UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

November 7, 2019 at 10:30 a.m.

1.	**19-90122-E-11** **MF-30**	**MIKE TAMANA FREIGHT LINES, LLC** **Matt Olson**	**MOTION FOR APPROVAL OF ADEQUATE PROTECTION STIPULATION WITH BB&T COMMERCIAL EQUIPMENT CORP.** **10-15-19 [380]**

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 creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on October 16, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion for Approval of Adequate Protection Stipulation with BB&T Commercial Equipment Corp. was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 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 Adequate Protection Stipulation with BB&T Commercial Equipment Corp. is granted.

The debtor in possession, Mike Tamana Freight Lines, LLC ("ΔIP") filed this Motion seeking approval of Stipulation seeking to set adequate protection payments to creditor BB&T Commercial Equipment Corp. ("Creditor"), holding a claim secured by several of ΔIP's vehicles/trailers (listed fully in the Motion (Dckt. 380)).

The Motion is supported by the Declaration of Amanjot Tamana, the Responsible Individual for the ΔIP. Dckt. 381. The Tamana Declaration states Creditor's collateral here is essential to the operation of ΔIP's business. *Id.*, ¶ 11.

The Stipulation (summarized by the court, and set out fully in Dckt. 383) proposes the following terms:

1. Commencing on January 20, 2020, ΔIP shall pay adequate protection payments in the amount of $21,767.16 per month for Contract One (Collateral is Fifteen 2018 Wabash Arctic Lite Trailers).

2. Commencing on January 20, 2020, ΔIP shall pay adequate protection payments in the amount of $4,281.21 per month for Contract Two (Collateral is Three 2018 Wabash Arctic Lite Trailers).

3. ΔIP shall cure the $26,048.37 of missed post-petition payments on contract one and contract two by January 20, 2020.

4. If ΔIP fails to make the payments, after three days, the Creditor may file an "Affidavit of Default" with court. Five days after any Affidavit of Default is filed, the automatic stay arising by reason of 11 U.S.C. § 362 shall be deemed terminated upon entry of an order thereon granting Secured Creditor relief from the automatic stay to pursue in rem remedies against its Collateral, without further need for hearing, unless ΔIP files an objection within that five-day period.

DISCUSSION

At the hearing, the court addressed the "Affidavit of Default" process and that it did not comply with the requirements for a motion when seeking such relief. The court instead granted similar relief in the form as follows:

In the event that there is a default not timely made, Creditor may file an *Ex Parte* Motion for a supplemental order granting relief from the automatic stay to allow it to pursue the *in rem* remedies against its collateral. The supplemental *ex parte* motion shall be filed using the docket control number for this Motion (DCN: MF-30) and no filing fee for a motion for relief shall be required. The grounds for relief in the supplemental motion is limited to the default in the timely payments and failure to timely cure any default in the payments required under the Stipulation. If filed, the Debtor in Possession shall have ten days to file an opposition and evidence contesting the alleged default in timely payment or cure, and set a hearing on the supplemental motion for the court's next available Chapter 7-11-12 relief from stay law and motion calendar (in either the Sacramento or Modesto Courthouse) not more than twenty-one days after service of the ex parte motion. The only issue to be addressed is the existence of a default in timely payment or timely cure.

The Motion is granted, with the amended default treatment stated above.

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 Approval of Adequate Protection Stipulation filed by the debtor in possession, Mike Tamana Freight Lines, LLC ("ΔIP") 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 ΔIP entering into the Adequate Protection Stipulation (Dckt. 383) is authorized, with it amended to provide that:

> In the event that there is a default not timely made, Creditor may file an *Ex Parte* Motion for a supplemental order granting relief from the automatic stay to allow it to pursue the *in rem* remedies against its collateral. The supplemental *ex parte* motion shall be filed using the docket control number for this Motion (DCN: MF-30) and no filing fee for a motion for relief shall be required. The grounds for relief in the supplemental motion is limited to the default in the timely payments and failure to timely cure any default in the payments required under the Stipulation. If filed, the Debtor in Possession shall have ten days to file an opposition and evidence contesting the alleged default in timely payment or cure, and set a hearing on the supplemental motion for the court's next available Chapter 7-11-12 relief from stay law and motion calendar (in either the Sacramento or Modesto Courthouse) not more than twenty-one days after service of the ex parte motion. The only issue to be addressed is the existence of a default in timely payment or timely cure.

2. **18-90847-E-7** **TOG-2**

IMELDA PADILLA
Thomas Gillis

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
9-17-19 [95]

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 Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2019. By the court's calculation, 51 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 7 Bankruptcy Case to a Case under Chapter 13 is xxxxx.

Imelda Padilla ("Debtor") seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007). This is Debtor's second attempt in seeking conversion of this case.

Debtor asserts that this Chapter 7 bankruptcy case should be converted to one under Chapter 13 because:

1. Debtor filed for bankruptcy using a "typing service."

2. Debtor made a mistake in filing a Chapter 7 because Debtor admits Trustee may be correct that Debtor and non-filing spouse may have upwards of $200,000.00 in equity in the house.

3. Unlike *Marrama v. Citizens Bank of Mass.*, 594 U.S. 365 (2007) Debtor did not hide her assets.

4. Debtor uniformly checked the same box for all her property, listing the wrong statute, a mistake Debtor's counsel attributes to the typing service.

5. Debtor asserts that only a small percentage of the listed property is hers because she married her husband in 2017. Debtor's non-filing spouse purchased the house in 1999, eighteen-years prior to the marriage.

6. Debtor is entitled to pay her bills in Chapter 13 per 11 U.S.C. 706(a).

7. Debtor asserts there are no cases exempting a movant from a conversion to Chapter 13 for citing the wrong exemptions or excessive exemptions.

Motion, Dckt. 101.

TRUSTEE'S OPPOSITION

Trustee filed an Opposition on October 24, 2019. Dckt. 115. Trustee argues that the court denied the motion for lack of good faith and that the current circumstances have not changed. Trustee further argues that:

1. Debtor's purposed plan payment is insufficient to meet the best interest of the creditor's test. Debtor's plan payment would need to be at least $1,523.80.00. Debtor has not demonstrated she could make that payment.

2. Trustee and Debtor have reached an agreement in principal to resolve the Trustee's demand to turnover of the residence and the 2018 tax refund. The settlement is in process and Trustee anticipates resolving the Trustee's objection to exemptions which the Trustee expect will cause the withdrawal of this motion.

DISCUSSION

In the previous motion Trustee argues the schedules reflect many unexplained changes in income and expenses.

In the Original Schedule I, Debtor listed her husband as having $6,965.43 in income from his work with Royal Countertops, with $4,099.05 in wages and $2,866.38 in overtime pay. Schedule I, Dckt. 21. The Amended Schedule I consolidates the income from wages and overtime to state one monthly gross wage of $6,574.00. Dckt. 62.

The difference between these two stated incomes is roughly $400.00 monthly.

In reviewing the Original Schedule J, Debtor stated a monthly expense of $6,379.00. Dckt. 21. This was reduced significantly in the Amended Schedule J to $4,470.00. Dckt. 62. Some of the changes include:

	Original Schedule J Dckt. 21	Amended Schedule J Dckt. 62
Rental/Home	$399.15	$769.00
Property Tax	$142.00	$0.00
Home Maintenance	$0.00	$75.00
Electric/Heat/Gas	$400.00	$255.00
Water/Sewer/Garbage	$160.00	$126.00
Phone/Cable/Internet	$380.00	$295.00
Food	$650.00	$750.00
Life Insurance	$50.00	$0.00
Health Insurance	$526.00	$0.00
Vehicle Insurance	$517.00	$185.00
Support Payments	$100.00	$0.00
Other: Credit Cards	$1,500.00	$0.00

On Amended Schedule J Debtor states that there is only $595.00 of projected disposable income available monthly. Dckt. 62 at 18-19. No provision is made for paying property taxes or insurance. On Amended Schedule D, the Pheasant Lane Property is listed as being encumbered by a mortgage securing an obligation of ($108,000), but that the value of this Property is only $10,000. Schedule D states that the obligation was incurred in 2006. While the Debtor asserts a limited community property interest of only $10,000, it appears that the Property securing the claim is substantially more.

No reason is given why Debtor and the non-debtor spouse are not paying property taxes or insurance. It does not appear likely that a $769 a month payment on a loan that is now thirteen years old is so low that the $769 would include property taxes and insurance.

In the above, there are clearly drastic changes to Debtor's expenses. Where the original Schedules were stated under penalty of perjury, it is important that such changes are explained.

Debtor's position has a duality that is inconsistent. Debtor contends that she really has no interest in the property of any significant value since it is almost her husband's separate property. But then she argues in her motion that converting to Chapter 13 is necessary for her to keep the property.

The non-debtor spouse has been absent from these proceedings. If the non-debtor spouse asserts that the real property is predominately his separate property, then the court would expect him to be in court, asserting his property interests, and not believing that it was necessary for the Debtor to file bankruptcy "to save the non-debtor spouse's house." This position of the "missing in action" non-debtor spouse does not ring quite true or credible.

Debtor does not explain any of these differences in the current motion.

Trustee asserts that $1,523.80.00 will be necessary for plan payments. Debtor's net income is $595.00 according the Amended Schedules. Dckt. 62. Debtor does not explain how she intends to pay for the remainder of the plan payment. However, this assumes that all of the asserted non-exempt equity is community property for this bankruptcy estate.

Debtor and counsel have prepared a "probable plan" which is projected to provide a 24% dividend to creditors holding general unsecured claims.

The court also notes that while "blaming" the petition preparer, Debtor has not informed the court what she paid the petition preparer, who the person named on the Petition works for, and what Debtor and counsel are doing to recover from the petition preparer not only the fees paid but the costs and expenses of counsel in working to correct these problems.

At the hearing, **xxxxxxxxxxxxxxxxxxx**

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

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

3. **19-90464-E-7** **MAS-4** **RICHARD RICKS** **Pro Se** **MOTION TO COMPEL ABANDONMENT** **10-8-19 [73]**

Tentative Ruling: The Motion to Compel Abandonment 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 Not 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 October 8, 2019. By the court's calculation, 30 days' notice was provided. 28 days' notice is required. As addressed below, service has not been made on all required parties in interest in this case.

The Motion to Compel Abandonment 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 Compel Abandonment is denied.

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 Hirst Law Group, P.C. ("Creditor") requests the court to order Irma Edmonds ("the Chapter 7 Trustee") to abandon any potential claim to bringing a voidable transfer action under the California Voidable Transfer Act with respect to potential claims that the estate may have against Joy Hughes, the soon to be ex-wife of the Debtor ("Property").

The Creditor does not specify a particular voidable transfer in its motion. But the Declaration of Mark A. Serlin ("Serlin") filed in support of the Motion specifies a 2018 transfer Debtor made to Joy Hughes, the transferee ("Hughes"). Dckt. 75. Serlin reveals that a 50% interest in Solomon Solutions, LLC was transferred to Hughes. Serlin declares that no consideration other than "a promise of a 'peaceful' divorce" was exchanged. Dckt. 75.

Mr. Serlin continues, stating that he is "informed and believes" (but does not state who so informs him) that the interest transferred had a value of $100,000. The Declaration does not provide testimony as to why or how such a claim to avoid a transfer worth $100,000 is of inconsequential value or burdensome to the bankruptcy estate.

Mr. Serlin does testify that his client is one of the largest creditors and believes that this bankruptcy case was filed due to his client's efforts to enforce its judgment against the Debtor.

DISCUSSION

Legal standard

Creditor begins its Motion that the "abandonment" of the estate's avoiding power rights is "specifically authorized under the authority of *In re Curry and Sorenson, Inc.*, 57 B.R. 824, 828 (9th Cir. B.A.P. 1986)." It does not appear that the Bankruptcy Appellate Panel in *In re Curry* was addressing the abandonment of estate assets to a creditor with a general unsecured claim. Creditor does not provide the court with quotations of the asserted authorizing language, but does direct the court to page 828 of the reported decision in *Curry*.

A review of *Curry* discloses that it did not provide for the abandonment of the avoiding rights to a creditor, but a creditor obtaining authorization to pursue such avoiding rights for the bankruptcy estate and for the benefit of the bankruptcy estate.

> The **exclusive power to commence avoidance actions vested in trustees and debtors-in-possession is permissive** rather than mandatory and the exercise of this power can only be reviewed for abuse of discretion. *See Matter of Monsour Medical Center*, 5 B.R. 715, 718 (W.Pa. 1980); *In re Amarex, Inc.*, 36 B.R. 59, 61 (W.Okla. 1984). If a creditor is dissatisfied with lack of action on the part of the debtor-in-possession, the creditor may move to replace the debtor-in-possession with a Chapter 11 trustee; or to convert the Chapter 11 case to one under Chapter 7; move to dismiss the Chapter 11 case; or petition the court to compel the debtor-in-possession to act or to gain court permission to institute the action itself. *See Matter of Monsour Medical Center, supra*, 5 B.R. at 718.
>
> Thus, if an aggrieved creditor believes that the debtor-in-possession has failed to fulfill its duty to prosecute actions, then the creditor must bring this to the attention of the court by an appropriate motion. This promotes the fair and orderly administration of the bankruptcy estate by providing judicial supervision over the

> litigation to be undertaken. *See Meyer v. Fleming*, 327 U.S. 161, 169, 90 L. Ed. 595, 66 S. Ct. 382 (1946); *Gochenour v. George & Francis Ball Foundation*, 35 F. Supp. 508, 518 (S.Ind. 1940). This judicial intervention is crucial, for resolution of the conflict between the creditor and the debtor-in-possession requires a balancing of the competing interests to determine whether or not the debtor-in-possession's failure to bring the action is unjustifiable and therefore constitutes an abuse of discretion. *See In re Toledo Equipment Co., Inc.*, 35 B.R. 315, 319 (N.Ohio 1983). At such a hearing the court can determine if the initiation of such an action at that time would forward the reorganization effort, or to the contrary, might be a detriment. Here the Appellants made no attempt to bring this matter to the attention of the Bankruptcy Court before commencing this action. The mere fact that the Debtor failed to institute such proceedings did not authorize them to proceed in their own names and upon their own behalf. *See Gouhenour v. George & Francis Ball Foundation, supra*, 35 F. Supp. at 517.
>
> . . .
>
> This Panel is not oblivious to the difficulty in gaining the cooperation of a debtor-in-possession to act against its own responsible officer, no matter how meritorious the cause of action may be. *See James V. Steifer Mining Co.*, 35 Cal.App. 778, 785, 171 P. 117 (1918). However, in order to avoid the confusion that would result if creditors could act on their own discretion, **the Appellants should have sought court permission before filing a complaint urging relief under Section 548 of the Code**. *See In re Scientific Resources Corporation*, 391 F. Supp. 63, 67 (E.Pa. 1975).
>
> Further, the complaint here is improperly styled with the Appellants themselves being named as plaintiffs**. An action to set aside a fraudulent transfer must be brought in the name of the bankruptcy [*829] estate as the real party in interest**. *See In re Macloskey*, 66 F. Supp. 610, 612 (N.J. 1946); In re Toledo Equipment Co., Inc., supra, 35 B.R. at 317.

I*n re Curry & Sorensen*, 57 B.R. 824, 828-829, (B.A.P. 9th Cir. 1986).

Based on the authority cited, it appears that the "squarely on all fours" relief requested would be for the court to authorize Creditor to commence and prosecute all such avoiding claims for the benefit of the bankruptcy estate, and have the same fiduciary duties to the estate that the Chapter 7 trustee would have in connection with such claims.

Further, Creditor does not state what legal authority for a Chapter 7 trustee being ordered to "abandon" property of the estate to a creditor. Congress provides in 11 U.S.C. § 554 as follows:

> § 554. Abandonment of property of the estate
>
> (a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

> (b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.
>
> (c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title. . . .

Only in paragraph (c) does Congress expressly state to whom the abandonment will be - the debtor upon the closing of the case.

The Ninth Circuit Court of Appeals addressed the abandonment issue when the trustee is abandoning property of the estate before the case is closed, holding:

> "Abandonment" is a term of art with special meaning in the bankruptcy context. It is the formal relinquishment of the property at issue from the bankruptcy estate. Upon abandonment, the **debtor's interest** in the property is restored *nunc pro tunc* as of the filing of the bankruptcy petition. . . .

Catalano v. Commissioner of Internal Revenue, 279 F.3d 682, 685 (9th Cir. 2002) (emphasis added). Thus, the "debtor's interest" is abandoned to the debtor.

Collier on Bankruptcy expands this discussion, reviewing the cases and stating the authority that the abandonment may be made to someone other than the debtor, so long as that person has a possessory interest in the asset of the estate being abandoned.

> [3] Effect of Abandonment
>
> Upon abandonment under section 554, the trustee is divested of control of the property because it is no longer part of the estate. Thus, abandonment constitutes a divesture of all of the estate's interests in the property. **Property abandoned under section 554 reverts to the debtor**, and the debtor's rights to the property are treated as if no bankruptcy petition was filed. Although section 554 does not specify to whom property is abandoned, **property may be abandoned by the trustee to any party with a possessory interest in it.** Normally, the debtor is the party with a possessory interest. However, **in some cases, it may be some other party, such as a secured creditor who has possession of the property when the trustee abandons the estate's interest**. In any event, property abandoned under subsection (c) (scheduled but not administered property) is deemed abandoned to the debtor.
>
> **Abandonment should not be considered a judicial sale of the property.** Therefore, when property is subject to a security interest, abandonment does not take the place of a proper foreclosure sale. Even if the secured party is given possession, it will still have to comply with any nonbankruptcy law requirements for sale. Abandonment also should not be considered to divest the court of jurisdiction to enforce the rights of a debtor to claim an exemption under section 522.

5 Collier on Bankruptcy P 554.02 (16th 2019) (emphasis added).

Creditor does not present the court with any contention that it has any right to possess the avoiding rights of the bankruptcy estate. It appears that if "abandoned" to Creditor, such would not be rights the Creditor could exercise.

Rather than an abandonment, it appears that Creditor is seeking to have the Chapter 7 Trustee sell/transfer all of the rights of the bankruptcy estate to Creditor. That is not the relief requested and there is no agreement for the Chapter 7 Trustee to so sell such rights of the bankruptcy estate pursuant to 11 U.S.C. § 363.

Defective Service

In addition to the substantive issues addressed above, Creditor has failed to properly serve this Motion (to the extent that a motion to abandon is proper) on all of the required parties in interest. The Proof of Service for this Motion indicates that it was served:

1. **Debtor via U.S. Mail:**
   Richard Arland Ricks
   4701 Hammett Rd
   Modesto, CA 95358;

2. **Trustee via U.S. Mail:**
   Irma Edmonds
   P.O. Box 3608
   Pinedale, CA 93650; and

3. **U.S. Trustee via Email:**
   Office of the U.S. Trustee
   Robert T Matsui United States Courthouse
   501 I Street, Room 7-500
   Sacramento, CA 95814
   Email: ustpregion17.sc.ecf@usdoj.gov

Service to All Creditors Required

Federal Rule of Bankruptcy Procedure 6007(b) requires that a Notice of Proposed Abandonment or Disposition must be served on "all creditors." Creditor did not serve the required parties and thus service is defective. On the Master Mailing List, additional creditors include: (1) Kay Jewelers, (2) IQ Pest Control, (3) Cox Communications, (4) TD Auto, (5) Citi Shell, and Crot First. Dckt. 3. The service being deficient, the Motion cannot be granted.

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

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

The Motion to Compel Abandonment filed by Hirst Law Group, P.C. ("Creditor") 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 denied.

4. 19-90671-E-7 **PATRICIA REED** **Pro Se** **TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 10-4-19 [14]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors and Office of the United States Trustee on October 9, 2019. By the court's calculation, 29 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). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The hearing on the Motion to Dismiss is continued to 10:30 a.m. on xxxxxx, 2019.

The Chapter 7 Trustee, Irma Edmonds ("Trustee"), seeks dismissal of the case on the grounds that Patricia Marlene Reed ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 10:00 a.m. on November 18, 2019. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 4, 2019. Dckt. 18. Debtor states she did not receive notice of the hearing. Debtor further states that dismissal would be a hardship.

DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

Extension of the Deadline for Filing Objections to Discharge and Complaints to Determine Nondischargeability of Debtor

This bankruptcy case was filed on July 19, 2019. The Debtor appeared at the initial meeting of creditors on September 16, 2019, then failed to appear at the continued meeting on September 30, 2019. The court's file reflects that existing deadline for filing objections to discharge and to seek the nondischargeability of debt would run on November 15, 2019.

The First Meeting not completed, the Trustee correctly requests that this deadline be extended sixty days for filing objections to discharge. No request has been made for extending the deadline for filing complaints to determine the nondischargeability of debt.

The court extends the deadline for filing objections to discharge under 11 U.S.C. § 727 and motions for abuse, other than under 11 U.S.C. § 707 are extended through and including January 15, 2020.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Irma Edmonds ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to **10:30 a.m. on xxxxxx, 2019**.
>
> **IT IS FURTHER ORDERED** that the deadlines to file objections to discharge under 11 U.S.C. § 727 and motions for abuse, other than under 11 U.S.C. § 707 are extended through and including January 15, 2020

5. 19-90382-E-7 TRACY SMITH MOTION FOR ENTRY OF DEFAULT
19-9013 MWH-2 JUDGMENT
KALRA V. SMITH 9-24-19 [12]

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant/Debtor on September 24, 2019. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion for Default Judgment 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.

No tentative ruling for the Motion for Default Judgment is posted.

6. 19-90482-E-7 CEC-1 | **DOROTHY YOUNG Carl Combs** | **MOTION BY CARL E. COMBS TO WITHDRAW AS ATTORNEY 10-11-19 [24]**

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, Chapter 7 Trustee, creditors, and Office of the United States Trustee on October 11, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Motion to Withdraw as Attorney is xxxxxx.

Carl E. Combs ("Movant"), counsel of record for Dorothy Mae Young ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case. Movant states the following:

A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e) and California Rule of Professional Conduct 1.16(b)(4).

B. Counsel cannot effectively represent Debtor due to inconsistency of and lack of communication.

C. Debtor has instructed Counsel cease working on bankruptcy proceedings.

D. Debtor has requested that Counsel not contact her any further.

Motion, Dckt. 25.

APPLICABLE LAW

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 one relevant for this Motion:

(1) The client

> (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L. CONDUCT 1.16(b)(4)(d).

DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that Debtor has refused to cooperate with counsel, has instructed counsel to cease working on her case, and requested that counsel not contact her any further. Movant states in his declaration:

> "Debtor states she will not do anything further on the matter and is refusing to cooperate with my office. She has advised that she will not participate in any further proceedings and has asked my office not to contact her further or perform any further work on her case. We have made at least 9 attempts to communicate with her since and gain her cooperation but in each case she either refuses to cooperate. In a last attempt to procure her cooperation, my office contacted her today by telephone. She informed my staff that her condition prevents her from leaving the house and will not meet with me."

Declaration, Dckt. 26.

Movant does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice. Neither the Chapter 7 Trustee, Debtor, nor any other relevant party has filed an opposition to this Motion. However, this Motion was filed according to Local Bankruptcy Rule 9014-1(f)(2).

Furthermore, under California Rule of Professional Conduct 3-700(C)(1)(d), Debtor's conduct, such as refusal to participate in bankruptcy proceedings and the lack of response to communications from the Movant is hindering Movant's ability to carry out his employment and duties effectively. Those may be considered sufficient reasons for permissive withdrawal.

The Motion to Withdraw is **xxxxxxxxxxxxxxxx**

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 Carl E. Combs ("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 to Withdraw as Attorney is xxxxxx.

7.	19-90482-E-7 CEC-2	**DOROTHY YOUNG** **Carl Combs**	**MOTION TO DISMISS CASE** **10-11-19 [27]**

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.

No proof of service provided. At the hearing, --------------------------------.

The Motion to Dismiss is denied without prejudice.

The Debtor Dorothy Mae Young, ("Debtor") seeks a dismissal of the case on the grounds that voluntary dismissal is proper under U.S.C. § 707 when it does not prejudice the creditors. Dismissal of this matter without notice to the creditors would be prejudicial.

This Motion to Dismiss is being filed by the same counsel who is petitioning the court to withdraw as counsel for Debtor.

Dismissal of a chapter 7 case under 11 U.S.C. § 707(a), other than § 707(a)(3), requires a motion, notice to all creditors and parties in interest, and a hearing. See 11 U.S.C. § 707(a)(1), FRBP 1017(a), 1017(c), 1017(f)(2), 2002(a)(4), and 9013. Debtor has failed to serve all parties. Debtor's Motion to Dismiss is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss filed by Dorothy Mae Young ("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 denied.

8. 17-90516-E-7 HCS-5 — **VERA JOHNSON** / **Thomas Hogan** — **MOTION FOR TURNOVER OF PROPERTY AND/OR MOTION TO COMPEL O.S.T. 10-28-19 [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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2019. By the court's calculation, 6 days' notice was provided. Dckt. 81.

The Motion for Turnover of Property / Motion to Compel O.S.T. 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 for Turnover is ~~xxxxx~~.

Gary Farrar, 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 1421 Brannon Avenue, Modesto, California ("Property"). In the Motion the Trustee sets forth grounds with particularity concerning the Debtor's failure to turnover the property of the estate, the concerns for the safety of the persons working for the trustee with respect to the Property, and the damage (graffiti and garbage) occurring to the Property while in the Debtor's possession. The Trustee provides six declarations and exhibits in support of the Motion.

DEBTOR'S RESPONSE

The Debtor, Vera Johnson ("Debtor") filed a Response to the Motion on November 4, 2019. Dckt. 87. While Debtor disputes several of the statements made in Movant's Motion, Debtor agrees to surrender the property but requests 90 days to remove her personal property and find a new place to live.

Debtor asserts that she is unable financially to correct the damage to the property, but that the City of Modesto has done so and that no further damage has occurred.

The Response continues, stating the Debtor is currently financially unable to obtain an alternative living space and would be homeless if forced to turnover the property of the bankruptcy estate to the Trustee. The Response does not indicate how this will be different in 90 days.

CREDITOR'S RESPONSE

Michael Johnson, Debtor's ex-husband, ("Creditor") filed a Response in Support of Trustee's Motion for Turnover on November 4, 2019. Dckt. 85. Creditor argues that the motion for turnover is also necessary to protect his interests as the Property is part of the divorce proceedings between Creditor and Debtor.

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 Vera June Johnson ("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, Debtor filed a Response to Trustee's Motion to Turnover on November 4, 2019. Dckt. 87. Debtor does not present an argument opposing the Motion. Instead, Debtor requests that the court grant the motion and order the Debtor to vacate and turnover the Property in 90 days to allow debtor time to remove her personal property from the home and to find a place to live. She also agrees to cooperate with realtor as handling the sale of the Property and maintain the home the process.

At the hearing, **xxxxxxxxxxxxx**

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

~~The Motion is granted. The Debtor shall turnover possession of 1421 Brannon Avenue, Modesto, California on or before noon on **xxxxxxx, 20xx**.~~

~~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 Gary Farrar, 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 Vera June Johnson ("Debtor"), and each of them, shall deliver on or before **noon on xxxxxxx, 20xx**, possession of the real property commonly known as 1421 Brannon Avenue, Modesto, California ("Property"), with all of their personal property, personal property of any other persons that Debtor, and each of them, allowed access to the Property; and any other person or persons that Debtor, and each of them, allowed access to the Property removed from the Property.~~

FINAL RULINGS

9.	**E09-90311-E-7** **MDM-2**	**BRIAN/PATTY CARROLL** **G. Michael Williams**	**MOTION FOR COMPENSATION FOR MICHAEL D. MCGRANAHAN, CHAPTER 7 TRUSTEE(S)** **10-4-19 [167]**

Final Ruling: No appearance at the November 7, 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 Debtors', Debtors' Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 4, 2019. By the court's calculation, 34 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 court, *sua sponte*, shortens the notice period to the 34 four days provided.

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.

Michael D. McGranahan, the Chapter 7 Trustee, ("Applicant") for the Estate of Brian Carroll and Patty Carroll ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period June 15, 2017, through November 7, 2019.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "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 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 litigation of a post discharge claim of exemption. The Estate has $35,000.00 of unencumbered monies to be administered as of the filing of the application. However, the Trustee has entered into an agreement with the Debtor regarding a settlement claim the Debtor is entitled to. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

<u>Case Administration:</u> Applicant spent 4.20 hours in this category. Applicant communicated with counsel; reviewed bankruptcy related documents; reviewed debtor's motion seeking settlement outside of bankruptcy estate;

<u>Claims Administration:</u> Applicant spent 10.00 hours in this category. Applicant reviewed orders related to distribution of funds; reviewed distribution spreadsheets; reviewed CPA files and fees; communicate4d with counsel regarding fees; attended hearings on fee applications; and reviewed and distributed final amounts.

<u>Fee Employment Application:</u> Applicant spent 3.70 in this category. Applicant assisted in the preparation of the Trustee fee application; and reviewed final application and declaration.

<u>Litigation:</u> Applicant spent 11.60 hours in this category. Applicant communicated with debtors and counsel regarding executed contracts; reviewed applications to employ; reviewed documents related to personal injury / mesh claim; communicated with special counsel regarding 2004 depositions and requests for production of documents; reviewed various settlement agreement drafts; reviewed proposed orders; and received and deposited funds.

<u>Efforts to Assess and Recover Property of the Estate:</u> Applicant spent 3.0 hours in this category. Applicant assisted the estate in negotiating with Debtor procuring a settlement of the reopened claim. Debtor reopened the case to claim an exemption for a "Mesh Implant Procedure Personal Injury Claim" ("Claim"). After negotiations with Debtor and their counsel, an agreement was reached on allocation of the proceeds of the claim.

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $142,009.00	$3,876.45
Calculated Total Compensation	$9,626.45
Total Maximum Allowable Compensation	$9,626.45
Less Previously Paid	$0.00
Total First Final Fees Requested	$9,000.00

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. Final Fees in the amount of $9,000.00 are approved pursuant are approved pursuant to 11 U.S.C. § 330 are 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.

In this case, the Chapter 7 Trustee currently has $227,009.00 of unencumbered monies to be administered. The Chapter 7 Trustee Summary of Services. Applicant's efforts have resulted in a realized gross of $99,480.07 recovered for the estate. Dckt. 167.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

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

Fees $9,000.00
Costs and Expenses $74.73

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 Michael D. McGranahan, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Michael D. McGranahan is allowed the following fees and expenses as a professional of the Estate:

Michael D. McGranahan, the Chapter 7 Trustee

Fees in the amount of $9000.00
Expenses in the amount of $74.73,

The fees and costs pursuant to this Motion, and fees in the amount of $9000.00 and costs of $74.73 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

10.	**09-90311-E-7** **SSA-9**	**BRIAN/PATTY CARROLL** **G. Michael Williams**	**MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEES ATTORNEY(S)** **10-4-19 [171]**

Final Ruling: No appearance at the November 7, 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 Debtors', Debtors' Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 4, 2019. By the court's calculation, 34 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 court, *sua sponte*, shortens the notice period to the 34 four days provided.

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 non-opposition. *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.

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

Fees are requested for the period June 29, 2019, through September 24, 2019. The order of the court approving employment of Applicant was entered on July 12, 2017. Dckt.64. Applicant requests fees in the amount of $20,000.00, inclusive of fees and costs.

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 review of case, Debtors' schedules and statement of affairs; drafting of initial application for appointment; assisting the Trustee in reviewing the estate claims; and preparation of the motion to approve settlement and release agreement and first and final application for fees and costs as counsel for Trustee. The Estate has $35,000.00 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 6.3 hours in this category. Applicant communicated with Chapter 7 Trustee, creditors and U.S. Trustee; coordinated and prepared statement of financial affairs, schedules and list of contracts; prepared interim statements and operating reports; assisted with general creditor inquiries; analyzed and communicated with various parties regarding mesh claims; and discussion with Trustee regarding motions for compromise and endorsement of settlement agreement, and motion for abandonment.

Asset Disposition: Applicant spent 2.3 hours in this category. Applicant prepared motion, declaration, points of authority and notice in support of abandonment of a smaller claim in order to facilitate global settlement; and reviewed court's ruling on the motion.

Fee/Employment Applications: Applicant spent 13.30 hours in this category. Applicant review and prepared the following: initial application to appointment of special counsel Noble McIntyre; first and final application approving fees and costs for special counsel; first and final fee application for CPA Maria Stokman; and first and final application as general bankruptcy counsel for Trustee and bankruptcy estate.

<u>Efforts to Assess and Recover Property of the Estate:</u> Applicant spent 28.80 hours in this category. Applicant discussed with Debtors' counsel concerning mesh claims and conducted research as it pertained to whether the claim was property of the bankruptcy estate; drafted and reviewed reply motion to Debtors' motion that mesh claims were not property of the bankruptcy estate; prepared two declarations in support of Trustee's reply; prepared evidentiary objections to debtors' evidence in support of debtors' motion; prepared exhibits in support of Trustee's reply; prepared for oral arguments on the motion; and review and discussion with Trustee of court's favorable decision on the motion.

<u>Claims Administration and Objection:</u> Applicant spent 7.5 hours in this category. Applicant conducted various follow-ups as they pertained to the mesh related claims in the estate; prepared tolling agreement and court order approving tolling agreement; reviewed Trustee's email concerning aggregate settlement amount of mesh related claims; drafted 2004 exam questions directed to debtor Carroll and spouse; and follow-up case discussion with Debtors' Counsel in support of compromise for claim; follow-up with Trustee regarding a possible resolution of second mesh claims as global settlement with bankruptcy case.

<u>Litigation:</u> Applicant spent 29.8 hours in this category. Applicant reviewed Debtors' motion on mesh claims and status of settlement overtures with debtors; analyzed recommendation of settlement; drafted multiple drafts of motion for compromise concerning mesh product liability claims between estate and debtors; preparation of motion, point of authorities, and declarations in support of compromise involving mesh claims; prepared application for order describing notice and shortening time to compromise motion; reviewed final recap sheet involving distribution of gross mesh proceeds; prepared draft order approving settlement of case and a separate order on shortening time; and attended court hearing concerning Trustee's motion to approve compromise of claims and controversies.

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	88.00 hrs	$300.00	$26,400.00
	0	$0.00	<u>$0.00</u>
Total Fees for Period of Application			$26,400.00

<u>Costs & Expenses</u>

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $273.61 pursuant to this application.

The costs presented in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Expenses	n/a	$273.61
Total Costs Requested in Application		$273.61

FEES AND COSTS & EXPENSES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. However, Applicant seeks to be paid an adjusted reduced rate of $20,000.00 for its fees and expenses incurred for Client. First and Final Fees and Costs in the amount of $20,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees, Costs and Expenses $20,000.00

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 Steven S. Altman ("Applicant"), Attorney for Michael D. McGranahan, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that 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 and expenses in the amount of $20,000.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

11. 19-90321-E-7 SSA-1 | **RANDY/TERRI BELFLOWER Steve Altman** | **MOTION TO AVOID LIEN OF TRI COUNTIES BANK 10-4-19 [37]**

Final Ruling: No appearance at the November 7, 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 Debtors', Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 4, 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.

This Motion requests an order avoiding the judicial lien of Tri Counties Bank ("Creditor") against property of the debtor, Randy Louis Belflower and Terri Lee Belflower ("Debtor") commonly known as 292 Dana Road, Valley Springs, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $73,329.62. Exhibit 2, Dckt. 42. An abstract of judgment was recorded with County on June 27, 2018, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $560,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $484,860.98 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $175,000.00 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Randy Louis Belflower and Terri Lee Belflower ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Tri Counties Bank, California Superior Court for Calaveras County Case No. 17CV03751, recorded on June 27, 2018, Document No. 2018-00727, with the Calaveras County Recorder, against the real property commonly known as 292 Dana Road, Valley Springs, California, is avoided in its entirety for all amounts in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

12. 19-90321-E-7 SSA-2 | RANDY/TERRI BELFLOWER Steve Altman | MOTION TO AVOID LIEN OF CITIBANK, NA. 10-4-19 [44]

Final Ruling: No appearance at the November 7, 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 Debtors', Debtor' Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 4, 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 non-opposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank, NA ("Creditor") against property of the debtor, Randy Louis Belflower and Terri Lee Belflower ("Debtors") commonly known as 292 Dana Road, Valley Springs, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,096.05. Exhibit 2, Dckt. 48. An abstract of judgment was recorded with Calaveras County on August 25, 2018, that encumbers the Property. *Id*.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $560,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $484,860.98 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $175,000.00 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Randy Louis Belflower and Terri Lee Belflower ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Citibank, NA, California Superior Court for Calaveras County Case No. 18CF12345, recorded on August 25, 2018, Document No. 2018-010858, with the Calaveras County Recorder, against the real property commonly known as 292 Dana Road, Valley Springs, California, is avoided in its entirety for all amounts in it entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

13. 19-90122-E-11
MF-29

MIKE TAMANA FREIGHT LINES, LLC
Matt Olson

MOTION FOR COMPENSATION BY THE LAW OFFICE OF AGUILAR BENTLEY LLC FOR ANNE BURTON WALSH AND ANNA AGUILAR, SPECIAL COUNSEL(S)
10-3-19 [368]

Final Ruling: No appearance at the November 7, 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 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 October 3, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Anne Burton Walsh and Anna Aguilar of Aguilar Bently LLC, the Special Counsel ("Applicant") for Mike Tamana Freight Lines, LLC, the Debtor in Possession ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 6, 2019, through October 1, 2019. The order of the court approving employment of Applicant was entered on August 6, 2019. Dckt. 335. Applicant requests compensation in the amount of $2,002.50 and expenses in the amount of $2,064.60.

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 conducting examinations of certain creditor pursuant to Rule 2004 of the Federal Rules of Bankruptcy in New York, where such creditors are located. Applicant is informed by counsel for the Debtor in Possession and believes that the estate is being administered and its business is operating pursuant to as cash-flow budget approved in connection with debtor-in-possession financing a motion to use cash collateral. Adding that the budget for the last quarter of 2019 includes an allocation sufficient to pay the requested compensation and reimbursement expenses.

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.

<u>Non-Party Rule 2004 Depositions in New York:</u> Applicant spent 4.2 hours in this category. Applicant reviewed deposition notices and emails with Counsel Olson regarding status of document production, prepared, attended and conducted examinations of certain creditors pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure in New York; made and entered statements on the record regarding non-appearances; and coordinate deposition transcript with Veritext (a court reporting agency).

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**
Anna Aguilar	0.6	$575.00	$345.00
Anne Burton Walsh	3.60	$450.00	$1,620.00
Nicole Morris	0.3	$125.00	<u>$37.50</u>

Total Fees for Period of Application	$2,002.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $2,064.60 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Meeting Room	$539.60	$539.60
Veritext Deposition Transcript	$1,525.00	$1,525.00
		$0.00
Total Costs Requested in Application		$2,064.60

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $2,002.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

First Interim Costs in the amount of $2,064.60 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11.

Applicant is allowed, and Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $2,002.50
Costs and Expenses $2,064.60

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

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

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

The Motion for Allowance of Fees and Expenses filed by Anne Burton Walsh and Anna Aguilar of Aguilar Bentley LLC ("Applicant"), Special Counsel for Mike Tamana Freight Lines, LLC, the Debtor in Possession, ("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 Anne Burton Walsh and Anna Aguilar of Aguilar Bently LLC is allowed the following fees and expenses as a professional of the Estate:

Anne Burton Walsh and Anna Aguilar of Aguilar Bently, LLC, Professional employed by the Debtor in Possession

Fees in the amount of $2,002.50
Expenses in the amount of $2,064.60,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

14. 19-90735-E-7 LBF-2	**KENNETH WYCKOFF Lauren Franzella**	**MOTION TO AVOID LIEN OF STANISLAUS CREDIT CONTROL SERVICE, INC. 9-23-19 [24]**

Final Ruling: No appearance at the November 7, 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 Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on September 23, 2019. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of 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. 22. An abstract of judgment was recorded with Stanislaus County on June 18, 2013, that encumbers the Property. *Id*.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $235,000.00 as of the petition date. Dckt. 22. The unavoidable consensual liens that total $77,854.33 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 22. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §704.730 in the amount of $175,000.00 on Amended Schedule C. Dckt. 22.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by 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. A California Corporation, California Superior Court for Stanislaus County Case No. 682206, recorded on June 18, 2013, Document No. 2013-0052172-00, with the Stanislaus County Recorder, against the real property commonly known as 445 Davitt Avenue, Oakdale, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

15. 19-90151-E-11 DCJ-1 | **Y&M RENTAL PROPERTY MANAGEMENT, LLC** David Johnston | **MOTION FOR DETERMINATION OF REASONABLENESS OF FEES** 9-29-19 [55]

Final Ruling: No appearance at the November 7, 2019 hearing is required.

Y&M Rental Property Management, LLC ("Debtor") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion for Determination of Reasonableness of Fees was dismissed without prejudice, and the matter is removed from the calendar.**

16. 19-90159-E-11 DCJ-1 | **BARRENO ENTERPRISES, LLC** David Johnston | **MOTION FOR DETERMINATION OF REASONABLENESS OF FEES** 9-30-19 [67]

Final Ruling: No appearance at the November 7, 2019 hearing is required.

Barreno Enterprises, LLC ("Debtor") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion for Determination of Reasonableness of Fees** was dismissed without prejudice, and the matter is removed from the calendar.

17. 19-90674-E-7 SSA-1 | **WILLIAM BARNES** Steve Altman | **MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, AS TO DEBTOR** 10-2-19 [13]

Final Ruling: No appearance at the November 7, 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 October 2, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Waive Financial Management Course Requirement 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 Waive Financial Management Course Requirement is granted.

Debtor's counsel Steve Altman ("Debtor's Counsel") filed this Motion seeking to waive the requirement for the debtor, William Barnes ("Debtor"), to complete the post-petition Financial Management Course. Debtor's Counsel argues this relief is warranted because the Debtor is unable to complete his requested debtor education course due to the fact he is in the Alexander Cohen Hospice Care facility in Hughson, California and due to his medical and physical condition.

APPLICABLE LAW

Section 109(h)(1) requires a debtor to complete debtor education requirement where Debtor receives credit counseling and budget analysis. In turn, Section 109(h)(4) of the Bankruptcy Code allows a waiver of said requirement under the following:

> The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone.
>
> Further providing:
>
> For the purpose of this paragraph incapacity means that the debtor is impaired by reason of mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means the debtor is so physically impaired as to be unable after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

11 U.S.C. § 109(h)(4). (*See also*: *In re Thomas* in support of the court's authority to waive the requirement to appear at the 341 Meeting. In re Thomas, No. 07-00097, 2008 WL 4835911 at p. 1 (Bankr. D.D.C. Nov. 6, 2008).

DISCUSSION

This case was filed on July 19, 2019. Dckt. 1. Debtor completed a pre-petition Debtor certificate for filing bankruptcy and also attended his first meeting of creditor on August 22, 2019. Altman Declaration, Dckt. 15. Debtor William Barnes was admitted to hospice care on September 4, 2019. Exhibit 1, Dckt. 17.

Counsel was informed by Debtor's son that Debtor is terminally ill. *Id.* Debtor is under heavy medication for pain and discomfort, and experiences confusion and lack of lucidity. Barnes Declaration, Dckt. 16.

On August 13, 2019, the Chapter 7 Trustee filed his Chapter 7 Trustee's report of No Distribution with a September 22, 2019 deadline to object to discharge. Dckt. 11. Docket shows that no objections have been filed as of November 5, 2019.

Debtor's Counsel has properly addressed the grounds for waiving this requirement. Debtor is terminally ill, suffering from bout of confusion and other heavy medication. Debtor is indeed for purposes of the bankruptcy code definition referenced above, unable to complete the certification requirement because of disability. Thus, the requirement is waived.

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 Waive Financial Management Course Requirement as to Debtor filed by debtor's counsel, Steve Altman ("Debtor's Counsel") 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.

18. [12-92479]-E-12 **DAVID/ESPERANZA AGUILAR** **MOTION FOR CONTEMPT**
[NFG]-5 **Nelson Gomez** **9-16-19 [[123]]**

Final Ruling: No appearance at the November 7, 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, creditor, and Office of the United States Trustee on September 16, 2019. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

The Motion for Contempt 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.

Pursuant to the prior Order of this Court (Dckt. 131), **the hearing on the Motion for Contempt has been continued to 10:30 a.m. on December 19, 2019.**

19. 10-90281-E-7 **LORRAINE/GARY ERWIN** **OBJECTION TO CLAIM OF SAXON**
ADJ-7 **Martha Passalaqua** **MORTGAGE SERVICES, INC., CLAIM NUMBER 3-1**
9-9-19 [186]

Final Ruling: No appearance at the November 7, 2019 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 9, 2019. By the court's calculation, 59 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 3 of Saxon Mortgage Services, Inc., as servicing agent for U.S. Bank National Association, as trustee for the MSM 2006-14SL pass-through certificates is sustained.

Michael D. McGranahan, the Chapter 7 Trustee, ("Objector") requests that the court disallow the claim of Saxon Mortgage Services, Inc., as servicing agent for U.S. Bank National Association, as trustee for the MSM 2006-14SL pass-through certificates ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $121,274.24.

Objector asserts that in 2010 Debtor initiated a Chapter 13 bankruptcy and during that proceeding an order was entered valuing Creditor's secured claim, which resulted all of Creditor's $121,274.24 claim to be an unsecured claim. Objector argues that the Order on Stipulation provided for Creditor's claim to be accounted for in the plan as an unsecured debt.

The Order on Stipulation conditioned that the Chapter 13 plan be completed. Objector argues since Debtor did not complete the Chapter 13 plan but instead the case was converted to a Chapter 7 case, the Creditor cannot now assert an unsecured claim against Debtor.

Objector states that since the case has been converted, the claim should be denied and "converted back to the Original Claim."

While the authorities cited by Objector are long and numerous, they do not address the "Conversion" of the claim and disallowance. It is argued that the "plan language of the order" mandates the disallowance of the unsecured claim.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

The court reviews the "plain language" of the order and the applicable statutory law. The "plain language" of the order states:

> 1. Creditors claim "shall [not may] be allowed as a non-priority general unsecured claim. [Creditor] shall file an amended Proof of Claim listing its claim as unsecured to be paid in accordance with Debtor's Plan." Order ¶ 1, Dckt. 48

With this first part of the order, the court expressly and clearly allowed Creditor's claim as an unsecured claim. The court concluded that there was no value in the collateral for Creditor and pursuant to 11 U.S.C. § 506(a) made the necessary allocation to the secured (none) and unsecured claims (all). As ordered by the court, an unsecured claim was filed. See Proof of Claim No. 21-1.

> 2. "The avoidance of [Creditor's] Second Deed of Trust is contingent upon Debtor's completion of their Chapter 13 Plan and Debtors' receipt of a Chapter 13 discharge." Order ¶ 2, *Id.*

Here, the court's order does not make the allowance of the unsecured claim contingent on completion of the plan, but "merely" the avoidance of the lien on the property in which there is no value for Creditor's junior deed of trust. The Order continues in Paragraph 3 stating that the lien (for which there is no value in the collateral) remains in the event that the bankruptcy case is dismissed or the bankruptcy case converted. *Id.* This does not state that the allowed unsecured claim becomes disallowed or "converted" with the case.

Objector fails to show a basis for the court "reversing" the prior order allowing the unsecured claim.

Based on the evidence before the court, the Objection to the Proof of Claim is sustained.

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 Objection to Claim of Saxon Mortgage Services, Inc., as servicing agent for U.S. Bank National Association, as trustee for the MSM 2006-14SL pass-through certificates ("Creditor"), filed in this case by Michael D. McGranahan, the Chapter 7 Trustee, ("Objector") 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 Objection to Proof of Claim Number 3 of Creditor is overruled.

20. 19-90595-E-7 **TREVOR CRANDALL** **MOTION TO APPROVE STIPULATION TO DISMISS CASE WITHOUT ENTRY OF DISCHARGE**
UST-1 **Thomas Hogan** **9-24-19 [17]**

Final Ruling: No appearance at the November 7, 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 September 24, 2019. By the court's calculation, 44 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 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 Approve Stipulation to Dismiss Without Discharge is granted.

Tracy Hope Davis, the United States Trustee for Region 17 ("US Trustee") requests that this court approve the Stipulation to Dismiss the Chapter 7 case without entry of discharge. The Debtor, Trevor Franklin Crandall ("Debtor") and the US Trustee have entered into an agreement to dismiss the case. Dckt. 18.

The Chapter 7 Trustee, Gary Farrar ("Chapter 7 Trustee") has not filed any response.

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 Stipulation to Dismiss Without Discharge filed by United States Trustee for Region 17, Hope Davis ("US 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 Approve Stipulation to Dismiss Without Discharge is granted, and the bankruptcy case is dismissed, with no discharge entered for Debtor Trevor Franklin Crandall in this case.