

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

November 21, 2019 at 10:30 a.m.

1. [17-90516-E-7](#) VERA JOHNSON CONTINUED MOTION FOR TURNOVER
[HCS-5](#) Thomas Hogan OF PROPERTY AND/OR MOTION TO
COMPEL
10-28-19 [[72](#)]

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

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

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

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

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

The hearing on the Motion for Turnover has been continued to January 9, 2020 at 10:30 a.m. by prior Order (Dckt. 97) filed on November 18, 2019.

CONTINUANCE OF HEARING

At the November 7, 2019 hearing, the Parties reported that a settlement of this was being negotiated to provide for the vacating of the premises by Debtor, funding being made available, and getting possession turned over to the Trustee. The parties requested a short continuance to allow for the documentation of the settlement.

If so settled, the court authorized the parties to file the written settlement and lodge an order with the court providing for relief on this Motion pursuant to the terms of the settlement.

REVIEW OF MOTION

Gary Farrar, the Chapter 7 Trustee, (“Movant”) in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 1421 Brannon Avenue, Modesto, California (“Property”). In the Motion the Trustee sets forth grounds with particularity concerning the Debtor’s failure to turnover the property of the estate, the concerns for the safety of the persons working for the trustee with respect to the Property, and the damage (graffiti and garbage) occurring to the Property while in the Debtor’s possession. The Trustee provides six declarations and exhibits in support of the Motion.

DEBTOR’S RESPONSE

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

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

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

CREDITOR’S RESPONSE

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

DISCUSSION

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

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

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

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

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

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

At the hearing, Trustee’s counsel stated that an agreement is being reached to have the property turned over to the Trustee, the husband to fund a \$5,000 payment to move out, and that it be done in 45 days, and that proof of insurance be provided. Debtor and counsel will cooperate with giving trustee and agents access to the property.

Enforcement of Turnover Orders

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

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.

This Motion to Approve Bidding Procedures was set to hearing by the Court's Order, Docket 1046.

The Ex-Parte Motion to Approve Bidding Procedures, to be heard in conjunction with the Motion to Sell Real Property Free and Clear Liens, Dckt. 1034, is **XXXXX.**

The Bankruptcy Code permits Jeffery Edward Arambel, the Debtor, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Movant proposes to sell the real property commonly known as Assessor Parcel Numbers 021-022-046, 021-022-045 and 021-022-044 ("Parcel A") and Assessor Parcel Numbers 021-022-043 and 021-022-028 ("Parcel B") (collectively "Property"). Series 12, P.S. a Ledger of Series Entities for HMHMHYLV LLC, a Delaware limited liability company ("HMHMHYLV LLC") has agreed to purchase the property subject to approval. The hearing on that Motion is set for hearing on November 20, 2019 at 10:30 a.m.

The Ex-Parte Motion to Approve Bidding Procedures regarding the Motion to Sell Real Property Free and Clear of Liens was filed on November 15, 2019. Dckt. 1044. The Motion concerns approving certain bidding and sale procedures related to the sale of the Property. The court set it to hearing by order filed on November 18, 2019. Dckt. 1047.

The proposed bidding procedures are:

- A. All potential bidders must deliver to the counsel for the Debtor on behalf of the Plan Administrator, at any time before the auction commences, \$100,000 in certified funds on account of the earnest money deposit required by Section 2(a) of the PSA. HMHMHYLV LLC has already delivered its deposit into escrow.
- B. All bidders (other than HMHMHYLV LLC) shall present the counsel for the Reorganized Debtor on behalf of the Plan Administrator with evidence of funds or financing acceptable to the Plan Administrator in an amount necessary to meet the initial bid plus the minimum initial overbid amount (for a total of \$26,310,898.76).
- C. Bids shall be submitted for the two parcels on a consolidated basis. The Reorganized Debtor proposes that the increased bid amount be allocated between the two parcels on a pro-rata basis (53.004% to Parcel A and 46.996% to Parcel B) and that the increased purchase price for the delayed closing of Parcel B be maintained on a percentage basis

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(that is, 103.571% of the initial Parcel B Purchase Price for closing by the deadline imposed by Section 3(b)(ii) of the PSA, and 107.143% of the initial Parcel B Purchase Price for closing by the deadline imposed by Section 3(b)(iii) of the PSA).

- D. The Reorganized Debtor proposes that :
1. the minimum initial overbid be \$275,000 (that being about 1% of the initial purchase price), and
 2. the minimum amount of all subsequent bids be not less than \$130,000 (that about being about 0.5% of the initial purchase price).
- E. The Reorganized Debtor proposes that bids be accepted from bidders or their authorized representatives who are present at the auction in person; bids by telephone, facsimile, email, letter or similar means will not be accepted unless the Plan Administrator expressly agrees otherwise.
- F. All bids shall be on terms equivalent to or better than the terms provided in the corresponding PSA, including terms with respect to due diligence, inspections, contingencies and the time for closing. Deadlines set and running under the PSA will continue to run and will not be extended. The highest and best bid shall be reduced to a written agreement on or before three (3) calendar days following the hearing on approval of the sale.
- G. Secured Creditors (as defined in the motion) shall be afforded any rights to credit bid to which they are otherwise entitled under the Bankruptcy Code and applicable law.
- H. All deposits by an unsuccessful bidder shall be refunded. The successful bidder's \$100,000.00 deposit shall be deposited into escrow property after the hearing, if not already so deposited. Said deposit shall be refundable only upon terms equivalent to or better than those provided in the PSA; otherwise it shall be non-refundable. Deposits shall be applied as described by the PSA.

At the hearing, **XXXXXXXXXXXXXXXXXXXX**

The Motion is **XXXXXXXXXXXXXXXXXXXX**

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 *Ex-Parte* Motion to Approve Bidding Procedures filed by Jeffery Arambel, Debtor in Possession, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

3. [18-90029-E-11](#)
[MF-44](#)

JEFFERY ARAMBEL
Matt Olson

**MOTION TO SELL FREE AND CLEAR
OF LIENS**
10-31-19 [[1034](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, creditors, parties requesting special notice, and Office of the United States Trustee on October 31, 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 U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Sell Property is **xxxxx.**

The Bankruptcy Code permits Jeffery Edward Arambel, the Debtor, (“Movant”) to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as :

- A. Assessor Parcel Numbers 021-022-046, 021-022-045 and 021-022-044 (“Parcel A”) and
- B. Assessor Parcel Numbers 021-022-043 and 021-022-028 (“Parcel B”) (collectively “Property”).

Movant in his Memorandum of Points and Authorities establishes that he will pay the secured claim of Stanislaus County Tax Collector (“Tax Claim”) in full, and then the proceeds will go to pay the

inferior lien holders Brighthouse Life Insurance Company (“Brighthouse”), and then SBN Ag I LLC (“Summit”) respectively. The following is owed to the above-mentioned creditors:

Secured Creditors Priority Estimated Claim Amount:

Stanislaus County Tax Collector Tax	\$36,363.60
Brighthouse	\$6,655,067.15
Summit	\$45,491,296.74

The proposed purchaser of the Property is HMHMHYLV LLC, and the terms of the proposed sale are:

- A. The gross price of the purchase is not less than \$26,035,898.76; and the purchase will occur in two phases.
- B. The sale of Parcel A is set to close within 30 days after the end of the due-diligence period. The sale of Parcel B is set to close not later than one year following the Court’s approval of the proposed sale.
- C. The agreement provides for a 30 day due-diligence period or 2 business days following the City of Patterson’s approval of the proposed sale, during which HMHMHYLV LLC may cancel the agreement and receive a return of its deposit.
- D. \$2 million is be held back form the purchase price to fund construction of a bridge, this construction is not a condition precedent to closing.
- E. HMHMHYLV LLC deposited \$100,000.00 to escrow as its initial deposit and will deposit \$300,000.00 for a total of \$400,000.00. The deposit is refundable if (1) the agreement is properly terminated, or (2) if the Debtor defaults.
- F. Taxes and utilities and an annual permit or inspection fees will be pro-rated. The parties will split the title insurance policy, closing fees, and escrow fees. Debtor will pay transfer tax, recording fee, a broker’s commission of 5% gross purchase, fund withholdings for US Trustee Fees and income taxes, and fund the hold back account. HMHMHYLV LLC will pay all recording fees for deed transferring title, all survey costs, and all due diligence costs.
- G. Each party shall pay its own legal fees, accounting, and other professional fees.

The Motion seeks to sell the Property free and clear of the lien of Brighthouse Life Insurance Co. and Summit (“Creditor”). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

- (f) The debtor in possession may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established the plan administrator has approved the sale, that the sale was done at “arm’s length” of the court, and that either the senior or junior lien will be paid down substantially by the sale. The Movant asserts that the lien holders will “likely” consent to the transactions but has not provided any evidence of such consent. Additionally, Movant argues that the lien holders are over secured by other property of the estate.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Tax Claim will be paid in full so the subsequent lien holders can be paid without consideration of the superior lien held by the Tax Claim and may also receive a substantial distribution from the sale. Notably, the plan administrator consents to the proposed sale. And no creditor has filed an opposition.

Movant has estimated that a 5 percent broker’s commission from the sale of the Property will equal approximately \$1,301,794.94. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 5 percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell 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 because all creditors and parties-in-interest were given notice as well as no party will be prejudiced by the removal of the stay.

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 6004(h), and this part of the requested relief is granted.

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

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

The Motion to Sell Property filed by Jeffery Edward Arambel, the Debtor, (“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 Jeffery Edward Arambel, the Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to HMHMYLV LLC or nominee (“Buyer”), the Property commonly known as Assessor Parcel Numbers 021-022-046, 021-022-045 and 021-022-044 (“Parcel A”) and Assessor Parcel Numbers 021-022-043 and 021-022-028 (“Parcel B”) (collectively “Property”), on the following terms:

- A. The Property shall be sold to Buyer for not less than \$26,035,898.76, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 1039, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Property is sold free and clear of the lien of Brighthouse Life Insurance Co. and Summit, Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), with the lien of such creditor attaching to the proceeds. Debtor in Possession shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.
- D. Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. Debtor in Possession is authorized to pay a real estate broker’s commission in an amount not more than 5 percent of the actual purchase price upon consummation of the sale. The 5 percent commission shall be paid to Debtor’s in Possession broker, Cushman & Wakefield.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2019. By the court’s calculation, 22 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 Barbara Davis (“Debtor”) requests the court to order Michael D. McGranahan (“the Chapter 7 Trustee”) to abandon property in the table below (“Property”).

Property	Value	Lien/ Encumbrances	Exemption	Net to Estate
2002 Toyota Camry	\$2,000.00	\$0	CCP § 703.14(b)(2)	\$0

Household belongings	\$2,000.00	\$0	CCP § 703.14(b)(3)	\$0
Clothes	\$250.00	\$0	CCP § 703.14(b)(3)	\$0
Jewelry	\$125.00	\$0	CCP § 703.140 (b)(4)	\$0
Cash on hand	\$1,500.00	\$0	CCP § 703.140 (b)(5)	\$0
Checking-Umpqua	\$15,466.00	\$0	CCP § 703.140 (b)(5)	\$0
Checking-Umpqua Business	\$1,336.00	\$0	CCP § 703.140 (b)(5)	\$0
Roth IRA-Luminary	\$7,000.00	\$0 5	CCP § 703.140 (b)(10) (A)	\$0
Security deposit-landlord	\$2,000.00	\$0	CCP § 703.140 (b)(5)	\$0
Federal pre paid tax	\$2,862.00	\$0	CCP § 703.140 (b)(5)	
Social security-monthly	\$1,023.00	\$0	CCP § 703.140 (b)(10) (A)	\$0
Accounts receivable from business	\$5,604.77	\$0	CCP § 703.140 (b)(5)	\$0
MCC Business Systems equipment	\$255.00	\$0	CCP § 703.140 (b)(6)	\$0
Mary Kay business equipment	\$188.00	\$0	CCP § 703.140 (b)(6)	\$0
May Kay inventory	\$1,200.00	\$0	CCP § 703.140 (b)(6)	\$0

The Property is not encumbered by any lien of any creditor. The Declaration of Barbara Davis has been filed in support of the Motion and values the Property at the above-mentioned table. See also the Declaration of Barbara Davis. Dckt. 12.

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 Barbara Davis (“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 in the below-listed table:

Property
2002 Toyota Camry
Household belongings
Clothes
Jewelry
Cash on hand
Checking-Umpqua
Checking-Umpqua Business
Roth IRA-Luminary
Security deposit-landlord
Federal pre paid tax
Social security-monthly
Accounts receivable from business
MCC Business Systems equipment
Mary Kay business equipment
May Kay inventory

and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Michael D. McGranahan (“Trustee”) to Barbara Davis by this order, with no further act of the Trustee required.

5. [18-90339-E-7](#) **KIMBERLY SOLARIO**
[18-9014](#) **NEU-3**
DE JONG V. SOLARIO

**MOTION FOR SUMMARY JUDGMENT
AND/OR MOTION FOR SUMMARY
JUDGMENT**
10-10-19 [30]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant-debtor (*pro se*), and Office of the United States Trustee on October 10, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

No tentative ruling for the Motion for Summary Judgment is posted at this moment. Please check later this evening.

6. [18-90847-E-7](#) **IMELDA PADILLA**
[MF-5](#) **Thomas Gillis**

**OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS**
10-17-19 [112]

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

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

Below is the court's tentative ruling.

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

Sufficient Notice **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, parties requesting special notice, and Office of the United States Trustee on October 17, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Certificate of Service states that the Objection and supporting pleadings were served on: (1) the Debtor, (2) U.S. Trustee, and (3) Synchrony Bank. Dckt. 114. It does not state that the Objection was served on counsel for the Debtor.

At the hearing, Counsel for the Trustee explained **xxxxxx**

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

The Objection to Claimed Exemptions is ~~sustained, and the exemptions are disallowed in their entirety.~~

The Chapter 7 Trustee, Michael D. McGranahan ("Trustee") objects to Imelda Padilla's ("Debtor") claimed exemptions under California law, Trustee asserts that the exemptions claimed exceed the lawful amount allowed under California law. Debtor has chosen the homestead exemption under California Civil Code of Procedure § 703.140(b)(1) and a wildcard exemption under § 703.140(b)(5). Debtor's claimed exemption listed on A / B of the Amended Schedules list exemptions for totaling \$55,024.55. Dckt. 105. Debtor's exemptions include 3912 Pheasant Lane exempting \$16,921.00, 3912 Pheasant Lane exempting \$26,800.00, Checking Acct # 1692 exempting \$115.55, and 2018 Federal/State Tax Return exempting \$11,188.00.

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

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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).

Here, the Trustee has stated excessively claimed exemptions. The court cannot “select” for the Debtor the correct exemptions to be taken.

~~The Chapter 7 Trustee’s Objection is sustained, and the claimed exemptions are disallowed.~~

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 The Chapter 7 Trustee, Michael D. McGranahan (“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 Objection is sustained, and the ~~claimed exemptions for 3912 Pheasant Lane (both), the Checking Acct #1692, and 2018 Federal/State Tax Return under California Code of Civil Procedure § 703.140(b)(1) and § 703.140(b)(5) are disallowed in their entirety. This is without prejudice to the Debtor timely filing an amended Schedule C claiming exemptions as allowed under California law.~~

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 Plaintiff, Plaintiff’s Attorney, Defendant-Debtor, Defendant’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 7, 2019. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Dismiss Cause of Action 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 Authorization For Plaintiff to Dismiss Second Claim for Relief in Adversary Complaint is granted.

Wilson Sarhad (“Defendant-Debtor”) moves for the court to issue an order authorizing dismissal of Plaintiff’s second claim for relief in Leonani Garcia’s (“Plaintiff”) Complaint pursuant to Federal Rule Bankruptcy Procedure 7041. Plaintiff’s second claim seeks a denial of the Debtor’s discharge pursuant to 11 U.S.C. § 727(a)(2).

APPLICABLE LAW

Rule 41 of the Federal Rules of Civil Procedure applies in adversary proceedings, except that a s a complaint objecting to the debtor’s discharge shall not be dismissed art the plaintiff’s instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper. FED. R. BANKR. P. 7041.

DISCUSSION

Plaintiff and Debtor-Defendant have provided notice to all interested parties, including the Trustee and the United States Trustee according to the notice filed as part of this motion. Dckt. 38. Both Trustee and the U.S. Trustee were served on November 7, 2019. Dckt. 41.

Further, as part of the August 26, 2018 settlement agreement, the Trustee agreed to the following:

“7. Section 727. Provided the Debtor and Debtor’s Wife make the settlement payment, the Trustee will not intervene in or pursue the adversary complaint filed by creditor Leonani Garcia which seeks both a determination of the dischargeability of a claim and the denial of the Debtor’s discharge.”

The Motion for Authorization of Dismissal of Second Claim for Relief in Adversary Complaint is thus warranted because Trustee has received notice regarding the dismissal of Plaintiff’s second claim and Trustee had waived his right to object pursuant to the August 26, 2018 Settlement Agreement. The Motion is granted.

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

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

The Motion for Authorization of Dismissal of Second Claim for Relief in Adversary Complaint filed by Wilson Sarhad (“Defendant-Debtor”) having been presented to the court, notice having been given on November 7, 2019 and no opposition filed,

IT IS ORDERED that the Motion for Authorization of Dismissal of Second Claim for Relief in Adversary Complaint is granted in that Leonani Garcia (“Plaintiff”) is authorized to dismiss the second cause of action (seeking relief pursuant to 11 U.S.C. § 727) of the Complaint.

Tentative Ruling: The Objection to Claim 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).

Below is the court's tentative ruling.

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

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

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 3 of Saxon Mortgage Services, Inc., as servicing agent for U.S. Bank National Association, as trustee for the MSM 2006-14SL pass-through certificates is overruled without prejudice.

The Court Continuing the November 7, 2019 Hearing

Due to the court's calendaring error, this matter was incorrectly stated as a final ruling at the prior hearing and the summary of the ruling incorrectly stated that the objection was "sustained," while the actual ruling and the draft order stated that it was overruled.

REVIEW OF OBJECTION

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

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

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

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

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

The Objection to Claim of Saxon Mortgage Services, Inc., as servicing agent for U.S. Bank National Association, as trustee for the MSM 2006-14SL pass-through certificates ("Creditor"), filed in this case by Michael D. McGranahan, the Chapter 7 Trustee, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 3 is overruled without prejudice.

FINAL RULINGS

9. [19-90451-E-7](#) **FEDERMAN ACHURY AND** **MOTION FOR COMPENSATION BY**
[BLF-2](#) **GUISELLE BALLESTEROS** **THE LAW OFFICE OF LORIS**
Steve Altman **L. BAKKEN FOR LORIS L. BAKKEN,**
 TRUSTEES ATTORNEY(S)
 10-9-19 [50]

Final Ruling: No appearance at the November 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on October 9, 2019. By the court’s calculation, 43 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 R. Farrar, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

November 21, 2019 at 10:30 a.m.

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Fees are requested for the period July 10, 2019, through November 14, 2019. The order of the court approving employment of Applicant was entered on July 22, 2019. Dckt. 26. Applicant requests fees in the amount of \$4,350.00 and costs in the amount of \$38.60.

APPLICABLE LAW

Reasonable Fees

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's

authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant’s services for the Estate include providing legal advice and rendered legal services to the Trustee regarding general case administration and strategies on how to handle property of the estate and assisted Trustee in recovering property of the estate, and reviewing and advising Trustee regarding Debtor’s motion to compel abandonment. The Estate has \$19,281.23 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 3.6 hours in this category. Applicant prepared Counsel’s fee agreement and employment application, extending the deadline to object exemptions, and preparing Counsel’s fee application. Counsel anticipates attending the hearing on the fee application by telephone.

Recover Property of the Estate: Applicant spent 9.9 hours in this category. Applicant assisted Trustee on reviewing and analyzing bank statements related to two (2) payments made by Debtor pre-petition which were honored by Debtor’s bank post-petition (“Transfers”) and later reviewed the legal issues and conducted legal research regarding the regarding recovery. Applicant also prepared a demand for Debtor to return the funds transferred to the bankruptcy estate and the final agreement for turnover of the funds.

Review and Advice regarding Debtor’s Motion to Compel Abandonment: Applicant spent 1.0 hours in this category. Applicant reviewed and discussed the Motion with Trustee; and joined

Trustee and Debtor’s Counsel in a conference call to discuss the Transfers and the motion to compel abandonment of the IRA.

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	14.5	\$300.00	\$4,350.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$4,350.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$38.60 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$26.80
Copying	\$0.10 per page	\$11.80
		\$0.00
		\$0.00
Total Costs Requested in Application		\$38.60

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$4,350.00 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 \$38.60 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	\$4,350.00
Costs and Expenses	\$38.60

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 Loris L. Bakken (“Applicant”), Attorney for Gary R. Farrar, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Loris L. Bakken is allowed the following fees and expenses as a professional of the Estate:

Loris L. Bakken, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$4,350.00
Expenses in the amount of \$38.60,

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

10. [19-90758-E-7](#)
[SSA-1](#)

TINA SILVA
Steve Altman

MOTION TO COMPELABANDONMENT
10-18-19 [16]

Final Ruling: No appearance at the November 21, 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 18, 2019. By the court’s calculation, 34 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 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 Tina Silva (“Debtor”) requests the court to order Michael D. McGranahan (“the Chapter 7 Trustee”) to abandon property in the table below (“Property”).

Property	Value	Lien/ Encumbrances	Exemptions	Net to Estate
Mini Cooper	\$21,000.00		CCP § 703.140(b)(2) \$5,850.00 CCP § 703.140(b)(5) \$9,867.00	\$0
Household belongings	\$1,500.00	\$0	CCP § 703.140(b)(3) \$1,500.00	\$0
Electronics, TV, iPad	\$400.00	\$0	CCP § 703.140(b)(3) \$400	\$0

Clothes	\$300.00	\$0	CCP § 703.140(b)(3) \$300.00	\$0
Checking- Citibank, Acct. 8471	\$47.00	\$0	CCP § 703.140(b)(5) \$47.00	\$0
Savings-Acorn	\$270.00	\$0	CCP § 703.140(b)(5) \$270.00	\$0
Citibank-checking & savings Acct. 2919	\$172.00	\$0	CCP § 703.140(b)(5)	\$0
Met Life - Compushare Acct. 823	\$270.00	\$0	CCP § 703.140(b)(5) \$270.00	\$0
Security deposit- landlord	\$1,275.00	\$0	CCP § 703.140(b)(5) \$1275.00	\$0
2018 State tax refund	\$67.00	\$0	CCP § 703.140(b)(5) \$67.00	\$0
Business equipment, supplies used in nail salon	\$2125.00	\$0	CCP § 703.140(b)(6) \$2125.00	\$0

The Property is encumbered by the lien of any creditor. The Declaration of Tina Silva has been filed in support of the Motion and values the Property as it is listed in the above-mentioned table. See the Declaration of Barbara Davis. Dckt. 18.

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 Tina Silva (“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 in the below listed table:

Property
Mini Cooper
Household belongings
Electronics, TV, iPad
Clothes
Checking-Citibank, Acct. 8471
Savings-Acorn
Citibank-checking & savings Acct. 2919
Met Life - Compushare Acct. 823
Security deposit-landlord
2018 State tax refund
Business equipment, supplies used in nail salon

and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Michael D. McGranahan (“Trustee”) to Tina Silva by this order, with no further act of the Trustee required.

11. [19-90273-E-7](#)
[BLF-4](#)

LARRY COLLINS
Richard Kwun

**MOTION FOR COMPENSATION FOR
LORIS L BAKKEN, TRUSTEES
ATTORNEY(S)**
10-9-19 [\[36\]](#)

Final Ruling: No appearance at the November 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on October 9, 2019. By the court's calculation, 43 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 R. Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 20, 2019, through November 21, 2019. The order of the court approving employment of Applicant was entered on July 9, 2019. Dckt. 26. Applicant requests fees in the amount of \$840.00 and costs in the amount of \$45.55.

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)?

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E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant’s services for the Estate include providing legal advice and rendering legal services to Trustee regarding general case administration and strategies on how to handle property of the estate and assisted Trustee in recovering property of the estate and in

selling property of the estate. The Estate has \$2,750.00 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 5.3 hours in this category. Applicant prepared fee agreement, employment application, and fee application. Applicant also anticipates attending the hearing on the fee application by telephone. Finally, this time also includes preparing two stipulations to extend the Trustee’s deadline to object to exemptions and to file a complaint objecting to discharge. (Applicant did not bill for any time on general case administration.)

Recovery of Property of the Estate: Applicant spent 3.8 hours in this category. Applicant communicated with Debtor’s counsel regarding the potential sale of two vehicles which Debtor later agreed to turn over to the estate. Applicant subsequently prepared the agreement for turnover of said property of the estate. (Applicant only billed 2.8 hours for recovery of property of the estate.)

Sale of Property of the Estate: Applicant spent 0.8 hours in this category. Applicant assisted Trustee in preparing and filing a Notice of Intent to Sell two vehicles to a third party for \$1,750.00. (Applicant did not bill for this time.)

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	9.9	\$300.00	\$2,970.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$2,970.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$45.55 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$31.25
Copying	\$0.10 per page	\$14.30
		\$0.00
Total Costs Requested in Application		\$45.55

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 single sum of \$840.00 for its fees incurred for Client. First and Final Fees in the amount of \$840.00 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 \$45.55 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	\$840.00
Costs and Expenses	\$45.55

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 Loris L. Bakken (“Applicant”), Attorney for Gary R. Farrar, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Loris L. Bakken is allowed the following fees and expenses as a professional of the Estate:

Loris L. Bakken, Professional employed by the Chapter 7 Trustee

November 21, 2019 at 10:30 a.m.

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Fees in the amount of \$840.00
Costs in the amount of \$45.55 ,

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

