues the hearing.

REVIEW OF THE MOTION

In asserting these claims, Debtors state with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

A. The August 21, 2014 confirmed Amended Plan called for monthly payments of $994.00.

B. The Amended Plan provided for Debtors to make payments on their Business Property, located at 5001 E. Monte Vista Avenue, Denair, California, through the Plan.

C. Creditor did not object to the confirmation of the Plan.

D. Creditor through its current servicer, LoanCare, LLC ("LoanCare"), has continued to ignore and disregard the order of this court regarding the confirmation of the Amended Plan, to the detriment of Debtor, including the pending foreclosure on Debtors' Business Property by Creditor.

Motion, Dckt. 150.

Prayer for Relief

Debtor requests the following relief:

1. For an evidentiary hearing to determine the amount owed by Debtors under terms of the confirmed Amended Chapter 12 Plan;

2. For an order dismissing the amounts claimed by LoanCare as owing which were part of the unsecured portion of Debtors' Amended Chapter 12 Plan;

3. For damages for emotional distress incurred by Debtors as a result of LoanCare's unlawful foreclosure action, according to proof;

4. For attorney's fees incurred by Debtors in defending them against LoanCare's unlawful foreclosure action, according to proof; and

5. For any additional relief which the court may deem appropriate.

Review of Evidence

Debtors have provided the Declaration of Nelson F. Gomez in support of the Motion. Dckt. 152. Declarant is Debtors' Counsel who testifies to the following:

A. No opposition to the entry of discharge was filed and an order granting Debtors' discharge was entered on February 22, 2018.

B. Once the thirty six payments were made to the Chapter 12 Trustee, Counsel communicated with the servicer of the loan, CIT Bank, to inquire as to where Debtors should make the remaining 204 payments called for by the Amended Chapter 12 Plan. He was informed that the Bankruptcy Department of CIT Bank would provide a response. See Exhibit A.

C. Counsel's attempt to communicate with Creditor was unsuccessful and the communication was returned as undeliverable. See Exhibit B.

D. CIT Bank informed Counsel that the servicing of the loan was being transferred to LoanCare. See Exhibit C.

E. On March 12, 2018, Counsel received a Debt Validation Letter ("Debt Letter") from LoanCare, which stated that the loan was in delinquency and that the arrears amount for Principal and Interest was $18,121.97. See Exhibit D.

F. On March 26, 2018, Counsel responded to the Debt Letter, challenging it as inaccurate on the grounds that the amount owed by Debtors was $5,450.76, which amounted to six payments of $908.46. Counsel never received a response to his letter.

G. On May 31, 2018, Counsel forwarded to LoanCare all the relevant documents from the Bankruptcy showing that this borrower only owed payments from October, 2017 to May, 2018. See Exhibit F.

H. Debtors sent payments to LoanCare beginning in March of 2018, until November of 2018. The payments were not accepted by the servicer, but later claimed that they did not receive them. Debtors have since received the funds from Bank of America. See Exhibit G.

I. On December 17, 2018, LoanCare informed Debtors that the loan was in default and that a foreclosure proceeding had commenced. The Notice of Default included sums which were part of the unsecured claim of Creditor, which had been dismissed when the Discharge of Debtors was entered. See Exhibit H.

J. Multiple attempts to communicate with LoanCare's individual in charge were unsuccessful. The foreclosure action resulted in a Notice of Trustee Sale issued by Trustee Corps, the company hired by LoanCare to conduct the foreclosure on June 24, 2019. See Exhibit I.

K. On May 22, 2019, after Creditor and LoanCare failed to respond to Debtor, through their attorney, Counsel asked this court to reopen the Bankruptcy Case for the purpose of filing the instant Motion.

L. Since the reopening of the case, LoanCare has continued to maintain the Trustee Sale of Debtors' property, only postponing it for terms of 30 days.

M. Counsel adds that Creditor and LoanCare are attempting to recover an unsecured component through the foreclosure action against the terms of the confirmed Plan, and Debtor requests the court to enforce the terms of the plan by issuing a ruling for Creditor and LoanCare to comply with the order so the foreclosure action is based solely on the amount legally owed by Debtor as outline in the Plan.

The following Exhibits are provided as part of the Declaration:

- Exhibit A: copy of October 9, 2017 Debtor's Counsel Letter to CIT Bank, NA and a copy of undeliverable envelope as Exhibit B.

- Exhibit C: copy of Notice of Servicing Transfer dated February 8, 2018

- Exhibit D: copy of March 6, 2018 LoanCare Debt Validation Letter

- Exhibit E: copy of March 26, 2018 Debtor's Counsel Letter to LoanCare

- Exhibit F: copy of Fax Transmission Cover Sheet and May 30, 2018 Letter to LoanCare with accompanying bankruptcy related documents

- Exhibit G: copies of nine (9) Bank of America Cashier's Checks in the amount of $908.46 dated March 2018 through November 2018.

- Exhibit H: copy of December 17, 2018 LoanCare Letter to Debtor regarding default and foreclosure proceedings

- Exhibit I: copy of Notice of Trustee's Sale

Dckt. 152.

RESPONDENT'S OPPOSITION

Respondent filed an Opposition on July 23, 2020. Dckt. 154. Respondent opposes the Motion on the following grounds:

A. Debtors do not allege that their loan is current and fail to explain how, specifically, the March 2018 Debt letter is inaccurate.

B. Debtors have not, and are unable to, produce proof of payments from October 2017 until now. LoanCare has no record of receiving the cashier's checks in question that Debtors contend were sent between March 2018 and November 2018 prior to the commencement of the foreclosure.

C. Debtors have failed to asserts how LoanCare violated the terms of the confirmed plan on the basis that the delinquent amount stated in the Debt Letter in the amount of $18,413.79 is not a portion of the unsecured claim that was to be wiped out upon discharge.

D. Instead, the delinquent amount included in the Debt Letter contains payments that were to be paid subject to the Amended Stipulation Resolving Debtors' Motion to Value Collateral on Subject Business Property and Setting Forth Chapter 12 Plan Treatment, but were, instead, paid at the lower amount of $779.19 (instead of the stipulated monthly plan payment of $908.46) coupled with the Debtors' lack of payments between October 2017 and March 2018 after the closing of the case.

E. Debtors failed to show that LoanCare violated the terms of the Plan and that they suffered any emotional distress damages.

F. The Motion fails to provide evidence or a calculation of the alleged attorney's fees and costs associated with the alleged violation of plan terms, hourly rate paid, or any other details that would allow a court to award fees and costs. Thus, Debtors are not entitled to an award of attorney's fees and costs.

DISCUSSION

The court begins with the Confirmed Amended Chapter 12 Plan, the modified contract between the parties. With respect to the secured claim at issue, the Confirmed Amended Plan provides:

Class 3: Secured claim of One West Bank.

This class consists of the claim of One West Bank which is secured by a Deed of Trust on the Real Property located at 5001 E. Monte Vista Avenue, Denair, California.

(The Bank filed a claim in the sum of $179,923.80. The Debtors and the Bank reached a Stipulation regarding the secured and unsecured portions of The Bank's claim, and the Court accepted this Stipulation.)

Confirmed Amended Plan, p. 2:22-25, 3:1-3, attached to Confirmation Order; Dckt. 79.

Class 3: Secured claim of One West Bank.

The holder of the claim in this class will receive $115,630.00, together with interest at the rate of 5% per annum, from September 1, 2014, in 240 fully amortized monthly payments of $779.17.

Prior to confirmation of the Amended Plan, the Debtor will make adequate protection payments of $779.17 to the holder of the claim in this class commencing November 1, 2013. Debtor has made these payments from November 1, 2013 to July 10, 2014.

The Trustee will make a total of 36 payments to the holder of the claim in this class from the funds paid to him, and the Debtors will make the remaining 204 payments. The holder of the claim in this class will retain its Deed of Trust against the Real Property.

Id., p. 3:13-24.

Thus, the confirmed plan provides that Creditor's secured claim is $115,630.00, with fully amortized payments of $779.17 a month until paid in full at the end of 20 years.

There does not appear that there can be many complex issues over whether the required payments under the Note, as modified by the confirmed Amended Plan, have been made - $779.17 per month commencing September 1, 2014.

The court notes that the Stipulation filed on August 20, 2014, a month before the Amended Plan is confirmed. The Stipulation provides for a 5.25% interest rate and for the pre-confirmation adequate protection payments to be $908.46, of which $129.29 to be applied to "escrow."

Using the Microsoft Excel Loan Calculator Program, the court computes the monthly payment for a fully amortized repayment of $115,630.00 over 240 months at 5.25% interest to be $779.17. So, while it appears that the interest rate stated in the plan, 5%, the monthly payment amount was computed consistent with the Stipulation at $779.17. No reference is made in the Plan to amounts for "escrow" (but presumably the portion of the loan documents not modified provide for such amounts if that is the asserted default).

August 27, 2020 Hearing

At the hearing, the court addressed with the Parties identifying the real financial issues that exist and how to clearly and accurately identify the payments required and the payments made.

At the hearing, Counsel for the Debtors reported that Creditor now agrees that the payments from the Debtor began the month after the hearing.

The Parties requested a continuance to 10:30 a.m. August 27, 2020, to further address resolution of this matter.

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 Enforce Terms of Confirmed Amended Chapter 12 Plan filed by David and Esperanza Aguilar, the Debtor/Plan Administrator having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Enforce Terms of Confirmed Amended Chapter 12 plan is **continued to 10:30 a.m. on October 1, 2020.**