UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 8, 2020 at 10:30 a.m.

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1. **19-25790-A-7** **SCHERRIE PIERSON** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
JHW-1 **Pro Se** **12-2-19 [12]**

SANTANDER CONSUMER USA INC.
VS.

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

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*), Chapter 7 Trustee, and Office of the United States Trustee on December 2, 2019. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Dodge Challenger, VIN ending in 1152 ("Vehicle"). The moving party has

provided the Declaration of Erica Engel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Scherrie Antoinette Pierson ("Debtor").

Movant argues Debtor has not made two (2) post-petition payments, with a total of $1,016.72 in post-petition payments past due. Declaration, Dckt. 17. Movant also provides evidence that there are 1.1 pre-petition payments in default, with a pre-petition arrearage of $1,290.65. *Id*.

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

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $18,720.93 (Declaration, Dckt. 17), while the value of the Vehicle is determined to be $3,000.00, as stated in Schedules B and D filed by Debtor (based on Debtor's information that the vehicle is not in working condition), which is less than the retail value as stated on the NADA Valuation Report.

Debtor voluntarily surrendered the Vehicle to Movant on November 9, 2019. *Id.*

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

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to

repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

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

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Santander Consumer USA Inc. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2012 Dodge Challenger, VIN ending in 1152 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

2. **19-26617-A-7** **LAYLA GUTIERREZ** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
CLH-2 **12-20-19 [28]**

INCOME BOOSTER #1 LLC 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.

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 (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on December 20, 2019. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay 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 Relief from the Automatic Stay is granted pursuant to 11 U.S.C. § 362(d)(1), and denied with respect to relief pursuant to 11 U.S.C. § 362(d)(4).

Income Booster #1 LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 45047 Vine Cliff Street, Temecula, California ("Property"). The moving party has provided the Declaration of Saleem Sheikh to introduce evidence as a basis for Movant's contention that Layla Gutierrez ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Riverside, with an order granting Movant's motion for summary judgment for possession having been issued by that court on October 25, 2019. Exhibit B, Dckt. 30.

Movant has provided a properly authenticated copy of the filed Judgment. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the

Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Additionally, on December 27, 2019, Trustee Susan K. Smith filed a statement of non-opposition. Trustee's December 27, 2019 Docket Entry Statement.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Here, the Motion states with particularity (Fed. R Bankr. P. 9013) the following grounds for relief pursuant to 11 U.S.C. § 362(d)(4):

A. Movant has been attempting to obtain possession of the Property since commencing the Unlawful Detainer on August 27, 2019 (which is just four months prior to the date of the hearing on this Motion).

B. The unlawful detainer action filed four months before the hearing on this Motion due to "fraudulent filing of an attempted removal to Federal District Court by a different Defendant and this bankruptcy petition by this Debtor."

C. The District Court entered an order remanding the matter back to the State Court on November 7, 2019. The District Court's order is provided a Exhibit D. This appears to be a standard form order used in the Central District.

D. Relief should be granted to "prevent this Debtor and others from continually delaying the UD Action by filing frivolous bankruptcy petitions and requests for removal, filed specifically for the purpose of causing such delay."

E. Movant commenced its efforts to obtain possession of the property in the Summer of 2019, with the unlawful detainer proceeding commenced on August 27, 2019.

F. On September 5, 2019, Liam Stokes, Jacob Gonzalez, and Layla Gutierrez, claimed to be tenants in possession and filed a demurrer to the unlawful detainer complaint.

G. On September 5, 2019, Reynaldo G. Rondero filed a separate motion to strike the unlawful detainer complaint.

H. Both the demurrer and the motion to strike were denied on September 13, 2019.

I. On October 18, 2019, Movant filed its motion for summary judgment, with it set for hearing on October 25, 2019.

J. On October 25, 2019, the State Court granted the motion for summary judgment.

K. On November 1, 2019, after the entry of the judgment for possession, Layla Gutierrez, the Debtor in this case, filed a notice of automatic stay in the State Court unlawful detainer action.

L. Reviewing Debtor's Schedules, the Movant notes:

1. Debtor does not reside in the Property.

2. Debtor does not list Movant as a creditor.

3. Debtor does not list the State Court unlawful detainer action as a legal proceeding she is a party to.

M. On November 5, 2019, Jacob Gonzalez filed a notice of removal of the State Court unlawful detainer action, in which the judgment has been entered, to the District Court in the Central District of California.

N. On November 7, 2019, the District Court issued an order, sua sponte, remanding the removed action back to the State Court.

REVIEW OF BANKRUPTCY DOCUMENTS FILED BY DEBTOR

On her Bankruptcy Petition, Debtor Layla Gutierrez states that she lives at 3109 39th Street, Sacramento, California, and has a mailing address of 45047 Vine Cliff St, Temecula, California. Dckt. 1 at 2.

On Schedule A/B, Debtor states under penalty of perjury that she has no interest in any real property. Dckt. 14 at 2. On Schedule A/B Debtor does not state any assets, interests, or rights relating to the Property.

On Schedule D, Debtor states that she has no creditors with any claims secured by any real or personal property. *Id.* at 14.

On Schedule E/F, Debtor states that she has no creditors with any priority unsecured claims. *Id.* at 16.

On Schedule E/F, Debtor lists four creditors with consumer credit card debt totaling $6,320.00. *Id.* at 17-18.

On Schedule G, Debtor states that she has no executory contracts or unexpired leases. *Id.* at 20.

On Schedule I, Debtor states that she has no income. *Id.* at 24 - 25.

Though having no income, on Schedule J Debtor states having ($2,982) in expenses. *Id.* at 27-28.

Additional information is provided by the Debtor on the Statement of Financial Affairs concerning her assets, living situation, and legal proceedings, including:

A. Debtor is not married and has lived at the 39th Street Address for at least the past three years. Statement of Financial Affairs Part 1 and 2. *Id.* at 30.

B. Debtor has no income in 2019, while having $30,000+ income in 2018 and 2017. Statement of Financial Affairs Part 4, *Id.* at 31.

C. All of the remaining questions for the Statement of Financial Affairs are checked "no." *Id.*

Movant has provided the court, as Exhibit E (Dckt. 30) with a pleading in the State Court unlawful detainer proceeding titled "Prejudgment Claim of Right to Possession" ("PCRP") which purports to have been filed by "Layla Gutierrez," the same name as the Debtor in this case. This was filed in the State court on September 5, 2019.

"Layla Gutierrez" states under penalty of perjury that she lives at 45047 Vine Cliff St, Temecula, California - the same address Debtor uses as a "mailing address," but not where she lives. PCRP ¶ 2, Exhibit E, Dckt. 30.

"Layla Gutierrez" states that she was living in the Vine Cliff Street property on August 27, 2019 when the State Court unlawful detainer action was filed. PCRP ¶ 4, *Id.*

"Layla Gutierrez" states that "I occupied the premises on the date the complaint was filed . . .I have continued to occupy the premises ever since." PCRP ¶ 5, *Id.*

"Layla Gutierrez" states that she has "an oral or written rental agreement with the former owner who lost the property to foreclosure." PCRP ¶ 13, *Id.*

The statements under penalty of perjury in the PCRP are in direct conflict with the statements under penalty of perjury on the Petition, Schedules, and Statement of Financial Affairs.

The Movant has established that this bankruptcy case filing is being used as part of a scheme to hinder, delay or defraud Movant. But this is the one and only bankruptcy case as part of the scheme.

The relief sought by Movant under 11 U.S.C. § 362(d)(4) may be granted upon the court finding that specific circumstances exist:

> (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
> . . .
> (4) with respect to a stay of an act against real property under subsection (a), **by a creditor whose claim is secured by an interest in such real property**, if the court finds that the **filing of the petition was part of a scheme to delay, hinder, or defraud creditors** that involved either—
>
> > (A) **transfer of all or part ownership of, or other interest in,** such real property without the consent of the secured creditor or court approval; or
> >
> > (B) **multiple bankruptcy filings affecting such real property**.

11 U.S.C. § 362(d)(4) (emphasis added).

The plain language of the above statue allows the court to grant relief to a creditor who has a claim secured by an interest in the real property. Here, Movant clearly states that it is not a creditor having a claim secured by the Property, but is the owner of the Property. Movant is not a creditor who may seek relief pursuant to 11 U.S.C. § 362(d)(4).

Next, if there were a creditor with a claim secured by the Property, the filing of this bankruptcy petition must be found to be part of a scheme to delay, hinder or defraud creditors that involves either one of the two mandatory conditions:

> A. The transfer of all or part ownership of, or other interest in the real property. Here, Movant does not allege that there is a transfer of an interest in the property as part of the scheme.
>
> B. The current bankruptcy case is one of multiple bankruptcy filings affecting the real property. Here, Movant clearly states that this is the one and only bankruptcy filing (at least as of now) **involving the Property.**

While it appears that there is a scheme afoot to hinder and delay Movant in prosecuting the unlawful detainer action (something that the State Court judge may want to exercise the remedies for abuse of the State judicial process), Movant's does not meet the requirements for relief pursuant to 11 U.S.C. § 362(d)(4). Collier on Bankruptcy, Sixteenth Edition, ¶ 362.07[6[

RELIEF FROM STAY PURSUANT TO
11 U.S.C. § 362(d)(1)

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)

Cause has been stated for granting relief from the stay in this case pursuant to 11 U.S.C. § 362(d)(1). Under penalty of perjury in this case, Debtor Layla Gutierrez states that she has no interest in, does not reside in, and does not have any lease or rental agreement related to the 45047 Vine Cliff Street, Temecula, California. It may well be that Debtor's identity is being stolen by those perpetrating the abuse of the State Court and the District Court in the Central District.

If Debtor Layla Gutierrez is the same Layla Gutierrez who has made statements under penalty of perjury in the State Court unlawful detainer action that are directly in conflict with her statements made under penalty of perjury in this federal court bankruptcy case, cause is shown for granting relief from the automatic stay (as well as whatever action the U.S. Trustee determines appropriate). Further, Debtor expressly states that she has no interest in the Temecula Property. This case should not impede Movant in the State Court unlawful detainer action.

The automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 45047 Vine Cliff Street, Temecula, California.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

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 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Income Booster #1 LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 45047 Vine Cliff Street, Temecula, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

IT IS FURTHER ORDERED that relief pursuant to 11 U.S.C. § 362(d)(4) is denied.

No other or additional relief is granted.

3. **19-26350-A-7** **RACHEL GARDNER** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
BCP-1 **12-23-19 [11]**

THE GOLDEN 1 CREDIT UNION
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.

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, and Office of the United States Trustee on December 23, 2019. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

The Golden 1 Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Chevrolet Camaro, VIN ending in 2640 ("Vehicle"). The moving party has provided the Declaration of Wes Motschman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Rachel Elizabeth Gardner ("Debtor").

Movant argues that there are three (3) pre-petition payments in default, with a pre-petition arrearage of $1,488.30. Declaration, Dckt. 13.

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

Though authenticated, Movant has not provided the court with a basis for determining that this out of court statement is admissible hearsay. FED. R. EVID. 802, 803. The court will not presume to make evidentiary legal assertions for Movant, which may or may not be so intended. Some common hearsay exceptions include: records of a regularly conducted activity, public records, and market reports and similar commercial publications. FED. R. EVID. 803(6), (8), and (17).

Though the court will *sua sponte* take notice that the Kelley Blue Book Valuation Report can be within the "market reports and similar commercial publications" exception to the hearsay rule (Federal Rule of Evidence 803(17)), it does not resolve the authentication requirement. FED. R. EVID. 901. In this case, and because no opposition has been asserted by Debtor, the court will presume the Declaration of Wes Motschman to be that he obtained the Kelley Blue Book Valuation Report and is providing that to the court under penalty of perjury. Movant and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

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 $27,986.79 (Declaration, Dckt. 13), while the value of the Vehicle is determined to be $20,000.00, as stated in Schedules B and D filed by Debtor.

According to Debtor's Statement of Intention, Debtor intends to surrender the Vehicle. Dckt. 1

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

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to

repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

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

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by The Golden 1 Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Chevrolet Camaro, VIN ending in 2640 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.
>
> No other or additional relief is granted.

4. **14-25201-A-7** **RAM GOPAL** **MOTION TO SELL**
DNL-3 **Dale Orthner** **12-17-19 [84]**

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, and Office of the United States Trustee on December 17, 2019. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Approve Sale and Assignment Agreement is ~~granted~~.

The Bankruptcy Code permits Alan S. Fukushima, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the bankruptcy estate's interest claims asserted by Debtor and Ravinder Kaur ("Kaur") against Nissim Lanyadoo *et al.* in Sacramento County Superior Court Case #34-2014-00170267 ("Property").

The proposed purchaser of the Property is Debtor, Ram Gopal, and Ravinder Kaur, and the terms of the sale are:

A. **Purchase Price: Debtor and Kaur shall pay to the Trustee the first $30,000.00** of any gross recoveries received on account of the claims in the State Court Action.

B. **Assignment:** Upon entry of an order granting th emotion to approve the agreement, all right, title, and interest of the Bankruptcy Estate in the State Court Action shall be deemed assigned to the Debtor and Kaur. Trustee

shall execute the additional documents required by Debtor and Kaur to effectuate assignment.

C. **Bankruptcy Court Approval:** The Agreement is conditioned upon an order granting the motion to approve the agreement as entered on the docket of the Bankruptcy Cause.

Proposed Overbid Procedures

The Trustee requests approval of overbid procedures that require a proposed overbidder, prior to the hearing on this motion, to provide the Trustee with a cashier's check in the amount of $31,000.00 ($30,000.00 + 1st overbid in the amount of $1,000.00) and proof of funds an additional $9,000.00. The Trustee requests that any further overbidding proceed in increments of at least $1,000.00.

DISCUSSION

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

From the Agreement, it is not clear whether the rights are assigned, with the Buyers as the owners, and said interests are encumbered by a judicially retained lien/encumbrance/interest for the Bankruptcy Estate for the first $30,000.00 recovered, senior in priority to all interests of Buyers, any attorney representing the Buyers, or any other person; or whether in stating in the Agreement that upon entering the order approving the sale the interests "shall be deemed assigned" to mean that a legal right to enforce the obligation, in the nature of an assignment for collection exists, and that the Buyers enforce the rights and collect the monies as the fiduciary of the Bankruptcy Estate, the first $30,000.00 of the monies recovered are property of the Bankruptcy Estate, and only after the $30,000.00 is paid to the Bankruptcy Estate do Buyers have a right to disbursement of the monies recovered.

At the hearing, xxxxxxxxxx

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because creditors stand to benefit from the sale proceeds as opposed to the risk and litigation costs that might be involved if Trustee continues to litigate the extent of the Bankruptcy estate's interest in the claims.

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 Alan S. Fukushima, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Alan S. Fukushima, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Debtor, Ram Gopal, and Ravinder Kaur, or nominee ("Buyer"), the bankruptcy estate's interest claims asserted by Debtor and Ravinder Kaur ("Kaur") in Sacramento County Superior Court Case #34-2014-00170267 ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $30,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 87, 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.

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

5. **19-23310-E-7** **WILLIAM/SYLVIA HOLSTEN** **OPPOSITION TO CHAPTER 7 TRUSTEE'S REPORT OF NO DISTRIBUTION**
Gretel Smith
10-25-19 [23]

DEBTOR DISMISSED: 09/20/2019

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 Objection. 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).

This Bankruptcy Case was filed on May 23, 2019. The Bankruptcy Case of co-Debtor William Holsten was dismissed on December 20, 2019, pursuant to the Motion of the Chapter 7 Trustee. Order, Dckt. 16. Debtor Sylvia Holsten was granted her discharge on December 20, 2019. Discharge, Dckt. 18.

On October 25, 2019, an Opposition to the Trustee No Asset Report was filed for San Joaquin River Club, Inc. Dckt. 23. This has not been file by an attorney, but by Daniel Diviney, President of the corporation.

Corporations, partnerships, and other non-individual entities must be represented by a licensed attorney and cannot purport to participate in federal court proceeding in pro se or through a non-attorney officer, partner, or other representative. *Rowland v. California Men's Colony*, 506 U.S. 194, 201-202 (1993); *In re America West Airlines*, 40 F3d 1058, 1059 (9th Cir 1994) ("Corporations and other unincorporated associations must appear in court through an attorney."); *Church of the New Testament v United States*, 783 F2d 771, 773 (9th Cir 1986); and *Multi Denominational Ministry of Cannabis and Rastafari, Inc., et al v. Gonzales*, 474 F.Supp. 1133 (N.D. Cal. 2007), affrm. 2010 U.S. App. LEXIS 2976 (9th Cir. 2010).

The California State Bar Website search of licensed attorneys discloses that the State Bar does not report there being a licensed attorney with the name Daniel Diviney authorized to practice law.

Though not properly filed, the court has reviewed the substance of the Opposition.

Mr. Diviney states that he had received the Notice of Hearing, Trustee's Motion to Dismiss, and the Continued First Meeting of Creditor Date, which was set for September 26, 2019. When Mr. Diviney communicated with the court on the morning of September 26, 2019, he was advised that the case was dismissed.

Such was true. The continued First Meeting was for William Holstein, and because he had not responded to the Trustee's Motion to Dismiss his case, on September 20, 2019, the court dismissed his bankruptcy case.

However, Sylvia Holstein had completed her First Meeting of Creditors and she received her discharge on September 20, 2019.

Mr. Diviney asserts that he does not believe that Sylvia Holstein has accounted for all property and she has not been adequately investigated. Mr. Diviney does not identify any assets not disclosed.

Mr. Diviney further asserts that Sylvia Holstein is employed and owns a house without any mortgage on it. He then explains how Sylvia Holstein was a member of the Corporation and was allowed to reside within the Club. Sylvia Holstein has now been "expelled" and can no longer live within the Club, but can sell the house.

Mr. Diviney then attaches 16 pages of documents, statements, and bills to the Objection. It appears that by the end of September 2019, San Joaquin River Club, Inc asserted it was owed $4,970.20 by the Debtor. Mr. Diviney does not state whether it is asserted that this obligation is secured by the house or is just an unsecured debt.

On Schedule A, Debtor lists owning real property in Tracy, California, with a value of $30,000.00. Dckt 1. at 12. There is the following, non-specific reference with respect to this asset, with Debtor stating, "Part of the San Joaquin County River Club Parties own the house bu not the land."

On Schedule C, Debtor claims an exemption of $30,000.00 in the real property, exhausting all of its value. This renders the property that the Trustee cannot administer, there being no economic value in it for the Bankruptcy Estate.

It appears that Mr. Diviney views the bankruptcy process as if the Trustee is a collection agency to take assets from a debtor. The Trustee is bound by the exemption laws, which renders the property of no value to the Bankruptcy Estate.

If San Joaquin River Club, Inc. has information showing that the property is worth significantly more, and its attorney can communicate that information to the Trustee, the Trustee would have to consider whether there are assets to be administered.

Based on the Objection, the San Joaquin River Club, Inc. not being represented by counsel, and no non-exempt assets having been identified to be administered, the Objection is overruled.

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 Chapter 7 Trustee's Report of No Distribution 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 Objection is overruled.

6. **19-26511-A-7** **SHANNON MASON**
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-11-19 [24]

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 Debtor (*pro se*), Chapter 7 Trustee, creditors, and Chapter 13 Trustee as stated on the Certificate of Service on December 13, 2019. The court computes that 25 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $31.00 due on November 27, 2019.

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

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $31.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

7. **18-27920-A-7** **GREEN BELT CARRIERS** **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH NATIONAL FUNDING, INC.**
MHK-8 **Stephen Reynolds** **12-9-19 [78]**

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, creditors, parties requesting special notice, and Office of the United States Trustee on December 9, 2019. By the court's calculation, 30 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Susan K. Smith, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with National Funding, Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are the claims related to the adversary proceeding over Settlor's Security Interest over the proceeds of the sale of certain personal property of the Debtor which was sold by Trustee ("Proceeds").

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit B in support of the Motion, Dckt. 81):

A. Settlor is to pay the Estate the sum of $1,500.00.

B. Settlor's Claim No. 12 is to deemed disallowed.

C. The Security Interest is to be deemed terminated, and the Proceeds shall be deemed free and clear of any lien, claim, interest, or the like of Settlor. Settlor is to promptly file a termination statement with the California Secretary of State in regard to the Security Interest.

D. The Trustee is to cause the Adversary Proceeding to be dismissed, should the Bankruptcy Court not have already done so in connection with the order approving the Agreement.

E. Except for the obligations and rights set forth in the Agreement, the parties effect a mutual general release of claims; and

F. The Trustee is to file and serve this motion to request the court's approval of the Agreement.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Under the terms of the settlement, all claims of the Estate, including any pre-petition claims of Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

Settlor asserts the ordinary-course defense to recovery of the proceeds. As to the transfer of the Security Interest, the Trustee argues that due to delay between time Settlor took the Secured Interest and perfected, the Security Interest is subject to avoidance. Due to these issues, the probability of success is not clear, and thus weighs in favor of proposed compromise.

Difficulties in Collection

Trustee does not anticipate any difficulties in collecting any money judgment against Settlor.

Expense, Inconvenience, and Delay of Continued Litigation

While litigating this proceeding is not exceptionally complex, it would nevertheless be costly in light of the limited resources available to the Estate. Further, in relation to the modest amount of controversy, the expense and delay of litigation would be great.

Paramount Interest of Creditors

Trustee believes the interest of creditors by this Agreement on the basis that as part of the Agreement, Settlor releases the Security Interest and Claim No. 12 and any other claim against the Estate.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it releases the Security Interest and Claim No. 12 which benefits other creditors and their recovery. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Susan K. Smith, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and National Funding, Inc. ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit B in support of the Motion (Dckt. 81).

8. **19-26532-A-7** **IRMA VAZQUEZ**
Thomas Gillis

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
11-15-19 [11]

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

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, Debtor's Attorney, Creditors, and Office of the United States Trustee on November 20, 2019. By the court's calculation, 49 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 denied without prejudice.

The Chapter 7 Trustee, Kimberly J. Husted ("Trustee"), seeks dismissal of the case on the grounds that Irma Bravo Vazquez ("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 12:30 p.m. on December 6, 2019. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

On December 8, 2019, Trustee submitted a Trustee Report. Trustee indicated that Debtor appeared at the scheduled Meeting of Creditors which was set for December 6, 2019 at 12:30p.m. Trustee's December 8, 2019 Docket Entry Statement.

DISCUSSION

Debtor did appear at the continued Meeting of Creditors, which resolves that issue. However, due to the delay, extending the deadline for objecting to discharge to February 14, 2020, is appropriate, due to the month delay in the First Meeting of Creditors being conducted.

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, Kimberly J. Husted ("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 denied without prejudice.

IT IS FURTHER ORDERED that the deadlines to file objections to discharge by Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including February 14, 2020.

9. **17-22333-E-7** **THOMAS WARREN** **MOTION TO SELL AND/OR MOTION TO PAY**
BHS-3 **Lucas Garcia**
12-5-19 [162]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on December 5, 2019. By the court's calculation, 34 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the estate's interest in real property commonly known as 11563 Quartz Drive #3, Auburn, California ("Property").

The proposed purchaser of the Property is Gwendolyn Davis, and the terms of the sale are:

A. Price Term to be paid by Buyer of $119,000.00.

B. Buyer to place a $1,200.00 deposit with Trustee which is non-refundable upon court approval.

C. Sold "As Is" and "Where Is" with payment to U.S. Bank National Association in the approximate amount of $35,000.00 and a lien in the approximate amount of $11,500.00 by the Auburn Greene Unit 2

Homeowner's Association and any other existing liens and property taxes, if any, being paid by the estate through escrow.

Bidding Procedures

A. Overbidding to start at 4120,00.00 with the buyer agreeing to all terms and conditions in the Residential Purchase Agreement. The overbids shall be in minimum $1,000.00 increments.

B. To qualify as a bidder, the bidder must bring to the court a cashier's check or a certified check for $2,200. The cashier's or certified check shall serve as a non-refundable deposit if the overbid is successful.

C. The successful overbidder must deliver to the Trustee a cashier's or certified check for the overbid amount within 48 hours of court approval of the sale.

D. Escrow to close within thirty (30) days of court approval.

CREDITOR'S NON-OPPOSITION

Creditor U.S. Bank National Association filed a Non-Opposition to the Motion to Sell on December 18, 2019. Dckt. 168. Creditor does not oppose as long as the order includes the following language:

> The loan secured by a first lien on real property located at 11563 Quartz Drive Unit 3, Auburn, CA 95602 will be paid in full as of the date of the closing of the sale, and the sale will be conducted through an escrow and based on a nonexpired contractual payoff statement received directly from Select Portfolio Servicing, Inc.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will provide the estate with an approximate net proceed of $35,680.57.

Movant has estimated that a 6 percent broker's commission from the sale of the Property will equal approximately $7,140.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 6 percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Debtor is in favor of the sale.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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 Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Kimberly J. Husted, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Gwendolyn Davis or nominee ("Buyer"), the Property commonly known as 11563 Quartz Drive #3, Auburn, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $119,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 165, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> E. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than 6 percent of the actual purchase price upon consummation of the sale. The 6 percent commission shall be paid to Realtor, Michael B. Snell II and Keller Williams Realty- Sac Metro.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

10. **19-27435-A-7** **TRAYVON WILLIS KENNEDY**
Justin Kuney

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-17-19 [18]

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 Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 19, 2019. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on November 27, 2019.

The hearing on the Order to Show Cause is continued to 10:30 a.m. on February 15, 2020, in light of Debtor having filed an Application to pay the fees in installments. Dckt. 22

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

11. **19-25743-A-7** **TAYLOR RANKINS** **CONTINUED MOTION TO COMPEL ABANDONMENT**
WLG-1 **Nicholas Wajda** **10-8-19 [17]**

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

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

Below is the court's tentative ruling.

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

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

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

The Motion to Compel Abandonment is xxxxxxxxxxx.

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

The Motion filed by Taylor Alexis Rankins ("Debtor") requests the court to order Sheri L. Carello ("the Chapter 7 Trustee") to abandon property commonly known as the daycare provider under the

fictitious business name of Little Me Preschool ("Property"). The Declaration of Nicholas Wajda has been filed in support of the Motion and states that the business listed in Debtor's schedules is nothing more than a name and seeing as debtor operates as a sole-proprietor there is no actual legal entity that would be capable of owning any assets. Further, the sole-proprietorship has no value to the bankruptcy estate and Debtor wishes to resume doing business under this fictitious business name.

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

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

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

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

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

CONTINUED HEARING

The court continued the hearing, ordering Debtor's counsel Nicholas Wajda to appear at the continued hearing in person, No Telephonic Appearance permitted for Mr. Wajda. Order, Dckt. 27. The court's order continued the hearing to December 12, 2019.

On November 22, 2019, Mr. Wajda filed a motion, to which a Declaration is improperly attached (the filing of each declaration as a separate pleading required under the Local Bankruptcy Rules), requesting that the hearing be continued. The basis of the request is that Mr. Wajda would be unable to attend on December 12, 2019 due to family commitments. An order was entered further continuing the hearing to January 8, 2020.

JANUARY 8, 2020 HEARING

No additional pleadings have been filed by the Debtor. Given the detail in which the court addressed the improper testimony by Mr. Wajda, one would expect an attorney to put together proper, admissible evidence that comply with the Federal Rules of Evidence.

At the hearing, **xxxxxxxxxx**

12. **18-21644-E-7** **ANGELO/LISA OLIVA** **MOTION TO RECONVERT CASE FROM CHAPTER 7 TO CHAPTER 13**
AVN-4 **Anh Nguyen** **11-18-19 [152]**

23 thru 25

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 Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2019. By the court's calculation, 53 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 Reconvert 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 Reconvert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is denied.

Angelo Aroldo Stefano Oliva and Lisa Renee Oliva ("Debtor") seeks to convert this case, initially filed under Chapter 13 and subsequently converted to Chapter 7, back to a case under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007). However, the

availability of this one-time, near-absolute right of conversion requires that "the case has not been converted under section 1112, 1208, or 1307 of this title." 11 U.S.C. § 706(a).

Debtor asserts that the case should be converted because in order to obtain a new mortgage loan, Debtor must be under a Chapter 13 proceeding.

PREVIOUS CONVERSION

Debtor initially filed this case under Chapter 13 on March 21, 2018, Dckt. 1. A plan was confirmed on December 11, 2018. On August 26, 2019, the court ordered Debtor's case converted to one under Chapter 7 in the interest of creditors and the estate after Debtor's failure to become current with plan payments under their Chapter 13 Plan.

TRUSTEE'S OPPOSITION

Trustee filed a detailed Opposition on December 23, 2019. Dckt. 169. As the Trustee first presents, this case was converted to one under Chapter 7 due to the conduct of the Debtor and the used of their "personal piggy bank" corporation. It was necessary for an independent fiduciary be appointed for the Bankruptcy Estate.

The Trustee reports that he has been attempting to investigate the Debtor's activities and the corporation, but the Debtor has not been cooperative. A preliminary conclusion the Trustee has reached is that Debtor's inability to make plan payments did not come from lack of cash flow, but from "lavish personal spending, undisclosed investment activity, and unexplained withdrawals. Opposition ¶ 6, *Id.*

The Trustee describes his investigation of transfers to and by the Debtor and the Corporation. The transactions being reviewed total almost three quarters of a million dollars. *Id.* at 3.

The Trustee has also identified Debtor transferring monies into an investment account linked to Angelo Oliva.

In addition to the Declaration of the Trustee (Dckt. 170), the Trustee provides copies of bank statements showing the transfers being made by Debtor during the bankruptcy case (Dckts. 171, 172).

No response has been provided by Debtor.

DISCUSSION

Here, Debtor's case has been converted previously, pursuant to 11 U.S.C. § 1307(c). That extinguishes Debtor's near-absolute right under 11 U.S.C. § 706(a) to convert a Chapter 7 case "at any time." *Gualtieri v. Goux (In re Goux)*, 65 B.R. 121 (Bankr. E.D.N.Y. 1986); *see* H.R. REP. NO. 595 (1997) ("If the case has already once been converted from chapter 11 or 13 to [C]hapter 7, then the debtor does not have that right [of conversion].")

While there is a sharp divide whether this permits debtors to request reconversion at all, a slight majority of courts have held that debtors may still make such a motion. *Compare In re Johnson*, 116 B.R. 224 (Bankr. D. Idaho 1990) (acknowledging the court's authority to allow reconversion while denying due to failure of debtors to demonstrate facts that would persuade the court to exercise its discretion), *with In*

re Banks, 252 B.R. 399, 399 (Bankr. E.D. Mich. 2000) (interpreting 11 U.S.C. § 706(a) as placing a bar on any reconversion). While there is no binding precedent on this matter in this Circuit, previous decisions of this court, as well as of the Bankruptcy Appellate Panel for the Ninth Circuit, show a trend toward adoption of the majority rule: allowing reconversion on a discretionary basis. *In re De La Salle*, No. 10-29678-E-7, 2011 Bankr. LEXIS 5621, at *26 (Bankr. E.D. Cal. Sept. 6, 2011) ("If [debtors] wish to propose a confirmable plan, they may seek to re-convert this case to one under Chapter 13. . ."); *see Gallagher v. Dockery (In re Gallagher)*, No. CC-13-1368-TaKuPa, 2014 Bankr. LEXIS 1037 (B.A.P. 9th Cir. Mar. 17, 2014) (assessing whether a tax refund was rightfully the property of the Chapter 13 or Chapter 7 estate in a case converted to Chapter 7 then subsequently reconverted to Chapter 13).

It remains within the court's discretion, therefore, whether to grant such a reconversion. Generally, a court will grant such a motion absent abuse of bankruptcy law and if the confirmed plan is in accordance with the requirements of 11 U.S.C. § 1325, in particular whether a plan is feasible under 11 U.S.C. § 1325(a)(6). Of great weight in such considerations is any change in circumstance from the initial failed plan that would suggest more likelihood of success now. *In re Johnson*, 116 B.R. at 227. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties. Trustee filed an Opposition on December 23, 2019.

Debtor refers to the reconversion as a means to obtain a mortgage loan that would allow them to save their house from being sold by the Chapter 7 Trustee and, according to them, pay 100% to unsecured creditors. Debtor asserts, that according to their loan officer, the loan could be funded two to four weeks from date of conversion and creditors would therefore be paid in two to four weeks. Further contending that this plan would allow the creditors to receive the same amount they would be entitled to under a Chapter 7 liquidation.

Trustee's opposition is well - taken. First, there is no proposed plan. A look at the dockets shows that Debtor did not file a plan and its accompanying motion. Debtor is simply asking to incur new debt.

As Trustee so plainly point out, there are issues regarding Debtor's management of personal and business accounts. Debtor throughout this bankruptcy proceeding continues to spend lavishly. Debtor's income seems to be substantially higher than what was asserted in the schedules. The court has previously pointed out concerns, especially as they relate to Debtor using their business as a "personal piggy bank."

Moreover, since conversion, Debtor has consistently made it difficult for to the Trustee to administer the estate: failing to timely disclose bank and mortgage statements despite repeated requests, inhibiting the ability of Trustee's broker to market Debtor's property; and filing this motion despite Trustee alerting them that there would be no discharge in this case.

The lack of a feasible plan and Debtor's long history of showing bad faith behavior shows this court that reconversion is not in the best interest of creditors and that the estate must remain under Chapter 7.

It is not credible that if the court give the Debtor control that in two to four weeks they can get an escrow closed, everyone paid, and the world will be right again. If such a closing is a sure thing based on work, appraisals, investigations, and the like prior to the case being converted, a good faith debtor, bona fide lender, and competent debtor counsel could get it done while the case was in Chapter 7.

Further, for "experienced" bankers and lenders, even if conversion to Chapter 13 is required before the loan closes, a loan can be structured, preliminary approval given for conversion of the case when the loan proceeds are in escrow and ready to be disbursed upon the court entering the order converting the case, and then upon the court issuing the order converting the case the monies are disbursed from the loan escrow to the Chapter 13 Trustee as the disbursing agent.

In reading the declarations from the two lender representative, which were written by Debtor's counsel, to the court they read more like declarations to assist the Debtor in converting the case from the fiduciary Chapter 7 trustee rather than lenders who are trying to make bona fide loans.

The Motion to Reconvert Case from Chapter 7 to a case under Chapter 13 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 Reconvert filed by Angelo Aroldo Stefano Oliva and Lisa Renee Oliva ("Debtors") 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 Reconvert is denied.

13. **19-25248-E-7** **COACT DESIGNWORKS** **MOTION FOR AUTHORITY TO USE ESTATE FUNDS**
DNL-2 **Jason Rios** **12-10-19 [44]**

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

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 December 10, 2019. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Motion for Authority to Use Estate Funds 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 Authority to Use Estate Funds is granted.

Alan Fukushima ("Chapter 7 Trustee") moves for an order approving the use estate funds in the amount of $3,500.00. Trustee proposes to use estate funds for the following expenses: $3,500.00 for storage of Debtor's paper records and computers equipment related to Debtor's former business operations through January 31, 2021.

DISCUSSION

Pursuant to 11 U.S.C. §363(b)– (1)The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. When not in the ordinary course of business, leave from the court must be obtained. Here, there is no business being operated by the Trustee.

Trustee asserts that, although storage will likely costs $3,225.00, Trustee requests authority to use estate funds in an amount not to exceed $3,500.00 out of an abundance of caution. Further, Trustee

contends that unsecured creditors will benefit from the storage of the records which contain outstanding accounts receivable that can be collected for the benefit of unsecured creditors.

Trustee has shown that the proposed use of estate funds is in the best interest of the Estate. The proposed use provides for the storage of Debtor's paper records and computers equipment related to Debtor's former business operations through January 31, 2021. Trustee has on hand approximately $226,000.00 in estate funds.

The Motion is granted, and Trustee is authorized to use estate funds not to exceed $3,500.00. The court authorize these funds for the specific purpose of electronic storage.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Authority to Use Estate Funds filed by Alan Fukushima ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, pursuant to this order, the estate funds may be used to pay the following expense:
>
> > Not more than $3,500.00 for storage of Debtor's paper records and computers equipment related to Debtor's former business operations through January 31, 2021.

14. **14-29361-E-7** **WALTER SCHAEFER**
DNL-34 **Douglas Jacobs**

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR Ccentury 21 BEACH AREA PROPERTIES, BROKER(S)
12-18-19 [488]

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 December 18, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 184 Los Delfines, Tambor, Costa Rica ("Property").

The proposed purchaser of the Property is Charles Pierre Fournier, and the terms of the sale are:

A. Price Term: $150,000.00, payable as follows: (a) $10,000.00 initial deposit and (b) the balance of $140,000.00 due prior to th close of escrow;

B. Closing Date: Escrow shall close within 30 calendar days of entry of the Bankruptcy order approving sale;

C. "As Is," "Where Is": Transfer of the Property shall be "as is" and "where is" without representation or warranty;

D. Sale subject to overbidding t6hrough conclusion of the sale hearing,

Proposed Bidding Procedures

A. Proposed overbidder, prior to or at the hearing on this motion, to provide the Trustee a deposit by cashier's check in the amount of $11,000.00 ($10,000.00 + first overbid of $1,000.00, and

B. Provide proof of funds for the balance of the purchase price.

C. Any overbidding shall proceed in increments of at least $1,000.00

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the current offered price is close enough to the listing price and unsecured creditors will benefit from the net proceeds resulting from the sale.

Movant has estimated that a 6 percent broker's commission from the sale of the Property will equal approximately $9,000.00 As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 6 percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court on the basis that Trustee does not anticipate any opposition to this motion.

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 not granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Kimberly J. Husted, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Charles Pierre Fournier or nominee ("Buyer"), the Property commonly known as 184 Los Delfines, Tambor, Costa Rica ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $150,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 492, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

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

D. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than 6 percent of the actual purchase price upon consummation of the sale. The 6 percent commission shall be paid to the Chapter 7 Trustee's broker, Century 21 Beach Area Properties.

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

15. **10-53472-A-7** **ESTATE OF MARK BELL** **MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR LISA K MCKEE, BROKER(S)**
BHS-4 **Ken Reid Reynoso** **12-13-19 [47]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on December 13, 2019. By the court's calculation, 26 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Geoffrey Richards, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the estate's 22.409% interest in real property commonly known as 8158 Eddington Way, Sacramento, California ("Property").

The proposed purchaser of the Property is Mahmood Khalid, and the terms of the sale are:

A. Price Term: $285,650.00 net ($290,000 less 1.5% credit to buyer for recurring and non-recurring closing costs)

B. Buyer has placed a deposit of $2,899.00 with Trustee, which is non-refundable upon court approval.

C. Property sold "As Is," Where Is" with no warranties or guarantees.

A. Overbiddings hall start at $286,650.00 with buyer agreeing to all terms and conditions as set in the Residential Purchase Agreement.

B. Overbids shall be in minimum $2,899.00 increments.

C. To qualify as a bidder, the bidder must bring to the court a cashier's or certified check for $3,899.00 made payable to Geoffrey Richards. This cashier's or certified check shall serve as a non-refundable deposit if the overbid is successful.

D. The Successful overbidder must deliver to the Trustee a cashier's or certified check for the overbid amount within 48 hours of court approval of the sale.

E. Escrow to close within forty-five (45) days of court approval.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will provide the estate with net proceeds of $48,250.37 for the Estate.

Movant has estimated that a 6 percent broker's commission from the sale of the Property will equal approximately $17,400.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 6 percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court on the basis that all parties in interest are in favor of the sale.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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 Geoffrey Richards, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Geoffrey Richards, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Mahmood Khalid or nominee ("Buyer"), the Property commonly known as 8158 Eddington Way, Sacramento, California ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $289,900.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 50, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

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

D. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than 6 percent of the actual purchase price upon consummation of the sale. The 6 percent commission shall be paid to the Chapter 7 Trustee's Realtor Lisa K. McKee.

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

16. **15-28774-A-7** **OTASHE GOLDEN** **MOTION FOR COMPENSATION FOR**
SSA-14 **Gabriel Liberman** **STEVEN S. ALTMAN, TRUSTEES ATTORNEY(S)**
12-13-19 [176]

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 December 13, 2019. By the court's calculation, 26 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Steven S. Altman, 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 February 19, 2016, through December 2, 2019. The order of the court approving employment of Applicant was entered on March 21, 2016. Dckt. 34. Applicant requests a reduced amount of $15,000.00, inclusive of fees and costs.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

A review of the application shows that Applicant's services for the Estate include general case administration; asset disposition; fee/employment applications; asset analysis and recovery; claims administration and objection; and litigation matters. The Estate has $54,498.22 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 13.10 hours in this category. Applicant conducted coordination and compliance activities, including preparation of statement of financial affairs, schedules, list of contracts, US Trustee interim statements, and operating reports; contacts with US Trustee, and general creditor inquiries.

Asset Disposition, Analysis and Recovery: Applicant spent 2.3 hours in this category. Applicant analyzed and made determinations related to sales, leases, abandonment, and related transaction work; and identified and reviewed potential assets including causes of actions and non-litigation recoveries.

Fee / Employment Applications: Applicant spent 22.50 hours in this category. Applicant prepared employment and fee applications for self and others and prepared motions to establish interim procedures.

Claims Administration and Objection: Applicant spent 12.3 hours in this category. Applicant conducted specific claim inquiries; bar date motions; and conducted analysis as to objections and allowances of claims.

Litigation Matters: Applicant spent 44.30 hours in this category. Applicant was involved in two litigation matters: Dameron/Sound Litigation and the Golden Wrongful Death Litigation– communicated with counsel of parties involved; prepared settlement agreements, motions and supporting documents; prepared notices; and conducted follow-up discussion concerning receipt of full monies due bankruptcy estate and confirmation of the same from the Golden Litigation..

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**

Steven Altman	94.50	$300.00	$28,350.00
	0	$0.00	$0.00
Total Fees for Period of Application			$28,350.00

Costs & Expenses

Though there are costs and expenses, Applicant rolls them in the discounted $15,000 amount, which is well under the actual time and value of the services expended in this case.

FEES AND COSTS & EXPENSES ALLOWED

Applicant seeks to be paid a single sum of $15,000.00 for its fees and expenses incurred for Client. First and Final Fees and Costs in the amount of $15,000.00 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 and Expenses $15,000.00

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 Steven S. Altman ("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 Steven S. Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Steven S. Altman, Professional employed by the Chapter 7 Trustee
>
> Fees and Expenses in the amount of $15,000.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

17. **11-40586-A-7** **RONALD BERG** **MOTION TO AVOID LIEN OF CHASE**
DJL-2 **Daryl Lander** **BANK, U.S.A., N.A.**
12-16-19 [26]

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, Creditor, parties requesting special notice, and Office of the United States Trustee on December 16, 2019. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

This Motion requests an order avoiding the judicial lien of Chase Bank, USA, N.A. ("Creditor") against property of the debtor, Ronald F. Berg ("Debtor") commonly known as 1689 Wyndham Way, El Dorado Hills, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $29,255.76. Exhibit 4, Dckt. 29. An abstract of judgment was recorded with El Dorado County on January 25, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $344,300.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $450,947.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 23. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $10.00 on Amended Schedule C. Dckt. 22.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Ronald F. Berg ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Chase Bank, USA, N.A., California Superior Court for El Dorado County Case No. PC20100134, recorded on January 25, 2011, Document No. 2011-0003868-00, with the El Dorado County Recorder, against the real property commonly known as 1689 Wyndham Way, El Dorado Hills, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

18. **11-40586-A-7** **RONALD BERG** **MOTION TO AVOID LIEN OF DCFS TRUST**
DJL-3 **Daryl Lander**
12-16-19 [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.

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, Creditor, parties requesting special notice, and Office of the United States Trustee on December 16, 2019. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

This Motion requests an order avoiding the judicial lien of DCFS Trust ("Creditor") against property of the debtor, Ronald F. Berg ("Debtor") commonly known as 1689 Wyndham Way, El Dorado, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $17,473.26. Exhibit 4, Dckt. 34. An abstract of judgment was recorded with El Dorado County on June 22, 2011, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $344,300.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $450,947.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 34. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §704.730 in the amount of $10.00 on Amended Schedule C. Dckt. 34.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Ronald F. Berg ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of DCFS Trust, California Superior Court for El Dorado County Case No. PCL20101470, recorded on June 22, 2011, Document No. 2011-0028483-00, with the El Dorado County Recorder, against the real property commonly known as 1689 Wyndham Way, El Dorado Hills, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

19. **19-27693-A-7** **JOHN/SYLVIA WENDLAND** **MOTION TO COMPEL**
MET-1 **Mary Ellen Terra** **12-17-19 [6]**

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 Debtors, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 17, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Compel Abandonment is granted.

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

The Motion filed by John Andrew Wendland and Sylvia Loren Wendland ("Debtors") requests the court to order Geoffrey Richards ("the Chapter 7 Trustee") to abandon property commonly known assets related to Debtor's sole proprietorship business known as Little Adventures Childcare, which consist of a daycare license, toys, Pack "N" Plays, highchairs, books and teaching equipment ("Property"). The Declaration of John A. Wendland and Sylvia L. Wendland has been filed in support of the Motion and values the Property at $1,600.00.

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

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 John Andrew Wendland and Sylvia Loren Wendland ("Debtors") 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 assets related to Debtor's sole proprietorship business known as Little Adventures Childcare, which consist of a daycare license, toys, Pack "N" Plays, highchairs, books and teaching equipment and listed on Schedule B by Debtor is abandoned by the Chapter 7 Trustee, Geoffrey Richards ("Trustee") to John Andrew Wendland and Sylvia Loren Wendland by this order, with no further act of the Trustee required.

20. **18-22453-A-7** **ECS REFINING, INC.** **MOTION TO ABANDON**
HSM-16 **12-23-19 [1256]**

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 holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on December 23, 2019. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Abandon 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 Abandon is granted.

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

The Motion filed by Kimberly J. Husted ("the Chapter 7 Trustee") requests that the court authorize her to abandon property commonly known as any and all tangible personal property (including but not limited to: a trailer, lift truck-model H30XM, 2 scales, a non-motorized Haulmaster 2.5 Ton Pallet Jack, pallet wrapper turn table, and racking) which is presently located at the Debtor's former leased facility located at 407 Boardman Street, Medford, Oregon ("Property"). The Declaration of Kimberly J. Husted has been filed in support of the Motion and provides testimony that the value of the Property is minimal and/or that there is no realizable equity in the assets. Trustee argues that this Property is or may be burdensome to the estate due to the potential associated expenses, including storage expenses.

Trustee notes that Summit Bridge National Investments V LLC, holds a lien over all of Debtor's property for debts owed in excess of $25million.

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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

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

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

IT IS ORDERED that the Motion to Compel Abandonment is granted, and the Property identified as any and all tangible personal property (including but not limited to: a trailer, lift truck-model H30XM, 2 scales, a non-motorized Haulmaster 2.5 Ton Pallet Jack, pallet wrapper turn table, and racking) which is presently located at the Debtor's former leased facility located at 407 Boardman Street, Medford, Oregon is abandoned to ECS Refining, Inc. by this order, with no further act of the Chapter 7 Trustee required.

FINAL RULINGS

21. **15-24202-A-7** **CHERYL MCNEIL** **MOTION FOR ADMINISTRATIVE EXPENSES**
ASF-2 **Pro Se** **12-9-19 [106]**

Final Ruling: No appearance at the January 8, 2020 hearing is required.

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

22. **19-24614-A-7** **HOWARD CORNEJO** **MOTION TO EMPLOY JOHN C. MAPLES AS SPECIAL COUNSEL**
DNL-2 **Michael Benavides** **11-27-19 [27]**

Final Ruling: No appearance at the January 8, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 27, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

J. Michael Hopper ("Trustee") seeks to employ John C. Maples ("Special Counsel]") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Special Counsel to prosecute the bankruptcy's estate personal injury claim for injuries sustained by the Debtor in a vehicle collision with an uninsured motorist as described in the petition.

Trustee argues that Special Counsel's appointment and retention is necessary to prosecute the bankruptcy's estate personal injury claim for injuries sustained by the Debtor in a vehicle collision with an uninsured motorist as described in the petition. The terms of employment consists of a contingent fee agreement for all services, with compensation as follows:

- 30% for any settlement achieved prior to filing suit or arbitration,
- 35% for settlement achieved more than 30 days prior to the start of any scheduled trial or arbitration, or
- 40% thereafter.

John Christopher Maples, an Attorney and CEO of JC Maples Law, testifies that he is being hired to prosecute the personal injury claim on behalf of the estate. Mr. Maples is currently representing Debtor in the personal injury action for injuries and damages that occurred on July 21, 2019. John Christopher Maples testifies he and the JC Maples Law do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, except for acting as the current attorney for Debtor in the state court action, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Special Counsel, considering the declaration demonstrating that Special Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ John C. Maples as Special Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Contingent Fee Retainer Agreement filed as Exhibit A, Dckt. 30. Approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

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

IT IS ORDERED that the Motion to Employ is granted, and Trustee is authorized to employ John C. Maples as Special Counsel for Trustee on the terms and conditions as set forth in the Contingent Fee Retainer Agreement filed as Exhibit A, Dckt. 30.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that the court has authorized the employment on the following contingent fee basis:

- 30% for any settlement achieved prior to filing suit or arbitration,

- 35% for settlement achieved more than 30 days prior to the start of any scheduled trial or arbitration, or

- 40% thereafter.

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

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

23. **19-25314-A-7** **APRIL SEYLER** **MOTION TO AVOID LIEN OF CAPITAL ONE N.A.**
MDA-1 **Mary Anderson** **11-25-19 [14]**

Final Ruling: No appearance at the January 8, 2020 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 Chapter 7 Trustee, Creditor, and Office of the United States Trustee on November 25, 2019. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One N.A. ("Creditor") against property of the debtor, April Rose Seyler ("Debtor") commonly known as 5826 Oakbrook Drive, Citrus Heights, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,116.00. Exhibit D, Dckt. 17. An abstract of judgment was recorded with Sacramento County on May 3, 2019, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $264,040.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $200,616.74 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §704.730 in the amount of $75,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by April Rose Seyler ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Capital One N.A., California Superior Court for Sacramento County Case No. 34-2014-00248940, recorded on May 3, 2019, Document No. 201905031052, with the Sacramento County Recorder, against the real property commonly known as 5826 Oakbrook Drive, Citrus Heights, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

24. **14-25816-A-7** **DEEPAL WANNAKUWATTE**
DNL-70 **Marc Caraska**

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES ATTORNEY(S)
11-14-19 [1314]

Final Ruling: No appearance at the January 8, 2020 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2019. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

At the hearing, the court shortened time to that given. However, Applicant presented the court with substantial additional fees of $1,820.00 being requested in pleadings filed and served by U.S. Mail on December 9, 2019, the court continues the hearing to insure that all parties in interest had sufficient notice of the total fees requested.

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

The Motion for Allowance of Professional Fees is granted, with the prior interim approval of fees of $23,120.00 and costs of $3,132.10, and additional fees of $1,820.00 approved as final fees and costs pursuant to 11 U.S.C. § 330.

Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") for Hank M. Spacone, 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 28, 2016, through November 8, 2019. The order of the court approving employment of Applicant was entered on January 23, 2017. Dckt. 64. Applicant requests fees in the amount of $23,120.00 and costs in the amount of $3,132.10.

By a supplemental pleading, an additional $1,820.00 in fees are requested. Declaration, Dckt. 1339.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney

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

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

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

A review of the application shows that Applicant's services for the Estate include preparing application to employ; communicating with Trustee regarding strategy for administration of the case, researching issues related to conversion to chapter 7; preparing Adverse Proceeding documents, preparing stipulations and disbursement motions; communicating with Trustee and third parties regarding claims and disbursements; assisting Trustee in the sale of estate's interests and preparing the motion for the sale; preparing applications for compensation. The Estate has $1,001,053.79 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 8.7 hours in this category. Applicant communicated and assisted Trustee on general matters related to hearings, status reports, and administering the estate; and closing the Chapter 11 case as it was converted to Chapter 7 case.

Fee/Employment Application: Applicant spent 21.9 hours in this category. Applicant prepared applications for special counsel, Trustee and Applicant's employment and final fee application.

Litigation and Contested Matters: Applicant spent 16.9 hours in this category. Applicant prepared Adverse Proceeding Complaint.

Claims and Disbursements: Applicant spent 16.6 hours in this category. Applicant communicated extensively with Trustee and other parties involved regarding claims and disbursements; prepared disbursement motions and prepared and appeared at the hearings on said motions; .

Asset Investigation and Disposition: Applicant spent 13.7 hours in this category. Applicant assisted Trustee in the sale of estate's interests; prepared the motions related to sale; and prepared and appeared at the hearing on the motion to sell th estate's interest.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
J. Russell Cunningham	30.0	$425.00	$12,750.00
J. Luke Hendrix	0.7	$325.00	$227.50
Nicholas L. Kohlmeyer	8.6	$275.00	$2,365.00
Nicholas L. Kohlmeyer	24	$225.00	$5,400.00
Nicholas L. Kohlmeyer	4.7	$200.00	$940.00
Ryan Ivanusich	6.1	$175.00	$1,067.50
Anne Badasci	3.7	$100.00	$370.00
Total Fees for Period of Application			$23,120.00

In addition to the above, Applicant requests supplemental fees of $1,820.00 for additional work done done in connection with final fee applications and concluding the administration of the case.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $3,132.10 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Photocopies	$0.10 per page	$1,607.50
Postage		$1,154.60
Advances (service fees and recording fees)		$370.00
		$0.00
Total Costs Requested in Application		$3,132.10

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. Interim Fees in the amount of $23,120.00 previously approved and the supplemental fees of $1,820.00 are approved as final fees 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

Prior Interim Costs in the amount of $3,132.10 are approved as final 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 final compensation to this professional in this case:

Fees	$24,940.00
Costs and Expenses	$3,132.10,

of which $23,129.00 in fees and $3,132.10 in Expenses were previously approved on an interim basis pursuant to 11 U.S.C. § 331, and an additional $1,820.00 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 Desmond, Nolan, Livaich & Cunningham ("Applicant"), Attorney for Hank M. Spacone, 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 Desmond, Nolan, Livaich & Cunningham is allowed the following Interim fees and expenses as a professional of the Estate:
>
> Desmond, Nolan, Livaich & Cunningham, Professional employed by the Chapter 7 Trustee
>
> | | |
> |---|---|
> | Fees | $24,940.00 |
> | Costs and Expenses | $3,132.10, |

of which $23,129.00 in fees and $3,132.10 in Expenses were previously approved on an interim basis pursuant to 11 U.S.C. § 331, and an additional $1,820.00 pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

25. **14-25816-A-7 DNL-72** **DEEPAL WANNAKUWATTE** **Marc Caraska** **MOTION FOR COMPENSATION FOR HANK M. SPACONE, CHAPTER 7 TRUSTEE(S)** **11-14-19 [1326]**

Final Ruling: No appearance at the January 8, 2020 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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2019. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Hank M. Spacone, the Chapter 7 Trustee, ("Applicant") for the Consolidated Estate of Deepal Sunil Wannakuwatte, Betsy Kathryn Wannakuwatte and Sarah Kathryn Wannakuwatte ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period December 28, 2016, through November 8, 2019.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also*

Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio), 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include general case administration which included conferring with parties of interest, employment of professionals, reviewing and discussing with counsel on matters relation to litigation and party's discharge; reviewing and updating schedules for claims; resolving priority claims; working with tax agencies and creditors; consulting with counsel regarding tax matters; attending meetings; reviewing and filing tax returns; and assisting counsel in preparing this final application. The Estate has $1,001,053.79 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

Asset Investigation, Marketing, and Sale: Applicant spent 13.90 hours in this category. Applicant reviewed draft of motion to approve sale of estate property- club memberships; communicated extensively regarding sale of club memberships; prepared and finalized report of sale of Spare Time Indoor Tennis LLC and Neroly Sports Club Investors LP; investigated IRA account; and drafted communications related to bank accounts.

General Case Administration: Applicant spent 42.90 hours in this category. Applicant performed customary duties such as opening the converted case; preparing for an conducting the 341 meeting of creditors; reviewing mail; and preparing monthly bank reconciliation and proper accounting of all assets and disbursements made.

Claims Administration and Objections: Applicant spent 7.70 hours in this category. Applicant reviewed and continued update of comparative control schedules for claims from proof of claim initially filed with the clerk's office for the estates of various parties involved; worked with FTB and other individual creditors to bring about the withdrawal of their filed claim in two of the estates part of this Chapter 7; and consulted with counsel regarding filed priority tax claims to include assessing options for resolving claims that potentially impact the estates.

Litigation Matters: Applicant spent 13.20 hours in this category. Applicant reviewed and discussed with Trustee's counsel correspondence related to ongoing litigation; authorized disbursement to fund litigation.

Tax Matters: Applicant spent 10.30 hours in this category. Applicant consulted with counsel regarding general tax filing issues and issues related to consolidation of various estates; and reviewed and filed administrative tax returns.

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $950,000.00	$47,500.00
3% of the balance of $58,191.00	$1,747.00
Calculated Total Compensation	**$54,997.00**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$54,997.00
Less Previously Paid	$0.00
Total First and Final Fees Requested	$54,997.00

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $54,997.00 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has $1,001,053.79 of unencumbered monies to be administered. The Chapter 7 Trustee provided services for the Estate including general case administration; conferring with parties of interest, employment of professionals, reviewing and discussing with counsel on matters relation to litigation and party's discharge; reviewing and updating schedules for claims; resolving priority claims; working with tax agencies and creditors; consulting with counsel regarding tax matters; attending meetings; reviewing and filing tax returns; and assisting counsel in preparing this final application.

This has been a case with not only substantial assets to be administered, but requiring the actions of the Trustee consistent with allowing the Trustee the maximum commission rate compensation in this case permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

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

Fees	$54,997.00
Costs and Expenses	$126.43

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 Hank M. Spacone, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Hank M. Spacone is allowed the following fees and expenses as a professional of the Estate:

Hank M. Spacone, the Chapter 7 Trustee

Fees in the amount of $54,997.00
Expenses in the amount of $126.43,

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.

26. 19-23519-A-7 BLF-3

MAIRA PINTO CHAVEZ DE GRIMA AND JOSE GRIMA
Seth Hanson

CONTINUED MOTION TO APPROVE STIPULATION REGARDING DISTRIBUTION OF NET PROCEEDS OF SALE OF REAL PROPERTY
10-9-19 [58]

Final Ruling: No appearance at the January 8, 2020 Hearing is required.

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

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

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

Pursuant to prior Order of the court, the hearing on the Motion for Approval of Compromise has been continued to January 30, 2020, at 10:30a.m. Dckt. 104.

27. **19-23519-A-7** **MAIRA PINTO CHAVEZ DE GRIMA AND JOSE GRIMA**
BLF-4 **Seth Hanson**

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH LEO CHAN AND SYLVIA M. CHAN
11-7-19 [67]

Final Ruling: No appearance at the January 8, 2020 Hearing is required.

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

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

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

Pursuant to prior Order of the court, the hearing on the Motion for Approval of Compromise has been continued to January 30, 2020, at 10:30a.m. Dckt. 105.

28. **19-23519-A-7** **MAIRA PINTO CHAVEZ DE GRIMA AND JOSE GRIMA** **CONTINUED OBJECTION TO HOMESTEAD EXEMPTION**
MF-1 **Seth Hanson** **7-25-19 [18]**

Final Ruling: No appearance at the January 8, 2020 Hearing is required.

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

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

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

Pursuant to prior Order of the court, the hearing on the Motion for Approval of Compromise has been continued to January 30, 2020, at 10:30a.m. Dckt. 103.

29. 19-26021-A-7 RAS-1 **CLARANNE ROHDE** **Lisa McKee** **MOTION FOR RELIEF FROM AUTOMATIC STAY** **12-6-19 [14]**

DEUTSCHE BANK NATIONAL TRUST COMPANY VS.

Final Ruling: No appearance at the January 8, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney], Chapter 7 Trustee, and Office of the United States Trustee on December 6, 2019. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities Inc., Asset-Backed Pass-Through Certificates, Series 2005-R4 ("Movant") seeks relief from the automatic stay with respect to Claranne Rohde's ("Debtor") real property commonly known as 8590 Everglade Drive, Sacramento, California ("Property"). Movant has provided the Declaration of Marilyn Solivan to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made one (1) post-petition payments, with a total of $1,932.87 in post-petition payments past due. Declaration, Dckt. 16. Movant also provides evidence that there are eight (8) pre-petition payments in default, with a pre-petition arrearage of $15,474.69. *Id*.

CHAPTER 7 TRUSTEE'S NON-OPPOSITION

Geoffrey Richards ("the Chapter 7 Trustee") filed a Non-Opposition on December 15, 2019. Trustee's December 15, 2019 Docket Statement Entry.

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 $372,400.00 (Declaration, Dckt. 16), while the value of the Property is determined to be $395,000.00, as stated in Schedules B and D filed by Debtor.

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

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Request for Attorneys' Fees

The Motion seeks the allowance of $1,031.00 in attorneys fees in connection with the present Motion for Relief From the Stay. The basis is stated to exist pursuant to a notice, a copy of which is provided as Exhibit A. No "Exhibit A" has been filed in support of the Motion.

Exhibit 1 is the Note upon which the secured claim is based. Dckt. 18 at 4. Paragraph 7(E) of the Note contains a contractual attorneys' fees provision, which states:

(E) Payment of Note Holder's Costs and Expenses

> If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

Exhibit 1, Dckt. 18 at 5.

The commencement of this Contested Matter seeking relief from the stay are necessary expenses in Movant exercising its rights under the Note and Deed of Trust securing the Note obligation.

No evidence of the $1,031.00 as reasonable costs and attorneys' fees is provided in support of the Motion. The Declaration provided by Ms. Solivan does not state that this is the amount of the attorneys' fees and costs actually owed or paid by Movant. No declaration is provided by Movant's counsel that this is the amount of fees owed for the services.

Notwithstanding this lack of evidence, the court determines that attorneys' fees and costs, including the filing fee for this Motion in the amount of $1,031.00 is a reasonable fee and costs.

The court awards the $1,031.00 in fees and costs secured by the deed of trust that may be recovered through the nonjudicial foreclosure sale of the Property.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

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

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

> [A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Movant and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Movant and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities Inc., Asset-Backed Pass-Through Certificates, Series 2005 ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee

under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 8590 Everglade Drive, Sacramento, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

IT IS FURTHER ORDERED that Movant is awarded $1,031.31 in attorneys' fees and costs as the prevailing party in this Contested Matter, which may be enforced as part of the obligation secured by the trust deed and paid through the nonjudicial foreclosure sale of the Property.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

30. **18-25323-A-7** **LESLIE RAY** **MOTION FOR COMPENSATION FOR**
ASF-2 **Thomas Amberg** **MICHAEL R. GABRIELSON,**
ACCOUNTANT(S)
12-3-19 [77]

Final Ruling: No appearance at the January 8, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 3, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Michael Gabrielson, of Gabrielson & Company, the Accountant ("Applicant") for Alan S. Fukushima, 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 October 2, 2018, through December 2, 2019. The order of the court approving employment of Applicant was entered on October 16, 2018. Dckt. 21. Applicant requests fees in the amount of $965.50 and costs in the amount of $63.18.

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 consultation on tax matters involving settlement distribution and other administrative functions. 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 Matters: Applicant spent 1.4 hours in this category. Applicant consulted with Trustee and counsel regarding tax issues involving potential and eventual settlement involving distribution from a decedent estate, including communication with trustee and counsel, review of Form K-1 and other tax related documents and settlement agreement.

Administrative Functions: Applicant spent 1.1 hours in this category. Applicant Prepared accountant declaration and related employment documents for trustee review; and prepared first and final fee application, including detailed description of tax services.

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**
Michael Gabrielson (2018)	1.1	$375.00	$412.50
Michael Gabrielson (2019)	1.4	$395.00	$553.00
	0	$0.00	$0.00
Total Fees for Period of Application			$965.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $63.18 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies		$35.60
Postage		$27.58
		$0.00
Total Costs Requested in Application		$63.18

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 $965.50 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 $63.18 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	$965.50
Costs and Expenses	$63.18

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 Michael Gabrielson of Gabrielson & Company ("Applicant"), Accountant for Alan S. Fukushima , the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Michael Gabrielson of Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:

Michael Gabrielson of Gabrielson & Company , Professional employed by the Chapter 7 Trustee

Fees in the amount of $965.50
Expenses in the amount of $63.18,

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

31. **19-22126-E-7 LBG-5** | **DAVID/HARMONY WOOD** **Lucas Garcia** | **MOTION TO AVOID LIEN OF CAPITAL ONE** **11-26-19 [50]**

Final Ruling: No appearance at the January 8, 2020 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 Chapter 7 Trustee, Creditor, and Office of the United States Trustee on November 26, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One ("Creditor") against property of the debtor, David Holden Wood and Harmony Ann Wood ("Debtors") commonly known as 17409 Lawrence Way, Grass Valley, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $6,797.93. Exhibit 2, Dckt. 53. An abstract of judgment was recorded with Nevada County on January 11, 2019, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $300,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $261,154.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 25. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $100,000.00 on Amended Schedule C. Dckt. 25.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by David Holden Wood and Harmony Ann Wood ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Capital One, California Superior Court for Nevada County Case No. CL18-082960, recorded on January 11, 2019, Document No. 20190000719, with the Nevada County Recorder, against the real property commonly known as 17409 Lawrence Way, Grass Valley, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

32. **19-26728-A-7** **NORBERT/JILL WASCHE** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
ASW-1 **Harry Roth** **11-19-19 [13]**

EAGLE HOME MORTGAGE OF CALIFORNIA VS.

Final Ruling: No appearance at the January 8, 2020 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 Debtors, Debtors' Attorney, Chapter 7 Trustee, Lienholder, and Borrower, on November 19, 2019. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The court notes that Movant served the Motion and related Documents on Debtor Norbert Wasche at an address on Shellhammer Dr. in Woodland, California, Debtor Jill Wasche at an address on Joshua Tree Rd in Chico, California, and served Debtor's counsel. Two weeks before the Motion for Relief was filed and served Debtor Norbert Wasche filed a notice of change of address, listing an address on Obermeyer Dr. In Gridley, California. Dckt. 12. On the Statement of Intention, the Debtors state that the property that is the subject of this Motion is to be surrendered. Given the service on Debtor Jill Wasche, service on Debtors' counsel, service on the Trustee for the Bankruptcy Estate, and the Statement that the property is to be surrendered, the court determines the notice to be sufficient.

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

The Motion for Relief from the Automatic Stay is granted.

Eagle Home Mortgage of California ("Movant") seeks relief from the automatic stay with respect to Norbert Jeffery Wasche and Jill Michele Wasche's ("Debtor") real property commonly known as 1933 Shellhammer Drive, Woodland, California ("Property"). Movant has provided the Declaration of Anna Roman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made one (1) post-petition payments, with a total of $3,935.69 in post-petition payments past due. Declaration, Dckt. 15. Movant also provides evidence that there are seven (7) pre-petition payments in default, with a pre-petition arrearage of $27,549.83. *Id*.

Additionally, according to Debtor's Statement of Intention, it is Debtors' intention to surrender the Property. Dckt. 1.

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 $516,839.39 (Declaration, Dckt. 15), while the value of the Property is determined to be $469,010.00, as stated in Schedules B and D filed by Debtor.

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

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Request for Attorneys' Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having

any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

Furthermore, a claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. FED. R. CIV. P. 54(d)(2)(A); FED. R. BANKR. P. 7054, 9014.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

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 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief from the Automatic Stay filed by Eagle Home Mortgage of California ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 1933 Shellhammer Drive, Woodland, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.
>
> No other or additional relief is granted.

33. **19-24134-E-7 MPD-4** **FELIX/DEBORAH KIARSIS** **Bruce Dwiggins** **MOTION FOR COMPENSATION FOR WEST AUCTIONS, AUCTIONEER(S) 12-10-19 [42]**

Final Ruling: No appearance at the January 8, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 10, 2019. By the court's calculation, 29 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

West Auctions, the Auctioneer ("Applicant") for Nikki Farris, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period November 19, 2019, through November 21, 2019. The order of the court approving employment of Applicant was entered on October 28, 2019. Dckt. 36. Applicant requests fees in the amount of $3,390.00 and costs in the amount of $75.00.

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 auctioning vehicle for the estate. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in the marketing and sale of real property described as 2013 Chevrolet Avalanche ("Property"). The Property was sold via an online public auction. The sale generated $22,600.00 of net monies (exclusive of these requested fees and costs) as recovery for Client.

West was employed as an auctioneer of estate property with proposed compensation of 15% of the gross proceeds plus a DMV fee of $75.00 per vehicle. Dckt. 36.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $75.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
DMV fees		$75.00
		$0.00
Total Costs Requested in Application		$75.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $3,390.00 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Chapter 7 Trustee is authorized to pay from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $75.00 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	$3,390.00
Costs and Expenses	$75.00

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 West Auctions ("Applicant"), Auctioneer for Nikki Farris, 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 West Auctions is allowed the following fees and expenses as a professional of the Estate:
>
> West Auctions, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $3,390.00
> Expenses in the amount of $75.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

34. **19-27542-A-7** **VINCENT/JERALEE EARP** **MOTION TO AVOID LIEN OF**
MS-1 **Mark Shmorgon** **DISCOUNT BANK**
12-9-19 [10]

Final Ruling: No appearance at the January 8, 2020 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 Debtors, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on December 9, 2019. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of the debtor, Vincent Morris Earp and Jeralee Jo Earp ("Debtors") commonly known as 167 Placer Drive, Jackson, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $2,480.05. Exhibit D, Dckt. 13. An abstract of judgment was recorded with Amador County on August 30, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $253,132.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $196,501.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §704.730 in the amount of $100,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Vincent Morris Earp and Jeralee Jo Earp ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Discover Bank, California Superior Court for Amador County Case No. 18-CV-10812, recorded on August 30, 2019, Document No. 2019-0006285-00, with the Amador County Recorder, against the real property commonly known as 167 Placer Drive, Jackson, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

35. **18-21644-E-7 DNL-4** | **ANGELO/LISA OLIVA** **Anh Nguyen** | **MOTION FOR DENIAL OF DISCHARGE OF BOTH DEBTORS UNDER 11 U.S.C. SECTION 727(A)** **11-20-19 [164]**

Final Ruling: No appearance at the January 8, 2020 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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 2019. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion for Denial of Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Denial of Discharge is granted.

J. Michael Hopper, the Chapter 7 Trustee, ("Objector") filed the instant Motion for Denial of Debtor's Discharge on November 20, 2019. Dckt. 164.

Objector argues that Angelo Aroldo Stefano Oliva and Lisa Renee Oliva ("Debtors") is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on March 13, 2013. Case No. 13-23391. Debtor received a discharge on July 2, 2013. Case No. 13-23391, Dckt. 32.

The instant case was filed under Chapter 7 on August 26, 2019.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on July 2, 2013, which is less than eight years preceding the date of the filing of the instant case. Case No. 13-23391, Dckt. 32. Therefore, pursuant to 11 U.S.C. § 727(a)(8), Debtor is not eligible for a discharge in the instant case.

Therefore, the Motion is granted. Upon successful completion of the instant case (Case No. 18-21644), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Denial of Discharge filed by J. Michael Hopper, the Chapter 7 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion for Denial of Discharge is granted, and upon successful completion of the instant case, Case No. 18-21644 , the case shall be closed without the entry of a discharge.

36. **18-21644-E-7** **ANGELO/LISA OLIVA** **MOTION FOR DENIAL OF DISCHARGE OF BOTH DEBTORS UNDER 11 U.S.C. SECTION 727(A)**
UST-1 **Anh Nguyen** **11-20-19 [161]**

Final Ruling: No appearance at the January 8, 2020 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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, and parties requesting special notice on November 20, 2019. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion for Denial of Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Denial of Discharge is granted.

Tracy Hope Davis, the United States Trustee, ("Objector") filed the instant Motion for Denial of Debtor's Discharge on November 20, 2019. Dckt. 161.

Objector argues that Angelo Aroldo Stafano Oliva and Lisa Renee Oliva ("Debtors") is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on March 13, 2013. Case No. 13-23391. Debtor received a discharge on July 2, 2013. Case No. 13-23391, Dckt. 32.

The instant case was filed under Chapter 7 on August 26, 2019.

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

Here, Debtor received a discharge under 11 U.S.C. § 727 on July 2, 2013, which is less than eight years preceding the date of the filing of the instant case. Case No. 13-23391, Dckt. 32. Therefore, pursuant to 11 U.S.C. § 727(a)(8), Debtor is not eligible for a discharge in the instant case.

Therefore, the Motion is granted. Upon successful completion of the instant case (Case No. 18-21644), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Denial of Discharge filed by Tracy Hope Davis, the United States Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion for Denial of Discharge is granted, and upon successful completion of the instant case, Case No. 18-21644 , the case shall be closed without the entry of a discharge.

37. **19-20763-E-7 BLF-5** **ALAN MERCADO** **Richard Kwun** **MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)** **11-18-19 [42]**

Final Ruling: No appearance at the January 8, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 18, 2019. By the court's calculation, 51 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Bakken Law Firm, 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 April 26, 2019, through January 7, 2020. The order of the court approving employment of Applicant was entered on May 13, 2019. Dckt. 22. Applicant requests fees in the amount of $2,910.00 and costs in the amount of $78.95.

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 providing Trustee with legal advice and rendering legal services as they pertained to general case administration and strategies on how to handle property of the estate and assisted Trustee in 1) the sale to the Debtor of the estate's nonexempt interest in a 2003 H2 Hummer; and 2) the recovery of property of the estate. The Estate has $9,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 5.0 hours in this category. Applicant prepared fee agreements; prepared and filed two joint ex parte motions and stipulations to extend the deadlines to object to exemptions and to file a complaint objecting to Debtor's discharge.

Sale of Estate Property: Applicant spent 8.2 hours in this category. Applicant assisted Trustee in the sale of a 2003 Hummer, including communicating with Debtor; reviewed the offer and later prepared the sale agreement and corresponding motion to sell; and attended hearing via telephonic appearance.

Recovery of Estate Property: Applicant spent 3.2 hours in this category. Applicant investigated and reviewed the legal issues related to Debtor's interest in a Thrift Savings Plan.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Loris L. Bakken	16.4	$300.00	$4,920.00
	0	$0.00	$0.00
Total Fees for Period of Application			$4,920.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $78.95 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$49.25
Copying		$29.70
		$0.00
Total Costs Requested in Application		$78.95

FEES AND COSTS & EXPENSES ALLOWED

Fees

However, Applicant seeks to be paid a reduced amount of $2,988.95 for its fees and expenses incurred for Client. First and Final Fees and Costs in the amount of $2,988.95 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 $78.95 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	$2,910.00
Costs and Expenses	$78.95

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 Bakken Law Firm ("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 Bakken Law Firm is allowed the following fees and expenses as a professional of the Estate:

Bakken Law Firm, Professional employed by the Chapter 7 Trustee

Fees in the amount of $2,910.00
Expenses in the amount of $78.95,

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

38. **19-24369-A-7** **DUANE MAGORIAN** **MOTION FOR RELIEF FROM**
JHW-1 **Lucas Garcia** **AUTOMATIC STAY**
12-2-19 [29]

TD AUTO FINANCE LLC VS.

Final Ruling: No appearance at the January 8, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on December 2, 2019. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

Pursuant to Stipulation filed on December 31, 2019, Dckt. 41, the Motion for Relief from Automatic Stay has been granted, with an Order issued on January 1, 2020 (Dckt. 44). The Matter is removed from the Calendar.

TD Auto Finance LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Dodge RAM 2500 VIN ending in 1360 ("Vehicle"). The moving party has provided the Declaration of Tania Franco to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Duane Leon Magorian ("Debtor").

Movant argues Debtor has not made three (3) post-petition payments, with a total of $2,456.28 in post-petition payments past due. Declaration, Dckt. 32.

DECEMBER 31, 2019 STIPULATION

Through Movant, Debtor and Trustee filed a Stipulation on December 31, 2019. Dckt. 41. Parties stipulate that the automatic stay pertaining to the 2014 Dodge RAM 2500 be terminated as to Debtor and Debtor's bankruptcy estate. The parties further stipulated that TD Auto Finance LLC must wait sixty (60) days after entry of the order approving the stipulation to enforce its rights and remedies pertaining to the

repossession and liquidation of said vehicle pursuant to its contract terms and as allowed by state law. Further, the sixty (60) day holding period may be waived upon written authorization by the Trustee granting Movant the right to secure the Vehicle at an earlier date. If the Trustee files a motion to sell the vehicle before the 60 day period has expired and includes a provision to pay Movant in full, that Movant will not seek to repossess the Vehicle pending court approval of the sale.