**UNITED STATES BANKRUPTCY COURT**
**Eastern District of California**

**Honorable Ronald H. Sargis**
**Chief Bankruptcy Judge**
**Sacramento, California**

**November 14, 2019 at 10:30 a.m.**

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**1.** **19-26203-A-7** **SHERRIE TITTLE**
**Ted Greene**

**ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
**10-16-19 [11]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on October 16, 2019. The court computes that 29 days' notice has been provided.

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

**The Order to Show Cause is sustained, and the case is dismissed.**

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $335.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

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|---|---|---|---|
| **2.** | **19-23604-A-7**<br>**DL-1** | **RACHAEL KONZ**<br>**Walter Dahl** | **MOTION TO AVOID LIEN OF MORGAN STANLEY SMITH BARNEY, LLC**<br>**10-8-19 [44]** |

**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.

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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, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 8, 2019. By the court's calculation, 37 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Morgan Stanley Smith Barney LLC ("Creditor") against property of the debtor, Rachael Leigh Konz ("Debtor") commonly known as 573 Ramos Drive Folsom, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of ($1,387,351.14). Exhibit 2, Dckt. 51.[FN. 1] Two abstracts of judgment was recorded with Sacramento County on January 17 and January 24, 2019, that encumber the Property. *Id.*

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FN. 1. For purposes of clarity, the court shows the debt or amount of judgment as negative numbers, ($xxxxx), and values and exemption amounts as positive numbers, $xxxxx.

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Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $1,100,000.00 as of the petition date. Dckt. 1. Debtor also provides her testimony as the owner of the property that the value is $1,100,000.00. Declaration, Dckt. 46.

Debtor states that the unavoidable consensual liens that total ($683,926.52) as of the commencement of this case. In the Reply to Creditor's Opposition, the Debtor notes that in a Reaffirmation Agreement filed on September 9, 2019, (Dckt. 30) U.S. Bank, N.A. affirmatively stated that the outstanding obligation upon the commencement of this case was ($683,924.52), slightly less than the ($691,000) stated by the Debtor in her Declaration (Dckt. 46) and on Schedule D (Dckt. 1). Debtor states in the Reply that use of the lower amount is proper for the computation of the lien avoidance. The court uses the lower amount of ($683,924), rounding off the amount to Creditor's benefit.

As discussed below, Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a)(3) in the amount of $175,000.00 on Original and Amended Schedule C. Dckts. 1, 24.

Debtor owns only a partial interest of 50% in the Property to which the impairing lien has attached. Debtor argues in the Motion that because she owns only an undivided 50% interest in the residence, the lien avoidance formula requires that only 50% of the "all other liens" be allocated to Debtor. Motion, at 3.

Using Debtor's valuation and statement of the obligation secured by liens encumbering the Property and Debtor's 50% undivided interest therein as follows

| | | |
|---|---|---|
| Value of Property | $1,100,000 | |
| US Bank Mortgage | ($683,924) | |
| | ========== | |
| Value of Property After Encumbrance Covering 100% of Property | $416,076 | |
| Allocation of Value to Respective Owners | Debtor | Co-Owner |
| | $208,038 | $208,038 |
| Debtor's Homestead Exemption | ($175,000) | |
| Creditor's Judgment Lien Obligation | ($1,531,749) | |
| | ========== | |
| Amount that liens, encumbrances, and homestead exemption (exceed)/less than value of Debtor's interest in the Property | ($1,498,711) | |

Given that the liens and encumbrances exceed the value of the Debtor's interest in the

Property, the homestead exemption is impaired. Here, there is $33,038 in value in excess of the senior liens and homestead exemptions for Creditor's judgment lien. This is computed as follows:

| | |
|---|---|
| Value of Debtor's Interest In the Property After Senior Secured Obligation of U.S. Bank, N.A. | $208,038 |
| Debtor's Homestead Exemption | ($175,000) |
| | ========== |
| Value in Property For Creditor's Judgment Lien | $33,038 |

**OPPOSITION FILED BY CREDITOR**

Creditor filed an Opposition on October 31, 2019. Dckt. 50. Creditor argues that Debtor's opinion of value should be rejected because Debtor does not provide the court does not provide the court with a detailed explanation of how she has an opinion of the value of her interest in the Property she owns. Opposition, p. 4:23, 5:1-22. Creditor cites the court to *In re Meeks*, 349 B.R. 19, 22 (Bankr. E.D. Cal. 2006), for the above assertion. The text of the decision the court is cited to state:

> The value of the Residence is listed in the Debtors' schedules and in the **Debtor's declaration in support of the motion at $ 289,000**. The motion explains the Debtors' valuation as follows: "value is based on the debtors' comparison of their residence to others in their neighborhood that have either sold or are for sale." **The Debtors offer no specifics or back-up details regarding the basis for their opinion**.
>
> **The Debtors offered their opinion of value as the owners of the Residence pursuant to Fed.R.Ev. 701.** Ms. File [the creditor's expert witness] offered her opinion as an expert witness pursuant to Fed.R.Ev. 702. **The court must determine how much weight to give the competing opinions of value.** The Debtor's testimony is subject to the same critical analysis as that of an independent appraiser. Based on the differences between the parties' respective positions, the court must carefully scrutinize the methods by which the competing opinions were derived. When the owner of property is unable to provide a detailed explanation of how he or she arrived at a value for the property, the testimony **may be insufficient** to establish in the court's mind an "actual belief…derived from the evidence" as to the validity of the owner's opinion. Russell, Bankruptcy Evidence Manuel § 701.2 at page 1218 (West 2006 edition), quoting *In re Brown*, 244 B.R. 603, 612 (Bankr. W.D.Va. 2000).
>
> Here, the **Debtors are permitted to give an opinion of the value of the Residence, but they are not qualified as experts to appraise the Residence**. **Neither are they qualified to give an opinion regarding the value differences between the Residence and the Comp. Sales**. For example, the Debtors may testify from their personal knowledge that the Residence has a shake roof.

> However, they are not qualified as experts to testify that a shake roof is worth $ 25,000 to $ 30,000 less than a tile roof. Consequently, the court **cannot give much weight to the Debtors' testimony regarding the value of the Residence and their efforts to compare the Residence with the Comp. Sales**.

*In re Meeks*, 349 B.R. at 22 (emphasis added).

The court's reading of the ruling in *Meeks* is that a debtor, as the owner of the property, may give an opinion as to value. But only the debtor's opinion, not a disguised expert opinion analysis. Debtor's declaration in this case is consistent with the Ruling in *Meeks*, as well as the Federal Rules of Evidence, and provides the owner's opinion and nothing more. Creditor appears to want the Debtor owner to act like an expert and provide testimony on how to properly appraise a home.

While an owner's opinion of value may be almost the most ephemeral of value testimony, it is evidence of value. Creditor has chosen not to offer any testimony to the contrary. In light of there being no contrary evidence presented by Creditor, the Debtor's opinion testimony evidence carries the day.

With respect to this issue of what a lay person may testify to as it relates to the value of property, the court notes the following from 4 WEINSTEIN'S FEDERAL EVIDENCE:

A. The testimony is to be based on the witnesses personal perception. 4 WEINSTEIN'S FEDERAL EVIDENCE, § 701.03[1]. Here, Debtor states only her opinion of value.

B. Homeowners and owners and officers of a business are allowed to offer lay opinions about the value of the home or business. *Id.*

C. Such opinion must be one that a normal person would form from the perceptions at issue. *Id.*, [2].

D. The owner is not to merely repeat the valuation of somebody else. *Id.*, [3].

E. The opinion must not be based on scientific, technical, or other specialized knowledge. *Id.*, [4](a).

F. Lay opinion must not be expert testimony in disguise. *Id.*, [4])b.

Consistent with the above is the unpublished decision by Judge Richard Lee (who was the author of the cited *Meeks* decision) in which he states, consistent with his ruling in *Meeks*:

> As owners of their home, the Debtors may state their opinion of its value under Fed. R. Evid.701. The source of that opinion is not material to its admissibility.

*In re Barajas*, 2006 Bankr. LEXIS 3095, *11-12, 2006 WL 3254483, (Bankr. E.D. Cal. 2006). This principle of an owner testifying as to the value of the property is extensively reviewed by the United States District Court in *United States ex rel. TVA v. An Easement & Right-Of-Way over 6.09 Acres of Land*, 140 F. Supp. 3d 1218, 1239-1240 (N.D. Alabama 2015), stating:

A long line of precedent establishes a general rule in this circuit that "an owner of property is competent to testify regarding its value." *Neff v. Kehoe*, 708 F.2d 639, 644 (11th Cir. 1983); *see also Hessen for Use & Benefit of Allstate Ins. Co. v. Jaguar Cars, Inc.*, 915 F.2d 641, 646 (11th Cir. 1990); *Gregg v. U.S. Indus., Inc.*, 887 F.2d 1462, 1469 (11th Cir. 1989); *Electro Servs., Inc. v. Exide Corp.*, 847 F.2d 1524, 1526 (11th Cir. 1988); *T.D.S., Inc. v. Shelby Mut. Ins. Co.*, 760 F.2d 1520, 1533 (11th Cir. 1985); *J & H Auto Trim Co. v. Bellefonte Ins. Co.*, 677 F.2d 1365, 1369 (11th Cir. 1982); *Dietz v. Consolidated Oil & Gas, Inc.*, 643 F.2d 1088, 1094 (5th Cir. April1981); *South Central Livestock Dealers, Inc. v. Security State Bank of Hedley, Tex.*, 614 F.2d 1056, 1061 (5th Cir. 1980); *Meredith v. Hardy*, 554 F.2d 764, 765 (5th Cir. 1977); *Kestenbaum v. Falstaff Brewing Corp.*, 514 F.2d 690, 698-99 (5th Cir. 1975); *Berkshire Mut. Ins. Co. v. Moffett*, 378 F.2d 1007, 1011 (5th Cir. 1967). The owner is generally presumed to be qualified to give such an opinion based on "his ownership alone." *Moffett*, 378 F.2d at 1011; *see also United States v. 68.94 Acres of Land, More or Less, Situate in Kent Cnty., State of Del.*, 918 F.2d 389, 397 (3d Cir. 1990) ("[T]he owner is deemed to have sufficient knowledge of the price paid, the rents or other income received, and the possibilities of the land for use, to render an opinion as to the value of the land." (quoting Nichols on Eminent Domain § 23.03 at 23-30 (1990) (citations omitted)); *United States v. 329.73 Acres of Land, Situated in Grenada & Yalobusha Counties, State of Miss.*, 666 F.2d 281, 284 (5th Cir. 1982) ("[O]pinion testimony of a landowner as to the value of his land is admissible without further qualification. Such testimony is admitted because of the presumption of special knowledge that arises out of ownership of the land." (citations omitted)); *LaCombe v. A-T-O, Inc.*, 679 F.2d 431, 434 (5th Cir. 1982); *Christopher Phelps & Associates, LLC v. Galloway*, 492 F.3d 532, 542 (4th Cir. 2007); *United States v. 10,031.98 Acres of Land, More or Less, Situate in Las Animas Cnty., Colo.*, 850 F.2d 634, 636 (10th Cir. 1988); *District of Columbia Redevelopment Land Agency v. Thirteen Parcels of Land*, 534 F.2d 337, 339, 175 U.S. App. D.C. 135 (D.C. Cir. 1976). In fact, the Eleventh Circuit has gone so far as to suggest that a witness's opinion of value of his personal property is generally admissible even if "self-serving and unsupported by other evidence." *Neff,* 708 F.2d at 644 (quoting *J & H Auto Trim Co.*, 677 F.2d at 1369). Similarly, our court of appeals has rejected arguments contesting the admissibility of an owner's testimony on the value of his property on the ground that it lacks a sound basis, concluding that such matters go only to the weight of the testimony and thus are to be challenged through cross-examination and refuting evidence. *See Gregg*, 887 F.2d at 1469; *Electro Services, Inc.*, 847 F.2d at 1526-27; *Neff*, 708 F.2d at 644; *J & H Auto Trim Co.*, 677 F.2d at 1369; *Meredith*, 554 F.2d at 765; *see also 329.73 Acres of Land, Situated in Grenada & Yalobusha Counties, State of Miss.*, 666 F.2d at 284 ("[A]ppellant attacks the probative value of [the landowner's] testimony on the grounds that it was not based on any accepted method of valuation, but this overlooks the fact that the opinion testimony of a landowner as to the value of his land is admissible without further qualification.").

Creditor's contention that Debtor's opinion of value is inadmissible and should be stricken because Debtor does not provide an analysis (as an expert would) of how Debtor reached that opinion is without merit.

Assertion that Debtor has Not Provided Evidence of Owning a 50% Interest in the Property

Creditor also complains that Debtor has not provided more evidence, other than her testimony under penalty of perjury that she owns a 50% interest in the Property and the amount of the senior secured Debt. But Debtor has provided her testimony, which is evidence. Creditor offers no evidence to the contrary. While Creditor may believe that testimony under penalty of perjury is of no value, such may speak more to how Creditor views providing such testimony as compared to Debtor. Fed. R. Evid. 601-603.

Assertion that Debtor has not Provided Evidence of Homestead Exemption

Creditor also bemoans the assertion that Debtor has not provided evidence of having claimed a homestead exemption, beyond her testimony, in the Property. Again, testimony under penalty of perjury is evidence. Creditor offers nothing in contrary evidence.

Assertion that Declaration Should Be Stricken For Not Complying With 28 U.S.C. § 1746

Creditor does correctly point out that Debtor's declaration states that it was declared under penalty of perjury under the laws of the State of California. Opposition, FN.3; Dckt. 50. Creditor does not state why this is an impediment to the court ruling on the evidence presented or the applicable law that Creditor believes is relevant. Creditor should not presume that statements can be made for commonly known legal principles and then leave it up to the judge and the judge's staff to construct the legal arguments. Debtor does not address this in Reply.

The court has assembled the specific law for the footnote comment by Creditor. 28 U.S.C. § 1746 provide for the use of unsworn declarations, which states:

> § 1746. Unsworn declarations under penalty of perjury
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1)
>
> If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of

America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2)

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

This raises an interesting issue as to whether such a statement, while not within the four corners and letter of 28 U.S.C. § 1746, must be disallowed as a declaration under penalty of perjury. The District court in *Kersting v. United States*, 865 F. Supp. 669 676-677 (D. Hawaii 1994), [FN. 2] considered this issue and concluded:

> Plaintiffs assert that the court erred by considering the affidavits of Luis DeCastro, Kenneth McWade, and William Sims, denying any breach of plaintiffs' attorney-client privilege. Plaintiffs ask the court to strike the affidavits of all three men, as well as the affidavit of Henry O'Neill, filed May 16, 1994, because the affiants declare, in the final sentence of each affidavit, that "under penalty of perjury [] the foregoing is true and correct to the best of my knowledge and belief."
>
> Plaintiffs assert that these unsworn declarations should not be considered by the court because they do not meet the verification requirements of 28 U.S.C. § 1746 and, consequently, are not subject -- despite their use of the phrase "under penalty of perjury" -- to the penalty of perjury. This argument is wholly without merit. As long as an unsworn declaration contains the phrase "under penalty of perjury" and states that the document is true, the verification requirements of 28 U.S.C. § 1746 are satisfied. *See Matter of Muscatell*, 106 Bankr. 307; *Nissho Iwai American Corp. v. Kline*, 845 F.2d 1300, 1306 (5th Cir. 1988). The authority upon which plaintiffs rely for their argument, *Campbell v. Fort Worth Bank & Trust*, 705 S.W.2d 400 (1986), is unpersuasive and contrary to the weight of authority. Campbell involved Texas state law and did not address the requirements of the applicable federal statute.

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FN. 2. While not triggering a problem under 28 U.S.C. § 1746, basing it on the "best of my knowledge and belief" may raise a problem under Federal Rules of Evidence 601 et seq., demonstrative a lack of personal knowledge by the witness.

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Looking to a recent unpublished decision out of the Eastern District Court of California, stating that the information is true and correct, and under penalty of perjury, does substantially comply with 28 U.S.C. § 1746. *Wilson v. City of Bakersfield*, 2017 U.S. Dist. LEXIS 201009 (E.D. Cal. 2010).

Creditor also argues that the declaration does not include the phrase, "I [Debtor] have personal knowledge of the matters set forth." Those words are not mandated by 28 U.S.C. § 1746 to be printed on the page of the declaration. Reading the plain language of Debtor's testimony in the Declaration, she states her opinion of value. She states her interest in the Property. She affirmatively states the homestead exemption she claims in the Property. She states that amount of the senior lien, which statement is qualified in the Reply and citation to the Reaffirmation Agreement filed with the court. There is nothing to indicate in the testimony that it is not based on Debtor's personal knowledge or that she is merely parroting what someone else is telling her to say.

While not within all four corners of 28 U.S.C. § 1746 as it relates to the reference to the State of California, the Declaration substantially complies with the federal statute, is made under penalty of perjury, and is affirmatively stated to be true and correct. Creditor has not directed the court to anything that might indicate the testimony not to be made under penalty of perjury.

Assertion That Creditor's Judgment Lien Against Debtor Encumbers the Interests of the Non-Judgment Debtor Co-Ownert

Finally, Creditor constructs an analysis of there being $234,000 of value in the Property for its judgment lien. However, in doing this Creditor treats its judgment lien as if it encumbers the co-owner, non-bankruptcy debtor, non-judgment debtor's interest in the Property. Creditor shows no legal basis (consistent with the certifications arising under Fed. R. Bankr. P. 9011) for asserting that its judgment lien encumbers anything more than Debtor's 50% interest in the Property.

**CONCLUSION**

Creditor's opposition consists entirely of the legal argument that the court should not find Debtor's uncontradicted testimony, for which no counter-evidence has been provided, not credible or not admissible. Creditor offers no properly authenticated evidence in opposition and does not seek to conduct any discovery. In looking at the evidence presented by Creditor, these are two exhibits filed with the Opposition, neither of which are authenticated as required by Federal Rules of Evidence 901 et seq. These documents consist of a copy of the asserted judgment against Debtor (and only the Debtor) and Amended Abstract of Judgment that is the subject of this Motion to Avoid Judgment Lien. Dckt. 51. Even if properly authenticated, these documents do not counter or contradict the testimony under penalty of perjury of Debtor.

If there was a *bona fide* dispute as to ownership, presumably Creditor would have provided the court with an authenticated preliminary title report showing the current state of title, history of transfers, and the basis for asserting that its judgement lien encumbered the entire property.

Further, if Creditor had a *bona fide* dispute as to value, it would be providing the court with at least a preliminary opinion of an appraiser, realtor, or real estate agent of a higher value, and then seek to proceed with discovery and obtain a final expert opinion of value. Such *bona fide* dispute of value is not asserted.

With respect to the homestead exemption claimed, if this Creditor had a *bona fide* dispute of the amount of the homestead exemption, Creditor would have explained what such a dispute was, and

the legal and evidentiary basis therefore. Such has not been presented by Creditor. [FN. 3.]

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FN. 3. The court notes that the homestead exemption of $175,000 has been claimed by Debtor pursuant to California Code of Civil Procedure § 704.730(a)(3). This exemption amount may be claim by: (A) a person 65 years of age or older; (B) a persona physically or mentally disable who as a result of that disability is unable to engage in substantial gainful employment; for which a rebuttable presumption arises if that person is receiving disability insurance benefits or payments under the Social Security Act; or (C) the person is 55 years of age or older and has cross annual income of not more than $25,000 if single or combined gross annual income of $35,000 if married.

On Schedule I, Debtor lists receiving Disability Insurance Payments of $5,269 a month as Debtor's sole source of income. Dckt. 1 at 43.

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The court concludes that Debtor has carried her burden of proof concerning this Motion. She has provided testimony and supporting evidence as to value of the Property, her interest in the Property, the homestead exemption being claimed, and the amount of the senior secured obligation. As stated in the published decision *In re Mohring* cited by Creditor in considering the burden of proof on a debtor for a motion to avoid lien, that court stated:

> A **motion to avoid lien is generally a routine, noncontroversial matter because the property has been specifically described in the schedules, valued, and claimed as exempt, and the creditor's claim has been listed as secured by the same property**. The validity of most exemptions is apparent from the face of the debtor's schedules and lists; properly prepared schedules and lists enable one "to determine precisely whether a listed asset is validly exempt simply by reading a debtor's schedules." *Hyman v. Plotkin (In re Hyman)*, No. 91-55300, slip op. at 6953 (9th Cir. June 22, 1992). **Conversely, proof of the necessary elements becomes more difficult when the schedules are incomplete or vague -- there is explaining to do.**

*In re Mohring*, 142 B.R. 389, 393 (Bankr. E.D. Cal. 1992) (emphasis added).

In the Motion now before this court, there is nothing incomplete or vague about the Schedules. Debtor has added to that with consistent testimony in her Declaration. The court in *Mohring* noted that even if the schedules were not presented to the court in connection with the motion, the court could take notice of the files in the case and the information provided in the schedules.

> If the debtor does not proffer the verified schedules and list of property claimed as exempt, the court nevertheless has discretion to take judicial notice of them for the purpose of establishing whether the property is listed and claimed as exempt and whether the contents, if true, reflect a prima facie case for entitlement to exemption under 11 U.S.C. § 522(b). Fed. R. Evid. 201(b)(2); *O'Rourke v. Seaboard Surety Co. (In re E.R. Fegert, Inc.)*, 887 F.2d 955, 957-58 (9th Cir. 1989); 1 J. Weinstein, Weinstein's Evidence P 201.03 at 201-35 (1992); B. Russell, Bankruptcy Evidence Manual § 201.5 (1991).

*Id.* In *Mohring*, the court concluded that because that debtor did not describe the assets with sufficient specificity and state the value of the assets (household goods) in which the exemption was being claimed, such was not sufficient to indicate to creditors and the trustee what exemption was being claimed in the various assets. That court concluded with the following:

> And there is a question of fact. What specific items of property are exempt?
>
> Until the answer to that question is known by way of amended schedules filed by the debtor under penalty of perjury, it is impossible to ascertain whether the debtor is entitled to exempt the property under section 522(b) and whether the property actually meets all of the requirements for lien avoidance under section 522(f)(2)(A).
> * * *
> The operative principle here is that although bankruptcy confers substantial benefits on the honest but unfortunate debtor, including a discharge of debts, the ability to retain exempt property, and the ability to avoid certain liens that impair exemptions, there is a price. The debtor must comply in good faith with the duties imposed by bankruptcy law. One seeking benefits under the Bankruptcy Code must satisfy the duty to schedule, for the benefit of creditors, all one's interests and property rights. *Oneida Motor Freight, Inc.*, 848 F.2d 414, 416 (3rd Cir. 1988). Failure to comply may warrant denial or, pending compliance, deferral of benefits.
>
> Accordingly, the motion will be DENIED, without prejudice to being renewed after schedules are amended.

*Id.* at 396. As stated above, the Schedules filed in the present case are clear, the Property identified, the Debtor's interest in the Property identified, and the exemption, amount of exemption, and statutory basis clearly stated in Schedules A/B and C (original and amended). Based upon the principles stated in *Mohring* cited by Movant, this Motion should be granted.

In the Bankruptcy Appellate Panel decision *In re Morgan*, 149 B.R. 147 (B.A.P. 9th Cir. 1993), cited by Creditor, the holding was not to impose some greater affirmative duty on a debtor to "prove" the exemption claimed on Schedule C, but "merely" to conclude that though a creditor did not object to a claim of exemption on Schedule C, that did not bar the creditor from presenting a good faith, *bona fide* opposition to a motion to avoid a lien based on challenging the claimed exemption. *In re Morgan*, 149 B.R. at 152.

Here, Creditor's opposition is not substantive or evidentiary, but only that Creditor does not believe that claiming the exemption on Schedule C, stating the basis for exemption, stating the amount of the exemption, and then affirming that in the Motion and Declaration is sufficient. Creditors offers no opposition to the exemption claimed, just that it believes there should be "more proof of the exemption." The court concludes the exemption has been claimed, Creditor has been afforded the opportunity to state a *bona fide*, good faith dispute to the claimed exemption, and no basis for any objection to the exemption as stated in Schedule C (original and amended), the Motion, and the Declaration has been stated by Creditor.

The court concludes that Debtor has provided the court with sufficient and proper evidence

showing the homestead exemption that Debtor is entitled to and claimed in this case and Contested Matter, the Property has been claimed as exempt, the judicial lien of Creditor impairs the homestead exemption in the Property, and that the judicial lien may be avoided to the extent that it impairs the homestead exemption.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), the judicial lien impairs the homestead exemption for all amounts in excess of ($33,038.00) of the judgment obligation secured by the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided in excess of ($33,038.00) subject to 11 U.S.C. § 349(b)(1)(B). The Motion is granted.

**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 Rachael Leigh Konz ("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 following judgment liens of Morgan Stanley Smith Barney LLC and Morgan Stanley Smith Barney FA Notes Holdings, LLC, United States District Court for the Southern District of New York Case No. 18-CV-05181, and for which the District Court for the Eastern District of California in Case No. 2:19-mc-00007-WBS-KJN issued the abstracts of judgment:
>
> > (1) January 17, 2019, Document Number 201901170748, with the Sacramento County Recorder, against the real property commonly known as 573 Ramos Drive, Folsom, California; and
> >
> > (2) January 24, 2019, Document No. 201901241365, with the Sacramento County Recorder, against the real property commonly known as 573 Ramos Drive, Folsom, California,
>
> and each of them are avoided for all amounts in the aggregate in excess of $33,038.00 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.
>
> In Opposition to the Motion to Avoid the Judicial Lien Morgan Stanley Smith Barney, LLC and Morgan Stanley Smith Barney FA Notes Holdings LLC affirmatively stated the January 17, 2019 recorded abstract and the January 17, 2019 recording of the abstract, including the recording information, and that there is only one judgment obligation for which the judgement liens were issued. Opposition, ¶¶ 2 and 3, FN. 2; Dckt. 50.

Prevailing party attorney's fees (if any) and costs shall be sought as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

**3.** **18-25811-A-7** **JLM ENERGY, INC.** **MOTION TO SELL AND/OR MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ALLIANCE FUND II JLM ENERGY FUNDING, LLC**
**DNL-2** **Stephen Reynolds**
**3 thru 4**
**10-24-19 [128]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on October 24, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

**The Motion to Approve Sale and Settlement Agreement is granted.**

The Bankruptcy Code permits Eric J. Nims, the Chapter 7 Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property commonly known as intellectual property of Debtor, specifically, the "Simple Panel

System," a simple panel integrated energy storage system, and the "Symmetric System/Method," a system and method for symmetric direct current regulation for optimized solar power generation and storage, and other IP. ("Property").

The proposed purchaser of the Property is Alliance Fund II JLM Energy Funding, LLC, and the terms of the sale are:

A. Purchase Payment: Purchase Price is $25,000, payable as follows: (a) $5,000.00 deposit within 7 calendar days of execution of the Agreement; and (b) the balance within 14 calendar days of court approval, provided no appeal or other pleading that affect the order granting the motion is not filed.

B. Assignment of Intellectual Property Rights: Upon the Trustee's receipt of the entire Purchase Price, the Debtor's intellectual property, as described in the agreement subject to approval, shall be deemed perpetually, irrevocably, and unconditionally assigned, transferred, and conveyed to Alliance or its designee, and their successors and assigns. The assignment shall include all interests of the Debtor and the bankruptcy estate[1] in the Debtor's IP.

Further, Movant requests that the court approve a compromise and settle competing claims and defenses with Alliance Fund II JLM Energy Funding, LLC ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Alliance's secured claim against Debtor for $11,058,844.00 as reflected in Proof of Claim 31.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 131):

A. Allowance of Claim: Upon Trustee's timely receipt of the $25,000 for the Debtor IP, as described above, Alliance's secured claim shall be allowed as a general unsecured claim in the amount of $11,038,844.00

B. Alliance Waiver of Lien: Upon entry of the Approval Order, excepting only the Debtor IP, and in consideration of the provisions of this Agreement, Alliance hereby releases and forever waives its lien against all scheduled and unscheduled property of the bankruptcy estate, including, without limitation, the Battery Assets.

C. Conditioned upon Trustee's receipt of the Purchase Price, Trustee releases and discharges Alliance from any and all actions, causes of

[1] The motion mentions specially both "all interests of the Debtor and the bankruptcy estate." The court notes that it cannot be two different interests as at this point whatever the Debtor's interests were in the property when this case was filed, all of those interests are property of the bankruptcy estate. 11 U.S.C. § 541(a).

action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, debts, liabilities and demands of whatsoever character nature and kind, known and unknown, suspected and unsuspected, including all claims that have been asserted or could be asserted with respect to the Debtor IP.

**DISCUSSION**

**MOTION TO APPROVE SALE**

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. It monetizes the value, free and clear of the $11,000,000 lien. The Trustee has provided as part of his business analysis in his Declaration the rationale for the sales price.

**APPROVAL OF COMPROMISE**

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

**Probability of Success**

Trustee argues that after he has advised that Alliance's claim has been properly perfected, and thus there would be no strong argument for disputing said claim.

**Difficulties in Collection**

Trustee asserts he is not aware of any difficulties in collection in this case.

**Expense, Inconvenience, and Delay of Continued Litigation**

Trustee alleges that as previously explained, because Alliance's claim has been perfected, the delay and expense in contesting and prosecuting the claim would be a serious detriment to the estate. Thus, the Agreement avoids the problems associated with litigation.

**Paramount Interest of Creditors**

Trustee contends that Agreement is in the best interest of the estate because the Agreement avoids any further litigation expenses while providing the estate with funds and relieving the remaining estate assets of Alliance's claim. As such, Trustee argues, the Agreement is in the paramount interest of the creditors.

**Consideration of Additional Offers**

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The Trustee has provided the court with the explanation of his exercise of his business judgment in resolving these issues.

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 Sell Property/Motion to Approve Compromise filed by Eric J. Nims, 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 Eric J. Nims, the Chapter 7 Trustee / is authorized to sell pursuant to 11 U.S.C. § 363(b) to Alliance Fund II JLM Energy Funding, LLC or nominee ("Buyer"), the Property commonly known as intellectual property of Debtor, specifically, the "Simple Panel System," a simple panel integrated energy storage system, and the "Symmetric System/Method," a system and method for symmetric direct current regulation for optimized solar power generation and storage, and other IP. ("Property ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $25,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 131, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the sale.

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

**IT IS FURTHER ORDERED** that the Motion for Approval of Compromise between Movant and Alliance Fund II JLM Energy Funding, LLC ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 131).

**4.** **18-25811-A-7** **JLM ENERGY, INC.** **MOTION FOR RELIEF FROM**
**FBD-3** **Stephen Reynolds** **AUTOMATIC STAY**
**10-10-19 [124]**

**ALLIANCE FUND II JLM ENERGY FUNDING, LLC VS.**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.
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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 10, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay 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 Relief from the Automatic Stay is dismissed without prejudice.**

Alliance Fund II JLM Energy Funding, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as all assets of the Debtor, including all of the Debtor's intellectual property. ("Property").

Movant argues Debtor has not made four (4) post-petition payments, with a total of $516,226.00 in post-petition payments past due. Motion, Dckt. 124. Movant also states that there are seven pre-petition payments in default, with a pre-petition arrearage of $1,927,847.00. *Id*.

**DISCUSSION**

There are several issues with Movant's Motion.

Movant requests relief from the automatic stay to "exercise its rights over the collateral" but

provides no definition for said collateral. Movant simply uses the phrase "all assets of the Debtor, including all of the Debtor's intellectual property." Motion, 1. Movant did not file any declarations or exhibits that would enlighten this court as to what it means by "collateral." Therefore, the court has no way to structure an order to establish any rights in unspecified collateral.

Additionally, Movant requests that the court order the Trustee to abandon said "intellectual property" as it "will not result in any value or benefit to the estate." Motion, 4. Rule 18 of the Federal Rules of Civil Procedure has not been incorporated in the Federal Rules of Bankruptcy Procedure. Movant's request for this abandonment order must be presented in a separate motion.

Subsequently, on October 24, 2019, Chapter 7 Trustee and Movant to this Motion filed a Motion to Approve Sale and Settlement Agreement. Dckt. 128. The settlement, though not tied to this Motion, provides for Trustee's sale of Debtor's intellectual property to Movant. Thus, rendering this Motion moot.

Thus, at this time, the Motion is denied without prejudice.

No other or additional relief is granted by the court.

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 Relief from the Automatic Stay filed by Alliance Fund II JLM Energy Funding, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the Motion for Relief from Automatic is dismissed without prejudice.
>
> No other or additional relief is granted.

**5.** **17-25114-E-7** **HSIN-SHAWN SHENG** **MOTION TO ABANDON**
**DNL-11** **Richard Jare** **10-16-19 [253]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 |Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 16, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Abandon 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 Abandon is granted.**

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). 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 Eric J. Nims ("the Chapter 7 Trustee") requests that the court authorize him to abandon a rental deposit in connection with property commonly known as 2769 Barrington Terrace, Fremont, California ("Property"). The security deposit was provided by Sarina M. Perales, securing a claim of $3,500.00. The Declarations of Eric J. Nims and Sarina M. Perales have been filed in support of the Motion and provides testimony that the value of the Property is $3,500.00.

In January 2018, Sarina M. Perales began renting Debtor's Property at which time she provided the Debtor with a cashier's check in the amount of $3,500.00 as a security deposit. Motion, ¶5. Perales has since vacated the Property and requested the return of the deposit. *Id.* at ¶6. Debtor has refused and advised her to seek the same from the Trustee. *Id.* Trustee has paid all unsecured claims. *Id.* at ¶8. An order for Trustee's final compensation was issued on July 11, 2019. *Id.* at ¶10. After accounting for payment of all unsecured claims and administrative expenses, funds remaining in the estate to be returned to the Debtor as a surplus will approximate $6,400.00. *Id.* at ¶12.

The court finds that Perales rightfully asserts a claim over the security deposit. Further, the court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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 Abandon Property filed by Eric J. Nims ("the Chapter 7 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as a rental deposit in the amount of $3,500.00 which was provided in connection with property commonly known as 2769 Barrington Terrace, Fremont, California, is abandoned to Sarina M. Perales by this order. The Trustee shall deliver in a commercially reasonable time the abandoned security deposit to Ms. Perales.

**6.** **19-23519-A-7** **MAIRA PINTO CHAVEZ DE GRIMA AND JOSE GRIMA** **MOTION TO APPROVE STIPULATION REGARDING DISTRIBUTION OF NET PROCEEDS OF SALE OF REAL PROPERTY**
**BLF-3** **Seth Hanson**
**12 thru 13**
**10-9-19 [58]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on October 9, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Maira Pinto Chavez De Grima and Jose Carlos Grima Hernandez ("Settlor/Debtor"). The claims and disputes to be resolved by the proposed settlement are that Debtor is in agreement that Trustee will sell the Property and that Settlor/Debtor will reduce their homestead exemption in the Property to $10,000.00.

Movant and Settlor/Debtor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit H in support of the Motion, Dckt. 63):

A. Movant will employ a realtor and list the Property for sale.

B. Settlor/Debtor will amend their Schedule C to reduce their exemption in the Property from $100,000.00 to $10,000.00.

C. Settlor/Debtor will maintain the Property in good condition and will maintain insurance on the Property.

D. Settlor/Debtor will cooperate with Trustee and his realtor in showing the Property.

E. Upon court's approval of the proposed sale of the Property, the costs of sale, standard in the industry, will be paid through escrow. After payment of all liens and costs of sale, the Net Sale Amount will be distributed from escrow as follows: $10,000.00 to Settlor/Debtor, and remainder to the bankruptcy estate.

F. Upon court's approval of the sale, Settlor/Debtor will vacate the Property.

G. Upon court's approval of the Stipulation, Trustee will file an application to employ Bob Brazeal of Remax Executive to list and market the Property for sale.

**DISCUSSION**

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

**Probability of Success**

Movant argues that by working together with Settlor/Debtor in order to sell the Property and reduce the exemption, the estate will receive some proceeds for the benefit of unsecured creditor. Trustee will recover approximately $55,160.00 for the estate without the uncertainty or delay of continued litigation.

**Difficulties in Collection**

Movant does not foresee any difficulties in collection as Settlor/Debtor has agreed to cooperate with Trustee in selling the house and will receive $10,000.00 of the Net Sale Amount.

**Expense, Inconvenience, and Delay of Continued Litigation**

Movant states that there is no specific dispute with respect to the Property and that by moving forward with the sale, Movant avoids incurring unnecessary administrative costs.

**Paramount Interest of Creditors**

Movant argues that the stipulation allows Movant to collect approximately $55,160.00, which is in the best interests of the creditors. Additionally, without the stipulation, Movant would likely abandon the Property as there would be no net proceeds for the estate after payment of costs of sale, payment of the Mortgage, and payment of the Settlor's/Debtor's previously scheduled exemption of $100,00.00. Thus, leaving nothing for unsecured creditors.

**Consideration of Additional Offers**

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it reduces Debtors' claimed exception to $10,000.00 instead of $100,000.00 allowing the Trustee to recover approximately $55,160.00 that will be distributed to unsecured claims. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Maira Pinto Chavez De Grima and Jose Carlos Grima Hernandez ("Settlor/Debtor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit H in support of the Motion (Dckt. 63).

| | | | |
|---|---|---|---|
| **7.** | **19-23519-A-7 MF-1** | **MAIRA PINTO CHAVEZ DE GRIMA AND JOSE GRIMA Seth Hanson** | **CONTINUED OBJECTION TO HOMESTEAD EXEMPTION 7-25-19 [18]** |

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 25, 2019. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is overruled without prejudice, the court having approved the settlement and compromise to reduce the Debtor's homestead exemption to $10,000.**

Creditors Leo Chan and Sylvia M. Chan ("Creditor") filed this Objection to the debtors', Maira Pinto Chavez De Grima and Jose Carlos Grim Hernandez's ("Debtor"), claimed homestead exemption.

Creditor argues Creditor was fraudulently induced into releasing its lien on Debtor's home, allowing Debtor to obtain refinancing, under the premise Creditor would receive a replacement lien. However, no subsequent deed of trust was ever recorded in favor of Creditor.

Creditor asserts that because of Debtor's misconduct, the claimed homestead exemption should be disallowed.

**CHAPTER 7 TRUSTEE'S RESPONSE**

Michael D. McGranahan, the Chapter 7 Trustee ("Trustee") filed a Response on September 9,

2019. Dckt. 40. Trustee asserts that after negotiations, Debtor has agreed to reduce Debtor's claimed exemption from $100,000.00 to $10,000.00 and agreed to cooperate with the sale of the Property. Trustee argues a motion to approve compromise is pending.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on September 9, 2019. Dckt. 44. Debtor opposes this Objection on the grounds that Schedule C was already amended consistent with a settlement entered with the Trustee.

**TRUSTEE'S MOTION TO APPROVE COMPROMISE**

Michael D. McGranahan, the Chapter 7 Trustee ("Trustee") filed a Motion to Approve Stipulation Regarding Distribution of Net Proceeds of Sale of Real Property on October 9, 2019. Dckt. 58. Through this stipulation, Trustee will sell the property and Debtors have agreed to lower their homestead exemption from $100,000.00 to $10,000.00 with the remainder of the net sale proceeds (an estimated amount of $55,000.00), going to unsecured creditors.

**DISCUSSION**

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

Debtor filed Amended Schedule C on September 10, 2019. Dckt. 45. Amended Schedule C reduces Debtor's claimed exemption to $10,000.00 pursuant to California Code of Civil Procedure 703.140(b)(5).

The court having approved the compromise to allow the homestead exemption in the amount of $10,000.00, the Objection is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by creditors Leo Chan and Sylvia M. Chan ("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 Objection to Claim of Homestead Exemption is overruled without prejudice, the court having approved the Stipulation between the Debtor and the Trustee to reduce said exemption to $10,000.00.

**8.** **19-24641-A-7** **S P E DRYWALL, INC** **MOTION FOR RELIEF FROM**
**AML-1** **Bruce Dwiggins** **AUTOMATIC STAY**
**10-17-19 [18]**

**AVALONBAY COMMUNITIES, INC.**
**VS.**

**No Final Ruling:** No appearance at the November 14, 2019 hearing is required.
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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 17, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay 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 Relief from the Automatic Stay is xxxxx.**

AvalonBay Communities, Inc. ("Movant") seeks relief from the automatic stay in the form of an order determining: (1) that the automatic stay does not apply to Movant entering into settlements with former material suppliers of the Debtor or (2) that retroactive annulment of the stay is proper). Movant has provided the Declaration of Rob Salkovitz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by S P E Drywall, Inc. ("Debtor").

The court summarizes the grounds stated in the Motion with particularity (Fed. R. Bankr. P. 9013) as follows:

A. Movant has entered into post-petition settlements with former material suppliers of the Debtor who assert mechanic's liens against properties owned by Movant.

B. Movant seeks to "recoup" payments made to such material suppliers against any

amounts owed to Debtor. (This sounds in the nature of an offset of obligations between Movant and Debtor based upon the rights under the contract between the two and applicable California law.)

C. Movant seeks to "recoup" additional costs and fees in incurred to complete work abandoned by the Debtor against any amounts owed to Debtor on the contracts with Debtor (again, sounding in the nature of an offset).

D. Movant sees to litigate, settle, or pay any remaining mechanic's liens against Movant's properties relating to Movant's contract(s) with Debtor, and to "recoup" such payments against any amounts Movant owes Debtor pursuant to such contracts.

E. To the extent that the court determines that he automatic stay applies to Movant settling or paying the former material suppliers to Debtor who assert mechanic's liens against Movant's real properties, to Movant completing work that Debtor has abandoned on the properties, and litigating, settling or paying mechanic's lien claims, that the stay be annulled.

F. Cause exists to grant the Motion on the following basis:

1. The court is directed to read the Points and Authorities;

2. The court is directed to read the Declaration of Robert Salkovitz;

3. The automatic stay does not apply to actions between non-debtor parties;

4. The real properties subject to the asserted mechanic's liens are owned by Movant, not the Debtor;

5. The automatic stay does not apply to Movant's "recoupment" against the Debtor for payments made to non-debtor material suppliers or Movant's additional costs in completing the work on the properties which the Debtor was obligated to do under the contract(s) with Debtor; and

6. Movant is entitled to retroactive relief from the stay because of Movant's lack of notice of Debtor commencing the bankruptcy case.

G. This Motion is based on:

1. The allegations in the Motion,

2. The Points and Authorities,

3. The Declaration of Robert Salkovitz;

4. All other documents filed with the court; and

5. All other evidence that Movant may subsequently present, whether oral or documentary, to the Court.

At this point, the court notes the following. The Motion must state with particularity the grounds upon which the relief is based. It appears that much of what Movant wants the court to consider is scattered among the points and authorities, exhibits, and declaration. Those additional documents are not the "Motion." See Local Bankruptcy Rules 9004-2(c) and 9014-1(d).

Here, the Points and Authorities is twenty-three pages in length, the first ten pages being a recitation of "facts" (which are "grounds"). Dckt. 20. The next seven pages are legal authorities and legal argument. The Declaration of Rob Salkovitz is seven pages in length and provides factual testimony to support what would be "grounds" for the relief requested. This includes identifying the contract, alleged breaches, and "facts" unrelated to a simple motion for relief from the stay.

Next, there are seven different docket entries for exhibits in support of the Motion. These are Dckt. 22 (68 pages of exhibits), Dckt. 23 (54 pages of exhibits), Dckt. 24 (65 pages of exhibits), Dckt. 25 (82 pages of exhibits), Dckt. 26 (52 pages of exhibits), Dckt. 27 (96 pages of exhibits), and Dckt. 28 (33 pages of exhibits). None of these almost 450 pages of exhibits are included as part of the grounds stated in the Motion upon which the relief is requested.

Review of Declaration

The Declaration of Rob Salkovitz (Dckt. 21) covers a wide range of testimony. Movant develops, constructs, acquires, and manages apartment projects. Mr. Salkovitz oversaw the construction of identified projects in Emeryville (one project) and Walnut Creek (two projects), California.

Movant and its subsidiaries, which are not now before the court, hired Debtor to perform work on the three California projects identified above.

At some non-specified time, "Debtor began failing to provide the necessary work force and pay its employees." Declaration ¶ 5, Dckt. 21. Mr. Salkovitz testifies receiving an email from Debtor's president on April 4, 2019, reporting improper activities by some of Debtor's employees.

Mr. Salkovitz testifies that on June 11, 2019, the Debtor notified him that Debtor was not paying its employees and had left two of the work sites.

In light of the termination of the work by Debtor, Movant engaged new contractors to timely proceed with the work on the three projects. Movant sent the Debtor "formal" termination notices on July 16, 25, and 26, 2019.

The Debtor purchase material for use on the three projects from suppliers, primarily Foundation Building Materials ("FBM") and L&W Supply Corporation ("LW"). These suppliers, when not paid by Debtor, recorded liens against Movant's properties.

Without knowledge of Debtor's July 23, 2019 Chapter7 bankruptcy filing, Movant entered into and consummated the following settlements:

A. August 1, 2019 Settlement with FBM for payment of $102,173.88 for the release of

FBM's mechanic's lien in that amount;

B. August 1, 2019 Settlement with FBM for payment of $40,574.88 for the release of FBM's mechanic's lien in that amount; and

C. July 30, 2019 Settlement with unstated material supplier for payment of $31,179.46 for that material supplier to not file a mechanics lien.

D. September 24, 2019 settlement with LW for payment of $175,000.00 for the release of LW's mechanic's lien in the amount of $192,498.21. After signing, the parties learned of this bankruptcy case and have agreed to hold the payment until the court rules on the present motion.

E. There is pending an agreement to settle with LW another mechanic's lien claim for $188,150.98 for the payment of $171,000.00. The parties have this on hold pending ruling on the Motion.

The Declaration makes reference to specific exhibits which are identified as the settlement agreements referenced.

Mr. Salkovitz proceeds to provide testimony about the costs and expenses incurred by Movant in obtaining the replacement contractors to do the work that Debtor had contracted to do. Mr. Salkovitz computes that damages (bankruptcy claim) incurred by Debtor's breaches of the contract, which the court rounds off for purposes of this discussion at approximately $3,600,000. Mr. Salkovitz testifies that there are additional damages that are being incurred.

**CHAPTER 7 TRUSTEE'S APPROVAL OF PROPOSED ORDER**

On November 11, 2019, Movant filed a supplemental pleading with a proposed order form for which both Movant and the Chapter 7 Trustee agree to be proper. Dckt. 32. The proposed order form provides for the following:

A. First, it provides that "The Motion is Granted." This in theory means whatever is said in the Motion, and everything that is said in the Motion is granted. The court does not sign such orders, as such generally leads to arguing and haggling over what relief was granted.

B. Second, there is a seventeen line, one sentence second "ordered" paragraph. This sentence begins with the negative, "without in any way determining. . ." whether the stay applies, any such non-determined stay is terminated and annulled retroactively to Allow Movant and its subsidiaries:

1. to retroactively validate and prospectively authorize (the court is unsure of the provisions of 11 U.S.C. § 362 that provide for the bankruptcy court to so "authorize") Movant and its subsidiaries to:

a. Exercise any and all state law and contractual rights and remedies to litigate, settle, compromise, or pay any actual or potential

mechanic's liens which have been or could be recorded against Movant's properties or projects that relate to the actions or inactions of Debtor;

b. Exercise any and all of their respective state law and contractual rights and remedies to recoup and/or offset any payments Movant has made or may make to third-parties or other damages against what Movant may owe Debtor on the contracts with Debtor.

C. Notwithstanding the retroactive annulment and granting of relief to Movant, the rights of the Trustee and bankruptcy estate to challenge any of the recoupment and offset rights are preserved, with the exception of asserting that exercising such rights as permitted by the order terminating and annulling the automatic stay.

D. The Movant and the Trustee preserve all monetary claims against the other (excluding violation of the stay for the acts permitted under the Order, and objections to claims.

E. Finally, that this order, as opposed to every other order issued by the court modifying, terminating, or annulling the automatic stay shall be binding and effective notwithstanding the conversion of this case to another Chapter under the Bankruptcy Code. It appears that Movant and Trustee seek to admit in all other cases that relief granted in one Chapter becomes null and void if and when that case is converted to another Chapter under the Bankruptcy Code.

Movant filed a Submission of Movant's and Trustee's Proposed Agreed Upon Order Regarding Avalon's Motion on November 7, 2019. Dckt. 32. Trustee Michael P. Dacquisto signed the proposed form of order granting Movant's Motion (I) for an Order Determining that the Automatic Stay Does Not Apply; or, alternatively, (ii) For Retroactive Annulment and Relief From the Automatic Stay.

**DISCUSSION**

Here, it appears that the Motion and the proposed resolution have made a simple situation much more complex. Movant asks for too much, and the Trustee gives it. Movant asks for relief from stay, or to determine that the stay does not exist, with respect to Movant's legal obligations to the third-party material suppliers who have or timely have the right to record and enforce mechanic's liens against the Movant's property. In substance, Movant fulfilling its legal obligations to protect its property will merely substitute the Movant for the material suppliers as creditors. This may result in the Movant being able to assert offset rights against Debtor on the obligations arising under the contracts with the debtor. Such is well beyond the scope of summary relief from stay proceedings. [FN. 1]

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

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The Movant seeks to get relief to actually do the offsets or recoupments against the obligations owed to the Debtor, and the Trustee appears to so want to concede. Then, what the Trustee and Movant appear to want to do is, if they disagree as to the offsets or recoupments done by Movant, then the Trustee will litigate to have the court reverse the already completed set-offs or recoupments. It is unclear why, in the context of a bankruptcy case, the court would expressly authorize such offsets or recoupments to be conducted, and then be asked to reverse such offsets or recoupments.

Also, as phrased in the Motion and supporting pleadings, it appears that relief is to be granted not to allow offsets and recoupments as permitted by law, but those which Movant determines to be permitted by law.

**Discussion at Hearing**

The court addressed with the respective counsel at the hearing the scope of an appropriate order. The court can see an order determining that the automatic stay as set forth in 11 U.S.C. § 362 does not apply to Movant and its subsidiaries in their dealings with the material supplies to address mechanics liens that have been or may be timely recorded. The order may include a "belt and suspenders" provision that to the extent the stay would apply, the court modifies such stay. Movant may then seek to assert that it is subrogated to the rights and claims of those material suppliers against the Debtor. Movant may assert that it may offset or seek by recoupment against the obligations owed to Debtor on the contract those and other amounts of damages. However, such cannot be prospectively "authorized" to be done.

The court appreciates the need for Movant and its subsidiaries to timely and effectively address the asserted breach of the contract by the Debtor, obtain replacement contractors, and address valid mechanic's lien claims to mitigate damages. The Trustee presumably seeks to have this go smoothly as well, so that to the extent that there are offsets and recoupments, they are minimized.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by AvalonBay Communities, Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are **xxxxxxxxxxxxxxxxxxx**

| | | | |
|---|---|---|---|
| **9.** | **19-25743-A-7**<br>**WLG-1** | **TAYLOR RANKINS**<br>**Nicholas Wajda** | **MOTION TO COMPEL ABANDONMENT**<br>**10-8-19 [17]** |

# Appearance of Nicholas Wajda, Counsel for Debtor Required for November 14, 2019 Hearing

# Telephonic Appearance Permitted

**Tentative Ruling:** The Motion to Abandon 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.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 8, 2019. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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 without prejudice.**

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 Taylor Alexis Rankins ("Debtor") requests the court to order Sheri L. Carello ("the Chapter 7 Trustee") to abandon property commonly known as the daycare provider under the fictitious business name of Little Me Preschool ("Property"). The Declaration of Nicholas Wajda has been filed in support of the Motion and states that the business listed in Debtor's schedules is nothing more than a name and seeing as debtor operates as a sole-proprietor there is no actual legal entity that would be capable of owning any assets. Further, the sole-proprietorship has no value to the bankruptcy estate and Debtor wishes to resume doing business under this fictitious business name.

Unfortunately, the witness explaining the business is not the Debtor who has personal knowledge of the business, but her bankruptcy attorney. In the Declaration Mr. Wajda, Debtor's attorney, "testifies" that Debtor's sole proprietorship is "nothing more than a name and seeing as the debtor operates a sole-proprietorship there is no actual legal entity that would be capable of owning any assets." Dckt. 19.

First, nothing in the Declaration shows that Mr. Wajda has any personal knowledge of the "fact" that it is a sole proprietorship and it is "nothing more than a name." Such personal knowledge is required of a witness to testify in federal court. Fed. R. Evid. 601 *et seq.* Second, given that Mr. Wajda "testifies" that Debtor operates a sole proprietorship, there is an entity, the Debtor, who is capable of owning assets relating to the business. Being an attorney for a party does not render counsel the "super witness" to provide testimony in lieu of the person who has personal knowledge.

The Motion requests that the "business" be ordered abandoned. However, the motion is not clear as to what the "business" is. On the one hand, the Motion could be read to seek the abandonment of the business name, and nothing else. See Motion ¶ 6, Dckt. 17, stating "[t]here is no value to the bankruptcy estate as it is simply a business name." So the court could order the abandonment of the name and nothing else. Thus, while having the "name," if there is any other property used in the business, such as blocks, mats, towels, puzzles, toys, and the like, such would not be abandoned and could not be used by the Debtor.

But then the Motion makes the conflicting statement that Debtor "[w]ishes the business to be abandoned so that the Debtor may resume her business under this name." *Id.*, ¶ 7. This could be read to say that there are more, unidentified assets to be abandoned, and if the court merely says "the business is abandoned," the court has no idea what it is ordering to be abandoned.

The person who has personal knowledge, the Debtor is "missing in action," unable or unwilling to provide the necessary testimony under penalty of perjury to grant the relief requested.

The court becomes concerned when the persons with actual knowledge are "unavailable" to testify and the attorney takes on the "witness" role.

The Motion is denied without prejudice.

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 Taylor Alexis Rankins ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is denied without prejudice.

**10.** **19-24644-E-7** **HARJIT KAUR**
**SKS-1** **Rajdep Chima**

**CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING AND MOTION TO EXTEND THE DEADLINES FOR FILING OBJECTIONS TO DISCHARGE & MOTIONS TO DISMISS**
**8-22-19 [23]**

**Tentative Ruling:** The Motion Dismiss 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— Opposition Filed, Dckt. 38..

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 1, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is xxxxxxxxxxx.**

The Chapter 7 Trustee, Susan Smith ("Trustee"), seeks dismissal of the case on the grounds that Harjit Kaur ("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 3:30 p.m. on October 2, 2019. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

**TRUSTEE'S REPORT OF NO DISTRIBUTION**

Susan K. Smith, Chapter 7 Trustee, filed a Report of No Distribution on October 3, 2019. Trustee stated that Section 341 Meeting was concluded on October 2, 2019. Further, Trustee reported that she had neither received not paid any money on account of this estate; had made a diligent inquiry into Debtor's financial affairs and location of property belonging to the estate. Trustee reported that there is no property available for distribution from the estate over and above that exempted by law. Thus having fully administered the estate, Trustee requested to be discharged as Trustee.

**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).

Debtor filed an Opposition (Dckt. 38) stating she is seeking to have this case jointly administered with that of her husband, Amarjit Singh. Bankr. E.D. Cal. No. 19-23605.

At the September 26, 2019 hearing the Trustee agreed to continue the hearing to the November 14, 2019 date. Nothing further has been filed by the Parties.

At the hearing, xxxxxxxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by the Chapter 7 Trustee, Susan Smith ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is **xxxxxxxxxx**.

**11. 18-22453-A-7 HSM-15 ECS REFINING, INC. Christopher Bayley**

**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH SUMMITBRIDGE NATIONAL INVESTMENTS V LLC**
**10-3-19 [1212]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 3, 2019. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with SummitBridge ("Settlor"). The claims and disputes to be resolved by the proposed settlement are to use cash collateral of SummitBridge to carve-out money for distribution to professionals employed by the Trustee, and Trustee will approve Settlor's claim as a valid and perfected first priority lien and security interest.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 1216):

A. A cash collateral carve-out from the Settlor's collateral and subordination of Settlor's superpriority claim on the following terms and conditions.

B. The Cash Collateral Carve-Out shall consist of:

1. A lump sum of $472,236.00 cash collateral carve-out from the Cash Collateral currently held by the Trustee;

2. One hundred present (100% ) of the proceeds of the personal property assets identified in paragraph 14(a)-(g) of the Stipulation, estimated to have a value of $272,652.00, which are identified as:

   a. The proceeds of the Trustee's auction, conducted April 9, 2019 - $35,244.69;

   b. Refund from The Zenith - $58,849.00;

   c. Hartford settlement - anticipated to be approximately $136,888.80);

   d. Refund from PG&E - $34,377.47;

   e. Refund from Robert Half International - $4,660.88;

   f. Refund form Nova Healthcare - $63.30; and

   g. Refund from Global Surety, a Chapter 11 bond - $2,571.00.

3. The first $50,000.00 portion of any funds paid or payable from California Department of Resources Recycling and Recovery (CalRecycle), with the balance of any funds paid or payable in connection with CalRecycle Receivables, in excess of $50,000.00, split sixty percent (60%) for the cash collateral carve-out and forty percent (40%) to the Settlor.

4. Fifty percent (50%) of the proceeds from any other accounts receivables collected by the Trustee after the date the Stipulation was fully executed.

C. Settlor consents to the use of the Cash Collateral for the Carve-Out on the terms and conditions of the Stipulation and releases its lien rights in the Cash Collateral, including such as granted under prior orders of the court.

D. From the Cash Collateral held by the Trustee remaining after the Carve-Out , Settlor will receive within seven days of the court approving this Settlement the sum of $1,500,000.00 as an interim payment, which shall be in addition to the amounts turned over to Settlor from the CalRecycle Receivables and fifty percent (50%) other accounts receivables that may be collected after the date the Stipulation was fully executed.

E. Settlor's asserted Superpriority Claim will be subordinated to all other Chapter 7

administrative expenses, excluding claims of insiders, including without limitation the Taggarts and the Taggart-related landlords.

F. Except as provided in the Stipulation approved by the court, the lien rights of Settlor in the Pre-Petition Collateral shall not be altered or impaired.

G. Trustee consents to the allowance of Settlor's claim, Proof of Claim No. Claim 327, in the amount of $26,690,022.98. The Trustee does not dispute the validity of Settlor's lien on specified items, but the Trustee does not waive any rights, claims, or defenses as to the validity or extent of Settlor's lien on other property.

H. Settlor does not assert a lien upon or security interest in the following: (1) the proceeds of the Trustee's auction on April 9, 2019 ($35,244.69); (2) refund from The Zenith ($58,849.00); (3) Hartford settlement (anticipated to be approximately $136,888.80); (4) Refund from PG&E ($34,377.47); (5) a refund from Robert Half International ($4,660.88); (6) a refund form Nova Healthcare ($63.30); and (7) a refund from Global Surety, a Chapter 11 bond, ($2,571.00).

I. The Trustee and Bankruptcy Estate are granting Settlor a general release for claims arising out of, arising under or related to the Debtor, the Debtor's estate, Settlor's loans and administration thereof with the Debtor and Debtor's estate.

J. The Trustee waives any right to surcharge Settlor's collateral for fees, costs or expenses arising on or after the October 2, 2018 conversion of this case.

K. The Trustee is not waving or releasing any right to surcharge collateral of Settlor for fees, costs, or expenses arising before the October 2, 2018 conversion of this case. Settlor does not waive any rights and/or defenses to any such surcharge claims.

The complete terms of the agreement was attached to the Motion for Approval as Exhibit A, Docket 1216.

**RESPONSES**

**CalRecycle**

California Department of Resources Recycling and Recovery ("CalRecycle") does not oppose the agreement.

**Sinclair and ECS**

Sinclair Partners, LLC, and ECS Big Town, LLC, Debtor's former landlords, ("Sinclair and ECS") respond to the proposed Stipulation. Sinclair and ECS seek to clarify that the agreement subordinates Settlor's claim to the administrative claims which Sinclair and ECS argue is "*pari passu*" with their claim. Sinclair and ECS argue the settlement that reserve Trustee's right to object to potential pre-conversion surcharge/and or defense to does not "adjust the rights of third parties to object to the amount and classification of the" Settlor's asserted superpriority claim.

**705 SC Landlord**

Forsyth-Bolinb Property management LLC ("705 SC Landlord") joins Sinclair and ECS's opposition. 705 SC Landlord further asserts that they have previously articulated concerns with respect to the scope of any superpriority status.

**MOVANT/TRUSTEE'S REPLY**

Movant responds to Sinclair and ECS as the "Taggart-Related Entitities." Movant responds that she does not dispute their characterization and asserts that such rights are not issues at this time.

Movant argues 705 SC Landlord joinder was not timely and is not an opposition. Movant asserts that the her responses to the "Taggart-Related Entitities" above, that the rights in question are not issue, also applies to 705 SC Landlord's joinder.

Movant responds CalRecycle's responses by asserting that it is not opposition but merely restates the agreement as to CalRecycle.

**DISCUSSION**

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met. Movant argues that pursuant to her business judgment, that the compromises of controversies on the terms set forth in the Motion and the Stipulation are fair and equitable and in the best interest of the estate and its creditors.

**Probability of Success**

Movant argues that Settlor has a higher probability of success than the Estate with respect to the approximately $2,100,000.00 in non-segregated funds held by the Movant. Movant argues that she

has investigated Settlor's lien and that it is properly perfected and likely extends to the non-segregated funds. The estate will receive $272,652.00 of the disputed funds as well as an additional $472, 236.00 as part of the cash-collateral carve-out. Settlor will receive an interim 1,500,000.00 on its claim. The Movant argues this split appropriately accounts for the Bankruptcy Estate's risk of loss in connection with any potential litigation with Settlor.

The Movant argues that although its position is likely higher than Settlor's that the proposed settlement with the $50,000.00 of the $600,000.00 funds Movant has segregated and the 60/40 split thereafter is appropriate given the Settlor's lien on those funds.

Settlor contends a superpriority claim in excess of $6,000,000.00 and the parties' rights as to the asserted superpriority claim are preserved. Further, the Settlor has agreed the superpriority claim will be subordinated to all other Chapter 7 administrative expenses.

Movant argues there may be surcharge claims to be made and those have been reserved.

Movant argues the stipulation to release claims of Movant against Settlor is valid under this factor because successful prosecution of those claims would be challenging.

**Difficulties in Collection**

Movant argues that Settlor is employing two law firms in this case, and Settlor has involved itself in virtually all motions filed by the trustee in this case. Trustee argues that Settlor has the resources to "put up a strong defense," and has showed it will do so. Movant argues that the litigation expenses to litigate the Estate's claims with Settlor is cost prohibitive.

**Expense, Inconvenience, and Delay of Continued Litigation**

Movant argues that the time expense to litigate the matters resolved by the Stipulation would be substantial. Movant argues that pre-trial and trial activity would cost tens of thousands of dollars, and maybe more.

**Paramount Interest of Creditors**

Movant's argues the Stipulation frees up $600,000.00 for the carve-out recipients. Thus, properly funding the Estate which is critical to administration of the Estate.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. As explained by the Trustee, it resolves complex legal and financial issues, allows for the Trustee to effectively administer the estate, and allows the Trustee to recover value for the bankruptcy estate. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and SummitBridge ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 1216).

**12.** **18-22453-A-7** **ECS REFINING, INC.** **AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY, AMENDED MOTION THAT POLICY IS NOT "ASSET OF THE ESTATE"**
**WEM-1** **Christopher Bayley** **10-10-19 [1225]**

**LIBERTY INSURANCE UNDERWRITERS INC. VS.**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 10, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

**The Motion for Relief from the Automatic Stay is xxxxx.**

Liberty Insurance Underwriters Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a the Private Advantage Liability Insurance Policy, Policy No. PCCS000287-0117 ("Property").

The Movant states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon

which the requested relief is based in the Motion (Dckt. 1210) originally filed that the court incorporates into the Amended Motion (in order to ascertain the grounds which are required to be stated in the Motion):

a. Movant seeks a determination that the Liability Insurance Policy is not property of the estate or that if property of the estate, Movant may make the payments required thereunder the insured persons under the policy.

b. The insured persons are identified as James Taggart, Kenneth Taggart, Jack Rockwood, and any other officers and directors of the Debtor.

c. Movant seeks to reimburse the insured persons their defense costs relating to claims being asserted against them by the Trustee.

d. The insured persons to be paid under the Insurance Policy is not the Debtor. This is commonly referred to as D&O (Directors, Officers, and Company) Coverage.

e. The policy has a $2,000,000 limit of liability.

f. The loss covered by the policy is stated to be defense costs, damages, judgments, and settlements.

g. The first priority for payment under the policy for insured persons is the "loss," which includes defense costs.

h. The insured persons for whom the defense costs are to be paid are officers and directors of the Debtor against whom the Trustee has asserted damages claims ranging from $17.9million to $20.9 million.

i. The Trustee has commenced discovery against the insured persons pursuant to Federal Rule of Bankruptcy Procedure 2004 which relates to the claims the Trustee is asserting.

j. The insured persons have requested payment of their defense costs under the insurance policy.

k. Since the policy is to pay the losses of the insured persons, then Movant asserts that the insurance policy itself is not property of the bankruptcy estate.

The court is not sure of the basis for this contention, as the cases cited by Movant state that the proceeds of the policy that are payment to third-parties injured by a debtor are not property of the bankruptcy estate. This issue has been long resolved that a bankruptcy estate cannot try to claim proceeds of an insurance policy that exists to pay third-parties injured by the debtor.

Though not before the court today, this issue raises an interesting question. Is the estate a "victim" with a claim against the insured persons which has a right to be paid from the policy for the loss caused by the insured person's conduct? The court will not even begin to attempt to consider this in the context of this summary proceeding Motion for Relief From the Stay.

**CHAPTER 7 TRUSTEE'S OPPOSITION**

Kimberly J. Husted ("the Chapter 7 Trustee") filed an Opposition on October 31, 2019. Dckt. 1243. The Chapter 7 Trustee asserts a limited opposition to Movant's request. The Chapter 7 Trustee does not object to Movant paying the defense costs incurred by James Taggart, Kenneth Taggart, and Jack Rockwood relating to the Trustee's demand letter and Rule 2004 applications, but does object to Movant paying for "any other directors or officers" that are not named in the Movant's amended motion. Finally, the Chapter 7 Trustee objects to the Movant seeking to have the court determine the Property is not property of the estate.

The Chapter 7 Trustee argues that:

1.The weight of the authority hold that the Policy is property of the estate.

2. The proceeds of the policy may not be property of the estate.

3. There is no Ninth Circuit authority that hold that the proceeds of director's and officer's liability policies are not property of the estate.

4. This Court need not make a determination as to whether the policy and the policy proceeds are property of the estate.

5. Since the policy is a wasting policy and the defense costs may used up that the Trustee should be provided quarterly reports identifying the amounts disbursed under the policy, both for the quarter and cumulatively.

**DISCUSSION**

Movant argues that the policy is for the benefit of the insured directors and officers, and that the policy should not be considered property of the estate. Movant further argues that because of a priority of payments provisions it prevents the policy from being property of the estate. Movant contends that the provision of the policy requires paying for the directors and officers, first, and then ECS, and for that reason the policy should not be considered property of the estate.

Movant argues in the alternative that cause under 11 U.S.C. § 362(d)(1) allows for the defense costs to be paid to the insured persons including: James Taggart, Kenneth Taggart, and Jack Rockwood, and any other directors and officers. Movant requests the stay to be lifted relating the defense costs as "related to the Trustee Demand Letter and the Rule 2004 Bankruptcy Demands." Dckt. 1227.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996).

The Chapter 7 Trustee does not object to the staying being lifted to provide for the defense costs related to the named individuals. The Court finds that there is cause to provide relief for this purpose. Since, the Court is lifting the automatic stay the Court declines to determine whether the policy or the policy proceeds are property of the estate.

No other or additional relief is granted by the court.

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 Relief from the Automatic Stay filed by Liberty Insurance Underwriters Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are modified to allow Movant, its agents, representatives, and successors, under its agreement, Private Advantage Liability Insurance Policy, Policy No. PCCS000287-0117 ("Insurance Policy"), to provide from the defense costs as related to related to the Trustee Demand Letter and the Rule 2004 Bankruptcy Demands and other future defense costs that are properly the subject of the Insurance Policy for James Taggart, Kenneth Taggart, and Jack Rockwood, who Movant has identified as insured persons, for claims asserted against then by the Chapter 7 Trustee in this case.
>
> If further insured persons are identified for whom Movant believes defense costs are to be provided, the Movant and Trustee by supplemental joint *ex parte* motion or Movant by a supplemental motion if there is not agreement with the Trustee filed using the Docket Control Number for this Motion, WEM-1, may seek a supplemental order granting such further relief. No additional filing fee shall be required for such supplemental motion(s).
>
> No other or additional relief is granted.

**13.** **12-23669-E-7** **CYNTHIA MARAL**
**DNL-5** **Rajdep Chima**

**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CHERYL BOHANNAN**
**O.S.T.**
**10-30-19 [65]**

**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 Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2019. By the court's calculation, 15 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

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

Alan S. Fukushima, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Cheryl Bohannan ("Settlor"). The claims and disputes to be resolved by the proposed settlement are the interests over 1,167 acres of agricultural properties in Sutter County occupied by Settlor and others ("Subject Properties") which are the subject of a divorce judgment and an adversary proceeding.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit J in support of the Motion, Dckt. 70):

A. Settlor's appeal from the Marvin Judgement shall be dismissed;

B. Judgment in the Adversary Proceeding shall be entered in favor of the Trustee as to two (2) of the Subject Properties and the *lis pendens* as to the remainder withdrawn;

C. Settlor shall pay $1,750,000.00 by March 23, 2010, through which time the Trustee shall not enforce the judgment and reasonably cooperate with use of the Subject Properties to finance the settlement payment;

D. If the $1,750,000.00 is paid on time, then the judgment shall be vacated and the Adversary Proceeding dismissed;

E. If the $1,750,000.00 is not paid on time, then Trustee may market at sell the two (2) properties subject to the judgment with the net proceeds disbursed as follows: the first $1,750,000.00 to the bankruptcy estate and balance 40% to the bankruptcy estate and 60% to Bohannan;

F. The bankruptcy estate and the Debtor on the one hand and Bohannan and her trusts on the other hand shall exchange mutual releases of all known and unknown claims and waive the provisions of California Civil Code Section 1542.

**DISCUSSION**

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

**Probability of Success**

Although Special Counsel has advised Movant that Settlor's pending appeal from the Marvin Judgment lacks merit and that all the Subject Properties fall within the scope of the bankruptcy estate, the matter is heavily disputed.

**Difficulties in Collection**

The Subject Properties, while believed to be valuable, they consist of agricultural real property occupied by a hostile opposing litigant.

**Expense, Inconvenience, and Delay of Continued Litigation**

The Subject Properties are already the subject of one appeal and an adversary proceeding. There is a strong likelihood of additional action in the State Court to adjudicate the trusts' interest in Subject Properties. Substantial attorney fees have been incurred and will likely continue if the matter is not resolved at this time. Certainty of the settlement is a far better alternative than the unknown outcome of potential litigation.

**Paramount Interest of Creditors**

The Debtor, who stands to receive a substantial surplus, is a party to and has expressed support for approval of the settlement. Additionally, it is the Trustee's opinion that the settlement is in the best interest of the estate.

**Consideration of Additional Offers**

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. It resolves the pending appeal and allows for the Trustee, working with the Settlor, to recover the value from the Property. It includes an effective enforcement mechanism in the event the Settlor is unable to make the promised payment. Further, the settlement not only provides for creditors to be paid in full, but a substantial surplus to the Debtor (who has joined in the settlement). The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Alan S. Fukushima, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Cheryl Bohannan ("Settlor") is granted, and the respective

rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit J in support of the Motion (Dckt. 70).

**14.** **15-28774-A-7** **OTASHE GOLDEN** **MOTION APPROVING STIPULATION**
**SSA-13** **Gabriel Liberman** **RESOLVING IRS CLAIMS IN BANKRUPTCY ESTATE WITH DEPARTMENT OF TREASURY-INTERNAL REVENUE SERVICE AND TRUSTEE**
**10-23-19 [166]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2019. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

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

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Department of Treasury-Internal Revenue Service ("Settlor"). The claims and disputes to be resolved by the proposed settlement are reduction of Settlor's last filed claim, Proof of Claim 6-4, filed November 14, 2017, which divides its claim as: a secured claim in the amount of $37,664.00, an unsecured claim in the amount of $366,436.17, and taxes and penalties owed to government entities in the amount of $17,895.66.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 2 in support of the Motion, Dckt. 171):

A. The Trustee shall pay all expenses of administration and costs pursuant to 11 U.S.C. § 503 et seq;

B. From the available funds at hand, Settlor shall be accorded payment of its secured claim in the sum of $10,000.00 from estate funds on hand by the Trustee; and

C. From the residual funds at hand, after payment of the claims referenced in A and B above, the residual monies may be allocated to unsecured creditors in the administration of this case based upon duly filed and allowed claims, other than the claims submitted by the Settlor as reflected in its latest amended claim 6-4, filed November 14, 2017.

**DISCUSSION**

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

**Probability of Success**

Trustee argues that settlement of Settlor's claim resolves what could be very contentious litigation between the parties, based upon the limited current resources available in the bankruptcy estate. It is uncertain how the Bankruptcy Court would deal with Settlor's claim and the Trustee's potential objections to the claim. Given the uncertainty of success in this matter, coupled with an outcome which reduces estate administrative costs, strikes a balance, between payment of a portion of

Settlor's claim and allowance of monies to be used to pay unsecured claims is advantageous to the bankruptcy estate and creditors herein.

**Difficulties in Collection**

In light of the dispute being with the federal government, the collectability is not a factor.

**Expense, Inconvenience, and Delay of Continued Litigation**

Due to the litigation's complexity, the Trustee and his counsel have tried to weigh the cost of litigation against the result and strike a balance with the Settlor which is equitable to all parties. Complexity is based on mixture of law and facts where the litigation would focus on the validity of the Settlor's lien rights, 11 U.S.C. § 506(c) surcharge issues, possible subordination of a portion of the Settlor's claim due to application of 11 U.S.C. § 726(a)(4).

**Paramount Interest of Creditors**

The resolution of this dispute and legal issues enhances the estate which is presently insolvent and avoids litigation which would only be an administrative expense to the bankruptcy. It will generate a small dividend, but a dividend, to creditor with unsecured claims by virtue of the subordination of the Settlor's unsecured claims.

**Consideration of Additional Offers**

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Department of Treasury-Internal Revenue Service ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit 2 in support of the Motion (Dckt. 171).

**15. 19-21976-E-7 DNL-10 — CONQUIP, INC. — Eric Nyberg — MOTION TO COMPROMISE CONTROVERSY/APPROVE**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on October 10, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of 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). The defaults of the non-responding parties and other parties in interest are entered.

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

J. Michael Hopper, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with M-I-C, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are a $23,146.00 payment given by Debtor to Settlor within 90 days of Debtor's petition date on account of an antecedent debt ("Disputed Payment") that Trustee contends, and Settlor disputes, may be avoided by the Trustee under 11 U.S.C. § 547.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 109):

A. Settlement Payment: Settlor shall pay Movant $11,573.00 ("Settlement Payment") within 14 calendar days of entry of the Bankruptcy Court's order approving the Agreement;

B. Allowance of Claim: Upon Movant's receipt of the Settlement Payment, Settlor shall be allowed a $11,573.00 general unsecured claim against the bankruptcy estate; and

C. Release: The parties shall exchange mutual releases.

**DISCUSSION**

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

**Probability of Success**

Movant argues that while he is confident in his position and believes that he would prevail at least in part in litigation regarding the Disputed Payment, the probability of success is ultimately unknown. Movant stands to recover an additional $11,573.00 if he were to prevail in avoiding the entire Disputed Payment. Movant has been advised by counsel that the Agreement is a fair and equitable result taking into account the risks of litigation.

**Difficulties in Collection**

The Agreement provides for immediate payment to Movant, whereas were he to prevail in litigation regarding the Disputed Payment, he would still need to collect on the judgment to realize any financial benefit for the estate.

**Expense, Inconvenience, and Delay of Continued Litigation**

Any continued litigation concerning the Disputed Payment will require time and expense that is otherwise wholly avoidable by the Agreement. This is particularly important because the costs of litigation alone could consume the additional $11,573.00 Movant stands to gain if he were to prevail in avoiding the entire Disputed Payment.

**Paramount Interest of Creditors**

Movant asserts that the Agreement will result in an efficient administration of the Debtor's estate as well as ensure a return to creditors on account of the Disputed Payment, while saving estate resources otherwise associated with continued litigation.

**Consideration of Additional Offers**

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it resolves the litigation without further expense, provides for a substantial recovery for the estate, and is demonstrates the exercise of prudent legal and business judgment. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by J. Michael Hopper, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and M-I-C, Inc. ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 109).

**16.** **19-24580-A-7** **PAUL SCOTT** **MOTION TO AVOID LIEN OF**
**RK-1** **Richard Kwan** **MIDLAND FUNDING LLC**
**10-6-19 [14]**

**No Tentative Ruling:** The Motion to Avoid Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

**Below is the court's tentative ruling.**
---

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on October 6, 2019. By the court's calculation, 39 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 xxxxx.**

This Motion requests an order avoiding the judicial lien of Midland Funding LLC ("Creditor") against personal property of the debtor, Paul Scott ("Debtor") commonly known as Debtor's bank account at Wells Fargo ending in 4481 and 3924 with a value of $1,786.84 ("Property").

The Motion alleges that a judgment was entered against Debtor in favor of Creditor in the amount of $11,228.52. No copy of the judgment is provided as an exhibit. The Motion then alleges that

Creditor obtained a writ of execution and levied on Debtor's accounts ending in 4481 and 3924 at Wells Fargo Bank, N.A. The Motion makes reference to Exhibit B, which appears to be some form of case information print out from a website. This exhibit has not been authenticated.

Debtor provides his Declaration, which provides the following testimony:

1. Debtor has claimed an exemption in the amount of $1,786.84 in his Wells Fargo Bank Accounts, with account numbers ending in 3924 and 4481.

2. Creditor obtained a default judgment against Debtor.

Dckt. 16. In stating that Creditor obtained a default judgment against him, Debtor makes a general, vague reference to Exhibit B. Debtor does not state what Exhibit B is or make any effort to authenticate Exhibit B. Debtor offers no copy of the purported judgment. There are no internet footers or other source document identifying information on this unauthenticated exhibit.

Debtor also makes a vague, general reference to Exhibit A, telling the court to "See" it, in connection with claiming an exemption in the two bank accounts. Declaration ¶ 2, Dckt. 16. Debtor makes no effort to identify or authenticate Exhibit A.

Exhibit A appears to be two letters from Wells Fargo Bank. The first letter, Dckt. 27 at 2, makes reference to Wells Fargo being served with a "legal order" that requires the Bank to withdraw $1,560.33 from account 3924. It tells the Debtor to contact the Sacramento County Sheriff about Case No. NCV 233750. Nothing more is disclosed in the unauthenticated letter.

The second letter that is part of Exhibit a, *Id.* at 3, states the same information about the Bank being served with a "legal order" and having to debit Debtor's account ending in 4481 for $81.51 and charging a non-refundable fee of $125.00. This letter makes the same referral to the Sacramento County Sheriff's Office. Exhibit B, Dckt. 17. An abstract of judgment was recorded with Sacramento County on February 13, 2015, that encumbers the Property. *Id*.

Debtor's Schedule A, lists an asset having a value of $1,786.84 as a bank levy amount (the bank not identified) and that Debtor will sue Creditor or the Sheriff if it is not returned. Dckt. 1 at 14. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $1,786.84 on Schedule C for the bank levy amount, restating that Debtor will sue Creditor or the Sheriff if it is not returned. Dckt. 1 at 17.

It appears that Debtor has a very modest balance asset, monies subject to a levy, that have been claimed as exempt. What the court has not been provided is authenticated evidence of the levying party, the actual judgment lien creditor, and the action in which the lien needs to be avoided.

The court is cognizant of this very modest amount to be avoided. To try and save Debtor's counsel from incurring unrecoverable legal fees in addressing the evidentiary shortcomings, the court addressed the issues at the hearing.

Counsel for the Debtor reported **xxxxxxxxxx**

~~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 personal property, and its fixing is avoided for all amounts up to $1,786.46 in the monies which were levied upon by the Sacramento County Sheriff (Case No. MCV-233750) from Wells Fargo Bank Accounts ending in 3294 and 4481 for which Debtor Paul Scott was the account holder of record, 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 Paul Scott ("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 Midland Funding LLC ,is avoided for all amounts up to $1,786.46 in the monies which were levied upon by the Sacramento County Sheriff (Case No. MCV-233750) from Wells Fargo Bank Accounts ending in 3294 and 4481 for which Debtor Paul Scott was the account holder of record, subject to 11 U.S.C. § 349(b)(1)(B).

**17.** **17-20689-A-7** **MONUMENT SECURITY, INC.** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PHILADELPHIA INDEMNITY INSURANCE COMPANY**
**DNL-21** **Matthew Eason** **10-16-19 [760]**

**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.

No 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 16, 2019. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**The Motion for Approval of Compromise is xxxxxxxxxx.**

J. Michael Hopper, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Philadelphia Indemnity Insurance Company ("Settlor"). The claims and disputes to be resolved by the proposed settlement are to seek approval of the Settlement Agreement and Release for Settlor who provided a defense for a state court litigation that was settled for the an amount within the policy limits.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 763):

A. Settlor shall pay Movant $2,500;

B. Movant shall file and faithfully prosecute a motion for approval of both (1) the Settlement Agreement and Release (SAR), and (2) the Agreement;

However, while saying there is a settlement, neither the Motion nor the Settlement Agreement identify what rights and claims the Trustee is compromising and settling.

At the hearing, Trustee's counsel explained that **xxxxxxxxxx**

**DISCUSSION**

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

**Probability of Success**

Movant argues that this factor is neutral "as there is no pending litigation regarding the Trustee signing the SAR." Dckt. 760.

**Difficulties in Collection**

Movant argues this factor is neutral since the Movant is in a "defensive position."

**Expense, Inconvenience, and Delay of Continued Litigation**

Movant argues this factor is in favor of the agreement because the agreement avoids the potential negative impacts of litigation.

**Paramount Interest of Creditors**

Movant argues this factor is in favor of approval because $2,500.00 is more than the cost of

seeking approval.

**Consideration of Additional Offers**

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

~~Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because xxxx. The Motion is granted.~~

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

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

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

~~**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Philadelphia Indemnity Insurance Company("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt.~~ 763).

**18.** **17-20689-A-7 DNL-22** **MONUMENT SECURITY, INC. Mathew Eason** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH AMAR RATTU AND KULDIP RATTU 10-16-19 [765]**

**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.

No Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, 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, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**The Motion for Approval of Compromise is xxxxx.**

J. Michael Hopper, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Amar Rattu and Kuldip Rattu ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Santa Clara Superior Court action ("Action") in which damages are sought by Settlor against Debtor (and other parties) for injuries suffered on October 9, 2012 in the lobby of a Motel 6 in San Jose, California.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 768):

A. The Settlor shall receive $1.25 million, of which $900,000.00 shall be

paid by G6 Hospitality Property LLC and $350,000.00 shall be paid by the Debtor's insurer;

B. The Action shall be dismissed with prejudice, with the parties bearing their own costs and attorney fees; and

C. The parties (including the Trustee) shall exchange releases relating to the underlying incident.

**DISCUSSION**

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

**Probability of Success**

Trustee argues that the probability of success in any litigation is ultimately unknown, and there are uncertainties associated with the Action. If the matter were to proceed to trial and an award exceeds the insurance policy limits, then the resulting deficiency claim, along with the indemnity and contribution claim of any co-defendant, would dilute the potential distribution to other general unsecured creditors.

**Difficulties in Collection**

This factor is neutral as the Trustee is in a defensive position that is also covered by insurance.

**Expense, Inconvenience, and Delay of Continued Litigation**

The settlement avoids the costs, expenses, and delay associated with continued litigation in the Action. The certainty of the settlement presented for approval is a far better alternative that the unknown outcome of the issues described above.

**Paramount Interest of Creditors**

It is the Trustee's opinion that the Settlement is in the best interest of the estate because it avoids any unnecessary costs, risks, and delay associated with litigation and assists the Trustee in moving the Debtor's case to closure and making final disbursements to creditors.

**Consideration of Additional Offers**

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it resolves the complex multi-party state court litigation and provides for the administration of the estate. This settlement is part of the larger settlement with all parties in that state court action. The source of payments are from insurance and a third-party. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by J. Michael Hopper, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Amar Rattu and Kuldip Rattu ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 768).

**19. 18-27592-E-7 MOH-1 JASON/MARY KOENIG MOTION TO COMPEL ABANDONMENT O.S.T 11-7-19 [48]**

**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 Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 7, 2019. By the court's calculation, 7 days' notice was provided. 14 days' notice is required.

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

**The Motion to Compel Abandonment is granted.**

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

The Motion filed by Jason W. Koenig and Mary E. Koenig ("Debtor") requests the court to order Michael P. Dacquisto ("the Chapter 7 Trustee") to abandon property commonly known as 1480 Kelley Street, Oroville, California ("Property"). The Property is encumbered by the lien of Wells Fargo, securing a claim of $193,398.53. Debtors claimed a $100,000.00 homestead exemption under C.C.P. § 704.730. The Declaration of Mary E. Koenig has been filed in support of the Motion and values the Property at $265,000.00.

The court finds that the debt secured by the Property exceeds the value of the Property and

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

**CHAMBERS PREPARED ORDER**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Jason W. Koenig and Mary E. Koenig ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 1480 Kelley Street, Oroville, California and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Michael P. Dacquisto ("Trustee") to Jason W. Koenig and Mary E. Koenig by this order, with no further act of the Trustee required.

# FINAL RULINGS

| | | | |
|---|---|---|---|
| **20.** | **15-24202-A-7**<br>**DNL-6** | **CHERYL MCNEIL**<br>**Pro se** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J RUSSELL CUNNINGHAM, TRUSTEES ATTORNEY(S)**<br>**10-17-19 [92]** |

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.

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

No Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 17, 2019. By the court's calculation, 28 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.**

Law Office of Desmond, Nolan, Livaich, & Cunningham for J. Russell Cunningham, the Attorney ("Applicant") for, the Chapter 7 ("Client"), makes a First and Final] Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period of June 8, 2015, through October 15, 2019. The orders of

the court approving employment of Applicant were entered on July 6, 2015 and April 29, 2019. Dckt. 29, 51. Applicant requests fees in the amount of $16,991.00 and costs in the amount of $293.80.

**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 preparing employment application; reviewing Debtor's bankruptcy documents; assisting and advising Trustee with matters related to estate assets; preparing application to employ Special Counsel; preparing two motions to approve compromise settlement; attending hearings; assisting Trustee with negotiating settlements and drafting same; communicating with Trustee; and preparing this final fee application.

The Estate has $588,825.00 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 2.4 hours in this category. Applicant communicated with Trustee on all matters related to the bankruptcy estate and reviewed Debtor's bankruptcy documents.

Tax & Withholding Issues: Applicant spent 2.3 hours in this category. Applicant communicated with CPA regarding estimation of tax, withholdings, and refund issues; and drafted 9019 motions and prepared declarations.

Litigation & Contested Matters: Applicant spent 4.1 hours in this category. Applicant prepared, reviewed and attended hearings related to several motions.

Settlement: Applicant spent 18.5 hours in this category. Applicant advised Trustee regarding to settlements with BNC and GIF, and prepared and attended hearings related to both motions to approve

compromise for settlement of claims.

Asset & Claims Analysis: Applicant spent 10.2 hours in this category. Applicant investigated claims against estate assets.

Fee/Employment Application: Applicant spent 17.5 hours in this category. Applicant prepared several applications to employ including two for themselves, and one for Special Counsel.

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** |
|---|---|---|---|
| J. Russell Cunningham | 22.40 | $440 / $425 | $9,515.00 |
| J. Luke Hendrix | 14.00 | $275 / $325 | $4,120.00 |
| Gabriel P. Herrera | 8.80 | $195.00 | $1,716.00 |
| Nicholas L. Kohlmeyer | 4.00 | $225 / $275 | $1,075.00 |
| Benjamin C. Tagert | 3.60 | $100.00 | $360.00 |
| Former Law Clerk | 2.00 | $75.00 | $150.00 |
| | 0 | $0.00 | $0.00 |
| **Total Fees for Period of Application** | | | $16,936.00 |

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $293.80 pursuant to this application.

The costs requested in this Application are,

| **Description of Cost** | **Per Item Cost, If Applicable** | **Cost** |
|---|---|---|
| Photocopies | $0.10 per page | $49.20 |
| Postage | | $227.42 |
| Advances (Service Fees and Recording Fee) | | $17.18 |
| | | $0.00 |

| | |
|---|---|
| **Total Costs Requested in Application** | $293.80 |

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $16,991.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**Costs & Expenses**

First and Final Costs in the amount of $293.80 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

| | |
|---|---|
| Fees | $16,991.00 |
| Costs and Expenses | $293.80 |

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 Law Office of Desmond, Nolan, Livaich & Cunningham for J. Russell Cunningham ("Applicant"), Attorney for Alan S. Fukushima, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Law Office of Desmond, Nolan, Livaich & Cunningham for J. Russell Cunningham is allowed the following fees and expenses as a professional of the Estate:
>
> Law Office of Desmond, Nolan, Livaich & Cunningham for J. Russell Cunningham, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $16,991.00
> Expenses in the amount of $293.80,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330

as counsel for the Chapter 7 Trustee.

| | | | |
|---|---|---|---|
| **21.** | **15-29103-A-7**<br>**DNL-10**<br>**2 thru 3** | **ROCK RIDGE PROPERTIES, INC.**<br>**Dennis Hill** | **MOTION FOR COMPENSATION FOR SUSAN K. SMITH, CHAPTER 7 TRUSTEE(S)**<br>**10-14-19 [135]** |

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.
**----------**

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

No 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 14, 2019. By the court's calculation, 31 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.**

Susan K. Smith, the Chapter 7 Trustee, ("Applicant") for the Estate of Rock Ridge Properties, Inc. ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period April 5, 2017, through October 14, 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 general case administration, asset analysis and recovery, investigation and management of claims; and consulting with CPA regarding tax matters and reviewing corporate tax returns. The Estate has $113,760.92 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 REQUESTED**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories. Though a detailed time analysis is not required, Applicant has provided this as part of her description of the services provided in the court computing the proper and fair compensation for the Trustee communicated on a commission basis.

General Case Administration: Applicant spent 5.00 hours in this category. Applicant reviewed bankruptcy related documents; prepared and conducted 341 meeting of creditors; reviewed Debtor's 521 documents; examined proofs of claim; prepared monthly bank reconciliations; and prepared final accounting..

Assets Analysis and Recovery: Applicant spent 39.90 hours in this category. Applicant investigated estate's interest in potential assets including Subject Property and competing claims regarding the same; employed and consulted general counsel regarding potential assets and competing claims; investigated estate's interest in potential transfer avoidance.

Claims: Applicant spent 3.60 hours in this category. Applicant assisted counsel in negotiating settlements with various parties and analyzed claim and determined proper allocation of estate funds thereto.

Taxes: Applicant spent 2.70 hours in this category. Applicant reviewed and signed off on all filed corporate tax returns.

**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 $950,000.00 | $48,516.40 |
| **Calculated Total Compensation** | **$54,266.40** |
| Plus Adjustment | $0.00 |
| Total Maximum Allowable Compensation | $54,266.40 |
| Less Previously Paid | $0.00 |
| **Total First and Final Fees Requested** | $40,000.00 |

**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. First and Final Fees in the amount of $40,000.00 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 $113,760.92 of unencumbered monies to be administered. The Chapter 7 Trustee's services for the Estate include general case administration, asset analysis and recovery, investigation and management of claims; and consulting with CPA regarding tax matters and reviewing corporate tax returns. Applicant's efforts have resulted in a realized gross of $1,020,327.94 recovered for the estate. Dckt. 130.

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 | $40,000.00 |
| Costs and Expenses | $1,626.42 |

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 Susan K. Smith, 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 Susan K. Smith is allowed the following fees and expenses as a professional of the Estate:

Susan K. Smith, the Chapter 7 Trustee

Fees in the amount of $40,000.00
Expenses in the amount of $1,626.42,

**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.

**22.** **15-29103-A-7 DNL-11**

**ROCK RIDGE PROPERTIES, INC.**
**Dennis Hill**

**MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES ATTORNEY(S)**
**10-14-19 [140]**

**Final Ruling:** No appearance at the November 14, 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 14, 2019. By the court's calculation, 31 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.**

Law Office of Desmond, Nolan, Livaich & Cunningham for J. Russell Cunningham, the Attorney ("Applicant") for Susan K. Smith, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 6, 2017, through October 8, 2019. The order of the court approving employment of Applicant was entered on May 11, 2017. Dckt. 31. Applicant requests fees in the amount of $49,967.50 and costs in the amount of $2,722.27.

**APPLICABLE LAW**

**Reasonable Fees**

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

**Lodestar Analysis**

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

**Reasonable Billing Judgment**

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

Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include general case administration, asset analysis and recovery, investigation and management of claims; and consulting and analyzing tax matters and reviewing corporate tax returns.

The Estate has $113,760.92 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

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

General Case Administration: Applicant spent 3.90 hours in this category. Applicant reviewed Debtor's bankruptcy documents; communicated with Trustee on settlement, claims, and employment matters.

Asset Analysis and Recovery: Applicant spent 61.00 hours in this category. Applicant conducted extensive asset investigation; prepared motion to approve sale of the Subject Property free and clear of claims; prepared motion to auction; drafted the auctioneer engagement agreement; reviewed the Subject Property sale agreement; reviewed and analyzed title report and conveyancing documents; and reviewed and analyzed closing statement.

Claims Administration and Objections: Applicant spent 3.40 hours in this category. Applicant investigated and communicated with various parties including former counsel, Trustee, and other parties related the TSA claim, and conducted research on effect of avoidance action statute of limitation on use of 502(d).

Litigation & Contested Matters: Applicant spent 33.20 hours in this category. Applicant prepared demand letters regarding evidence retention and stay violations; prepared application for authority to issue discovery to potential avoidable transfer transferees; prepared complaints for two

adversary proceedings drafted stipulation to extend time in order to facilitate mediation in adversary proceedings; and prepare for and take deposition of relevant party.

Fee/Employment Application: Applicant spent 16.30 hours in this category. Applicant prepared the applications to employ their law offices, auctioneer, CPA and broker; prepared the application for approval of compensation o the Trustee; and prepared the final fee application and expects to attend the hearing for the same.

Tax Issues: Applicant spent 0.50 hours in this category. Applicant communicated with parties, Trustee, and CPA regarding tax issues and consequences of potential settlement.

Settlement/Non-Binding ADR: Applicant spent 39.10 hours in this category. Applicant assisted Trustee in negotiating and drafted her settlement with various parties.

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** |
|---|---|---|---|
| J. Russell Cunningham | 79.10 | $425.00 | $33,617.50 |
| J. Luke Hendrix | 3.30 | $325.00 | $1,072.50 |
| Nicholas L. Kohlmeyer | 58.00 | $225.00 | $13,050.00 |
| Nicholas L. Kohlmeyer(2) | 4.10 | $275.00 | $1,127.50 |
| Benjamin C. Tagert | 9.10 | $100.00 | $910.00 |
| Courier | 3.80 | $50.00 | $190.00 |
| | 0 | $0.00 | $0.00 |
| **Total Fees for Period of Application** | | | $49,967.50 |

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $2,722.27 pursuant to this application.

The costs requested in this Application are,

| **Description of Cost** | **Per Item Cost, If Applicable** | **Cost** |
|---|---|---|
| Photocopies | at $0.10 per page | $116.20 |

| | | |
|---|---|---|
| Postage | | $174.79 |
| Advances (Service Fees and Recording Fee) | | $2,431.28 |
| | | $0.00 |
| **Total Costs Requested in Application** | | $2,722.27 |

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $49,967.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**Costs & Expenses**

First and Final Costs in the amount of $2,722.27 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

| | |
|---|---|
| Fees | $49,967.50 |
| Costs and Expenses | $2,722.27 |

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 Law Office of Desmond, Nolan, Livaich & Cunningham for J. Russell Cunningham ("Applicant"), Attorney for Susan K. Smith, 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 Law Office of Desmond, Nolan, Livaich & Cunningham for J. Russell Cunningham is allowed the following fees and expenses as a professional of the Estate:
>
> Law Office of Desmond, Nolan, Livaich & Cunningham for J. Russell

Cunningham, Professional employed by the Chapter 7 Trustee

Fees in the amount of $49,967.50
Expenses in the amount of $2,722.27,

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

**23.** **19-24406-A-7** **RONALD WADE**
**RTD-1** **Mark Wolff**
**6 thru 8**

**MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR**
**10-16-19 [25]**

**DEBTOR DISMISSED: 10/28/2019**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.
**----------**

The case having previously been dismissed, the Motion is dismissed as moot.

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 Extend Deadline to File a Complaint Objecting to Discharge of the Debtor having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the Bankruptcy Case having been dismissed.

**24.** **19-24406-A-7** **RONALD WADE** **MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS CASE UNDER SEC. 707(B)**
**RTD-2** **Mark Wolff** **10-16-19 [30]**

**DEBTOR DISMISSED: 10/28/2019**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.
---

The case having previously been dismissed, the Motion is dismissed as moot.

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 Extend Time to File a Motion to Dismiss Case Under Sec. 707(B) having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the Bankruptcy Case having been dismissed.

**25.** **19-24406-A-7** **RONALD WADE** **MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT**
**RTD-3** **Mark Wolff** **10-16-19 [36]**

**DEBTOR DISMISSED: 10/28/2019**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.
---

The case having previously been dismissed, the Motion is dismissed as moot.

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 Extend Deadline to File a Complaint Objecting to Dischargeability of a Debt having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

**26.** **18-24923-A-7** **JACQUELINE JAMES** **MOTION FOR COMPENSATION FOR**
**BLF-5** **Gary Farley** **LORIS L BAKKEN, TRUSTEES**
**ATTORNEY(S)**
**10-9-19 [61]**

**Final Ruling:** No appearance at the November 14, 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 9, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**The Motion for Allowance of Professional Fees is granted.**

Loris L. Bakken, the Attorney("Applicant") for Gary Ray Fraley, the Chapter 7("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 20, 2018, through November 14, 2019. The order of the court approving employment of Applicant was entered on September 10, 2018. Dckt. 24. Applicant requests fees in the amount of $5,220.00 and costs in the amount of $112.42.

**APPLICABLE LAW**

**Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the

circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

**Lodestar Analysis**

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

**Reasonable Billing Judgment**

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

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

recovery?

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

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

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

A review of the application shows that Applicant's services for the Estate include general administration and strategies on how to handle property of the estate; assisted Trustee in employing a realtor and selling real property; and obtaining turnover of the death certificate of the deceased joint tenant on the real property. The Estate has $15,000.00 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 5.8 hours in this category. Applicant prepared her corresponding fee agreement and employment application, stipulations to extend the deadline to object to exemptions, and the present fee application (including telephonic attendance to the hearing related to this application).

Employment of Realtor and Sale of Real Property: Applicant spent 13.2 hours in this category. Applicant was involved and administered all services related to the employment of a realtor and sale of the real property located at 18754 Quartz Court, Penn Valley, California, including but not limited to: reviewed the listing agreement; prepared and filed the application to employ Reed Block of Reed Block Realty in Gold River, California; communicated with the realtor on matters of employment, terms of the listing agreement and the overbidding process; and handled all matters related to the motion for court approval of the sale.

Stipulation with Debtor Regarding Distribution of Net Proceeds of Sale: Applicant spent 4.2 hours in this category. Applicant prepared and filed both the stipulation and the motion to approve the stipulation to divide the net proceeds of the sale 50/50 between the Debtor and the bankruptcy estate.

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

| Names of Professionals and Experience | Time | Hourly Rate | Total Fees Computed Based on Time and Hourly Rate |
|---|---|---|---|
| Loris L. Bakken | 23.2 | $300.00 | $6,960.00 |
| | 0 | $0.00 | $0.00 |
| **Total Fees for Period of Application** | | | $6,960.00 |

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $112.42 pursuant to this application.

The costs requested in this Application are:

| Description of Cost | Per Item Cost, If Applicable | Cost |
|---|---|---|
| Postage | N/A | $46.22 |
| Copying | ($0.10 per page) | $56.20 |
| | | $0.00 |
| **Total Costs Requested in Application** | | $102.42 |

**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. However, Applicant seeks to be paid a reduced single sum of $5,332.42 (legal fees of $5,220.00 and costs of $112.42) for its fees and costs incurred for Client. First and Final Fees and Costs in the amount of $5,332.42 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**Costs & Expenses**

First and Final Costs in the amount of $112.42 are approved pursuant to 11 U.S.C. § 330and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $5,220.00

Costs and Expenses $112.42

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Loris L. Bakken ("Applicant"), Attorney for Kimberly J. Husted, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Loris L. Bakken is allowed the following fees and expenses as a professional of the Estate:
>
> Name of Applicant, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $5,220.00
> Expenses in the amount of $112.42,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

**27.** **17-28324-E-7 GMR-3** | **MORTIMER/ARLENE JARVIS** | **Walter Dahl** | **MOTION FOR COMPENSATION FOR GEOFFREY RICHARDS, CHAPTER 7 TRUSTEE(S)** | **10-11-19 [152]**

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.

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Geoffrey Richards ("the Chapter 7 Trustee") having filed a Notice of Withdrawal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion for Compensation for Geoffrey Richards, Chapter 7 Trustee, was dismissed without prejudice, and the matter is removed from the calendar.**

**28.** **19-26126-A-7** **BENJAMIN/AMY GOOD** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
**Eric Schwab** **10-15-19 [11]**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.
---

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney], and Chapter 13 Trustee as stated on the Certificate of Service on October 17, 2019. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on September 30, 2019.

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

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

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

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

**29.** **19-26129-A-7** **JASEN OKUNNUGA**
**Ted Greene**

**ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
**10-15-19 [15]**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.
---

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney], and Chapter 13 Trustee as stated on the Certificate of Service on October 17, 2019. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on September 30, 3019.

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

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

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

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

**30.** **19-26231-A-7** **MELISSA TAYLOR** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
**Ted Greene** **10-17-19 [14]**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.
---

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on October 19, 2019. The court computes that 26 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on October 3, 2019.

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

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

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

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

**31.** **18-25241-A-7** **GERARDO/REBECCA HERNANDEZ** **MOTION TO DISMISS CASE TO 11 U.S.C. SECTION 707(B) PURSUANT 10-4-19 [56]**
**UST-1** **Kathleen Crist**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 4, 2019. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is granted, and the case is dismissed.**

The Chapter 7 Trustee, Tracy Hope Davis ("Trustee"), seeks dismissal of the case on the grounds that Gerardo Gabriel Hernandez and Rebecca Louise Hernandez ("Debtor") have a monthly net income that will allow them to repay 100 percent of general unsecured claims and thus the cased may be dismissed pursuant to the abuse provisions of 11 U.S.C. §§ 707(b)(1) and 707(b)(3)(B).

**APPLICABLE LAW**

Under 11 U.S.C. § 707(b). Dismissal of a case or conversion to a case under chapter 11 or 13,

> (1) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, trustee (or bankruptcy administrator, if any), or any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter.

Further, 11 U.S.C. § 707(b)(3) provides that,

> (3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(i) does not arise or is rebutted, the court shall consider—
>
> (A)whether the debtor filed the petition in bad faith; or
>
> (B)the **totality of the circumstances** (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse. (Emphasis added.)

**DISCUSSION**

According to Debtor's voluntary petition, Debtor's debts are primarily consumer debts. Additionally, Debtor has a combined monthly net income of $11,496.00. After a reasonable reduction of their expenses conducted by the U.S. Trustee, Debtor's expenses are $6,983.00. Once the expenses are deducted from Debtor's monthly income, Debtor has a monthly disposable income of $4,513.00 for purposes of 11 U.S.C. § 707(b)(3)(B). Thus, giving Debtor the ability to pay 100 percent of their general unsecured debts in another chapter of bankruptcy. Under 11 U.S.C. § 707(b) and the totality of the circumstances test, Debtor's ability to repay 100 percent of unsecured claims justifies dismissal of the case.

Other circumstances to take into account include Debtor's future earning potential. At the beginning of the case, Joint-Debtor was on state disability payments due to a vehicle accident. Joint-Debtor has now been working full-time as a registered nurse and Debtor has been in his same employment for over four years as an electrician with the Stockton Unified School District. It is likely that Debtor will have sufficient future income to be able to repay their debts.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Tracy Hope Davis ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

**32.** **18-22453-A-7** **ECS REFINING, INC.** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILLOUGHBY PASCUZZI AND RIOS LLP FOR PAUL J. PASCUZZI, SPECIAL COUNSEL(S)**
**FWP-1** **Christopher Bayley** **10-9-19 [1218]**
**24 thru 26**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.
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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, and Office of the United States Trustee on October 9, 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.**

Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP formerly Felderstein, Fitzgerald, Willoughby & Pascuzzi LLP, ("Applicant") for Kimberly J. Husted, 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 December 28, 2018, through September, 2019. The order of the court approving employment of Applicant was entered on January 14, 2019. Dckt. 969. Applicant requests fees in the amount of $23,218.50 and costs in the amount of $35.05.

**APPLICABLE LAW**

**Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the

circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

**Lodestar Analysis**

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

**Reasonable Billing Judgment**

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

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

recovery?

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

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

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

A review of the application shows that Applicant's services for the Estate include (1) to develop and implement a request for proposals process to investigate the Estate's potential litigation claims against third parties; and (2) to evaluate applications submitted by and interviewing prospective special litigation counsel. 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.

Asset Analysis and Recovery: Applicant spent 42.5 hours in this category. Applicant investigated, reviewed, and analyzed aspects of prospective litigations issues. Applicant also liaised with potential law firms, drafted Request for Proposal and Non-Disclosure Agreement (NDA) documents, and liaised with Trustee regarding hiring potential law firms for litigation roles.

Professional Employment Applications: Applicant spent 2.6 hours in this category. Applicant reviewing and revising the application to employee special counsel to the Trustee. And preparing a supplemental disclosure regarding employment of special counsel.

Professional Fee Applications: Applicant spent 7.2 hours in this category. Applicant drafted first and final fee application.

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** |
|---|---|---|---|
| Thomas A. Willoboughby | 31.5 | $495.00 | $15,592.50 |
| Paul J. Pascuzzi | 11.9 | $495.00 | $5,890.50 |
| Karen L. Widder | 8.9 | $195.00 | $1,735.50 |

| | |
|---|---|
| **Total Fees for Period of Application** | $23,218.50 |

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $35.05 pursuant to this application.

The costs requested in this Application are,

| **Description of Cost** | **Cost** |
|---|---|
| Photocopy | $9.40 |
| Postage | $24.65 |
| Document Retrieval | $1.00 |
| **Total Costs Requested in Application** | $35.05 |

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Fees in the amount of $23,218.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**Costs & Expenses**

First and Final Costs in the amount of $35.05 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

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

| | |
|---|---|
| Fees | $23,218.50 |
| Costs and Expenses | $35.05 |

pursuant to this Application for $23,218.50 and costs of $35.05 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 Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP formerly Felderstein, Fitzgerald, Willoughby & Pascuzzi LLP, ("Applicant"), Attorney for Kimberly J. Husted, 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 Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP formerly Felderstein, Fitzgerald, Willoughby & Pascuzzi LLP is allowed the following fees and expenses as a professional of the Estate:

Felderstein Fitzgerald Willoughby Pascuzzi & Rios LLP formerly Felderstein, Fitzgerald, Willoughby & Pascuzzi LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of $23,218.50
Expenses in the amount of $35.05,

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

**33.** **19-22653-E-7 DNL-9** | **REECE/RODINA VENTURA** **Peter Macaluso** | **MOTION TO EMPLOY ANTHONY SODONO, III AS SPECIAL COUNSEL 10-9-19 [233]**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.

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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 holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on October 9, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is granted.**

Geoffrey Richards ("Trustee") seeks to employ McManimon, Scotland & Baumann, LLC ("Special Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Special Counsel to pursue and protect the estates's rights in a probate proceeding in the Superior Court of New Jersey Chancery Division: Probate Part Bergen.

Trustee argues that Special Counsel's appointment and retention is necessary to assist Trustee in pursuing and protecting the estates's rights in a probate proceeding in the Superior Court of New Jersey Chancery Division: Probate Part Bergen. The Terms of Special Counsel's employment consist of an hourly fee agreement for all services. The hourly rate billed by the attorneys varies according to their experience and expertise. The rates range from $325.00-$625.00 per hour for partners, $255-$295 per hour for associates, $195 per hour for law clerks, and $145-$215 per hour for paralegals and support staff.

Anthony Sodono, an Attorney of McManimon, Scotland & Baumann, LLC , testifies that he

was previously employed in the same case while it was a Chapter 11 and is now requesting to be employed as Special Counsel for the Chapter 7 case so he can assist the Trustee with the New Jersey probate court case. Anthony Sodono testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Special Counsel, considering the declaration demonstrating that Special Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ McManimon, Scotland & Baumann, LLC as Special Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Retainer Agreement filed as Exhibit A, Dckt.236. Approval of the hourly rate is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 Employ filed by Geoffrey Richards ("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 Employ is granted, and Trustee is authorized to employ McManimon, Scotland & Baumann, LLC as Special Counsel for Trustee on the terms and conditions as set forth in the Retainer Agreement filed as Exhibit A, Dckt. 236.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.
>
> **IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by special counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

**34.** **19-25058-A-7** **PRECIOUS WILCOX** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
**Pro Se** **10-15-19 [30]**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.
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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on October 17, 2019. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $31.00 due on October 1, 2019.

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

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

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

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

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

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

| | | | |
|---|---|---|---|
| **35.** | **19-23786-E-7**<br>**UST-1** | **MICHAEL HUNT AND DEMETHA WILLIAMS HUNT**<br>**Pro Se** | **MOTION FOR DENIAL OF DISCHARGE OF JOINT DEBTOR UNDER 11 U.S.C. SECTION 727(A)**<br>**9-23-19 [22]** |

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.

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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*), Chapter 7 Trustee, and on September 23, 2019. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

The Motion for Denial of Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). 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 Denial of Discharge is granted.**

Tracy Hope Davis, the United States Trustee, ("Objector") filed the instant Motion for Denial of Debtor's Discharge on September 23, 2019. Dckt. 22.

Objector argues that Co- Debtor, Demetha Williams Hunt, ("Debtor") is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a 2011 filed Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on September 15, 2011. Case No. 11-42330. Debtor received a discharge on February 13, 2012. Case No. 11-42330, Dckt. 36.

The instant case was filed under Chapter 7 on June 14, 2019.

11 U.S.C. § 727(a)(8) provides that a court shall not grant a discharge if a debtor has received a discharge in a case filed under chapter 7 or 11 within eight years before the filing date of the instant

case. 11 U.S.C. § 727(a)(8).

Here, Debtor received a discharge under 11 U.S.C. § 727 on February 13, 2012, which is less than eight years preceding the date of the filing of the instant case. Case No. 11-42330, Dckt. 36. Therefore, pursuant to 11 U.S.C. § 727(a)(8), Debtor is not eligible for a discharge in the instant case.

Therefore, the Motion is granted. Upon successful completion of the instant case (Case No. 19-23786), Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Denial of Discharge filed by Tracy Hope Davis, the United States 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 Motion for Denial of Discharge is granted, and upon successful completion of the instant case, Case No. 19-23786, the case shall be closed without the entry of a discharge as to Co-Debtor, Demetha Williams Hunt only.
>
> This order does not effect the eligibility for discharge for Debtor Michael Hunt.

**36.** **14-29391-E-7** **ENRIQUE QUILES** **MOTION TO EMPLOY FRANCISCO R. MOYA HUFF AS SPECIAL COUNSEL**
**DNL-12** **Eric Schwab** **10-9-19 [167]**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on October 9, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is granted.**

J. Michael Hopper ("Trustee") seeks to employ Francisco R. Moya Huff ("Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel to perform legal and notarial services required to complete the Trustee's sale of real property in Puerto Rico and an order approving Counsel's compensation for a flat fee not to exceed $1,000.00 without further application to the Bankruptcy Court.

Trustee argues that Counsel's appointment and retention is necessary to perform legal and notarial services required to complete the Trustee's sale of approximately 19,957.452 square meters of land in Maunabo, Puerto Rico ("Subject Property"), research and all the related filings required by the municipality and government of Puerto Rico. The terms of Huff's employment consist of a flat free agreement in an amount not to exceed $1,000.00 to complete property transfers.

Francisco R. Moya Huff, a solo practitioner in Puerto Rico, testifies that he will provide all reasonable and necessary services related to the proper administration of the sale of the Subject Property. Francisco R. Moya Huff testifies he does not represent or hold any interest adverse to Debtor or to the

Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Francisco R. Moya Huff as Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Estimated Costs of Services filed as Exhibit A, Dckt. 170. Approval of the flat fee is subject to the provisions of 11 U.S.C. § 328.

In light of the court having previously approved the sale (Order, Dckt. 140), the modest amount of the compensation, the necessity of the services to consummate the sale as authorized by the court, and the cost of a further fee hearing, the court approves the fees and authorizes the payment thereof by the Trustee without further order of the court.

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 Employ filed by J. Michael Hopper ("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 Employ is granted, and Trustee is authorized to employ Francisco R. Moya Huff as Counsel for Trustee on the terms and conditions as set forth in the Estimated Costs of Services filed as Exhibit A, Dckt. 170.
>
> **IT IS FURTHER ORDERED** that compensation in the amount not to exceed $1,000.00 as a "flat fee" for the services provided is approved pursuant to 11 U.S.C. § 330 and the Trustee is authorized to pay such amount without further order of the court.

**37.** **19-22393-A-7** **GARY TEIXEIRA** **CONTINUED MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS**
**MHK-2** **Richard Hall** **9-3-19 [38]**

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.

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Eric J. Nims ("the Chapter 7 Trustee") 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 Contempt and/or Motion for Sanctions was dismissed without prejudice, and the matter is removed from the calendar.**

**38.** **15-28797-E-7** **NATALIE GEOFFROY** **MOTION FOR COMPENSATION FOR URBAN ASSETS RECOVERY, OTHER PROFESSIONAL(S)**
**HCS-3** **Pro Se** **10-10-19 [56]**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.

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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*), Debtor's Attorney], Chapter 7 Trustee, creditors, and Office of the United States Trustee on October 10, 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.**

Alford Elliott, the recovery specialist ("Applicant") for Geoffrey Richards, the Chapter 7 ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 2, 2012, through August 23, 2019. The order of the court approving employment of Applicant was entered on March 11, 2019. Dckt. 46. Applicant requests fees in the amount of $3,345.03 inclusive of costs.

**APPLICABLE LAW**

**Reasonable Fees**

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

**Lodestar Analysis**

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

**Reasonable Billing Judgment**

Even if the court finds that the services billed by a professional are "actual," meaning that

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

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

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

A review of the application shows that Applicant's services for the Estate related to recover of $13,380.11 for the estate, which the Trustee would not have been able to reasonable discover without the services of Applicant. The court finds the services were beneficial to Client and the Estate and were reasonable.

**FEES REQUESTED**

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in the marketing and sale of personal property described as unclaimed property tax refund in Sacramento County ("Property"). The Property was retrieved from Sacramento County from warrant no. 1102315108. The warrant generated $13,380.11 of net monies (exclusive of these requested fees and costs) as recovery for Client.

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $3,345.03. pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Chapter 7 Trustee is authorized to pay from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $3,345.03

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 Alford Elliott ("Applicant"), the recovery specialist for Geoffrey Richards, 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 Alford Elliott is allowed the following fees and expenses as a professional of the Estate:
>
> Alford Elliott, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $3,345.03
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as a professional for the Chapter 7 Trustee.

**39.** **19-26125-A-7** **LOYD MOONEY** **MOTION FOR RELIEF FROM**
**JHW-1** **Kathleen Crist** **AUTOMATIC STAY**
**10-11-19 [10]**

**TD AUTO FINANCE LLC VS.**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 11, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

TD Auto Finance LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Dodge Grand Caravan, VIN ending in 5292 ("Vehicle"). The moving party has provided the Declarations of Doris Pope-Reyes and John Eng to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Loyd Donald Mooney ("Debtor").

Movant provides evidence that there are four (4) pre-petition payments in default, with a pre-petition arrearage of $1,354.56. Declaration, Dckt. 10. Further, Movant obtained possession of the Vehicle on September 11, 2019. *Id.*

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

**TRUSTEE'S NON-OPPOSITION**

Trustee filed a Non-Opposition on October 28, 2019.

**DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $9,843.26 (Declaration, Dckt. 14), while the value of the Vehicle is determined to be $8,000.00, as stated in the Statement of Financial Affairs filed by Debtor, which is slightly less than the retail value as stated on the NADA Valuation Report.

**11 U.S.C. § 362(d)(1): Grant Relief for Cause**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in pre-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

**11 U.S.C. § 362(d)(2)**

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

**Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court. Movant requests waiver on the basis that Movant obtained possession of the vehicle on September 11, 2019; the vehicle is a depreciating asset; and the account is four months delinquent.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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 Relief from the Automatic Stay filed by TD Auto Finance LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2013 Dodge Grand Caravan ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

**40.** **19-25867-A-7** **DANIELLE OAKLEY** **MOTION FOR RELIEF FROM**
**JHW-1** **David Van Dyke** **AUTOMATIC STAY**
**10-3-19 [9]**

**TD AUTO FINANCE LLC VS.**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on October 3, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

TD Auto Finance LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Dodge Grand Caravan, VIN ending in 6465 ("Vehicle"). The moving party has provided the Declaration of Doris Pope-Reyes to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Danielle Marie Oakley ("Debtor").

Movant provides evidence that there are three (3) pre-petition payments in default, with a pre-petition arrearage of $1,206.30. Declaration, Dckt. 12.

**DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $21,700.04 (Declaration, Dckt. 12), while the value of the Vehicle is determined to be $15,832.00, as stated in Schedules B and D filed by Debtor.

**11 U.S.C. § 362(d)(1): Grant Relief for Cause**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

**11 U.S.C. § 362(d)(2)**

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981)

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable non-bankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

**Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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 Relief from the Automatic Stay filed by TD Auto Finance LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Dodge Grand Caravan ("Vehicle"), and applicable non-bankruptcy law to obtain possession of, non-judicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

**41.** **19-25888-A-7** **RAMESHWAR PRASAD** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
**CAS-1** **Charles Hastings** **10-9-19 [10]**

**FINANCIAL SERVICES VEHICLE TRUST VS.**

**Final Ruling:** No appearance at the November 14, 2019 hearing is required.
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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, parties requesting special notice, and Office of the United States Trustee on October 9, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

Financial Services Vehicle Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Rolls Royce Ghost Sedan, VIN ending in 4252 ("Vehicle"). The moving party has provided the Declaration of Pamela Weems to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Rameshwar Prasad ("Debtor").

Movant argues Debtor has not made 3.953 post-petition payments, with a total of $13,745.25 in post-petition payments past due. Declaration, Dckt. 12. Movant also provides evidence that there are 1 pre-petition payments in default, with a pre-petition arrearage of $3,476.43. *Id*.

Movant has also provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

**DISCUSSION**

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $257,750.41 (Declaration, Dckt. 12), while the value of the Vehicle is determined to be $250,000.00, as stated in Schedules B and D filed by Debtor, which is less than the retail value as stated on the NADA Valuation Report.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

**Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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 Relief from the Automatic Stay filed by Financial Services Vehicle Trust ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Rolls Royce Ghost Sedan, VIN ending in 4252 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.