

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

January 19, 2023 at 10:30 a.m.

1. 20-00202-E-0 RHS-1	IN THE MATTER OF THOMAS OSCAR GILLIS, FEE RUBRIC	CONTINUED STATUS CONFERENCE RE: RECOVERY OF OVERPAYMENT OF LEGAL FEES AND ENFORCEMENT OF FEE RUBRIC ORDER AND RELATED ORDERS 6-23-22 [248]
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Continued from 11/17/22

The Status Conference is XXXXXXX
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JANUARY 19, 2023 CONFERENCE

This matter has presented the court, Mr. Gillis, the U.S. Trustee, the Chapter 13 Trustees, and Mr. Gillis' former clients with an interesting set of challenges, a possible substantial financial recompense for the obligations owed by Mr. Gillis' former clients, and then a crushing financial shortfall result. These financial obligations arise from Mr. Gillis having been paid and taken fees in excess of what he was allowed by the court for the legal services. This was caused in part because of Mr. Gillis' suspension from the practice of law by the State Bar of California. The overpayment of fees totals or more than (\$304,732) (rounded amount). Orders: DCN: UST-1, Dckt. 231; DCN-UST-3, Dckt. 232; DCN: UST-4, Dckt. 233; DCN: UST-5, Dckt.

With the Court's Fee Rubric in place (setting the dollar amount of the Chapter 13 fixed fee Mr. Gillis opted to receive for the actual services provided prior to Mr. Gillis being suspended from the practice of law), it was projected that there would be up to \$159,847 of fees owed to Mr. Gillis to be paid in the future through the Chapter 13 plans. See Fee Rubric Order; UST-1, Dckt. 234.

These fees owed to Mr. Gillis were ordered (levied upon) to be paid to the Clerk of the Bankruptcy Court and be a common fund from which payment would be made to Mr. Gillis former clients for the disgorgement obligation for the fees he was paid but not allowed since he could not provide the legal services (having been suspended from the practice of law). Additionally, the U.S. Trustee and the Chapter 13 Trustee were authorized to enforce the disgorgement order (which constitutes a judgment) against other assets of Mr. Gillis (such as fees that he was owed in Chapter 11 or Chapter 12 cases in this and other Districts).

If \$150,000 of fee monies had been generated and paid to the Clerk of the Court, then there would have been approximately a 52.4% pro rata dividend. Unfortunately, those cases filed by Mr. Gillis for which he had received the fees did not go well, with there being only \$13,532.00 **that has been recovered, and all of those have now been completed (with apparently one or two exceptions) and no further significant fee monies will be generated.** The U.S. Trustee (presumably having the superior resources and being aware of Chapter 11 and 12 cases filed by Mr. Gillis in this and other Districts) was not able to generate any additional amounts.

With only \$13,532 in monies in the common fund for pro rata distribution, that would generate a pro rata distribution of only 4.44%. The vast majority of pro rata distributions would be \$35 or less. This would be substantially further eroded by the costs of making very small distributions, unclaimed funds due to the small amounts, and further projected administrative expense that would whittle away at the net monies for a *pro rata* distribution.

Rational Distribution Percentage Determination

One initial method of distribution administrative expenses for *de minimis* disgorgement disbursements would be to set a minimum disgorgement amount to be included in the common fund distribution. This is a simple, logical, easily documented method. However, given the fact that a substantial number of the disgorgement amounts are \$800 (which at a 4.44% dividend would generate a \$35.52 distribution), such would result in the vast majority of Mr. Gillis' former clients being excluded and the those in the higher end receiving a substantially increased distribution.

Fortunately, through the diligent work of the Clerk of the Court and his Deputy Clerks, another rational, easily documented, and more inclusive distribution formula can be established. The Clerk of the Court determined that the disgorgement obligation cases fall into the following basic categories:

Group 1: Chapter 13 Plan Completed, Debtor's Discharge Granted, No New Attorney or Legal Expense Incurred (i.e. none having been allowed by the court)

Group 2: Chapter 13 Plan Completed, but No Discharge Has Been Entered, and Thomas Gillis is Still Listed as Attorney of Record For the Debtors.

Group 3: Chapter 13 Plan Has Not Been Completed, But Less Than Six Months of Performance Remains, and Thomas Gillis is Still Listed As Attorney of Record For the Debtors.

Group 4: Chapter 13 Plan Completed, Debtor's Discharge Granted, but Debtor Incurred Legal Expense of New Counsel.

Group 5: Debtor's case dismissed.

For Group 1, though Mr. Gillis was not able to provide the legal services for which he was overpaid, those Debtors have successfully navigated their Chapter 13 Case, had it successfully concluded, and obtained their discharge. While they overpaid Mr. Gillis, his inability to provide legal services (due to his suspension) did not result in them suffering further monetary loss.

For Group 2, Mr. Gillis continues to have the court list him as the attorney of record and Debtors have completed their Plan and will be obtaining their discharge. While they overpaid Mr. Gillis, his inability to provide legal services (due to his suspension) did not result in them suffering further monetary loss.

For Group 3, Mr. Gillis continues to have the court list him as the attorney of record and Debtors is listed as the attorney of record for the Debtors, and the Debtors are mere months away from completing their Plan and being able to receive their discharge.

For Group 4, the Debtors were obligated to pay another attorney or legal service to completed the work for which they had overpaid Mr. Gillis. Group 4 clearly suffered a financial loss through having to pay for legal services twice.

For Group 5, the Debtors had their bankruptcy cases dismissed, getting little if any legal value for the overpayment to Mr. Gillis and have clearly suffered a financial loss, as well as possibly having lost legal rights.

A common fund distribution to Group 4 and Group 5 logically provides for a *pro rata* percentage of the overpaid fees to the two groups had suffered the loss and harm due to Mr. Gillis being unable to provide the legal services for fees that he received but were not allowed by the court.

For Group 1, Group 2, and Group 3, while they paid more fees that Mr. Gillis was allowed under the Fee Rubric, through karma or the rough justice of life, they were able to receive the benefits under the Bankruptcy Code. In substance they have not suffered any substantial economic loss, and if they have to hire counsel to assist them in completing their § 1328 form, the court will be minor. For these Debtors, in effect, they gained the benefit of the completed Chapter 13 Plan and obtaining a discharge for less than what it would have cost if Mr. Gillis had not been suspended and was able to represent the Debtors for whom he filed bankruptcy in the window of time when he knew he was being suspended but filed bankruptcy cases and taking fees with the knowledge that he would be unable to provide the legal service.

The following chart identifies the number of Mr. Gillis' former clients in each of the above groups and the aggregate amount of fees ordered disgorged for each group.

Group 1 Plan Completed, No Additional Legal Fees		Group 2 Plan Completed, Additional Legal Fees Paid		Group 3 Case Dismissed	
Number of Former Clients	XYZ	Number of Former Clients	XYZ	Number of Former Clients	XYZ
Aggregate Amount of Fees Ordered Disgorged	XYZ	Aggregate Amount of Fees Ordered Disgorged	XYZ	Aggregate Amount of Fees Ordered Disgorged	XYZ

Average Feed Per Former Client	XYZ	Average Fees Per Former Client	XYZ	Average Fees Per Former Client	XYZ

Group 4		Group 5	
Number of Former Clients	XYZ	Number of Former Clients	XYZ
Aggregate Amount of Fees Ordered Disgorged	XYZ	Aggregate Amount of Fees Ordered Disgorged	XYZ
Average Fees Per Former Client	XYZ	Average Fees Per Former Client	XYZ

With distributions to Group 4 and Group 5, those who have been required to pay additional legal fees or had their bankruptcy cases dismissed, the *pro rata* distribution will be **xxxxxxx%**. With that *pro rata* distribution percentage, the lowest distribution amount would be \$ **xxxxxxx** and **xxxxxxx%** of the distributions would be \$ **xxxxxxx** .

At the January 19, 2023, the court addressed the Group 2 and Group 3 distribution program with the U.S. Trustee, the Chapter 13 Trustees, the Clerk of the Court, and Mr. Gillis. In that discussion, **xxxxxxx**

To implement such a distribution program the court would proceed with the following steps:

- A. The court issue an Order to Show Cause why the court should not order the Group 2 and Group 3 distribution program. This affords the former clients of Mr. Gillis notice of what is proposed and an opportunity to raise points with the court and other parties.
- B. If the court adopts the Group 2 and Group 3 distribution program:
 1. An Opt In form to participate in the *pro rata* distribution will be set to each former client in Group 2 and Group 3. The form will include the former client providing the required information for the Clerk to issue the tax reporting form, the former client's back account information for the electronic payment of the

pro rata distribution, and an opt out option from the electronic payment, which if elected, will result in the pro rata distribution being made by check.

2. The Opt In will require it to be returned to the Clerk of the Court within thirty-days (the court will specify a date for the deadline to avoid calendar counting confusion).

C.

It was further discussed at the January 19, 2023 hearing, **XXXXXXX**

FINAL RULINGS

2. [22-22805-E-7](#)
[BLG-1](#)

GARY & PAULA FARR
Chad Johnson

MOTION TO AVOID LIEN OF ASSET
ACCEPTANCE, LLC
12-20-22 [\[18\]](#)

2 thru 3

Final Ruling: No appearance at the January 19, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Chapter 7 Trustee, Creditor, and Office of the United States Trustee on December 20, 2022. 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 Asset Acceptance Corp, LLC ("Creditor") against property of the debtor, Gary Ray Farr and Paula Perry-Farr ("Debtor") commonly known as 255 Cotta Way, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$19,277.72. Exhibit A, Dckt. 20. An abstract of judgment was recorded with Solano County on April 20, 2021, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$566,700.00 as of the petition date. Dckt. 13. The unavoidable consensual liens that total \$142,172 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Additionally, the Internal

Revenue Service has a statutory lien of \$103,108.29. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a) in the amount of \$565,000.00 on Schedule C. Dckt. 13.

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 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 Gary Ray Farr and Paula Perry-Farr ("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 Asset Acceptance Corp, LLC, California Superior Court for Solano County Case No. FCM130963, recorded on April 20, 2021, Document No. 202100043930, with the Solano County Recorder, against the real property commonly known as 255 Cotta Way, Vallejo, 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.

Final Ruling: No appearance at the January 19, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, Office of the United States Trustee on December 20, 2022. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Redeem 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.

<p>The Motion to Redeem is granted.</p>
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Gary Ray Farr and Paula Perry-Farr (“Debtor”) seeks to redeem 2011 Nissan Altima (“Property”) from the claim of JP Morgan Chase Auto (“Creditor”) pursuant to 11 U.S.C. § 722. Under that provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Property, not just to Debtor’s exempt interest in it. *See H.R. Rep. No. 95-595*, at 381 (1977). To redeem the Property, Debtor must pay the lien holder “the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption.” 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). The court looks to 11 U.S.C. § 506 to determine the amount of the secured claim.

The Motion is accompanied by the declaration of debtor Gary Ray Farr. Debtor seeks to value the Property at a replacement value of \$100.00 as of the petition filing date. Debtor Gary Ray Farr attributes the low value to the need for a new transmission and water pump and the vehicle currently being inoperable. Debtor states they received a quote that maintenance would cost approximately \$4,000. As the owner, Debtor’s opinion of value is evidence of the Property’s value. *See FED. R. EVID. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien perfected on the Property secures Creditor's claim with a balance of approximately \$8,869.00. Therefore, Creditor's claim secured by the lien is under-collateralized, and pursuant to 11 U.S.C. § 506(a), the court determines Creditor's secured claim to be in the amount of \$100.00.

Debtor has claimed an exemption in the amount of \$100.00 in the Property pursuant to California Code of Civil Procedure § 704.010. Because Debtor claims an exemption in the Property, Debtor is permitted to redeem the Property by paying Creditor \$100.00 at the time of redemption, which payment is in full satisfaction of the secured claim.

The Motion to Redeem pursuant to 11 U.S.C. § 722 and Federal Rule of Bankruptcy Procedure 6008 is granted.

The court shall issue an order in 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 Redeem filed by Gary Ray Farr and Paula Perry-Farr ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Debtor is authorized and allowed pursuant to 11 U.S.C. § 722 to redeem the 2011 Nissan Altima ("Property") by paying JP Morgan Chase Auto, the creditor holding the claim secured by the Property, the total amount of \$100.00, in full at the time of redemption, which must be paid on or before February 24, 2023.