UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

March 8, 2018, at 10:30 a.m.

1.	**16-90603-E-7** **HSM-2**	**MARK ONE CORPORATION** **Cecily Dumas**	**MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH JOHN SIMS** **1-31-18 [76]**

Final Ruling: No appearance at the March 8, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No 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 31, 2018. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The hearing on the Motion for Approval of Compromise is continued to 10:30 a.m. on April 12, 2018, pursuant to the court's prior order.

Irma Edmonds, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with John Sims, individually and as trustee of the G&M Baker 1994 Trust, ("Settlor").

On February 21, 2018, the parties filed a Stipulation agreeing to continue the hearing and setting a briefing schedule. Dckt. 82. On February 28, 2018, the court approved that Stipulation, continuing the hearing to 10:30 a.m. on April 12, 2018, and setting a briefing schedule. Dckt. 85.

The court having continued this matter by prior ruling, the hearing on the Motion is continued to 10:30 a.m. on April 12, 2018.

2. **16-90603-E-7** **MARK ONE CORPORATION** **CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL**
17-9021 **12-20-17 [1]**
BURGER PHYSICAL THERAPY SERVICES, INC. V. SIMS

Final Ruling: No appearance at the March 8, 2018 hearing is required.

Continued to 4/12/18 at 10:30 a.m. by order of the court [Dckt 46]

Plaintiff's Atty: Jamie P. Dreher
Defendant's Atty: Walter J. Schmidt

Adv. Filed: 12/20/17 [Notice of Removal of Lawsuit Pending in State Court]
Answer: none

The Status Conference has been continued to April 12, 2018, pursuant to prior order of the court (Dckt. 46).

Nature of Action:
Determination of removed claim or cause

Notes:
Continued from 2/15/18 to be heard in conjunction with other matters on calendar.

3. **16-90603-E-7** **MARK ONE CORPORATION** **CONTINUED MOTION FOR REMAND**
17-9021 **DB-1** **1-18-18 [13]**
BURGER PHYSICAL THERAPY SERVICES, INC. V. SIMS

Final Ruling: No appearance at the March 8, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant's Attorney and Chapter 7 Trustee's Attorney on January 18, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Office of the United States Trustee has not been served. The latest United States Trustee guidelines request service of all pleadings and orders in Chapter 7 adversary proceedings. Given the court's decision in this matter, the court waives the service defect.

The Motion for Remand 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 Motion for Remand is continued to 10:30 a.m. on April 12, 2018, pursuant to the court's prior order (Dckt. 43).

Burger Physical Therapy Services, Inc. ("Plaintiff") moves the court for an order remanding this Adversary Proceeding to the Stanislaus Superior Court pursuant to 28 U.S.C. § 1452(b). Alternatively, Plaintiff moves for the court to abstain under 28 U.S.C. § 1334(c)(1) from hearing this Adversary Proceeding.

Plaintiff asserts that remand is appropriate because all of the causes of action stated in the Complaint are based upon state law and do not commonly arise in bankruptcy. Additionally, Plaintiff states that the Complaint does not assert any cause of action against the debtor in the underlying proceeding, Mark One Corporation ("Debtor"). Instead, the Complaint alleges two causes of action against two non-debtors.

Plaintiff argues that its claims are not asserted against Debtor, and any recovery will go to Plaintiff directly, not to the bankruptcy estate.

DEFENDANT'S OPPOSITION

John Sims, individually and as Trustee of the G&M Baker 1994 Trust ("Defendant") filed an Opposition on February 1, 2018. Dckt. 30. Defendant argues that Plaintiff's Complaint is a fraudulent conveyance action, disguised in other terms.

Defendant illustrates that Paragraphs 8 and 28 of the Complaint reference a scheme or plan to strip away and fraudulently transfer assets from Debtor. Debtor argues that as a fraudulent transfer action, this matter is authorized to be prosecuted by a trustee under 11 U.S.C. § 548.

Additionally, Defendant argues that he and Irma Edmonds ("the Chapter 7 Trustee") agree that Debtor's Bankruptcy Estate owns the claims alleged by Plaintiff, putting them exclusively within the Chapter 7 Trustee's control.

Defendant argues that he and the Chapter 7 Trustee have been negotiating a settlement to resolve the preference action that the Chapter 7 Trustee filed against Defendant, Adversary Proceeding No. 17-09007. A settlement and motion to approve the settlement have been presented to the court in Debtor's bankruptcy case, and the hearing is set for March 8, 2018. Case No. 16-90603, Dckt. 76.

Finally, Defendant argues that abstention is not applicable to cases that have been removed from state to federal court, and it is not applicable when there is no parallel state court proceeding. Dckt. 30 at 3:8–14 (citing *Security Farms v. Int'l Bhd. of Teamsters*, 124 F.3d 999, 1009 (9th Cir. 1997) (stating that abstention is not applicable when a case has been removed from state to federal court); *Schulman v. California. (In re Lazar)*, 237 F.3d 967, 981–82 (9th Cir. 2001) (citation omitted) ("[A]bstention can exist only where there is a parallel proceeding in state court.")).

PLAINTIFF'S REPLY

Plaintiff filed a Reply on February 8, 2018. Dckt. 34. Plaintiff argues that Defendant has failed to address the legal standard set forth by Plaintiff. Now, Plaintiff asserts that the matter should be remanded because Defendant has not opposed remand.

Plaintiff argues that even if the Chapter 7 Trustee has standing to bring Plaintiff's claims, that does not mean that the bankruptcy court has jurisdiction. Plaintiff argues that the claims may be brought in state court.

Nevertheless, Plaintiff argues that the claims are his and not the Chapter 7 Trustee's to enforce because they are being asserted against Defendant personally. For most of the Reply, Plaintiff uses the same language that it has already asserted in the Motion, which the court addresses below.

FEBRUARY 15, 2018 HEARING

At the hearing, the court determined that the Motion should be continued to be addressed after the court addresses a pending motion to compromise. Dckt. 36. The court continued the hearing on the Motion to 10:30 a.m. on March 8, 2018. Dckt. 39.

STIPULATION AND ORDER CONTINUING

On February 21, 2018, the parties filed a Stipulation agreeing to continue the hearing to April 12, 2018. Dckt. 41. On February 28, 2018, the court approved that Stipulation, continuing the hearing to 10:30 a.m. on April 12, 2018. Dckt. 43.

RULING

The court having continued this matter by prior ruling, the hearing on the Motion is continued to 10:30 a.m. on April 12, 2018.

4. **16-90603-E-7** **MARK ONE CORPORATION** **CONTINUED MOTION TO DISMISS**
17-9021 **WJS-1** **ADVERSARY PROCEEDING**
BURGER PHYSICAL THERAPY SERVICES, INC. V. SIMS **1-9-18 [9]**

Final Ruling: No appearance at the March 8, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on January 9, 2018. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion to Dismiss Adversary Proceeding is continued to 10:30 a.m. on April 12, 2018, pursuant to the court's prior order (Dckt. 45).

John Sims, individually and as Trustee of the G&M Baker 1994 Trust, ("Defendant") moves for the court to dismiss all claims against it in Burger Physical Therapy Services, Inc.'s ("Plaintiff-Debtor") Complaint for lack of standing.

Defendant asserts that Plaintiff's Causes of Action became property of the estate under 11 U.S.C. § 541(a)(1), and only Irma Edmonds ("the Chapter 7 Trustee") may prosecute the claims, pursuant to 11 U.S.C. § 323.

PLAINTIFF'S OPPOSITION

Plaintiff filed an Opposition on February 1, 2018. Dckt. 28. Plaintiff argues that once this case is remanded back to state court, then the case will be back in its "rightful" location. Plaintiff also argues that Defendant is wrong to assert that this Adversary Proceeding is a fraudulent conveyance action solely within the Chapter 7 Trustee's authority.

Plaintiff argues that Defendant has noted only one section of the Complaint that references a fraudulent conveyance and insists that looking at the Complaint more broadly shows that the causes of action are for a scheme to frustrate the payments to Plaintiff.

Plaintiff asserts that for a cause of action based on conspiracy and aiding and abetting a fraudulent transfer, a creditor is the proper party to prosecute such claims. *Id.* at 5 (citing *In re Hamilton Taft & Co.*, 176 B.R. 895, 902 (Bankr. N.D. Cal. 1995)).

FEBRUARY 15, 2018 HEARING

At the hearing, the court determined that the Motion should be continued to be addressed after the court addresses a pending motion to compromise. Dckt. 37. The court continued the hearing on the Motion to 10:30 a.m. on March 8, 2018. Dckt. 40.

STIPULATION AND ORDER CONTINUING

On February 21, 2018, the parties filed a Stipulation agreeing to continue the hearing to April 12, 2018. Dckt. 41. On February 28, 2018, the court approved that Stipulation, continuing the hearing to 10:30 a.m. on April 12, 2018. Dckt. 45.

RULING

The court having continued this matter by prior ruling, the hearing on the Motion is continued to 10:30 a.m. on April 12, 2018.

5. **17-91012-E-7** **JOHN/EVA QUINONES** **MOTION TO COMPEL ABANDONMENT**
TPH-1 **Thomas Hogan** **2-21-18 [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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 21, 2018. 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, ----------.

The Motion to Compel Abandonment is granted.

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

The Motion filed by John Quinones and Eva Quinones ("Debtor") requests the court to order Irma Edmonds ("the Chapter 7 Trustee") to abandon a business commonly known as John M. Quinones, Marriage and Family Therapist and the assets of office furniture, laptop, printer, business checking account, and business savings account ("Property"). Debtor argues that the Property is necessary for Debtor to earn income, and Debtor states the business services are tied to skill and relationships directly. Additionally, Debtor claims that all amount for the Property have been exempted on Schedule C.

The court finds 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 John Quinones and Eva Quinones ("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 John M. Quinones, Marriage and Family Therapist and the assets of office furniture, laptop, printer, business checking account, and business savings account and listed on Schedule B by Debtor is abandoned by Irma Edmonds ("the Chapter 7 Trustee") to John Quinones and Eva Quinones by this order, with no further act of the Chapter 7 Trustee required.

6. **11-93024-E-12** **JOSE/MARIA BETTENCOURT** **MOTION FOR ENTRY OF DISCHARGE**
TOG-25 **Thomas Gillis** **1-29-18 [269]**

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.

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 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 29, 2018. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Discharge is xxxxxxxxxxxxxx.

The Motion for Entry of Discharge has been filed by Jose Bettencourt and Maria Bettencourt ("Debtor"). With some exceptions, 11 U.S.C. § 1228 permits the discharge of debts provided for in a plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments.

Michael Meyer's ("the Chapter 12 Trustee") final report has not been filed in this case, which has not yet triggered the specified thirty-day objection period. *See* FED. R. BANKR. P. 5009. No order approving a final report and discharging the Chapter 12 Trustee has been entered. The entry of an order approving the final report is evidence that the estate has been fully administered. *See In re Avery*, 272 B.R. 718, 729 (Bankr. E.D. Cal. 2002).

Debtor's Declaration (Dckt. 271) certifies that Debtor:

A. has completed the plan payments;

B. does not have any delinquent domestic support obligations;

C. has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case;

D. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and

E. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

The Chapter 12 Trustee has not filed a final report in this case and has not responded to the Motion to indicate whether he concurs that Debtor is entitled to a discharge. At the hearing, the Chapter 12 Trustee confirmed that Debtor has completed all plan payments.

Debtor having completed the plan payments and having satisfied all other conditions, Debtor is entitled to a discharge. The Motion is granted, and the court shall enter an order discharging Debtor.

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 Entry of Discharge filed by Jose Bettencourt and Maria Bettencourt ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **xxxxxxxxxxx**.

7. **18-90029-E-11** **JEFFERY ARAMBEL** **STATUS CONFERENCE RE: MOTION TO EMPLOY RENO F.R. FERNANDEZ, III AS ATTORNEY(S)**
MF-3 **1-29-18 [36]**

Debtor's Atty: Iain A. Macdonald; Reno F.R. Fernandez; Matthew J. Olson

Notes:
Set by order filed 2/20/18 [Dckt 73]; Ian MacDonald and Reno Fernandez to personally appear.

[MF-3] Declaration of Jeffery Edward Arambel in support of application to employ attorneys filed 2/21/18 [Dckt 88]

The Motion to Employ Counsel for Debtor in Possession Jeffery Arambel is xxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Chapter 11 bankruptcy cases were filed for Filbin Land & Cattle Co., Inc. ("Filbin"), 18-90030, and Jeffery Arambel ("Arambel"), 18-90029 (Arambel owner of 100% of the stock in Filbin and the CEO/Secretary/Sole Director), by attorney Reno Fernandez of MacDonald │Fernandez, LLP. On January 15, 2018, the court conducted the initial status conferences in the two Chapter 11 cases. As permitted by prior orders extending time, the Schedules and Statement of Financial Affairs were filed on January 14, 2018, for both cases and not available for review by the court prior to the two Status Conferences.

Filbin as Debtor in Possession in its case (with Arambel as the CEO responsible representative) and Arambel as Debtor in Possession in his case both request the court authorize employment of Reno Fernandez as counsel for the two related Debtors in Possession. Previously, the court has raised the issue of whether said counsel would meet the disinterestedness standard required under 11 U.S.C. § 327 to represent both Debtors in Possession. 18-90030, Status Conference Order, Dckt. 5; 18-90029 Status Conference Order, Dckt. 6.

At the Status Conferences, proposed counsel for the two Debtors in Possession requested that the court authorize his employment for the Arambel Debtor in Possession, while reserving authorizing employment for the Filbin Debtor in Possession pending the court's review of the schedules and the parties further addressing the issue. No parties in attendance objected to such employment.

After the February 15, 2018 Status Conferences, the court reviewed the Schedules and Statements of Financial Affairs filed in the two Chapter 11 cases as part of preparing the minutes for the Status Conferences. A review of the Schedules and Statements of Financial Affairs filed in the two cases raises concerns for the court.

The court's review of the Schedules and Statement of Financial Affairs raises serious concerns about the information provided therein, the accuracy of such information, and the ability of Arambel and counsel to prosecute these $200 million real estate cases. As discussed in the Minutes, the information

stated under penalty of perjury is inconsistent. Though presented to the court as a $200 million real estate reorganization, even after an extension of time, the Schedules are confusing, do not clearly identify the real estate assets of each Debtor, and have handwritten corrections to prior, out-of-date financial statements. The two debtors have merely taken Arambel's personal financial statement from March 2017 and presented it as Arambel's personal financial statement as of the January 2018 filing of his case and purportedly as the corporation's financial statement as of the January 2018 filing of the Filbin Chapter 11 case.

It appears that the two debtors and counsel may believe that the legal separateness of Arambel personally and Filbin are irrelevant, because they want it to be such. Unfortunately, their apparent decision that the legal separateness and obligations of the two debtor in possession fiduciaries is irrelevant is not such for these two fiduciaries as debtors in possession, nor as debtors in accurately completing the Schedules and Statements of Financial Affairs.

Taken at face value, Arambel states under penalty of perjury that he has interests in property with a value of $190,389,565.00 and that he is the only person with any interest in those properties. 18-90029; Schedule A/B, Dckt. 53 at 3. However, Filbin states under penalty of perjury on its Schedule A/B that it is the owner of the same properties having a value of $190,389,565.00. 18-90030; Schedule A/B Question 54–55.1, Dckt. 40 at 4–5. Both cannot be the sole owners of the almost $200 million properties.

On his Statement of Financial Affairs, Arambel states that he had gross income of $5,100,000.00 in 2017, $5,527,744.00 in 2016, and $9,904,315.00 in 2015. 18-90029; Statement of Financial Affairs Question 4, Dckt. 53 at 46–47. For Filbin, it states having gross income of $97,200.00 in 2017, $350,000.00 in 2016, and $107,836.00 in 2015. 18-90030; Statement of Financial Affairs Question 1, Dckt. 40 at 23. Though purporting to have the same assets, it appears that substantially all of the income from the properties is allocated to Arambel.

Though there being $200 million of properties and millions of dollars in income, Filbin reports that Arambel is the only person who has any of that debtor's books and records for the two years prior to the filing of the bankruptcy case. The exception is that a CPA is listed for preparation of the 2015 tax return. 18-90030; Statement of Financial Affairs Question 26, Dckt. 40 at 28. It does not appear reasonable that there are no other professionals involved in keeping the books and records of the $200 million real estate and farming enterprise.

As discussed in the Civil Minutes, it appears that some of Arambel's personal expenses are being paid by Filbin, notably Arambel has no transportation expenses, though listing $480.00 for vehicle insurance. 18-90029; Schedule J, Dckt. 53 at 44.

The credibility of Arambel falls further in reviewing Schedule J in which he purports to have $0.00 in expenses for: (1) clothing, (2) personal care products and services, (3) medical and dental expenses, transportation, and entertainment. *Id.* Further, Arambel states under penalty of perjury on Schedules I and J that he pays no federal income tax, no state income tax, no Social Security tax, and no self-employment tax. *Id.* at 37–44.

Amended Schedules and Status Report.

On March 1, 2018, Debtor filed Amended Schedules and Statement of Financial Affairs. Dckt. 114. The Amended Schedules appear to address the concerns raised by the court.

On March 1, 2018, Debtor in Possession filed a Status Report. Dckt. 112. It begins comparing how Chapter 11 cases are handled in the District of Delaware and the Southern District of New York, indicating that accurate, truthful Schedules and Statements of Financial Affairs are not required for months or up to a year in those cases. Debtor in Possession comments that the judges in the Eastern District of California do not follow such practices. Thus, it appears that Debtor felt compelled to file the inaccurate Schedules and Statement of Financial Affairs in this case.

Debtor did not file a second motion to extend the time to file accurate, truthful Schedules and Statement of Financial Affairs, instead electing to file the Schedules and Statement of Financial Affairs that caught the eye of, and spurred the ire of, the court leading to setting this Status Conference rather than granting the *Ex Parte* Motion to Employ Counsel.

Fortunately, approximately one week after the court entered the Order for this Status Conference on this Motion and the Minutes from the Chapter 11 Status Conference, Debtor filed the Amended Schedules and Statement of Financial Affairs.

Debtor in Possession argues that the incomplete, inaccurate Schedules and Statement of Financial Affairs, which Debtor signed under penalty of perjury, were filed so that Debtor in Possession could push ahead the case. Debtor in Possession states that, relying on the incomplete and inaccurate Schedules and Statement of Financial Affairs, Debtor and Debtor in Possession were able to get the U.S. Trustee to conclude the First Meeting of Creditors.

Debtor in Possession appears to acknowledge that the exuberance in moving the case forward at any cost (including Debtor stating inaccurate and incomplete information under penalty of perjury) may not have been the best course of action. The proposed attorney for Debtor in Possession in the purported $200 million case has brought in support from other attorneys in his firm—a very senior experienced attorney and a younger attorney with boundless energy. They are also working on bringing in other counsel for the debtor in possession in the related bankruptcy case, proving the legal horsepower of that firm.

The Status Report further addresses the needs of the Estate for the employment of accountants and a responsible reorganization officer to be the responsible individual for the individual Debtor in Possession in this case.

Reply of American Agcredit, FLCA to Status Report

American Agcredit, FLCA ("American") filed a Reply challenging the ability of Debtor in this case to serve as Debtor in Possession. Additionally, American challenges Debtor's ability to serve as the responsible representative in the related Chapter 11 case of Filbin Land & Cattle Co., Inc. American points to the inaccurate statements of Mr. Arambel and his proffered testimony that the inaccurate and incomplete statements under penalty of perjury are warranted to move the case forward and help creditors.

Ruling on Motion to Employ

Proposed counsel has responded quickly to address the concerns of the court and to advance the rights and interests of the Bankruptcy Estate. Proposed counsel has brought in other members of his firm, as well as developing a plan to bring in independent counsel for the debtor in possession in the related bankruptcy case.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**.

8.	**18-90029-E-11** **MF-4**	**JEFFERY ARAMBEL** **Reno Fernandez III**	**MOTION TO CONSOLIDATE LEAD CASE 18-90029 WITH 18-90030** **2-15-18 [57]**

Final Ruling: No appearance at the March 8, 2018 hearing is required.

Jeffery Arambel ("Debtor in Possession") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, (Dckt. 102) **the Motion to Consolidate Cases was dismissed without prejudice, and the matter is removed from the calendar.**

9. **18-90029-E-11** **JEFFERY ARAMBEL** **MOTION FOR JOINT ADMINISTRATION**
MF-5 **Reno Fernandez III** **2-15-18 [60]**

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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties requesting special notice and Office of the United States Trustee on February 15, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Joint Administration 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, ----------.

The Motion for Joint Administration is ~~denied~~.

Jeffery Arambel ("Debtor in Possession") moves for the court to jointly administer his case and the separate case of Filbin Land & Cattle Co., Inc. (Case No. 18-90030) pursuant to Federal Rule of Bankruptcy Procedure 1015(b).

Federal Rule of Bankruptcy Procedure 1015(b) governs joint administration of cases pending in the same court with two or more related debtors, providing:

> (b) If a joint petition or two or more petitions are pending in the same court by or against (1) a husband and wife . . . , the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest.

The notes by the Advisory Committee provide additional insight to how the two subsections apply to cases. The notes state:

> Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. **This rule does not deal with the consolidation of cases involving two or more separate debtors**. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. **Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule** [because] the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates. . . .
>
> **Joint administration as distinguished from consolidation** may include combining the estates by using a single docket for the matters occurring in the administration, including the listing of filed claims, the combining of notices to creditors of the different estates, and the joint handling of other purely administrative matters that may aid in expediting the cases and rendering the process less costly.

FED. R. BANKR. P. 1015 (Notes of Advisory Committee) (citing *Sampsell v. Imperial Paper & Color Corp.*, 313 U.S. 215 (1941)).

Joint administration is a procedural tool that aids expediting cases. *Reider v. F.D.I.C. (In re Reider)*, 31 F.3d 1102, 1109 (11th Cir. 1994) ("Joint administration is designed for the ease of administration . . . ."). Joint administration permits using a single docket for administration, which includes listing filed claims, combining notices to creditors of different estates, and jointly handling ministerial matters. *Id.* (citing FED. R. BANKR. P. 1015 (Note 3 of Advisory Committee)). Joint administration is used for convenience and to save costs. *Id.* (citing *Unsecured Creditors Comm. v. Leavitt Structural Tubing Co.*, 55 B.R. 710, 712 (N.D. Ill. 1985)).

DISCUSSION

Debtor in Possession argues that joint administration of the two cases will eliminate duplicative actions and will promote judicial economy. Specifically, Debtor in Possession argues that there are many common creditors and that the two debtors are affiliates of one another. Debtor in Possession argues that there are numerous identical motions that will be filed in each case, differing only in the caption, and Debtor in Possession anticipates that there will be identical creditor claims in each case.

Here, Debtor in Possession and his business are seeking bankruptcy relief arising from the same financial conditions. There is a sufficient similarity of the causes leading to this case that it is plausible to believe that there will be similar matters to address between the two cases. Debtor in Possession is not seeking that the two cases be consolidated, only that they be administered together.

Joint administration is permissible to alleviate costs and to promote efficiency, and here, Debtor in Possession has argued that there will be identical motions filed and that there will be at least some identical creditor claims. Joint administration of these two cases is in the best interests of creditors and provides for economic administration of these cases.

Debtor in Possession has prosecuted this case, and Debtor appears to have drafted his Schedules to predetermine that his case and the Filbin Land & Cattle Co., Inc. shall be consolidated.

The Motion requesting that Case No. 18-90029 and Case No. 18-90030 be administered jointly pursuant to Federal Rule of Bankruptcy Procedure 1015(b) is **xxxxxxxxxxxxxxxxxxxxxxxx**.

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 Joint Administration filed by Jeffery Arambel ("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 the Motion for Joint Administration is **xxxxxxxxx**~~;~~ ~~and this bankruptcy case, *In re Jeffery Edward Arambel*, Case No. 18-90029, and the bankruptcy case *In re Filbin Land & Cattle Co., Inc.*, Case No. 18-90030, are ordered to be administered jointly.~~

10. 18-90030-E-11 MF-4
FILBIN LAND & CATTLE CO., INC.
Reno Fernandez III
MOTION TO CONSOLIDATE LEAD CASE 18-90029 WITH 18-90030
2-15-18 [44]

Final Ruling: No appearance at the March 8, 2018 hearing is required.

Filbin Land & Cattle Co., Inc., ("Debtor in Possession") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Consolidate Cases was dismissed without prejudice, and the matter is removed from the calendar.**

11. 18-90030-E-11 MF-5 | **FILBIN LAND & CATTLE CO., INC.** **Reno Fernandez III** | **MOTION FOR JOINT ADMINISTRATION 2-15-18 [47]**

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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties requesting special notice and Office of the United States Trustee on February 15, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Joint Administration 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, ----------.

The Motion for Joint Administration is ~~denied~~.

Filbin Land & Cattle Co., Inc., ("Debtor in Possession") moves for the court to jointly administer his case and the separate case of Jeffery Arambel (Case No. 18-90029) pursuant to Federal Rule of Bankruptcy Procedure 1015(b).

Federal Rule of Bankruptcy Procedure 1015(b) governs joint administration of cases pending in the same court with two or more related debtors, providing:

> (b) If a joint petition or two or more petitions are pending in the same court by or against (1) a husband and wife . . . , the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest.

The notes by the Advisory Committee provide additional insight to how the two subsections apply to cases. The notes state:

> Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. **This rule does not deal with the consolidation of cases involving two or more separate debtors**. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. **Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule** [because] the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates. . . .
>
> **Joint administration as distinguished from consolidation** may include combining the estates by using a single docket for the matters occurring in the administration, including the listing of filed claims, the combining of notices to creditors of the different estates, and the joint handling of other purely administrative matters that may aid in expediting the cases and rendering the process less costly.

FED. R. BANKR. P. 1015 (Notes of Advisory Committee) (citing *Sampsell v. Imperial Paper & Color Corp.*, 313 U.S. 215 (1941)).

Joint administration is a procedural tool that aids expediting cases. *Reider v. F.D.I.C. (In re Reider)*, 31 F.3d 1102, 1109 (11th Cir. 1994) ("Joint administration is designed for the ease of administration . . . ."). Joint administration permits using a single docket for administration, which includes listing filed claims, combining notices to creditors of different estates, and jointly handling ministerial matters. *Id.* (citing FED. R. BANKR. P. 1015 (Note 3 of Advisory Committee)). Joint administration is used for convenience and to save costs. *Id.* (citing *Unsecured Creditors Comm. v. Leavitt Structural Tubing Co.*, 55 B.R. 710, 712 (N.D. Ill. 1985)).

DISCUSSION

Debtor in Possession argues that joint administration of the two cases will eliminate duplicative actions and will promote judicial economy. Specifically, Debtor in Possession argues that there are many common creditors and that the two debtors are affiliates of one another. Debtor in Possession argues that there are numerous identical motions that will be filed in each case, differing only in the caption, and Debtor in Possession anticipates that there will be identical creditor claims in each case.

Here, Debtor in Possession and his business are seeking bankruptcy relief arising from the same financial conditions. There is a sufficient similarity of the causes leading to this case that it is plausible to believe that there will be similar matters to address between the two cases. Debtor in Possession is not seeking that the two cases be consolidated, only that they be administered together.

Joint administration is permissible to alleviate costs and to promote efficiency, and here, Debtor in Possession has argued that there will be identical motions filed and that there will be at least some identical creditor claims.

However, Debtor in Possession, the conduct of its responsible representative, and counsel have acted in a matter as if the consolidation of this case with that of Jeffery Arambel (whether substantive or administrative) is a foregone conclusion.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**.

The Motion requesting that Case No. 18-90029 and Case No. 18-90030 be administered jointly pursuant to Federal Rule of Bankruptcy Procedure 1015(b) is ~~denied~~.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Joint Administration filed by Filbin Land & Cattle Co., Inc., ("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 the Motion for Joint Administration is **xxxxxx**~~, and this bankruptcy case, *In re Filbin Land & Cattle Co., Inc.*, Case No. 18-90030, and the bankruptcy case *In re Jeffery Edward Arambel*, Case No. 18-90029, are ordered to be administered jointly.~~

12.	**17-90734-E-7** **ICE-3**	**RODOLFO MARTINEZ AYALA AND AURORA DELGADO CEJA** **Pro Se**	**MOTION TO EMPLOY WEST AUCTIONS, INC. AS AUCTIONEER(S)** **1-23-18 [43]**

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*), creditors, parties requesting special notice, and Office of the United States Trustee on January 23, 2018. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The Motion to Employ is granted.

Irma Edmonds ("the Chapter 7 Trustee") seeks to employ West Auctions, Inc. ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. The Chapter 7 Trustee seeks the employment of Auctioneer to sell property commonly known as 2008 BMW Z4, VIN ending in 5018, ("Vehicle") at public auction.

The Chapter 7 Trustee argues that Auctioneer's appointment and retention is necessary to liquidate the Vehicle with Auctioneer assisting in advertising the auction, storing the Vehicle until sold, and performing an auction.

The Chapter 7 Trustee states that Auctioneer will be entitled to a 20% commission from the sale and will also be entitled to $640.00 in costs for inspecting, transporting, storing, and preparing documents for the Vehicle.

Donna Bradshaw, Vice President of Auctioneer, testifies that she will assist with the auction functions sought by the Chapter 7 Trustee. She testifies that she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

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

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

At the January 11, 2018 hearing on the Chapter7 Trustee's motion to employ a different auctioneer, the court denied that motion because the auctioneer's commission and cost reimbursement had been disguised as only being for 15% when it really would impact as much as 47% of the total sales price. Dckt. 39. The court also noted that neither the Chapter 7 Trustee nor the auctioneer had attempted to explain why such compensation was appropriate in this case for the Vehicle.

Now, the Chapter 7 Trustee seeks to employ Auctioneer at a 20% commission, with an additional $640.00 awarded for costs. The court needs to carefully consider requests to employ compensation requests. They must be reasonable—both to the estate and to professionals hired by trustees and debtors in possession. The hired professionals must be properly compensated because they are not expected to provide "charity" to subsidize bankruptcy cases. However, they must recognize that bankruptcy is not a process to just generate monies for professionals and trustees, with the professionals being paid without regard to the value to the bankruptcy estate.

The compensation begins with a 20% commission. This is for an anticipated $12,000 vehicle (value listed on Schedule A/B, with neither the Chapter 7 Trustee nor auctioneer providing the court with a projected value amount). A 20% commission on a $12,000 sale would be $2,400, generating a $9,600 recovery for the bankruptcy estate. No request is made for the auctioneer also having a buyer pay an additional "buyer's premium" to the auctioneer.

The Chapter 7 Trustee then requests authority to pay reasonable expenses relating to selling the Vehicle, which amount is not to exceed $640.00. In the Motion, it is stated that these expenses include (but are not limited to) "inspecting, transporting, storing, and/or vehicle document preparation." Motion ¶ 8, Dckt. 43. The Declaration of Donna Bradshaw, a vice president of Auctioneer, is provided in support of the Motion. Dckt. 45. She testifies that the costs are: $265 for transportation of the vehicle, $300 for storage (not identifying if it is a third-party expense or internal cost of Auctioneer), and $75 for document preparation.

With the projected costs, the Chapter 7 Trustee would be paying $3,005.00 as the costs for a $12,000.00 sale. On a percentage basis, the cost for selling the Vehicle would be 25%.

The costs are not unreasonable. The Chapter 7 Trustee, exercising her duties as the fiduciary to the bankruptcy estate exercises her business judgment in presenting these sales to the court. The court grants the Motion and authorizes the employment.

Because the Chapter 7 Trustee and Auctioneer have chosen not to present the court with a contract setting forth the terms for such services, they will be bound by the order of this court. To the extent that a dispute arises in which the expert Auctioneer asserts "the Chapter 7 Trustee should have known," it is the expert who has chosen not to set forth what it believes is the obvious to someone with experience in the business of being an auctioneer. The court does not expect there to be an issue; the Auctioneer is a well-established business that has provided services in many cases to trustees and debtors in possession, all without problems or disputes.

The motion is granted, and the Chapter 7 Trustee is authorizes West Auctions, Inc. to sell a 2008 BMW Z4, VIN ending in 5018, ("Vehicle") at public auction, for which the auctioneer shall be paid from the gross proceeds of the sale a commission of 20% of the gross sales proceeds and the reimbursement of costs and expenses, whether provided by a third-party or by Auctioneer, not to exceed the aggregate amount of $640.00, for which the costs shall not exceed $265.00 for transportation, $300.00 for storage, and $75.00 for vehicle document preparation.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Irma Edmonds ("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 Employ is granted, and the Chapter 7 Trustee is authorized to hire West Auctions, Inc. ("Auctioneer") to sell a 2008 BMW Z4, VIN ending in 5018, ("Vehicle") at public auction, for which the auctioneer shall be paid from the gross proceeds of the sale a commission of 20% of the gross sales proceeds and the reimbursement of costs and expenses, whether provided by a third-party or by Auctioneer, not to exceed the aggregate amount of $640.00, for which the costs shall not exceed $265.00 for transportation, $300.00 for storage, and $75.00 for vehicle document preparation.

13. **17-90734-E-7 ICE-4** | **RODOLFO MARTINEZ AYALA AND AURORA DELGADO CEJA** **Pro Se** | **MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR WEST AUCTIONS, INC., AUCTIONEER(S)** **1-23-18 [47]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on January 23, 2018. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Irma Edmonds, 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 personal property commonly known as a 2008 BMW Z4, VIN ending in 5018 ("Vehicle").

Movant proposes to sell the Vehicle at public auction on the following terms:

A. Auction conducted by West Auctions, Inc.;

B. Vehicle sold "as is";

C. Auctioneer to receive a 20% commission, plus $640.00 for costs; and

D. If Movant does not believe that the winning bid is reasonable, then Movant may hold the Vehicle for future sale or auction without additional notice.

DISCUSSION

The Motion for authorization to sell the 2008 BMW Z4, VIN ending in 5018, by public auction is within the exercise of business discretion by Movant for the liquidation of property of the estate. Such sale, and the payment of the fees and expenses authorized by separate order of this court for the employment of West Auctions, Inc. is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Irma Edmonds, 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 sell the 2008 BMW Z4, VIN ending in 5018, ("Vehicle") by public auction, with such auction services provided by West Auctions, Inc. Movant is further authorized to pay the fees and expenses of West Auctions, Inc., as allowed by separate order for the employment of said auctioneer from the gross proceeds from the sale of the above reference vehicle.

14. 16-90736-E-11 TBG-9 | **RONALD/SUSAN SUNDBURG** **Stephan Brown** | **MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7** **2-7-18 [175]**

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. FN.1.

FN.1. Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that at least twenty-one days' notice (the minimum notice) has been provided. Based upon language that at least the minimum service has been provided, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on February 7, 2018. By the court's calculation, 29 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice).

The Motion to Convert was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

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

Ronald Sundburg and Susan Sundburg ("Debtor in Possession") filed this Motion to Convert the Chapter 11 bankruptcy case to one under Chapter 7. Debtor in Possession asserts that the case should be dismissed or converted at their election because they are the fiduciary debtor in possession still, because the case was not commenced involuntarily, and because the case has not been converted.

APPLICABLE LAW

Congress provides in 11 U.S.C. § 1112(a) that,

> (a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—
>
> (1) the debtor is not a debtor in possession;
>
> (2) the case originally was commenced as an involuntary case under this chapter; or
>
> (3) the case was converted to a case under this chapter other than on the debtor's request.

While it is the "Debtor in Possession" that has filed this motion, the debtors are serving as Debtor in Possession, and the court treats this request as being made by the debtors.

The Motion does not state grounds, other than Debtor in Possession, expressing the election of the debtors, that the case be converted. A review of the file indicates that this request is made in light of Debtor in Possession not being able to confirm a plan.

Conversion of the case pursuant to 11 U.S.C. § 1112(a) is appropriate. The Motion is granted, and the case is converted to a case under Chapter 7.

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

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

15. 16-90736-E-11 TBG-5 | **RONALD/SUSAN SUNDBURG** **Stephan Brown** | **CONTINUED MOTION TO USE CASH COLLATERAL** **2-21-17 [70]**

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 creditors, parties requesting special notice, and Office of the United States Trustee on February 21, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Use Cash Collateral is denied without prejudice.

Ronald Sundburg and Susan Sundburg ("Debtor in Possession") filed the instant Motion for Authority to Use Cash Collateral on February 21, 2017. Dckt. 70.

REVIEW OF ORIGINAL MOTION (TBG-5)

Debtor in Possession and Bank of America, N.A. ("BANA") entered into a number of agreements (described in Amended Stipulation at Dckt. 72), including:

A. December 19, 2007: Loan of $324,817.44 to Susan Sundburg evidenced by a Finance Agreement;

B. December 21, 2007: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 5132 Yosemite Boulevard, Empire, California (recorded on January 14, 2008);

C. December 21, 2007: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 11 South Abbie, Empire, California (recorded on January 14, 2008);

D. December 31, 2007: Increase of Susan Sundburg's loan to $385,228.62 evidenced by a Final Disbursement, Change and Repayment Schedule;

E. June 20, 2012: Susan Sundburg executed a Finance Agreement, confirming terms of a restated loan and reduction of principal in a proposed amendment;

F. June 20, 2012: Ronald Sundburg executed a Guaranty whereby he unconditionally agreed to pay all of Susan Sundburg's obligations to BANA, including any and all interest, fees, and costs, and attorneys' fees and legal expenses incurred for the enforcement of the obligations of a restated loan, in the even Susan Sundburg failed to pay;

G. June 25, 2012: BANA and Susan Sundburg executed a Final Disbursement, Change and Repayment Schedule, finalizing and ratifying terms to a restated loan;

H. June 27, 2012: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 7634 Adams Avenue, Valley Springs, California (recorded on July 17, 2012);

I. June 28, 2012: BANA and Debtor in Possession executed an Amendment to Loan Agreement to consolidate, renew, replace, and refinance Susan Sundburg's loan and reduce the principal balance to $324,817.44;

J. Unspecified date: Susan Sundburg executed a Finance agreement that pledged certain personal property as collateral for the restated loan;

K. October 22, 2015: BANA and Debtor in Possession executed a Loan Modification Agreement that extended the maturity date of the restated loan from July 1, 2015, to March 1, 2016;

L. October 22, 2015: BANA and Debtor in Possession executed a Modification of Deed of Trust for the Yosemite Boulevard property (recorded on December 28, 2015); and

M. October 22, 2015: BANA and Debtor in Possession executed a Modification of Deed of Trust for the South Abbie property (recorded on December 28, 2015).

BANA asserts that the above properties securing its claims are generating monthly net profit of approximately $500.16 from rents and lease income. BANA asserts that the monthly net profit is its cash collateral pursuant to 11 U.S.C. §§ 552(b) and 363(a). Debtor in Possession seeks to use those funds to maintain the ongoing business of the rental properties at Yosemite Boulevard and South Abbie.

The parties report that the cash collateral will be used as follows:

A. Cash collateral will be used to pay reasonable, ordinary, and necessary expenses of operating and maintaining the Yosemite Boulevard and South Abbie properties;

B. Debtor in Possession shall make adequate protection payments to BANA by the tenth day of each month in the amount of $200.00, with the first payment due on or before February 28, 2017;

C. The collected cash collateral shall be deposited into accounts designated with the Office of the U.S. Trustee;

D. Debtor in Possession may not use the cash collateral for any purpose other than as specified between the parties, and Debtor in Possession may not withdraw monies without BANA's express consent or Bankruptcy Court authorization;

E. Cash collateral may not be used to make any capital investment or improvement of business without BANA's prior written authorization;

F. The right to use cash collateral expires upon default or upon BANA providing fifteen day's written notice of termination;

G. Debtor in Possession may exceed the budgeted amount for any particular line item expense by not more than $50.00, provided that Debtor in Possession may not exceed the total budget on a monthly basis by more than 10%.

The parties' stipulation grants BANA a replacement lien in all post-petition collateral income securing Debtor's lien to BANA and a replacement lien on the Debtor in Possession's account opened for the use of cash collateral. To the extent that any replacement lien and security interest is insufficient to compensate BANA, BANA shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(2).

The parties submitted an Amended Stipulation on February 21, 2017. Dckt. 72. The Amended Stipulation is the same as what Debtor in Possession has proposed in a new motion, discussed subsequently.

PRIOR HEARINGS

The court has authorized the use of cash collateral on several occasions, most recently at the November 30, 2017 hearing. Dckt. 154; *see also* Dckt. 131, 96, 76.

SUPPLEMENTAL PLEADING

Debtor in Possession filed a Supplemental Pleading on February 21, 2018, requesting that the same budget approved by the court be extended through July 31, 2018. Dckt. 181. The budget is presented here as:

Commercial Property 5132 Yosemite Blvd/ 11 S. Abbie, Empire, California 95319			
	Real Property Rent	$2,750.00	
	First Mortgage (Jenison)		($1,188.67)
	Bank of America AP Payment		($200.00)
	Property Taxes		($623.88)
	Utilities (Water, Sewer, Garbage)		($113.14)
	Repair/Maintenance		($500.00)
	NET INCOME	$124.31	
Personal Property Collateral			
	Lease Income	$450.00	
	Stearns Leasing (Laser Lease)		($244.15)
	Repairs/Maintenance		($30.00)
	NET INCOME	$175.85	
	TOTAL NET INCOME	$300.16	

Debtor in Possession also requests that approval of the use of cash collateral include a 10% variance for each category of expense, with the exception of property taxes, to be paid biannually when due, with any cash remaining after tax payments to be retained in Debtor in Possession's cash collateral account. Debtor in Possession also requests that net rent amounts remain in the cash collateral account.

DISCUSSION

By separate motion, Debtor in Possession has moved for this case to be converted from Chapter 11 to Chapter 7. The court has reviewed that Motion and has prepared an order to grant it to convert this case to one under Chapter 7. Without this case being in Chapter 11 any longer, Debtor in Possession's request to continue using cash collateral is moot, with trustee powers transferring to a Chapter 7 trustee. Therefore, the Motion is denied without prejudice.

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 Ronald Sundburg and Susan Sundburg ("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 the Motion is denied without prejudice, Debtor in Possession moving by separate motion to convert this case voluntarily to one under Chapter 7.

16. **17-91041-E-7** **LAURA DICKEY** **MOTION TO COMPEL ABANDONMENT**
MRG-1 **Michael Germain** **2-16-18 [10]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2018. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Compel Abandonment is granted.

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

The Motion filed by Laura Dickey ("Debtor") requests the court to order Michael McGranahan ("the Chapter 7 Trustee") to abandon a business commonly known as "Snip-n-Clip Doggie Salon" and its assets ("Property"). The Property assets consist of a desk, chair, grooming supplies, microwave oven, refrigerator, and washing tubs. Debtor argues that the assets have been fully exempted on Schedule C and that the business has no sale value to the Chapter 7 Trustee because the business's clients are primarily loyal to Debtor because of cultivated relationships.

The Chapter 7 Trustee filed a statement of non-opposition on February 21, 2018.

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

CHAMBERS PREPARED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Laura Dickey ("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 "Snip-n-Clip Doggie Salon" and its assets and listed on Schedule B by Debtor is abandoned by Michael McGranahan ("the Chapter 7 Trustee") to Laura Dickey by this order, with no further act of the Chapter 7 Trustee required.

17. 18-90045-E-7 JOHN FIELDS — **ORDER TO SHOW CAUSE—FAILURE TO PAY FEES**
Patrick Greenwell — **2-13-18 [12]**

Final Ruling: No appearance at the March 8, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on February 15, 2018. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on January 30, 2018.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

18. 18-90046-E-7 BARBARA ROEHRICK
Patrick Greenwell

ORDER TO SHOW CAUSE—FAILURE TO PAY FEES
2-13-18 [11]

Final Ruling: No appearance at the March 8, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on February 15, 2018. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on January 30, 2018.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

19. 18-90050-E-7 ALFONSO/HELEN RUBIO
Pro Se

ORDER TO SHOW CAUSE—FAILURE TO PAY FEES
2-16-18 [16]

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on February 18, 2018. The court computes that 18 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on January 31, 2018.

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

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

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

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

20. 17-90156-E-7 LUZ ACOSTA
SSA-8 Patrick Greenwell

MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEES ATTORNEY(S)
1-26-18 [73]

Final Ruling: No appearance at the March 8, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2018. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Steven Altman, the Attorney ("Applicant") for Michael McGranahan, the Chapter 7 Trustee ("Client"), makes a first and final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 10, 2017, through January 24, 2018. The order of the court approving employment of Applicant was entered on May 30, 2017. Dckt. 19. Applicant requests fees in the amount of $10,500.00 and costs in the amount of $174.93.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature,

the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that Applicant's services for the Estate include case administration, claims administration and objection, fee/employment applications, asset disposition, and asset analysis and recovery. The Estate has $26,737.14 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Case Administration: Applicant spent 7.6 hours in this category. Applicant conducted the initial case engagement and email from Client concerning nature and scope of assignment. Review of Debtor's schedules, statement of affairs and claims filed to date in case. Initial lunch engagement meeting with Client to discuss nature and scope of assignment in case. Preparation of draft declaration of Client in support of opposition to Debtor's first amended exemptions filed, securing court date and also coordination of court hearing date. Monitoring status of case appointment and transmittal to Trustee. Preparation and review of draft stipulation and order extending Client's time to object to Debtor's discharge. Instructions with staff secretary to distribute same for signing and file appropriate documents with Court with appropriate court order. Send courtesy copy of stipulation for execution and return to Debtor's counsel. Emails exchanged between office and Mr. Acosta regarding necessary documents office and Client must review in Debtor's case: title/registration for vehicles, insurance, taxes. Review of documents provided by Debtor's husband and transmittal to Client for review. Review of correspondence by Debtor's counsel relative to being out of country and unable to respond to mail or emails in timely fashion. Response to same. Review of emails between office and Client concerning draft settlement agreement between estate and Debtor potentially resolving claims and areas of dispute. Follow-up communications with Debtor's counsel concerning resolution of claims and disputes with Debtor. Meeting with Mr. Acosta to review sales/settlement check received from Modesto Toyota for execution and transmittal to Client's office. Review of case file and current court orders. Preparation of review of full motion and supporting documents to unblock bank account to allow distribution of residual proceeds obtained for benefit of bankruptcy estate. Follow-up meeting with Client to discuss case administration matters, final applications, fiduciary return for estate and status of monies agreed to be turned over by either Debtor or her husband, or both. Review of granted court motion concerning unblocking bank account.

Claims Administration & Objection: Applicant spent 8.4 hours in this category. Applicant reviewed of Debtor's schedules, including exemptions. Extended case research into objection to selected

Debtor's claimed exemptions in property. Follow-up emails exchanged between office and Client concerning claimed objections to be filed by Client to Debtor's exemptions (original or amended). Preparation of revised Client Objection to Exemptions in case. Requested email to staff secretary to proof same and also set matter for hearing in Bankruptcy Court. Further extended meeting with Client concerning Debtor's schedules, amendments made, switched statutory exemptions, possible objection to "tools of trade" exemption filed in case by Debtor. Discussion of need to know "historical use" of trade tools. Review of Client's email concerning revisions in terms and conditions of turnover motion for settlement of outstanding claims in estate between Debtor, her husband and the estate.

Fee/Employment Applications: Applicant spent 5.6 hours in this category. Applicant reviewed of engagement emails from Client. Conflict check involving review of Debtor's schedules, statement of affairs and claims. Preparation of initial application for appointment and supporting documents. Transmittal to U.S. Trustee's Office for review and comment. Review of endorsed order appointing firm for engagement. Preparation of first and final application as counsel for Chapter 7 Trustee. Preparation of expanded project category information. Preparation of motion, supporting declaration and related pleadings and exhibits in support of final fee application.

Asset Disposition: Applicant spent 9.2 hours in this category. Applicant reviewed Debtor's schedules and statement of affairs. Conference with Client concerning marketing and disposition of nonexempt property. Discussion of Debtor's and counsel's proposals to retain nonexempt property but fix a value owed to estate and allow payment by cash or other assets. Discussion with Client of Debtor's husbands 2013 Silverado Truck to be sold and used as asset to resolve nonexempt issues. Discussion of buy/sell terms and conditions among Client, Debtor, and Debtor's counsel. Preparation of draft buy/sell agreement. Review and transmittal between Client, Debtor, and Debtor's counsel. Phone conference with Debtor's husband concerning sale of Silverado vehicle, "as is" and "without warranties" and discussion of his execution of collateral agreement also signed by Debtor and Debtor's counsel. Discussion of sale of Silverado either at Car Max or through Modesto Toyota: whichever party offer best offer. Preparation of sale motion, supporting points and authorities and transmittal to staff secretary for proof and execution by Client. Draft of declaration of Client in support of Trustee's approval of sale motion, email to Client concerning revisions to same. Court hearing to approve sale motion of Silverado vehicle and approval of same. Transmittal of court decision to Client and Debtor's husband for files. Discussion with Client of "unwanted" property not necessary to be turned over by Debtor or her husband. Discussion of possible abandonment motion with Client to facilitate case administration issues. Follow-up emails between office to Client and Debtor's husband concerning status of sale and disposition of 2013 Silverado Truck with Modesto Toyota. Discussion of need to issue "two party check." Preparation of and review of court's tentative (and latter final ruling) approving unblocking of Client's segregated account in case for distribution of assets.

Asset Analysis & Recovery: Applicant spent 10.0 hours in this category. Applicant reviewed engagement request by Client concerning representation for bankruptcy estate. Transmittal to staff secretary for set up of file and secure review of schedules and statement of affairs of Debtors. Extended meeting with Client to review Debtor's schedules, claimed exemptions and value of property nonexempt. Discussion of Debtor and husband's use of property tax refund monies, ultimately determined nonexempt due to exemption schedule change. Discussion of letter to be sent to Debtor and her counsel concerning nonexempt returns and nonexempt vehicle. Revisions to draft letter for turnover. Courtesy copy to Client. Follow-up

meeting with Client relative to status of objections to exemptions, turnover of funds and vehicles. Discussion of stipulation or motion extending time to object to Debtor's discharge in view of untuned over property. Further follow-up meeting with Client concerning status of property issues, turnover, exemptions filed by Debtors. Follow-up letter to Debtor's husband for identification of items listed on recap sheet and encumbrances concerning same. Multiple phone calls to Debtor's husband regarding case administration issues. Follow-up letter to Client with proposed stipulation continuing estate's objection to discharge period against Debtor and follow-up turnover letter directed at both Debtor and her counsel. Preparation for review by Client of Motion for Turnover with supporting declaration, points and authorities and other pleadings. Review of correspondence from Debtor's counsel concerning Debtor's compliance issues and response to Client's proposed stipulation continuing objection period for discharge against Debtor. Follow-up review of correspondence from counsel fo Debtor concerning Client's position to turnover nonexempt property. Review of further follow-up correspondence from Debtor's counsel accepting Client's proposed agreement resolving claims for both turnover and nonexempt property turnover. Suggested Motion to Compromise claims as format resolving legal disputes. Follow-up phone conference with Debtor's counsel agreeing to sell truck to secure payment for tax refund monies spent in estate. Discussion of related exemption and turnover issues. Follow-up emails with Debtor's husband concerning resolution of turnover property issues and timetable for performance. Preparation of further update status conference statement to Bankruptcy Court about case. Preparation of Stipulation allowing for turnover, terms and conditions, email to Client for review and comment and execution. Follow-up work concerning sale and liquidation of 2013 Ford Silverado through Modesto Toyota dealership and transmittal of net proceeds to Client. Follow-up discussion with Client, Debtor's husband and also Modesto Toyota personnel concerning purchase and sale of 2013 Ford Silverado vehicle and distribution of residual sale proceeds following payment of secured claim with Ally finance. Follow-up calls with Debtor's husband concerning payment to bankruptcy estate of residual funds remaining unpaid (spent tax refund) and timetable for restitution payment to Client for bankruptcy estate. Review of email from Debtor's husband relative to payment of $2300 to Client for spent tax refunds.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Steven Altman	40.8 hours	$300.00	$12,240.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00

	0	$0.00	$0.00
Total Fees for Period of Application			$12,240.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $174.93 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.10	$62.80
Postage		$112.13
		$0.00
		$0.00
Total Costs Requested in Application		$174.93

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $10,500.00 for its fees incurred for Client. First and Final Fees in the amount of $10,500.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $174.93 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $10,500.00
Costs and Expenses $174.93

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Steven Altman ("Applicant"), Attorney for Michael McGranahan, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Steven Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Steven Altman, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $10,500.00
> Expenses in the amount of $174.93,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

21. **17-90156-E-7** **LUZ ACOSTA** **MOTION FOR COMPENSATION FOR**
SSA-9 **Patrick Greenwell** **ATHERTON AND ASSOCIATES, LLP, ACCOUNTANT(S)**
1-26-18 [79]

Final Ruling: No appearance at the March 8, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2018. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Maria Stokman, CPA at Atherton & Associates, LLP, Certified Public Accountants, Inc., the Accountant ("Applicant") for Michael McGranahan, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 31, 2017, through January 26, 2018. The order of the court approving employment of Applicant was entered on September 20, 2017. Dckt. 61. Applicant requests fees in the amount of $1,525.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include analyzing tax and preparing tax returns. The Estate has $26,737.14 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

Tax Analysis and Preparation of Returns: Applicant spent 4.3 hours in this category. Applicant prepared final tax returns for the period ending September 30, 2017.

Fee/Employment Application: Applicant spent 0.4 hours in this category. Applicant reviewed the bankruptcy petition, performed conflicts check, and prepared time records.

Case Administration: Applicant spent 1.4 hours in this category. Applicant reviewed e-mails with Client and responded regarding filing requirements and projected loss on the sale of a vehicle.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Maria Stokman, CPA	6.1 hours	$250.00	$1,525.00
	0	$0.00	$0.00

	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees for Period of Application			$1,525.00

FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $1,525.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $1,525.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Maria Stokman, CPA at Atherton & Associates, LLP, Certified Public Accountants, Inc. ("Applicant"), Accountant for Michael McGranahan, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Maria Stokman is allowed the following fees and expenses as a professional of the Estate:
>
> Maria Stokman, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $1,525.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

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

22.	**16-90083-E-7** **SSA-18**	**VALLEY DISTRIBUTORS, INC.** **Iain Macdonald**	**MOTION FOR ADMINISTRATIVE EXPENSES** **2-9-18 [329]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2018. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Motion for Allowance of Administrative Expenses is granted.

Irma Edmonds, the Chapter 7 Trustee, ("Movant") requests payment of administrative expenses in the amount of $990.37 for post-petition tax liabilities. Specifically, Movant notes that a court-approved accountant determined that $990.37 is due in principal for charges in operating a pension plan. Movant argues that this is the final payment owing for administering the pension plan.

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 argued that there is a post-petition tax liability in the form of a principal payment for operating a pension plan. Movant has noted that

the expense was determined to be a administrative expense after review of notification from the Estate's accountant. Movant states that the amount is owed to John Hancock, Valley Distributors's pension administrator.

Movant having demonstrated that the expenses were necessary, the court finds that Movant paying $990.37 for a pension plan operation principal was necessary for the Estate. The Motion is granted, and Movant is authorized to pay John Hancock its administrative expenses in the amount of $990.37.

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, 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 the Chapter 7 Trustee is authorized to pay John Hancock $990.37 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

23. **15-90284-E-7** **ANTONIO/LUCILA AMARAL** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES MACKO FOR ANTHONY D. JOHNSTON, TRUSTEES ATTORNEY(S)**
ADJ-3 **Axel Gomez** **2-9-18 [46]**

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, parties requesting special notice, and Office of the United States Trustee on February 9, 2018. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

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

Fees are requested for the period August 18, 2015, through February 8, 2018. The order of the court approving employment of Applicant was entered on August 21, 2015. Dckt. 26. Applicant requests fees in the amount of $3,500.00 and costs in the amount of $936.22.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include general case administration and litigating preferential transfers. The Estate has $6,758.50 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Analysis and Recovery: Applicant spent 6.50 hours in this category. Applicant reviewed pre-petition payments to Cargill, Inc.; corresponded with Cargill's attorney; and prepared a settlement motion.

Litigation: Applicant spent 24.50 hours in this category. Applicant prosecuted a preference action against Rafael Saldana dba Saldana Bros. Hay, obtained a default judgment, performed collection services, determined with the Chapter 7 Trustee that full collection was unlikely, and moved for abandonment of the judgment.

Fee and Employment Applications: Applicant spent 3.80 hours in this category. Applicant prepared the necessary applications and supporting documents for employment and prepared this compensation application.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Anthony Johnston, attorney	34.80 hours	$275.00	$9,570.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees for Period of Application			$9,570.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $936.22 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	$0.10	$226.10
Postage		$144.87
Service Fees		$445.00
Notice of Judgment Lien Filing Fee		$10.00
Certified Copy of Bankruptcy Court Judgment Fee		$12.00
Fee to process levy documentation with U.S. Marshals Service		$98.25
Total Costs Requested in Application		$936.22

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $3,500 for its fees incurred for Client. First and Final Fees in the amount of $3,500.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $936.22 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$3,500.00
Costs and Expenses	$936.22

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Anthony Johnston ("Applicant"), Attorney for Michael McGranahan, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Anthony Johnston is allowed the following fees and expenses as a professional of the Estate:
>
> Anthony Johnston, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $3,500.00
> Expenses in the amount of $936.22,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

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

24. **08-92594-E-7** **ROBERT/STEPHANIE** **CONTINUED MOTION TO COMPEL**
15-9054 **ACHTERBERG MDG-3** **1-9-18 [77]**
ACHTERBERG, JR. ET AL V.
CREDITORS TRADE ASSOCIATION

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 Defendant's Attorney on January 10, 2018. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Office of the United States Trustee has not been served. The latest United States Trustee guidelines request service of all pleadings and orders in Chapter 7 adversary proceedings.

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

The Motion to Compel is granted.

Robert Achterberg, Jr., and Stephanie Achterberg ("Plaintiff") requests that the court order Gary Looney, president and owner of Creditors Trade Association, Inc., dba Great Western Collection Bureau ("Defendant") to produce documents related to payment of a judgment against Defendant. Plaintiff also asks for reimbursement of fees and costs associated with Defendant failing to comply with discovery. Additionally, Plaintiff seeks imposition of monetary sanctions against Defendant for any future failures and to prohibit Defendant from introducing contrary evidence to the Motion.

FEBRUARY 15, 2018 HEARING

At the hearing, the court continued the hearing to 10:30 a.m. on March 8, 2018, because of a filing error of the court's tentative ruling. Dckt. 87.

APPLICABLE LAW

The Federal Rules of Civil Procedure are incorporated into bankruptcy proceedings in large part. This is true with respect to the discovery provisions (whether in an adversary proceeding or contested matter). Here, Federal Rule of Civil Procedure 37 and incorporating Federal Rule of Bankruptcy Procedure 7037 are cited in the motion as the basis for the relief requested.

Federal Rule of Civil Procedure 37(a) establishes the procedure for obtaining an order from the court to compel a party to respond to discovery. When requested and the court issues such an order, the requesting party is entitled to recover the costs and expenses in prosecution of such a motion. FED. R. CIV. P. 37(a)(5).

"Meet and Confer" Requirement

Federal Rule of Civil Procedure 37(a)(1) requires that the motion to compel discovery "include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make . . . discovery in an effort to obtain it without court action." FN.1.

FN.1. Both the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure are mentioned several times in the court's ruling. A Federal Rule of Civil Procedure will be referred to as "Rule," and a Federal Rule of Bankruptcy Procedure will be referred to as "Bankruptcy Rule."

The certification requirement of Rule 37(a)(1) was described in *Shuffle Master, Inc. v. Progressive Games, Inc.* as comprising two elements:

> [T]wo components are necessary to constitute a facially valid motion to compel. First is the actual *certification* document. The certification must accurately and specifically convey to the court who, where, how, and when the respective parties attempted to personally resolve the discovery dispute. Second is the *performance*, which also has two elements. The moving party performs, according to the federal rule, by certifying that he or she has (1) in good faith (2) conferred or attempted to confer. Each of these two subcomponents must be manifested by the facts of a particular case in order for a certification to have efficacy and for the discovery motion to be considered.

170 F.R.D. 166, 170 (D. Nev. 1996); *see also Triad Commer. Captive Co. v. Carmel (In re GTI Capital Holdings, LLC)*, No. AZ-09-1053-JuMKD, 2009 Bankr. LEXIS 4539, at *26–27 (B.A.P. 9th Cir. Aug. 20, 2009); *Sanchez v. Wash. Mutual Bank (In re Sanchez)*, No. 06-2251-D, 2008 Bankr. LEXIS 4239, at *2–3 (Bankr. E.D. Cal. Sept. 8, 2008). The court went further, stating that "a moving party must include more

than a cursory recitation that counsel have been 'unable to resolve the matter.'" *Shuffle Master, Inc.*, 170 F.R.D. at 171; *see also Triad Commer. Captive Co.*, 2009 Bankr. LEXIS 4539, at *27; *Sanchez*, 2008 Bankr. LEXIS 4239, at *3.

Rule 37 also requires that the moving party must have conferred in good faith or attempted to confer with the opposing party regarding the discovery dispute. *Shuffle Master, Inc.*, 170 F.R.D. at 171. The court in *Shuffle Master* noted that good faith "cannot be shown merely through the perfunctory parroting of statutory language . . . to secure court intervention; rather it mandates a genuine attempt to resolve the discovery dispute through non-judicial means." *Id.*; *see also Sanchez*, 2008 Bankr. LEXIS 4239, at *3–4. The movant must show good faith and the party need actually attempt a meeting or conference. *Shuffle Master, Inc.*, 170 F.R.D. at 171. Courts have found that "conferment" requirement entails "two-way communication, communication which is necessary to genuinely discuss any discovery issues and to avoid judicial recourse." *Compass Bank v. Shamgochian*, 287 F.R.D. 397, 398–99 (S.D. Tex. 2012).

The "meet and confer" requirement is not satisfied by mailing a letter from one party's counsel to another party's counsel. *See Leimbach v. Lane (In re Lane)*, 302 B.R. 75, 78–79 (Bankr. D. Idaho 2003). The requirement of filing "a certificate cannot be satisfied by including with the motion copies of correspondence that discuss the discovery at issue. . . . The Court is unwilling to decipher letters between counsel to conclude that the requirement has been met." *Ross v. Citifinancial, Inc.*, 203 F.R.D. 239, 240 (S.D. Miss. 2001).

DISCUSSION

The court first considers whether Plaintiff has satisfied the "meet and confer" requirement of Rule 37(a). After trial, the court granted a motion compelling defendant to appear and be examined. *See* Dckt. 75, 76. Defendant was examined on September 28, 2017, after the court's hearing on the motion to compel. Dckt. 76. Mr. Gross states that at that examination, Defendant failed to supply all requested documents, including bank statements for any accounts utilized by Defendant along with a list of all accounts receivable or accounts in which Defendant is a judgment creditor. Dckt. 79 at 2:16–21.

Mr. Gross states that he attempted to meet and confer on October 10, 2017, by e-mailing a letter to Defendant advising of the default. *Id.* at 2:22–23. Mr. Gross states that he received a response from Defendant's counsel on October 16, 2017, stating that Defendant's house had been lost to fire and that he would not be able to respond for another week. *Id.* at 2:23–3:1.

Mr. Gross states that he sent a second e-mail attempting to meet and confer on November 16, 2017, advising that he would bring this Motion otherwise. *Id.* at 3:2–5.

The court has reviewed the October 10, 2017 "meet and confer" letter. In it, counsel for Plaintiff communicates to Defendant:

> In a follow up to the Order for Exam and to constitute a meet and confer effort, I would ask that you provide my office with details as well [as] bank statements for any accounts utilized by Creditors' Trade Association, Inc. In

addition. A [*sic*] list of all accounts receivables or accounts in which Creditors' Trade Association, Inc, is a judgment creditor.

As for a possible settlement, we would like to see a payment of $1,500.00 per month by your client.

Exhibit C, Letter, Dckt. 80.

That correspondence is considered in light of the prior proceedings in this case. On September 28, 2017, the court conducted a hearing on Plaintiff's motion to compel Defendant to appear and be examined. Dckt. 76. Debtor appeared and was examined.

It is clear that though Plaintiff has attempted to engage Defendant in communication, Defendant has not reciprocated. That is not a situation when there is merely a perfunctory letter sent. Rather, there have been two face-to-face hearings at which Defendant attended.

Defendant's unwillingness to meet and confer does not defeat Plaintiff's ability to request for the court to order that Defendant produce financial documents.

Attorney's Fees and Costs Requested

The Motion requests that the court award Plaintiff reasonable attorney's fees and costs arising from Defendant's failure to comply with discovery.

Federal Rule of Civil Procedure 45(g) provides that the court may hold in contempt a person who fails to obey the subpoena or an order relating to it. As stated in Federal Rule of Civil Procedure 45(a), the subpoena is also used to compel attendance at a deposition or document production. Commonly the first step in treating the non-responding party as being in "contempt" and imposing sanctions is for the court to issue an order compelling compliance with the subpoena. Though this may seem like the court issuing an order stating that the prior order is "really an order that must be complied with," because the subpoena is issued by an attorney, the full effect of it may not be appreciated by the other person. MOORE'S FEDERAL PRACTICE, CIVIL § 45.62[3]. However, as noted by the Seventh Circuit, no such order compelling is actually required under the Federal Rules of Civil Procedure. *United States SEC. v. Hyatt*, 621 F.3d 687, 693 (7th Cir. 2010).

That is similar to the process used for general discovery and the failure to comply. Federal Rule of Civil Procedure 37 and Federal Rule of Bankruptcy Procedure 7037 require that a party first move to compel discovery after non-compliance. Then, if the other party fails to comply with the order to compel discovery, the sanctions are appropriate for failing to comply with the order.

The court will apply that procedure here and issue the order compelling Defendant to produce the financial documents. Further, in light of Defendant's failure to engage in this case since judgment has been entered, the court will issue a corrective sanction as part of the order.

The corrective sanction will be in the amount of $1,000.00, to be paid by Defendant, to Plaintiff in this case, if Defendant fails to produce documents as ordered by the court.

More importantly, Defendant will only be obligated to pay the $1,000.00 if Defendant fails to comply with the order of this court to produce documents.

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 Compel filed by Robert Achterberg, Jr., and Stephanie Achterberg ("Plaintiff") 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 is granted and that Gary Looney, president and owner of Creditors Trade Association, Inc., dba Great Western Collection Bureau ("Defendant"), shall produce and deliver at **xxxx on xxxx, 2018**, the following documents to Malcolm Gross, counsel for Plaintiff:
>
> A. Bank statements for accounts utilized by Creditors' Trade Association, Inc., and
>
> B. A list of all accounts receivables or accounts in which Creditors' Trade Association, Inc., is a judgment creditor.
>
> **IT IS FURTHER ORDERED** that if Defendant fails to deliver the documents specified above in paragraphs A & B by **xxxx, on 2018**, the court shall issue an order for Defendant to pay a $1,000.00 corrective sanction to Plaintiff in this case. This corrective sanction will be ordered only if Defendant fails to timely comply with this Order.
>
> **IT IS FURTHER ORDERED** that the order to produce the above documents is without prejudice to all rights of privilege or other objections to such production or questions at the Examination as may properly and timely be raised by Defendant.
>
> Further, the $1,000.00 corrective sanction, which will be imposed only if Defendant fails to comply with this Order, does not limit further sanctions, corrective and punitive, which may be ordered by this court and the U.S. District Court for violations of this order, including awarding attorney's fees and costs to Plaintiff, and corrective and punitive incarceration.

25. **16-90998-E-7** **ALI/NOOR SALEH** **MOTION TO AVOID LIEN OF GERALD**
SDM-2 **Scott Mitchell** **LECLAIR, ET AL.**
2-7-18 [23]

Final Ruling: No appearance at the March 8, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on February 7, 2018. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Gerald LeClair, Matthew LeClair, Kelly Simmons, Shirley Ellenbarger, Dylan Miars, Misty Stevens, Wilbur Steens, Nicole Lincoln, Daryl Lincoln, Dana Nottbohm, and Alyssa Nottbohm ("Creditor") against property of Ali Saleh and Noor Saleh ("Debtor") commonly known as 2813 Olympus Court, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $336,643.72. An abstract of judgment was recorded with Stanislaus County on January 16, 2014, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $393,500.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $273,227.62 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $120,272.38 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Ali Saleh and Noor Saleh ("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 Gerald LeClair, Matthew LeClair, Kelly Simmons, Shirley Ellenbarger, Dylan Miars, Misty Stevens, Wilbur Steens, Nicole Lincoln, Daryl Lincoln, Dana Nottbohm, and Alyssa Nottbohm, California Superior Court for Stanislaus County Case No. 672165, recorded on January 16, 2014, Document No. 2014-0003004-00, with the Stanislaus County Recorder, against the real property commonly known as 2813 Olympus Court, 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.