UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 21, 2017, at 10:30 a.m.

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1. **10-21200-E-7** **ROBERT CLOSE** **MOTION TO AVOID LIEN OF BEN'S**
JSO-2 **Jeffrey Ogilvie** **TRUCK & EQUIPMENT, INC.**
11-13-17 [90]

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 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on November 13, 2017. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order declaring that the judicial lien of Ben's Truck & Equipment, Inc. ("Creditor") against undisclosed property of Robert Close ("Debtor") is void. No Code section is cited for the legal relief requested, and there is no Memorandum of Points and Authorities to guide the court when interpreting this Motion.

The Motion itself is titled "Motion for Order Declaring 'Judgment Lien' Void as to Debtor," but Debtor's declaration is listed as being "In Support of Motion to Avoid Judicial Lien on Real Property." *Compare* Dckt. 90, *with* Dckt. 93. Neither document discloses the property, and neither document cites 11 U.S.C. § 522(f), which contains the applicable rules for avoiding judicial liens. Debtor has not cited the

court to a statutory basis to declare a lien void. Additionally, Debtor has not claimed any real property as exempt on Schedule C.

Voiding of Judgment As to Personal Liability and Future Property of Debtor

It is well established that pursuant to 11 U.S.C. § 524(a) that the entry of a discharge operates to void a judgment as to personal liability for future enforcement against exempt property of the debtor or future acquired property of a debtor. However, it does not void the judgment or judgment lien to the extent that the lien has attached to property of the debtor as of the commencement of the bankruptcy case. Other provisions, such as 11 U.S.C. § 522(f) affords the court the power to void an otherwise valid, enforceable judgment lien.

Here, the Debtor's dilemma is that Creditor was not given notice of the bankruptcy case when it was filed in 2010, and was not given notice of the opportunity to file a complaint objecting to Debtor's discharge or the nondischargeability of the debt owed to creditor. Debtor's Verification of Master Address List, Dckt. 4; Notice of Chapter 13 Bankruptcy Case and Certificate of Service, Dckt. 12; and Notice of Conversion to Chapter 7 and Certificate of Service, Dckt. 28.

The problem for Debtor is that 11 U.S.C. § 523(a)(3) provides that a creditor's debt is not discharged if the claim was neither listed nor schedule under section 521(a)(1) in time to permit the creditor to file a complaint for the nondischargeability of its debt. Debtor did not schedule Creditor's claim and did not give creditor notice of the bankruptcy case.

Debtor was discharged in this case after John Reger ("the Chapter 7 Trustee") administered the case as a no asset distribution case. *See* Dckt. 79. The Ninth Circuit Court of Appeals has reviewed the scenario of when a debtor wishes to reopen to schedule a claim and have it discharged in a no asset case. *Beezley v. California Land Title Co.*, 994 F.2d 1433 (9th Cir. 1992). The Ninth Circuit concluded that merely because a claim was not listed on the debtor's schedules, such was not determinative of whether the debt was discharged or not. The court concluded that whether the debt was discharged in a no asset case turned on whether the debt was the type barred from discharge under 11 U.S.C. § 523(a)(3)(B), and if so, as a matter of law the debt was not discharged.

Judge O'Scannlain wrote an extensive concurring decision explaining the legal underpinnings of the majority one paragraph ruling. Judge O'Scannlain's analysis concludes:

> "The analysis the Code requires is, I submit, as follows: Because Beezley's was a no-asset, no-bar-date case, section 523(a)(3)(A) [failure to give notice to creditor in time to file a proof of claim] does not bar the discharge of his debt to Cal Land under section 727(b). Cal Land has alleged, however, that Beezley committed fraud in connection with the transaction that was the subject of its lawsuit against him, and that the debt evidenced by the default judgment it obtained against Beezley is therefore nondischargeable under section 523(a)(3)(B). Had Beezley listed this debt in his bankruptcy schedules, Cal Land would have been required under Bankruptcy Rule 4007(c) to litigate this nondischargeability question 'within 60 days following the first date set for the meeting of creditors,' which had long since passed when this

> litigation commenced. **However, because Beezley failed to schedule the debt, Bankruptcy Rule 4007(b) affords Cal Land the right to litigate dischargeability outside the normal time limits, again in accordance with section 523(a)(3)(B).** See *American Standard*, 147 Bankr. at 484 ('In effect, a debtor who fails to list a creditor loses the jurisdictional and time limit protections of Section 523(c) and Rule 4007(c).'). See also *In re Lochrie*, 78 Bankr. 257, 259-60 (9th Cir. BAP 1987).
>
> This is the only right Cal Land can claim by virtue of its omission from Beezley's schedules. In particular, Cal Land cannot escape the need to prove nondischargeability merely because Beezley's failure to list his debt to Cal Land may have been intentional or may have prejudiced its ability to show that Beezley committed fraud years ago, as the holding in Stark would suggest. Stark has no place in the analysis of the matter at hand."

Id. at 1440-1441 (emphasis added).

Thus, until the creditor is afforded an opportunity to assert grounds for nondischargeability, the court cannot determine that the debt has been discharged.

The Ninth Circuit followed up this analysis in *White v. Nielsen (In re Nielsen)*, 383 F.3d 992 (9th Cir. 2004). The mere failure to list an asset on the schedules (or give the creditor notice) does not render the debt nondischargeable in a no asset case. But if the debt was nondischargeable pursuant to 11 U.S.C. § 523(a)(3)(B), then it is nondischargeable. *Id.* at 926-927.

The question turns on whether the debt, here a judgment, is one that is nondischargeable under 11 U.S.C. § 523(a)(2) [fraud], (a)(4) [defalcation, embezzlement, larceny], or (a)(6) [willful and malicious injury], all of which are grounds that must affirmatively be prosecuted by the creditor. As determined by the Ninth Circuit in *Beaty v. Selinger (In re Beaty)*, 306 F.3d 914 (9th Cir. 2002), a creditor whose claim was not scheduled and did not have actual notice of the bankruptcy case is not given an unlimited amount of time in which to assert such nondischargeability rights, but must act reasonably or face having the ability to assert such nondischargeability rights by the doctrine of laches. In stating this legal principle, the Ninth Circuit panel stated:

> "On balance, we believe that the best reading of § 523(a)(3)(B) and Rule 4007(b) is that laches is available as a defense. At the same time, **we read those provisions as directing bankruptcy courts to be especially solicitous to § 523(a)(3)(B) claimants when laches is invoked, and to refuse to bar an action without a particularized showing of demonstrable prejudicial delay.** Just as there is a strong presumption that a delay is reasonable for purposes of laches when a specified statutory limitations period has not yet lapsed, there should be a similar presumption in § 523(a) (3)(B) cases. **A party asserting laches as a defense to a complaint filed under § 523(a)(3)(B) must make a heightened showing of extraordinary circumstances and set forth a compelling reason why the action should be barred.** See *Jarrow Formulas*, 304 F.3d 829, 2002 WL 1163624 at *5 ('If the plaintiff filed suit within the analogous limitations period, the strong presumption is that laches is inapplicable.'); *Shouse v. Pierce County*, 559 F.2d 1142, 1147 (9th

> Cir. 1977) ('It is extremely rare for laches to be effectively invoked when a plaintiff has filed his action before limitations in an analogous action at law has run.'); see also *Patton v. Bearden*, 8 F.3d 343, 348 (6th Cir. 1993) (noting the 'strong presumption that laches will not apply when the analogous statute of limitations has not run, absent compelling reason,' and requiring a showing of "gross laches in the prosecution of the claim" (internal citation and quotation omitted)); *Reconstr. Fin. Corp. v. Harrisons & Crosfield*, 204 F.2d 366, 370 (2d Cir. 1953) (noting that 'a heavy burden rests on . . . the party setting up laches as a defense' when the limitations period has not yet expired); *In re Marriage of Hahn & Cladouhos*, 263 Mont. 315, 868 P.2d 599, 601 (Mont. 1994) ('When a claim is filed within the time limit set by the analogous statute, the defendant bears the burden to show that extraordinary circumstances exist which require the application of laches'); *Bldg. & Constr. Trades Council of N. Nev. v. State ex rel. Pub. Works Bd.*, 108 Nev. 605, 836 P.2d 633, 637 (Nev. 1992) ('Especially strong circumstances must exist . . . to sustain a defense of laches when the statute of limitations has not run.'); *Williams v. Mertz*, 549 So. 2d 87, 88 (Ala. 1989) (when limitations period has not expired, 'special facts must appear which make the delay culpable') (internal citation and quotation omitted)."

Id. at 926 (emphasis added).

Thus, it does not appear that merely because a debtor requests that the court "declare" that an unscheduled debt has been discharged is the unscheduled debt discharged. It is clear that if the debt is one subject to 11 U.S.C. § 523(a)(2), (4), or (6), it is not discharged. Such has to be determined. If the debt is discharged, then the judgment lien is void. If void and the debtor wants to quiet title, then the debtor may seek such determination through an adversary proceeding. Fed. R. Bankr. P. 7001.

The claim of Creditor is based on a state court judgment entered on November 23, 2009. Abstract of Judgment, Exhibit A; Dckt. 92. This judgment remains in force and effect for ten years, unless renewed.

Debtor has provided the court with a copy of a Trustee's Deed Upon Sale recorded in 2010, by which Federal National Mortgage Association was the grantee. Exhibit B, *Id.* The court is uncertain as to why this foreclosure deed has been provided and why it is relevant as to whether Creditor's debt based on the judgment was dischargeable or nondischargeable pursuant to 11 U.S.C. § 523(a)(3)(B).

At this juncture, Debtor does not have the benefit of the Federal Rule of Bankruptcy Procedure 4007(c) limitations for a creditor commencing an action to have a debt determined nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), or (6) [which provision are subject to the 11 U.S.C. § 523(a)(3) exception from discharge]. However, for the debt to be nondischargeable it must be determined that the debt is nondischargeable under 11 U.S.C. § 523(a)(2), (4), or (6), and the creditor may not unreasonably delay in prosecuting such action.

There are some possible solutions. Debtor may commence a declaratory relief adversary proceeding (Fed. R. Bank. P. 7001) for the court to determine that the judgment was not one for which relief may be granted under 11 U.S.C. § 523(a)(2), (4), or (6). Conversely, the creditor may file an adversary

proceeding seeking a determination that the judgment was nondischargeable, subject to the Debtor's defenses, including that of laches.

But what the Debtor cannot do is file a motion for the court to issue an order either voiding the judgment, voiding the judgment lien, or determine that such lien is "void." If the judgment is not dischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), or (6), such judgment and lien would not be void.

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
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> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Robert Close ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** that the Motion is denied without prejudice.

2. **15-28108-E-11** **WILLARD BLANKENSHIP** **MOTION TO MODIFY CHAPTER 11**
RLC-12 **Stephen Reynolds** **PLAN**
11-13-17 [223]

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-Plan Administrator, Debtor-Plan Administrator's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2017. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3019(b) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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 court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Confirm the Modified Plan is denied.

Willard Blankenship ("Debtor-Plan Administrator") seeks confirmation of the Modified Plan because it extends the time that Ruedin and Kletchko ("Creditors") have to object to certain claims, pursuant to a settlement between the parties. Dckt. 225 at 3. The Motion states with particularity (Fed. R. Bankr. P. 9013) the proposed to the modifications to the existing confirmed plan are:

> A. "The proposed modifications are relatively straight forward and are found in a dozen lines printed in bold spread between the first two pages of the proposed modified Plan and two sentences on the tenth page." Motion, p. 3:17-19; Dckt. 223.
>
> B. "Debtor will contribute an additional $18,000 to the funds available to creditors and the time to object to certain claims contemplated by the original plan will be extended." *Id.*, p 3:19-21.

C. "The proposed Modified Plan also represents a compromise between the Creditors and Debtor." *Id.*, p. 3:26-27.

The Modified Plan edits Section 5.04 to read that all claims objections shall be filed within 120 days of the Modified Plan's effective date, and the Modified Plan adds a provision to Article VII that requires Debtor to pay $500.00 per month beginning in August 2017 until $18,000.00 total has been paid (with those funds being distributed pro rata to Classes 2 and 3). 11 U.S.C. § 1127 permits a debtor to modify a plan after confirmation.

In the Supplemental Brief, the Plan Administrator/Debtor presents the court with authorities for creating a new period under the modified plan, for objections to claims be filed. Dckt. 229. Under the present confirmed Plan the Plan Administrator/Debtor (then acting as the Debtor in Possession) set a post-confirmation deadline for filing objections to claims. This was one-hundred and eighty days after the effective date of the Plan.

A hard negotiated for term of the confirmed Plan was giving creditors Ruedin and Kletchko (the other parties in the hard fought, hostile state court proceedings adverse to Debtor) the authority to object to the claim filed by Debtor's state court counsel in the hard fought, hostile state court proceedings.

The Plan Administrator/Debtor asserts that since there is no statutory time set for filing objections to claims, then they are creatures of merely "administrative convenience." Therefore, though under the confirmed Plan the time period for Ruedin and Kletchko has expired, it is of no real moment and a new time period to object to the claim filed by their Debtor's adversary counsel can be created.

REVIEW OF CONFIRMED PLAN

The ability to object to claims is not unlimited, with the Confirmed Plan creating an express 180-day limitation. The Confirmed Plan, ¶ 6.04 (misnumber ¶ 5.04 under Article V of the Plan, p. 8 of Plan) requiring that all objections be filed within 180 days of the effective date. Plan attached to Confirmation Order, Dckt. 153. In the Class 2 Claim Treatment, ¶ 4.01, p. 5 of Plan, the Confirmed Plan expressly provides for Creditors to have the right to object to the claims filed by Davis Law Firm and the claim schedule for Yury Galprin Lieber Law. *Id.* The Confirmed Plan further provides that the "Effective Date" is fourteen business days following the entry of the order confirming the Plan. *Id.*; Plan ¶ 7.02, page 10 of Plan. The Order confirming the Plan was entered on the court's docket on October 11, 2016. The fourteenth business day after entry on the docket is October 31, 2016. April 29, 2017, is the 180th day after October 31, 2016.

For a deadline to object to claims, the Plan states that "[a]ll claim objections, including the claims objections allowed to Class 2 . . . shall be filed within 180 days of the Plan Effective Date." *Id.*, at 8:26–28. The Effective Date of the Plan is October 31, 2016, which is the requisite fourteen business after the October 11, 2016 entry of the order confirming the Plan. Dckt. 153. One hundred and eighty days later is April 29, 2017.

CREDITORS APRIL 4, 2017 PLEADING

On April 4, 2017, Creditors filed a pleading titled:

> "MICHAEL KLETCHKO AND PATRICK RUEDIN'S
> STATEMENT OF OBJECTION AND RESERVATION
> OF RIGHTS TO CONTEST CLASS 3 CLAIMS"

Dckt. 189. That document was not served on anyone and appears to be Creditors' dictate to Debtor, other parties in interest, and the court.

In the Statement, Creditors make the following pronouncements:

A. Creditors object to the first phase of distribution as set forth in the terms of the Confirmed Plan.

B. Creditors assert that they have been deprived of $63,774.33 that is to be paid to them from the reverse mortgage that is to fund the first phase of distribution under the Confirmed Plan.

C. Creditors request that the court set a hearing to determine whether the parties can resolve this dispute.

D. Creditors also now object to the Confirmed Plan Phase 2 sale of the Indiana Property. Creditors assert that the sale has occurred but the Plan Administrator/Debtor has failed to account for or distribute any of the proceeds.

Reservation, Dckt. 189.

Other than advising the court that Creditors are "annoyed," no legal action is taken or initiated with the above pleading.

Creditors have not filed any objections to claims in this case, a right they specifically bargained for in the Chapter 11 Plan.

APPLICABLE LAW

Federal Rule of Bankruptcy Procedure 3007 governs the procedure for objecting to claims. In relevant part, it states:

> (a) Objections to claims. An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claim, the debtor or debtor in possession, and the trustee at least 30 days prior to the hearing.
>
> . . .

> (c) Limitation on joinder of claims objections. Unless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.

FED. R. BANKR. P. 3007 (a) & (c). Federal Rule of Bankruptcy Procedure 3007 (d) & (e) provide the mechanisms for presenting an omnibus objection to claims.

Local Bankruptcy Rule 3007-1 provides additional measures in this district for objecting to claims. That rule states:

> An objection to a proof of claim shall include the name of the claimant, the date the proof of claim was filed with the Court, the amount of the claim, and the number of the claim as it appears on the claims register maintained by the Court. Unless the basis for the objection appears on the face of the proof of claim, the objection shall be accompanied by evidence establishing its factual allegations and demonstrating that the proof of claim should be disallowed. A mere assertion that the proof of claim is not valid or that the debtor is not owed is not sufficient to overcome the presumptive validity of the proof of claim.

LOCAL BANKR. R. 3007-1(a). The Local Rules establish that such objections must be set for hearing on either forty-four or thirty days' notice. LOCAL BANKR. R. 3007-1(b)(1) & (2). Short notice may be deemed inadequate by the court. *See, e.g.*, *In re Ambassador Park Hotel, Ltd.*, 61 B.R. 792 (N.D. Tex. 1986) (deeming eight days' oral notice of hearing on Chapter 11 debtor's objection to creditor's claim to be inadequate under Federal Rule of Bankruptcy Procedure 3007).

Local Bankruptcy Rule 9014-1(d)(1) states that "every application, motion, contested matter or other request for an order, shall be filed separately from any other request, except that relief in the alternative based on the same statute or rule may be filed in a single motion."

NOVEMBER 16, 2017 STATUS CONFERENCE

At the Status Conference, the court noted that Debtor-Plan Administrator discussed a plan modification in the term of a "resurrection" for an "extension" of the deadline to object to claims, but the court noted the deadline had passed long ago. Dckt. 228 at 2.

Additionally, the court reviewed the other key change to the Plan, which is the payment of $500.00 per month until $18,000.00 has been paid to Creditors.

RULING

In considering the proposed modification, the court begins with the reason the modification is required. The Plan Administrator/Debtor *explains* that when he went to perform the plan and obtain the post-confirmation refinancing, he could not obtain the refinancing (a reverse mortgage) on the terms as required by the confirmed plan. Declaration ¶ 4. The Plan Administrator/Debtor states that to obtain the

reverse mortgage he was *required* to have $63,774.33 of the proceeds held back to make the Plan Administrator/Debtor's insurance and property tax payments.

Rather than stopping at that point, notifying Ruedin and Kletchko, and moving to promptly modify the plan or obtain authorization from the court to deviate from the Plan (the contract binding the Debtor and fiduciary Plan Administrator/Debtor), the decision was made for the Plan Administrator/Debtor to succumb to the changed reverse mortgage terms and *accept* $63,774.33 to pay the Plan Administrator/Debtor's future insurance and property tax payments.

The Plan Administrator/Debtor, the fiduciary to perform the Plan, elected to violate the Plan and just present the court with a *fait accompli* taking of the $63,774.33. This is reported to have occurred in January 2017.

In May of 2017, four months later, the Plan Administrator/Debtor popped up and filed a motion to approve a different distribution ("Different Distribution Motion") than provided in the confirmed Chapter 11 Plan. Motion, Dckt. 192. In the Different Distribution Motion, the Plan Administrator/Debtor advises the court that the reverse mortgage came up short, and after having the $63,774.33 set aside for his future insurance and property taxes, and paying $43,365.00 to his attorney, the Plan Administrator/Debtor was coming up short on the required payment to Ruedin and Kletchko.

Plan Administrator/Debtor, Ruedin, and Kletchko Agreement

The Plan Administrator/Debtor and creditors Ruedin and Kletchko have reached a financial agreement to adequately account for the $63,774.33 in monies that were held back from the reverse mortgage to pay Plan Administrator/Debtor's future insurance and property taxes.

The proposed Modified Plan requires the Debtor to fund the Plan with an additional $500 a month until an additional $18,000.00 has been paid into the plan. At $500 a month, this will take three years. This appears to be in recognition that the Debtor's future insurance and property taxes have already been pre-funded by $63,774.33 being held back for Debtor rather than paid into the Plan as required by the existing confirmed plan.

This additional funding does not strike the court as unreasonable, and reflects a monetary adjustment between these parties to get creditors Ruedin and Kletchko close to what the existing confirmed Plan required (before the Plan Administrator/Debtor elected to close the reverse mortgage that did not comply with the Plan).

This portion of the proposed Modified Plan appears proper.

Modified Term to Create New Period For Ruedin and Kletchko to Objection to Claim of Debtor's State Court Attorney

As this court has noted, the pre-bankruptcy litigation of the Debtor, Ruedin and Kletchko, and Debtor's transfer away of the Indiana property were not events which sounded in good faith. Those practices flowed through to these federal court proceedings. In denying the motion for relief from the

automatic stay, the court determined that a number of the grounds were not based on any proper legal authority. Civil Minutes, p. 6-7; Dckt. 62. (Emphasis added.) These findings include:

> "**The Movant first asserts that the lien is not on account of an antecedent debt. This is facially incorrect**. A judgment, on its face, is 'on account of an antecedent debt owed by the debtor before such transfer was made.'...The Movant stated it was a judgment, and therefore admits to the nature of the lien being antecedent.
>
> **As to the assertions that the Movant was unaware of the Debtor-in-Possession's insolvency and that the Debtor-in-Possession failed to prove that he was insolvent, the Movant has failed to address § 547(f).** Section 547(f) states:
>
> > For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.
>
> In the instant case, the 90-day window from the time of filing the petition ran from July 20, 2015 through October 17, 2015. The abstract of judgment was recorded on July 22, 2015, within the 90-day window. Therefore, it was presumed that the Debtor-in-Pos
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> Furthermore, the Movant asserts that, even if the Debtor-in-Possession is able to show that the judgment is a preferential payment, the Movant can assert the new value defense of 11 U.S.C. § 547(c)(4). However, the "new value" the Movant asserts was part of the new consideration was the Movant not exercising methods in which the Movant would be able to enforce the judgment. **The three points that the Movant asserts constitutes new consideration is that the Movant decided to file the abstract of judgment, rather than filing a lawsuit or enforcing the lien against liquid accounts. Courts have found that forbearance from exercising pre existing rights does not constitute new value for purposes of the new value defense of § 547(c)(4).** *In re ABC Naco, Inc.*, 483 F.3d 740 (7th Cir. 2007).
>
> The Movant also asserts that the Debtor-in-Possession's homestead exemption should be disallowed because the homestead was acquired through the use of fraud. Unfortunately, this argument fails to provide a ground sufficient for the relief requested. The Movant seems to make general allegations as to the inapplicability of the homestead exemption without showing, specifically, that in the instant case such should happen. **As the Debtor-in-Possession noted, the Movant failed to file an objection to exemptions within thirty days of the meeting of creditors. Therefore, at first glance, such argument is not proper.**
>
> However, even beyond that, the Movant does not argue how the equitable estoppel doctrine applies to justify disallowing the exemption after the objection window has run."

The Debtor in Possession, did not fare much better in this ruling, though he prevailed in having the court deny the motion for relief from the automatic stay, the court noted:

> "It concerns the court that, in reviewing the docket, that the Debtor-in-Possession has not appeared to prosecute and retrieve potential assets for the bankruptcy estate. Especially since the Debtor-in-Possession has the same fiduciary duties as would a trustee appointed in the case. 11 U.S.C. § 1107. There appears to be an asset (in this case being a preferential payment) which could be applied to the estate."

Id. at 8.

Creditors Ruedin and Kletchko then filed a motion to dismiss or convert this case. In denying that motion the court's findings and conclusions stated in the Civil Minutes, p. 4 - 5, Dckt. 103, include:

Excerpt 1 at p. 4.

> "In this District, a minimum of 28-days notice is required in order for the court to find that failure to timely opposition is a statement of non-opposition. Local Bankr. R. 9014-1(f)(1). Here, the **Movant appears to be noticing the Motion on 21-days notice, which is 7-days short of the minimum for the court to issue final rulings without a hearing due to the default in responses**.
>
> **Third, the Movant failed to properly serve all necessary parties**. Fed. R. Bankr. P. 2002(a) requires that notice be given to "the debtor, the trustee, all creditors and indenture trustees." A review of the Proof of Service, which is improperly attached to the Notice of Motion, states that only: (1) Debtor's attorney; (2) U.S. Trustee; (3) Thomas G. Mouzes; and (4) Judith Hotze. Dckt. 78. Facially, the Movant has failed to serve the Debtor-in-Possession or the creditors. Rather, the Movant only provided notice to a total of four parties in this Chapter 11 case. This alone is grounds to deny the Motion.
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> **Fourth, the Movant improperly served the Motion 'via Notice of Electronic Filing.'** This is not permitted under the Local Rules. It appears that the Movant has improperly assumed that the Eastern District follows the same procedures as other districts in the state. Unfortunately, that assumption is inaccurate. In order for electronic service to be proper, the party must have consented and registered with the court's electronic filing system. The Eastern District does not offer a court "Notice of Electronic Filing." Therefore, the Movant failed to properly serve the Motion."

Excerpt 2 at p. 5.

> "The Movant does not provide specifics as to how the continuation of the instant case has resulted in the 'bleeding' of equity and assets. While the Movant does provide general grounds such as accrual of interest and general market conditions as

'cause,' the Motion seems to be based on the best interest of the Movant rather than the best interest of 'creditors and the estate.'

The Movant also asserts that dismissal is proper because of allegedly fraudulent conveyances of certain real property that would otherwise have been property of the estate. The Movant fails to provide specifics in the Motion as to which transfers are fraudulent and why dismissing the case rather than keeping the Debtor-in-Possession in bankruptcy would not result in a better outcome. The Movant appears to argue that the mere fact that the Movant accuses the Debtor-in-Possession of fraudulent conveyances that cause exists."

The court further visited the conduct of the Plan Administrator/Debtor, Ruedin and Kletchko when makings the findings and conclusions in denying the Plan Administrator/Debtor's motion to disburse monies in a manner not provided for in the confirmed Plan. These findings and conclusions are stated in the Civil Minutes, p. 1-4, Dckt. 202 (emphasis added), and include:

Excerpt 1.

"Creditors [Ruedin and Kletchko] argue that **if they had been told that Debtor would be taking $63,774.33 of the reverse mortgage moneys away from Creditor, they would not have agreed to and would not have supported the Plan.** As the "500 lb. gorilla" creditor in this case, such loss of support would likely have doomed any plan.

Creditors then continue, arguing that **even though they have elected not to file objections to claims and have not complied with the requirements of the Confirmed Plan, they 'object'** to four claims by virtue of mentioning them in passing in objecting to the present Motion."

Excerpt 2.

"Just as Creditors complain that Plan Administrator/Debtor has not complied with the Plan and the proposed distribution, **Creditors ignore the Plan and now try to unfairly attack other creditors.** Creditors ignore the Bankruptcy Code (11 U.S.C. § 502), the Federal Rules of Bankruptcy Procedure (Rule 3007), the Local Bankruptcy Rules, and the Confirmed Plan. Creditors create their own rules and law of how they will blindside other creditors and operate outside the law."

Excerpt 3.

Upon review of the pleadings and the conduct of the Plan Administrator/Debtor and the Creditors, the court determines it necessary to require the in-court appearance of those parties and their attorneys at the continued hearing. **Plan Administrator/Debtor's contention, "I didn't know, so I'm taking $63,000.00 of the reverse mortgage monies to pay my future taxes and insurance so I don't have to pay it," is as unsatisfactory as Creditors' "Rules, we don't**

need to follow no Rules, we make the Rules" in how they have failed to, and now try to untimely, prosecute their rights provided in the plan (at their requirement)."

Excerpt 4.

> The court has previously addressed the shortcomings of the Plan Administrator/Debtor, Creditors, and their respective counsel in their "prosecution" of this bankruptcy case. Examples include:
>
> > [1] failure of Plan Administrator/Debtor to file evidence in support of motion to confirm; Civil Minutes, p. 8, Dckt. 149;
> >
> > [2] Creditors filing an "objection" to administrative fees which stated no specific opposition; Civil Minutes, p. 4, Dckt. 150;
> >
> > [3] Denial of Creditors' motion to dismiss the case, Creditors not stating grounds for dismissal; Civil Minutes, p. 4–6, Dckt. 103;
> >
> > [4] Dismissing Creditors contention that the recording of their judgment lien was not based on an "antecedent debt," Creditors cannot ignore the statutory presumption of insolvency under 11 U.S.C. § 547, the contention of forbearance was not supported by the evidence, and Creditors asserted "baseless grounds" in requesting relief; Civil Minutes, p. 6–8, Dckt. 62;
> >
> > [5] Dismissal of Creditor's complaint against non-debtor third-parties for relief under 11 U.S.C. § 523 for failing to state a claim for which relief could be granted against nondebtors under that provision of the Bankruptcy Code; Adv. Pro. 16-2010, Civil Minutes, p. 13–14; and
> >
> > [6] Creditors failing to show any legal basis for trying to unilaterally exercise the powers of a debtor in possess/trustee under 11 U.S.C. §§ 547 and 548; id., p. 15–16; [.]"

Excerpt 5.

> "In Adversary Proceeding 16-2010 the court perceived the litigation conduct of Plan Administrator/Debtor and Creditors to be "sandbox litigation," well below that required in federal court proceedings. 16-2010; Civil Minutes, p. 15–16, Dckt. 38. **The court observed that the pleadings disclosed a 'toxic, less than professional, relationship between [Creditors and Plan Administrator/Debtor] in the State Court [proceedings that set the stage for the bankruptcy case filing].**' *Id.*, p. 17. The Civil Minutes include extensive quotations of the less than professional conduct that one expects from parties engaging in litigation, even in state court. This court's conclusions included: . . . ."

Excerpt 6.

> "Creditors have sat back, appearing to be in a state of somnolence while not getting paid the monies they believed they were entitled to under the Plan. Though negotiating hard to have the right to object to claims, Creditors have let those rights lapse in apparent disinterest in this case. Now, belatedly, Creditors believe they have the right and power to hide what may be objections to claims in a response to the present Motion. No certificate of service has been filed for Creditors' Opposition to the present Motion."

The lack of attention and prosecution of this case and the various rights under the confirmed plan by Plan Administrator, Ruedin, and Kletchko was reflected in the court's findings and conclusions stated in the Civil Minutes, p. 1, for the November 1, 2017 continued post-confirmation status conference, Dckt. 219 (emphasis added), which include:

> "**No further pleadings have been filed by any parties in interest** in this bankruptcy case. At the hearing, counsel for the Plan Administrator/Debtor advised the court **that though the parties had serious discussions and worked out the terms of a resolution of the disputes in July 2017, it was only now that the attorneys would begin the drafting of such possible settlement documents.** Possibly, in the upcoming weeks, documents may be completed and then work on a motion to amend the plan begun. For the Plan Administrator/Debtor, resolution of this dispute was not a priority matter because it would not be for several months when monies would be available to perform any stipulation. Counsel for Creditors and the two Creditors [Ruedin and Kletchko] identified below have not taken any action to document any purported settlement or agreement."

Like the court has noted before, the deadline for objecting to claims passed on April 29, 2017. No action was taken by Ruedin and Kletchko. Though they fought hard to get the right to object to the claims, they took no action over the six months permitted under the confirmed Plan.

Now, Debtor-Plan Administrator and Creditors seeks to "resurrect" that deadline and essentially create a new, second window in which an objection to claim can be filed. The parties cite the court generally to the provisions of 11 U.S.C. § 502(a) and to an argument that a claims objection deadline is an administrative feature that may be altered by a modified plan. The parties have not provided the court with any case law to support their position, however, and the court disagrees with their position.

Considering all of the evidence, conduct of the Plan Administrator/Debtor, Ruedin and Kletchko, the court is convinced if there was a good faith, meritorious objection to the claim of state court counsel for the Debtor, it would have been filed. Rather, the conduct of the Plan Administrator/Debtor, Ruedin and Kletchko demonstrate that such "objection" is intended to be used for promoting "sandbox" litigation which is prosecuted for the sake of causing expense, delay, and harm on others – without regard to the merits of such contention.

Mandating that the court impose a new claims objection period in place of the one that expired eight months ago manifests bad faith in proposing the modified plan. No explanation has been provided

for Ruedin and Kletchko being unable to or prevented from reasonably and diligently prosecuting any *bona fide*, good faith, Rule 9011 compliant claim objection.

The "economics of the plan" further demonstrates that a claims objection would not be prosecuted for any good business reason. Ruedin and Kletchko have a claim for $1,164,360.00 in this case. Proof of Claim No. 2.

The claims filed in this case total $1,216,815.97. FN.1. Clerk's Registry of Claims filed in this case. Rudin and Kletchko hold 95.6% of the total claims in the case (before payment on the secured portion of their claim). Davis Law, APC, state court counsel for the Debtor, have a claim for $45,155.41. Proof of Claim No. 4. That is 3.3% of the total claims.

FN.1. It appears that the law firm has filed two proofs of claim, which duplicate each other - Proof of Claim No. 3 and Proof of Claim No. 4. No action was taken by the Debtor in Possession or Rudin and Kletchko to object to a duplicate proof of claim. For the calculations in this ruling, the court has reduced the unsecured secured claims by $45,526.55, for the apparent first duplicate Proof of claim filed by Debtor's state court attorneys. This has the effect of maximize the result to Rudin and Kletchko if they had prosecuted the claims objection.

Under the proposed Modified Plan, Rudin and Kletchko are to be paid:

A. $132,567 October 2016 and $18,000 in monthly payments for their secured claim.

B. Rudin and Kletchko will be paid $150,567 through the Plan on their secured claim.

C. Rudin and Kletchko will have a general unsecured claim of $916,762.16 (amount stated in Plan after application of the above monies).

D. The other unsecured claims in the case total $52,455.97, which when added to the above amount for Rudin and Kletchko, the general unsecured claims in this case to be paid through the Chapter 11 Plan total.....$969,218.13.

E. Rudin and Kletchko will receive a 94.5% *pro rata* dividend from the $286,135 to be distributed to creditors holding general unsecured claims, which totals.....$270,648.

If Rudin and Kletchko were able to prevail on a claims objection and have the full $45,155.41 claim of the Debtor's state court attorney disallowed, the computation changes as follows:

A. The unsecured claims would total.....$924,062.72

B. Rudin's and Kletchko's pro rata percentage would be.....99.2%

C. Rudin's and Kletchko's pro rata distribution would be.....$283,874.39

Thus, if Rudin and Kletchko were to pursue the long ignored claim objection, the aggregate dollar benefit would be $13,225.57 — a 4.9% increase.

Assuming that an experience billing rate of $400 an hour is charged for the claims objection, a mere thirty hours of work would wipe out any monetary benefit to Rudin and Kletchko.

It is clear that there is no economic benefit for Rudin and Kletchko in pursuing any claims objection. They have taken no action over 180 days to prosecute any such objection. It appears that the only "value" to such an objection is to carry on non-productive, non-economic spite litigation now in federal court.

The Plan Administrator/Debtor, Rudin, and Kletchko now seek to make the court a "partner" in promoting such spite litigation. Doing such further manifests the bad faith of these three parties.

Denial of Motion to Confirm Modified Plan

While the court could confirm a modified plan which restructured the payments between the Debtor and Rudin and Kletchko to provide for the $18,000.00 additional payment to make up for the monies Debtor was forced to take from the refinance to pay his future insurance and property taxes, the Plan Administrator/Debtor, Rudin, and Kletchko have placed a bad faith poison pill in trying to give Rudin and Kletchko the green light to prosecute non-economic litigation.

The proposed modified plan does not comply with 11 U.S.C. § 1129 and is not proposed in good faith.

The motion is denied and the proposed Modified Plan is not confirmed.

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 Confirm the Modified Chapter 13 Plan filed by Willard Blankenship ("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 Motion to Confirm the Modified Plan is denied.

3. **14-26919-E-7** **RODERICK ROBBINS** **MOTION FOR COMPENSATION BY**
HSM-5 **Stephen Murphy** **THE LAW OFFICE OF HEFNER, STARK, & MAROIS FOR AARON A. AVERY, TRUSTEES ATTORNEY(S)**
11-16-17 [142]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2017. By the court's calculation, 35 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.

Hefner, Stark & Marois, LLP, the Attorney ("Applicant") for Geoffrey Richards, 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 March 5, 2015, through December 21, 2017. The order of the court approving employment of Applicant was entered on March 17, 2015. Dckt. 99. Applicant requests fees in the amount of $37,741.50 and costs in the amount of $55.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that Applicant's services for the Estate include asset investigation, asset disposition, claims review, litigation, discovery, and general case administration. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 18.10 hours in this category, including 1.40 hours billed at no charge. Applicant reviewed initial case issues and assets and advised Client; performed case initiation activities, including conflicts analysis and employment application; drafted employment application for itself and for real estate broker (not filed, though); drafted motion to extend discharge deadline; advised Client about general case matters; drafted and prosecuted this Application.

Asset Investigation: Applicant spent 27.30 hours in this category. Applicant reviewed the debtor's schedules and statement of financial affairs regarding intended administration of real properties; analyzed factual issues bearing on legal issues related to potential estate assets, including regulatory facts related to a San Francisco property; communicated with Client and real estate professionals concerning analysis of potential real property assets; reviewed pleadings and docket regarding history of converted case; engaged in multiple communications with the debtor's bankruptcy counsel relating to investigation and analysis of various estate assets, including legally complex issues related to a San Francisco property (an asset of a separate probate estate); reviewed issues with respect to substantial documentation produced by the debtor; analyzed legal issues regarding deed and regulatory restrictions/Section 8/title issues for administering San Francisco property; attended Meeting of Creditors to question the debtor about estate assets and a motion to compel abandonment of Sacramento rental property; communicated with the debtor's counsel about lack of timely communication and responses to requests for information; and analyzed probate case issues.

Asset Disposition: Applicant spent 84.45 hours in this category, including 3.75 hours billed at no charge. Applicant analyzed legal issues about the Estate's interest in assets and asset appreciation in case converted from Chapter 13 to Chapter 7; researched legal and factual issues related to the debtor's motion to compel abandonment of Sacramento rental property; drafted opposition to motion to compel abandonment; communicated with the debtor's counsel throughout case concerning lack of timely communication and responses to requests for information; communicated with the debtor's counsel in connection with negotiation of resolution pursuant to which the debtor would complete the sale of the San Francisco property through probate, conclude administration of the probate estate, waive his right to compensation in that case, and distribute funds to the bankruptcy estate for administration and distribution;

researched legal and procedural issues in connection with bankruptcy and probate law interplay; advised Client about strategies; drafted agreement with the debtor about administration of real property; drafted and prosecuted compromise motion approving agreement with the debtor; reviewed pleadings, agreements, and other documents in probate case to ensure consistency with the debtor's agreement with the bankruptcy estate; communicated with the debtor's bankruptcy and probate counsel and real estate agent about providing timely information and updates and issues about performance under an agreement with the Estate; advised Client about options to compel timely performance under agreement; and reviewed issues about closing a sale of real property, motion to approve final accounting, and distributing proceeds to the Estate.

Claims: Applicant spent 0.10 hours in this category. Applicant reviewed the claim of HSBC.

Litigation: Applicant spent 2.10 hours in this category. Applicant engaged in probate-related communications; drafted letter to San Francisco Housing Authority; and e-mailed with Client about a possible motion to compel turnover.

Discovery: Applicant spent 0.30 hours in this category. Applicant addressed issues regarding possible formal discovery as a means of receiving timely information from the debtor.

The Motion states that there is a 100% distribution to creditors in this case, with the Trustee having generated approximately $185,946.81 in the case. The legal services included addressing complex real estate issues, as well as the Debtor's efforts to force the abandonment of the real property.

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 blended and averaged at $300.28 per hour:

Names of Professionals and Experience	**Time**	**Total Fees Computed Based on Time and Hourly Rate**
Aaron Avery	120.25 hours	$32,288.50
M Steiner	1.60 hours	$624.00
Howard Nevins	7.60 hours	$3,031.00
J Levy	2.90 hours	$798.00
Total Fees for Period of Application		$36,741.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $55.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Sacramento County recording fee		$30.00
Certified copies of petition		$25.00
		$0.00
		$0.00
Total Costs Requested in Application		$55.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $39,741.50 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 $55.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$36,741.50
Costs and Expenses	$55.00

pursuant to this Application as final fees 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 Hefner, Stark & Marois, LLP ("Applicant"), Attorney for Geoffrey Richards, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Hefner, Stark & Marois, LLP, is allowed the following fees and expenses as a professional of the Estate:

Hefner, Stark & Marois, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of $36,741.50
Expenses in the amount of $55.00,

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

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