UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

September 19, 2019 at 10:30 a.m.

1.	**18-90029-E-11** **MF-41**	**JEFFERY ARAMBEL** **Matt Olson**	**JOINT MOTION FOR ADMINISTRATIVE EXPENSES** **8-29-19 [922]**

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 in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on August 29, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Allowance of Administrative Expenses was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, 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 Administrative Expenses is granted.

While caption a "Joint Motion To Allow Administrative Claim . . .," this is actually a motion for the approval of compromise and then payment of the compromise amount as an administrative expense.

Jeffery Edward Arambel, the Debtor in Possession ("ΔIP") and Morada Farming Company, LLC ("Settlor") jointly request the court approve a stipulation allowing the Settlor's claim as an administrative expense in the amount of $20,524.03.

Settlor is a company owned by Henry Foppiano. Foppiano purchased various of the ΔIP's properties, and thereafter used Settlor to remove various property off the purchased lands. Settlor has argued that there was an agreement between Settlor and ΔIP for the removal of the property, ad therefore that the cost of removal should be an administrative expense. ΔIP argued there was no agreement, and the asserted cost for removal was unreasonable high.

Settlor filed a motion for administrative expense, which after hearing was denied without prejudice. Dckt. 814. At the hearing, the court noted it was unclear whether there was a claim against ΔIP, or against the Debtor in his personal capacity. Civil Minutes, Dckt. 813.

While no settlement agreement was filed in support of the Motion, the terms are very plain. Settlor's claim is determined to be an administrative expense in the amount of $20,524.03.

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

Movant argues that there was some benefit provided to the Estate notwithstanding the existence of an agreement, and therefore it is likely the Estate would have to pay at least for the value of those services. Movant argues further that Settlor has threatened to back out of the sale for property of the Estate.

Movant's argument is well-taken. Settlor provided valuable services to the Estate. Unless it is found that the Debtor in his personal capacity alone (and not as ΔIP) is liable, the Estate would at least have to pay for the value of those services. Therefore, this factor weighs in favor of settlement.

Difficulties in Collection

Movant argues this factor is not relevant.

Movant's argument is well-taken. The Estate is in a defensive position and would not have to collect on a successful judgment. Therefore, this factor is neutral.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues litigation would be a distraction and would necessarily involve expense and delay.

Here, the issues are not very complex. The disputed issue is essentially the amount of Settlor's claim for services rendered. Furthermore, the expense and delay are not great. While settlement may offer less expense and delay, the disputes are straightforward and would not result in significant expense, delay, and inconvenience.

Paramount Interest of Creditors

Movant's argues the best interest of the creditors is in settlement because the negotiated resolution provides a fixed, reduced amount for the administrative expense asserted by Settlor and avoids the costs and expense of threatened litigation.

This argument is well-taken. Even though the litigation here is not complex, there would be some cost and delay, and the result if successful would most likely result in a similar claim amount to what the settlement provides.

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 the negotiated resolution provides a fixed, reduced amount for the administrative expense asserted by Settlor and avoids the costs and expense of threatened litigation. 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 for Allowance of Administrative Expense filed by Morada Farming Company, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the claim of Morada Farming Company, LLC shall be an allowed administrative expense of the Chapter 11 Estate in this case pursuant to 11 U.S.C. § 503(b)(1) in the amount of $20,524.03.

2. 19-90400-E-7 JUSTAN JOHNSON — MOTION TO DISMISS CASE
SSA-1 Steve Altman — 8-9-19 [24]

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2019. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxxx.

The debtor, Justan A. Johnson ("Debtor"), filed this Motion seeking to dismiss the Chapter 7 case pursuant to 11 U.S.C. § 707. Debtor's reason for wanting dismissal is straightforward: in less than a month after filing this case, Debtor's grandmother passed away, and Debtor learned he will inherit real property valued at approximately $300,000.00. Declaration, Dckt. 28.

The Debtor argues that with this significant change in financial circumstances, Debtor can procure a secured loan for roughly $50,000.00 to pay all claims in this case, as well as any administrative expenses the Chapter 7 trustee has incurred thus far.

In support of the Motion, Debtor filed the Declaration of Chris Harringfeld, the president and owner of California Mortgage Associates. Declaration, Dckt. 27. Harringfeld testifies that it will be difficult

to obtain a loan on the Debtor's new property while in a Chapter 7, and that even in a chapter 13 it would take approximately one year before Debtor is eligible for a loan. *Id*.

CHAPTER 7 TRUSTEE'S OPPOSITION

Garry Farrar, the Chapter 7 Trustee ("Trustee") filed an Opposition on September 5, 2019. Dckt. 30. Trustee argues that despite the Debtor's representations, there is nothing requiring Debtor to pay creditors in the event the case is dismissed.

Trustee argues further that despite Debtor's arguments, Debtor could receive a loan despite being in bankruptcy. The Declaration of Trustee provides testimony that he would be able to get a loan secured by the property for $50,000.00 at 9.75% APR and 3 points over a 10 year term. Declaration, Dckt. 31.

Trustee concludes that allowing him to administer the property would pay all claims in this case and avoid "plain legal prejudice" to creditors.

DEBTOR'S REPLY

Debtor filed a Reply on September 11, 2019. Dckt. 34. Debtor argues the following:

1. Information about a potential loan brought in through Trustee's Exhibit B is inadmissable hearsay.

2. The loan proposed by Trustee is more akin to a "hard money loan."

3. There is no prejudice to any creditor through dismissal of the case because creditors are free to assert their rights outside of bankruptcy. No creditor has filed an opposition to the Motion.

4. Debtor wishes to proceed outside of bankruptcy to preserve his credit and to avoid further administrative costs.

DISCUSSION

The court may dismiss a case under Chapter 7 only after notice and a hearing and only for cause. 11 U.S.C. § 707. Colliers provides the following discussion regarding voluntary dismissal:

> When the debtor seeks dismissal of a voluntary case, the relevance of the "cause" requirement has been questioned. Most cases, however, seem to require some cause for dismissal even in this situation, although the cause may simply be that dismissal is in the best interest of the debtor and not prejudicial to creditors. The debtor's best interest lies generally in securing an effective fresh start upon discharge and in the reduction of administrative expenses, leaving resources to work out debts; for creditors, if delay is said to have prejudiced them, the court must determine whether, as section 707(a) provides, the delay has been unreasonable. Thus, for example, the Court of Appeals for the Second Circuit, in Smith v. Geltzer, held that the bankruptcy court must consider whether dismissal would benefit creditors and whether it would enable the debtor to secure an effective fresh start, as well as the costs to the debtor,

> both in administrative expenses and the possible harm to a debtor's ability to obtain credit or seek bankruptcy relief in the future.
>
> When the debtor seeks dismissal, courts must take care to assure that creditors will not be prejudiced by a dismissal. Debtors are not generally permitted to dismiss cases over the objections of creditors or the trustee in order to refile to gain the benefit of exemptions that had been improperly claimed in the first case. Some courts have refused dismissal of a voluntary petition when the primary purpose was to file a fresh petition that would include debts incurred since the petition sought to be dismissed was filed. Similarly, dismissal may be denied when it is sought because property has been obtained or is expected that could satisfy the debtor's debts, to transfer the case to a different district, to render dischargeable a previously nondischargeable debt, or because fraud on the part of the debtor is discovered. The fact that the debtor has changed his or her mind about invoking bankruptcy jurisdiction to seek relief from debts and giving up the Seventh Amendment right to a jury trial on a claim that has passed to the bankruptcy estate is not, by itself, cause for dismissal.
>
> Generally, it has been held that the trustee has standing to object on behalf of the unsecured prepetition creditors of the debtor, even if no creditor objects. However, some courts have held that the trustee may object only for the purpose of securing the trustee's own costs and expenses.

6 Collier on Bankruptcy P 707.03 (16th 2019).

Here, the cause for dismissal is arguably that payment of claims would be easier and cheaper outside of bankruptcy given Debtor's post-petition change in circumstances. This argument is well-taken. Dismissing the bankruptcy would reduce administrative expense, avoid more significant detriment to Debtor's credit, and possibly allow for more favorable loan terms.

At the same time, allowing Debtor to dismiss the case would permit Debtor to increase the delay and expense to creditors before recovering on their claims (in the event creditors are forced to seek enforcement theirselves, Debtor deciding not to voluntarily pay claims as represented).

Debtor commenced this case with the May 1, 2019 *pro se* filing of his Voluntary Petition. On Schedule D Debtor lists one creditor with a claim of ($13,384.00) secured by Debtor's vehicle stated to have a value of $14,000.00. Dckt. 1 at 19.

Debtor lists having general unsecured claims of ($30,447.00), of which ($17,433) is Capital Bank for credit card debt, ($5,751.00) to Chase Bank for credit card debt, and ($2,485.00) to Chase Card for credit card debt. Schedule D/E, *Id.* at 20-21. Thus, at least 84% of Debtor's unsecured obligations are for credit card debt.

Going to Schedule I Debtor listing having monthly take home income of $2,735. *Id.* at 26-27. On Schedule J Debtor lists having ($2,842.00) in month obligations, leaving him a negative ($106.21) a month after his reasonable and necessary expenses. This includes ($700) a month for rent.

In his Reply Debtor bemoans that the loan the trustee suggests is a "hard money loan" and not reasonable. Given Debtor's income, one questions what other loan he could obtain. This "get a loan and

pay creditors" solution is the one given to the Debtor why the case should be dismissed and creditors be left to Debtor voluntarily paying everyone.

The Trustee filed a Reply Declaration to the Reply filed by the Debtor to the opposition addressing the lack of a declaration by a representative of the hard money lender. Dckt. 36. This provides confirmation of a loan to Debtor.

It appears that given Debtor having engaged experienced counsel and there being an experienced, reasonable Chapter 7 Trustee, a possible resolution based on a realistic repayment method could be established. It may be, if the Debtor investigates other lenders that his post-bankruptcy dismissal rate may be better, but only slightly better, given his income and expenses. It may be a year or two after dismissal he could refinance.

Or it may be that a lien or other encumbrance can be placed on the property to insure that the monies from the property, loan or sale, will be used to pay the claims that would be paid through this bankruptcy case filed by Debtor.

At the hearing, xxxxxxxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by the debtor, Justan A. Johnson ("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 Dismiss is XXXXXXXX.

3. 18-90123-E-11 LORENA ALVARADO
UST-1 Anh Nguyen

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 , MOTION TO DISMISS CASE
8-12-19 [62]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors, and parties requesting special notice on August 12, 2019. By the court's calculation, 38 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).

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 11 Bankruptcy Case to a Case under Chapter 7 is XXXXXXXXXXX.

This Motion to Convert the Chapter 11 bankruptcy case of Lorena Alvarado ("Debtor in Possession") has been filed by Tracy Hope Davis ("Movant"), the U.S. Trustee. Movant asserts that the case should be dismissed or converted because Debtor in Possession has not filed monthly operating reports for the months October 2018 through June 2019.

DEBTOR'S OPPOSITION

Debtor in Possession filed an Opposition on September 5, 2019. Dckt. 68. Debtor in Possession provides an overview of the case history and necessity of this case, asserting the Debtor in Possession was the victim of fraud and filed this case to preserve two properties. Debtor in Possession asserts further that one of the two properties has been foreclosed, and that Debtor in Possession is in the process of a loan modification regarding the other property.

Debtor in Possession requests the hearing be continued to allow the negotiation of a loan modification.

APPLICABLE LAW

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

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1).

DISCUSSION

The Debtor in Possession's opposition is based on the desire to stay in Chapter 11, not any explanation as to why the Debtor in Possession is not filing monthly operating reports or prosecuting this case. It appears that filing this Chapter 11 case has been solely to obtain the automatic stay and the Debtor not intending to fulfill her obligations as the Debtor in Possession in good faith. Given that the Debtor in Possession is represented by counsel, such failure cannot have been inadvertent or unintentional.

While the explanation as to why the prior Chapter 13 case failed and the stated misconduct of persons in her former attorney's office are strong, they do not grant the Debtor in Possession a waiver of the federal bankruptcy law.

At the hearing, xxxxxxxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert the Chapter 11 case filed by Tracy Hope Davis ("the U.S. Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is xxxxxxxxxxxx

4.	**19-90735-E-7** **LBF-1**	**KENNETH WYCKOFF** **Lauren Franzella**	**MOTION TO AVOID LIEN OF STANISLAUS CREDIT CONTROL SERVICE, INC.** **8-16-19 [11]**

Tentative Ruling: No appearance at the September 19, 2019 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, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 16, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted, with the lien avoided in part.

This Motion requests an order avoiding the judicial lien of Stanislaus Credit Control Service, Inc. a California Corporation ("Creditor") against property of the debtor, Kenneth Wyckoff ("Debtor") commonly known as 445 Davitt Avenue, Oakdale, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $77,854.33. Exhibit A, Dckt. 14. An abstract of judgment was recorded with Stanislaus County on June 18, 2013, that encumbers the Property. *Id*.

DISCUSSION

Valuation of the Property

In the Motion and in Debtor's Declaration, it is stated that the Property has a fair market value of $220,900.00. This is not an accurate statement of value, as it include possible future costs of sale if the Debtor were to sell the Property.

Both the Motion and Declaration point to the value as stated on Debtor's Schedule A/B. On Schedule A/B, Debtor states the value of the Property is $220,900.00, but includes the following additional information:

> Appraisal done by Daniel Del Real of PMZ Realty. CMA is based on comparables in the area. Value reflects 6% cost of sale

Dckt. 1.

Thus, the amounts asserted in the Motion and Declaration are the FMV plus an added 6% for cost of sale.

For the purposes of 11 U.S.C. § 522(f), the court inquires as to the "value" of property. "Value" means fair market value as of the date of the filing of the petition . . . 11 U.S.C. § 522(a)(2).

Nowhere in the applicable Bankruptcy Code sections is there a reference to including a cost of sale. In the Motion, which is a pleading presented to the court subject to Federal Rule of Bankruptcy Procedure 9011, there is no legal authority presented for this proposition.

11 U.S.C. § 522(f)(2)(A) Analysis

While not clearly stated, it appears the Property has a FMV of approximately $234,420.00 as of the petition date ($234,420.00 fair market value less the 6 percent cost of sale is the net value, not the fair market value, asserted in the Motion is $220,900.00 asserted in the Schedules). Dckt. 1. The unavoidable consensual liens that total $119,087.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $23,958.67 on Schedule C. *Id.*

In the Motion, Debtor's counsel does not walk through a detailed analysis. Rather, in Debtor's Declaration, Debtor states:

> 9. At the time of filing my petition, I had a first deed of trust with Select Portfolio Servicing, Inc. in the amount of $119,087.00 **which results in $23,958.67 of equity in the property**. A true and correct copy of my filed Schedule D is located in the List of Exhibits as Exhibit "C".
>
> 10. **I exempted $23,958.67 of the property value for this real property in Schedule C** of my bankruptcy petition. A true and correct copy of Schedule C is located in the List of Exhibits as Exhibit "D". My property located at 445 Davitt Avenue, Oakdale, California is fully exempt as I claimed $23,958.67 under CCP 704.730. Based on the value of the property and the 1st Deed of Trust owed to Select Portfolio Servicing, Inc., the creditor's lien impairs my claimed exemption.
>
> 11. Based on the impairment of creditor's claim on my claim on my claimed exemption, I request that the court grant my Motion

to Avoid the Judicial Lien of STANISLAUS CREDIT CONTROL SERVICES, INC. a California Corporation.

Declaration, Dckt. 13(emphasis added).

First, the court notes that Debtor's testimony here does not meet the requirements of the Federal Rules of Evidence. If called to testify about the above, it is unlikely the Debtor would have personal knowledge about how his claimed exemptions are impaired. FED. R. EVID. 602. This is in the realm of sophisticated legal expertise–these are legal conclusions that are being made by Debtor's counsel.

More problematic though is that Debtor's counsel has made an analytical mistake. As stated above (by Debtor and not discussed in the Motion or supporting Memorandum), there is $23,958.67 in equity in the Property after adding up the unavoidable lien and the judicial lien, and the Debtor has exempted only that amount.

A simple mathematical computation for impairment considering the value of the Property less the liens and exemption is computed as follows (rather than a long, multi-paragraph narrative analysis):

FMV	$234,420.00	
First Deed of Trust Secured Debt	($119,087.00)	
Exemption Claimed	($ 23,958.67)	
Judgement Lien of Creditor	($125,000.00)	Estimate based on post judgment interest of 10% per annum on the judgment principal. Debtor did not provide the court with a calculation of the interest accrual and merely lists the initial judgment amount on Schedule D. The court gives the Debtor the benefit of the doubt and computes what could be the maximum amount of the judgment lien if the Debtor failed to make any payments on this judgment since 2013.
	==========	
Non-Impairment/(Impairment) Amount...	($33,625.70)	

Using the simple mathematical calculation provided by Congress in 11 U.S.C. § 522(f), the exemption is impaired to the extent of ($33,625.70) and future amounts above that for this judgment lien.

The Motion is granted and the judgment lien is avoided for all amounts in excess of $91,374.30. FN. 1

FN. 1. Debtor and Debtor's Counsel might feel that it is unfair that the court properly applied the facts established by the Debtor to the proper applicable law. Such consternation is assuaged by the ruling of the Supreme Court in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010). It is incumbent on federal trial judge to apply the proper law to the evidence presented. The federal courts are not a three ring game circus in which there is the opportunity to fool the other side and mislead the court into not properly applying the law. In the upper left-hand header of Debtor's Declaration, above the caption, the following information is provided:

Ruling

The court applying the arithmetical formula specified in 11 U.S.C. § 522(f)(2)(A), there is equity to support the judicial lien. Therefore, the Judicial Lien impairs the Debtor's exemption of the real property, and is avoided in all amounts in excess of $91,374.30, subject to the provisions of 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 Kenneth Wyckoff ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Judgment Lien of Stanislaus Credit Control Service, Inc., for the judgment in California Superior Court for Stanislaus County Case No. 682206, recorded on June 18, 2013, DOC-2013-0052172-00 with the Stanislaus County Recorder, against the real property commonly known as 445 Davitt Avenue, Oakdale, California, is avoided for all amounts in excess of $91,374.30 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.

5. **19-90151-E-11** **Y&M RENTAL PROPERTY MANAGEMENT, LLC**
David Johnston

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
2-21-19 [1]

Debtor's Atty: David C. Johnston

Notes:
Continued from 3/28/19 to allow Debtor and Debtor's counsel to determine how, if possible, these matters can be properly presented in federal court. Further continued from 8/29/19 due to court calendaring issues.

[UST-1] United States Trustee's Motion to Dismiss Case or Convert Case to Chapter 7 filed 7/11/19 [Dckt 18]; Order appointing Chapter 11 Trustee filed 8/1/19 [Dckt 35]

[UST-2] United States Trustee's Motion for Review and Disgorgement of Fees of David C. Johnston, Esq. Filed 7/11/19 [Dckt 21]; heard 8/1/19 and continued to 10:30 a.m. on 10/3/19 [Dckt 34]

[UST-3] Application for Order Approving the Appointment of Chapter 11 Trustee filed 8/28/19 [Dckt 39]; Order granting filed 8/29/19 [Dckt 44]

The Status Conference is continued to 2:00 p.m. on xxxxx, 2019.

6. **19-90464-E-7**
MAS-1

RICHARD RICKS
Pro Se

MOTION FOR CONTEMPT
8-6-19 [40]

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, and Office of the United States Trustee on August 6, 2019. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion For Order To Show Cause 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 Compel is granted.

Creditor Hirst Law Group, P.C. filed this Motion for Order To Show Cause requesting that the court issue and Order To Show Cause why the debtor, Richard Arland Ricks ("Debtor") should not be sanctioned $1,615.00 for willful failure to attend court ordered examination and document production.

The court issued an Order granting the Movant's Application For Examination on May 30, 2019. Dckt. 22. That Order provided that attendance for the examination may be compelled pursuant to Federal Rule of Bankruptcy Procedure 9016, which rule incorporates Federal Rule of Civil Procedure 45. *Id*.

On May 31, 2019, Movant filed a Subpoena For Rule 2004 Examination which complied with Federal Rule of Civil Procedure 45. Dckt. 27. The Subpoena was served that same day, and then again on June 13, 2019. Exhibit, Dckt. 43 at p. 11, 14.

Movant has presented evidence that it incurred $1,615.00 in attorney's fees and costs. Declaration, Dckt. 42 at ¶ 9.

Movant also requests in the Motion that Debtor be taken into custody pursuant to Federal Rule of Bankruptcy Procedure 2005.

DISCUSSION

The Debtor has been served with a subpoena for a 2004 examination, and did not attend that examination. The Motion requests the court issue an Order requiring the Debtor to show cause why sanctions should not be imposed.

Based on Debtor's failure to appear to the noticed 2004 examination after the issuance of a subpoena, the Motion is granted. The court shall issue and Order requiring Debtor to appear and show cause why sanctions should not be issued for his failure to attend the noticed 2004 examination.

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

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

The Motion For Order To Show Cause filed by Creditor Hirst Law Group, P.C. ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

IT IS FURTHER ORDERED that the court shall issue an Order requiring debtor, Richard Arland Ricks, to appear and show cause why sanctions in the amount of $1,750.00 should not be imposed for failure to comply with Movant's subpoena setting 2004 examination.

IT IS FURTHER ORDERED that the debtor, Richard Arland Ricks, shall appear in person at the **XXXXX** hearing–No Telephonic Appearance Permitted.

7. 18-90456-E-7 SSA-2 | **JAN TOURTLOTTE** Martha Passalaqua | **MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEES ATTORNEY(S)** 8-30-19 [21]

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 30, 2019. By the court's calculation, 20 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.

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

Fees are requested for the period October 11, 2018, through August 23, 2019 (and through the hearing on this Motion). The order of the court approving employment of Applicant was entered on October 22, 2018. Dckt. 19. Applicant requests fees in the amount of $3,900.00 and costs in the amount of $18.96.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include case administration, asset recovery, and fee and employments applications. The Estate has $8,504.66 of unencumbered monies to be administered as of the filing of the application. 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 2.5 hours in this category. Applicant discussed liquidation of assets (stock holdings between Debtor and ex-spouse) and proper method of resolution of claims between parties with Trustee, American Funds, Debtor'.s counsel, Ms. Passalaqua and Debtor's ex-husband G. Papadopolous. Applicant also reviewed claims in the estate and monitored completion of form's liquidation process and receipt of monies between Trustee and American Funds.

Efforts to Assess and Recover Property of the Estate: Applicant spent 5.2 hours in this category. Applicant investigated stock holdings of the debtor and her ex-husband, and pursued liquidation of those assets.

Fee and Employment Applications: Applicant spent 3.8 hours in this category. Applicant prosecuted motions to employ and compensate.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Steven S. Altman	13	$300.00	$3,900.00
Total Fees for Period of Application			$3,900.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $18.96 pursuant to this application. A review of the Billing Statement filed as Exhibit 2 shows these expenses were for copies and postage. Dckt. 25.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $3,900.00 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 $18.96 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.~~

~~The court authorizes the Chapter 7 Trustee to pay the fees and costs allowed by the court.~~

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

~~Fees $3,900.00~~
~~Costs and Expenses $18.96~~

~~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 Steven S. Altman ("Applicant"), Attorney for Michael 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 Steven S. Altman is allowed the following fees and expenses as a professional of the Estate:~~

~~Steven S. Altman, Professional employed by the Chapter 7 Trustee~~

~~Fees in the amount of $3,900.00~~
~~Expenses in the amount of $18.96;~~

~~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.~~

8. **16-90157-E-7** **DARYL FITZGERALD** **CONTINUED MOTION BY RICHARD KWUN TO WITHDRAW AS ATTORNEY**
18-9011 **RK-1** **6-13-19 [66]**
FITZGERALD V. TRELLIS COMPANY

Appearance Required for Richard Kwun, counsel of record seeking to withdraw, and Daryl Fitzgerald, the client Plaintiff-Debtor

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff on June 13, 2019. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Withdraw is XXXXXXX.

Richard Kwun ("Movant"), counsel of record for the debtor, Daryl Fitzgerald ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case.

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

> Richard Kwun, counsel for plaintiff, after having substituted in at the plaintiff's request now hereby moves for withdrawal from representation based on the Memorandum of Points and Authorities in Support of Motion to Withdraw filed herewith.

Motion, Dckt. 66.

In reviewing the Memorandum of Points and Authorities in Support of Motion ("Memo"), the following basis for relief is asserted:

A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e) and California Rule of Professional Conduct Rule 1.16 (b) (4). Memo ¶¶ 9-10, Dckt. 69.

B. Debtor has not returned phone and email communications sent by Movant. *Id*., ¶¶ 5-7.

C. Debtor has filed his own pleadings, *pro se,* without informing Movant. *Id*., ¶ 5.

Memorandum of Points and Authorities, Dckt. 69.

In his Declaration (Dckt. 68) Movant states that Debtor had ARAG legal services insurance which would fund the representation. Movant has undertaken the representation under such coverage.

DEBTOR'S MOTION TO SUBSTITUTE
DEBTOR AS COUNSEL

On June 20, 2019, Debtor filed a motion entitled "Plaintiff return to *pro se*." Dckt. 73. That motion details the Debtor's view of difficulties in working with counsel, and expresses a desire to proceed in *pro se.*

Attached to the Debtor's motion is email correspondence regarding the scheduling of depositions, and an Eastern District of California Substitution of Attorney form with "terminated 2019" written , among several other interlineations.

AUGUST 1, 2019 HEARING

Neither Counsel seeking to withdraw nor the Plaintiff-Debtor who is seeking to substitute in appeared at the hearing. Civil Minutes, Dckt. 77. The court having been informed that legal insurance exists for counsel and could possibly exist for replacement counsel, the court continued the hearing on the Motion to address with the Plaintiff-Debtor and counsel how the withdrawal and replacement will be handled and therefore.

DISCUSSION

Review of Minimum Pleading Requirements for a Motion

Federal Rule of Civil Procedure 7(b), incorporated into this Adversary Proceeding by Federal Rule of Bankruptcy Procedure 7007, requires that the motion itself state with particularity the grounds upon which the relief is requested. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Here, the Motion states the following:

> Richard Kwun, counsel for plaintiff, after having substituted in at the plaintiff's request now hereby moves for withdrawal from representation based on the Memorandum of Points and Authorities in Support of Motion to Withdraw filed herewith.

Motion, Dckt. 66. The above does not contain any of the factual or legal grounds for relief. The Motion is merely a direction by the Movant to the court to review other pleadings.

Failure to comply with the Federal, Bankruptcy, and Local rules is generally grounds for denial of the Motion.

However, in light of the circumstances here, and Debtor having filed his own motion seeking substitution, the court shall consider the Motion.

Legal Authority For Withdrawal

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3- 700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the two relevant for this Motion:

> (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
>
> > (4) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

(6) The client knowingly and freely assents to termination of the employment.

CAL. R. PROF'L. CONDUCT 1.16(b).

Consideration of Withdrawal

In this Adversary Proceeding, the court has concerns about Debtor's ability to represent himself. However, in reviewing Movant and Debtor's pleadings filed, it is clear Debtor has made it unreasonably difficult for Movant to provide representation.

Email communications between Movant and Debtor show an unwillingness to proceed with depositions in this Proceeding. While Debtor appears to have some medical reasons for pushing the depositions off nearly half a year(from May to October), they are unexplained.

Without Movant's knowledge, Debtor filed his own objection to depositions. Dckt. 64. In the objection Debtor provides detailed information as to the number of medical visits he has had recently, but no actual detail is provided regarding any illness or condition.

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 Withdraw as Attorney filed by Richard Kwun ("Movant") having been presented to the court, neither Movant or the client Plaintiff-Debtor appeared at the noticed hearing; and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Withdraw as Attorney is **XXXXX**.

9. 18-90847-E-7 IMELDA PADILLA
MF-3 Thomas Gillis

MOTION FOR TURNOVER OF PROPERTY
8-22-19 [72]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on August 22, 2019. By the court's calculation, 28 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 3912 Pheasant Lane, Modesto, California ("Property") and as to any 2018 tax refunds (the "Tax Refund").

DEBTOR'S REPLY

The debtor, Imelda Padilla ("Debtor") filed an Objection to the Motion on September 5, 2019. Dckt. 84. Debtor disputes that Motion on the grounds that a motion to convert the case to on e under Chapter 13 is pending, and if granted the present Motion would become moot. Debtor further argues that a briefing schedule should be permitted for this Motion, and requests that the hearing on the Motion be continued to October 17, 2019.

MOVANT'S REPLY

Movant filed a Reply on September 12, 2019. Dckt. 87. Movant argues that Debtor has already attempted to convert the case, which motion was denied, and that it is not likely a feasible Chapter 13 Plan could be proposed.

DOCUMENTS FILED ON SEPTEMBER 17, 2019

On September 17, 2019, on the eve of this September 19, 2019 hearing, the Debtor filed a series of documents (Dckts. 89-90). No leave to file untimely additional or supplemental documents was request and no such relief has been granted by the court.

Docket 89 is the Debtor's Supplemental Objection. In the Supplemental Objection the Debtor's counsel asserts in pertinent part:

A. The 3912 Pheasant Lane, Modesto, California property was purchased in 1999 by Debtor's non-filing husband. Sup. Opp. ¶ 1, Dckt. 89.

B. Debtor's counsel concludes that the house is and has been the non-filing spouse's separate property since 1999. *Id.* ¶ 2.

This statement stands in contrast to Schedule A/B in which Debtor states under penalty of perjury that she has an interest in the Pheasant Lane Property and her interest has a value of $97,500.00. Dckt. 21 at 3.

C. The property was purchased 17 yeas before the Debtor married her non-filing spouse. *Id.* ¶ 3.

D. During the two year marriage the non-filing spouse refinanced the home two times and did not put the debtor on title. *Id.* ¶ 4.

E. The Debtor and non-debtor spouse made the monthly mortgage payments with community property monies.

F. Debtor resided in the home and asserts she can claim a homestead interest in the Property. *Id.* ¶¶ 6,7.

G. The Motion for turnover made pursuant to the Bankruptcy Code violates Due Process under the Fourteenth Amendment. It is asserted that the non-debtor spouse has an interest in the property and turning over the house as property of the bankruptcy estate, for some possible future sale at some possible future time, violates the absent non-debtor spouse's rights. *Id.* ¶¶ 8-11.

It appears that what Debtor argues here is that any dispute for the property will be between the Trustee and the non-debtor spouse, and Debtor is merely a non-participant spectator.

The Debtor provides her Declaration with the Supplemental Opposition. This Declaration is to provide the Debtor's personal knowledge testimony. Fed. R. Evid. 601, 602. Debtor begins by telling the court of events which occurred in 1999, directing the court to read a "Property Radar Report" and her attorney's declaration. Declaration ¶ 2, Dckt. 91. Debtor then provides the court with her legal conclusion that the house is separate property, choosing to waive the attorney-client privilege and state she makes those statements as it having been explained to her by her attorney. *Id.* ¶ 1 (there being a second paragraph 1 after paragraph 2 of the Declaration).

Debtor then testifies that she married the non-debtor spouse in 2017, eighteen years after she asserts that her non-debtor spouse purchased the property. *Id.* ¶ 2 (there being a second paragraph 2 after the second paragraph 1). Debtor testifies that the non-debtor spouse refinanced the Property two times since they have been married, and directs the court to an unidentified Exhibit A. *Id.* ¶ 3. Exhibit A the "Property Radar" exhibit generated by unknown persons.

Debtor's counsel has filed his Declaration in Opposition to the Motion. Dckt. 92. He first testifies that he purchased and maintained an office "business record" entitled the Property Radar Report. He asserts that this is a business record pursuant to Federal Rule of Evidence 803(b). Declaration ¶¶ 2,3; Dckt. 92.

There is no Federal Rule of Evidence 803(b). There is a Federal Rule of Evidence 804(b) which addresses exceptions to the Hearsay Rule which provides:

> (b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:
>
> (1) Former Testimony. Testimony that:
>
> > (A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and
> >
> > (B) is now offered against a party who had—or, in a civil case, whose predecessor in interest had—an opportunity and similar motive to develop it by direct, cross-, or redirect examination.
>
> (2) Statement Under the Belief of Imminent Death. In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.
>
> (3) Statement Against Interest. A statement that:
>
> > (A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and
> >
> > (B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.
>
> (4) Statement of Personal or Family History. A statement about:
>
> > (A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the

> declarant had no way of acquiring personal knowledge about that fact; or
>
> (B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.
>
> (5) [Other Exceptions.] [Transferred to Rule 807.]
>
> (6) Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability. A statement offered against a party that wrongfully caused—or acquiesced in wrongfully causing—the declarant's unavailability as a witness, and did so intending that result.

None of these excepts appear to be applicable.

> In paragraph 4 of his Declaration, counsel states that:
>
> "I routinely form my legal conclusion on the state of the home title from said business records."

Id.

There is a hearsay exception found in Federal Rule of Evidence 803(6), which is commonly known as the business records exception. It provides:

> The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:
> . . .
> (6) Records of a regularly conducted activity. A **record of an act, event, condition, opinion, or diagnosis** if:
>
> (A) the **record was made** at or near the time **by**—or from information transmitted by—**someone with knowledge**;
>
> (B) the **record was kept in the course of a regularly conducted activity** of a business, organization, occupation, or calling, whether or not for profit;
>
> (C) **making the record was a regular practice** of that activity;
>
> (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and
>
> (E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

Fed. R. Evid. 803(b) [emphasis added]. As discussed in Weinstein on Evidence the witness must show that all of the above was done in creating the record. Here, all that is shown is that counsel went to an internet site and printed a page of information that: (1) purports to be someone else's record, (2) purports to have been made by someone else, (3) purports to be maintained by someone else, and (4) purports to be done as a regular activity by someone else. Counsel, as the witness, cannot testify as to how the report is made, maintained, and what the regular activity is. He can merely testify that he pushed the print button for a report that someone else has made/maintained/has as business records/creates it in a credible manner. [FN. 1.]

FN. 1. Given Debtor's counsel's long and storied career in federal bankruptcy court, such a misstatement of Federal Rule of Evidence 803(6) [assuming that the reference to (b) was a clerical error] could not have been inadvertent.

The third Declaration is provided by Debtor's Counsel's employee, Cecilia Duarte. Dckt. 93. She testifies that she has read and explained the documents to the Debtor and Counsel as the English-Spanish language translator.

Glaring in its absence is the purported owner of the Property – Jose Amezquita. Mr. Amezquita fails or refuses to provide any testimony and is not before the court asserting an interest in the Property. Rather, Mr. Amezquita (if he is married to the Debtor) is waived by the Debtor as the real party in interest, "so therefore the Trustee loses and I, the Debtor, take the Property."

If Mr. Amezquita exists and if Mr. Amezquita asserts an interest in the property, an action may be filed in this court to determine what interests the bankruptcy estate and Mr. Amezquita have.

Motion to Convert

Debtor, on September 17, 2019 (which is one hundred and twelve days, more than three months, after the court denied the prior motion to convert; Order, Dckt. 71) filed her second motion to Convert this Case to one under Chapter 13. Dckt. 95. Waiting more than three months to file a motion to convert is not indicative of a debtor who in good faith seeks to prosecute a Chapter 13 case.

In her Motion, Debtor states the following grounds with particularity upon which the bases the request to convert this case:

A. "The reason for conversion is because the Trustee has threatened to sell the Debtor's home." Motion ¶ 1, Dckt. 95

B. Debtor is eligible for relief, Debtor and her husband having $83,585.16 in annual gross income. *Id.* ¶ 2. It is further alleged that Debtor meets the 11 U.S.C. § 109(e) debt limits.

C. "Debtor is requesting conversion to Chapter 13 because she will be able to pay her unsecured creditors through a plan. She will be able to pay their unsecured creditors the same amount as a Chapter 13 Trustee can obtain from liquidation." *Id.* ¶ 4.

D. Debtor will fund a Chapter 13 Plan with monthly payments of $595.00 a month for a period of sixty (60) months. *Id.* ¶ 5. This will allow for a twenty-four percent (24%) dividend for creditors holding general unsecured claims, and allow Debtor to keep the Property as her home. *Id.*

E. Debtor has now filed an Amended Schedule I to include here non-debtor spouse's income, *Id.* ¶ 7, which was not included on original Schedule I.

F. Debtor has "tightened her belt" on expenses, which is now reflected in her Amended Schedule J, which include eliminating the charitable contributions which she previously stated under penalty of perjury she was making. *Id.* ¶ 8

Debtor has filed her Declaration in support of the Motion to Convert. Her testimony includes here stating that she does not speak or understand English. Declaration, dckt. 97. She testifies that she paid a document petition preparer $125.00 to type up her schedules, but no bankruptcy petition preparer notice, declaration, or signature were filed.

On Original Schedule I Debtor states under penalty of perjury that here non-debtor spouse has $6,965.33 a month in gross wage income. Debtor listed having no income. After withholding, Debtor's combined monthly income was stated to be $4,743.18. Dckt. 21 at 29-30.

On Original Schedule J Debtor states under penalty of perjury that her family unit (2 adults and two children) and monthly expenses of ($6,379.15). *Id.* at 31-32. Based on Original Schedule I, any Chapter 13 plan would be doomed to failure. Debtor's expenses do not look unreasonable for a family of two adults and two children (pre-teen and teenager).

On May 20, 2019, Debtor filed an Amended Schedule. Dckt. 62 at 16-17. As an amended schedule I, it dates back all the way to the filing of this case. On it Debtor reduces the non-debtor spouse's gross income to $6,547.00. *Id.* But Debtor then decreases the withholdings so that the combined monthly income is greater than previously stated, with it stated on Amended Schedule I to be $5,065.00. Gross income is reduced but take home income goes up by Debtor's calculation.

On Amended Schedule J Debtor decreases her necessary and reasonable expenses from the previously stated amount by thirty percent (30%). *Id.* at 18-19. Other than saying that she was "belt-tightening," Debtor offers no explanation as to why she previously stated under penalty of perjury that her expenses were thirty percent (30%) higher.

In comparing the Original Schedule J statement of reasonable and necessary expenses with the Amended Schedule of such reasonable and necessary expenses, the following jump out:

A. Debtor's monthly mortgage payment doubles from ($399.15), Dckt. 21 at 31 to ($769.00), Dckt. 63 at 18.

B. Debtor's property taxes of ($142.00) a month on Original Schedule J drops to $0.00 on Amended Schedule J. *Id.*

C. Debtor's property insurance of ($75.00) a month on Original Schedule J drops to $0.00 on Amended Schedule J. *Id.*

D. Debtor now lists a maintenance expense of ($75.00) being necessary on Amended Schedule J, which on Original Schedule J the amount was $0.00. *Id.*

E. Debtor listed ($400) monthly expenses for electricity, heat, and gas on Original Schedule J, Dckt. 21 at 32, but drops it forty-four percent [44%] to $255.00 on Amended Schedule J, Dckt. 62 at 19.

F. Debtor lists ($380.00) in expenses for phone, cell phone, internet, satellite, and cable on Original Schedule J, but drops it to ($295) on Amended Schedule J. *Id.*

G. Debtor increases medial and dental expenses from ($90) a month on Original Schedule J to ($600.00) on Amended Schedule J, an increase of five hundred sixty-six percent [566%]. *Id.*

H. Debtor increases entertainment expenses from ($100.00) on Original Schedule J to ($200.00), an increase of one-hundred percent [100%]. *Id.*

I. Debtor drops her charitable contributions from ($50.00) a month on Original Schedule J to ($0.00) on Amended Schedule J. *Id.*

J. While Debtor stated that she had ($526.00) a month in heath insurance expense, it has been dropped to ($0.00) on Amended Schedule J. *Id.*

K. While Debtor stated that she had vehicle insurance expense of ($517.00) on Original Schedule J, it has now been dropped to ($185.00), a sixty-four percent [64%] reduction, on Amended Schedule J. *Id.*

L. Debtor also removes ($1,500.00) a month in credit card expenses from Original Schedule J, listing $0.00 on Amended Schedule J. *Id.*

By decreasing gross income, increasing take home income, and then cutting back expenses, Debtor asserts on Amended Schedule J to have $595.00 a month to fund a plan.

Given the grossly different amounts for expenses stated under penalty of perjury, the court is at a loss to determine which statement, if either, under penalty of perjury is accurate.

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 Imelda Padilla ("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.

Here, the Debtor has not really presented any argument opposing the Motion. Rather, Debtor argues that turnover should be postponed in the event the case is converted by Debtor's motion.

Additionally, the court already heard one motion attempting to convert the case. At the hearing on that motion, the court stated the following:

> At the end of the day, the court remains unconvinced that Debtor is accurately stating her assets and providing the information required under penalty of perjury. Though an excuse is given that,
>
> "2. I am poorly educated and do not speak English.
>
> 3. When I filed my case, I didn't understand about how to exempt property;"
>
> Declaration, Dckt. 64, she purports to provide testimony giving complex legal analyses and conclusions. No interpreter is required and Debtor is signing various documents under penalty of perjury - which if her testimony is believe, she has no ability to understand.
>
> Debtor has demonstrated that, even with the assistance of counsel, she will sign whatever is put in front of her. She is not prosecuting this case in good faith.

Civil Minutes, Dckt. 70. The aforementioned findings to not bode well for any future attempt at converting the case.

Further, Debtor's "empty chair" argument that someone else really owns the property is not credible and is a red flag that Debtor is gaming the system. If the non-debtor spouse owns the property then

it makes little sense for Debtor to "waste" $35,700.00 in payments through a Chapter 7 plan. The non-debtor spouse documenting his ownership will cost well less than $35,700.00. Debtor and her spouse "wasting" $35,700.00 is not credible.

The court's findings and conclusions from the prior Motion to Convert, which was denied without prejudice, include:

> In filing this bankruptcy case Debtor was not on her own. On page 7 of the Voluntary Petition, she says under penalty of perjury that she has paid a "Jose Rivera" to help her fill out the bankruptcy forms. Dckt. 1 at 8. On the original Schedules and Statement of Financial Affairs it is again stated under penalty of perjury that a "Jose Rivera" was paid to help Debtor complete the bankruptcy forms. Dckt. 21 at 45. Though the signature line for "Mr. Rivera" expressly states that the Bankruptcy Petition Prepare's Notice, Declaration, and Signature are to be attached, none is attached by the Debtor and Mr. Rivera.
>
> Though saying that she has paid "Mr. Rivera" for the assistance in preparing the documents and in filing this case, on the Statement of Financial Affairs, in response to Question 16 Debtor states under penalty of perjury that she has not paid anyone anything for such assistance. Dckt. 21 at 40. Debtor provides conflicting statements under penalty of perjury on this point.
>
> . . .
>
> Debtor has demonstrated that, even with the assistance of counsel, she will sign whatever is put in front of her. She is not prosecuting this case in good faith.
>
> Additionally, it may well be that the estate has substantial claims and rights against "Mr. Rivera" for assisting Debtor, for undisclosed amounts of money for filing clearly defective and deficient Schedules and Statement of Financial Affairs. The court believes that the Debtor is incapable of asserting such rights and claims.
>
> . . .
>
> At the hearing Debtor's counsel argued that having to file an amended schedules was not "bad faith." It was a common event. Correcting schedules is common and correcting information is consistent with the redemptive theme running through bankruptcy.
>
> What Debtor's counsel continued to ignore was Debtor signing a declaration under penalty of perjury purporting to testify about legal issues, a statute, a Supreme Court case, and her legal conclusions and findings which she clearly did not know and could not so testify. Counsel's explanation that he told her it complied with the law so its ok for her to testify under penalty of perjury as if she had personal knowledge and legal expertise (Fed. R. Evid. 601, 602) is without merit. Rather, it shows that Debtor will sign whatever is put in front of her, so long as she is told that it helps her win.

Id. at 6,7, 8-9. It appears that this continues.

Debtor also requests a further briefing schedule. However, no reason is provided for the necessity of further briefing. No argument has been presented opposing the Motion. This request is merely a further tactic to delay the court's decision on the Motion.

The Motion is granted. The Debtor shall turn over possession of the 3921 Pheasant Lane, Modesto California Property and the 2018 tax refund on or before noon on October 16, 2019.

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 the debtor, Imelda Padilla ("Debtor") shall deliver on or before **noon on October 16, 2019,** possession of all 2018 tax refunds (the "Tax Refund"); and of the real property commonly known as 3912 Pheasant Lane, Modesto, California ("Property"); all of Debtor's personal property, personal property of any other persons that Debtor allowed access to the Property; and any other person or persons that Debtor allowed access to the Property removed from the Property.

10. 12-93049-E-11 MF-2 | **MARK/ANGELA GARCIA** | **Mark Hannon** | **MOTION FOR ORDER ENFORCING PAYMENT OBLIGATIONS OF PLAN AND IMPLEMENTATION OF ORDERS OF THIS COURT**
7-29-19 [1069]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Trustee's Attorney, Plan Administrator, Plan Administrator's Attorney, and Office of the United States Trustee on July 29, 2019. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

The Motion for Order Enforcing Payment Obligations of 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 Motion for Order Enforcing Payment Obligations of Plan is denied without prejudice.

The present Motion filed by G Street Investments ("Movant") seeks an order enforcing certain provisions of the debtors, Mark Anthony Garcia and Angela Marie Garcia's ("Debtor"), Confirmed Chapter 11 Plan of Reorganization (the "Plan").

Movant argues that the Plan provides for its $750,000.00 claim to be due and payable on August 31, 2018, but that $56,375.00 remains to be paid. Movant provides an overview of the case history, Mr. Gary Farrar being appointed as plan administrator ("Plan Administrator") and seeking a refinance of Estate properties to pay Movant's claim.

Movant asserts that it believed the payment on the remainder of its claim was pending, but the Plan Administrator later argued that the claim had been reduced to $700,000.00 via a payoff demand. Movant argues that the Plan Administrator has *sua sponte* modified the Plan by attempting to reduce Movant's claim.

Movant notes that its corporate status has been on hold since August 31, 2018, Movant choosing not to maintain active status because it was in the process of winding up. Movant argues that it is in the process of reinstating so that funds received in 2019 can be accounted for.

PLAN ADMINISTRATOR'S RESPONSE

The Plan Administrator filed a Response on August 30, 2019. Dckt. 1078. Plan Administrator argues that there were discussions regarding a possible reduction of Movant's claim on May 13, 2019. Thereafter, a payoff demand was transmitted by Movant stating Movant "amends its demand to the sum of $700,000.00" Exhibit F, Dckt. 1082. Plan Administrator asserts that this lower demand reflected what he thought was negotiations for a reduction to Movant's claim, and that it is likely Movant merely regrets reducing its claim.

Plan Administrator also notes Movant is exercising powers, rights, and privileges that have been suspended.

MOVANT'S RESPONSE
AND SUPPLEMENTAL RESPONSE

Movant filed a Response on September 12, 2019. Dckt. 1084. The Response discusses at length the factual underpinnings of this dispute, and argues that Movant was not aware of and did not intend for their to be a reduction of its claim.

A Supplemental Response was filed September 16, 2019. Dckt. 1091. The Supplemental Response that bank statements show that as early as April 15, 2019, the Plan Administrator had no intention of paying Movant's full claim.

The Supplemental Response argues further that the payoff demand signed by Movant's counsel related only to the release of a small abstract of judgement held by Movant's counsel individually.

CONFIRMED CHAPTER 11 PLAN

The court issued an Order confirming the Plan (Dckt. 740) on May 6, 2016. Dckt 781. The Plan provided for Movant's (impaired) claim as a Class 4. Dckt. 740 at 3:21-23. The Plan provided further:

> The entire unpaid balance of the note, consisting of the said sum of $750,000.00, together with any such additional charges, fees, interest, and the like which may have accrued, shall be due and payable on August 31, 2018.
>
> Debtors have a right to prepay this obligation. Any and all rents in excess of $4,250.00 per month will be the property of the Debtors and shall be returned to Debtors. Within 10 days of the Effective Date of the Plan, Debtors will dismiss their adversary complaint and the complaint objection with prejudice. G Street Investments LLC will not proceed with non-judicial or judicial foreclosure as long as the Debtors comply with the Plan provisions.

> Within 10 calendar days of the Effective Date of the Plan, G Street Investments shall rescind the Notice of Default it recorded and provide proof of same to the Debtors and the Trustee and their respective counsel.

Plan, Dckt. 740 at p. 8:6-17. As to defaults under the Plan, the following is stated:

> If the Debtors default in a payment or covenant under the Plan, it will have 30 days within which to cure the default without consequence. The 30-day cure period will begin upon receipt by the Debtors and their attorney of a notice of such default. If the Debtors fail to cure the default within the 30-day period, the affected creditor or party will be free to enforce its rights as modified by the Plan.

Id., at p. 14:16-20.

SUSPENSION OF G STREET INVESTMENTS, LLC STANDING

California law provides that the rights, powers and privileges of a corporation may be suspended for nonpayment of taxes or for failure to file other necessary information. Cal. Corp. Code § 2205(c), 5008(c); Cal. Rev. & Tax. Code § 23301. It is well-settled that a delinquent corporation may not bring suit and may not defend a legal action. *United States v. 2.61 Acres of Land, More or Less, Situated in Mariposa Cty., State of Cal.*, 791 F.2d 666, 668 (9th Cir. 1985)(citing *Reed v. Norman*, 48 Cal.2d 338, 343 (1957)). However, once the corporate powers are reinstated, the corporation may defend an action. *Id*. (citing *Traub Co. v. Coffee Break Service, Inc.*, 66 Cal.2d 368, 371 (1967)). A corporation may move for a continuance in order to enable the corporation to revive itself. *Id.*

A review of the Secretary of State's website discloses that G Street Investments, LLC has been suspended. https://businesssearch.sos.ca.gov/CBS/Detail. The reason is stated as "FTB Suspension." A Statement of No Change for G Street Investments, LLC was filed on April 3, 2019, with the Secretary of State. It is signed by "Iain A. Macdonald, Attorney." The address for G Street Investments is stated to be 914 13th Street, Modesto, California. This document was obtained by clicking the link at the above Secretary of State webpage.

It appears that as a matter of California law, G Street Investments, LLC, the creditor in this case, is without legal ability to petition this court for relief.

DISCUSSION

The court has reviewed in detail the allegations and evidence provided. There is a plan with a specified amount to be paid Movant - the $750,000.00 plus interest, fees, and charges. The Plan Administrator responds that the amount owed Movant was amended by Movant. Specifically, the grounds and evidence for such amendment are (**emphasis** added):

A. "4. The Debtors requested that Mr. Farrar, as Plan Administrator, file a motion requesting court approval to refinance the G Street Property and to obtain financing on real property located at 1508 Prospect Lane, Modesto, California 95354 (the "Prospect Property"). The Debtors contended **such financing would provide funds sufficient to pay in full the unpaid balance of the lien of G Street Investments, LLC,**

$750,000.00. Any excess funds would be used for plan payments, normal operating expenses, and to make repairs to improve the Prospect Property to make it ready for sale within six months to provide additional income to fund the Chapter 11 Plan. (Doc. No. 1026, ¶ 2; Doc No. 1027, ¶ 2)." Trustee Response ¶ 4, Dckt. 1078.

B. "5. On February 15, 2019, Mr. Farrar filed the requested motions and set them for hearing on March 14, 2019. On March 18, 2019, the **Court entered orders granting both motions.** (Doc. Nos. 1037, 1039)." *Id.*, ¶ 5.

C. "7. On April 2, 2019, Mr. Farrar received an email from Mr. Macdonald that stated that he had heard nothing from the title company about putting in a demand. Mr. Farrar responded by email that he would be meeting with Mr. Garcia on April 3, 2019, to discuss all outstanding issues in the case. In addition, **Mr. Farrar stated, "I presume you know the small loan closed, which provided funds to recast your client's balance shortfall,**" to which Mr. Macdonald responded, "I didn't know the small one closed but sounds like progress." (Farrar Dec., ¶ 3; Ex. B)." *Id.* ¶ 7.

D. "8. On May 7, 2019, Mr. Farrar received an **email from Mr. Macdonald** that requested that the title company **amend GSl's demand to $750,900 (from $750,000) plus interest at 6.8% from April 1, 2019.** (Farrar Dec., ¶ 4; Ex. C)." *Id.* ¶ 8.

E. "11. **Mr. Garcia and GSI**, through Mr. Macdonald, **continued to discuss a possible reduction of the payoff amount**. In one of his emails to Mr. Macdonald, on May 9, 2019, **Mr. Garcia clarified that he hadn't said that he didn't have the funds to close escrow**, and on May 13, 2019, Mr. Macdonald asked Mr. Garcia if they should end the escrow or negotiate something. (Garcia Dec., ¶ 4; Exs. D-E)." *Id.* ¶ 11.

F. "12. On May 15, 2019, **on behalf of GSI, Mr. Macdonald submitted the Updated Payment Amount to the title company**. The **payoff demand dated May 15, 2019,** states simply, "Dear [escrow officer], [p]er our recent conversations, G Street Investments, LLC **amends its demand to the sum of $700,000."** **The demand** does not elaborate regarding the circumstances of the reduced demand and **does not claim that there is an amount outstanding beyond the $700,000 demand.** (Ex. F)." *Id.* ¶ 12.

G. "13. On May 21, 2019, **Mr. Farrar received** from the title company the **final closing statement for the refinance of the G Street Property** (the "G Street Closing Statement), which **reflects payment of $700,000.00 to GSI**. Mr. Farrar was not surprised by the lowered demand amount **given Mr. Garcia's representations** that he was working with Mr. Macdonald to reduce the balance due GSI. (Farrar Dec., ¶ 7; Ex. G)." *Id.* ¶ 13.

H. "15. On June 4, 2019, **Mr. Farrar and Ms. Bakken received from Mr. Macdonald** a letter, which states first that Mr. Macdonald had received Mr. Farrar's and Ms. Bakken's "applications for compensation and the *statements made by both of [them] about* ***financing 'to provide funds sufficient to pay in full the unpaid balance of G Street Investments LLC, $750,000'"*** and second that "**[GSI and Mr. Macdonald] were**

told of an escrow and [they] submitted the deed of reconveyance. **At the last minute** [they] *were told there were* ***insufficient funds and therefore [they] were paid $700,000***" (*emphasis* added). (Farrar Dec., ¶ 9; Ex. H)."

I. "16. On **June 11**, 2019, **Mr. Farrar, Ms. Bakken, and Mr. Macdonald** participated in a conference call **regarding the closing of escrow on the G Street refinance**. Ms. Bakken reiterated that as stated in the motions for court approval of the refinancing of the G Street Property, **the balance owed to G Street Investments was intended to come from the refinance on the G Street Property and the financing on the Prospect Property;** however, Mr. Macdonald stated that he had not focused on that fact and **had submitted a reduced payoff demand of $700,000.00 to the title company in the escrow for the refinance of the G Street Property. Mr. Farrar indicated** that it was our **understanding** that $700,000.00 had been agreed upon by GSI and Mr. Garcia. Mr. Macdonald stated that GSI contends that there is still a balance owed to it of $56,375.1 (Farrar Dec., ¶ 10; Bakken Dec., ¶ 4)." *Id.* ¶ 16.

At this juncture the court notes that Mr. and Mrs. Garcia were removed as plan administrators due to their, and their attorney's, failure to fulfill their fiduciary duties as plan administrators, failure to provide accurate information and testimony to the court, and demonstrating an inability to proceed in good faith in this case. When the court sees references to the Plan Administrator and Mr. MacDonald (who actually lived through the misconduct in this case) "relying" on things being said and to be done by Mr. Garcia, such "reliance" is incredible (and not in a good way).

J. "17. On **June 12, 2019**, Mr. Farrar received a **letter from Mr. Macdonald demanding** that the estate pay the balance owing to it of $56,375. (Farrar Dec., ¶ 11; Ex. I)." *Id.* ¶ 17.

K. "18. On **June 24, 2019, Mr. Farrar filed Status Report# 6** and attached to it the demand letter from Mr. Macdonald dated June 12, 2019. In his report, **Mr. Farrar stated** as follows: **"Mr. Macdonald reduced the payment demand to $700,000 and released the G Street Investments lien. In escrow, no agreement or provision** was provided for addressing the short fall of the original demand and the plan administrator was not notified of the shortfall or G Street Investments reduced demand. No new note, substitute collateral or private agreement was provided for .... **Mr. Garcia's position is that nothing is owed.**" In addition, Mr. Farrar also reported, "[q]uestions have been raised about G Street Investments LLC's ability to conduct any business or to have legal ability to conduct any business or to have legal representation" **in this case as GSI's current status as a corporation is suspended.** (Doc. No. 1061; Doc. No. 1069, pg. 5, lines 10-13)." *Id.* ¶ 18.

L. "As stated above, **Mr. Garcia contends that he reached a resolution with Mr. Macdonald whereby GSI agreed to accept $700,000** as payment in full on the amount due. The **conversations of Ms. Bakken and Mr. Farrar with Mr. Garcia** on May 10 and May 14 during which **Mr. Garcia stated that he was working with Mr. Macdonald for a possible reduction of the balance owed to GSI are consistent with Mr. Garcia's contention**. In addition, **Mr. Garcia's email communications** with Mr. Macdonald during that time period **are also consistent with Mr. Garcia's**

> **contention. It is further evidenced by GSl's demand of $700,000** reduced from $750,000 with no agreement or provision provided for addressing the shortfall of the original demand, no communication with the plan administrator regarding a shortfall, and no new note or substitute collateral." *Id.*, p. 7:26-27, 8:1-8.

It is unclear from the Motion what basis Movant is using to "enforce" the terms of the Plan. A proceeding to obtain injunctive relief is an adversary proceeding. FED. R. BANKR. P. 7001(7). No adversary has been commenced here.

The Motion is required to state with particularity the grounds for relief, either through Federal Rule of Bankruptcy Procedure 9013, or through Federal Rule of Civil Procedure 7 as incorporated by Federal Rule of Bankruptcy Procedure 7007. Here, the Motion does not state what the Plan terms are which Creditor has allegedly violated–there is merely a conclusion that the Plan said Movant's claim was $750,000.00, and that Plan Administrator has not paid (and does not intend to pay) the full amount of the claim .

Nature of Confirmed Plan

As provided in 11 U.S.C. § 1141, confirmation of the Chapter 11 Plan binds the parties to the terms of the confirmed plan. The confirmation of a plan works to modify the pre-petition obligations of creditors and become the "amended obligation" that is owed.

> Section 1141(a) of the Code provides that a confirmed chapter 11 plan is binding upon a broad list of entities. Subject to the requirements of due process, a confirmed plan is binding upon every entity that holds a claim against or interest in the debtor even though a holder of a claim or interest is not scheduled, has not filed a claim, does not receive a distribution under the plan or is not entitled to retain an interest under the plan. **The confirmation order terminates all such rights except as otherwise provided in the plan or the confirmation order, subject to revocation of that order pursuant to section 1144**. In other words, a confirmed plan precludes parties from raising claims or issues that they could have or should have raised before confirmation. A confirmed plan also binds any entity issuing securities or acquiring property under the plan. Thus, one who provides funding or buys assets to permit the debtor to emerge from its chapter 11 case will be obligated to perform as provided in the plan. A plan's provisions, including any obligations imposed under the plan on the reorganized debtor or successor to the debtor, fully substitute for all the debtor's and debtor in possession's preconfirmation obligations. But they do not bind an entity that is not a creditor or other party in interest in the case.

8 Collier on Bankruptcy P 1141.02 (16th 2019)(emphasis added).

The confirmed plan is the "amended contract" to be enforced by the parties. *See Claremont McKenna College v. Asbestos Settlement Trust (In re Celotex Corp.)*, 613 F.3d 1318, 1323 (11th Cir. 2010).

The present Motion seeks to assert and enforce the contractual rights between the Parties. These are the obligations and rights, as amended by the confirmed Chapter 11 Plan.

By the terms of the Plan, there is a clear avenue for relief in the event that there is an asserted default under the Plan:

> If the Debtors default in a payment or covenant under the Plan, it will have 30 days within which to cure the default without consequence. The 30-day cure period will begin upon receipt by the Debtors and their attorney of a notice of such default. **If the Debtors fail to cure the default within the 30-day period, the affected creditor or party will be free to enforce its rights as modified by the Plan.**

Dckt. 740 at p. 14:16-20. The above does not indicate that the Movant was to seek an order that Plan Administrator carry out the terms of the Plan. Rather, it is simply permitted that Movant enforce its rights it has.

Exhibit G provided by the Trustee (Dckt. 1082) is the Final Closing Statement for G Street Property. The loan obtained for this Property was $750,000 (shown as the Credit being paid into the Escrow from Monterey Peninsula Capital Partners, Inc.). In addition to the $700,000 paid to GSI, there were the additional necessary disbursements that had to be made directly from escrow:

Lender Fees to (NA) Monterey Peninsula Capital Partners, Inc. [the lender making the $750,000 loan]	($15,000.00)
Broker Origination Fee to Advanced Capital Funding, Inc.	($15,000.00)
Prepaid Interest (215.7534 per day from 5/9/19 to 6/1/19)	($4,962.33)
Processing Fee to (NA) Monterey Peninsula Capital Partners, Inc.	($500.00)
Doc Prep Fee to (NA) Monterey Peninsula Capital Partners, Inc.	($750.00)
Title Charges	
Title - Lender's Title Insurance to WFG National Title Insurance Company	($1,800.00)
Title - Recording Services Fee to WFG National Title Insurance Company	($14.45)
Title - Settlement or closing fee to WFG National Title Insurance Company	($450.00)
Title - Notary fees to First Class Signing Service	($300.00)
Title - Courier Fee to WFG National Title Insurance Company	($60.00)
Government Recording and Transfer Charges	
Recording Fee, Order to WFG National Title Insurance Company $29.00	($29.00)

Recording Fee, Releases to WFG National Title Insurance Company $34.00	($34.00)
CA Affordable Housing Recording Fees to WFG National Title Insurance Company $450	($450.00)
Mortgage $47.00	($47.00)
Release $50	($50.00)
Substitution of Trustee/Recon to WFG National Title Insurance Company $29.00	($29.00)
Additional Settlement Charges	
Property Tax Due- Defaulted to Stanislaus County Tax Collector	($8,809.67)
Payoff Liens to City of Modesto	($189.12)
Payoff Liens to City of Modesto	($427.25)
Total	($48,901.82)

With these additional necessary payments from Escrow 19-271134 there was not sufficient loan proceeds to pay GSI anything more than the $700,000.00 in the amended demand made to Escrow 19-271134. This is consistent with GSI's assertions.

A copy of the Amended Demand made in Escrow 19-271134 is provided as Exhibit F, *Id.*, by the Plan Administrator. That Amended Demand states in its entirety:

Ms. Melissa Otwa, Escrow Officer
WFG National Title Insurance Company
780 San Ramon Valley Blvd., Suite 100
Danville, CA 94526

Re: Borrower(s): Mark Garcia and Angela M. Garcia
Escrow No.: 19-271134
Updated Demand Amount

Dear Ms. Otwa:

Per our recent conversations, G Street Investments, LLC amends its demand to the sum of $700,000.

G STREET INVESTEMENTS, LLC

Iain A. Macdonald,
Managing Partner

This indicates a conversation between Mr. Macdonald and Ms. Oiwa at WFG National Title Company. It specifically references "Escrow No.: 19-271134." It does not state that GSI waives or releases a portion of the obligation owed as provided in the Confirmed Chapter 11 Plan.

The Plan Administrator has not provided the court with the closing statement from the second loan authorized to be obtained by the Debtor to fund the Chapter 11 Plan being administered by the Plan Administrator. However, it appears that he has provided in connection with his September 13, 2019 filed Status Report. Exhibit 1, Dckt. 1087. That Final Closing Statement shows the following:

Loan Amount Credit	$130,000.00
Pay off CSCDA Loan	($41,117.08)
Payoff: Prop Taxes to Stanislaus County Tax Collector	($65.53)
Lender Fees to (NA) Monterey Peninsula Capital Partners, Inc. [the lender making the $750,000 loan]	($5,200.00)
Prepaid Interest (39.1781 per day from 3/26/19 to 4/1/19)	($235.07)
Homeowner's Insurance Premium (12 mo.) to Nationwide Insurance	($432.68)
Processing Fee to (NA) Monterey Peninsula Capital Partners, Inc.	($450.00)
Doc Prep Fee to (NA) Monterey Peninsula Capital Partners, Inc.	($500.00)
Title Charges	
Title - Lender's Title Insurance to WFG National Title Insurance Company	($482.00)
Title - Document preparation to WFG National Title Insurance Company	($50.00)
Title - Recording Services Fee to WFG National Title Insurance Company	($14.45)
Title - Settlement or closing fee to WFG National Title Insurance Company	($450.00)
Title - Notary fees to First Class Signing Service	($175.00)
Title - Courier Fee to WFG National Title Insurance Company	($30.00)
Government Recording and Transfer Charges	

Recording Fee, Order to WFG National Title Insurance Company $30.00	($30.00)
CA Affordable Housing Recording Fees to WFG National Title Insurance Company $225.00	($225.00)
Recording fees: Deed $17.00	($17.00)
Mortgage $49.00	($49.00)
Satisfaction $23.00	($23.00)
Recording fees: Deed $20.00	($20.00)
Court Order to WFG National Title Insurance Company $26.00	($26.00)
CA Affordable Housing Recording Fees to WFG National Title Insurance Company $75.00	($75.00)
Additional Settlement Charges	
Property Tax Due-1st plus penalty and 2nd Installment 18/19 to Stanislaus County Tax Collector	($5,513.29)
Property Tax Due- Defaulted 17/18 to Stanislaus County Tax Collector	($8,945.12)
Garbage Lien to City of Modesto	($40.00)
Total	$65,834.78

By the court's calculation there was $65,834.78 in net loan proceeds after payment of the liens, encumbrances, and loan costs.

The court issued two orders for post-confirmation borrowing to fund the Confirmed Chapter 11 Plan. The first of these is authorizing the loan to be secured by the G Street Property which provides in pertinent part:

> **IT IS ORDERED** that the Motion is granted and **Mark Garcia and Angela Garcia** (the "Debtors") are **authorized** to execute, enter into and perform all of their obligations under the Mortgage Agreement filed as Exhibit B in support of the Motion (Dckt. 1028), and **to borrow money pursuant to the Mortgage Agreement up to $750,000.00** from Denise LaBarre or its assigns ("Lender"), which **shall be used** for the purpose stated in the Motion **to pay** (**with additional funds from other separate borrowing authorized by the court**) **the secured claim of G Street Investments, LLC** which is secured by the real property commonly known as 900 G Street, Modesto, California, as well as plan payments, normal operating expenses, and repairs and improvements to the property commonly known as 1508

Prospect Lane, Modesto, California 95354 (the "Prospect Property") to prepare it for marketing and sale.

. . .

IT IS FURTHER ORDERED that the Debtors **and the Plan Administrator are authorized to use the proceeds** of the Mortgage Agreement **to provide funds (together with the funds from the proposed financing of real property located at the Prospect Property**) to **pay in full the unpaid balance of the lien of G Street Investments, LLC, $750,000.00,** and after payment in full of said lien, any remaining loan proceeds to fund plan payments, normal operating expenses, and expenses to repair and improve the Prospect Property to prepare it for marketing and sale.

IT IS FURTHER ORDERED that Debtors shall file with the court a **report after the closing of the loan documenting**: (1) the loan closing, (2) the identity of the person making the loan and the person who holds the note that Debtor shall be paying (whether Denise LaBarre or an "assign"), and (3) **the payment in full of the obligation owed to G street Investments, LLC (which shall include copies of the G Street Investments, LLC note marked "Paid in Full" (or similar words) and a recorded reconveyance of the lien(s) securing the obligation owed to G Street Investments, LLC).**

Order, Dckt. 1037 (emphasis added).

Exhibit G provided by the Plan Administrator, the Final Closing Statement of the G Street Refinance, shows that it closed by May 16, 2019 (the Disbursement Date shown on the Final Closing Statement).

No report has been filed by the Debtors providing the specific information which they have been ordered to provide, though one hundred and twenty-five (125) days have passed from that closing.

The court issued a second order authorizing the additional borrowing, which was to be secured by the Prospect Lane Property to provide the additional funding to pay the G Street Investments, LLC claim and other plan amounts. That order in pertinent part provides:

IT IS ORDERED that the Motion is granted and **Mark Garcia (the "Debtor")** is authorized to execute, enter into and perform all of their obligations under the Mortgage Agreement filed as Exhibit B in support of the Motion (Dckt. 1035), and **to borrow money** pursuant to the Mortgage Agreement up to $130,000.00 from George H. Wake, Trustee for George H. Wake 2004 Trust or its assigns ("Lender"), which shall be used for the purpose stated in the Motion **to pay (with additional funds from other separate borrowing authorized by the court) the secured claim of G Street Investments, LLC which is secured by the real property commonly known as 900 G Street, Modesto, California (the "G Street Property"),** plan payments, normal operating expenses, and repairs and improvements to the Prospect Lane Property to prepare it for marketing and sale.

. . .

IT IS FURTHER ORDERED that the **Debtor and the Plan Administrator** are authorized **to use the proceeds** of the Mortgage Agreement to provide funds (together with the funds from the proposed financing of the G Street Property) **to pay in full the unpaid balance of the lien of G Street Investments, LLC, $750,000.00**, and to fund plan payments, normal operating expenses, and expenses to repair and improve the Prospect Property to prepare it for marketing and sale.

IT IS FURTHER ORDERED that **Debtor shall file with the court a report after the closing of the loan documenting**: (1) the loan closing, (2) the identity of the person making the loan and the person who holds the note that Debtor shall be paying (whether George H. Wake, Trustee for George H. Wake 2004 Trust or an "assign"), and (3) the payment in full of the obligation owed to G Street Investments, LLC (which shall include copies of the G Street Investments, LLC note marked "Paid in Full" (or similar words) and a recorded reconveyance of the lien(s) securing the obligation owed to G Street Investments, LLC).

Order, Dckt. 1039 (emphasis added).

The report ordered to be filed by Debtor has not been filed.

The Plan Administrator has provided the with two emails between Iain Macdonald for GSI and Mark Garcia, one of the two debtors. Exhibits D and E, Dckt. 1082. Exhibit D is an email thread beginning at 11:06 a.m. on May 9, 2019 and concluding with a May 9, 2019 email time stamped 5:27 p.m. This thread consists of the following discussion:

A. May 9, 2019 Email From Mark Garcia to Iain Macdonald at 11:06 a.m., in which Mr. Garcia states:

   1. Asks to "reduce the demand in order to [close] this transaction." The transaction is not identified in the body of the email or the subject line.

B. May 9, 2019 Email From Iain Macdonald to Mark Garcia at 11:16 a.m. in which Mr. Macdonald responds:

   1. "[I]nvestors say no. . . ."

   2. "[r]ecord NOD next week if this deal blows up." The "deal" is not identified in the body of the email or subject line.

C. May 9, 2019 Email from Mark Garcia to Iain Macdonald at 11:19 a.m. in which Mr. Garcia responds:

   1. "Ok your decision."

D. May 9, 2019 Email from Iain Macdonald to Mark Garcia at 12:00 p.m. in which Mr. Macdonald responds:

1. "BTW what's the amount of the shortfall?"

E. May 9, 2019 Email from Mark Garcia to Iain Macdonald at 1:37 p.m. in which Mr. Garcia responds:

1. "Iain I didn't tell you, I didn't have the funds."

2. "There is more involved. You are unwilling to negotiate and therefore we can move on."

F. May 9, 2019 Email from Iain Macdonald to Mark Garcia at 5:27 p.m. in which Mr. Macdonald responds:

1. "When will I see balance of April and May payment?"

This email thread closes with Mr. Macdonald asking about the current monthly payment amounts.

Exhibit E is an email thread beginning at 1:50 p.m. on May 10, 2019, and ending on May 14, 2019 at 6:14 a.m. This thread consists of the following discussion:

A. May 10, 2019 email from Iain Macdonald to Mark Garcia at 1:50 p.m. in which Mr. Macdonald asks:

1. "Mark - who is Chris martin calling me for – does he represent you?"

B. May 10, 2019 email from Mark Garcia to Iain Macdonald at 3:26 p.m. which responds:

1. "Chris is a family friend and consultant. No he does not represent me, self interest I assume."

C. May 10, 2019 email from Iain Macdonald to Mark Garcia at 3:43 p.m. in which Mr. Macdonald which responds:

1. "Tough businessman!"

D. May 13, 2019 email from Mark Garcia to Iain Macdonald at 4:10 p.m. in which Mr. Garcia comments:

1. "Well the let's see how it ends.."

E. May 13, 2019 email from Iain Macdonald to Mark Garcia at 6:13 p.m. in which Mr. Macdonald states:

1. "Not sure what that means but should we end the escrow so I can get my docs back or do you want to negotiate something."

F. May 13, 2019 email from Mark Garcia to Iain Macdonald at 8:16 p.m. in which Mr. Garcia responds:

1. "Yes you have options, tomorrow Lender's funds will be returned."

G. May 14, 2019 email from Iain Macdonald to Mark Garcia at 6:14 p.m. in which Mr. Macdonald states:

1. "A couple things would help me analyze my options. Please tell me what the lender appraise the property out so I can see how much cushion G St. has. Also, let's calculate interest at the default rate in the note from the date of default last September 1 plus attorneys fees spent pushing in the bankruptcy since that date to get the refinancing to where it is. My rough call is approximately $50,000 you were being forgiven by G St. in the $750,000 demand. Also please answer my question about May rent."

This indicates in the discussion that amount in excess of $750,000 were being "forgiven," but there were other amounts owed (such as the "May rent").

GSI and the Plan Administrator have spent huge amounts of time preparing and filing pleadings, tossing darts at each other, and complaining how unreasonable each other is. Both ignore the basic issue presented:

The Plan requires that GSI be paid $750,000.00, plus interest, fees, and expenses.

The court issued two orders authorizing the Debtor to borrow sufficient monies to pay the plan required amounts of $750,000.00, plus interest fees and expenses.

GSI, Iain Macdonald, and the Plan Administrator have relied upon the two Debtors to properly disburse the amounts on the GSI claim.

GSI says that it has only received $700,000.00 from the G Street Loan, which clearing from the Final Closing Statement is all that there was to be paid, and has not been paid the additional amounts as expressly provided in the two orders above from the Prospect Lane loan.

The only issue is whether the Plan has been performed or in default. If in default, GSI can seek to assert its rights. If in default, then the Plan Administrator can act accordingly. If GSI asserts a default and the Debtors assert that the cut a deal or obtained a reduction in the amount of the GSI claim as expressly provided for in the plan, then GSI and the Debtors can have that battle.

The court will not be drawn into an extensively briefed side show of bickering between GSI and the Plan Administrator. Each will act according to the Confirmed Plan in this case, the orders issued, and assert and defend their actual respective rights.

Presentation at the Hearing

At the hearing, xxxxxxxxxxxxxx.

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 Order Enforcing Payment Obligations of Plan filed by G Street Investments ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

FINAL RULING

11.	**18-90494-E-7** **BLF-5**	**MELINDA BROOME** **Joe Angelo**	**MOTION FOR COMPENSATION FOR REMAX EXECUTIVE, REALTOR(S)** **7-30-19 [79]**

Final Ruling: No appearance at the September 19, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2019. By the court's calculation, 51 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.

Remax Executive, the Real Estate Broker ("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.

The order of the court approving employment of Applicant was entered on August 31, 2019. Dckt. 21. Applicant requests fees in the amount of $385.00.

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include research related to and valuation for the Estate's real property. The Estate has $55,050.20 of unencumbered monies to be administered as of the filing of the application. Declaration, Dckt. 82. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

The Application states that Applicant researched the public records to determine the history of ownership and track chain of title. Applicant also reviewed information to value the Estate's real property.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Bob Brazeal	3.5	$110.00	$385.00
Total Fees for Period of Application			$385.00

FEES 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 $385.00 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.

The court authorizes the Chapter 7 Trustee to pay the fees and costs allowed by the court.

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

Fees $385.00

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 Remax Executive ("Applicant"), Real Estate Broker 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 Remax Executive is allowed the following fees and expenses as a professional of the Estate:
>
> Remax Executive, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $385.00,
>
> 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.

12.	**18-90494-E-7** **BLF-6**	**MELINDA BROOME** **Joe Angelo**	**MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)** **7-30-19 [85]**

Final Ruling: No appearance at the September 19, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2019. By the court's calculation, 51 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.

Bakken Law Firm, the Attorney ("Applicant") for GaryR. Farrar, the Chapter 7 Trustee ("Client"), makes a First Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 29, 2018, through September 19, 2019. The order of the court approving employment of Applicant was entered on August 31, 2018. Dckt. 20. Applicant requests fees in the amount of $13,335.00 and costs in the amount of $321.11.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include case administration, asset investigation and disposition, employment and fee applications, and opposition to motions to convert the case. The Estate has $50,000.00 of unencumbered monies to be administered as of the filing of the application. Declaration, Dckt. 87. 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 7 hours in this category. Applicant prepared fee and employment applications, as well as drafting and filing several stipulations to extend the deadline to object to claim of exemptions.

Debtor's Motion To Convert: Applicant spent 14.5 hours in this category. Applicant assessed and ultimately opposed two separate motions to convert the case, which motions were denied.

Adversary Proceedings: Applicant spent 4.8 hours in this category. Applicant reviewed several pleadings filed in an adversary proceeding commenced objecting to the debtor's discharge.

Employment of Realtor and Investigation of Assets: Applicant spent 5.1 hours in this category. Applicant prepared and prosecuted motions related to the investigation of the debtor's real property, including the motion to employ a broker and a motion for turnover of the property.

Sale of Estate Assets: Applicant spent 18.7 hours in this category. Applicant entered into extensive negotiations for

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Loris Bakken	48.4	$300.00	$14,520.00
Loris Bakken	1.7	$150.00	$255.00
Total Fees for Period of Application			$14,775.00
Total Fees Requested			$13,335.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $321.11 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Cost**
Postage	$164.91
Copies	$156.20
Total Costs Requested in Application	$321.11

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 $13,335.00 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 $321.11 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.

The court authorizes the Chapter 7 Trustee to pay the fees and the costs allowed by the court.

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

Fees	$13,335.00
Costs and Expenses	$321.11

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 Bakken Law Firm ("Applicant"), Attorney for Gary R. 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 Bakken Law Firm is allowed the following fees and expenses as a professional of the Estate:
>
> Bakken Law Firm, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $13,335.00
> Expenses in the amount of $321.11,
>
> 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.

13. 19-90209-E-7 BLF-4 | **ELSA CASILLAS** **Seth Hanson** | **MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S) 7-30-19 [32]**

Final Ruling: No appearance at the September 19, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2019. By the court's calculation, 51 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.

Bakken Law Firm, the Attorney ("Applicant") for Gary R. 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 April 26, 2019, through August 29, 2019. The order of the court approving employment of Applicant was entered on May 21, 2019, and effective April 26, 2019. Dckt. 16. Applicant requests fees in the amount of $2,100.00 and costs in the amount of $37.05.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include general case administration, the negotiation of a settlement, and prosecution of court approval for the settlement. The Estate has $6,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 3.9 hours in this category. Applicant prepared the fee and employment applications, attended hearings, and prepared a stipulation to extend the deadline for Trustee to object to exemptions.

Motion to Compromise: Applicant spent 10.8 hours in this category. Applicant assisted Client in a dispute with the debtor over life insurance proceeds, resulting in a settlement. Furthermore, Applicant prosecuted the motion for approval of the settlement.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Loris Bakken	14.7	$300.00	$4,410.00
Total Fees for Period of Application			$4,410.00
Total Fees Requested			$2,100.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $37.05 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
Postage	$21.75
Copies	$15.30
Total Costs Requested in Application	$37.05

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 Fees in the amount of $2,100.00 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 $37.05 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.

The court authorizes the Chapter 7 Trustee to pay the fees and costs allowed by the court.

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

Fees	$2,100.00
Costs and Expenses	$37.05

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 Bakken Law Firm ("Applicant"), Attorney for Gary R. 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 Bakken Law Firm is allowed the following fees and expenses as a professional of the Estate:
>
> Bakken Law Firm, Professional employed by the Chapter 7 Trustee

Fees in the amount of $2,100.00
Expenses in the amount of $37.05,

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. 19-90718-E-7 **RAMON CERVANTES AND GRACIELA REYNOSO**
Wilber Salgado

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-16-19 [12]

Final Ruling: No appearance at the September 19, 2019 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on August 18, 2019. The court computes that 32 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on August 2, 2019.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

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

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

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

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

15. 19-90730-E-7 | **JOSE SERVIN-VACA AND NOEMI SERVIN** | **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Wilber Salgado | **8-22-19 [12]**

Final Ruling: No appearance at the September 19, 2019 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on August 24, 2019. The court computes that 26 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on August 8, 2019.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

16. 19-90110-E-7 TRO-1 | **CAMPBELL WINGS, INC.** Reno Fernandez | **MOTION FOR RELIEF FROM AUTOMATIC STAY** 7-23-19 [47]

CALIFORNIA RESTAURANT MUTUAL BENEFIT CORPORATION, IRMA EDMONDS VS.

Final Ruling: No appearance at the September 19 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. A Proof of Service ("Proof") was attached to the Amended Notice [FN.1.]. Dckt. 50. The Proof states that the Amended Notice was filed with the court, and thereby CM/ECF will provide notice to:

> Anthony D. Johnston (SBN 244282)
> FORES MACKO JOHNSTON, INC.
> A Profession Law Corporation
> 1600 "G" Street, Suite 103
> Modesto, CA 95354-0903
> Tel: (209)527-2889
> ajohnston@foresmacko.com

Id. The Proof also states service was made by mail. Mr. Johnston is the Trustee's attorney, one of the two movants for this Motion.

The Motion for Relief from the Automatic Stay is granted.

The Chapter 7 Trustee, Irma Edmonds ("Trustee"), and Claimant California Restaurant Mutual Benefit Corporation ("Joint Movant") filed this Joint Stipulated Motion seeking relief from the automatic stay to allow Arbitration Case No. 01-17-0005-9874 regarding unpaid workers' compensation claims (the "Arbitration") to be concluded.

Joint Movant argues relief is warranted here to allow its potential claim to be determined.

The court interprets the Joint-Motion to be a Motion For Relief made by Joint-Movant and a statement of non-opposition by the Trustee.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine "whether cause exists to allow litigation to proceed in another forum, 'the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.'" *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int'l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass'n v. Sanders (In re Santa Clara Cty. Fair Ass'n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the Arbitration warrants relief from stay for cause. An arbitration case has already commenced to determine potential workers' compensation claims that Joint Movant may have against the Estate. Judicial economy is furthered by allowing the Arbitration to continue to a conclusion.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the Arbitration. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted by the court.

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 Joint Stipulated Motion for Relief from the Automatic Stay filed by Chapter 7 Trustee, Irma Edmonds ("Trustee"), and Claimant California Restaurant Mutual Benefit Corporation ("Joint 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 automatic stay provisions of 11 U.S.C. § 362(a) are modified as applicable to Campbell Wings, Inc. ("Debtor") to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation in Arbitration Case No. 01-17-0005-9874.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, Trustee, or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

17. 12-90645-E-7 MHK-4 | **MICHAEL/BOBBI LINDER** Scott Mitchell | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF MEEGAN, HANSCHU & KASSENBROCK FOR ANTHONY ASEBEDO, TRUSTEES ATTORNEY(S) 8-20-19 [53]**

Final Ruling: No appearance at the September 19, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2019. By the court's calculation, 30 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.

Meegan, Hanschu & Kassenbrock, the Attorney ("Applicant") for Eric J. Nims, 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 May 15, 2017, through August 13, 2019. The order of the court approving employment of Applicant was entered on June 28, 2017 and made effective May 15, 2017. Dckt. 28. Applicant requests fees in the amount of $7,710.00 and costs in the amount of $85.72.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include case administration; asset analysis, recovery, and disposition; claims review; employment and fee applications; and exemption review. 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 5 hours in this category. Applicant communicated with Client, a settlement administrator, and counsel regarding matter sin this case.

Efforts to Assess and Recover Property of the Estate: Applicant spent 9.5 hours in this category. Applicant communicated with a settlement administrator regarding Debtor's potential personal injury claims and obtained the administrator's agreement to remit settlement proceeds.

Asset Disposition: Applicant spent 6.5 hours in this category. Applicant drafted, filed, and served motion to obtain approval for compromise with medical product providers. Applicant also communicated with counsel for the defendants in regard to form of motion and order.

Claims Issues: Applicant spent 1.2 hours in this category. Applicant reviewed claims filed and communicated with Trustee and settlement administrator regarding amount of allowed claims in the case.

Employment and Compensation of Professionals: Applicant spent 3.4 hours in this category. Applicant drafted and prosecuted employment and fee applications for professionals of the Estate.

Exemptions: Applicant spent 0.6 hours in this category. Applicant reviewed the initial exemption claims filed by the Debtor and amended exemptions filed after the Debtors' case was reopened.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**

Anthony Asebedo	26.2	$294.27 [FN.1.]	$7,710.00
Total Fees for Period of Application			$7,710.00

FN.1. This is a blended rate, as stated in the billing statement filed as Exhibit B. Dckt. 56.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $85.72 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Cost**
Copies	$18.70
PACER	$4.90
Postage	$62.12
Total Costs Requested in Application	$85.72

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 $7,710.00 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 $85.72 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.

The court authorizes the Chapter 7 Trustee to pay the fees and costs allowed by the court.

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

Fees	$7,710.00
Costs and Expenses	$85.72

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 Meegan, Hanschu & Kassenbrock ("Applicant"), Attorney for Eric J. Nims, 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 Meegan, Hanschu & Kassenbrock is allowed the following fees and expenses as a professional of the Estate:

Meegan, Hanschu & Kassenbrock, Professional employed by the Chapter 7 Trustee

Fees in the amount of $7,710.00
Expenses in the amount of $85.72,

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.

18. 19-90461-E-7 LORRAINE ESCOBAR **COMPLAINT**
19-9014 **8-12-19 [1]**
REYES V. ESCOBAR

Final Ruling: No appearance at the September 18, 2019 Status Conference is required.

Plaintiff's Atty: Pro Se

Defendant's Atty: Pro Se

Adv. Filed: 8/12/19
Answer: 9/4/19
Amd. Answer: 9/6/19

Nature of Action:
Objection/revocation of discharge
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:

Plaintiff's Notice of Verified Complaint for Determination of Dischargeability and Objecting to Debtor's Discharge filed 8/12/19 [Dckt 5], set for hearing 9/19/19 at 10:30 a.m.

Order to Show Cause re Dismissal of Contested Mater or Imposition of Sanctions [failure to pay fees] filed 8/26/19 [Dckt 10], set for hearing 10/3/19 at 10:30 a.m.

Motion for Leave to Proceed In Forma Pauperis filed 8/26/19 [Dckt 11]; Order denying filed 9/3/19 [Dckt 14]

The Status Conference in this Adversary Proceeding will be conducted at 2:00 p.m. on October 17, 2019, as set forth in the Summons issued in this Adversary Proceeding (Dckt. 6).