

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

**February 14, 2019 at 10:30 a.m.**

1. **16-90603-E-7**  
**ICE-1**

**MARK ONE CORPORATION**  
**Cecily Dumas**

**MOTION FOR ADMINISTRATIVE**  
**EXPENSES**  
**12-31-18 [\[153\]](#)**

**Final Ruling:** No appearance at the February 14, 2019 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on December 31, 2018. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Administrative Expenses 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 Administrative Expenses is granted.**

Irma Edmonds, the Chapter 7 Trustee ("Movant"), requests payment of administrative expenses in the amount of \$807.00, providing for the California state income taxes of Mark One Corporation ("Debtor") for the fiscal year ending October 31, 2018.

**February 14, 2019 at 10:30 a.m.**

**- Page 1 of 47 -**

## DISCUSSION

Movant states that she has hired on behalf of the Estate a certified public accountant to advise her on and prepare the estate income tax returns. Movant's CPA has determined the Estate's liability to the Franchise Tax Board for the fiscal year ending October 31, 2018 is \$807.00.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant is seeking to pay the Estate's tax liability.

Movant having demonstrated that the expenses were necessary, the court finds that payment of the California state income taxes for the fiscal year ending October 31, 2018 is necessary for Debtor and the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of \$807.00.

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 Motion for Allowance of Administrative Expense filed by Irma Edmonds ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the Chapter 7 Trustee is authorized to pay the Franchise Tax Board \$807.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

2. [18-90909-E-7](#)  
[RKW-2](#)

CYNTHIA DARIO-GOOD  
Randall Walton

MOTION TO COMPEL  
ABANDONMENT  
1-29-19 [\[11\]](#)

**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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 29, 2019. By the court's calculation, 16 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, -----

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<p><b>The Motion to Compel Abandonment is granted.</b></p>
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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 Cynthia Y. Dario-Good ("Debtor") requests the court to order Michael D. McGranahan ("the Chapter 7 Trustee") to abandon personal property of Debtor's business described as office equipment, ceramics, and paint ("Property"). The Property is encumbered by the lien of Aaron and Stacy Woodill, securing a claim of \$5,722.87. Schedule D, Dckt. 1. The Declaration of Cynthia Y. Dario-Good has been filed in support of the Motion and values the Property at \$25,700.00. Dckt. 13 at ¶ 3; *See also* Schedule A/B, Dckt. 1. Debtor claims an exemption of \$15,225.00 in the Property pursuant to CCP section 703.140(b)(5).

Debtor has closed her business pursuant to request by the Trustee. Dckt. 13 at ¶ 9. While there are \$4,747.13 in nonexempt assets remaining from the business, Debtor argues that the remaining value would not be greater than the cost of sale and administrative expenses. *Id.*, ¶ 8.

Trustee has not filed an opposition to the Motion.

## **DISCUSSION**

The court finds that the debt secured by, exemptions claimed in, and cost associated with selling 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 Cynthia Y. Dario-Good (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as personal property of Debtor’s business described as office equipment, ceramics, and paint (“Property”) and listed on Schedule A / B by Debtor is abandoned by Michael D. McGranahan (“the Chapter 7 Trustee”) to Cynthia Y. Dario-Good by this order, with no further act of the Chapter 7 Trustee required.

**Final Ruling:** No appearance at the February 14, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2019. By the court's calculation, 35 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.

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
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This Motion requests an order avoiding the judicial lien of Citibank (South Dakota) N.A. ("Creditor") against property of Margaret Lisbeth West ("Debtor") commonly known as 1729 Brent Lane, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,603.95. Exhibit A, Dckt. 32. An abstract of judgment was recorded with Stanislaus County on March 2, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$105,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$325,000.00 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 § 703.140(b)(5) in the amount of \$5,603.95 on Amended Schedule C. Dckt. 36.<sup>FN.1.</sup>

FN.1. In the Motion, Debtor states an exemption of \$16,700.00 was claimed in the Property. A review of the Amended Schedule C shows that amount was for a 2005 BMW. Debtor claimed an exemption of \$5,603.95 in the Property.

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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 Margaret Lisbeth West ("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 Citibank (South Dakota), N.A., California Superior Court for Stanislaus County Case No. 651603, recorded on March 2, 2011, Document No. 2011-0017421-00, with the Stanislaus County Recorder, against the real property commonly known as 1729 Brent Lane, Modesto, 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 February 14, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on January 10, 2019. By the court's calculation, 35 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.

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
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This Motion requests an order avoiding the judicial lien of Target National Bank ("Creditor") against property of Teresa Dolores Olvera ("Debtor") commonly known as 1416 Vlach Way, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$9,832.00. Exhibit A, Dckt. 23. An abstract of judgment was recorded with Stanislaus County on February 18, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, Debtor's 1/3 interest in the subject real property has an approximate value of \$30,586.05 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$153,824.00 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 § 703.140(b)(1) and 703.140(b)(5) in the amounts of \$0.00 and \$9,832.00, respectively, on Amended Schedule C. Dckt. 26.

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 Teresa Dolores Olvera (“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 Target National Bank, California Superior Court for Stanislaus County Case No. 656571, recorded on February 18, 2011, Document No. 2011-0013965-00, with the Stanislaus County Recorder, against the real property commonly known as 1416 Vlach Way, Modesto, 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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), parties requesting special notice, and Office of the United States Trustee on January 16, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

**The hearing on the Objection to Claimed Exemptions is continued to  
XXXXXXX.**

Michael D. McGranahan ("the Chapter 7 Trustee") objects to Imelda Padilla's ("Debtor") claimed exemptions under California law as to two assets: Debtor's residence, commonly known as 3912 Pheasant Lane in Modesto, California (the "Property") and Debtor's vehicle commonly known as a 2016 Toyota Highlander (the "Vehicle").

#### **Exemption Claimed in the Property**

On Debtor's Schedule C, Debtor claims an exemption pursuant to CCP section 703.140 in the Property up to 100 percent of fair market value up to any applicable statutory limit." Schedule C, Dckt. 21. The Property has a fair market value of \$300,000.00 as stated on Debtor's Schedule A/B, and is encumbered by a single deed of trust totaling \$105,000.00 as stated on Schedule D.

Trustee argues the statutory limit of California Code of Civil Procedure section 703.140 is \$26,800.00. Trustee also notes that if Debtor claimed an exemption pursuant to California Code of Civil Procedure section 704.730(a)(2), the statutory limit would be \$100,000.00.

Trustee requests the court determine the applicable statutory limit to be either \$26,800.00 or \$100,000.00.

### **Exemption Claimed in the Vehicle**

On Debtor's Schedule C, Debtor claims an exemption in the Vehicle up to 100 percent of fair market value up to any applicable statutory limit." Schedule C, Dckt. 21.

The Vehicle has a fair market value of \$26,250.00 as stated on Debtor's Schedule A/B. Dckt. 1. No secured claim is listed on Schedule D.

Trustee argues the statutory limit of California Code of Civil Procedure section 703.140(b)(5) is \$1,425.00 assuming all Debtor's homestead. Trustee also notes that if Debtor claimed an exemption pursuant to California Code of Civil Procedure section 703.140(b)(2) or 704.010, the statutory limit would be \$5,350.00 or \$3,050.00, respectively.

Trustee requests the court determine the applicable statutory limit to be either \$1,425, \$3,050 or \$5,350.

## **DISCUSSION**

### **Insufficient Notice Of Hearing**

As discussed, *supra*, the time period for notice provided was sufficient. However, in the body of the Notice, Trustee informs Debtor the hearing takes place "at 501 "I" Street, 6th Floor, Courtroom 28, Sacramento, California." Dckt. 26. The body conflicts with the address stated in the caption as "1200 "I" Street, Suite 4, Modesto, California."

Trustee filed a Corrected Notice of Hearing the same day as the original notice, however the error (and the notice in its entirety) was not changed. Further, no proof of service was filed showing the "corrected" notice was served on Debtor.

The Debtor here being in *Pro Se*, the court is not confident that Debtor is not prejudiced by being provided incorrect information. The court shall continue the hearing on the Objection to **XXXXXXXXXX** to allow Trustee to properly notice the Motion.

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

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

The Objection to Claimed Exemptions filed by Michael D. McGranahan ("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 hearing on the Objection to Claimed Exemptions is continued to **XXXXXXX**

**Alternative Language of ruling and order if sufficient service is shown.**

~~Here, Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts on his Schedule C. California Code of Civil Procedure § 703.140(b)(2)-(5) does not allow claiming 100% of fair market value and requires the claimant to list actual values. The Chapter 13 Trustee's Objection is sustained, and the claimed exemptions are disallowed.~~

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

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

~~The Objection to Claimed Exemptions filed by Michael D. McGranahan ("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 Objection is sustained, and the claimed exemptions for Debtor's Property and Vehicle under California Code of Civil Procedure § 703.140(b)(1) and (b)(5) are disallowed in their entirety.~~

~~This disallowance is without prejudice to Debtor filing an amended claim of exemptions (Amended Schedule C).~~

6. [18-90959-E-7](#)  
[MRG-1](#)

MICHAEL/JOANNE LAFRANCE  
Michael Germain

MOTION TO COMPEL  
ABANDONMENT  
1-30-19 [\[12\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 30, 2019. By the court's calculation, 15 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, -----  
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<p><b>The Motion to Compel Abandonment is granted.</b></p>
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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 Michael E. and Joanne Veronica LaFrance ("Debtor") requests the court to order Michael D. McGranahan ("the Chapter 7 Trustee") to abandon two businesses owned by Debtor, including the assets of the businesses, LaFrance Electric and LaFrance Quilting ("LaFrance").

The Declaration of Michael LaFrance and Joanne LaFrance has been filed in support of the Motion. Dckts. 14, 15. Debtor describes the assets of LaFrance as including old cement mixers, ladders,

wheelbarrows, hand tools, wires, connectors, and a Gamill Quilt Machine. Dckt. 14 at 1:24-25; Dckt. 15 at 2:1-2. LaFrance (as to the Gamill Quilt Machine) is encumbered by the lien of Cindy Dulany, securing a claim of \$6,397.79. Schedule D, Dckt. 1. Debtor values LaFrance at \$9,050.00 (\$3,050.00 for LaFrance Electric and \$6,000.00 for LaFrance Quilting). Dckt. 14 at 2:1-2; Dckt. 15 at 1:25-27; *See also* Schedule A/B, Dckt. 1. Debtor claims exemptions pursuant to California Code of Civil Procedure section 704.060 an exemption in the amount of \$9,050.00 in LaFrance. Schedule C, Dckt. 1.

LaFrance is run by Debtor with no other employees. Therefore, Debtor's do not believe there is any value to the goodwill or other intangible assets of the business. Dckt. 14 at 2:6-13; Dckt. 15 at 2:2-10.

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

### **CHAMBERS PREPARED ORDER**

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

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

The Motion to Compel Abandonment filed by Michael E. and Joanne Veronica LaFrance ("Debtor's") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the two businesses owned by Debtor, including assets described as old cement mixers, ladders, wheelbarrows, hand tools, wires, connectors, and a Gamill Quilt Machine, LaFrance Electric and LaFrance Quilting ("LaFrance") and listed on Schedule A / B by Debtor is abandoned by Michael D. McGranahan ("the Chapter 7 Trustee") to Michael E. and Joanne Veronica LaFrance by this order, with no further act of the Chapter 7 Trustee required.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2019. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

<p><b>The Motion to Sell Property is granted.</b></p>
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The Bankruptcy Code permits Gary Farrar, 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 898 Morada Circle, Copperopolis, California ("Property").

The proposed purchaser of the Property is Jody L. Scott, and the terms of the sale are:

- A. Purchase price of \$16,000.00.
- B. Initial Deposit of \$1,600.00.
- C. Title and Escrow to be with First American Title, #5735600, officer Susan Plunkett.
- D. Surveyor cost not to exceed \$500.00.

## 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: **XXXXXXXXXXXXXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because achieves net funds of \$13,077.35 .

Movant has estimated that a 10 percent broker's commission from the sale of the Property will equal approximately \$1,600.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a 10 percent commission.

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 Gary Farrar, 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 Gary Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Jody L. Scott or nominee ("Buyer"), the Property commonly known as 898 Morada Circle, Copperopolis, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$16,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit D, Dckt. 40, 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 equal to 10 percent of the actual purchase price upon consummation of the sale. The 10 percent commission shall be paid to the Chapter 7 Trustee's broker, Veronica Hemphill

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on January 31, 2019. By the court's calculation, 14 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, -----.

<b>The Motion to Abandon is granted.</b>
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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 Michael D. McGranahan ("the Chapter 7 Trustee") requests that the court authorize him to abandon personal property used in the debtor, United Resorts, LLC's ("Debtor"), hotel business and described as used furniture, cleaning supplies, pool equipment and supplies, equipment for one office, washing machines, air-conditioning equipment and linen ("Property"). The Declaration of Michael D. McGranahan has been filed in support of the Motion and provides the following testimony:

1. The Property is of minimal value.
2. The Property is in a used, damaged and dirty state.
3. Trustee doubts he could find an auctioneer who would agree to sel the Property.

4. There is no hotel staff monitoring the property and it would be prohibitively expensive to hire a guard as the estate has no cash or valuable assets.
5. Several squatters reside at the hotel location.
6. Based upon the state of the premises and property and the presence of squatters, Trustee is very concerned that the estate could become subject to large claims for personal injury or damage to neighboring property if the estate continues in possession of the property.

Dckt. 19.

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 Michael D. McGranahan (“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 personal property used in Debtor’s hotel business and described as used furniture, cleaning supplies, pool equipment and supplies, equipment for one office, washing machines, air-conditioning equipment and linen (“Property”) is abandoned to United Resorts, LLC by this order, with no further act of the Chapter 7 Trustee required.

9. [19-90062-E-7](#)  
[MF-3](#)

UNITED RESORTS, LLC  
Michael Yi

MOTION TO REJECT LEASE OR  
EXECUTORY CONTRACT  
1-31-19 [\[23\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Lease / Executory Contract Parties, Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on January 31, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

-----.

<p><b>The Motion to Reject Lease or Executory Contract is granted.</b></p>
----------------------------------------------------------------------------

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") moves to reject all unexpired leases of real property, including a lease for real property commonly known as 1525 McHenry Avenue in Modesto, California, by lessors the Khatri Brothers, as well as any lease or agreement with any subtenant. Movant asserts that the leased premises was the debtor, United Resorts, LLC's ("Debtor"), motel business which has ceased and is not operating. Movant argues Debtor's possessory interest in the premises through the leases poses a danger to the estate, as the property is used by squatters and vagrants, sometimes for illegal purposes. Movant argues further any value to the estate would be minimal considering the Trustee's commission, attorney's fees, accountant's fees and other administrative expenses that would be required to administer such problematic assets.

Federal Rule of Bankruptcy Procedure 1007(b)(1)(C) requires a debtor to file a schedule of executory contracts and unexpired leases. A review of the docket shows that the executory contract is disclosed on Official Form 206G at Line 2.2, Dckt. 1. However, no subleases or tenancies for any of the occupants of the property are listed.

## **APPLICABLE LAW**

11 U.S.C. § 365 deals with executory contracts and unexpired leases. For the purpose of this Motion, Section 365 provides in relevant part:

- (1) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

In the Ninth Circuit, courts apply the business judgment rule when reviewing a decision to reject an executory contract or lease. *See Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665 (9th Cir. 2007). In reviewing a rejection motion, the bankruptcy court should presume that the trustee “acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate” and should approve rejection unless the “conclusion that rejection would be ‘advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.’” *Id.* at 670 (quoting *Lubrizol Enter. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)). Adverse effects upon the other contract party are not relevant, unless the effect is so disproportionate to the estate’s prospective advantage that it shows rejection could not be a sound exercise of business judgment. *See id.* at 671; *In re Old Carco LLC*, 406 B.R. 180, 192 (Bankr. S.D.N.Y. 2009).

## **DISCUSSION**

Here, Movant has demonstrated several sound business judgment reasons for rejecting the leased premises. Debtor has ceased its hotel business, and the premises poses a danger to the estate, as the property is used by squatters and vagrants, sometimes for illegal purposes.

Upon review of Movant’s request and cause shown, the court finds that it is in the best interest of Debtor, creditors, and the Estate to authorize Movant to reject the all unexpired leases of real property, including a lease for real property commonly known as 1525 McHenry Avenue in Modesto, California, by lessors the Khatri Brothers, as well as any lease or agreement with any subtenant. Therefore, the Motion is granted, and Movant is authorized to reject all unexpired leases of real property, including a lease for real property commonly known as 1525 McHenry Avenue in Modesto, California, by lessors the Khatri Brothers, as well as any lease or agreement with any subtenant, pursuant to 11 U.S.C. § 365(a).

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 Reject Lease or Executory Contract filed by Michael D. McGranahan, 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 is granted, and Movant is authorized to reject all unexpired leases of real property, including a lease for real property commonly known as 1525 McHenry Avenue in Modesto, California, by lessors the Khatri Brothers, as well as any lease or agreement with any subtenant for the 1525 McHenry Avenue Property.

The rejection of the above lease is effective upon issuance of this order, no further act of the Chapter 7 Trustee required.

10. [13-90069-E-7](#)  
[HCS-8](#)

DONALD/CLAUDETTE  
BECKWITH  
Scott Mitchell

**MOTION TO COMPROMISE  
CONTROVERSY/APPROVE  
SETTLEMENT AGREEMENT WITH  
BOSTON SCIENTIFIC CORPORATION,  
MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF KNOX RICKSEN, LLP  
FOR STEVEN B. STEIN, SPECIAL  
COUNSEL(S), MOTION FOR  
COMPENSATION BY THE LAW OFFICE  
OF GREENFIELD SULLIVAN DRA, ET  
AL.**

**1-17-19 [92]**

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 17, 2019. By the court's calculation, 28 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.

<b>The Motion for Approval of Compromise is granted.</b>
----------------------------------------------------------

Gary R. Farrar, the Chapter 7 Trustee, ("Movant" or "Trustee") requests that the court approve a compromise and settle competing claims and defenses with Boston Scientific Corporation ("Settlor"). The claims and disputes to be resolved by the proposed settlement relate to product liability and personal injury of debtor Claudette Davene Beckwith and related claims of her husband debtor Donald Beckwith (collectively "Debtor"), stemming from Claudette's use of a plastic transvaginal mesh implant.

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 A in support of the Motion, Dckt. 97):

- A. Settlor shall pay the sum of \$125,000.00 to Trustee within 60 days of execution of the settlement to be held in trust subject to the settlement's "Payment of Lien" provision.
- B. The contingent fee for Trustee's Special Counsel authorized to be employed by the Trustee is 40% of the monies recovered, which will be divided between Steven B. Stein, Esq. Of Knox Ricksen, LLC, who will receive 25% of the 40%, and Greenfield Sullivan Draa & Harrington, LLP, which will received 75% of the 40%. The 40% contingent fee totals \$49,640.56, plus \$898.61 in costs, for a total Special Counsel compensation of \$50,539.17.
- C. 5 percent of Debtor's settlement amount will be paid to a Common Benefit Fund Assessment pursuant to court order.
- D. Each of the two Debtors and the Chapter 7 Trustee on behalf of the Bankruptcy Estate in this case give general releases to Settlor for any and all claims.
- D. Debtor is responsible for resolving and paying any liens on the settlement proceeds

## 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 settlement, Movant shall recover \$125,000.00 (less 5 percent paid to a common benefit fund) in satisfaction of the Estate's claim for recovery of the property. Movant asserts that the property can be recovered for the Estate for the claim it has against Settlor. Movant does not allege what the potential recovery would be were the matter not settled.

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.

### **Probability of Success**

Movant states that Debtor's claim is for liability solely if there is a defect in the product labeling that gave rise to a "failure to warn" a "learned intermediary" physician of all known risks in the physician's decision to implant a medical device into his or her patient. Dckt. 94 at 4:16-18. Settlor asserts as a defense that its transvaginal mesh product was successfully inserted and benefitted many thousands of women, without complications. *Id.* at 4:21-22.

Because of the numerosity of claims against Settlor, a settlement program was developed. Movant argues the settlement achieved here exceeds the amount reflected from Settlor's settlement models and what Debtor's counsel in the case anticipated as recovery. 5:6-7, 14-15.

As to the probability of success at trial, Movant argues only that success is uncertain, as there is "never a guarantee of success" given the unpredictability of a jury and Settlor's "endless" legal resources.

Here, Debtor's claim appears plain. She used Settlor's transvaginal mesh implant product and was harmed. Settlor's product has harmed many users, as over 40,000 claims have been filed for this reason, and a special settlement program had to be developed. Dckt. 94 at 4:19-26.

Movant here argues that the settlement achieved was significantly greater than average. This indicates that Debtor's claim is greater than average. On the limited evidence presented, the probability of success were Debtor to pursue her claims at trial is very high.

### **Difficulties in Collection**

Movant argues collecting from Settlor after trial would not be difficult given its significant resources. The court agrees.

### **Expense, Inconvenience, and Delay of Continued Litigation**

Movant argues the expense, inconvenience, and delay here would be significant. The Debtor's lawsuit has already been pending 5 years. Dckt. 94 at 7:19. At trial and during discovery, Debtor would be required to hire experts at significant expense. Movant argues that pursuit of the claims at trial (particularly given Settlor's propensity to appeal judgements) would take years with no guarantee of recovery.

On the evidence presented, whether this factor favors settlement is a close question. Movant argues that there would be significant additional expenses. However, in its Motion Movant specifies that the case is taken on contingency fee basis. That agreement not having been provided, it is unclear whether the Estate would bore that additional expense, or simply Debtor's counsel.

The court agrees that further litigation would likely continue for a period of years. However, Movant has not been provided is an estimate of the recovery obtainable at trial. If the recovery at trial were substantial, it may be that the added time is well worth the wait.

While Movant argues that an appeal of successful judgement is likely, nothing precludes Debtor from seeking settlement at that juncture. Settlement after obtaining a successful judgement at trial would likely be significantly greater than the current offer.

### **Paramount Interest of Creditors**

Movant argues the paramount interest of the creditors in this case is settlement without further expense, delay, and uncertainty of recovery.

A review of Debtor lists secured claims of \$404,240.00 and unsecured claims of \$286,651.64 on Schedules D and E/F. Dckt. 1.

On Schedule A, Debtor lists real property valued at \$157,829.00 encumbered the Deed of Trust of OneWest Bank in the amount of \$390,317.00. Dckt. 1. Debtor's personal property listed on Schedule B has an aggregate value of \$19,904.35. On Debtor's Schedule C, Debtor claims exemptions in the personal property in the amount of \$12,360.35. Therefore, nonexempt personal assets amount to \$7,544.00 (which is overstating the value a Trustee would likely see in actually liquidating the assets and the accounting for cost of sale).

All told, Debtor's unsecured claims are currently looking at pennies on the dollar from other assets of the Bankruptcy Estate.

Settlement here would provide \$68,210.83 in recovery for this asset of the estate.

### **Issue of Net Recovery for Estate**

The Motion does not expressly state the terms for the recovery being divided as between the Debtor and the bankruptcy estate. On Amended Schedule C Debtor claims an exemption of \$22,075.00 pursuant to California Code of Civil Procedure § 703.140(b)(11)(D) [“(D) A payment, not to exceed twenty-four thousand sixty dollars (\$24,060), on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent”] and \$18,314.65 pursuant to § 703.140(b)(5) [“(5) The debtor's aggregate interest, not to exceed in value one thousand two hundred eighty dollars (\$1,280) plus any unused amount of the exemption provided under paragraph (1), in any property.”]. The asset in which the exemption is take is identified as “See Attachment 35.” Dckt. 43 at 10. There is no Attachment 35 to the Amended Schedule C.

The deadline for the Trustee to file objections to claim of exemptions had been extended multiple times, with the last extension expiring on January 26, 2015. Order, Dckt. 85.

In requesting the extension of deadlines, a series of stipulations were filed. The first was filed on January 17, 2014. Dckt. 52. In it the Debtor and Trustee recite that the \$40,389.65 exemption is claim in the claim that is now being settled. Stipulation ¶ C, *Id.*

Thus, it appears that for this settlement, of the \$68,210.63 left over after compensation of special counsel and the 5% general fund carve out, and then the \$40,389.65 exemption (59%) , there is \$27,820.98 for the estate (41%).

### **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 requested relief is properly granted.

### **REQUEST FOR ATTORNEY'S FEES AND COSTS**

In addition to its request for approval of compromise, Movant requests the court approve compensation for the estate's special counsel, Steven B. Stein, Esq., of Knox Rickson, LLP; and Tyler Draa, Esq., and Marcia Gerston, Esq., of Greenfield Sullivan Draa & Harrington, LLP ("Special Counsel"), in the amount of \$49,640.56, plus reimbursement of costs in the amount of \$898.61, for a total of \$50,539.17.

Here, the court has previously authorized the employment of counsel on such contingent fees terms. Order, Dckt. 76. The terms are subject to the provisions of 11 U.S.C. § 330 for final approval and 11 U.S.C. § 328 for adjustment of such fee terms based upon additional information showing that such fee terms are improvident based upon subsequent developments.

Though the provisions of Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 (allowing for the combining of multiple claims for relief in one motion or application), see Federal Rule of Bankruptcy Procedure 9014, the court may permit such rule to be applicable for a specific contested matter. Fed. R. Bankr. P. 9014(c). One of the few areas where the court has found it appropriate to extend the Rule 18 provisions is a motion to sell or a motion to approve a compromise in which there is a professional who has been employed on normal contingent fee terms. While the better course is for counsel to include a separate motion requesting authorization to make Rule 18 and Rule 7018 applicable, the court infers it from the present Motion.

As part of the terms of the settlement, and in determining the net recovery for Debtor and the Bankruptcy Estate, the court allows and authorizes payment of the 40% contingent fee and \$898.61 in costs.

FN.1.

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FN. The court notes that the Trustee fails to identify what comprises the \$898.61 in costs. Fortunately, in the Declaration of Justin Draa (Dckt. 96), an attorney with Greenfield Southwick, LLP, the Declarant testifies that the costs break down to as follows: \$400 U.S. District Court Filing Fee; \$381.81 Scans/Photocopies (at an unstated per page rate), \$78.80 PACER Service Center, Research Charges, and \$38.00 LEXIS Research. Mr. Draa does not explain why simple PACER charges and having LEXIS research resources are not part of the normal overhead of a law firm that handles sophisticated personal injury claims. Given the limited dollar amount, the court will infer that they were for extraordinary services for which additional charges were made beyond what is normally expected to be provided with a 40% contingent fee. Neither the special counsel, Trustee, or Trustee's counsel should expect the court to be so "accommodating" in a future application, and the failure to provide such basic information may be a basis for reducing the percentage fee or hourly rate.  
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Therefore, upon review of the Motion, evidence, supporting pleadings in this case, the arguments of counsel, and good cause appearing 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 Gary R. Farrar, 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 Boston Scientific Corporation ("Settlor") is granted, and the Trustee is authorized to settle the claims identified in the Settlement Agreement filed as A, Dckt. 97, on the terms and conditions stated in said Settlement Agreement.

**IT IS FURTHER ORDERED** that the contingent fee for Trustee's Special Counsel authorized to be employed by the Trustee is 40% of the monies recovered, which will be divided between Steven B. Stein, Esq. Of Knox Ricksen, LLC, who will receive 25% of the 40%, and Greenfield Sullivan Draa & Harrington, LLP, which will receive 75% of the 40%, plus \$898.61 in costs, for a total Special Counsel compensation of \$50,539.17 is approved, and the Trustee is authorized to pay such fees and costs from the Settlement Proceeds.

**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, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on January 31, 2019. By the court's calculation, 14 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, -----  
-----.

<p><b>The Motion to Compel Abandonment is granted.</b></p>
------------------------------------------------------------

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 Wilson Sarhad ("Debtor") requests the court to order Irma Edmonds ("the Chapter 7 Trustee") to abandon Debtor's 1/9 interest in property commonly known as 1300 North Olive Avenue, Turlock, California ("Property"). The Property is encumbered by the lien of Leonani Garcia, securing a claim of \$234,985.00. Schedule D, Dckt. 1. The Declaration of Wilson Sarhad has been filed in support of the Motion and values the Property at \$26,000.00. Dckt. 62 at ¶ 5. The Declaration also notes the judgement lien of Rafid Khoshaba was recorded against the Property in the amount of \$4,000.00 on December 21, 2018, and that (after protracted litigation described more fully in Debtor's Motion) Debtor executed a quitclaim on October 26, 2017 purporting to release his interest in the Property to the other co-owners. Dckt. 60, ¶¶ 9-10.

The court finds that the debt secured by the Property exceeds the value of the Property, that it is questionable whether Debtor has any interest in the Property given the executed quitclaim, and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

### **CHAMBERS PREPARED ORDER**

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

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

The Motion to Compel Abandonment filed by Wilson Sarhad (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and Debtor’s 1/9 interest in property commonly known as 1300 North Olive Avenue, Turlock, California (“Property”) and listed on Schedule A / B by Debtor is abandoned by Irma Edmonds (“the Chapter 7 Trustee”) to Wilson Sarhad by this order, with no further act of the Chapter 7 Trustee required.

12. [17-90577-E-7](#)  
[17-9019](#)

WILSON SARHAD

GARCIA V. SARHAD

CONTINUED PRE-TRIAL CONFERENCE  
RE: COMPLAINT TO (1) DETERMINE  
DISCHARGEABILITY OF PARTICULAR  
DEBT; AND (2) DETERMINE  
DISCHARGEABILITY OF ALL DEBTS  
11-6-17 [\[1\]](#)

Plaintiff's Atty: Michael R. Dennis  
Defendant's Atty: David C. Johnston

Adv. Filed: 11/6/17  
Answer: 12/3/17

Nature of Action:  
Dischargeability - willful and malicious injury  
Objection/revocation of discharge

<b>The Pre-Trial Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXX</span></b>
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Notes:

Continued from 1/24/19. Wilson Sarhad, the Defendant-Debtor, Avelian Sarhad, the wife of the Defendant-Debtor, and person identified by Defendant-Debtor as necessary for consummation of the settlement shall appear in person - No Telephonic Appearance Permitted.

#### **FEBRUARY 14, 2019 STATUS CONFERENCE**

The court continued the Status Conference based on a perception that this matter was not being concluded. At the February 14, 2019 Status Conference XXXXXXXXXXXX

#### **JANUARY 24, 2019 STATUS CONFERENCE**

On January 23, 2019, Wilson Sarhad, Defendant-Debtor, filed an updated Status Report. Dckt. 22. He reports that the matter has been resolved in a settlement approved by the court, and that the \$20,000 payment required thereunder has been paid to the Trustee. *Id.* ¶ 1.

Defendant-Debtor states that he intends to object to the claim of the Internal Revenue Service in his Chapter 7 case, and that the hearing on the Objection should be in 60 days. *Id.* ¶ 3. The Defendant-Debtor made the same representation to the court in his Status Conference Statement filed on November 26, 2018. Dckt. 20, ¶ 3. A review of the Docket in Defendant-Debtor's Chapter 7 case shows that no such objection has been filed. CH 7 Case, 17-90577.

The Status Report concludes with Defendant-Debtor's counsel stating that he has been unable to address this case due to extraordinary family health issues.

The Chapter 7 bankruptcy case has been pending since July 14, 2017. The settlement was approved by order filed on August 26, 2018. 17-90577.

At the hearing the Defendant-Debtor stated that the promised objection to claim would be filed, stating that the Internal Revenue Service was claiming amount in excess of what was owed. The court reviewed with counsel for Debtor Proof of Claim No. 1-1 filed by the Internal Revenue on December 1, 2017, in the amount of \$537.85. Counsel for the Debtor believed that the amount was higher, based on what had been asserted by the Internal Revenue Service in one of Debtor's three prior recent bankruptcy cases (in which he was represented by the same counsel as in this case), and there was no objection to the Internal Revenue Service having a claim for \$537.85.

Counsel for Defendant-Debtor explained that as part of the settlement with Plaintiff, Defendant-Debtor was to assign over his 1/9 interest in property which he inherited with his siblings. Earlier the property had been in escrow, but Debtor failed to take the necessary action for that to close. It was represented that Defendant-Debtor would promptly get the 1/9 interest abandoned by the Trustee, confirmed in amount for Plaintiff by the other eight owners, and assigned over to Plaintiff.

The last component part is the payment of \$20,000, which is to come from a loan, refinance, or sale of the Debtor's residence. No steps have been taken to date to generate these monies. Counsel for the Debtor stated that it is the Debtor's wife, Avelain Sarhad, who has the responsibility for this.

The court was left with the sense that Defendant-Debtor is not taking the necessary action to resolve this matter, but is intentionally not acting to delay this matter. Such causes the court's time and resources to be wasted, as well as those of the Plaintiff.

It being represented to the court that Avelain Sarhad, the Defendant-Debtor's wife, is responsible for generating the \$20,000 payment and the settlement being consummated, her attendance at the continued Pretrial Conference is necessary.

## **SUMMARY OF COMPLAINT**

Leonani Garcia ("Plaintiff") filed a Complaint (Dckt. 1) to have Plaintiff's debt determined nondischargeable pursuant to 11 U.S.C. § 523(a)(6) and that Defendant-Debtor be denied a discharge pursuant to 11 U.S.C. § 727(a)(2) [property of the debtor]. Plaintiff alleges that she obtained a state court judgment for failure to pay wages, harassment, and punitive damages. Further, Plaintiff alleges that an abstract of judgment was recorded in Stanislaus County in May 14, 2014, and a Notice of Judgment Lien filed with the Secretary of State on July 9, 2014.

It is further alleged that W.S. Towing, Inc., one of the two judgment debtors, was converted by Defendant-Debtor to a partnership two months before the commencement of a prior Chapter 13 bankruptcy case in 2014. The Complaint alleges further conduct relating to contentions that assets of W.S. Towing, Inc.,

one of Plaintiff's two state court judgment debtors (for which the judgment lien had been filed with the Secretary of State) were transferred into Defendant-Debtor's partnership or Defendant-Debtor.

The allegations continue, asserting that Defendant-Debtor purports to no longer have these business assets, but purports to have transferred them to his non-debtor wife.

## **SUMMARY OF ANSWER**

Wilson Sarhad ("Defendant-Debtor") has filed an Answer (Dckt. 8) that admits and denies specific allegations in the Complaint. Defendant-Debtor also asserts seven affirmative defenses.

## **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. § 1334 and 157(b)(2), and 11 U.S.C. § 523 and § 727 and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(l) [and J]. Complaint ¶ 1, Dckt. 1. In his Answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings, and consents to the bankruptcy judge issuing final orders and judgments. Answer ¶ 1, Dckt. 8. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgment in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

13. [18-90786-E-7](#)

GREGORY/DORALEEN WOODS  
Pro Se

TRUSTEE'S MOTION TO DISMISS FOR  
FAILURE TO APPEAR AT SEC.  
341(A) MEETING OF CREDITORS  
1-4-19 [\[14\]](#)

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Creditors on January 6, 2019. By the court's calculation, 39 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 (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

**The Motion is granted, with the court extending the deadline for filing objections to discharge and complaints for nondischargeability of debt as provided in 11 U.S.C. §§ 523, 707(b), and 727, for all parties in interest are extended through and including April 1, 2019, and denied without prejudice for all other relief requested.**

Gary Farrar ("the Chapter 7 Trustee") alleges that Gregory Leon and Doraleen L. Woods ("Debtor's") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

Alternatively, if Debtor's case is not dismissed, the Chapter 7 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 09:30 a.m. on January 31, 2019. If Debtor fails to appear at the continued Meeting of Creditors, the Chapter 7 Trustee requests that the case be dismissed without further hearing.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on January 23, 2019. Dckt. 19. Debtor argues Debtor Darlene Woods missed the Meeting Of Creditors due to surgery, and requests the court not dismiss the case.

## **RULING**

A review of the Docket shows Debtor appeared at the continued January 31, 2019 Meeting of Creditors, and that the Meeting was further continued to February 14, 2019.

Given Debtor's appearance at the continued hearing and filed Opposition, cause does not appear to dismiss the case. However, the court shall in the alternative extend the deadlines to file objections to discharge to reflect the continued Meeting of Creditors.

The Motion is granted, and 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 April 1, 2019.

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 Gary Farrar ("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 Dismiss is granted and the deadline for filing objections to discharge and complaints for nondischargeability of debt as provided in 11 U.S.C. §§ 523, 707(b), and 727, for all parties in interest are extended through and including April 1, 2019, and denied without prejudice for all other relief requested.

**IT IS FURTHER ORDERED** that the request for dismissal is denied without prejudice.

14. [17-90494-E-7](#)  
[18-9012](#)

DALJEET MANN  
SSA-4

MOTION TO TAX COSTS AND/OR  
MOTION FOR PREVAILING PARTY  
FEES FOR STEVEN ALTMAN,  
PLAINTIFFS ATTORNEY(S)  
1-18-19 [56]

EDMONDS V. MANN ET AL

**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*), Defendant's, Plaintiff, and Office of the United States Trustee on January 18, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Tax Costs and/or for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Plaintiff, Defendants, 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, -----

-----.

<b>The Motion to Tax Costs and/or for Allowance of Professional Fees is <span style="color: red;">XXXXX</span>.</b>
---------------------------------------------------------------------------------------------------------------------

**PRELIMINARY ISSUE TO ADDRESS - No Judgement for Plaintiff-Trustee has been entered.**

On December 26, 2018, the court entered its order granting the Motion for Entry of a Default Judgment in this Adversary Proceeding. Order, Dckt. 53. The Order very clearly states the terms of the Judgment *that is to be entered*. In issuing the Order, the court neglected to state that "Counsel for Plaintiff-Trustee shall prepare and lodge with the court a proposed judgment consistent with this Order." Because such a judgment will be recorded by the Plaintiff-Trustee, the court commonly will have counsel prepare a judgment that they, and the title company with which they are dealing, are comfortable with.

Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054 the motion for attorney's fees and the costs bill are filed after the judgment is entered. An impossibility due to the court having not directed counsel and not having generated a judgment on its own to have occurred.

The Plaintiff-Trustee did comply with that portion of the court's order directing that the motion be filed on or before February 1, 2019, the present Motion having been filed on January 18, 2019. Dckt. 56.

To align the award of the attorney's fee to be enforced as part of the Judgment, court direct counsel for Plaintiff-Trustee to prepare an order consistent with the court's Order granting the Motion for Default Judgment, with said Judgment further stating that any award of attorney's fees and costs shall be enforced as part of the judgment.

The court continues the hearing on the Motion for Attorney's Fees and Costs to **10:00 a.m. on xxxxxx, 2019**. Plaintiff-Trustee shall file any supplemental pleadings for any additional attorney's fees incurred in having to prepare the judgment on or before **xxxxx, 2019**, and Opposition thereto shall be filed and served on or before **xxxxxxx, 2019**.

#### **REVIEW OF MOTION**

(The court having prepared a tentative ruling before realizing that the judgment had not been entered, provides that tentative below.\_

Irma Edmonds, the Chapter 7 Trustee ("Movant" or "Plaintiff-Trustee"), moves for prevailing party attorney's fees pursuant to *Fed. R. Ban P.* 7054 and taxation of costs pursuant to 28 U.S.C. § 1920.

Movant filed a Complaint against Ninder and Jasleen Mann ("Defendants"), family members of debtor Daljeet Mann ("Debtor"). Dckt. 1. The Complaint alleged that a transfer of Debtor's 33 percent interest in RJ Lodging, LLC to Defendants was a fraudulent conveyance. On September 7, 2018, the clerk entered default against the Defendants. Dckts. 32, 33. On December 26, 2018, the court issued an Order Granting Motion For Entry of Default Judgement, awarding monetary judgement against Defendants, imposing an equitable lien on Defendant's real property, granting injunctive relief, authorizing the Plaintiff-Trustee to sell Defendant's real property, and awarding post-judgment interest. Order, Dckt. 53. The court further ordered that attorneys' fees and cost sought by Plaintiff-Trustee, if any, shall be requested as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054, by appropriate motion or bill of costs filed on or before February 1, 2019. *Id.*

Fees are requested for the period July 27, 2018, through December 26, 2018. Movant requests fees in the amount of \$35,790.00 and taxation of costs totaling \$4,320.72.

#### **Basis for Attorney's Fees Stated in the Motion**

The Motion asserts the principal that a prevailing party is one who has been awarded some relief by the court. Here, Plaintiff-Trustee asserts that she is the "prevailing party" as set forth in the order granting the motion for entry of default judgment. Motion, p. 3:12.5-20. Having stated that Plaintiff-Trustee is the prevailing party, Plaintiff-Trustee then asserts the right to attorney's fees.

Plaintiff-Trustee then directs the court to California substantive law - the Tort of Another Doctrine - as the basis for awarding attorney's fees. Cal. C.C.P § 1021; *Prentice v. North American Title Guarantee Corp.*, 59 Cal.2d 618, 620-21 (1963).

Plaintiff-Trustee asserts that the first, second, and fourth through seventh causes of action in the Complaint are claims for which Tort of Another attorney's fees may be awarded. Additionally, the Plaintiff-Trustee points to California Civil Code § 3336 for the proposition that if there is a wrongful conversion of property, then one may also recover the "fair compensation for the time and money properly expended in pursuit of the property wrongfully converted."

## **STATUTORY BASIS FOR COSTS**

A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

28 U.S.C. § 1920.

## **Requested Costs**

Movant provides a cost billing analysis and supporting evidence, with the costs stated in the Motion as follows:

Filing Fees: Movant states she incurred costs of \$350.00 as court filing fees.

Deposition Costs and Service of Process Fees: Movant states she incurred costs of \$1,412.67 as service of process fees.

Court Report and Transcripts: Movant states she incurred costs of \$700.35 for deposition transcripts and copies which were necessary to illustrate the history of the venture, payments, and disbursements received by LLC members and ultimate disposition of the fraudulently conveyed property.

Interpreter Fees and Costs: Movant states she incurred costs of \$900.00 in hiring an interpreter to conduct the translation of Debtor's ex-wife's testimony from Punjabi to English.

### **Costs Awarded**

Movant has provided evidence of costs incurred in the amount of \$4,320.72 in this Adversary Proceeding. Movant was the prevailing party in this Adversary Proceeding. Order, Dckt. 53.

On the evidence provided, the costs asserted by Movant include fees of the clerk and marshal, fees for transcripts, and compensation for interpreters. As the prevailing party the Movant is entitled to these costs. 28 U.S.C. § 1920(1)-(2), (6).

Therefore, the Motion is granted and Movant shall be awarded costs in the amount of \$4,320.72.

### **BASIS FOR ATTORNEY'S FEES**

The Plaintiff-Trustee asserts the "Tort of Another" and California Civil Code § 3336 as the basis for recovering attorney's fees under the "American Rule," by which a party bears its own attorney's fees unless as otherwise provided by contract or statute. *Travelers Casualty & Surety Company of America v. Pacific Gas and Electric Company*, 549 U.S.443, 448 (2007).

Plaintiff-Trustee's Complaint, Dckt. 1, sought relief for the following claims:

#### First Cause of Action - Injunctive Relief

Plaintiff-Trustee sought injunctive relief to prevent the Defendants from transferring the property that was the subject of the Complaint.

#### Second Cause of Action - Equitable Lien

Plaintiff-Trustee asserted that she had an equitable lien on the property transferred from the Debtor to Defendants.

#### Third Cause of Action - Accounting

Plaintiff-Trustee requested an accounting of all of the Debtor's property and proceeds thereof transferred to Defendants.

#### Fourth Cause of Action - 11 U.S.C. § 548(a)(1)(A)

Plaintiff-Trustee alleges that the pre-petition transfers from Debtor to Defendants were avoidable as fraudulent conveyances (transfers with an intent to hinder, delay, or defraud an entity, under the Bankruptcy Law.

#### Fifth Cause of Action - 11 U.S.C. § 548(a)(1)(B)(I)

Plaintiff-Trustee alleges that the pre-petition transfers from Debtor to Defendants were avoidable as having been made for less than reasonable equivalent value under Bankruptcy Code.

Sixth Cause of Action - 11 U.S.C. § 544(b)

Plaintiff-Trustee alleges that the pre-petition transfers from Debtor to Defendants were avoidable as a matter of the California Fraudulent Conveyance Statute, California Civil Code § 3439.04 as incorporated into the Bankruptcy Code, because the transfers were for less than reasonably equivalent value.

Seventh Cause of Action - 11 U.S.C. § 544(b)

Plaintiff-Trustee alleges that the pre-petition transfers from Debtor to Defendants were avoidable as a matter of the California Fraudulent Conveyance Statute, California Civil Code § 3439.04 as incorporated into the Bankruptcy Code, because the transfers were for less than reasonably equivalent value.

**Statutory Claims to Recover Otherwise Legal Transfers**

From what Plaintiff-Trustee describes in the causes of action, she is exercising statutory rights that allow a trustee or creditors to avoid and recover otherwise legal transfers of property by a person. These statutes recognize the inclination of man to want to favor some and gift away assets rather than have the “grubby creditors” get their hands on them. Additionally, that some person may scheme to transfer assets to others, having a secret agreement that the other person holds the assets, safe from creditors of the transferor, but will use them for the benefit of the transferor.

Interestingly, Plaintiff-Trustee has not directed the court to one State or Federal Case awarding attorney’s fees to a prevailing party under 11 U.S.C. § 548 or California Civil Code § 3439.04. Presumably, if the “Tort of Another” and California Civil Code § 3336 recovery of wrongfully converted property principles were well established to apply to avoiding fraudulent conveyances, such cases would have been cited. Quite possibly the reason they are not, and do not exist, is that the transferor is not “converting” someone’s property when he/she gifts assets away to others, even if trying to prevent a “grubby creditor” from taking that asset to pay an obligation of the transferor.

In reviewing the Complaint, the court does not identify a “tort claim” for which the Tort of Another Doctrine is being asserted. Additionally, the fees being requested are not fees incurred in dealing with the fall out from conduct of another, but for prosecuting the fraudulent conveyance action against the Debtor.

In discussing a request for attorney’s fees for prosecuting an action under 11 U.S.C. § 548(a)(1) stated:

The magistrate judge declined Acequia's request for attorney's fees. On appeal, Acequia cites no statutory or contractual basis for such fees, arguing only that “exceptional circumstances” justify an award of fees. *See Richardson v. Alaska Airlines, Inc.*, 750 F.2d 763, 765 (9th Cir.1984) (“The American rule denies attorney's fees to a litigant in federal court in the absence of contract, applicable

statute, or other exceptional circumstances.... **[A]ny exceptions to the American Rule will be narrowly circumscribed.**") (citation omitted). In view of the magistrate judge's determination that "Clinton's defense of this case was neither unreasonable, frivolous, nor vexatious," the refusal to award attorney's fees was not an abuse of discretion.

*Acequia, Inc v. Clinton*, 34 F.3d 800, 819 (9th Cir. 1994) [emphasis added].

In discussing the right to attorney's fees when seeking recovery pursuant to California Civil Code § 3336, the California Court of Appeals confirms that recovery of fees based on that Code section is not proper, stating,

The sole legal authority advanced by Haines for this element of compensatory damages is Civil Code section 3336. In material part, that statute provides that the \*\*181 detriment caused by the wrongful conversion of personal property includes "[a] fair compensation for the time and money properly expended in pursuit of the property."

...

As stated in *Russell v. United Pacific Ins. Co.* (1963) 214 Cal.App.2d 78, 29 Cal.Rptr. 346, "The general rule is that attorneys' fees are not a proper item of recovery from the adverse party, either as costs, damages or otherwise, unless there is express statutory authority or contractual liability therefor [citations]. **Section 3336** of the Civil Code, which sets out the measure of damages in conversion actions, **does not** expressly **provide for attorneys' fees** for the converting of property. **It has long been held that such fees are not within the rule of damages provided for by that section** [citations]." (*Id.* at p. 91, 29 Cal.Rptr. 346; accord, *Viner v. Untrecht* (1945) 26 Cal.2d 261, 272, 158 P.2d 3; *W.R. Bradshaw & Co. v. Eggers* (1915) 27 Cal.App. 132, 148 P. 961; *W. & P. Nicholls v. Mapes* (1905) 1 Cal.App. 349, 82 P. 265.) Thus, attorney's fees should not have been awarded Haines even indulging the questionable assumption that all of the "fees" he claimed were incurred "in pursuit of the property" (Civ.Code, § 3336) rather than in pursuit of a criminal conviction.

*Haines v. Parra*, 193 Cal. App. 3d 1553, 1558-1559 (1987) [emphasis added].

As to the Tort of Another Doctrine cited, it is discussed in Miller and Starr California Real Estate 4<sup>th</sup>, § 40:66, which states:

**Third-party tort theory or tort of another.** Attorney's fees may be recovered under the "third-party tort" theory, also referred to as the "tort of another" theory, even though there is no express contract provision for the payment of fees as an element of damages proximately caused. **When one person by tortious conduct compels another person to engage in litigation against a third person**, the tortfeasor is liable for the attorney's fees incurred in that litigation. The tort may be nothing more than negligence that precipitates litigation by or against the plaintiff.

**When fees may not be recovered on this theory.** When the action against the third party **is not caused by the tort of the defendant**, or if there is no proximate cause between the defendant's conduct and the necessity to file or defend the third-party suit, the tortfeasor is not liable for the attorney's fees incurred in prosecuting the action against the third party.

Also, **attorney's fees cannot be awarded under this theory in an ordinary two-party lawsuit.** This theory cannot be used to apply to one of several joint tortfeasors each of whom is jointly and severally liable to the plaintiff for commission of the tort.

Here, the Plaintiff-Trustee has not identified the tortious conduct of the Defendants that cause the Plaintiff-Trustee to engage in litigation against another, and thereby incur attorney's fees for the litigation against the other person which Plaintiff-Trustee now seeks to obtain from the original tortfeasor.

Rather, Plaintiff-Trustee presents the court with a two-party dispute. Plaintiff-Trustee asserts the right to recover transfers received by the Defendants, not that the Plaintiff-Trustee litigated against some third-party due to the torts of the Defendants.

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 the Chapter 7 Trustee and Defendant, Irma Edmonds ("Movant" or "Plaintiff-Trustee"), in this Adversary Proceeding and prevailing party on appeal having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing.

**IT IS ORDERED** that the hearing on the Motion for Attorney's Fees and Costs to **10:00 a.m. on xxxxxx, 2019**. Plaintiff-Trustee shall file any supplemental pleadings for any additional attorney's fees incurred in having to prepare the judgment or legal basis for asserting the right to be awarded attorney's fees on or before **xxxxxx, 2019**, and Opposition thereto shall be filed and served on or before **xxxxxxx, 2019**.

15. [18-90258](#)-E-7  
[MF-6](#)

ANDREAS ABRAMSON  
Iain Macdonald

**SCHEDULING CONFERENCE FOR  
EVIDENTIARY HEARING RE :  
AMENDED MOTION TO AVOID LIEN  
OF HELEN MCABEE  
8-8-18 [\[141\]](#)**

Debtor's Atty: Iain Macdonald  
Secured Creditor's [Helen McAbee] Atty: Richard B. Gullen  
Interested Party's [Bernadette Cattaneo] Atty: Stephen D. Finestone

<b>The Scheduling Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXX</span></b>
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Notes:  
Set by order of the court filed 12/21/18 [Dckt 246]

Deadlines Set -  
On or before 1/15/19, Debtor to lodge and serve direct testimony statements, exhibits, and hearing brief  
On or before 2/5/19, Helen McAbee and Bernadette Cattaneo to lodge and serve direct testimony statements, exhibits, and hearing briefs

16. [19-90122](#)-E-11  
[MF-2](#)

MIKE TAMANA FREIGHT  
LINES, LLC

**MOTION TO PAY AND/OR MOTION TO  
MAINTAIN EMPLOYEE BENEFITS  
PROGRAMS O.S.T.  
2-12-19 [9]**

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on February 12, 2019. By the court's calculation, 2 days' notice was provided. The court set the hearing for February 14, 2019. Dckt. 27.

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

**The Motion To Pay And/Or Motion To Maintain Employee Benefits Programs is  
XXXXX**

At the hearing, **XXXXXXXXXX**.

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

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

The Motion To Pay And/Or Motion To Maintain Employee Benefits Programs filed by Mike Tamana Freight Lines, LLC (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that **XXXXXXXXXXXXX**.

17. [19-90122](#)-E-11  
[MF-3](#)

MIKE TAMANA FREIGHT  
LINES, LLC

MOTION FOR AUTHORITY TO  
OBTAIN FINANCING O.S.T.  
2-12-19 [\[15\]](#)

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

-----

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on February 12, 2019. By the court's calculation, 2 days' notice was provided. The court set the hearing for February 14, 2019. Dckt. 28.

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

<b>The Motion For Authority To Obtain Financing is <span style="color: red;">XXXXX</span>.</b>
------------------------------------------------------------------------------------------------

At the hearing, XXXXXXXXXX.

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

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

The Motion For Authority To Obtain Financing filed by Mike Tamana Freight Lines, LLC, the debtor in possession ("DIP") having been presented to the

court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that **XXXXXXXXXX**.

18. <a href="#">19-90122-E-11</a> <a href="#">MF-4</a>	<b>MIKE TAMANA FREIGHT LINES, LLC</b>	<b>MOTION TO USE CASH COLLATERAL O.S.T. 2-12-19 [21]</b>
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**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

-----

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on February 12, 2019. By the court's calculation, 2 days' notice was provided. The court set the hearing for February 14, 2019. Dckt. 29.

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

<b>The Motion for Authority to Use Cash Collateral is <b>XXXXX</b></b>
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At the hearing, **XXXXXXXXXX**.

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

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

The Motion for Authority to Use Cash Collateral filed by Mike Tamana Freight Lines, LLC (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that **XXXXXXXXXXXXXXXXXX**.