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

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

**November 29, 2018 at 10:30 a.m.**

# Notice
# The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 8.

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|---|---|---|
| 02-94454-E-7<br>MDM-3 | **LUANN SELECKY**<br>**John Kyle** | **MOTION FOR COMPENSATION FOR MICHAEL MCGRANAHAN, CHAPTER 7 TRUSTEE**<br>**10-19-18 [158]** |

**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 19, 2018. By the court's calculation, 41 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

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

Michael McGranahan, the Chapter 7 Trustee, ("Applicant") for the Estate of Luann Selecky ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period September 25, 2017, through November 29, 2018.

**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 the reopening of the case after discovery of undisclosed assets—real property commonly known as 1037 Westmont Terrace, Modesto California ("Property") and a promissory note for $500,000.00 ("Note")—and the Trustee's subsequent investigation into the assets and sale of the Property to pay all creditors in full. 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.

General Case Administration: Applicant spent 17.20 hours in this category. Applicant reviewed claims register and schedules, reviewed certain motions, and communicated regarding certain claims.

Efforts to Assess and Recover Property of the Estate: Applicant spent 2.10 hours in this category. Applicant made communications regarding the recovery of the Property to prepare for its disposition.

Asset Disposition: Applicant spent 28.80 hours in this category. Applicant employed professionals, analyzed the condition of the Debtor's real property, prepared the property for sale, prepared and filed the requisite motions, and ultimately sold the Property.

Litigation: Applicant spent 0.70 hours in this category. Applicant filed a motion to turnover regarding the Note and entered into a compromise with the Note holder, thus disposing of it in connection with the sale of the Property.

Tax Matters: Applicant spent 3.40 hours in this category. Applicant performed a tax analysis of the Estate and the proposed sale of the Property.

**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 $198,791.12 | $9,939.56 |
| **Calculated Total Compensation** | **$15,698.56** |
| Plus Adjustment | $0.00 |
| Total Maximum Allowable Compensation | $15,698.56 |
| Less Previously Paid | $0.00 |
| **Total First and Final Fees Requested** | $15,698.56 |

The Estate currently has $149,371.17 on hand and $21,208.88 is anticipated to be paid to Debtor in the final distribution with all creditors paid in full.

**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 $15,698.56 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 $149,371.17 of unencumbered monies to be administered. The Chapter 7 Trustee's the reopening of the case after discovery of Debtor's undisclosed real property and subsequent liquidation of the property resulted in the solvency of the Estate, payment in full to all creditors, and disposition of the Note—to the benefit of the Estate. Applicant's efforts have resulted in a realized gross of $270,000.00 recovered for the estate. Dckt. 160.

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 | $15,698.56 |
| Costs and Expenses | $137.74 |

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Michael McGranahan, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Michael McGranahan is allowed the following fees and expenses as a professional of the Estate:
>
> Michael McGranahan, the Chapter 7 Trustee:
>
> Fees in the amount of $15,698.56
> Expenses in the amount of $137.74,
>
> **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**.**

| | | | |
|---|---|---|---|
| **1.** | **17-90577-E-7**<br>**SSA-4** | **WILSON SARHAD**<br>**David Johnston** | **MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY**<br>**11-1-18 [52]** |

**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).**

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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 November 1, 2018. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

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

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

Fees are requested for the period November 13, 2017, through October 26, 2018. The order of the court approving employment of Applicant was entered on November 28, 2017. Dckt. 36. Applicant requests compensation totaling $7,000.00—inclusive of fees in the amount of $6,775.83 and costs in the amount of $244.17.

**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). An attorney 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.

## 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: reviewing the case file, schedules, statement of financial affairs, claims relating to the Estate; analyzing Debtor's prior filings, assets, and transfers; communicating with creditor regarding jury trial judgment against Debtor, Debtor's business operations, and asset valuations; preparing document production requests and reviewed responsive documents; and negotiating settlement between Debtor and the Estate and filed attendant motion for approval. The Trustee is presently holding $20,000.00 on behalf of the Estate. 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 5.90 hours in this category. Applicant's services included coordination and compliance activities, including preparation of statement of financial affairs, schedules, list of contracts, interim statements and operating reports for the Trustee, and general creditor inquiries.

Fee and Employment Applications: Applicant spent 5.50 hours in this category. Applicant's services included employment and fee applications for himself and other professionals employed by the Estate, and filed motions to establish interim procedures.

Asset Disposition: Applicant spent 1.70 hours in this category. Applicant's services included examination and review of supporting documents relating to production requests concerning the transfer of assets by Debtor and his spouse and their operation of corporate and non-corporate enterprises.

Asset Analysis and Recovery: Applicant spent 10.0 hours in this category. Applicant's services included conferencing regarding the state court judgment against Debtor, transfer of certain properties to

spouse by Debtor, possible fraudulent conveyance claim, and valuation of business interests by Debtor. Applicant also negotiated a settlement between Debtor and the Estate relating to these issues and prepared the attendant motion for its approval.

Litigation: Applicant spent 0.20 hours in this category. Applicant's services included reviewing the file and dischargeability of the judgment in the underlying case, and reviewing status conference statement in an adversary matter set for August 23, 2018.

Claims Administration and Objection: Applicant spent 3.0 hours in this category. Applicant's services included inquiries into specific claims and analysis of those claims, drafting of bar date motions, and work related to objections to and allowances of claims.

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

| **Names of Professionals and Experience** | **Time** | **Hourly Rate** | **Total Fees Computed Based on Time and Hourly Rate** |
|---|---|---|---|
| Steven Altman, Attorney | 26.3 | $300.00 | $7,890.00 |
| **Discount** | | | ($1,114.17) |
| **Total Fees for Period of Application** | | | $6,775.83 |

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $244.17 pursuant to this application.

The costs requested in this Application are,

| **Description of Cost** | **Per Item Cost, If Applicable** | **Cost** |
|---|---|---|
| Copying, Postage, etc. | $0.10 | $244.17 |
| **Total Costs Requested in Application** | | $244.17 |

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

Applicant seeks to be paid $6,775.83 for its fees incurred for Client. First and Final Fees in the amount of $6,775.83 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 $244.17 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

| | |
|---|---|
| Fees | $6,775.83, |
| Costs | $244.17, |

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Steven Altman ("Applicant"), Attorney for Irma Edmonds, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Steven Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Steven Altman, Professional employed by the Chapter 7 Trustee
>
> | | |
> |---|---|
> | Fees | $6,775.83, |
> | Costs | $244.17, |
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

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

**2.** **17-90494-E-7** **DALJEET MANN** **MOTION TO EMPLOY REMAX**
**SSA-3** **Pro Se** **EXECUTIVE AS BROKER**
**10-29-18 [77]**

**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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor *Pro Se,* parties requesting special notice, creditors, Chapter 7 Trustee, and Office of the United States Trustee on October 29, 2018. By the court's calculation, 31 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. .

**The Motion to Employ is granted.**

Irma Edmonds ("the Chapter 7 Trustee") seeks to employ Bob Brazeal a Remax Executive of Modesto California (" Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. The Chapter 7 Trustee seeks the employment of Broker to assist the Chapter 7 Trustee with respect to valuing, marketing, and selling Daljeet Singh Mann's ("Debtor") real property commonly known as 2520 Piazza Ct., Modesto, California (the "Property").

In consideration for Broker's services, Broker shall receive a commissioned basis of 6 percent.

Bob Brazeal, a residential real estate broker employed at Remax, testifies that he is an experienced real estate broker with personal knowledge of the facts in this case. The Brazeal Declaration states further Brazeal and his company 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.

The CV of Mr. Brazeal demonstrates he has approximately 38 years in the real estate industry. Exhibit 1, Dckt. 80.

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.

However, the Motion does not state any terms for the employment. No contract with this professional is provided. The grounds stated with particularity in the Motion are:

A. The bankruptcy estate has an interest in real property identified as 2520 Piazza Ct, Modesto, California.

B. The Trustee desires to engage the broker "if appropriate in the context of the Trustee's administration in the bankruptcy case, to assist the Trustee in the marketing and sale of the Property."

C. Debtor transferred a 33% interest in his corporation to his ex-wife and his daughter. A portion of the value obtained by the ex-wife and daughter was used to purchase the Property.

D. Trustee want authorization to engage broker, on non-specific terms, to possibly assist the Trustee.

E. If the broker assists in the marketing and sale of the property, there shall be a commission of some amount paid to broker.

This professional has been engaged by, and provided services to, a number of trustees in this District. He has successfully assisted trustees in marketing and selling real property. There is no issue as to his demonstrated ability to provide good value services in the administration of the bankruptcy estate.

However, in this case, the Trustee, counsel for the Trustee, and the broker have "cut the corner" and do not provide the court with a clear contract, employment terms which can be identified, and a compensation methodology to be approved (subject to the look-back provisions of 11 U.S.C. § 328).

The court grants the motion and authorizes the employment of this professional, with all compensation issues to be subsequently determined as provided in 11 U.S.C. § 330.

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 Irma Edmonds ("the Chapter7 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 the Chapter 7 Trustee is authorized to employ Bob Brazeal as Broker for the Chapter 7 Trustee to assist in the marketing and sale of the real property commonly known as 2520 Piazza Ct., Modesto, California, if the Trustee so engages the services of this professional.
>
> **IT IS FURTHER ORDERED** that no compensation is permitted, and no compensation percentages or amounts are set pursuant to 11 U.S.C. § 328, and compensation and reimbursement of expenses shall be subsequently determined pursuant to 11 U.S.C. § 330.

**3.** **17-90346-E-7** **ENRIQUEZ/LISA SANCHEZ** **MOTION TO AMEND O.S.T.**
**HSM-24** **Thomas Hogan** **11-13-18 [126]**

**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 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 13, 2018. By the court's calculation, 16 days' notice was provided. The court set the hearing for November 29, 2018. Dckt. 133.

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

**The Motion To Modify Approval Of Compromise is granted.**

Gary Farrar, the Chapter 7 Trustee ("Trustee"), filed this Motion To Modify Approval Of Compromise seeking to modify the court's prior Order granting Trustee's Motion For Approval Of Compromise. *See* Motion, Dckt. 100; Order, Dckt. 109.

The Original Compromise provided that the Trustee sell Enriquez Sanchez and Lisa Mona Sanchez's ("Debtor") real property commonly known as 4605 Strawflower Lane, Salida, California (the "Property"). The close of escrow for the sale of the Property was condition on Co-Debtor Maria Sanchez obtaining a reverse mortgage or alternative financing to satisfy the Bonuccelli Deed of Trust encumbering the Property in the amount of $135,000.00.

Subsequent to the court's Order granting the Trustee's Motion (Dckt. 100), the Trustee learned Maria Sanchez's proposed reverse mortgage lender will not process the loan unless the Property is titled in Maria Sanchez's name.

To address this issue, Trustee requests the court enter an order providing:

> (1) Paragraph 1 of the Agreement be modified to permit the Trustee to deed the Estate's interest in the real property commonly known as 4605 Strawflower Lane, Salida, California (APN 135-032-033) Maria Sanchez prior to close of her reverse mortgage contemplated by the Agreement, on the conditions set forth herein;
>
> (2) the court's Order on the Original Motion, entered August 20, 2018, and the compromise of controversies/sale of assets approved in connection with the Original Motion and Agreement, as modified herein, shall in all other respects remain unchanged and controlling;
>
> (3) the Trustee is authorized to sign any and all documents that may be appropriate and/or necessary to consumate the Agreement, as modified;
>
> (4) the stay of effectiveness of the Order n this Motion is waived;
>
> and (5) such other and further relief as the court deems necessary and proper.

Dckt. 126. The Trustee proposes additionally that in the event Maria Sanchez's reverse mortgage does close within 60 days of transferring the Estate's interest in the Property to Maria Sanchez, that the Property shall be deeded back to the Estate in the same condition, subject to no monetary encumbrances other than the Bonuccelli Deed of Trust and a lien for real property taxes. Other conditional terms of the modification are discussed in the Motion. *See* Dckt 126, ¶ 10.a.-10.f.

**NONOPPOSITIONS FILED**

On November 16, 2018, Maria Sanchez filed a Non-Opposition to Trustee's Motion. Dckt. 134.

On November 19, 2018, Debtor filed a Non-Opposition to Trustee's Motion. Dckt. 136.

On November 25, 2018, Shirley Bonuccelli, Trustee of the Bonuccelli Trustee and Rose Johnson filed a Non-Opposition to Trustee's Motion. Dckt. 138.

**DISCUSSION**

Here, the court already approved Trustee's Motion For Approval Of Compromise. Dckt. 109. In granting that Motion, the court found that upon weighing the factors outlined in *A & C Props* and *Woodson*, the compromise was in the best interest of the creditors and the Estate because it reduces the significant monetary and time cost of litigation, and serves the best interest of the creditors whom will receive payment in full.

The proposed modification provides the same result, reducing the significant monetary and time cost of litigation, and serving the best interest of the creditors whom will receive payment in full. Based on the foregoing and the non-opposition of the parties involved, 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 Modify Approval Of Compromise filed by Gary Farrar, the Chapter 7 Trustee ("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 is granted, and the court's August 20, 2018, Order (Dckt. 109) granting Trustee's Motion For The Approval Of Compromise is modified. Trustee's Counsel shall prepare an appropriate modified order expressly stating the modified terms as set forth in the ruling on this Motion.

**4.** **11-92235-E-11** **JAMES/LORI SARAS**
**DMS-4** **Michael Liviakis**

**MOTION FOR FINAL DECREE AND ORDER CLOSING CASE AND/OR MOTION TO PROVIDE THAT UNCLAIMED PROPERTY REVERT BACK TO THE DEBTOR PURSUANT TO 11 U.S.C. SECTION 347**
**10-26-18 [865]**

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

---

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors and the Office of the United States Trustee on October 26, 2018. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Final Decree and Order Closing Case 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 Final Decree and Order Closing Case is denied without prejudice.**

James Saras, the Plan Administrator ("Plan Administrator"), filed the present Motion seeking an order for a final decree closing the case and providing the remaining funds in the sum of $24,450.01 revert back to the debtors James John Saras and Lori Elsie Saras ("Debtor").

**APPLICABLE LAW**

**Final Decree and Closing of Case**

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) states additionally that the court is required to close a case after an estate is "fully administered and the court has discharged the trustee." The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk,* 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been "fully administered," factors the court considers include whether:

A. the plan confirmation order is final;

B. deposits required by the plan have been distributed;

C. property to be transferred under the plan has been transferred;

D. the debtor (or the debtor's successor under the plan) has taken control of the business or of the property dealt with by the plan;

E. plan payments have commenced; and

F. all motions, contested matters, and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. *See id.*; *In re John G. Berg Assocs., Inc*., 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

**Review of Minimum Pleading Requirements for a Motion**

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil

actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the "state with particularity" requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

*Martinez v. Trainor*, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

**DISCUSSION**

**Absence of Grounds Stated in Motion**

Movant has not provided any grounds. The insufficient statement made by Movant is:

> A. The Motion for Final Decree and to Provide that Unclaimed Property Revert Back to the Debtor Pursuant to 11 U.S.C. Section 347 ("Motion") is based upon the Notice of Hearing on Motion, the Motion, the Memorandum of Points and Authorities in Support of Motion, and the Declaration of David M. Sternberg in Support of Motion, filed on October 25, 2018.

At no point within the Motion is anything other than a request for relief reference to other pleadings provided to the court. The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that the Plan Administrator believes that the Points and Authorities is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents. The court has not waived that Local Rule for the Plan Administrator.

**Absence of Grounds Provided in Memorandum of Points and Authorities**

The Memorandum of Points and Authorities in support of the Motion provides the following additional grounds:

> 1. Since the last Status Conference, the Plan Administrator has been able to disperse additional checks to the farm workers. At this time, the total amount of undispersed checks is $13,843.38, and the total amount of total amount of checks to the farm workers that have cleared is $14,332.63. The balance on hand is $24,450.01 in the trust account of David M. Sternberg

& Associates, and the debtor is requesting that these funds revert to him. Dckt. 867, at 1:26-2:2.

2. Zenaido Arauza ("Arauza") was the most likely person to locate the farm workers. As such, Arauza was provided with all of the checks, but he was unable to disperse them all. By the time of the hearing on the Subject Motion, a Declaration from Arauza stating that he is unable to locate any more farm workers will be filed with this Court, if not filed prior to the hearing. The Plan Administrator filed his quarterly reports and will have paid all of the fees owed to the Office of the U.S. Trustee by the time of the hearing on the Subject Motion. *Id*. at 2:3-8.

3. All unclaimed funds in the sum of $24,450.01 should revert back to the debtor, pursuant to 11 U.S.C. Section 347. *Id*. at 2:11-12.

4. Pursuant to Bankruptcy Rule 3022, the Court should enter a final decree closing the case because the case is fully administered. *Id*. at 2:15-16.

5. Since the farm worker issue is the sole remaining issue and there are no matters remaining that need court intervention, the Court should close this case and order that the unclaimed funds revert to the debtor. *Id*. at 2:18-20.

Even reviewing the above provided through the Plan Administrator's Memorandum of Points and Authorities, no sufficient grounds have been provided upon which the court could grant relief. Plan Administrator provides an overview of a very narrow issue in the Confirm Plan–payment to farm workers.

The court is unaware (based on the Motion and supporting pleadings) whether the plan confirmation order is final; whether deposits required by the plan have been distributed; whether property to be transferred under the plan has been transferred; whether the Debtor (or the Debtor's successor under the plan) has taken control of the business or of the property dealt with by the plan; whether plan payments have commenced; or whether all motions, contested matters, and adversary proceedings have been finally resolved. *See* Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991).

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Final Decree and Order Closing Case filed by James Saras, the Plan Administrator ("Plan Administrator") 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 Final Decree and Order Closing Case is denied without prejudice.

**5.** **16-90157-E-7** **DARYL FITZGERALD** **CONTINUED MOTION TO DISMISS**
**18-9011** **RSL-1** **NAVIENT AND/OR MOTION FOR SUMMARY JUDGMENT**
**7-18-18 [10]**

**FITZGERALD V. NAVIENT ET AL**

**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 Plaintiff on July 18, 2018. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss Navient as a Defendant and/or Motion for Summary Judgment Dismissing Navient as a Defendant is xxxxxxxxxxxxxxxx.**

Navient Solutions, LLC ("Movant") filed a Motion to Dismiss Navient as a Defendant and/or Motion for Summary Judgment Dismissing Navient as a Defendant on July 18, 2018. Dckt. 10. Daryl Darnell Fitgerald ("Plaintiff-Debtor") filed a voluntary petition on February 29, 2016. Plaintiff-Debtor filed this Adversary Proceeding on June 25, 2018, naming "Navient" as a Defendant. Dckt. 1.

Movant asserts the following:

1. There is no actual legal entity in existence known as "Navient" Dckt. 10, ¶ 3.

2. Navient Solutions, LLC was a servicer of one Federal Family Education Loan Program ("FFELP") guaranteed student loan, on which the Plaintiff is or was liable ("FFELP Loan"). *Id.*, ¶ 4.

3. The original FFELP guarantor on the Plaintiff's FFELP Loan was Texas Guaranteed Student Loan Corporation ("TGSLC"), also known as Trellis Company ("Trellis"). *Id.*, ¶ 5.

4. Prior to the filing of Plaintiff's Complaint, all interests in all of the FFELP Loan serviced by Navient were transferred to the TGSLC in May 2016, due to default on the loan obligation. *Id.*, ¶ 6.

5. Navient has continued some servicing responsibilities with respect to the FFELP Loan, but Navient has no interest in the FFELP Loan other than servicing. *Id.*, ¶ 7.

6. As a servicer of the FFELP Loan, neither Navient Solutions, LLC, nor named Defendant "Navient", nor any of their other related companies, corporations or entities, has any authority to litigate the discharge of any of Plaintiff's FFELP loan. *Id.*, ¶ 8.

7. Fed.R.Civ.P. 21 provides that: "… On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party." *Id.*, ¶ 11.

8. Because the Plaintiff owes no debt to Navient Solutions, LLC, nor to named Defendant "Navient", nor to any of their other related companies, corporations or entities, these are not proper defendants in this adversary proceeding seeking to discharge debt. *Id.*, ¶ 13.

9. "[W]here certain defendants are clearly without authority or power to effect any of the relief sought by the plaintiffs," those defendants may be dropped. Severance of a party is appropriate unless the party is "indispensable." *Id.*, ¶ 14.

10. The Summons and Complaint were sent to a post office box only, not naming any recipient by name, title, or otherwise. Therefore, Service of the Summons and Complaint were ineffective, as not having been made in accordance with Fed.R.Bankr.P 7004(b)(3). Id., ¶¶ 17-18.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition to the Motion on July 30, 2018, and the refiled the same Opposition on August 1, 2018 attaching an additional document entitled "Proof of Service." Dckt. 21. Debtor opposes the Motion on the grounds that Movant has a history of using variations of their name, unclear information, and non-response to inquiries, which led to "Disputed" back in 2016. Dckt. 20, ¶ I. Debtor states "the clerk's office can confirm my conversation with them about Navient using various names and confusing tactics along with Texas Guarantee known as the Trellis Company. Therefore, we listed company as Navient et al..." *Id.*

Debtor also asserts that the Trellis Ombudsmen, Federal Student Aid (FSA), Debtor's 2016 Credit Report, and other documents confirm Navient (presumably as creditor and holder of the claim). Dckt. 20, ¶¶ II.-VII.

**AUGUST 23, 2018 HEARING**

At the August 23, 2018, hearing on the Motion, the court noted several deficiencies in Movant's evidence, which could otherwise establish clearly that Movant has no interest in the debt at the center of this Adversary Proceeding, has no right to be paid, and confirm to whom the debt has been assigned with properly authenticated transfer documents. The court continued the hearing on the Motion to October 18, 2018 to allow for the filing of supplemental pleadings.

**AMENDED AFFIDAVIT &**
**PROMISSORY NOTE**

On September 13, 2108, Movant filed an Amended Affidavit of Peter Shipman. Dckt. 28. The sole amendments to the Affidavit were to remove a statement that "Navient" is no a legal entity in existence, and to authenticate the newly filed Promissory Note identified as Exhibit 1 which indicates assignment of the Promissory Note from Movant to TGSLC. *See* Exhibit 1, Dckt. 29.

Exhibit 1 provides a copy of the original Promissory Note (Dckt. 29 at p.2), a Supplemental Loan Listing Sheet (*Id*. at p. 4), and two copies of an alleged assignment. *Id*. at pp. 3, 5. The pages indicating assignment state merely:

> All rights, titles, and interest of the undersigned is hereby assigned (without warranty except that the note qualifies for insurance) to: TGSLC

*Id.* The Document also indicates it is "TRUE AND EXACT" and is signed by an unidentified "Authorized Agent." *Id.*

**DEBTOR'S SUPPLEMENTAL OPPOSITION**

Plaintiff-Debtor filed a Supplemental Opposition on September 20, 2018. Dckt. 31. Plaintiff-Debtor asserts Movant admits it transferred the loan herein during a pending Chapter 7 Case, and is still involved in the case. Plaintiff-Debtor asserts there are no county records indicating any assignment of debt.

Plaintiff-Debtor argues further that there was no default on the loan during the original Chapter 7 case, that Movant and TGSLC are partners in the loan, and that a signatures on loan consolidation applications were forged by Plaintiff-Debtor's ex-wife.

**ORDER CONTINUING HEARING**

Prior to the October 18, 2018 hearing, the court issued an Order continuing the hearing on the Motion to November 29, 2018 due to a scheduling conflict. Dckt. 39.

**DISCUSSION**

Federal Rule of Civil Procedure 21 applies in bankruptcy adversary proceedings. *Fed. R. Bankr. P.* 7021. On motion or on its own, the court may at any time, on just terms, add or drop a party. *Fed. R. Civ. P.* 21.

The facts of this case seem fairly straight forward. Movant was servicing the student loan of Plaintiff-Debtor on behalf of the guarantor Texas Guaranteed Student Loan Corporation ("TGSLC"). Exhibit A, Dckt. 12. After Debtor defaulted on her loan in May 2016, all interests were transferred to TGSLG. *Id.* Movant currently has no interest in the loan and is not a proper party to this action. *Id.* Because "Navient" and Movant are not proper defendants to this action, the court exercises its ability to drop them as parties to this Adversary Proceeding. *Fed. R. Civ. P.* 21.

The Complaint, as read by the court does not name "Navient" as a defendant, but Navient Solutions, Inc. Complaint § II, p.2; Dckt. 1. The Complaint further alleges that Plaintiff-Debtor seeks a determination that any student loan obligation owed to Navient Solutions, Inc. be determined discharged by the court. *Id.*

**Failure to Make Statements Under Penalty of Perjury or Oath**

The Original Affidavit of Petra Shipman was improperly filed as an exhibit. While this exhibit Affidavit was notarized, nowhere in it does it state that the statements therein are made under penalty of perjury. Congress provides in 28 U.S.C. § 1746 that unsworn declarations under penalty of perjury must comply with the following:

> § 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)".

The court notes that on the Exhibit Affidavit the Notary merely certifies that Petra Shipman identified herself and signed the document. No certification is provided that Ms. Shipman was sworn in and that the statements are made under penalty of perjury. In a quick review of Indiana Law (where the Affidavit was notarized), as of July 1, 2018, placing the official seal on a document makes the document self-authenticating.

> 33-42-10-4. Official seal makes record self-authenticating.
>
> A notary public's official seal, when properly:
>
> (1) executed; and
>
> (2) affixed, associated, or attached to a record;
>
> shall make the record self-authenticating for the purpose of a court proceeding.

Ind. Code 33-42-10-4. In reviewing the definitions statute for the Indiana Notary Laws the court notes that "(15) "Verification on an oath or affirmation" means a declaration that a statement in a record is true." Ind. Code 33-42-0.5-1(15). Such "Verification on an oath or affirmation" is just one of many tasks a notary may do under Indiana law.

> (4) "Notarial act" means any act that a notarial officer may perform. The term includes the following acts:
>
> (A) Taking an acknowledgment.

(B) Administering an affirmation or oath.

(C) Taking a verification on an oath or affirmation.

(D) Attesting to or witnessing a signature.

(E) Attesting to or certifying a copy of a document or record.

(F) Noting a protest of a negotiable record.

*Id.*, (4). From the notary stamp on the Exhibit Affidavit, it appears that it merely attests to the signature, not to the administration of an oath or affirmation.

Movant's Amended Affidavit was not amended to address the aforementioned issues, which were raised by the court during the August 23, 2018 hearing on the Motion. Dckt. 28.

**Conclusion**

The court continued the hearing to allow Movant to provide the written documentation and confirmation that it has not interest in the debt, has no right to be paid, and confirm to whom the debt has been assigned with properly authenticated transfer documents. To date, Movant has not cured the defects identified by the court with the Affidavit.

Furthermore, Movant's Exhibit 1 does not present a clear picture to the court. Dckt. 29. Most of the exhibit is illegible. What is filed is not an Agreement, but a bare statement that rights of Movant were assigned to TGSLC.

At the hearing **xxxxxxxxxxxxxxxxxxxxxxxxx**

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 Navient as a Defendant and/or Motion for Summary Judgment Dismissing Navient as a Defendant filed by Navient Solutions, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **xxxxxxxxxxxxxxxxxxxx.**

**6.** **11-92004-E-11 DCJ-5** **GREGORY/CYNTHIA SHINKWIN** **David Johnston** **MOTION FOR ENTRY OF DISCHARGE** **10-30-18 [236]**

**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 the U.S. Attorney for the IRS, Office of the U.S. Trustee, parties requesting special notice, and creditors on October 30, 2018. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Discharge 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 Entry of Discharge is xxxxxxxxxxxxxxx.**

The Motion for Entry of Discharge has been filed by Gregory E. Shinkwin and Cynthia R. Shinkwin (" Debtor"). 11 U.S.C. § 1141(d)(5)(A) permits the court's discharge of debts provided for in a plan when all payments have been made.

Debtor's Declaration (Dckt. 239) certifies that Debtor:

A. has completed the plan payments;

B. does not have any delinquent domestic support obligations;

C. Will complete a financial management course and file the certificate with the court before the hearing on the Motion;

D. has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case;

E. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and

F. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

A review of the docket shows Debtor filed the necessary completion of financial management course certifications. On October 30, 2018. Dckts. 241, 242.

**CREDITOR'S OPPOSITION**

Secured creditor, Bank of America, NA, a national banking association ("Creditor") filed an Opposition to the Motion on November 15, 2018. Dckt. 243. Creditor asserts that Debtor and Creditor entered into a stipulation, ultimately incorporated by the Second Amended Plan, which required the following payments to Creditor:

> a. Consecutive monthly payments of $4,194.27 each to Creditor for its Deed of Trust Agreement (Proof of Claim, No. 7) until the remaining balance due under said agreement is paid in full;
>
> b. Sixty (60) monthly payments of $900 each to Creditor for its Business Loan Agreement (Proof of Claim, No. 6), commencing on August 1, 2012; and
>
> c. Ninety-six (96) consecutive monthly payments of $1,900.00 to Creditor for its Finance Agreement (Proof of Claim, No. 5), commencing on August 1, 2012.

Creditor asserts further Debtor brought the Motion under 11 U.S.C. § 1141(d)(5)(A), which allows discharge upon completion of all payments under the plan, as opposed to 11 U.S.C. § 1141(d)(5)(B), which allows discharge even if not all plan payments have been completed.

Creditor opposes the Motion on grounds that Creditor's Deed of Trust and Finance Agreement claims have not been paid in full, with outstanding balances of $409,178.21 and $41,800.00, respectively. Declaration, Dckt. 244.

**DEBTOR'S RESPONSE**

Debtor filed a Response to Creditor's Opposition on November 22, 2018. Dckt. 247. Debtor argues that both Creditor's Deed of Trust and Finance Agreement claims are paid "to date," meaning that all payments that have come due have been paid. Debtor argues further that both claims were unimpaired under 11 U.S.C. § 1124(1), and therefore Creditor retains its legal, equitable, and contractual rights notwithstanding a discharge. Debtor notes that while Creditor claims it does not have adequate protection for its secured interest, no valuation has been provided in support of that claim.

Debtor also states in the Response that Debtor is willing to stipulate that the discharge will not affect's legal, equitable, and contractual rights as to the Deed of Trust and Finance Agreement claims to resolve Creditor's grounds for opposition.

**DISCUSSION**

Under a Chapter 11 case with a debtor who is an individual, unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan. 11 U.S.C. § 1141(d)(5)(A).

> (5) In a case in which the debtor is an individual–
>
> (A) **unless after notice and a hearing the court orders otherwise for cause**, confirmation of the plan does not discharge any debt provided for in the plan **until** the court **grants a discharge on completion of all payments under the plan**;
>
> (B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if–
>
> > (I) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date;
> >
> > (ii) modification of the plan under section 1127 is not practicable; and
> >
> > (iii) subparagraph (C) permits the court to grant a discharge; and
>
> (C) the court may grant a discharge if, after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that–
>
> > (I) section 522(q)(1) may be applicable to the debtor; and
> >
> > (ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B);
>
> and if the requirements of subparagraph (A) or (B) are met.

11 U.S.C. § 1141

Here, Debtor does not allege that they have completed all payments. Rather, as to Classes 2, 4, 6, and 7 under the Confirmed Plan, Debtor states "We are current and have always been current in making

the following payments required under the Plan which have not fully matured." Declarations, Dckt. 238, 239. This does not meet the requirements of the Bankruptcy Code.

The confirmed Chapter 11 Plan in this case requires for Plan payments:

A. Class 1 Secured Claim - Franchise Tax Board

1. Cash payments equal to claim, plus 3% per annum interest

B. Class 2 Wells Fargo

1. Receive its contractual payment - no modification

C. Class 3 Toyota

1. Receive its contractual payment - no modification

D. Class 4 B of A (Senior lien on Office Suite)

1. Receive its contractual payment - no modification

E. Class 5 Secured Claim of B of A (Junior Lien on Office Suite, Senior Lien on Business Personal Property)

1. Deferred cash payments equal to the allowed amount of the claim, plus interest of 5% per annum, to be made in 60 monthly payments of $900.00 each ($47,700.00 claim amortized over 60 months with 5% per annum interest equal a $900.16 a month payment, as computed with the Microsoft Excel Simple Loan Calculator).

F. Class 6 Secured Claim of B of A (Junior Lien on Business Property)

1. Deferred cash payments equal to the amount of the claim, $169,100, amortized over 96 months with 5% per annum interest, with monthly payments of $1,900. (Using the Excel Simple Loan Calculator, the loan, if amortized over 96 months (eight years), would requirement monthly payments of $2,140.79).

G. Class 7 Student Loan Claims

1. Deferred cash payments equal to the amount of the claims, plus 3% per annum interest, over 120 months, with a monthly payment of $523.00.

H. Class 8 General Unsecured Claims

1. Deferred cash payments equal to 20% of the allowed claim, with payments of $365.00 a month for 60 months, to be distributed *pro rata* to this class of claims.

Second Amended Chapter 11 Plan, attached to Order Confirming Second Amended Plan, Dckt. 96.

Creditor's opposition focuses on a Stipulation to use cash collateral and order thereon entered October 5, 2012. The Order confirming the Chapter 11 Plan, creating the "amended contract" between the parties was entered on October 24, 2012. Dckt. 160. Creditor asserts that the Plan "memorialized" the cash collateral stipulation. In so contending, Creditor appears to contend that the Plan and confirmation is a mere appendage to a cash collateral stipulation. Such contention would be incorrect. The court cannot, and does not, "pre-confirm" plan terms outside confirmation of the Plan itself.

Turning to the Chapter 11 Plan, it provides for the Class 4 secured claim that there is no modification on the payment obligations due Creditor. Thus, Creditor continues to be paid without modification. Creditor does not state how many payments of this unmodified obligation remain to be paid. See Opposition (243) and Declaration (Dckt. 244).

Creditor then makes an admission that while the Plan provides for paying the Class 4 secured claim in full, Creditor states that it is not "adequately protected" because the value of the collateral is less than the amount the Debtor agreed to pay as a secured claim. Creditor makes no contention that the collateral is decreasing is value, but merely that it got Debtor to pay more than the value of its collateral. (See 11 U.S.C. § 506(a) definition of secured claim.)

Creditor acknowledges that the Class 5 secured claim have been paid in full as required under the Plan.

In the Opposition Creditor cites 11 U.S.C. § 1141(d)(5)(A), but offers no citations or analysis provide by secondary authorities, such as Collier on Bankruptcy, in determining whether the existence of a secured debt for which no modification is made bars entry of the discharge in an individual's Chapter 11 case.

Starting with the plain language of 11 U.S.C. § 1141(d)(5)(A), Congress begins with "unless after notice and a hearing the court orders otherwise for cause," the mere confirmation of a plan does not discharge any debt provided for in the plan until the court grants a discharge on "completion of all payments under the plan."

First, a motion is now before the court on "notice and hearing" for entry of the discharge in this Chapter 11 case. There is no dispute that all compromised debts provided for in the plan have been paid as required under the Plan. There remains the balance, which the confirmed Second Amended Plan does not provide to be paid, that is unpaid which remains to be discharged. There is no dispute that these obligations, not provided to be paid in the plan, may be discharged.

For the Class 4 claim there remains the unmodified long term, secured contractual obligation which Debtor is obligated to pay under the terms of the confirmed plan.

As set forth in 11 U.S.C. § 1141, "the provisions of a confirmed plan bind the debtor . . and any creditor. . . ." Under the terms of this Confirmed Second Amended Chapter 11 Plan the Debtor is bound to pay Creditor the full amount of the Class 4 Claim. There is no pre-petition obligation not required to be paid in the confirmed plan, which binds the debtor, of the Class 4 claim to be discharged.

However, for Class 6, Debtor has re-written the obligation to require plan payments spread over 96 months (eight years) at $1, 900 a month. As noted above, it appears this slightly under-funds a 96-month payment plan.

**Debtor's Acknowledgment of Contractual Obligation to Pay Claim, as a Personal Obligation, Post-Discharge**

In Response to the Opposition, Debtor states:

> 6. The large ($400,000+) Class 4 claim was unimpaired under the confirmed plan. Under 11 United States Code § 1124(1), confirmation of a plan left "unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest" In the unlikely event of a future default, the Bank's legal, equitable, and contractual rights will not be affected by the Debtors' discharge.
> . . .
> 8. To resolve the concerns of the Bank as set forth in the Opposition, the Debtors are willing to stipulate that the discharge will not affect the Bank's "legal, equitable, and contractual rights" as to Claims 4 and 6 (the confirmed plan already having preserved such rights as to the Class 4 claim).

While with respect to the Class 4 unimpaired claim the retention of the pre-petition contractual rights has merit, for the Class 6 Claim there are plan payments, not unimpaired pre-petition contractual rights payments, which remain to be made. By the terms of the Confirmed Plan, payments would not be completed until August 2020.

Debtor's proposal to acknowledge the contractual obligation is in effect a statement of the pre 2005 law concerning the extra-bankruptcy enforcement rights of the parties to a contract.

This is presented to the court pursuant to the "unless otherwise ordered by the court" provisions of 11 U.S.C. § 1441(d)(5)(A). Presumably Debtor argues that the entry of the discharge for the other obligations which are not to be paid under the plan, while expressly confirming that the Class 6 Plan Obligation, as well as the unimpaired Class 4 Obligation, are not discharged is consistent with the Congressional intent to not automatically give a debtor a discharge for merely confirming a Chapter 11 Plan. The Debtor has to perform the Plan, not merely promise to perform a plan.

At the hearing, **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 Motion for Entry of Discharge filed by Gregory E. Shinkwin and Cynthia R. Shinkwin (“ Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is **xxxxxxxxxx**

# FINAL RULINGS

| | | | |
|---|---|---|---|
| 7. | 17-90326-E-7<br>SSA-3 | GARY/CAROL BARZEE<br>Patrick Greenwell | MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY<br>10-25-18 [31] |

**Final Ruling:** No appearance at the November 29, 2018 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 25, 2018. By the court's calculation, 35 days' notice was provided [FN.1]. 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).

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FN.1. Applicant filed a second Proof of Service on October 30, 2018. Dckt. 37. The second Certificate indicates additional notice was provided to Debtor Carol Barzee at an address distinct from the address listed on Debtor's Form 101.

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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.**

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

Fees are requested for the period August 8, 2017, through October 24, 2018. The order of the court approving employment of Applicant was entered on August 23, 2017. Dckt. 20. Applicant requests fees in the amount of $5,040.00 and costs in the amount of $792.01.

**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). An attorney 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.

## 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 performance of general case administration duties, preparation of employment and fee applications, and the analysis, recovery, and disposition of assets for the Estate. The Trustee presently holds $23,622.00 on behalf of the Estate. Dckt. 38. 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 1.20 hours in this category. Applicant performed coordination and compliance activities, including preparation of the statement of financial affairs, schedules, a list of contracts, and interim statements and operating reports for the Trustee.

Employment and Fee Applications: Applicant spent 3.50 hours in this category. Applicant prepared employment and fee applications on behalf of Client.

Asset Disposition: Applicant spent 1.30 hours in this category. Applicant performed analysis of Debtor's assets, including review of Debtor's Schedules, statement of financial affairs and claims concerning stock.

Asset Analysis and Recovery: Applicant spent 7.5 hours in this category. Applicant performed services regarding the liquidation of Debtor's stock shares, including communicating significantly with financial institutions concerning the procedures for stock liquidation and lost stock certificates, and preparing necessary forms and documents.

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

| **Names of Professionals and Experience** | **Time** | **Hourly Rate** | **Total Fees Computed Based on Time and Hourly Rate** |
|---|---|---|---|
| Steven Altman, Attorney | 16.8 | $300.00 | $5,040.00 |
| **Total Fees for Period of Application** | | | $5,040.00 |

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $792.01 pursuant to this application.

The costs requested in this Application are,

| **Description of Cost** | **Per Item Cost, If Applicable** | **Cost** |
|---|---|---|
| Copying, Postage, etc. | $0.10 | $46.64 |
| Stock Share Administrative Fee | $745.37 | $745.37 |
| **Total Costs Requested in Application** | | $792.01 |

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $5,040.00 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 $792.01 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

| | |
|---|---|
| Fees | $4,032.00 |
| Costs and Expenses | $792.01, |

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Steven Altman ("Applicant"), Attorney for Irma Edmonds, the Chapter 7 Trustee ("Client"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Steven Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Steven Altman, Professional employed by the Chapter 7 Trustee:
>
> Fees in the amount of $4,032.00
> Expenses in the amount of $792.01,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**8.** **13-90643-E-12 ADJ-8** **GARY/CHRISTINE TAYLOR** **Anthony Johnston** **MOTION FOR ENTRY OF DISCHARGE** **10-5-18 [192]**

**Final Ruling:** No appearance at the November 29, 2018 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 the Chapter 12 Trustee, creditors, and Office of the United States Trustee on October 5, 2018. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Discharge 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 Entry of Discharge is granted.**

The Motion for Entry of Discharge has been filed by Gary and Christine Taylor ("Debtor"). With some exceptions, 11 U.S.C. § 1228 permits the discharge of debts provided for in a plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. Jan Johnson's (the "Chapter 12 Trustee") final report was filed on September 4, 2018, and no objection was filed within the specified thirty-day period. *See* FED. R. BANKR. P. 5009. The order approving final report and discharging the Chapter 12 Trustee was entered on October 9, 2018. Dckt. 196. The entry of an order approving the final report is evidence that the estate has been fully administered. *See In re Avery*, 272 B.R. 718, 729 (Bankr. E.D. Cal. 2002).

Debtor's Declaration (Dckt. 194) certifies that Debtor:

A. has completed the plan payments;

B. does not have any delinquent domestic support obligations;

C. has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case;

D. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and

E. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

There being no objection, Debtor is entitled to a discharge.

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 Entry of Discharge filed by Gary and Christine Taylor ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the court shall enter the discharge for Gary V. Taylor and Christine J. Taylor in this case.

**9.** **02-94454-E-7** **LUANN SELECKY** **AMENDED MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY**
**SSA-11** **John Kyle** **10-19-18 [162]**

**Final Ruling:** No appearance at the November 29, 2018 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 19, 2018. By the court's calculation, 41 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.**

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

Fees are requested for the period September 28, 2017, through October 12, 2018. The order of the court approving employment of Applicant was entered on October 10, 2017. Dckt. 32. Applicant requests fees in the amount of $30,720.00 and costs in the amount of $1,103.29.

**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). An attorney 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.

## 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 includes general case administration, claims administration and objections, fee and employment applications, asset analysis, disposition, and recovery, and business operation. 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 28.40 hours in this category. Applicant performed coordination and compliance activities, including preparation of statement of financial affairs, schedules, list of contracts, interim statements and operating reports for the Trustee, and general creditor inquiries.

Claims Administration and Objection: Applicant spent 26.60 hours in this category. Applicant performed inquiries into specific claims and analysis of those claims, drafted bar date motions, and performed work as to objections to and allowances of claims and exemptions.

Fee and Employment Applications: Applicant spent 13.70 hours in this category. Applicant prepared employment and fee applications for himself and other professionals employed by the Estate, and filed motions to establish interim procedures.

Asset Disposition: Applicant spent 15.50 hours in this category. Applicant performed duties relating to the sale of the Property, including transactional work relating to leases and abandonment.

Asset Analysis and Recovery: Applicant spent 19.70 hours in this category. Applicant identified and reviewed potential assets, including causes of action and non-litigation recoveries.

Business Operation: Applicant spent 0.20 hours in this category. Applicant prepared an agreement between Debtor and the Estate to condition maintenance of Debtor's occupancy of premises.

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

| **Names of Professionals and Experience** | **Time** | **Hourly Rate** | **Total Fees Computed Based on Time and Hourly Rate** |
|---|---|---|---|
| Steven Altman, Attorney | 102.1 | $300.00 | $30,630.00 |
| Dawn Darwin, Paralegal | 1.0 | $90.00 | $90.00 |
| **Total Fees for Period of Application** | | | $30,720.00 |

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $1,103.29 pursuant to this application.

The costs requested in this Application are,

| **Description of Cost** | **Per Item Cost, If Applicable** | **Cost** |
|---|---|---|
| Copying, Postage, etc. | $0.10 | $1,103.29 |
| **Total Costs Requested in Application** | | $1,103.29 |

**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 $30,720.00 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 $1,103.29 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

| | |
|---|---|
| Fees | $30,720.00 |
| Costs and Expenses | $1,103.29, |

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Steven Altman ("Applicant"), Attorney for Michael McGranahan, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Steven Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Steven Altman, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $30,720.00
> Expenses in the amount of $1,103.29,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees and costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**10.** **16-90157-E-7** **DARYL FITZGERALD** **CONTINUED MOTION TO DISCHARGE STUDENT LOAN**
**18-9011**

**10-3-18 [34]**
**FITZGERALD V. NAVIENT ET AL**

**Final Ruling:** No appearance at the November 29, 2018, hearing is required.
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Debtor *Pro Se*, Daryl Fitzgerald ("Debtor"), having filed a "Withdraw Motion To Discharge" which this court construes to be an Ex Parte 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 To Discharge Student Loan was dismissed without prejudice, and the matter is removed from the calendar.**

**11.** **18-90030-E-11** **FILBIN LAND & CATTLE CO., INC.** **CONTINUED MOTION TO USE CASH COLLATERAL**
**STJ-12** **Michael St. James** **8-23-18 [284]**

**Final Ruling**: No appearance at the November 29, 2018, hearing is required.
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**The Debtor having filed a "withdrawal" of the Motion to Use Cash Collateral, the court concludes the hearing on the Motion and removes the matter from the Calendar.**

Filbin Land & Cattle Co., Inc. ("Debtor in Possession") filed a "Withdrawal of Motion to Use Cash Collateral" on November 15, 2018. Dckt. 369. The "Withdrawal" does not state any statutory or rule authority to merely "withdraw" a matter from the court's calendar.

When no opposition to a motion has been filed, commonly, the term "withdrawal" is improperly used as 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. However, such "dismissal" as provided in the Federal Rules of

Civil Procedure has the effect the effect of rendering the proceedings a nullity and leave the parties as if the action had never been brought. "It carries down with it previous proceedings and orders in the action, and all pleadings, both of plaintiff and defendant, and all issues, with respect to plaintiff's claim." *In re Piper Aircraft Distribution Sys. Antitrust Litig.*, 551 F.2d 213, 219 (8th Cir. 1977).

If so "dismissed," then the Debtor in Possession might well be in a situation where it has no orders authorizing the prior use of Cash Collateral. Order, Dckts. 308, 351. Presumably that is not what the Debtor in Possession is attempting to do.

The court construes the "Withdrawal of Motion" to be a statement that no further relief in the form authorizing the use of cash collateral is being sought pursuant to the present Motion (DCN: STJ-11), that the hearings may be concluded, the matter removed from the calendar.

The Court shall enter an order in substantially the following form:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The continued hearing on the Motion to Use Cash Collateral filed by Filbin Land & Cattle Co., Inc., the Debtor in Possession, having been presented to the court, the Debtor in Possession having filed a notice that no further relief is being sought pursuant to this Motion, the court having entered two prior orders authorizing the use of cash collateral, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearings on the Motion to Use Cash Collateral are concluded, no further relief is requested pursuant to this Motion, and the matter is removed from the Calendar.