UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

December 19, 2019 at 10:30 a.m.

1.	**18-90600-E-7** **BSH-1**	**CORAZON HERNANDEZ** **Brian Haddix**	**MOTION TO COMPEL ABANDONMENT** **12-2-19 [59]**

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 Chapter 7 Trustee, and creditors on December 2, 2019. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

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

The Motion to Compel Abandonment is granted as for all assets other than the real property known as 2721 E Orangeburg Avenue, Modesto, California, for which that additional relief is denied.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b).

Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Corazon Maria Hernandez ("Debtor") requests the court to order Michael D. McGranahan ("the Chapter 7 Trustee") to abandon the following property:

Asset	**Value**	**Encumbrance**	**Equity**	**Exemption- Exempt Amount**
Debtor's Bare Legal Title to, as well as any and all other legal and/or equitable interest in, if any, real property commonly known as 2721 E Orangeburg Ave, Modesto, CA 95355	$2,850 (1%)	$175,406	$0	CCP §703.140(b)(5) - $2,850
2013 Acura ULX U Tech	$15,000	$15,189	$0	
Debtor's Bare Legal Title to, as well as any and all other legal and/or equitable interest in, if any, a 2014 Toyota Corolla LE	$100	$9,571	$0	CCP §703.140(b)(2) - $100
Household Goods & Furnishings	$1,440	$0	$1,440	CCP §703.140(b)(3) - $1,440
Electronics: TV, DVD Player, Tables & Smart Phones, Printers & Scanners, Security Camera System, Camera & Camcorders	$550	$0	$550	CCP §703.140(b)(3) - $550
Clothing, Leather Coats, Shoes	$240	$0	$240	CCP §703.140(b)(3) - $240
Everyday Jewelry, Watches, Necklaces, Earrings	$90	$0		CCP §703.140(b)(4) - $90
Cash on Hand	$60	$0	$60	CCP §703.140(b)(5) - $60

Bank Account – Savings – Golden 1 CU – 3518-0	$21	$0	$21	CCP §703.140(b)(5) - $21
Bank Account – Checking – Golden 1 CU – 3518-9	$44.75	$0	$44.75	CCP §703.140(b)(5) - $44.75
Bank Account – App – Bank Mobile Vibe – 4680	$3.02	$0	$3.02	CCP §703.140(b)(5) - $3.02
Bank Account – Primary Share – Valley 1st CU – 7400-00	$25	$0	$25	CCP §703.140(b)(5) - $25
Bank Account – Checking –Valley 1st CU – 7400-80	$0	$0	$0	
Bank Account – HSA – Optum Bank – 3306	$17.06	$0	$17.06	CCP §703.140(b)(5) - $17.06
Bank Account – Savings – Travis CU – 7805	$5	$0	$5	CCP §703.140(b)(5) - $5
Retirement Account – Mass Mutual	$739.27	$0	$739.27	CCP §703.140(b)(5) - $739.27
Retirement Account – StanCERA	$70,566.13	$0	$70,566.13	CCP §703.140(b)(5) - $70,566.13

The Declaration of Corazon Maria Hernandez has been filed in support of the Motion and values of the Property listed above. Dckt. 61.

TRUSTEE'S OPPOSITION

Trustee filed an Opposition to Debtor' motion on December 4, 2019. Dckt. 65. The Trustee objects to the Debtor's request to compel abandonment of the following assets: The estate's interest in that certain real property located at 2721 East Orangeburg Avenue in Modesto, California (the "Real Property"). The Trustee does not object to the balance of the requests.

Trustee contends that the Real Property is titled exclusively in the Debtor's name and is the subject of an adversary proceeding to determine the extent of the estate's interest therein, as against the purported equitable interests of the Debtor's mother, and to sell the property free and clear of such interest pursuant to Bankruptcy Code § 363(h), pending before this Court as *McGranahan v. Gariba*, Adv. Proc. No. 19-09016-E. Default was entered on November 5, 2019 (Docket No. 12), and a motion for relief from default has not been filed.

Additionally, Trustee argues that the value of the estate's interest in the Real Property likely exceeds the claimed exemption. Specifically, the Trustee believes that the value of the Real Property is at least $285,000.00 pursuant to the Debtor's schedules (Dckt.1) and is encumbered only by a mortgage in the approximate amount of $175,788.53 based on the Debtor's schedules and the reaffirmation agreement filed on November 28, 2018 (Dckt. 27).

DISCUSSION

The court finds that the real property commonly known as 2721 East Orangeburg Ave., Modesto, California ("Real Property") being the subject of an Adversary proceeding is of consequential value to the Estate. The Adversary Proceeding filed on September 30, 2019, by the Trustee seeks only for a judgment authorizing the sale of the Real Property pursuant to 11 U.S.C. § 363(h) - the sale of the Estate's interest and that of a co-owner. The Complaint alleges that the Debtor, not Defendant Socorro Gariba, asserts that Socorro Gariba holds the legal and equitable interests in the Real Property.

The default of Defendant Socorro Gariba has been entered in the Adversary Proceeding. 19-9016; Dckt. 12. A Motion for Entry of Default Judgment for the sale of the Real Property has been filed, which is set for hearing on January 9, 2020. *Id.*; Motion, Dckt. 15.

Unfortunately, the Adversary Proceeding seeks merely to have the court order the sale of co-owned property, but does not seek to have a determination of the respective interests in the Real Property. If the court concludes this Adversary Proceeding only ordering the sale, then there will be the unavoidable double expense of a second adversary proceeding for the court to determine what interests the Bankruptcy Estate has in the Real Property (unless there is an as of yet undisclosed settlement to be proposed for the determination of the respective interests of these parties and distribution of the sales proceeds).

For the Debtor, the present Motion to Compel Abandonment appears to be an effort to "slip one by the court and Trustee" and circumvent the adjudication of the respective rights and interests of the parties to the Adversary Proceeding.

Debtor's Motion does not mention the Adversary Proceeding or otherwise disclose to the court that the Real Property is subject to that ongoing action.

Additionally, Debtor asserting that Debtor really does not have an interest in the Real Property appears to preclude granting the requested relief – abandonment of the Real Property to the Debtor. Given that Debtor admits that she has no interest in the Real Property, other than bare naked legal title, it is Socorro Gariba that would be the real party in interest who would have to be before the court and not a surrogate.

This puts in question Debtor's good faith in this bankruptcy case. If Debtor "admits" that she does not have an interest in the Real Property, how can she (subject to the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011) state under penalty of perjury that she can claim an exemption in the Property? The same is true for the 2014 Toyota Corolla LE in which she asserts having only "bare legal title," yet claim an exemption as an owner of the vehicle. The provisions of California Code of Civil Procedure § 703.140(b)(5) and (b)(2) are expressly limited to "the debtor's aggregate interest" in the property being claimed as exempt - with Debtor admitting she has no interest.

The Trustee has, it appears, satisfied himself that for the 2014 Toyota Corolla LE it is not worth the Bankruptcy Estate's time and expense in determining what are the actual interests of the Bankruptcy Estate.

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

CHAMBERS PREPARED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Corazon Maria Hernandez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as:

Asset	**Value**	**Encumbrance**	**Equity**	**Exemption- Exempt Amount**
2013 Acura ULX U Tech	$15,000	$15,189	$0	
Debtor's Bare Legal Title to, as well as any and all other legal and/or equitable interest in, if any, a 2014 Toyota Corolla LE	$100	$9,571	$0	CCP §703.140(b)(2) - $100
Household Goods & Furnishings	$1,440	$0	$1,440	CCP §703.140(b)(3) - $1,440
Electronics: TV, DVD Player, Tables & Smart Phones, Printers & Scanners, Security Camera System, Camera & Camcorders	$550	$0	$550	CCP §703.140(b)(3) - $550

Clothing, Leather Coats, Shoes	$240	$0	$240	CCP §703.140(b)(3) - $240
Everyday Jewelry, Watches, Necklaces, Earrings	$90	$0		CCP §703.140(b)(4) - $90
Cash on Hand	$60	$0	$60	CCP §703.140(b)(5) - $60
Bank Account – Savings – Golden 1 CU – 3518-0	$21	$0	$21	CCP §703.140(b)(5) - $21
Bank Account – Checking – Golden 1 CU – 3518-9	$44.75	$0	$44.75	CCP §703.140(b)(5) - $44.75
Bank Account – App – Bank Mobile Vibe – 4680	$3.02	$0	$3.02	CCP §703.140(b)(5) - $3.02
Bank Account – Primary Share – Valley 1st CU – 7400-00	$25	$0	$25	CCP §703.140(b)(5) - $25
Bank Account – Checking –Valley 1st CU – 7400-80	$0	$0	$0	
Bank Account – HSA – Optum Bank – 3306	$17.06	$0	$17.06	CCP §703.140(b)(5) - $17.06
Bank Account – Savings – Travis CU – 7805	$5	$0	$5	CCP §703.140(b)(5) - $5
Retirement Account – Mass Mutual	$739.27	$0	$739.27	CCP §703.140(b)(5) - $739.27
Retirement Account – StanCERA	$70,566.13	$0	$70,566.13	CCP §703.140(b)(5) - $70,566.13

and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Michael D. McGranahan ("Trustee") to Corazon Maria Hernandez by this order, with no further act of the Trustee required.

IT IS FURTHER ORDERED that the real property commonly known as 2721 East Orangeburg Avenue, Modesto, California is not abandoned and the Motion is denied as to that real property.

IT IS FURTHER ORDERED that Debtor shall deliver possession of any personal property which is abandoned to the person whom she asserts is the actual owner of the personal property abandoned.

2.	**18-90811-E-7** **MF-4**	**SHORGHEH/JAKLIN LATIFI** **David Johnston**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF MACDONALD FERNANDEZ LLP FOR RENO F.R. FERNANDEZ III, TRUSTEES ATTORNEY(S)** **11-26-19 [54]**

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's, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 26, 2019. By the court's calculation, 23 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.

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

Fees are requested for the period December 21, 2018, through November 22, 2019. The order of the court approving employment of Applicant was entered on December 21, 2019. Dckt. 23. Applicant requests fees in the amount of $1,837.50 and costs in the amount of $13.50.

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 the main activity which was to evaluate, challenge and ultimately resolve certain exemptions claimed by the Debtor. In particular, the Firm assisted with preparing and prosecuting an objection to the Debtor's claim of exemption for a truck as a tool of trade. 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.

Exemptions: Applicant spent 3.4 hours in this category. Applicant assisted Trustee in preparing and prosecuting an objection to the Debtor's claim of exemption for a truck as a tool of trade which resulted in causing Debtor to produce certain title information and to negotiate to resolve the exemption issues, ultimately resulting in sale of the truck by the estate to the Debtor.

Sale of Assets: Applicant spent 0.8 hours in this category. Applicant assisted the Trustee with the motion to authorize sale of the truck and another automobile.

Employment & Fee Application: Applicant spent 0.7 hours in this category. Applicant assisted Trustee with the employment of professionals and the current fee application.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Reno F.R. Fernandez III	4.90	$375.00	$1,837.50
	0	$0.00	$0.00
Total Fees for Period of Application			$1,837.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $13.50 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
PACER		$1.10
Photocopies		$9.80
Postage		$2.60
		$0.00
Total Costs Requested in Application		$13.50

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly 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 $1,837.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case .

Costs & Expenses

First and Final Costs in the amount of $13.50 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$1,837.50
Costs and Expenses	$13.50

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 Macdonald Fernandez LLP ("Applicant"), Attorney for Michael D. McGranahan, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Macdonald Fernandez LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Macdonald Fernandez LLP, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $1,837.50
> Expenses in the amount of $13.50,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

3.	**19-90122-E-11 MF-31**	**MIKE TAMANA FREIGHT LINES, LLC Matt Olson**	**MOTION FOR COMPENSATION FOR ACRIUS CAPITAL, LLC, BROKER(S) 11-27-19 [409]**

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 in Possession, Debtor in Possession's Attorney, creditors holding the twenty (20) largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 27, 2019. By the court's calculation, 22 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 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.

Acrius Capital, LLC, the Financing Broker ("Applicant") for Mike Tamana Freight Lines, LLC, the Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 1, 2019, through October 31, 2019. The order of the court approving employment of Applicant was entered on April 1, 2019. Dckt. 152. Applicant requests a flat fee in the amount of $5,000.00.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

A review of the application shows that Applicant's services for the Estate include assisting Debtor in Possession in efforts to obtain a factoring facility for the Debtor in Possession. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Pursuant to the Employment Application approved by the court on April 1, 2019, Applicant's fee was described as the following: a flat fee of $72,000.00 upon closing of a facility from a lender introduced by Acrius Capital, plus 2% the total maximum amount of any increase in the facility, or a flat fee of $5,000.00 if a facility does not close.

Thus, Applicant requests a flat fee of $5,000.00 for assisting Debtor in Possession in efforts to obtain a factoring facility for the Debtor in Possession. Specifically, Applicant negotiated on Debtor in Possessions behalf with various lenders and connected the Debtor in Possession with the most promising leads and assisted Debtor in Possession with negotiation of factoring facilities with those lenders. Declaration, Dckt. 411. While the Court ultimately approved the Debtor in Possession entering into an agreement concerning a factoring facility for debtor-in-possession financing, Applicant did not broker that transaction. *Id.* Therefore, the flat fee of $5,000 is payable, as authorized by the Court's order of April 1, 2019. *Id.*

FEES AND COSTS & EXPENSES ALLOWED

Fees

Flat Fee

Applicant seeks to be paid a single sum of $5,000.00 for its fees incurred for Client. First and Final Fees and Costs in the amount of $5,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available estate monies in a manner consistent with the order of distribution in a Chapter 11 case.

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

Fees $5,000.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Acrius Capital, LLC ("Applicant"), Financing Broker for Mike Tamana Freight Lines, LLC, the Debtor in Possession, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Acrius Capital, LLC is allowed the following fees and expenses as a professional of the Estate:
>
> Acrius Capital, LLC, Professional employed by the Debtor in Possession
>
> Fees in the amount of $5,000.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor in Possession.

4.	**18-90428-E-11** **UST-1**	**RANDHAWA TRUCKING, LLC** **Brian Haddix**	**MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7, MOTION TO DISMISS CASE** **10-30-19 [129]**

Tentative Ruling: The Motion to Convert or Dismiss this Chapter 11 Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, and parties requesting special notice on October 30, 2019. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

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

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.

The Motion to Convert or Dismiss the Chapter 11 Bankruptcy Case ~~to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.~~

This Motion to Convert or Dismiss the Chapter 11 bankruptcy case of Randhawa Trucking, LLC ("Debtor in Possession") has been filed by Tracy Hope Davis ("Movant"), the U.S. Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

A. Debtor has failed to timely file numerous monthly operating reports. *See* 11 U.S.C. § 1112(b)(4)(F).

B. Debtor has failed to file a plan by the 300-day deadline applicable to small business debtors. *See* 11 U.S.C. § 1112(b)(4)(J).

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

DISCUSSION

Trustee argues there is a cause to act because Debtor has failed to timely file numerous monthly operating reports. Notably, the report for January 2019 was approximately 106 days late; the report for February 2019 was approximately 46 days late; the report for June 2019 was approximately 106 days late; the report for July 2019 was approximately 75 days late; and the report for August 2019 was approximately 44 days late.

Additionally, Debtor failed to file a plan by the 300-day deadline imposed by Section 1121(e)(2). On the Petition, the Debtor designated itself as a "small business debtor." The plan in a small business case "shall be filed not later than 300 days after the date of the order for relief." *See* 11 U.S.C. § 1121(e)(2). The 300-day deadline to file a plan in this case has now passed. The Debtor has not filed a plan or a disclosure statement. The 300-day deadline was on or about April 3, 2019. Declaration, Dckt. 131.

Trustee also contends that Debtor is unable to establish unusual circumstances that would grant justification against converting the case. Trustee argues that the record does not disclose any unusual circumstances that would establish justification against granting the relief requested in the Motion. For instance, the Debtor has not filed a plan and is now precluded from doing so.

Further, Trustee asserts that converting to a Chapter 7 on the basis that although there may not be significant equity in the Real Property, the Debtor, may own inventory, supplies, and equipment worth more than $100,000. Moreover, on the September MOR, the Debtor reported that it has $137,572 of funds on hand.

Cause exists to convert this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is converted to a case under Chapter 7.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert the Chapter 11 case filed by Tracy Hope Davis ("the U.S. 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 Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

5. **18-90428-E-11** **RANDHAWA TRUCKING, LLC** **CONTINUED MOTION FOR RELIEF**
GMW-1 **Brian Haddix** **FROM AUTOMATIC STAY**
10-10-19 [108]

RAJINDER K. SHARMA, ET AL.
VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in possession, Debtor in possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on October 10, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is xxxx.

Continuance of November 7, 2019 Hearing
Possible Creditor Plan

At the hearing the Debtor in Possession, counsel for Movant, and counsel for PG14, LLC addressed the court concerning a Chapter 11 plan being developed by PG14, LLC and ongoing discussions concerning the consensual presentation of such plan to the court. The Parties requested, in light of their efforts and the anticipated filing of such plan shortly, that this hearing be continued for a scheduling conference, if such is necessary.

REVIEW OF MOTION

Rajinder K. Sharma, Paramjit Rai, Shakuntala Rai and Dalbir Singh ("Movants") seek relief from the automatic stay with respect to Randhawa Trucking, LLC's ("Debtor in Possession") real property commonly known as 1200 6th Street, Modesto, California ("Store Property"). Movants have provided the

Declaration of Rajinder K. Sharma to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movants argue that neither the Debtor nor the Bankruptcy Estate have any equity in the Property.

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in possession filed an Opposition on October 24, 2019. Dckt. 119. Rajinder K. Sharma, Declarant for the Debtor in Possession, alleges that the deed of trust he possesses has a due date of October 2024 and that he was unaware of the existence of Movant's deed of trust with a Note due date of October 2017. Further, Declarant asserts that Debtor in Possession has been in negotiations with Movants to reach a settlement with respect to Movants' claim and asserted violation of the automatic stay.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $823,000.00 (Declaration, Dckt. 114), while the value of the Property is determined to be $1.3 million, as stated in Schedules B and D filed by Debtor.

Trustee's Motion to Convert Case

On October 30, 3019, Trustee filed a Motion to Convert Case from, Chapter 11 to Chapter 7. Dckt. 129. Trustee's pending motion set to be heard on December 19, 2019, requests the case be converted on two grounds: (1) Debtor's failure to timely file monthly operating reports, and (2) Debtor in Possession's failure to file a plan under Rule 1121(e)(2) which dictates that small business debtors must file a plan 300 days after filing the Petition.

The Debtor designated itself as a "small business debtor" as defined in 11 U.S.C. § 105(51D). Petition, Question 8; Dckt. 1 at 2. With the Debtor in Possession failing to file a Plan in the time period specified in 11 U.S.C. § 1121(e)(2), that opportunity has closed. While a creditor could step forward with a plan, none have.

It appears that this case will be converted from Chapter 11 to Chapter 7. With that, the Chapter 7 Trustee can engage in a discussion with the holder of the junior deed of trust for which there is approximately $400,000 of value in the collateral to see if there is a collaborate effort by which the Estate and the junior lien creditor are financially better off than allowing the significantly oversecured Movants foreclosing. However, until the case is converted and trustee appointed, that chair at the table for the bankruptcy estate is empty.

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

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

WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Here, Movants argue several allegations for cause. Debtor has not been diligent in carrying out its duties in its bankruptcy case. Further, Movants contend that the case was filed in bad faith for the purpose of delaying foreclosure. Movants argue that the bad faith can be inferred by the fact that the case is now 16 months old and Debtor has not proposed any type of organization.

Movants also assert that Debtor has failed to filed the required monthly operating reports including June 2019 until present. A look at the docket reflects that Debtors submitted five monthly operating reports for May through September 2019 on October 28, 2019. Dckts. 124-128. As it is also a point made by the U.S. Trustee, Debtor has demonstrated that they cannot submit the required timely operating reports.

Additionally, Movants have been receiving a $5,000.00 a month interest payment from the Estate. In addition to being of benefit to Movants, it has reduced the erosion of value that exists for the junior lien claim and possibly the Bankruptcy Estate.

11 U.S.C. § 362(d)(1): Equity Cushion

The existence of defaults in post-petition or pre-petition payments by itself does not guarantee Movants obtaining relief from the automatic stay. A senior lienor is entitled to full satisfaction of its claim before any subordinate lienor may receive payment on its claim. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][d][i] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Therefore, a senior lienor may have an adequate equity cushion in the property for its claim, even though the total amount of liens may exceed a property's equity. *Id.* In this case, the equity cushion in the Property for Movants' claim provides adequate protection for such claim at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movants have not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1). Indeed, Creditor appears to have substantial equity cushion as being first in timer for the Store Property. Movants are owed $823,000. There is $40,240.50 owed in delinquent property taxes. The Store Property is valued at $1.3 million. Thus, Movant has an estimated $400,000.00 equity cushion.

Further, Debtor has been paying monthly interest payments to Movants. According to the monthly operating reports, Debtor has been making monthly interest payments of $5,000.00 to Falcon Investments. A search of Falcon Investments in the California Secretary of State website shows that the LLC has Movant Rajinder K. Sharma as its agent of service of process.

11 U.S.C. § 362(d)(2): Debtor and Equity

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988).

It may be that the Estate has no equity in the Store Property, or that the ability of the Trustee to effectively and efficiently sell the Property has recoverable value in the Store Property as it relates to the interests of the junior lien creditor who would otherwise have to deal with satisfying the $800,000+ senior lien to protect the remaining value in the Property.

At this juncture, the court cannot determine that there is no value in the property for the Bankruptcy Estate. The interests of Movants are more than adequately protected by the substantial equity cushion and the monthly payments of $5,000 Movants have been receiving.

At the hearing, xxxxxxxxxxx

6. **18-90428-E-11 BSH-3** | **RANDHAWA TRUCKING, LLC** **Brian Haddix** | **CONTINUED PRE-EVIDENTIARY HEARING CONFERENCE RE: MOTION FOR ORDER TO SHOW CAUSE WHY THE SHARMA FAMILY TRUST, PARAMJIT RAI, SHAKUNTALA RAI, AND DALBIR SINGH SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF THE AUTOMATIC STAY**
4-29-19 [77]

Debtor's Atty: Brian Haddix

Notes:
Continued from 11/21/19 by oral motion of the Parties and pursuant to order of the court [Dckt 142]

The Pre-Evidentiary Hearing Conference is xxxxxxxxxxxxxxx

REVIEW OF MOTION

The Chapter 11 debtor in possession, Randhawa Trucking, LLC ("ΔIP") filed this Motion for Sanctions [FN.1.] seeking (1) a determination that the Sharma Family Trust, Paramjit Rai, Shakuntala Rai, and Dalbir Singh ("Respondent") wilfully violated the automatic stay, and (2) an order awarding sanctions.

FN.1. The Motion was actually entitled "MOTION FOR ORDER TO SHOW CAUSE WHY THE SHARMA FAMILY TRUST, PARAMJIT RAI, SHAKUNTALA RAI, AND DALBIR SINGH SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF AUTOMATIC STAY." Dckt. 77.

However, the Motion does not actually request the court issue an order to show cause–what is requested if for the court to find there was a stay violation and to issue sanctions. The court has recast the Motion to reflect the relief requested.

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

1. Debtor filed this case on June 6, 2018.

2. Respondent received notices from this bankruptcy case via the BNC beginning June 13, 2018.

3. Respondent appeared at November 29, 2018 status conference.

4. On December 10, 2018 Respondent filed and served a Notice of Default.

5. On April 17, 2019 Respondent filed and served a Notice of Trustee's Sale.

6. No motions for relief have been filed in this case.

7. It is indisputable Respondent had actual notice of the bankruptcy. Therefore the violation was wilful.

8. The violation of stay was not inconsequential.

Motion, Dckt. 77.

The Declaration of Avinash Singh filed in support of the Motion presents testimony that Mr. Singh spoke "with Mr. Sharma several times regarding the bankruptcy and the debt both in telephone and a face-to-face meeting on November 29, 2018 at the US Bankruptcy Court's meeting room outside the court room." Declaration, Dckt. 79.

OPPOSITION

Respondent filed several documents relating to the Motion on May 23, 2019. Dckts. 84-86.

The Declaration of Rajinder Sharma presents the following testimony:

1. On or about August 24, 2015, Rajinder Sharma, Paramjit Rai, Shakuntala Rai, and Dalbir Singh collectively made a $600,000.00 loan to Avinash Singh ("Singh").

2. The loan was made to Singh as an individual, secured by two properties owned by Singh as of the date the loan was made and Deed of Trust was recorded: 1200 6th Street, Modesto, Stanislaus County, California ("Modesto Property") and 253 Tissot Drive, Patterson, Stanislaus County, California.

3. Rajinder Sharma recently discovered that the day after the loan was made, Singh transferred the Modesto Property to ΔIP. The lenders did not know about this transfer.

4. Respondent did receive a notice of ΔIP's filing, but did not know the Modesto Property had been deeded by Singh to ΔIP. Further, Respondent are not attorneys and did not understand the import or significance of ΔIP filing a bankruptcy.

5. Respondent hired Equity Foreclosure Company ("EFC") in 2018 to pursue foreclosure on the Modesto Property. A record search by EFC indicated the Modesto Property was owned by "Randhawan Trucking, LLC" and not "Randhawa Trucking, LLC."

6. After learning ΔIP held title to the Modesto Property through notice of this Motion, Respondent instructed ECF to postpone further proceedings.

7. Respondent was not advised by ΔIP or counsel for ΔIP regarding possible stay violations.

Declaration, Dckt. 84.

The Declaration of Stephanie Roberts, and EFC employee, presents testimony that the title owner of the Modesto Property is "Randhawan Trucking, LLC" and not "Randhawa Trucking, LLC," and therefore that there was nothing to give Respondent notice that the Modesto Property was included in the bankruptcy of ΔIP.

REVIEW OF GRANT DEED

ΔIP filed as Exhibit "A" the Corporation Grant Deed alleged to transfer title of the Modesto Property to ΔIP. Dckt. 80.

The Grant Deed states Avinash Singh grants to "Randhawa**n** Trucking, LLC" the Modesto Property. *Id (*emphasis added). The Grant Deed was recorded on September 15, 2015 in Stanislaus County.

JUNE 6, 2019 HEARING

At the June 6, 2019 hearing the court continued the hearing in part to allow further pleadings to be filed (and in part to allow the presiding judge to hear the Contested Matter). Civil Minutes, Dckt. 96. In continuing the Matter for further pleadings, the court provided the following discussion:

> On April 29, 2019 the Debtor in Possession filed and serve this Motion. On May 23, 2019, the attorneys for Rajinder Sharma, one of the persons named in the Motion for Sanctions, filed the Declaration of Rajinder Sharma, the Declaration of Stephanie Roberts, and thirty pages of Exhibits as evidence in connection with the Motion. Dckts. 84, 85, 86. The Declaration of Rajinder Sharma has the title,
>
> DECLARATION OF RAJINDER SHARMA IN OPPOSITION TO DEBTOR'S MOTION FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT FOR VIOLATION OF AUTOMATIC STAY
>
> Dckt. 84. Then, the Declaration of Stephanie Roberts is titled:
>
> DECLARATION OF STEPHANIE ROBERTS IN OPPOSITION TO DEBTOR'S MOTION FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT FOR VIOLATION OF AUTOMATIC STAY
>
> Dckt. 85.
>
> The Exhibits document has the title:
>
> EXHIBITS IN OPPOSITION TO DEBTOR'S MOTION FOR ORDER TO SHOW CAUSE REGARDING CONTEMPT FOR

Dckt. 86.

However, no "Opposition" to the Motion has been filed, only evidence that someone wants to present - if there was an opposition filed.

It may well be that an opposition could be distilled from the testimony given by Stephanie Roberts and Rajinder Sharma, but none has been stated by any of the named persons against whom relief is requested. If it were to be distilled by the court, then it would effectively be the court that would be creating the opposition - which would be highly improper for the court to advocate for one party against another.

Further, relief is sought against the Sharma Family Trust, Paramjit Rai, Shakuntala Rai, and Dalbir Singh. Paramjit Rai, Shakuntala Rai, and Dalbir Singh are nowhere to be seen in this contested matter - not only failing to file any opposition but for the documents filed the counsel filing those documents is only the attorney for Rajinder Sharma personally. The attorney filing the pleading clearly identifies that he is representing only Rajinder Sharma personally, and does not indicate any representation of Mr. Sharma in any representative or fiduciary capacities, such as a trustee of a trust.

It appears that the Sharma Family Trust, Paramjit Rai, Shakuntala Rai, and Dalbir Singh have elected to default in response to the Motion, acknowledging or admitting their violations of the automatic stay.

Counsel of record for Rajinder Sharma, who is not named in the Motion, is a very experienced, well respected attorney in the bankruptcy community. That there would just be some declarations thrown at the court, no opposition filed, and the named parties defaulting is very surprising. It appears that such may reflect a larger problem for the court and parties in this case.

Reading the Rajinder Sharma (who is not named in the present Motion) declaration, it appears that there is an under current of ill will or bad blood with the Debtor and Debtor in Possession. Mr. Sharma goes beyond merely providing personal knowledge, factual testimony of a lay person witness (Fed. R. Evid. 601, 602), but proceeds to provide his legal analysis and conclusion concerning due on sale or transfer clauses.

Beyond his legal opinion, Mr. Sharma then provides the court with his "personal knowledge testimony" (with personal knowledge required, Fed. R. Evid. 602) that based only on "information and belief" does he so testify as to certain "facts."

With respect to the testimony provided by Stephanie Roberts, she does so as an employee of the foreclosure company. Presumably, she presents herself as

having specialized knowledge of the foreclosure process in California. Her declaration provides detailed testimony of checking public records for bankruptcies filed and there being a trustee's sale guarantee issued which identified the Debtor as the owner of the property. Ms. Roberts testifies as there being actual notice that the Debtor owned the property as of November 2018.

> 7. As noted in the [trustee sale guarantee], the record owner of the subject property as of November 2018 was "Randhawan Trucking, LLC." As part of EFC's due diligence, we check the public records to see if there is any pending bankruptcy cases and in this instance, there was not a record of any pending or prior bankruptcy filed by Randhawan Trucking, LLC.

Dec. ¶ 7, Dckt. 85.

Ms. Robert's testimony is accurate with respect to the trustee sale guaranty stating the property is owned by "Randhawan Trucking, LLC." Rajinder Sharma Exhibit D, Dckt. 86 at 13. But the Debtor in this case, and the owner of the property is named -

Randhawa Trucking, LLC

there being no "n" on the end of "Randhawa." Petition, p. 1; Dckt. 1.

A copy of the Corporation Grant Deed provided by the Debtor in Possession to document the 2015 transfer from Avinash Singh to the Debtor which has been filed as Exhibit A (Dckt. 80 at 2) lists the name of the transferee entity receiving the property as

Randhawa**n** Trucking, LLC

Exhibit A, Dckt. 80 at 2 (triple emphasis added). This is noted in the Declaration of a non-party to the Motion that was filed with the court.

It may be that the asserted violation of the automatic stay is the result of something as simple as a finger brushing the wrong additional key when the deed transferring title to the Debtor was prepared.

The court notes that missing from the Debtor in Possession's exhibits is the nice, polite, professional letter from Debtor in Possessions counsel to the believed wrongdoer of the asserted violation, of all the bad things that could happen, and asking them, politely, to correct the violation (void act). After sending such a letter, there would be no doubt that there was actual knowledge of the bankruptcy, the stay, and no honest, good faith belief that there could be an automatic stay.

Id.

RESPONDENT'S SUPPLEMENTAL OPPOSITION

Respondent and Rajinder Sharma filed an Opposition on June 20, 2019. Dckt. 100. In the Opposition Respondent and Rajinder Sharma argue they were aware of this bankruptcy case, but not that the Modesto Property had been deeded to ΔIP. *Id.* at p. 19-25.

The Opposition further states that while EFC was hired to process the foreclosure, their research did not turn up an applicable bankruptcy case because the Modesto Property was owned by Randhawan Trucking, LLC, and not ΔIP.

The Opposition asserts that all foreclosure efforts were halted once they received notice of this Motion, and that this Motion could have been avoided through an informal demand.

DISCUSSION

Respondent argues that once they learned the Modesto Property was within the bankruptcy case that they ceased all foreclosure proceedings. However, it is not clear what steps Respondent has taken to undo the recorded notice of default.

At the hearing, counsel for Rajinder Sharma, The Sharma Family Trust, Paramjit Rai, Shakuntala Rai, and Dalbir Singh, though having filed a prior declaration by Rajinder Sharma and a opposition to the Motion for his clients (subject to the Fed. R. Bankr. R. 9011 certificates), he did not "know" what his clients "knew" about the Debtor owning the 1200 6th Street Property as that relates to the alleged violation of the stay.

It appears that the parties in this Bankruptcy Case may be suffering from "prosecution paralysis," unable to prosecute any plan in this case.

For the Parties to this Contested Matter, it appears that they do not have a good handle on the facts and the asserted violation of the stay. It appears that extensive discovery may be required.

The court issued a Pre-Evidentiary Scheduling Order setting the following dates and deadlines:

a. Jurisdiction exists for this Contested Matter pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding arising under 11 U.S.C. § 362 and 105(a) and pursuant to 28 U.S.C. § 157(b)(2)(A) and (O).

b. Discovery closes, including the hearing of all discovery motions, on October 18, 2014.

c. The Pre-Evidentiary Hearing Conference in this Contested Matter shall be conducted at 2:00 p.m. on November 21, 2019.

7. **18-90029-E-11 MF-45** **JEFFERY ARAMBEL** **Matt Olson** **MOTION FOR COMPENSATION FOR BACHECKI, CROM & CO., LLP, ACCOUNTANT(S) 11-26-19 [1052]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties requesting special notice, and Office of the United States Trustee on November 26, 2019. By the court's calculation, 23 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 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.

Jay D. Crom at Bachecki, Crom & Co., LLP, the Accountant ("Applicant") for Jeffery Edward Arambel, the Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 11, 2018, through September 30, 2019. The order of the court approving employment of Applicant was entered on September 16, 2018. Dckt. 608. Applicant requests fees in the amount of $57,716.00 and costs in the amount of $398.85.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

A review of the application shows that Applicant's services for the Estate include conferring and corresponding with the estate's counsel, Macdonald Fernandez LLP, and counsel for the related matter, *In re Filbin Land & Cattle Co., Inc.* (Bankr. E.D. Cal., Case No. 18-90030) (herein "the Filbin case") to assess the estimated income tax consequences of prior and potential future transactions. 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.

Tax Analysis: Applicant spent 150.30 hours in this category. Applicant assisted counsel and Debtor in Possession in assessing the estimated income tax consequences of prior and potential future transactions; reviewed income tax returns for 2013 through 2016; reviewed the claims filed in the case t assess the potential tax deduction arising from future claim payments for the Estate as a cash basis taxpayer; prepared a tax analysis and computation of the Estate's tax basis in the Stadtler and Filbin land purchases; reviewed the draft Plan and management agreement to assess tax aspects of the proposed reorganization plan; attended conference calls to assess potential tax consequences of real property sales; prepared and updated a tax and cash flow analysis for the Estate's real property; attended various conference calls related to income tax issues, additional documentation needed; computed tax basis of assets sold and prepared comp0utations of gain; and prepared the Estate's Federal and California income tax returns for the fiscal period ended November 30, 2018 and prepared a projection of estimated income taxes for year end November 30, 2019.

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
Jay D. Crom	56.00	$525.00	$29,400.00
Virginia Huan-Lau	5.80	$370.00	$2,146.00
Virginia Huan-Lau	4.00	$360.00	$1,440.00
Jason Tang	48.10	$300.00	$14,430.00
Jason Tang	35.80	$280.00.	$10,024.00
Kimberly Lam	0.60	$460.00	$276.00
	0	$0.00	$0.00
Total Fees for Period of Application			$57,716.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $398.85 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
PACER		$379.80
Photocopies	$0.10 per copy	$11.20
Postage		$7.85
		$0.00
Total Costs Requested in Application		$398.85

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly 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 $57,716.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

First and Final Costs in the amount of $398.85 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	$57,716.00
Costs and Expenses	$398.85

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 Jay D. Crom at Bachecki, Crom & Co., LLP ("Applicant"), Accountant for Jeffery Edward Arambel, the Debtor in Possession, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Jay D. Crom at Bachecki, Crom & Co., LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Jay D. Crom, at Bachecki, Crom & Co., LLP, Professional employed by the Debtor in Possession
>
> Fees in the amount of $57,716.00
> Expenses in the amount of $398.85,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Debtor in Possession.

8. **18-90029-E-11 MF-46** **JEFFERY ARAMBEL** **Matt Olson** **MOTION FOR COMPENSATION FOR BRAUN INTERNATIONAL, APPRAISER(S)** **11-27-19 [1057]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties requesting special notice, and Office of the United States Trustee on November 27, 2019. By the court's calculation, 22 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 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.

Braun International, the Appraiser ("Applicant") for Jeffery Edward Arambel, the Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 5, 2018, through September 30, 2019. The order of the court approving employment of Applicant was entered on June 5, 2018. Dckt. 394. The Order does not set any hourly rate or flat fee amounts as authorized for the employment. Applicant requests fees in the amount of $24,670.00 and costs in the amount of $2,279.96.

The Motion states that Applicant received and is holding a $7,500.00 retainer.

The Employment Agreement is to provide appraisal services for the Zacharias Ranch, East of Interstate Hwy 5, Patterson, California, and the Cazale Ranch, East of Interstate Hwy 5, North of Del Paerto Cyn. Rd, Patterson, California. Exhibit A, Dckt. 329 at 3. The fee for the appraisal services is stated to be $14,400.00. Employment Agreement ¶ 12; *Id.* at 5. No additional amounts are stated to be paid by the Debtor in Possession.

The Motion states that in addition to providing the appraisal services for the flat fee of $14,400.00, Debtor in Possession then engaged Applicant to provide expert witness services , for which an hourly rate of $395.00 was charged, for an additional $10,270.00 in fees – twenty-six (26) hours of time billed.

In addition, Applicant seeks recover of $2,279.96 in costs, which consist of:

> $1,102.00 to purchase comparable sales data for the appraisal (which Applicant contract to provide such appraisal for a flat fee)
>
> $450.00 to purchase additional comparable sales data preparatory to giving expert testimony
>
> $727.96 for long-distance trave and meal expense.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R.

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include appraisals of those certain real properties commonly known as Cazale Ranch and Zacharias Ranch and expert testimony and court appearances related to . The court finds the services were beneficial to Client and the Estate and were reasonable.

REVIEW OF FEES, COSTS, AND EXPENSES REQUESTED

Fees

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

Efforts to Assess and Recover Property of the Estate: Applicant spent 26 hours in this category. Applicant provided expert testimony and court appearances related to Cazale Ranch appraisal.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Anthony Fitzgerald	26	$395.00	$10,270.00
	0	$0.00	$0.00
Total Fees for Period of Application			$10,270.00

Additionally, Applicant requests a flat fee of $14,400.00 for performed appraisals of those certain real properties commonly known as Cazale Ranch and Zacharias Ranch.

Anthony Fitzgerald, the director of Applicant's valuation and brokerage group, has provided his Declaration in support of the Motion. Dckt. 1059. He provides the authentication of the billing and expense records filed as Exhibits A and B in support of the Application.

Exhibit A is the Invoice for the flat fee appraisal services provided by Applicant pursuant to the Agreement that was the subject of the court's Order (Dckt. 394). This invoice states:

> INVOICE
> Braun provided the valuation services per the agreement dated May 11, 2018 of Zacharais Ranch and Cazale Ranch.
>
> | | |
> |---|---|
> | Appraisals | $14,400 |
> | Comp data | 1,102 |
> | Retainer received | - 7,500 |
> | Balance Due | $ 8,002 |

Dckt. 1060 at 3.

A review of the May 11, 2018 Agreement, Exhibit A to Motion For Authorization to Employ; Dckt. 239 at 3-6; referenced in the Invoice provides for a flat fee of $14,400.00 for the appraisals. Paragraph 2 of the Agreement states tat it is the "Complete Agreement." *Id.* at 4.

The Agreement includes a provision for "Post Engagement Support," which is for "any additional effort expended by Braun on behalf of Client to provide testimony and IRS support beyond the scope of this contract." *Id.* For such additional effort expended, the standard per diem of $395.00 per hour, plus expenses, including travel time and court time, will be charged. [FN. 1]

FN. 1. This provision is a bit cryptic, as it states that the per diem fee is $395.00. The Merriam-Webster dictionary provides the following definitions of "per diem:"

Definition of per diem (Entry 1 of 3)

: by the day : for each day

per diem adjective

Definition of per diem (Entry 2 of 3)

1 : based on use or service by the day : daily

2 : paid by the day

per diem noun

Definition of per diem (Entry 3 of 3)

1 : a daily allowance

2 : a daily fee

https://www.merriam-webster.com/dictionary/per%20diem.

Thus, this would appear to be a per diem, per day, charge of $395.00. But then it states that the per diem is hourly. In light of the nature of the services provided, the court concludes that the use of "per diem" in this provision is a clerical error (and something that Applicant may wish to review with its business attorneys to avoid such confusion, and possibly non-payment of hourly fees).

In Paragraph 12 of the Agreement, it provides for a fee of $14,400.00 for the two appraisals. It also provides for the additional expense to be paid by the Bankruptcy Estate for "comparable market data purchased for the appraisal."

The flat fee and reimbursement (included in the expenses below) are reasonable and necessary for the services provided and allowed.

Exhibit B, Dckt. 1060 at 5, are the "billing records" for the additional $10,270 in time for the expert testimony. This is stated to be for 8 hours of trial preparation, 5 hours of "attorney prep meeting," 5 hours for court hearing and testimony, and 8 hours for travel time.

No information is provided as to what was done for these services. No dates are included and no task descriptions are provided by the professionals. The court cannot tell whether the travel is the same day as the hearing or a different day. The bill does include a bulk sum of $727.96 for "Travel-Lodging," with no information about how such amounts are computed and to what they relate.

Neither the Motion nor Declaration provide any information about when this expert witness testimony was provided. Even though in today's economy the bankruptcy court is not buried under the avalanche of cases as it was in 2010 through 2012, the court does not have any independent recollection of when and what services were provided. In this case there are "only" 1,074 docket entries, and in the related Chapter 11 Case for Filbin Land & Cattle Company, 18-90030, there are "only" 515 docket entries.

Though Mr. Fitzgerald testifies that "Contemporaneous records of work performed are kept in Applicant's ordinary court of business into which entries are made at or about the time services are rendered or costs are incurred. . . ;" Declaration ¶ 2, Dckt. 1059, none are provided with the Application.

The court has attempted to wade through the 1,074 docket entries and identify when someone from Applicant provided testimony. The court identified a declaration in support of confirmation provided by Todd Wohl, a Senior Partner of Braun International Real Estate. Dckt. 943. In his two pages of testimony, he references providing services in developing values for properties for use in the Disclosure Statement. *Id.*, ¶ 3. He then makes reference to "opining" in February 2019 as to the values of the properties. The court cannot find any documents relating to such "opining" in February 2019, and it appears this relates to the work done in connection with the Disclosure Statement.

At this juncture, the hole in the documentation and evidence provided leaves the court with two choices: (1) deny the request for the additional fees and expenses or (2) make an "educated guess" at what should have been reasonably provided based on the court's wading through the 1,076 docket entries. The court opts for the later - with such being an educated, informed determination, not a mere "guess."

Clearly, information needed to be provided for the Disclosure Statement and confirmation of the Plan. Mr. Wohl's Declaration (Dckt. 943) was given in support of the confirmation of this Plan.

Though no evidentiary hearing was schedule and none was requested by either the Debtor in Possession or any creditor and the confirmation was submitted to the court based on the declarations and written record, Mr. Wohl may have been in attendance that day to provide support to Debtor in Possession counsel (but not to testify as no evidentiary hearing was scheduled). The "value" of Mr. Wohl's services at the confirmation hearing is not that of an expert witness, but as support for Debtor in Possession counsel, though such support would be limited as the opposition evidence would necessarily have to be filed in advance in the form of declarations and documentary evidence.

Therefore, the court determines that the reasonable value of these additional services provided total $7,418.00. This takes into account the nature of the Declaration testimony, the confirmation hearing being based on the declarations and documentary evidence (and there being no opportunity to provide live testimony because no person requested that a live testimony evidentiary hearing be set).

With respect to the expenses, the court cannot identify why and how $727.96 of travel expenses were necessary. The court will allow $450.00 for the additional comparable data in light of Mr. Wohl providing support for the Disclosure Statement and Declaration concerning the values of properties other than those which were the subject of the appraisal.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $2,279.96 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Sales data purchase for appraisal		$1,102.00
Sales data purchase in preparation of expert testimony		$450.00
Long distance travel and meal expenses		$727.96
		$0.00
Total Costs Requested in Application		$2,279.96

FEES AND COSTS & EXPENSES ALLOWED

Fees

Set Fee for Appraisals and Hourly Fees for Additional Services

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 $21,818.00 ($14,400.00 set fee for appraisal and $7,418.00 in fees for additional work) are approved pursuant to 11 U.S.C. § 330; authorized to be paid by the Plan Administrator is authorized to pay $14,318.00 from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan; and Applicant is authorized to disburse the retainer of $7,500.00 in payment of these allowed fees.

Costs & Expenses

First and Final Costs in the amount of $1,552.00 ($1,102.00 and $450.00 in comparable sales data) are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Plan Administrator from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan. The court does not allow the $727.96 in travel and lodging costs.

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

Fees $21,818.00

Costs and Expenses $ 1,552.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Braun International ("Applicant"), Appraiser for Jeffery Edward Arambel, the Debtor in Possession, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Braun International is allowed the following fees and expenses as a professional of the Estate:
>
> Braun International, Professional employed by the Debtor in Possession
>
> Fees in the amount of $21,818.00
> Expenses in the amount of $1,552.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as appraiser for Debtor in Possession.
>
> **IT IS FURTHER ORDERED** that Plan Administrator is authorized to pay $ 14,318.00 in fees and $1,552.00 in costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan, and Applicant is authorized to apply the $7,500.00 in retainer monies held by Applicant in payment of these allowed fees.

9. 19-90159-E-11 RAC-2 — BARRENO ENTERPRISES, LLC — David Johnston — MOTION TO SELL — 11-12-19 [86]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2019. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property 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 Sell Property is denied without prejudice.

The Bankruptcy Code permits David M. Sousa, the Chapter 11 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §363. Movant's Motion states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which the relief is based and relief requested:

> David M. Sousa (the "Chapter 11 Trustee") hereby moves the Court (this "Motion") for an order authorizing the sale of substantially all of the assets of Barreno Enterprises, LLC (the "Debtor"). The Chapter 11 Trustee proposes to sell the aforementioned assets to Michael Barreno (the "Buyer"), for $12,000.00, plus the assumption of certain liabilities, subject to overbid, pursuant to §§ 105 and 363(b)(1) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002(a)(2) and 6004.

Motion, p. 1:21.5-25.5; Dckt. 86.

All the Motion tells the court is that the trustee seeks an order to authorize the sale of "substantially all of the assets of Barreno Enterprises, LLC (the 'Debtor')." Taken on its face, the Trustee is not seeking to sell any property of the Bankruptcy Estate, but sell some assets of the limited liability company debtor that exist outside of the Bankruptcy Estate. No basis is shown for the Trustee selling assets belonging to the limited liability company.

The Motion does not identify what these assets of the Debtor are that will be sold. They are not stated in the Motion. The Motion does not direct the court to an exhibit if the list is so long that it is overly burdensome for Movant and his attorney to have that typed into the Motion.

The Motion goes further to "specifically" request:

> 1. Authorizing the Chapter 11 Trustee to sell the Debtor's assets, as provided for in that Asset Purchase Agreement, to the Buyer or an alternate purchaser that submits a higher or better bid;
>
> 2. Authorizing the Chapter 11 Trustee to execute any and all documents reasonably necessary to effectuate the sale of the Debtor's assets;
>
> 3. Waiving the application of Rule 6004(h); and
>
> 4. Granting such other and further relief as the Court deems just and proper.

Motion, p. 2:1-6; *Id.* This offers nothing more with particularity about what is being sold. Other than requesting that this court override the fourteen day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) imposed by the Supreme Court, no basis is given for such relief.

The Motion does instruct the court that the Motion is based on the Memorandum of Points and Authorities, Declaration of the Trustee, and any other evidence that Movant shall present at the hearing of this Motion (without stating a basis for the Movant being exempted from having to file evidence with the Motion or with a reply, if any).

The court declines the opportunity to review other documents filed by a party, assemble from those documents what must be stated in the motion, state for a party what grounds the court believes should be stated, and then advocate for that party.

Here, Movant proposes to sell the personal property commonly known as hard assets of a Dickey's Restaurant including but not limited to kitchen appliances such as ice maker, freezer, smoker, sinks, cabinets, cooler, fryer gas range, grill, sandwich/salad prep table, and knife holder, and restaurant items such as wood dining chairs, signs, tables, and racks ("Property").

The proposed purchaser of the Property is Michael Barreno, and the terms of the sale are:

A. The price term of sale of the assets is $12,000.00.

B. All expenses will be borne by the respective party that incurs such expense.

C. The Debtor's assets do not include the Franchise Agreement, as it is owned by the individuals Albert and Evelyn Barreno.

D. Closing date is to occur no later than five (5) days after the court enters the sale order.

DISCUSSION

As discussed above, the Motion falls short of the minimum requirements under Federal Rule of Bankruptcy Procedure 9013.

The eight (8) page "Points and Authorities" filed by Movant (Dckt. 88) appears to contain little in legal points and authorities, but much of what should properly be included in the Motion. Four of the pages are "statements of facts" and "statement of sale terms," both of which properly must be in the Motion. It then has three pages of legal point, authorities, and arguments (properly in a points and authorities). On the eighth page, "grounds" for why the court should waive the fourteen day stay of enforcement.

The Trustee provides his clear, well written declaration in support of the Motion. Dckt. 89. He provides testimony of his investigation of the assets and why he believes the sale is appropriate in the exercise of the Trustee's business judgment.

The Declaration also states that the property to be sold is subject to liens. Such is not provided for in the Motion, whether as a sale free and clear with the liens attaching to the proceeds or for specified amounts to be paid from the sales proceeds for the consensual release of the liens.

In the Declaration the Trustee also refers to his selling "assets of the Debtor."

Movant has filed exhibits in support of the Motion. The first is identified as the "Asset Purchase Agreement," being 24 pages in length. Dckt. 90. The Asset Purchase Agreement begins with a May 20, 2015 dated letter on Dickey's Barbecue Pit letterhead to Albert and Evelyn Barreno. *Id.* at 3-4. This appears to be a cover letter for Albert and Evelyn Barreno obtaining a franchise agreement for a location in Oakdale, California. This exhibit is only 2 pages in length, not 24 as stated on the first page of the Exhibit's first page cover sheet.

Next, Exhibit 2 is identified as being "Articles about Dickey's Barbecue Restaurants and is stated to be 12 pages in length. These appear to be a series of internet articles about Dickeys Barbecue franchises. The Trustee references Exhibit 2 in his Declaration, but does not authenticate them. Fed. R. Evid. 901 et seq. It appears that these may be some articles that the Trustee used in coming to a decision to sell assets (to the extent they are property of the bankruptcy estate) rather than operate the business.

Exhibit 3 is identified as being the "Franchise Agreement with Dickey's Barbecue Restaurant's, Inc.", and that it is 3 pages in length. However, Exhibit 3 does not appear to be a franchise agreement, but is titled:

Asset Purchase Agreement
Dated October 24, 2019
Among
David M. Sousa in his Capacity as Chapter 11 Trustee for the

Bankruptcy Estate of Barreno Enterprises, LLC, as Seller
And
Michael Barreno, An Individual, as Buyer

This sale document is 22 pages in length. In Paragraph 2.1 the Agreement states that the Trustee will sell "all of the Debtor's right, title and interest in, to and under the following assets owned, leased or used by the Debtor in the Operation of the Business, free and clear of all Liens, Liability, claims, interests and encumbrances . . . ."

As of the time the Agreement was entered into and continuing through the hearing, the Debtor limited liability company exists. The Debtor limited liability company has assets that it may have acquired or been funded with since the commencement of this case. The Debtor has a reversionary interest for property of the Bankruptcy Estate in the event this case was dismissed or converted and closed.

Exhibit 4 is identified as "North star Leasing Company Consent to Sale. The first page of Exhibit 4 is a Gmail email from Vincent Trang to mmajor@northstarleasing.com. The email states that the Trustee intends to sell assets of Dickey's BBQ Merced Location at an auction, and that North Star Leasing has security interests in some of the equipment at that location. The email continues, requesting that if North Star consents to the auction sale, then the proceeds from the sale of the assets which are leased would then be applied to the North Star claim.

The email continues listing a wholesale appraisal value, the Trustee's valuation, and the "Bid Offer" from Michael Barreno. The email requests confirmation of whether North Star consents to the sale.

The third page of Exhibit 4 (*Id.* at 47) is an email from Mike Majors at North Star which appears to be in response to Vincent Trang's email and states:

> Vincent,
>
> Yes, will accept the auction prices on the equipment. If higher amount are offered, please take those as well.
>
> If you need any further information, please let me know.
>
> Thank You
>
> Mike

This email thread is not authenticated by Mr. Trang. In his Declaration, the Trustee makes reference to Exhibit 4, but does not authenticate it.

Exhibit 5 is identified as "Danjon Capital, Inc. Consent to Sale," and is stated to be 3 pages in length. This is a Gmail email from Vincent Trang to "anddrewn@danjoncapcom." This email states that the Trustee is selling assets of "Barreno Enterprises" in an auction, which include assets that are subject to the lien of Danjon Capital. It asks whether Danjon Capital would agree to the sale of the assets listed in the email, with the proceeds being applied to Danjon Capital's claim. *Id.* at 50.

Page 3 of Exhibit 5 is a Gmail email from Andrew Nguyen to Vincent Trang, stating that the Trustee al sell the assets subject to Danjon's liens, so long as all of the proceeds go to Danjon. As with Exhibit 4, Mr. Trang does not authentic these emails. In his Declaration, the Trustee makes reference to Exhibit 5, but does not authenticate it.

Exhibit 6 is identified as the "Price Breakdown of Assets in Sale," and is one page in length. The computation on this charge shows a sales price of $12,000, with the Danjon proceeds being ($1,960) and the NS Leasing, LLC proceeds being ($1,825), leaving a net amount of unencumbered proceeds of $12,000.

The purchaser is Michael Barreno, a person who has the same last name as the managing member and identified 100% owner of the Debtor – Albert Barreno.

While the Trustee wants to sell some assets, they are not identified in the Motion. Then, the Trustee states that he wants to sell property of the "Debtor," not property of the Bankruptcy Estate.

The Purchase Agreement states that the Trustee will be selling only the Debtor's interest in the property of the Debtor being sold.

It is also asserted that the property can be sold free and clear of liens, but the Motion does not request such relief.

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

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because pay secured creditors the full value of their collateral and result in a small pot of cash for administrative and priority creditors.~~

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because, under the Agreement, the Closing is to occur no later than five (5) days after the Court enters the Sale Order. Waiver of the stay ensures that the Chapter 11 Trustee can meet this deadline and will reduce the carrying costs to the Debtor's estate.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is denied.

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

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

The Motion to Sell Property filed by David M. Sousa, the Chapter 11 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that David M. Sousa, the Chapter 11 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Michael Barreno or nominee ("Buyer"), the Property commonly known as hard assets of a Dickey's Restaurant including but not limited to kitchen appliances such as ice maker, freezer, smoker, sinks, cabinets, cooler, fryer gas range, grill, sandwich/salad prep table, and knife holder, and restaurant items such as wood dining chairs, signs, tables, and racks ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $12,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 90, and as further provided in this Order.

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

D. The Chapter 11 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

F. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is not waived for cause.

10. 19-90461-E-7 LORRAINE ESCOBAR CONTINUED ORDER TO SHOW CAUSE
19-9014 RHS-1 10-24-19 [37]
REYES V. ESCOBAR

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Plaintiff, Debtor/Defendant, Debtor's Attorney, Chapter 7 Trustee, and other such other parties in interest as stated on the Certificate of Service on October 26, 2019. The court computes that 54 days' notice has been provided.

The Order to Show Cause Why Adversary Proceeding Should Not Be Dismissed is sustained, conditioned on Defendant-Debtor reimbursing Plaintiff $350.00 for the filing fee in this Adversary Proceeding on or before December 30, 2019.

ORDER TO SHOW CAUSE WHY ADVERSARY PROCEEDING SHOULD NOT BE DISMISSED WITHOUT PREJUDICE

On October 17, 2019, the court conducted the Continued Status Conference and a Motion to File an Amended Complaint in this Adversary Proceeding. Plaintiff Emilio Reyes and Defendant-Debtor Lorraine Escobar, both in *pro se*, appeared at both matters.

Defendant-Debtor advised the court that she had filed a request to dismiss her Chapter 7 case. She reported that she filed the request to dismiss in *pro se* because her attorney of record refused to represent her on such motion, but told her "she could file it if she wanted to." As the court addressed at the hearing, Defendant-Debtor's counsel of record in her Chapter 7 case is her attorney in that case and she cannot operate outside of his representation.

Defendant-Debtor stated that she has no desire to proceed with her Chapter 7 case and that this Adversary Proceeding was an unnecessary proceeding as she desired to litigate Plaintiff's disputes in the pending State Court Action. The court observed that in light of those proceedings it is likely that the court would modify the stay to allow those parties to conclude that litigation and then bring any final judgment back to this court for consideration of the limited federal bankruptcy nondischargebility issues stated in the proposed Amended Complaint in this Adversary Proceeding.

Debtor also stated that with respect to her Chapter 7 bankruptcy case, she did not file it with the intention of stopping the state court litigation with Plaintiff, that she never told her state court attorney (who is located in Southern California) about filing bankruptcy in advance of the bankruptcy case being filed, that

she found her Southern California bankruptcy attorney on the internet, that she did not list Plaintiff as a "creditor" because she did not consider him one and intended to litigate his disputes in bankruptcy court, and when her Southern California State Court attorney learned of the bankruptcy filing, that State Court attorney was annoyed.

The court has reviewed Defendant-Debtor's Chapter 7 filings and they do not square with the story she told at the October 17, 2019 Status Conference and Hearing. The pleadings filed by Defendant-Debtor and information stated therein by her under penalty of perjury include the following:

A. Schedule E/F - Creditors Holding Unsecured Claims

1. Plaintiff Emilio Reyes is listed as a creditor holding an undisputed, non-contingent, liquidated claim in the amount of ($5,000.00). 19-90461; Dckt. 1 at 20.

2. All of Defendant-Debtor's other unsecured claims total $14,133. *Id.* at 19-21. Of these,

a. Capital One is listed as having a credit card account and a charge account for a combined unsecured claim of ($11,073). This constitutes 78.3% of all of the non-Plaintiff claims and is a very small amount of unsecured debt as a basis for commencing a Chapter 7 case.

b. The other main creditor is Chase Card Services, with a claim of $2,967.00. *Id.* at 20.

For unsecured debt, there is very little to warrant filing a Chapter 7 case. As discussed below, Debtor asserts that she desired the extraordinary relief of bankruptcy because her income is limited to Social Security and she needed the relief. As every experienced bankruptcy attorney knows, the extraordinary relief of obtaining a discharge is not to be wasted on minor debts, especially when the consumer debtor has other easy "defenses" to small collar unsecured debt.

B. Schedule D - Secured Claims

1. None. *Id.* at 18.

C. Schedule E/F - Priority Claims

1. None. *Id.* at 19.

D. Schedule A/B

1. Real Property Owned

a. None. *Id.* at 11.

2. Personal Property

a. Aggregate Value of $4,554. *Id.* at 11-15. Of these, the major assets are:

(1) 2005 Chevy Equinox.....$1,545

(2) Miscellaneous Household Furnishings....$1,000

(3) Bank Accounts.....$ 500

(a) Debtor includes within the $4,554 of value a bank account as identified as her mother's with a value of $200, so the $4,554 amount appears to be overstated.

E. Schedule C - Exempt Assets

1. All of Defendant-Debtor's assets are claimed as exempt. *Id.* at 17-18.

F. Schedule I - Income

1. Defendant-Debtor has only $1,782.68 in monthly gross income, *Id.* at 25-26, consisting of:

a. Business net income.....$ 354

b. Social Security.....$1,109

c. Pension.....$1,109

Defendant-Debtor has not included the required profit and loss operating statement for her business. See Item 8.a. on Schedule I. This indicates that the gross income is of a very small amount and not a significant income source (or a device for Defendant-Debtor to have her persons, non-business expenses paid) for Defendant-Debtor.

G. Schedule J - Expenses

1. Defendant-Debtor's monthly expenses are ($1,787). *Id.* at 27-28. These exhaust all of Defendant-Debtor's monthly gross income, leaving her running a ($4.32) a month shortfall in covering her expenses.

On her Statement of Financial Affairs, Defendant-Debtor provides the following information under penalty of perjury.

H. For her wage and business income, *Id.* at 30-31

1. For the first four months of 2019, her gross business income was $12,385, which averages $3,096.25. Debtor reporting having only $354 in net income from her business, it appears that her "business expenses" are 88.6% of the reported gross income. It appears that such a business may be more of a "hobby" than a profitable venture. (On Schedule A/B Defendant-Debtor lists this business as having a value of only $400, again, indicating a "hobby.")

2. For 2018, the business did worse, having annual income of only $12,385, which averages only $1,032 a month.

3. In 2017, it appeared that Defendant-Debtor's business did a bit better, having $20,003 in gross income, which averages $1,666.92 a month. With expenses of 88.6% of the gross income, that would leave only $190 a month in net income.

I. For her pension and wage income, it is stated to have been $5,714 for the first four months of 2019 and $17,142 in 2018 and 2017, which averages $1,428.50 a month. *Id.* at 31.

J. In response to Question 9, whether the Defendant-Debtor is or was in the year preceding the filing of the bankruptcy case a party to a lawsuit, Defendant-Debtor stated under penalty of perjury "No." *Id.* at 32. This is clearly inaccurate information, as there is no dispute that Defendant-Debtor was, and continues to be a party to the State Court lawsuit with Plaintiff.

K. In response to Question 16, Defendant-Debtor states that she paid the Wajda Law Group, APC $1,535.00 as attorney's fees and filing fees for this bankruptcy case. *Id.* at 33.

Disclosure of Compensation of Attorney for Debtor

L. It is disclosed that Nicholas Wajda, Esq., of Wajda Law Group, APC was paid $1,200 in legal fees for the representation, as well as Defendant-Debtor paying the $335.00 filing fee. *Id.* at 1.

Though Defendant-Debtor affirmatively stated at the Status Conference and Hearing that the Plaintiff was not included in the bankruptcy, that she did not notice Plaintiff of the Bankruptcy Case filing, in addition to Plaintiff being listed on Schedule E/F, Counsel for Debtor included Plaintiff on the Master Address List filed with this court. Dckt. 3.

Though the lawsuit with Plaintiff was not listed on the Statement of Financial Affairs, Defendant-Debtor stated that she told her bankruptcy attorney, Mr. Wajda, about it and that Mr. Wajda said he would find the information about the lawsuit. Defendant-Debtor then told the court that Mr. Wajda was able to identify some Small Claims Court litigation involving the Defendant-Debtor, but not Plaintiff's lawsuit.

No explanation was provided why Defendant did not provide a copy of one of the Pleadings in Plaintiff's State Court Action or give Mr. Wajda Defendant-Debtor's State Court Action attorney's name and number.

Declaration of Alexandra McIntosh

On November 18, 2019, Alexandra McIntosh filed her Declaration. Dckt. 40. Ms. McIntosh identifies that she is Debtor's counsel in the State Court Action. Ms. McIntosh states that she was surprised when she learned that Debtor had filed bankruptcy.

Opposition to Declaration of Alexandra McIntosh

On December 2, 2019, Emilio Reyes filed an 84 page response to the Declaration of Alexandra McIntrosh. He extensively argues the testimony, including extensive exhibits.

Reimbursement of Filing Fee Condition of Dismissal of Adversary Proceeding and Bankruptcy Case

Though Defendant-Debtor has been strident in her assertions that her filing of the Bankruptcy Case "had nothing to do with Plaintiff's litigation" and that filing a Chapter 7 case to obtain a Chapter 7 discharge was "necessary" due to her debts (not including the obligation asserted by Plaintiff) this is not borne out by the objective evidence presented.

As even a moderately experienced bankruptcy attorney knows, the discharge obtained in a Chapter 7 bankruptcy case is a very, very valuable right and not something wasted over "nickel and dime debts." In reviewing this court's files, Nicholas Wajda is clearly a very experienced bankruptcy attorney, showing up as the attorney of record in eight hundred and ten (810) bankruptcy cases dating back to 2009. A review of the bankruptcy filings in the Central District of California lists Nicholas Wajda as an attorney in 4,691 cases during the period from June 2009 to September 2019. Between the cases Mr. Wajda is the attorney in just the Eastern District of California and the Central District of California, he is representing parties in an average of 550 cases a year just in those two Districts.

Additionally, on his law firm's website, Mr. Wajda states that he has "filed over 5,000 successful bankruptcy cases, helped countless others with debt issues and has built a reputable practice serving clients all over California and Nevada." https://wajdalawgroup.com/about-us. Clearly an attorney who knows not to waste a client's discharge.

Even if Debtor was concerned that her three credit card creditors might come after her for the grand sum of ($14,000) spread between them, her monthly income is substantially Social Security - exempt from levy. Her pension income is exemptible and not something a creditor could get to. Such experienced bankruptcy attorneys know how to communicate such "you are out of luck, don't waste time and money, my consumer debtor client is a turnip" message.

The court has not been presented with any credible reason for Defendant-Debtor filing the Chapter 7 case (which she now wants to abandon given that Plaintiff is actively pursuing this nondischargeability litigation), the objective facts do not show any good faith reason for commencing this case based on Defendant-Debtor's other obligations and assets.

Commencing the Chapter 7 case to try and corral state court litigation and have it focused in the bankruptcy court would not be an improper purpose for filing - but Defendant-Debtor has expressly and repeatedly denied that the Bankruptcy Case was filed for that purpose.

The evidence and objective facts as shown in the Bankruptcy Case record, including the statements made by the Defendant-Debtor under penalty of perjury, show that the Chapter 7 Bankruptcy Case was filed because of the State Court litigation being prosecuted by Plaintiff.

In light of the Defendant-Debtor now seeking, and the court willing to dismiss her Chapter 7 case, such dismissal is to be conditioned on Defendant-Debtor reimbursing the Plaintiff $350.00 that Defendant-Debtor necessitated Plaintiff to pay to commence this Adversary Proceeding by her gambit in filing the Chapter 7 case (which Defendant-Debtor now admits she had no good faith, *bona fide* reason to file).

The $350.00 reimbursement is a very small, modest cost, but one that Defendant-Debtor must reimburse.

At the October 17, 2019 Status Conference and Hearing, Plaintiff announced that he intended to seek an additional $100+ for all his mailing costs. The court is unsure how, serving a nondischargebility complaint by First Class mail could cost $100+. Possibly it is because Plaintiff has created extensive pleadings, going well beyond what is necessary under the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure. The original Complaint is 91 pages in length (Dckt. 1) and the First Amended Complaint is 146 pages in length (Dckt. 25).

RULING

The court does not find Debtor's assertions that the bankruptcy case was innocently filed and done without the intent to try and derail Mr. Escobar's State Court litigation. If so, Debtor would be proceeding with the bankruptcy case, rather than seeking to have it dismissed when Mr. Escobar commenced the Adversary Proceeding.

Motion is granted and the Adversary Dismissed, contingent on Defendant-Debtor reimbursing Plaintiff Emilio Reyes the sum of $350.00, the filing fee in this Adversary Proceeding. The reimbursement shall be paid on or before December 30, 2019. Given the time this Order to Show Cause has been pending and the court previously addressing the reimbursement as a condition of dismissal, the court presumes that Defendant-Debtor will have the funds readily available, if not cashier's check in hand at the December 19, 2019 hearing.

If Defendant-Debtor elects to not pay the $350.00, the court will consider how this Adversary Proceeding will be prosecuted or whether there is sufficient grounds to dismiss Defendant-Debtor's Chapter 7 case with prejudice - which would then make all existing debts nondischargeable.

At the hearing, xxxxxxxxxxxxxxxx

11. 19-90461-E-7 RHS-1 — LORRAINE ESCOBAR — Nicholas Wajda — CONTINUED ORDER TO SHOW CAUSE 10-25-19 [16]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Plaintiff, Debtor/Defendant, Debtor's Attorney, Chapter 7 Trustee, and other such other parties in interest as stated on the Certificate of Service on October 30, 2019. The court computes that 21 days' notice has been provided.

The Order to Show Cause Why Bankruptcy Should Not Be Dismissed and Why Nicholas Wajda, Esq. Should Not Be Ordered To Disgorged Legal Fees is sustained and xxxxxxxxxx.

ORDER TO SHOW CAUSE WHY BANKRUPTCY CASE SHOULD NOT BE DISMISSED AND WHY NICHOLAS WAJDA, ESQ. SHOULD NOT BE ORDER TO DISGORGE $1,200 IN LEGAL FEES

On May 20, 2019, Lorraine Ann Escobar, the Debtor, commenced this voluntary Chapter 7 Bankruptcy Case. She has been represented by Nicholas Wajda, Esq., in the filing and prosecution of this case.

On August 29, 2019, the Debtor filed a one-page, handwritten request to have her case dismissed. This request is filed by the Debtor personally and not her attorney of record. The reason for Debtor seeking to dismiss this Chapter 7 case rather than prosecuting it to discharge (the Trustee having completed the First Meeting of Creditors and the deadline for filing objections to discharge having expired and only her state court nemesis Emilio Reyes seeking to have her discharge denied) is states as:

> I, Lorraine Ann Escobar, do hereby dismiss my bankruptcy case so my attorney can proceed on my civil litigation case without interruption

Dckt. 13.

At the October 17, 2019 Status Conference and the hearing on the Motion to Amended the Complaint in Adversary Proceeding 19-9014 (Escobar v. Reyes) Debtor could not provide the court with

any credible reason for having filed this case that she now wants to dismiss. (See discussion below of facts relating to this Case and the Adversary Proceeding.)

When the court questioned the Debtor why she was filing the request to dismiss her case rather than her attorney of record who is representing her, she stated to the court that Mr. Wajda refused to seek such relief, but told her "that she could file it she wanted to." Mr. Wajda, as the attorney of record cannot abandon his client and tell her to file whatever she wants to, he just will not do it. An attorney who is attorney of record cannot "self-withdraw" or "selectively withdraw" from representation of his or her client. Such withdrawal must be authorized by the court. E.D. Cal. L.R. 182; Bankr. E.D. Cal. L.B.R. 2017-1.

The Debtor has provided "explanations" as to why she filed bankruptcy, asserting it had nothing to do with the pending state court litigation by Plaintiff. As discussed below, such statements are not consistent with the information provided by her under penalty of perjury in this Bankruptcy Case and the objective facts to the court. Much of what Debtor argues is that it is Mr. Wajda's fault in what she has said under penalty of perjury in this Bankruptcy Case.

The court has issued a separate Order to Show Cause re Dismissal of the Adversary Proceeding. For the ease of review by the Parties and Counsel, the court duplicates that discussion below, all of it relevant with respect to the filing, prosecution, and now dismissal of this Bankruptcy Case.

REVIEW OF BANKRUPTCY CASE, ADVERSARY PROCEEDING, AND ORDER TO SHOW CAUSE RE DISMISSAL OF ADVERSARY PROCEEDING

On October 17, 2019, the court conducted the Continued Status Conference and a Motion to File an Amended Complaint in this Adversary Proceeding. Plaintiff Emilio Reyes and Defendant-Debtor Lorraine Escobar, both in pro se, appeared at both matters.

Defendant-Debtor advised the court that she had filed a motion to dismiss her Chapter 7 case. She reported that she filed the motion to dismiss in pro se because her attorney of record refused to represent her on such motion, but told her "she could file it if she wanted to." As the court addressed at the hearing, Defendant-Debtor's counsel of record in her Chapter 7 case is her attorney in that case and she cannot operate outside of his representation.

Defendant-Debtor stated that she has no desire to proceed with her Chapter 7 case and that this Adversary Proceeding was an unnecessary proceeding as she desired to litigate Plaintiff's disputes in the pending State Court Action. The court observed that in light of those proceedings it is likely that the court would modify the stay to allow those parties to conclude that litigation and then bring any final judgment back to this court for consideration of the limited federal bankruptcy nondischargebility issues stated in the proposed Amended Complaint in this Adversary Proceeding.

Debtor also stated that with respect to her Chapter 7 Bankruptcy Case, she did not file it with the intention of stopping the state court litigation, that she never told her state court attorney (who is located in Southern California) about filing bankruptcy in advance of the bankruptcy case being filed, that she found her Southern California bankruptcy attorney on the internet, that she did not list Plaintiff as a "creditor" because she did not consider him one and intended to litigate his disputes in bankruptcy

court, and when her Southern California State Court attorney learned of the bankruptcy filing, that State Court attorney was annoyed.

The court has reviewed Defendant-Debtor's Chapter 7 filings and they do not square with the story she told at the October 17, 2019 Status Conference and Hearing. The pleadings filed by Defendant-Debtor and information stated therein by her under penalty of perjury include the following:

A. Schedule E/F - Creditors Holding Unsecured Claims

1. Plaintiff Emilio Reyes is listed as a creditor holding an undisputed, non-contingent, liquidated claim in the amount of ($5,000.00). 19-90461; Dckt. 1 at 20.

2. All of Defendant-Debtor's other unsecured claims total $14,133. Id. at 19-21. Of these,

a. Capital One is listed as having a credit card account and a charge account for a combined unsecured claim of ($11,073). This constitutes 78.3% of all of the non-Plaintiff claims and is a very small amount of unsecured debt as a basis for commencing a Chapter 7 case.

b. The other main creditor is Chase Card Services, with a claim of $2,967.00. Id. at 20.

c.

For unsecured debt, there is very little to warrant filing a Chapter 7 case. As discussed below, Debtor asserts that she desired the extraordinary relief of bankruptcy because her income is limited to Social Security and she needed the relief. As every experienced bankruptcy attorney knows, the extraordinary relief of obtaining a discharge is not to be wasted on minor debts, especially when the consumer debtor has other easy "defenses" to small collar unsecured debt.

B. Schedule D - Secured Claims

1. None. Id. at 18.

C. Schedule E/F - Priority Claims

1. None. Id. at 19.

D. Schedule A/B

1. Real Property Owned

a. None. Id. at 11.

2. Personal Property

a. Aggregate Value of $4,554. Id. at 11-15. Of these, the major assets are:

(1) 2005 Chevy Equinox.....$1,545

(2) Miscellaneous Household Furnishings....$1,000

(3) Bank Accounts.....$ 500

(a) Debtor includes within the $4,554 of value a bank account as identified as her mother's with a value of $200, so the $4,554 amount appears to be overstated.

E. Schedule C - Exempt Assets

1. All of Defendant-Debtor's assets are claimed as exempt. Id. at 17-18.

F. Schedule I - Income

1. Defendant-Debtor has only $1,782.68 in monthly gross income, Id. at 25-26, consisting of:

a. Business net income.....$ 354

b. Social Security.....$1,109

c. Pension.....$1,109

Defendant-Debtor has not included the required profit and loss operating statement for her business. See Item 8.a. on Schedule I. This indicates that the gross income is of a very small amount and not a significant income source (or a device for Defendant-Debtor to have her persons, non-business expenses paid) for Defendant-Debtor.

G. Schedule J - Expenses

1. Defendant-Debtor's monthly expenses are ($1,787). Id. at 27-28. These exhaust all of Defendant-Debtor's monthly gross income, leaving her running a ($4.32) a month shortfall in covering her expenses.

On her Statement of Financial Affairs, Defendant-Debtor provides the following information under penalty of perjury.

H. For her wage and business income, Id. at 30-31

1. For the first four months of 2019, her gross business income was $12,385, which averages $3,096.25. Debtor reporting having only $354 in net income from her business, it appears that her "business expenses" are 88.6% of the reported gross income. It appears that such a business may be more of a "hobby" then a profitable venture. (On Schedule A/B Defendant-Debtor lists this business as having a value of only $400, again, indicating a "hobby.")

2. For 2018, the business did worse, having annual income of only $12,385, which averages only $1,032 a month.

3. In 2017, it appeared that Defendant-Debtor's business did a bit better, having $20,003 in gross income, which averages $1,666.92 a month. With expenses of 88.6% of the gross income, that would leave only $190 a month in net income.

I. For her pension and wage income, it is stated to have been $5,714 for the first four months of 2019 and $17,142 in 2018 and 2017, which averages $1,428.50 a month. Id. at 31.

J. In response to Question 9, whether the Defendant-Debtor is or was in the year preceding the filing of the bankruptcy case a party to a lawsuit, Defendant-Debtor stated under penalty of perjury "No." Id. at 32. This is clearly inaccurate information, as there is no dispute that Defendant-Debtor was, and continues to be a party to the State Court lawsuit with Plaintiff.

K. In response to Question 16, Defendant-Debtor states that she paid the Wajda Law Group, APC $1,535.00 as attorney's fees and filing fees for this bankruptcy case. Id. at 33.

Disclosure of Compensation of Attorney for Debtor

L. It is disclosed that Nicholas Wajda, Esq., of Wajda Law Group, APC was paid $1,200 in legal fees for the representation, as well as Defendant-Debtor paying the $335.00 filing fee. Id. at 1.

Though Defendant-Debtor affirmatively stated at the Status Conference and Hearing that the Plaintiff was not included in the bankruptcy, that she did not notice Plaintiff of the Bankruptcy Case filing, in addition to Plaintiff being listed on Schedule E/F, Counsel for Debtor included Plaintiff on the Master Address List filed with this court. Dckt. 3.

Though the lawsuit with Plaintiff was not listed on the Statement of Financial Affairs, Defendant-Debtor told her bankruptcy attorney, Mr. Wajda, about it and that Mr. Wajda said he would find the information about the lawsuit. Defendant-Debtor then told the court that Mr. Wajda was able to identify some Small Claims Court litigation involving the Defendant-Debtor, but not Plaintiff's lawsuit.

No explanation was provided why Defendant did not provide a copy of one of the Pleadings in Plaintiff's State Court Action or give Mr. Wajda Defendant-Debtor's State Court Action attorney's name and number.

Reimbursement of Filing Fee Condition of Dismissal of Adversary Proceeding and Bankruptcy Case

Though Defendant-Debtor has been strident in her assertions that her filing of the Bankruptcy Case "had nothing to do with Plaintiff's litigation" and that filing a Chapter 7 case to obtain a Chapter 7 discharge was "necessary" due to her debts (not including the obligation asserted by Plaintiff) this is not borne out by the objective evidence presented.

As even a moderately experienced bankruptcy attorney knows, the discharge obtained in a Chapter 7 bankruptcy case is a very, very valuable right and not something wasted over "nickel and dime debts." In reviewing this court's files, Nicholas Wajda is clearly a very experienced bankruptcy attorney, showing up as the attorney of record in eight hundred and ten (810) bankruptcy cases dating back to 2009. A review of the bankruptcy filings in the Central District of California lists Nicholas Wajda as an attorney in 4,691 cases during the period from June 2009 to September 2019. Between the cases Mr. Wajda is the attorney in just the Eastern District of California and the Central District of California, he is representing parties in an average of 550 cases a year just in those two Districts.

Additionally, on his law firm's website, Mr. Wajda states that he has "filed over 5,000 successful bankruptcy cases, helped countless others with debt issues and has built a reputable practice serving clients all over California and Nevada." https://wajdalawgroup.com/about-us. Clearly an attorney who knows not to waste a client's discharge.

Even if Debtor was concerned that her three credit card creditors might come after her for the grand sum of ($14,000) spread between them, her monthly income is substantially Social Security - exempt from levy. Her pension income is exemptible and not something a creditor could get to. Such experienced bankruptcy attorneys knowhow to communicate such "you are out of luck, don't waste time and money, my consumer debtor client is a turnip" message.

The court has not been presented with any credible reason for Defendant-Debtor filing the Chapter 7 case (which she now wants to abandon given that Plaintiff is actively pursuing this nondischargeability litigation), the objective facts do not show any good faith reason for commencing this case based on Defendant-Debtor's other obligations and assets.

Commencing the Chapter 7 case to try and corral state court litigation and have it focused in the bankruptcy court would not be an improper purpose for filing - but Defendant-Debtor has expressly and repeatedly denied that the Bankruptcy Case was filed for that purpose.

The evidence and objective facts as shown in the Bankruptcy Case record, including the statements made by the Defendant-Debtor under penalty of perjury, show that the Chapter 7 Bankruptcy Case was filed because of the State Court litigation being prosecuted by Plaintiff.

In light of the Defendant-Debtor now seeking, and the court willing to dismiss her Chapter 7 case, such dismissal is conditioned on Defendant-Debtor reimbursing Plaintiff $350.00 which she

necessitated Plaintiff to pay to commence this Adversary Proceeding by her gambit in filing the Chapter 7 case (which Defendant-Debtor now admits she had no good faith, bona fide reason to file).

The $350.00 reimbursement is a very small, modest cost, but one that Defendant-Debtor must reimburse.

At the October 17, 2019 Status Conference and Hearing, Plaintiff announced that he intended to seek an additional $100+ for all his mailing costs. The court is unsure how, serving a nondischargebility complaint by First Class mail could cost $100+. Possibly it is because Plaintiff has created extensive pleadings, going well beyond what is necessary under the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure. The original Complaint is 91 pages in length (Dckt. 1) and the First Amended Complaint is 146 pages in length (Dckt. 25).

December 16, 2019 Filed Response
by Nicholas Wajda

The court's Order to Show Cause was originally set for hearing on November 21, 2019. The court did not set a deadline for the filing of response pleadings. The hearing was continued pursuant to the *ex parte* Motion for a Continuance (Motion, Dckt. 18; Order, Dckt. 20) filed on November 14, 2019, by Mr. Wadja.

On December 16, 2019, a Response was filed to the Order to Show Cause. It states that the Response is based on the response pleading and the Declaration of Nicholas Wajda, and documentary evidence attached thereto. Response, p. 1:26.5-27.5. A review of the Docket no declaration or documentary evidence has been filed. There is only Docket entry 22, the Response.

The Response filed by Mr. Wadja argues the following:

A. Between January 2019 and May 2019, Mr. Wadja had several conversations with Debtor concerning her motivations for filing bankruptcy. Response ¶ 1, Dckt. 22.

B. Debtor has monthly income of $1,782.68. *Id.*, ¶ 3.

C. Debtor has monthly expenses of ($1,787.00). *Id.*, ¶ 4.

D. Debtor owes ($14,144) in unsecured debt, consisting of four credit cards. *Id.*, ¶ 5.

E. There is a disputed claim being asserted by Emelio Reyes, which is stated in the Response to be ($5,000). *Id.*, ¶ 6.

F. Prior to filing bankruptcy, Debtor informed Mr. Wadja that Reyes was making a claim against Debtor relating to her genealogy business. *Id.*, ¶ 7.

G. Mr. Wajda does not recall if Debtor told him that Debtor was involved in state court litigation (with Reyes). *Id.*

H. No set amount was owed to Reyes, so Mr. Wajda and an estimated amount of ($5,000) was put on the Schedules. *Id.*, ¶ 9.

I. It is stated that Debtor did not provide Mr. Wajda with a copy of any pleadings relating to the litigation with Reyes. *Id.*, ¶ 10.

At this point, this statement raises a serious of red flags concerning the good faith of the Debtor and conduct of counsel. As any well experienced bankruptcy attorney, such as Mr. Wajda, knows, a potential debtor client is clearly asked to disclose all litigation, all lawsuits, "is anybody suing you or threatening to sue you." Mr. Wajda, as an experienced bankruptcy attorney, necessarily had to ask and push the Debtor on that question. Thus, either the Debtor told him and they decided to not put disclose the litigation information, or Debtor withheld the information from Mr. Wajda so that her bankruptcy information was intentionally inaccurate. Or, it is possible that Mr. Wajda neglected to properly pose the question, resulting in the Debtor inaccurately disclosing under penalty of perjury information concerning claims and pending litigation.

J. Debtor did not provide Mr. Wajda with information about Debtor's State Court Action attorney. *Id.*, ¶ 11.

K. Mr. Wajda was unable to locate any information about the State Court Action with Reyes. *Id.*, ¶ 12.

The Response does not include any information about the investigation under taken by Mr. Wajda to uncover the litigation information.

L. On May 20, 2019, Debtor filed her voluntary Chapter 7 petition. *Id.*, ¶ 1.

M. On August 12, 2019, Reyes commenced Adversary Proceeding 19-9014 against the Debtor. *Id.*, ¶ 15.

N. Upon receiving the Adversary Proceeding Complaint, Mr. Wajda contacted Debtor. *Id.*, ¶ 16.

O. Mr. Wajda advised the Debtor that defense of an Adversary Proceeding was not included in his bankruptcy representation and that he would not represent Debtor in the Adversary Proceeding. *Id.*, ¶ 17.

P. At some point Debtor requested that Mr. Wajda get her bankruptcy case dismissed, and then Debtor would focus on defending herself in the State Court Action. *Id.*, ¶ 19.

Q. Mr. Wajda advised Debtor on multiple occasions that dismissal fo the bankruptcy case would not be in her best interests since she would still be liable for otherwise dischargeable debt. *Id.*, ¶ 20.

R. Mr. Wajda advised the Debtor that "losing" the Adversary Proceeding (to determine the debt nondischargeable) was inconsequential since she could still defend herself in the State Court Action. *Id.*, ¶ 21.

This is curious advice. If the Adversary Proceeding were litigated and determinations made in the federal court, they could not be relitigated in the State Court Action. These could include not only determinations of fraud, willful and malicious injury to Reyes, the amount of damages, and punitive damages, but also that Debtor should be denied her discharge as to all debts due to making a false oath or account. 19-9014; Complaint, Dckt. 1.

S. On August 29, 2019, Debtor made a written request to Mr. Wajda to get her bankruptcy case dismissed. *Id.*, ¶ 22.

T. There are reasons why the Debtor filed the Bankruptcy case and why she would, in good faith want to prosecute the case;

1. She commingles her exempt Social Security monies with her modest additional income from her genealogy business.

2. ($14,000) of unsecured debt is not insignificant for the Debtor in light of her limited income.

3. Debtor does not need to have the stress of the four credit card company collectors contacting her about the ($14,000) in debt. *Id.*, ¶ 27-29.

U. Even though Debtor "adamantly" contests that she filed the bankruptcy case to stop the State Court Action filed by Reyes, it did exist at that time and the bankruptcy case could have narrowed the issues for the State Court litigation. *Id.*, ¶ 30.

V. It is irrelevant whether Debtor filed the case to stay the State Court Action, as that is something that one may do. *Id.*, ¶ 32.

W. Mr. Wajda asserts that it is not in Debtor's best interests to dismiss the bankruptcy case. *Id.*, ¶ 34.

X. At this point, Debtor now wants the court to allow the State Court litigation to proceed. *Id.*, ¶ 35.

Y. By refusing to do what the Debtor requested - filing a motion to dismiss as desired by the Debtor - Mr. Wajda was acting in the best interests of the Debtor. *Id.*, ¶ 41.

What the Response does not address are the Debtor's affirmative statements at the prior hearing that she instructed her attorney to get the case dismissed and he refused, telling her to file her own motion if that is what she wanted to do.

Z. Filing a motion to dismiss the Chapter 7 case would have been against the Debtor's best interests, so Mr. Wajda should not be required to disgorge the $1,200.00 in attorneys' fees he has been paid. *Id.*, ¶ 42-43.

Tacked on to the end of the Response, and not filed as a separate document as required by the Local Bankruptcy Rules, is a Declaration of Nicholas Wajda. *Id.* at 8-10. In it, Mr. Wajda purports to provide his personal knowledge testimony (Fed. R. Evid. 601) of the Debtor's income, finances, and debt. There is nothing to indicate how he has such personal knowledge and can provide such testimony.

The Declaration paragraphs parallel the Response paragraphs.

DISCUSSION

A review of the Response and what has been filed in the case by the Debtor and Mr. Wajda do not square with this case being filed in good faith. As Mr. Wajda carefully explains in his Response, there is every reason that a good faith Debtor would not seek to have this case dismissed shortly after the Reyes Adversary Proceeding was commenced - if the bankruptcy case had been filed in good faith.

A good faith Debtor would have reviewed with her attorney all pending litigation. This may or may not have occurred. In his Declaration Mr. Wajda states, "I was not able to locate any information about the state court action." Dec. ¶ 13, Dckt. 22 at 9. He does not explain what he did or why he attempted to locate such information before Reyes commenced the Adversary Proceeding, if he was not told about the State Court Action.

A well prepared debtor in filing bankruptcy would not seek to "jump ship" when that state court creditor filed an Adversary Proceeding, but would continue in the prosecution of the bankruptcy case.

Mr. Wajda does not address why he refused to provide legal services when she, for whatever reason, chose to have her case dismissed. Mr. Wajda does not provide any authority that he is the "conservator" for the Debtor, only taking such action as he believes to be in the Debtor's best interests. If there was an irreconciable breach between Mr. Wajda and the Debtor - such as her asking him to do things not warranted under the law or were illegal, or that he would knowingly have her commit perjury – he would properly have filed a motion to withdraw as counsel, unable to perform the services as her attorney and refund her the unused portion of the fees paid in advance.

Mr. Wajda did not seek to withdraw, but the Debtor has stated in open court that he told her to file her own motion to dismiss. Her statements to the court are that he, as her counsel of record, told her to act as if she was in *pro se*.

The conduct of Mr. Wajda as counsel for the Debtor does not meet the minimum standards in providing competent, good faith representation to a debtor. While the fees for a Chapter 7 case are low, only $1,200.00, his services are not of that value. 11 U.S.C. § 329.

Conduct of Counsel in Federal Court and
California Rules of Professional Conduct

Some of the Rules of Professional Conduct (emphasis added to Rule text) adopted by the California Supreme Court relevant to the current discussion, Debtor's pro se motion to dismiss, and Mr. Wajda's representation of his client include:

> **Rule 1.1 Competence**
>
> (a) A lawyer **shall not intentionally**, recklessly, with gross negligence, or repeatedly **fail to perform legal services with competence**.

> **Rule 1.2 Scope of Representation and Allocation of Authority**
>
> (a) Subject to rule 1.2.1, **a lawyer shall abide by a client's decisions concerning the objectives of representation** and, as required by rule 1.4, shall reasonably consult with the client as to the means by which they are to be pursued. . . .

In the comment to Rule 1.2 Diligence, the decision making authority on what path to choose in the client's rights being advanced rests with the client, not the attorney imposing a power to "overrule" the client's decision:

> Comment
>
> Allocation of Authority between Client and Lawyer
>
> [1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. (See, e.g., Cal. Const., art. I, § 16; Pen. Code, § 1018.) A lawyer retained to represent a client is authorized to act on behalf of the client, such as in procedural matters and in making certain tactical decisions. A lawyer is not authorized merely by virtue of the lawyer's retention to impair the client's substantive rights or the client's claim itself. *(Blanton v. Womancare, Inc*. (1985) 38 Cal.3d 396, 404 [212 Cal.Rptr. 151, 156].)

> **Rule 1.3 Diligence**
>
> (a) A **lawyer shall not intentionally**, repeatedly, recklessly or with gross **negligence fail to act with reasonable diligence in representing a client**.

(b) For purposes of this rule, "reasonable diligence" shall mean that a lawyer acts with commitment and dedication to the interests of the client and **does not neglect or disregard**, or unduly delay **a legal matter entrusted to the lawyer**.

Rule 1.16 Declining or Terminating Representation

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if: (1) the client insists upon presenting a claim or defense in litigation, or asserting a position or making a demand in a non-litigation matter, that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing
law;
. . .

(6) the client knowingly and freely assents to termination of the representation;
. . .

(c) If permission for termination of a representation is required by the rules of a tribunal, a **lawyer shall not terminate a representation before that tribunal without its permission**.

Local Bankruptcy Rule 2017-1 covers the attorneys, scope of representation, and withdrawal (which is a parallel rule to Local District Court Rule 182). Local Bankruptcy Rule 20017-1 provides

LOCAL RULE 2017-1
Attorneys – Appearances, Scope of Representation, and Withdrawal

(a) Scope of Representation in Bankruptcy Cases and Proceedings.

1) An **attorney who is retained to represent a debtor in a bankruptcy case constitutes an appearance for all purposes in the case**, including, without limitation, motions for relief from the automatic stay, motions to avoid liens, objections to claims, and reaffirmation agreements. However, an appearance in the bankruptcy case for a party does not require the attorney to appear for that party in an adversary proceeding. If the debtor files a motion to reopen the case, the attorney representing the debtor in connection with that motion shall be the debtor's counsel of record.

2) An **attorney appearing in a bankruptcy case** or in an adversary proceeding **may not withdraw from representation, or decline to act on behalf of the client**, without first complying with the withdrawal requirements of Subpart (e) of this Rule. Any contract or agreement which purports to limit the scope of an

attorney's representation, except as permitted by Subpart (a)(1) of this Rule, will not be recognized by the Court.

. . .

(e) Withdrawal. Unless otherwise provided herein, **an attorney who has appeared may not withdraw leaving the client in *propria persona* without leave of court upon noticed motion and notice to the client** and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. **Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules**. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. . . .

Congress provides in 11 U.S.C. § 329,, as a matter of federal law with the respect to representation of debtors, that the bankruptcy court has the authority, and responsibility to review fees charged and received by attorneys for debtor.

§ 329. Debtor's transactions with attorneys

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to--

(1) the estate, if the property transferred–

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2) the entity that made such payment.

The Code section is discussed in COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 329.05, including:

¶ 329.01 Overview of Section 329

> Section 329 of the Bankruptcy Code not only recognizes the bankruptcy court's traditional concern for the need to carefully scrutinize the compensation paid to the debtor's attorney, but also underscores that the court has a duty to do so, *sua sponte* and even in the absence of objections. Courts have long acknowledged that debtors are in a vulnerable position and therefore might be reluctant to object to fees they have paid or agreed to pay. In order to prevent overreaching by an attorney, and provide protection for creditors, section 329 requires that an attorney submit a statement of compensation to enable the court to determine if the fees are reasonable. Thus, section 329 establishes a process that is statutorily mandated to ensure that only reasonable fees are charged for services provided to debtors. A law firm's obligations under section 329 to timely disclose its fee arrangements, a significant complement to the firm's obligation to disclose conflicts of interest it may have pursuant to section 327, is central to the integrity of the bankruptcy process
>
> ¶ 329.05 Procedure for Judicial Examination of Compensation Paid or Promised to Attorney for Debtor
>
> [1] Court Examination of Compensation; Fed. R. Bankr. P. 2017
>
> Rule 2017(a) provides for court examination of compensation in the form of money paid or property transferred to an attorney prior to and in contemplation of the filing of a petition under title 11 by or against the debtor, or before entry of the order for relief in an involuntary case, for services rendered or to be rendered. Rule 2017(b) calls for court examination of payments or transfers to an attorney as compensation. Such examination may be on the court's own initiative or on motion by the debtor or the United States trustee. The court will examine payments or transfers to an attorney as compensation, or an agreement therefor, "after entry of the order for relief in a case under the Code," if the payment, transfer or agreement was for services in any way related to the bankruptcy.

The Disclosure of Compensation filed in this case states that Nicholas Wajda was paid $1,200.00 to represent the Debtor in this Bankruptcy 7 bankruptcy case. Dckt. 1 at 46. No other attorneys are disclosed as being paid any compensation for representing the Debtor in this case, and expressly states that none of the fees will be shared with any other person, unless they are members of Mr. Wajda's law firm.

The Trustee's Report of the First Meeting of Creditors in this case discloses that an attorney named Kathleen Crist appeared as counsel for Debtor. On the website for Wajda, only two attorneys are listed as members of the law firm - Nicholas Wajda and Michael Reid. [FN. 1.]

The California State Bar lists Kathleen Crist-Walker and a Kathleen Crist (same State Bar Number) as an attorney located in Modesto California. [FN.2.] Kathleen Crist is not a member of Mr. Wajda law firm. It would appear to be unlikely that Ms. Crist provided pro bono services for Mr. Wajda, but likely that she was paid to appear at he First Meeting of Creditors as counsel for the Debtor. If so,

then there are other attorneys, contrary to what Mr. Wajda stated on the Statement of Compensation, sharing in the $1,200.00 in fees paid by the Debtor to be represented by counsel in this case.

FN. 1. https://wajdalawgroup.com/about-us.

FN.2. http://members.calbar.ca.gov/fal/Licensee/Detail/146197

Discussion at Hearing

At he hearing, **xxxxxxxxxx**

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

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

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

~~**IT IS ORDERED** that the Order to Show Cause is sustained and Lorraine Escobar, the Debtor shall pay $350.00 to Emilio Reyes, the Plaintiff in Adversary Proceeding 19-9014, to reimbursement for the filing of said Adversary Proceeding that was necessitated by the Debtor's commencement of this bankruptcy case that she now petitions the court to dismiss. The payment of $350.00 shall be made by cashier's check or other certified funds on or before December 30, 2019. Debtor shall file with the court and serve on Mr. Reyes on or before January 5, 2020, documentation of such payment having been timely made to Mr. Reyes. If the payment is not timely received by Mr. Reyes, he shall file with the court and serve on the Debtor on or before January 5, 2020, a notice of failure to make ordered payment.~~

~~**IT IS FURTHER ORDERED** that Nicholas Wajda, the attorney of record for Debtor in this case shall refund $557.00 to the Debtor from the $1,200.00 he was paid by Debtor to be her attorney in this case. The court determines that the $643.00 which Mr. Wajda will retain from the $1,200.00 he was paid by Debtor to be her attorney in this case more than reasonably compensates him for the legal services provided. The payment of $557.00 shall be made by cashier's check or other certified funds on or before December 30, 2019. Mr. Wajda shall file with the court and serve on the Debtor on or before January 5, 2020, documentation of such payment having been timely made to the Debtor. If the payment is not timely received by Debtor, she shall file with the~~

court and serve on Mr. Wajda on or before January 5, 2020, a notice of failure to make ordered payment.

IT IS FURTHER ORDERED the hearing on this Order to Show Cause is continued to 10:30 a.m. on January 8, 2020, for the court to determine whether it has been concluded by payment of the ordered amounts or whether further proceedings are warranted.

IT IS FURTHER ORDERED that if the $350.00 has not been timely paid to Emilio Reyes by the Debtor, Lorraine Escobar, the Debtor, shall appear in person at the January 8, 2020 continued hearing in person, No Telephonic Appearance Permitted.

IT IS FURTHER ORDERED that if the $557.00 has not been timely paid to the Debtor by Nicholas Wajda, Nicholas Wajda shall appear in person at he January 8, 2020 continued hearing in person, No Telephonic Appearance permitted.

12. 19-90893-E-7 ROBERT/JULIE BLINE MOTION TO COMPEL ABANDONMENT
MDA-1 Diane Anderson 11-15-19 [10]

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's, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 15, 2019. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Motion to Compel Abandonment is granted.

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

The Motion filed by Robert William Bline and Julie Elizabeth Bline ("Debtor's") requests the court to order Michael D. McGranahan ("the Chapter 7 Trustee") to abandon property commonly known as two Wells Fargo bank accounts: (1) Wells Fargo Checking account XXXXXX1349 and (2) Wells Fargo High Yield Saving Account XXXXXX9168 ("Property"). The Declaration of Robert William Bline, Jr. and Julie Elizabeth Bline has been filed in support of the Motion and values the Property at $0.00.

The two bank accounts belong to Debtors' mother. According to Debtors, the accounts are only for the mother's use and benefit after the death of Debtors' father. Declaration, Dckt. 13. They assert that Donna L. Bline holds a 100% interest in the Property; that they have made no contributions to these accounts and none of the funds have been used for their benefit. *Id.* Further, contending that Debtors did not include these accounts in their initial filing because they did not consider themselves to have any interest in them. *Id.*

For purposes of this Motion, the court finds that the Property has no value to the Estate. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Robert William Bline and Julie Elizabeth Bline ("Debtor's") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as two Wells Fargo bank accounts:(1) Wells Fargo Checking account XXXXXX1349 and (2) Wells Fargo High Yield Saving Account XXXXXX9168 ("Property"), are abandoned by the Chapter 7 Trustee, Michel D. McGranahan ("Trustee") to Robert William Bline and Julie Elizabeth Bline by this order, with no further act of the Trustee required.

13. 19-90495-E-7 BLF-3 | **CURTIS PAULUS** **Pro Se** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **10-31-19 [53]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, and Office of the United States Trustee on October 31, 2019. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The hearing on the Objection to Claimed Exemptions is xxxxxxxxx

The Chapter 7 Trustee, Gary R. Farrar ("Trustee") objects to Curtis Paulus's ("Debtor") claimed exemptions under California law because Debtor failed to state the applicable law allowing a claimed exemption of the real property known as 525 Bodem Street, Modesto, California (the "Property") of $106,800.00. Further, debtor failed to establish by a preponderance of the evidence that the property is exempt under section 704.730 or section 703.140(b)(5) of the California Code of Civil Procedure.

DEBTOR'S OPPOSITION

On December 4, 2019, Debtor filed an Opposition/Response. Dckt. 57. Debtor requests additional time to hire an attorney in order to address Trustee's objection to the Homestead exemption.

DISCUSSION

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has

the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

Under California Code of Civil Procedure Section 704.730,

(a) The amount of the homestead exemption is one of the following:

> (1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

California Code of Civil Procedure Section 704.730.

Debtor claims an exemption in the Property of $106,800.00 without specifying the section of the California Coded of Civil Procedure pursuant to which the Property would be exempt. As a result, Trustee is unable to determine the appropriate statutory limit or whether the value of the Property exceeds the applicable statutory limit. Thus, Trustee cannot determine whether the claimed exemption is valid.

Further, Trustee contends, that if the Debtor intended to exempt the Property under California Code of Civil Procedure Section 704.730, he has failed to establish by a preponderance of the evidence that he is entitled to claim a homestead exemption on the Property.

Trustee correctly asserts that this section allows an individual to exempt $75,000 in his homestead (unless Debtor meets the criteria either under section 704.730(a)(2) or (a)(3)). Debtor claimed $106,800. Thus, exceeding the amount allowed. Moreover, in order to use this exemption, Debtor must reside in the dwelling that falls under the homestead exemption. Debtor's Petition disclosed he lives at 353 Maxwell Avenue, Oakdale, California, not at the Property. Dckt. 1.

California Code, Code of Civil Procedure - CCP § 703.140 (b)(5) states "The debtor's aggregate interest, not to exceed in value one thousand five hundred and fifty dollars ($1,550) plus any unused amount of the exemption provided under paragraph (1), in any property. This exemption is often called the "wildcard" exemption.

In the alternative, if Debtor intended to exempt the Property under Section 703.140(b)(5), Trustee correctly argues Debtor has exceeded the amount available under that section as well.

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

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

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

~~The Objection to Claimed Exemptions filed by The Chapter 7 Trustee, Gary R. Farrar ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the hearing on the Objection is xxxxxxxxxx~~

14. 19-90482-E-7 **DOROTHY YOUNG**
Pro Se

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
11-13-19 [31]

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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on November 15, 2019. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

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

The Chapter 7 Trustee, Michael D. McGranahan ("Trustee"), seeks dismissal of the case on the grounds that Dorothy Mae Young ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 11:30 a.m. on December 17, 2019. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on December 9, 2019. Dckt. 42. Debtor states the following in a handwritten note:

"I am Dorothy Mae Young. I am 92 years old. I cannot walk. I am unable to appear in court. Please cancel this. I'm very ill."

Dckt. 42.

DISCUSSION

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

This is the third time that Debtor has failed to appear at the Meeting of Creditors. The first Meeting was held on July 23, 2019. Trustee's July 24, 2019 Docket Entry Statement. The second was held October 1, 2019. Trustee's October 2, 2019 Docket Entry Statement. Finally, the third Meeting was held November 5, 2019. Trustee's November 6, 2019 Docket Entry Statement.

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

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

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

FINAL RULINGS

15. 18-90702-E-7 MICHAEL EVANS AND CHRISTINA SMITH MH-1
19-9011 EVANS ET AL V. NAVIENT SOLUTIONS, INC. ET AL
MOTION TO INTERVENE AND/OR MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL , MOTION FOR JUDGMENT ON THE PLEADINGS
11-11-19 [28]

ADVERSARY PROCEEDING DISMISSED: 11/22/19

Final Ruling: No appearance at the December 19, 2019 hearing is required.

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

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

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

The Motion to Intervene AND/OR Motion to Dismiss Adversary Proceeding OR in the alternative, Motion for Judgment on the Pleadings having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

16. 18-90237-E-7 JOANN MERENDA
HSM-7 Pro Se
MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
11-25-19 [106]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the December 19, 2019 hearing is required.

Gary Farrar ("the Chapter 7 Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the**

Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor was dismissed without prejudice, and the matter is removed from the calendar.

17. 18-90428-E-11 **RANDHAWA TRUCKING, LLC**
Brian Haddix
CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 6-7-18 [1]

Debtor's Atty: Brian Haddix

Notes:
Continued from 11/21/19 to be conducted in conjunction with the United States Trustee's Motion to Convert or Dismiss pursuant to order of the court [Dckt 141].

The Status Conference is concluded and removed from the Calendar, the court having converted this case to one under Chapter 7

18. 19-90671-E-7 ICE-1 **PATRICIA REED**
Pro Se
CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING AND MOTION TO EXTEND THE DEADLINES FOR FILING OBJECTIONS TO DISCHARGE AND MOTIONS TO DISMISS 10-4-19 [14]

Final Ruling: No appearance at the December 19, 2019 hearing is required.

Pursuant to Order (Dckt. 28), the Motion to Dismiss has been denied, and this matter removed from the court's December 19, 2019, 10:30a.m. calendar.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditor, and Office of the United States Trustee on September 16, 2019. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

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

By prior Order of the Court (Dckt. 135), the hearing on the Motion for Contempt has been continued to 10:30 a.m. on January 23, 2020.