UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 10, 2019 at 10:30 a.m.

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1. **19-24945-A-7** **RICHARD MAZON** **MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE HEARING**
Pro Se **8-6-19 [5]**

An Application for Waiver of Chapter 7 filing fee has been filed by Richard Mazon ("Debtor"). The Debtor's family unit consists of one person (Debtor). Debtor's gross income is $3,066 (Schedule I, family help).

The First Meeting of Creditors has not been concluded, the Trustee reporting that Debtor has failed to appear at the scheduled First Meeting of Creditors on September 11, 2019. Trustee's September 11, 2019 Docket Entry Reports.

The Debtor failing to appear at the First Meeting of Creditor's the Trustee has not been afforded the opportunity to investigate the Debtor's finances. This precludes the court from being able to determine that Debtor meets the financial guidelines for waiver of the filing fee.

The court finding that Debtor ~~does not~~ meet the financial guidelines for a fee waiver ($1,561.25), upon consideration of the Debtor's income, assets, the Schedules in this case, and the additional information provided at the hearing, **the court ~~denies~~ grants the application for waiver of the Chapter 7 filing fees.**

~~**The court shall order an installment payment schedule for the Chapter 7 filing fees.**~~

2. **19-21710-A-7** **TIMOTHY/KIM PRUITT** **CONTINUED AMENDED MOTION TO**
DEF-1 **David Foyil** **REDEEM AND AMENDED MOTION FOR APPROVAL OF ASSOCIATED FINANCING**
8-23-19 [50]

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 23, 2019. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion to Redeem 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.

The Motion to Redeem is denied without prejudice.

Kim Rochelle Pruitt ("Debtor") seeks to redeem a 2016 Ford Fusion, VIN ending in 6457 ("Property") pursuant to 11 U.S.C. § 722. Under that provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Property, not just to Debtor's exempt interest in it. *See* H.R. Rep. No. 95-595, at 381 (1977). To redeem the Property, Debtor must pay the lien holder "the amount of the allowed secured

claim of [the lien] holder that is secured by such lien in full at the time of redemption." 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). The court looks to 11 U.S.C. § 506 to determine the amount of the secured claim.

The Motion is accompanied by the declaration of Debtor Kim Priutt. As the owner, Debtor's opinion of value is evidence of the Property's value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). However, as discussed below, Debtor offers no testimony as to value.

DISCUSSION

Identity of Creditor Whose Claim is Sought to be Valued

The present Motion seeks authority to redeem the Property for a price of $13,584.00 pursuant to 11 U.S.C. § 722 and financing, and attorneys' fees. Beginning with the Motion to Redeem, the court must also value the claim secured by the Property.

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

1. The item to be redeemed is tangible personal property intended primarily for personal, family or household use is more particularly described as follows:

   Year: 2016
   Make: Ford
   Model: Fusion
   VIN: 3FA6P0H99GR386457

2. The interest of the Debtor in such property is exempt or has been abandoned by the estate and the debt (which is secured by said property to the extent of the allowed secured claim of the **Creditor**) is a dischargeable consumer debt.

3. The allowed secured claim of said Creditor [the actual creditor not being identified in the Motion], for purposes of redemption, the "redemption value", should be determined to be thirteen thousand five hundred eighty four dollars($13,584) as evidenced by the written appraisal. Attached hereto as Exhibit "B" is a true and correct copy of said appraisal.

4. Arrangements have been made by the Debtor to pay to the said **Creditor** up to the aforesaid amount in a lump sum should this motion be granted.

5. The payment for this proposed redemption is to be financed through Prizm Financial Co. LLC., with all of the particulars of that financing (interest rate, finance charge, amount financed, total of payments, amount of payments, etc.). Attached hereto as Exhibit "A' is a true and

> correct copy of a draft of the redemption loan. As demonstrated there, the monthly amount, term of the payments and the overall amount of the repayment will be decreased significantly through the proposed redemption. Moreover, the Debtor has agreed to borrow and disperse additional funds in the amount of seven hundred dollars($700), from their loan with Prizm Financial Co. LLC, for representation of the debtor in securing for the benefit of the debtor an order granting the debtor the right to redeem under 11 U.S.C. 722 a certain motor vehicle, such compensation being in addition to that previously disclosed and being for services rendered beyond the scope of the legal services to have been rendered for such compensation heretofore disclosed.

The court notes that in this paragraph it is not clear who is representing the Debtor and to whom the $700.00 is to be paid.

> 6. WHEREFORE, the Debtor requests the Court to order the said **Creditor** to accept from the Debtor the lump sum payment of the redemption value and release their lien of record. In the event the said **Creditor** objects to this motion, the Debtor requests the Court to determine the value of the property as of the time of the hearing on such objection.

Motion, Dckt. 50(emphasis added).

In the above, Debtor does not identify the creditor whose secured claim is being valued. It is left for the court to solve that mystery.

The Motion clearly requests that the court authorize the redemption of a 2016 Ford Fusion. In her Declaration, Debtor Kim Pruitt testifies under penalty of perjury that she wants to redeem a 2016 Ford Fusion. Dec. ¶ 2, Dckt. 52.

However, on Schedule A/B also only lists a 2017 Ford Fusion. Dckt. 1. In addition, Debtor states Debtor owns a 2018 KIA Forte; 2017 KIA Rio XL; and a 2015 Harley Davidson. Dckt. 1at 12-13.

On Schedule D, the Debtor lists the $34,500.00 claim of Golden One Credit Union. *Id.* at 21. That claim is secured by a 2017 Ford Fusion with 18,342 miles, valued at $13,120.00. *Id*. This debt was incurred in July 2017. *Id*.

Thus, it appears there is an error in either the Schedules or Motion as to the year of the Debtor's vehicle. [FN. 1] Nevertheless, it appears Golden One Credit Union is the creditor ("Creditor") whose claim Debtor is seeking to value and pay off here.

FN. 1. The vehicle year error raises the question of whether debtor Kim Pruitt has even read the Declaration onto which has been typed a "/s/ Kim Pruitt" signature.

Valuation of the Property

At the first hearing on the Motion, the court noted there was no exemption claimed in the Property. Civil Minutes, Dckt. 56. Subsequently, Debtor filed Amended Schedule C claiming an exemption of $13,120.00 in the Property. Dckt. 60.

The Motion states Creditor's claim "should be determined to be thirteen thousand five hundred eighty four dollars($13,584) as evidenced by the written appraisal." Motion ¶ 3, Dckt. 50.

The Debtor offers no evidence in the form of her testimony as to value. Debtor offers no testimony as to the condition of the vehicle.

As is apparent in the above statement, the Motion seeks to value the Property based on a written appraisal, and not on the opinion of the Debtor. For the "appraisal," no declaration is provided by Dan Hatfield, the name of the person who has been typed "/s/ Dan Hatfield" on the bottom of the alleged, unauthenticated document identified as an "appraisal."

The document identified as an "appraisal" has an interesting title:

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Redemption v. Reaffirmation Savings Analysis

Dckt. 53 at 6. This "appraisal" then states that the valuation is actually "Based on Edmunds." Thus, it does not appear that there is an "appraiser" who is providing the court with expert opinion, but someone who has a form into which they put information from the Edmunds auto valuation guide.

No testimony has been provided by Mr. Hatfield as to his knowledge, skill, experience, training, or education qualifying him as an expert. FED. R. EVID. 702. No testimony was provided at all–the Debtor merely relies on a purported appraisal which is inadmissable hearsay. FED. R. EVID. 801, et seq.

Comparison of Current Obligation to Proposed Redemption Financing

The Motion is devoid of any information of the current obligation, interest rate, monthly payment, and status of the loan. Dckt. 50. In her Declaration, debtor Kim Pruitt provides no testimony of as to the current loan with her Credit Union, the monthly payments, and the status of such payments.

The Debtor's proposed financing to fund the redemption is unsettling. The APR is 24% over a 60 month term. With a finance charge of ($10,923.80), the Debtor would be paying at least $24,507.80 for a car allegedly worth only $13,584.00. It is unclear why someone who just received the extraordinary relief of a Chapter 7 discharge would immediately run out and get saddled with a bad loan - made even worse by the fact that the vehicle appears to be in only fair to poor condition.

On Schedule D Debtor states under penalty of perjury that Creditor has a ($34,500) claim secured by the 2017 For Fusion, which has a value of only $13,120.00.

On Schedule J-2 (debtor Kim Pruitt testifying in her Declaration that she and the co-debtor

are prosecuting a dissolution of their marriage) Debtor testifies that she has a monthly car payment of ($521.00). If this is what the Creditor payment is, Debtor's proposed redemption payment of ($422.63) is $100 a month less - at the cost of 24.878% interest.

Conspicuously absent is any discussion of Debtor's our counsel's efforts to engage in good faith, bona fide, economic negotiations with Creditor to reaffirm the obligation at a reasonable interest rate (presumably a credit union would have a reasonable interest rate for its members) and a reasonable retail value.

This vehicle is described on the unauthenticated exhibit to be in fair condition, with several items identified as being in poor condition. Clearly not a vehicle that a lender would like to repossess and then sell at an auto auction. Based on the $13,000 value in the unauthenticated exhibit, it appears that Golden 1 would be lucky to get $6,000 to $7,000 at an auction.

Here, Debtor and Debtor's counsel could be hero to Creditor by stepping up to "buy" it at the $13,000 retail value (if it were in showroom ready, good condition) at a reasonable "high" interest rate (say 6.5%) in reaffirming the debt.

Debtor's counsel's and the "appraiser" assuming that a reaffirmation would only be for an amount that is three times the actual retail value of the vehicle is incorrect. The court is unsure why an experienced consumer debtor counsel would not have engaged the credit union in such a discussion and could not have "educated" the credit union of the win-win resolution (assuming that Debtor actually has the ability to pay for the vehicle).

The Motion is denied without prejudice.

The court shall issue an order in 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 Redeem filed by the debtor, Kim Rochelle Pruitt ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

3. **19-25323-A-7** **APRIL RICHMOND** **MOTION FOR RELIEF FROM**
CJC-14 **Pro Se** **AUTOMATIC STAY**
9-11-19 [19]

HPA US1 LLC VS.

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 (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on September 11, 2019. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay 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 Relief from the Automatic Stay is granted.

HPA US1 LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 6192 Riverside Blvd., #C-46, Sacramento, California ("Property"). The moving party has provided the Declaration of Tim Cernak to introduce evidence as a basis for Movant's contention that April Dawn Richmond ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance.

Movant argues an unlawful detainer action, case no. STK-CV-LUDR-2019-10074, was commenced and Movant was granted possession on August 20, 2019. Declaration ¶ 6, Dckt. 21. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant has presented a colorable claim for title to and possession of this real property. As

stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

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 Motion for Relief from the Automatic Stay filed by HPA US1 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 6192 Riverside Blvd., #C-46, Sacramento, California.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.
>
> No other or additional relief is granted.

4. **18-22453-A-7** **ECS REFINING, INC.** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH HARTFORD FIRE INSURANCE COMPANY**
HSM-14 **Christopher Bayley** **9-6-19 [1200]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 7 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 2019. By the court's calculation, 34 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise 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 Approval of Compromise is granted.

Kimberly Husted, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Hartford Fire Insurance Company ("Settlor").

The settlement here seeks to resolve the pending (and potentially reopened) adjustment of workers' compensation claims by Settlor.

The settlement here revolves around a workers' compensation policy executed between Movant and Settlor. Pursuant to the policy terms, a trust account is held by Settlor to cover Movant's $250,000.00 deductible and other handling expenses. The Trust account has on hand $343,539.22, which is left over from a $775,000.00 deposit made by Movant. Settlor also holds loss deposits of $50,000.00.

Settlor argues that the trust account is not property of the Estate, and that Settlor holds a lien in the trust account and loss deposit funds. Movant does not dispute those arguments, but seeks to resolve the pending (and potentially reopened) adjustment of workers' compensation claims by Settlor.

Movant and Settlor have reached a resolution, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Commutation and Release Agreement filed as Exhibit A in support of the Motion (Dckt. 1204)):

A. Settlor will receive $255,315.00 in funds derived from the trust account. These funds are for present and potential workers' compensation claims.

B. Movant will receive the remaining $136,888.80 in trust account and loss deposit funds.

C. Movant releases claims against Settlor.

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 this factor is neutral or in favor of settlement because the settlement is in the

nature of a buyout.

Essentially, the dispute here is over how much of the trust account and loss deposit funds will be depleted through payment of workers' compensation claims. The Motion expresses that the final amount of claims is really unknown, but could potentially result in using all trust and loss deposit funds. Because the probability of more or less funds being depleted is not clearly shown on the evidence presented, this factor is neutral.

Difficulties in Collection

Movant argues this favor weighs in favor of settlement because the funds are held by Settlor in a trust account and loss deposit.

Ad stated by Movant, the funds are held in trust by Settlor. If it were determined that workers' compensation claim were all resolved, then Settlor would return the trust account and loss deposit funds. There being no difficulty in collection, this factor weighs against settlement.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues an adversary proceeding to secure the remaining funds would take 9 to 12 months, and would generate significant expense, and therefore this factor weighs in favor of settlement.

Movant's argument is well-taken. Determining a final resolution to pending and potentially pending workers' compensation claim would not be quick, painless litigation. This factor weighs in favor of settlement.

Paramount Interest of Creditors

Movant argues this factor weighs in favor of settlement because the time and expense of litigation is avoided, and $136,888.80 is preserved for creditors.

Movant's argument is well-taken. The settlement here allows for immediate determination of what the Estate is entitled to, and results in $136,888.00 in funds preserved for the Estate without further expense or delay.

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 settlement here allows for immediate determination of what the Estate is entitled to, and results in $136,888.00 in funds preserved for the Estate without further expense or delay. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Kimberly Husted, the Chapter 7 Trustee ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Hartford Fire Insurance Company ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Commutation and Release Agreement filed as Exhibit A in support of the Motion (Dckt. 1204).

5. **19-25286-A-7** **CYNTHIA/FRANK PEREIRA** **MOTION TO COMPEL ABANDONMENT**
MOH-1 **O.S.T.**
10-3-19 [11]

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

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on October 3, 2019. By the court's calculation, 7 days' notice was provided. The court issued an Order granting Shortened Notice on October 4, 2019. Dckt. 17.

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

The Motion to Compel Abandonment is granted in part.

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

The Motion filed by Cynthia Periera and Frank Periera ("Debtor") requests the court to order the Chapter 7 Trustee, Nikki B. Farris ("the Chapter 7 Trustee"), to abandon the following assets:

Asset	**Value**	**Exemption**	**Non-Exempt Value**
Sole Proprietorship identified as Thrive Homeschool (the "Business")	$0	$0	$0
Accounts Receivables for the Business	$4,820.00	$4,820.00	$0
Educational Equipment used in the Business	$3,000.00	$3,000.00	$0
2019 Tax Refunds	$9,131.00 (estimated)	$9,131.00 (estimated)	$0
Total NonExempt Equity			$0

As to the tax refunds, Debtor argues that those amount are still unliquidated pending Debtor completing the 2019 tax return. Of the tax refund, $5,564.00 was received from Debtor's 2018 tax return and claimed fully exempt on Schedule C.

Here, Debtor listed the Business, the Business' accounts receivables, and the Business equipment on Schedule A/B. Dckt. 1. On Schedule C, Debtor claimed exemptions in the value of those assets leaving no non-exempt value. Therefore, the court finds that the Business, the Business' accounts receivables, and the Business equipment is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon that property.

The Motion also seeks abandonment of certain tax refunds. However, those refunds were not listed on Schedule A/B. Dckt. 1. On Line 28 of Schedule A/B, Debtor states there are no tax refunds owed to Debtor. *Id.* On Schedule C, Debtor claims no exemption in any tax refund.

This bankruptcy case was filed August 22, 2019, two-thirds of the way through the year.

Furthermore, Debtor admits they are only estimating a potential 2019 tax refund.

The relief requested as to the tax refund is essentially declarative relief. That request is denied without prejudice.

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

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

The Motion to Compel Abandonment filed by Cynthia Periera and Frank Periera ("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 Compel Abandonment is granted, and the Property identified as:

Asset	**Value**	**Exemption**
Sole Proprietorship identified as Thrive Homeschool (the "Business")	$0	$0
Accounts Receivables for the Business	$4,820.00	$4,820.00
Educational Equipment used in the Business	$3,000.00	$3,000.00

and listed on Schedule A / B by Debtor is abandoned by Chapter 7 Trustee, Nikki B. Farris ("Trustee") to Cynthia Periera and Frank Periera by this order, with no further act of the Trustee required.

IT IS FURTHER ORDERED that the request to order the abandonment of any 2019 tax refunds is denied without prejudice.

No other further relief is granted.

6. **18-20568-A-7** **PAUL AMADOR**
ADJ-3 **Charles Hastings**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES MACKO JOHNSTON, INC. FOR ANTHONY D. JOHNSTON, TRUSTEES ATTORNEY(S) 8-29-19 [36]

Final Ruling: No appearance at the October 10, 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 Chapter 7 Trustee, creditors, and Office of the United States Trustee on August 29, 2019. By the court's calculation, 42 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.

Anthony D. Johnston, the Attorney ("Applicant") for Irma Edmonds, 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 2, 2018 through August 23, 2019. The order of the court approving employment of Applicant was entered on May 18, 2018. Dckt. 19. Applicant requests fees in the amount of $5,252.50 and costs in the amount of $155.99.

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 and asset disposition. The Estate has $23,542.50 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 0.2 hours in this category.

Efforts to Assess and Recover Property of the Estate: Applicant spent 15 hours in this category. Applicant negotiate the sale of the Estate's interest in real property, drafted the purchase agreement, prepared the motion for approval of the sale, and supervised the escrow process.

Fee and Employment Applications: Applicant spent 3.9 hours in this category.

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 D. Johnston	19.1	$275.00	$5,252.50
Total Fees for Period of Application			$5,252.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $155.99 pursuant to this application

The costs requested in this Application are,

Description of Cost	Cost
Copies	$55.00
Postage	$28.99.00
Telephonic Appearance	$60.00
Certified Copy of Order	$12.00
Total Costs Requested in Application	$155.99

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 $5,252.50 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 $155.99 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	$5,252.50
Costs and Expenses	$155.99

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 Anthony D. Johnston ("Applicant"), Attorney for Irma Edmonds, 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 Anthony D. Johnston is allowed the following fees and expenses as a professional of the Estate:

Anthony D. Johnston, Professional employed by Chapter 7 Trustee

Fees in the amount of $5,252.50
Expenses in the amount of $155.99,

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.

7. **19-24424-A-7** **MIA BAE**
Stephen Reynolds

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
8-22-19 [10]

Final Ruling: No appearance at the October 10, 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, and Office of the United States Trustee on August 24, 2019. By the court's calculation, 47 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). 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 respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is denied without prejudice.

The Chapter 7 Trustee, Susan K. Smith ("Trustee"), seeks dismissal of the case on the

grounds that Mia Bae ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

A review of the docket shows Trustee entered a Trustee Report on the docket October 3, 2019. The report states Debtor appeared at the continued Meeting of Creditors. The Report also makes a determination of there being no distribution to creditors in this case.

Based on the foregoing, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Susan K. Smith ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.