UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Pursuant to District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by *pro se* (not represented by an attorney) parties through April 30, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878**.

MODESTO DIVISION CALENDAR
April 2, 2020 at 10:30 a.m.

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1. **18-90847-E-7** **IMELDA PADILLA**
MF-7 **Thomas Gillis**

MOTION FOR COMPENSATION FOR RENO F.R. FERNANDEZ III, TRUSTEES ATTORNEY(S)
3-5-20 [136]

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 March 5, 2020. By the court's calculation, 28 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.

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

Fees are requested for the period January 22, 2019, through February 27, 2020. The order of the court approving employment of Applicant was entered on January 22, 2019. Dckt. 34. Applicant requests fees in the amount of $5,000.00 and costs in the amount of $32.64.

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 can 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 proving general case administration; assisting Trustee with asset investigation and evaluation of Debtor's claimed exemptions; and demand for turnover of Debtor's residence and tax refunds.

The Trustee has not offered his declaration in support of this Motion identifying the results of the representation and what assets the Trustee has for distribution in this case. Counsel's $5,000 may be reasonable, or they may be out of proportion for this estate.

The Declaration of counsel provided in support of the Motion does not provide any testimony as to how the representation has been positive for the Trustee and bankruptcy estate. It merely states that the billing records are filed in support of the Motion.

While outlining providing services for which $10,028.50 were billed (and discounted for this Application), the Motion does not state the financial condition of the Bankruptcy Estate or the result of Applicant's work.

A review of the file discloses that the Trustee achieved a settlement of disputes with the Debtor relating to claimed exemptions and changing stories by the Debtor as to ownership of real property. Under the terms of the Settlement the Trustee recovered $8,000.00 for the Estate, and the right to any amounts in excess of $3,188 of the Debtor's 2018 tax refund.

While the Trustee is recovering modest amounts, this case was not made any easier by Debtor or Debtor's counsel, with Debtor "changing her story" under penalty of perjury. Making a modest case "difficult" to try and discourage a trustee and trustee's counsel from asserting rights of a bankruptcy estate is not a reason for finding counsel's fees unreasonable just because there is not a larger recovery.

Applicant has agreed to reduce fees. This further shows Applicant's appreciation of being professionally reasonable with respect to other professionals and the trustee, adjusting what may have otherwise been allowable fees.

The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 3.6 hours in this category. Applicant assisted with the administration of the case by obtaining approval of Applicant's employment, reviewing documents, successfully applying for a Rule 2004 Examination, and other ancillary work.

Asset Investigation: Applicant spent 2.3 hours in this category. Applicant assisted Trustee in identifying and organizing the estate's assets, specifically Applicant assisted the Trustee with efforts related to certain real property and tax refunds, and other potential assets.

Claimed Exemptions: Applicant spent 3.7 hours in this category. Applicant evaluated Debtor's claims of exemption and objecting to certain claimed exemptions, specifically the exemptions related to Debtor's residence and vehicles; as well drafting and prosecuting objections to certain amended claims of exemptions resolved by settlement.

Turnover: Applicant spent 12.8 hours in this category. Applicant assisted Trustee in communications with Debtor for turnover of residence and tax refunds; and after Debtor refused to turn over the property, Applicant drafted and successfully prosecuted motion to compel turnover.

Other Contested Matters: Applicant spent 11.40 hours in this category. Applicant assisted Trustee in opposing Debtor's two motion to convert the case to chapter 13; and later assisted the Trustee in resolving the second motion to convert by way of settlement.

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
Reno F.R. Fernandez	1.4	$490.00	$686.00
Reno F.R. Fernandez	10.8	$375.00	$4,050.00
Matthew J. Olson	18.1	$275.00	$4,977.50
Samantha G. Brown	3.5	$90.00	$315.00
Total Fees for Period of Application			$10,028.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $32.64 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	$0.10	$11.60
Postage		$21.04
		$0.00
Total Costs Requested in Application		$32.64

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $5,000.00 for its fees incurred for Client. First and Final Fees and Costs in the amount of $5,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $32.64 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	$5,000.00
Costs and Expenses	$32.64

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Macdonald Fernandez LLP ("Applicant"), Attorney for Michael D. McGranahan, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Macdonald Fernandez LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Macdonald Fernandez LLP, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $5,000.00
> Expenses in the amount of $32.64,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

2.	**20-90175-E-7** **BJS-1**	**SANDRA NUNEZ** **Bradley Swingle**	**MOTION TO DISMISS DUPLICATE CASE** **3-10-20 [11]**

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 10, 2020. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss Duplicate Case was not 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 Dismiss Duplicate Case is xxxxx.

Chapter 7 Debtor, Sandra Avila Nunez ("Debtor"), seeks dismissal of the instant case on the grounds that this case is a duplicate case that was accidentally filed by Debtor's Counsel.

INSUFFICIENT NOTICE OF MOTION

Notice as a Motion under LBR 9014–1(f)(1) or (f)(2) is unclear

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 a hearing will be held to regarding Debtor's attorney inadvertent uploading of the wrong documents to file which caused Debtor to have a duplicate bankruptcy case. Based upon the Motion have been filed on March 10, 2020, 23 days before the hearing, 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).

Notice fails to meet the Requirements of Local Rules as to Contents

There are other issues with Debtor's Motion. The Notice fails to meet the requirements of local rules as to contents. The Notice is devoid of most of the information required by the local rules, including the statement about viewability of tentative rulings on the court's website.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss Duplicate Case filed by Sandra Avila Nunez ("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 denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF APPLICANT PROVIDES SUFFICIENT NOTICE.

DISCUSSION

On February 24, 2020, Debtor filed a voluntary Chapter 7 petition, Case Number 20-90153. On March 2, 2020, while filing a Chapter 7 Bankruptcy case for another debtor, Counsel's office inadvertently filed a duplicate case, Case Number 20-90175, under Debtor's name.

A look at the petition and other documents filed on both cases reflect that they are in fact identical cases.

It seems however, that this is not the only duplicate filing being dismissed by Debtor. A search of Debtor's name in this court's PACER program shows that an additional "duplicate" case, Case Number 20-10808, was filed the same day. Debtor's Counsel has another Motion to Dismiss a Duplicate Case in front of the Honorable Frederick E. Clement under that case.

Thus, the motion is granted, and Case Number 20-90175 is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by Chapter 7 Debtor, Sandra Avila Nunez ("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 Dismiss is granted and Bankruptcy Case Number 20-90175 is dismissed as being an erroneous duplicate filing for Debtor.

3.	**19-90582-E-7** **ICE-2**	**RICHARD/VERNA EVANS** **Nicholas Wajda**	**MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR WEST AUCTIONS INC., AUCTIONEER(S)** **2-18-20 [26]**

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

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 Debtors, Debtor's Attorney, creditors, and Office of the United States Trustee on February 18, 2020. 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 2014 Toyota Prius ("Property").

Trustee proposes the sale made by auction, and proposes (and requests authority via a separate motion) to employ West Auctions, Inc. ("West") to assist her in liquidating the Property for the highest price possible through a public auction sale. The Property will be sold on an "as-is" basis with no warranties with respect to the Property. The public auction will be held on or after April 2, 2020, through West Auctions Inc., 427 Cleveland Street, Woodland, CA 95695. If no reasonable bids are received, the Property may be held for subsequent auction or private sale without additional notice.

West has agreed to serve as auctioneer of this Property on the following terms and conditions:

A. Compensation of 20% percent of the gross sale proceeds, irrespective of the amount of gross sale proceeds.

B. West seeks reasonable expenses currently estimated to be $1,000.00 incurred in preparing the Property for sale, including inspecting, transporting, storing, and/or vehicle document preparation.

DISCUSSION

The Bankruptcy Code permits the Trustee to sell the property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Trustee proposes auctioning the Property, which Trustee argues is in th best interest of the estate and will result in the quickest liquidation of the Property at the full fair market value. Declaration, Dckt. 28. At this time, the Property is believed to be free and clear of all liens. *Id*.

At the hearing, **xxxxxxxx**

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 Irma Edmonds, the Chapter 7 Trustee, is authorized to sell at auction pursuant to 11 U.S.C. § 363(b) the Property of the Estate identified as 2014 Toyota Prius ("Property").

The court denies without prejudice the request that the Property may be sold by private sale.

IT IS FURTHER ORDERED that the Trustee may pay West Auctions, Inc., the auctioneer authorized to be employed by Trustee, expenses not to exceed $1,000.00 and the 20% commission as authorized for the employment, with the commission amount not to exceed $3,000.00 without further order of the court. [FN. 1.]

FN. 1. Neither the Trustee nor the auctioneer have provided the court with an estimate of the gross sales price, so it is difficult for the court to determine that a 20% is reasonable. The sales price may be $9,000.00 (clearly reasonable) or $30,000 (clearly unreasonable, absent special circumstances). In the future the Trustee and the Auctioneer should consider providing the estimated sales price so the court can make an informed decision as to whether the percentage is reasonable and not merely ask for a "blank check."

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4. 19-90464-E-7 RICHARD RICKS
19-9020 MAS-1
HIRST LAW GROUP, P.C. V. RICKS

CONTINUED MOTION FOR SUMMARY JUDGMENT AND/OR MOTION FOR SUMMARY ADJUDICATION
1-24-20 [12]

No Tentative Ruling: The Motion For Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant-Debtor on January 24, 2020. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion for Summary Judgment 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).

The Motions is granted for partial summary judgment on the denial of Defendant-Debtor's discharge in Bankruptcy Case No. 19-90464.

Hirst Law Group, P.C. ("Plaintiff") filed the instant adversary proceeding on December 6, 2019, against Richard Arland Ricks ("Defendant-Debtor"). In the underlying bankruptcy proceeding, Plaintiff claimed he had a claim against the Defendant-Debtor in excess of $100,000.00, though no Proof of Claim has been filed.

REVIEW OF THE MOTION FOR SUMMARY JUDGMENT

On January 24, 2020, Plaintiff filed the instant Motion for Summary Judgment pursuant to Fed. R. Bankr. P. 7056. Dckt. 12. Plaintiff asserts that the are no issues of material fact such that Plaintiff is entitled to judgment as a matter of law. Plaintiff adds that if the court is disinclined to grant summary judgment, then Plaintiff seeks summary adjudication as to the 11 U.S.C. § 727(a)(4)(A) claim only. Further adding that Plaintiff will dismiss all the remaining claims under 11 U.S.C. § 727(a)(3) and 11 U.S.C. § 727(a)(5) if court grants the summary adjudication as to 11 U.S.C. § 727(a)(4)(A).

The court begins its consideration of the requested relief with the Motion itself and the grounds with particularity stated therein. Fed. R. Civ. P. 7(b), Fed. R. Bankr. P. 7007. The grounds stated with particularity consist of the following:

> Plaintiff Hirst Law Group P.C. ("HLG") hereby moves for summary judgment against defendant Richard Arland Ricks for denial of discharge under 11 U.S.C. § 727(a)(4)(A) pursuant to FRBP 7056. There are no disputed issues of material fact such that HLG is entitled to judgment as a matter of law. Should the Court be disinclined to grant summary judgment, then HLG seeks summary adjudication as to the 11 U.S.C. § 727(a)(4)(A) claim only. If the Court grants HLG's summary adjudication motion as to the 11 U.S.C. § 727(a)(4)(A) claim, HLG will dismiss all the remaining claims so as judgment can be entered on the 11 U.S.C. § 727(a)(4)(A) claim singly.

Motion, Dckt. 12. The above is the entirety of what is stated in the Motion.

As addressed below in considering a summary judgment, that a party "moves for summary judgment" and alleges that there are no disputed issues of material of fact, are not sufficient grounds for granting the requested relief.

Additional Documents Filed With the Motion

A Memorandum of Points and Authorities in support of the Motion was also filed. Dckt. 18. The Points and Authorities begins with a rich statement of particular factual grounds and events upon which the Motion is based. The Points and Authorities then, beginning on page 3, provides the legal authorities and arguments applying the legal authorities to the "grounds" as stated in the first two pages of the Points and Authorities.

Next, the Declaration of Mark A. Serlin, counsel for Plaintiff has been filed. Dckt. 14. Mr. Serlin's testimony relates to the 2004 Examination he conducted of the Defendant-Debtor.

The Declaration of Michael Hirst is also provided. Dckt. 16. He testifies to representing the Defendant-Debtor, beginning in 2013, in a federal False Claims *qui tam* action. Mr. Hirst further testifies that in April 2015 the Defendant-Debtor obtained a payment of $1,287,000. Not satisfied, Defendant-Debtor asserted a claim against Mr. Hirst's firm concerning that representation. Mr. Hirst's firm prevailed and has a claim against the Defendant-Debtor arising therefrom.

In August 2019, Mr. Hirst was told by Brian Soriano, that Mr. Soriano was representing the Defendant-Debtor in a new *qui tam* action. Further, that he was seeking to have Mr. Hirst's firm assist in

that new action, which was projected to be 5 to 15 times the value of the successful recovery in the prior case in which Mr. Hirst represented the Defendant-Debtor.

Additionally, the following documents have been provided (Dckt. 15):

- Exhibits A: Defendant-Debtor Richard Rick Rule 2004 Examination Transcript (including the exhibits attached to the subpoena)

- Exhibit B: Transcript of Record Proceedings for September 16, 2019 (Trustee Irma Edmonds Presiding)

and at Dckt. 17:

- Exhibit A: copy of the Arbitration Award Judgment for attorney's fees and costs

- Exhibit B: copy of email communication between Brian Soriano and Michael Hirst

Supplemental Filings

At the initial hearing on the Motion, the court addressed with Movant's counsel the shortcomings in the Motion. Civil Minutes, Dckt. 23. Rather than having the Motion denied without prejudice, Movant agreed to file a Supplement to the Motion that states the grounds upon which the relief is requested. The Defendant-Debtor appeared at the hearing and the court set the deadline for filing opposition. Replies, if any, by Movant may be presented orally at the hearing.

Plaintiff Supplemental Pleadings

On March 16, 2020, Plaintiff filed a Supplement to Motion for Summary Judgment and Alternatively for Summary Adjudication. Plaintiff states the following grounds upon which relief is requested:

1. At the Rule 2004 examination ("Examination") conducted by Plaintiff, Defendant-Debtor admitted that he was a claimant in a *qui tam* action and was being represented by an attorney in San Francisco.

2. Defendant-Debtor also admitted at the Examination that he knew he had such *qui tam* claim prior to the filing of the within bankruptcy.

3. This admission completely contradicts Defendant-Debtor's Schedules, and specifically question 33 on Schedule B relating to claims against third parties whether or not suit had been filed thereon.

4. Further, in his filed answer in the instant adversary proceeding, Defendant-Debtor made no effort to dispute that he knew he had such *qui tam* claim

prior to filing for bankruptcy and had failed to list it in his bankruptcy schedules.

5. Defendant-Debtor, instead, tried to sidestep the issue by claiming that he was not a named plaintiff in any pending action.

6. Moreover, Defendant-Debtor's attorney in the unscheduled *qui tam* claim has opined to Plaintiff that the unscheduled *qui tam* claim is worth 5-15 times the amount of the prior *qui tam* claim from which Defendant-Debtor received $1.287 million in 2016.

7. Defendant-Debtor did not disclose such valuable claim anywhere in his schedules, and then confirm the accuracy of those schedules at his section 341 meeting.

Defendant-Debtor Richard Arland Ricks

On March 25, 2020, Plaintiff filed an Opposition. Dckt. 29. Defendant-Debtor filed an opposition, arguing the following:

1. Plaintiff's Motion claims Defendant-Debtor failed to inform about a *qui tam* case in which he is the plaintiff.

2. While Defendant-Debtor has attempted to pursue such claims, to date, no claim has been filed and there is no plan for such action to be filed.

3. As supported by the Declaration of Brian Soriano, Debtor's efforts at pursuing *qui tam* claims have been unsuccessful, in part due to the moving party's statements to the interested law firms.

4. Defendant-Debtor denies having concealed, destroyed, mutilated, falsified, and/or failed to keep or preserve information and/or documents.

5. Defendant-Debtor was married to an accountant for 25 years and that he has never kept custody of documents or financial records and any information or documents related to his finances were submitted by his ex-wife Joy L. Hughes in her deposition with Mr. Serlin ("Plaintiff's Counsel") last year. Adding that he told counsel that the only documents he had failed to provide was the pink slip for his motorcycle.

6. Defendant-Debtor admits he signed his bankruptcy petition and answered "no" to the question of any pending lawsuits. This statement is true and correct. No filings have been made at the city, county, state, or federal level regarding a *qui tam* case. Defendant-Debtor's understanding of the question being that a case has been filed.

7. All financial information, including bank statements were provided to Plaintiff's Counsel under Defendant-Debtor's former wife's deposition, which clearly explains the dissipation of funds.

8. Defendant-Debtor could not afford the $240.00 to obtain a copy of his deposition but he is very clear on the matters stated above.

Defendant-Debtor has signed the Opposition as if it were a declaration.

Debtor also filed the Declaration of Brian E. Soriano. Dckt. 30. Under penalty of perjury, Mr. Soriano testifies that he is an attorney presently assisting Debtor (since at least August 2019) in finding a leading law firm with the resources and experience to prosecute a *qui tam* action. According to Mr. Soriano, two law firms have declined taking Defendant-Debtor's case after speaking with Plaintiff. He also testifies that at this point no case has been filed and no commitment from any firm exists pursue the claim and that to his knowledge. Further, asserting that to his knowledge Debtor is not a claimant in any pending *qui tam* action and that he has no intention of filing said action without the commitment and support of a national firm experienced in handling whistleblower action.

APPLICABLE LAW FOR A MOTION FOR SUMMARY JUDGMENT

In an adversary proceeding, summary judgment is proper when "[t]he movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), incorporated by Fed. R. Bankr. P. 7056. The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P. 56(c), incorporated by Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248–50 (1986); 11 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 56.11[1][b] (3d ed. 2000). "[A dispute] is 'genuine' only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is 'material' only if it could affect the outcome of the suit under the governing law." *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008), citing *Anderson v. Liberty Lobby, Inc*., 477 U.S. at 248 (1986).

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that a fact cannot be genuinely disputed, the moving party must "cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ..., admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A), incorporated by Fed. R. Bankr. P. 7056.

In response to a sufficiently supported motion for summary judgment, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial. *Barboza*, 545 F.3d at 707, citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055–56 (9th Cir. 2002). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists. *Id.* (citing *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *County. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court "generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented." *Agosto v. INS*, 436 U.S. 748, 756 (1978). "[A]t the summary judgment stage [,] the judge's function is not himself to weigh the evidence and determine the truth of the matter[,] but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249.

Review of the Complaint

Plaintiff seeks a determination that Plaintiff's claims are nondischargeable pursuant to 11 U.S.C. §§ 727(a)(3), 727(a)(4)(A), and 727(a)(5) as the claims arise from Defendant-Debtor's failure to keep or preserved recorded information related to Defendant-Debtor's financial condition or business transaction; false statements and/or omissions in the Defendant-Debtor's Schedules and Statement of Affairs; failure to satisfactorily explain the dissipation of monies allegedly received by Defendant-Debtor. Dckt. 1. The grounds upon which these claims are based are as follows:

A. As it pertains to 11 U.S.C. § 727(a)(3), Plaintiff alleges that Defendant-Debtor claimed at a Rule 2004 examination that he had no banking or other documents whatsoever regarding his income, assets, expenditures, and the like notwithstanding his receipt of a subpoena under F.R.B.P. 2004 compelling such production such that discharge under this section is appropriate.

B. As it pertains to 11 U.S.C. § 727(a)(4)(A), Plaintiff alleges that Defendant-Debtor testified in a Rule 2004 examination that he had a large qui tam claim which he knew to exist before he filed for bankruptcy which he did not disclose in his sworn schedules in this bankruptcy case such that discharge under this section is appropriate.

C. As it pertains to 11 U.S.C. § 727(a)(5), Plaintiff alleges that Defendant-Debtor has failed to satisfactorily explain the dissipation of over $1.2 million in cash received by Debtor in May 2016 and the fact that there are now no assets to distribute to creditors of Defendant-Debtor such as Plaintiff such that denial of discharge under this section is appropriate.

Review of the Answer

In response, Defendant-Debtor filed an Answer to the Complaint on January 6, 2020. Dckt. 9.

A. As to the allegation that Debtor failed to keep or preserve recorded information, Defendant-Debtor denied having concealed, destroyed, mutilated, falsified, and/or failed to keep or preserve information and/or documents.

B. Defendant-Debtor states that he has been married to an accountant for 25 years and that he never kept custody of documents or financial records and any information or documents related to his finances were submitted by his

ex-wife Joy L. Hughes in her deposition with Mr. Serlin ("Plaintiff's Counsel") last year. Adding that he told counsel that the only documents he had failed to provide was the pink slip for his motorcycle.

C. Defendant-Debtor admits that he signed his bankruptcy petition and answered "no" to the question of any pending lawsuits. Defendant-Debtor then states that no qui tam lawsuit has been filed at the city, county, state, or federal level. Defendant-Debtor's understanding of the question being that a case has been filed.

D. Defendant-Debtor states that all financial information, including bank statements were provided to Plaintiff's Counsel under Defendant-Debtor's former wife's deposition, which Defendant-Debtor states explains the dissipation of funds.

E. Defendant-Debtor advises the court that he could not afford the $240.00 to obtain a copy of his deposition but he is very clear on the matters stated above.

DENIAL OF DISCHARGE LAW

11 U.S.C. § 727(a)(3)- Failure to Keep Adequate Books and Records

Section 727 of the Code provides for exceptions to discharge. Specifically, 11 U.S.C. § 727(a)(3) provides:

> (a) The court shall grant the debtor a discharge, unless—
>
> [. . .]
>
> (3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case[.]

11 U.S.C. § 727(a)(3).

11 U.S.C. § 727(a)(4)(A)- False Oaths

Section 727 of the Code provides for exceptions to discharge. Specifically, 11 U.S.C. § 727(a)(4)(A) provides:

> (a) The court shall grant the debtor a discharge, unless—
>
> [. . .]

> (4) the debtor knowingly and fraudulently, in or in connection with the case—
>
> (A)made a false oath or account[.]

11 U.S.C. § 727(a)(4)(A).

The false oath that is a sufficient ground for denying a discharge may consist of (1) a false statement or omission in the debtor's schedules or (2) a false statement by the debtor at an examination during the course of the proceedings.

6 Collier on Bankruptcy P 727.04 (16th 2019).

The false oath must have related to a material matter. *Retz v. Samson* (*In re Retz*), 606 F.3d 1189 (9th Cir. 2010); *Coccia v. Fischer* (*In re Fischer*), 2 C.B.C.2d 305, 4 B.R. 517 (Bankr. S.D. Fla. 1980) ("[a] bankruptcy discharge may be denied under § 727(a)(4)(a) only if the false oath related to a … matter … material to the condition of the estate or the debtor's entitlement to discharge").

The subject matter of a false oath is material and warrants a denial of discharge if it is related to the debtor's business transactions, or if it concerns the discovery of assets, business dealings, or the existence or disposition of the debtor's property. *Van Robinson v. Worley*, 849 F.3d 577 (4th Cir. 2017) (valuation of only significant nonexempt asset at less than one fifth its value was material); *Chalik v. Moorefield* (*In re Chalik*), 748 F.2d 616, 11 C.B.C.2d 1159 (11th Cir. 1984); *In re Weiner,* 208 B.R. 69 (B.A.P. 9th Cir. 1997) (undervaluation of assets intended to keep property from creditors).

11 U.S.C. § 727(a)(5)- Failure to Satisfactorily Explain Deficiencies of Assets to Meet Liabilities

Section 727 of the Code provides for exceptions to discharge. Specifically, 11 U.S.C. § 727(a)(5) provides:

> (a) The court shall grant the debtor a discharge, unless—
>
> [. . .]
>
> (5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities[.]

Section 727(a)(5) must be read in conjunction with Federal Rule of Bankruptcy Procedure 4005, which imposes on the plaintiff the burden of "proving the objection." *In re LaBonte*, 5 C.B.C.2d 181, 13 B.R. 887 (Bankr. D. Kan. 1981) (plaintiffs' attempt to present a prima facie case under section 727(a)(5) by pointing to discrepancies in inventory valuations and fluctuations in inventory value each month held insufficient to prevent discharge). The initial burden of going forward with evidence is on the objector, who must introduce more than merely an allegation that the debtor has failed to explain losses.

6 Collier on Bankruptcy P 727.08 (16th 2019).

DISCUSSION

The court begins with going back and looking at the Schedules completed by Debtor under penalty of perjury. On Schedule A/B Debtor discloses all of real and personal property assets, including any claims (whether contingent, disputed, unliquidated or the like) against any other person.

The court notes that Debtor's Schedules as they pertain to personal property are interesting in that Debtor states under penalty of perjury that he has: (A) no household goods or furnishings (Question 6); (B) no electronics, such as a TV, radio, stereo, computer, cell phone, or camera (Question 7); (C) no jewelry, such as a watch (Question 12); no cash (Question 16); and (D) no checking, savings, or other account of any kind (Question 17).

19-90464; Schedule A/B, Dckt. 1.

Of specific importance to the matter now before the court, is Defendant-Debtor's response to Questions 34, 35 of Schedule I, to which he responded "No," which is:

> 34. Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims
>
> 35. Any financial assets you did not already list

Id.

On the Statement of Financial Affairs flied by Debtor, he states having no income in 2017 and 2018, and income of $1,900 in 2019. *Id.*; Statement of Financial Affairs, Questions 4, 4; Dckt. 1.

Statement of Financial Affairs Question 9 , to which Defendant-Debtor stated "No," asks:

> **9. Within 1 year before you filed for bankruptcy, were you a party in any lawsuit, court action, or administrative proceeding?**
> List all such matters, including personal injury cases, small claims actions, divorces, collection suits, paternity actions, support or custody modifications, and contract disputes.

Id.; Dckt. 1 at 38. This question asks whether the Defendant-Debtor was a party to a lawsuit, as compared to Schedule A/B which inquires about any possible claims that the Defendant-Debtor may have had.

The Schedules and Statement of Financial Affairs were completed with the assistance of Nick Ditaranto, a document petition preparer. *Id.*; Petition Preparer's Notice, Dckt. 1 at 46-47.

Cause of Action Pursuant to 11 U.S.C. § 727(a)(4)(A)- False Oaths

Plaintiff provides facts that show that Debtor indeed gave a false oath. Debtor, under the penalty of perjury, filed his schedules without disclosing the potential *qui tam* action information. Debtor attended his Section 341 meeting and he again provided a false oath when he confirmed the schedules he had filed as true and correct.

Specific statements by the Defendant-Debtor with respect to the accuracy of his Schedules include the following:

MS. EDMONDS: Did you read and review your bankruptcy petition?

MR. RICKS: Yes, I did.

MS. EDMONDS: Did you sign the petition before it was filed with the court?

MR. RICKS: Yes, I did.

MS. EDMONDS: And did you list all of the real and personal property that you own or have a right to?

MR. RICKS: Yes, I did.

MS. EDMONDS: Did you list all of your creditors?

MR. RICKS: Yes, I did.

MS. EDMONDS: Is all of the information in your bankruptcy petition true and correct?

MR. RICKS: Yes, it is.

Exhibit C, 341 Meeting Transcript, p. 3; Dckt. 15.

Plaintiff then directs the court to the transcript from the 2004 examination of the Defendant-Debtor conducted by Plaintiff's counsel.

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Q. Now, are you a plaintiff or potential plaintiff in any other whistleblower actions?

A. Yes.

Q. Okay.· And what are those?

A. I can't speak on that.

Q. You say you cannot speak on that.· Why not?

A. I've been instructed by the Federal Bureau of Investigation.

Q. Oh, okay.· So you reported something of -- of a

whistleblower to the FBI?

A. Sir, I'm very uncomfortable speaking on that. Okay?

Q. Okay.· Well, can you tell me when you first made this report?

A. Sir, by instructions of -- of the -- I'm not going to have any conversation regarding that matter.

Q. Okay.· Let me ask it this way:· Did you become aware of the facts or circumstances that give rise to this other potential whistleblower claim before you

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filed for bankruptcy?· Which was this year, of course.

A. Repeat your question.

Q. Did you become aware of the facts or circumstances giving rise to this potential whistleblower claim prior to the time that you filed for bankruptcy?

A. Yeah.

Q. Okay.· Are you represented by counsel in connection with this other potential whistleblower claim?

A. I'm not going to respond to any questions regarding the whistleblower matter, sir.

Exhibit A, 2004 Examination Transcript, p. 24-25 (identified by line number of the transcript); Dckt. 15.

Plaintiff also provides the Declaration of Michael Hirst, the founding attorney of the Plaintiff. He testifies as to the claim that Plaintiff has against Defendant-Debtor. Dckt. 16.

In his Opposition stated under penalty of perjury, Defendant-Debtor provides the court with the following evidence to counter that presented by Plaintiff:

> While I have attempted to pursue such claims, to date, no claim has been filed and there is no plan for such action to be filed.

Opposition Statement Under Penalty of Perjury, p. 1:22-23; Dckt. 29.

> [m]y efforts at pursuing these *qui tam* claims have been unsuccessful, in part due to the moving party's statements to the interested law firms.

Id., p. 1:23-25.

> I have not concealed, destroyed, mutilated, falsified, and/or failed to keep or preserve information and/or documents. I was married to an accountant for 25 years. I have never kept custody of any statements, documents and/or financial records.

Id., p. 1:26-28.

> Under the penalty of perjury, I signed my bankruptcy petition and answered "no" to the question of any pending lawsuits. This statement is true and correct. There has been no filing of any case at the city, county, state or federal level regarding a *qui tam* case. My understanding of the question posed means that a case has been filed.

Id., p. 2:4-7.

> All financial information, including bank statements were provided to Mr. Serlin under my former wife's deposition. This clearly explains the dissipation of funds.

Id., p. 2:8-9.

While responding about lawsuits, the Defendant-Debtor does not address the failure to list the possible claim on Schedule A/B. In the Supplement to the Motion filed by Plaintiff, this failure to disclose the asset, not merely whether a lawsuit was filed, which states with particularity:

> **This admission totally contradicts his sworn schedules, and specifically question 33 on schedule B** relating to claims against third parties whether or not suit had been filed thereon. Critically, in his filed answer in this adversary proceeding, Ricks made no effort to dispute that he knew he had such qui tam claim prior to filing for bankruptcy and that he failed to list it in his bankruptcy schedules and instead tried to sidestep the issue by claiming that he was not a named plaintiff in any pending action.

Supplement to Motion, p. 2:10-15; Dckt. 27. The Motion specifically directs the Defendant-Debtor to the listing of the claim as property, not the question of whether any litigation is pending.

Defendant-Debtor provides the Declaration of Brian Soriano as part of his Opposition to the Motion for Summary Judgment. Mr. Soriano testifies under penalty of perjury:

> 1. I am an attorney in good standing licensed to practice in the Courts in the State of California. . . .
> . . .
>
> 3. In 2019, I was investigating facts and circumstances brought to my attention by Mr. Ricks that suggested there were additional violations similar to those involved

> in Mr. Ricks' previous whistleblower case that were actionable against some of the same parties as well as some additional companies not identified in the prior action.
>
> 4. In August of 2019, I sent an email to Michael Hirst, with Mr. Ricks' authorization, inviting him to participate in the second whistleblower action as a co-counsel representing Mr. Ricks. Days later, I received a response declining the invitation to participate in the second whistleblower case.

Declaration (identified by paragraph number); Dckt. 30.

Mr. Soriano provides evidence that in 2019, prior to August, the Defendant-Debtor had communicated with Mr. Soriano about the potential whistleblower claims he had against others.

Mr. Hirst, for the Plaintiff, provides his testimony that the prior *qui tam* action, which was quite successful, with the Defendant-Debtor recovering $1.287 Million in April 2016. Declaration, ¶ 3. Mr. Hirst testifies that he received an email from Mr. Soriano dated August 21, 2019, a copy of which is provided as Exhibit B, Dckt. 17. Rather than quoting Mr. Hirst paraphrasing the email, the text from the email sent by Mr. Soriano includes:

> We were introduced around the time that Richard Ricks first retained your office to assist him in his Qui Tam claims. Since your successful resolution of that matter, Mr. Ricks has uncovered additional, similar violations wherein service contractors are defrauding the government. I have communicated with witnesses and explored with Richard the contractual issues in the case and believe there is another action where subsequent violations by [redacted in original] and [redacted in original] can be shown, as well as related violations by additional service providers. The basis for the claim appears strong and we already have the interest of the FBI and involvement by a special agent in the Army's CID.
> . . .
> [W]hile it is difficult to estimate the value of the present action, I do have reason to believe it could be anywhere from 5-15 times greater than the previous action you and Richard resolved. This is due to the number of violations, the fact that [redacted in original] and [redacted in original] have committed these violations after previously being fined by the Government, and the fact that it appears likely that this action will be pressed with the threat of a criminal prosecution due to the FBI's interest, rather than as a civil matter. Given the amount of recovery at stake, I am open to sharing in the recovery as an expense in order to bring in a lawyer with your experience in these matters to help maximize the recovery and ensure that the action is successful.

Exhibit B, August 21, 2019 Email from Brian Soriano to Michael Hirst; Dckt. 17 at 3-4.

Mr. Soriano demonstrates that as of August 21, 2019, substantial investigation had been done and the Defendant-Debtor believed that Defendant-Debtor had highly valuable claims, with a projected value (before expenses) of $6.4 Million to $19.3 Million. Even allowing for plaintiff's counsel exuberance, in light of Defendant-Debtor prior success in identifying such claims, Defendant-Debtor and Mr. Soriano were aware of some very substantial claims that Defendant-Debtor believed he could prosecute.

Defendant-Debtor's Chapter 7 case was filed on May 21, 2019, three months before Mr. Soriano sending his email touting the highly valuable claims that Defendant-Debtor was seeking to prosecute with Mr. Soriano's assistance. Mr. Soriano's email and testimony does not identify how long he had been working on investigating this new claim with the Defendant-Debtor.

However, in his 2004 Examination Defendant-Debtor admits that he became aware of this claim that he was to prosecute and for which he engaged Mr. Soriano, stating under penalty of perjury in the 2004 Examination:

> -Page 24 -
> 23. Q. Okay.· Let me ask it this way:· Did you become
> 24 aware of the facts or circumstances that give rise to
> 25 this other potential whistleblower claim before you
>
> -Page 25 -
> 1 filed for bankruptcy?· Which was this year, of course.
>
> 2 A. Repeat your question.
>
> 3 Q. Did you become aware of the facts or
> 4 circumstances giving rise to this potential
> 5 whistleblower claim prior to the time that you filed for
> 6 bankruptcy?
>
> 7 A. Yeah.

2004 Examination (identified by page and line numbers); Dckt. 15.

Defendant-Debtor unequivocally states that he was aware the facts and circumstances that existed upon which he would assert. This is consistent with Mr. Soriano's statements in his email, that by August 21, 2019, just three months after the bankruptcy case was filed, he had communicated with witnesses, identified other possible defendants, and had developed "the interest of the FBI and involvement by a special agent in the Army's CID," as well as he was "trying to finalize the complaint and prepare for its filing." Exhibit B, Dckt. 17.

Sufficient grounds have been established for the obligation to be nondischargeable pursuant to 11 U.S.C. § 727(a)(4)(A).

No Relief Sought Pursuant to 11 U.S.C. § 727(a)(3) and § 723(a)(5)

In the Complaint, Plaintiff states in the final paragraph of the Complaint:

> 9. In light of the foregoing, Debtor should be denied a discharge pursuant to 11 U.S.C. §§ 727(a)(3), 727(a)(4)(A), and/or 727(a)(5).

In the Supplement to the Motion, Plaintiff seeks summary judgment only based on the failure of Defendant-Debtor to disclose the claim(s) that he and Mr. Soriano were actively prosecuting in 2019. 11 U.S.C. § 727(a)(4)(A).

The provisions of 11 U.S.C. § 727(a)(3) provide that a debtor may be denied a discharge in the bankruptcy when:

> (3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case; . . . .

The Motion and Supplement to the Motion do not state grounds for relief under this provision of 11 U.S.C. § 727.

It is also alleged in the Complaint that the Defendant-Debtor be denied his discharge in his bankruptcy case based on 11 U.S.C. § 727(a)(5), which provides for denial of a discharge when:

> (5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities; . . . .

Again, neither the Motion nor the Supplement to the Motion state grounds for relief under this provision of 11 U.S.C. § 727.

The Motion is granted and the court enters a partial summary judgment for Plaintiff that Defendant-Debtor is denied his discharge in Chapter 7 bankruptcy case 19-90464 pursuant to 11 U.S.C. § 727(a)(4)(A) for having made a false oath in failing to list the whistleblower claim that Defendant-Debtor knew the facts of and was preparing to prosecute.

The Motion is denied without prejudice, to the extent Movant believes it was asserting, as to any other claims in the Complaint.

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 Summary Judgment filed by Hirst Law Group P.C. ("Plaintiff") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, the court determining that there are no genuine disputes as to any material fact that Richard Arland Ricks, the Defendant-Debtor, had knowledge at the time the bankruptcy case was filed of the possible whistleblower claim that his non-bankruptcy counsel on that claim valued between $6.4 Million to $19.3 Million, Defendant-Debtor stating under penalty of perjury on Schedule A/B in his bankruptcy "No" that to the Question 33 whether he had any possible claims against anyone, and good cause appearing;
>
> **IT IS ORDERED** that the Partial Summary Judgment granted as provided in Federal Rule of Civil Procedure 56(a), as incorporated into Federal Rule of

Bankruptcy Procedure 7056, for Plaintiff Hirst Law Group, P.C. and against Defendant-Debtor Richard Arland Ricks, denying Defendant-Debtor Richard Arland Ricks his discharge in Bankruptcy Case 19-90464 for:

(1) A monetary judgment in the amount of $100,000.00; and

(2) Determining that the $100,00.00 above judgment are non-dischargeable pursuant to under 11 U.S.C. § 727(a)(4)(A) as independent grounds for determining the judgment nondischargable.

FINAL RULINGS

5. 20-90113-E-7 RUBEN RUIZESPARZA
Pro Se
ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-28-20 [14]

Final Ruling: No appearance at the April 2, 2020 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*),Creditors, and Chapter 7 Trustee as stated on the Certificate of Service on March 1, 2020. The court computes that 32 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $31.00 due on February 14, 2020.

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.

6. 19-91122-E-7 BLF-2 | **MARIBEL SOTO RIVERA** **Pro Se** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **2-19-20 [28]**

Final Ruling: No appearance at the April 2, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 19, 2020. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Objection to Claimed Exemption is sustained, and the exemption in the real property identified as 6225 Howard Avenue, Riverbank, California is disallowed in its entirety.

The Chapter 7 Trustee, Michael D. McGranahan ("Trustee") objects to Maribel Soto Rivera's ("Debtor") claimed exemptions in real property located at 6225 Howard Avenue, Riverbank, California (the "Property") under California law because Debtor failed to specify the code section that allows an exemption and further Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts.

Because Debtor failed to state the applicable California code section, Trustee is unable to determine the appropriate statutory limit or whether the value of the Property exceeds the applicable statutory limit. Further, Trustee must object to the Debtor's claimed exemptions to avoid binding the estate to accept potentially improper exemptions.

Review of Schedule C

A review of Debtor's Schedule C shows that Debtor has listed the Property as having a value and that 100% of the fair market value, up to the applicable statutory limit, is claimed as exempt. Dckt. 20 at 11. However, the Debtor has failed to state any statute allowing her an exemption in the Property.

Debtor claims no other exemptions in any other property of the Debtor.

The court notes that Debtor has not used the correct form for her schedules, using those for a non-individual debtor. Debtor does not list any of her personal property, such as clothing, furniture, and electronics.

Prior Filings

This is not Debtor's first, or even second, recent bankruptcy filing. On November 7, 2019, she filed Chapter 7 Case No. 19-90997, which was dismissed on November 25, 2020, due to failure to timely file Schedules and Statement of Financial Affairs. Before that, Debtor filed Chapter 7 Case No. 19-90784 on August 28, 2019, which was dismissed on September 8, 2019, for failure to file documents.

SUSTAINING OBJECTION TO CLAIM OF EXEMPTION

The Objection to Claim of Exemption in the Property is sustained, and it is disallowed in its entirety. While saying that an exemption in property worth $135,000 is claimed, no statutory basis is stated. list The Chapter 7 Trustee's Objection is sustained, and the claimed exemptions are disallowed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by Michael D. McGranahan ("the Chapter 7 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed exemption for 100% of fair market value on real property 6225 Howard Avenue, Riverbank, California is disallowed in its entirety.

7.	**20-90122-E-7** **TPH-1**	**JUAN MORALES ROQUE AND MARIA MORALES** **Thomas Hogan**	**MOTION TO COMPEL ABANDONMENT** **2-14-20 [5]**

Final Ruling: No appearance at the April 2, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 14, 2020. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Motion to Compel Abandonment is 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 Juan Carlos Morales Roque and Maria Guadalupe Morales ("Debtors") requests the court to order Michael D. McGranahan ("the Chapter 7 Trustee") to abandon property commonly known as:

> (1) Morales Trucking, Debtor's sole proprietorship business operated out of Debtor's residence and
>
> (2) "Business Assets" consisting of: Business Combined Checking and Savings Account with Bank of America with a balance of $757.07 (as of the date of filing), Business Combined Checking and Savings Account with Travis Credit

Union with a balance of $5.52 (as of the date of filing), and a 2015 Freightliner Cascadia valued at $40,000.00 (as of the filing date) ("Property").

The Property, specifically the 2015 Freightliner Cascadia, is encumbered by the lien of Freedom Truck Finance, securing a claim of $49,669.00.

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

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 Juan Carlos Morales Roque and Maria Guadalupe Morales ("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:

(1) Morales Trucking, Debtor's sole proprietorship business operated out of Debtor's residence and

(2) "Business Assets" consisting of: (A) Business Combined Checking and Savings Account with Bank of America with a balance of $757.07 (as of the date of filing), (B) Business Combined Checking and Savings Account with Travis Credit Union with a balance of $5.52 (as of the date of filing), and (C) the 2015 Freightliner Cascadia valued at $40,000.00 (as of the filing date),

and listed on Schedule A / B by Debtor are abandoned by the Chapter 7 Trustee, Michael D. McGranahan ("Trustee") to Juan Carlos Morales Roque and Maria Guadalupe Morales by this order, with no further act of the Trustee required.

8. **14-90024-E-7** **LAURA GRAYBILL** **MOTION TO AVOID LIEN OF**
GMW-2 **Michael Williams** **CITIBANK, N.A.**
3-5-20 [25]

Final Ruling: No appearance at the April 2, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on March 5, 2020. By the court's calculation, 28 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 Citibank, N.A. ("Creditor") against property of the debtor, Laura M Graybill ("Debtor") commonly known as 1211 Allen Court, Oakdale, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $6,171.30. Exhibit A, Dckt. 28. An abstract of judgment was recorded with Stanislaus County on August 16, 2013, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $160,000.00 as of the petition date. Dckt. 12. The unavoidable consensual liens that total $190,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 12. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $500.00 on Schedule C. Dckt. 12.

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 Laura M. Graybill ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Citibank, N.A., California Superior Court for Stanislaus County Case No. 682522, recorded on August 16, 2013, Document No. 2013-0070508-00, with the Stanislaus County Recorder, against the real property commonly known as 1211 Allen Court, Oakdale, 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.

9.	**19-90582-E-7** **ICE-1**	**RICHARD/VERNA EVANS** **Nicholas Wajda**	**MOTION TO EMPLOY WEST AUCTIONS, INC. AS AUCTIONEER(S)** **2-18-20 [22]**

Final Ruling: No appearance at the April 2, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2020. 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Employ is granted.

Irma Edmonds ("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. Trustee seeks the employment of Auctioneer to liquidate a 2014 Toyota Prius, currently in Debtor's possession ("Property").

Trustee argues that Auctioneer's appointment and retention is necessary because Trustee needs such services to liquidate certain property. The terms of employment as stated in the Motion are:

1. Auctioneer to actively advertise the sale of the Property;

2. Auctioneer to assist in storing the Property until sold;

3. Auctioneer to generally perform and assist the Trustee in matters which are customarily done and performed by Auctioneers in connection with the auction sale of the Property;

4. Auctioneer to paid a 20% commission for the sale of the Property; and

5. Auctioneer to seek additional reasonable expenses currently estimated to be $1,000.00 incurred in preparing the Property for the sale, including inspecting, transporting, storing, and/or vehicle document preparation.

Donna Bradshaw, a Vice President of West Auctions, Inc., testifies that she will market advertise the Property owned by the estate; and generally perform and assist the Trustee in matters which are customarily done and performed by Auctioneers in connection with the auction sale of Property. Donna Bradshaw testifies 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.

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ West Auctions, Inc. as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Motion. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Irma Edmonds ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, and Trustee is authorized to employ West Auctions, Inc. as Auctioneer for Trustee on the terms and conditions as set forth are:
>
> 1. Auctioneer to actively advertise the sale of the Property;

2. Auctioneer to assist in storing the Property until sold;

3. Auctioneer to generally perform and assist the Trustee in matters which are customarily done and performed by Auctioneers in connection with the auction sale of the Property;

4. Auctioneer to paid a 20% commission for the sale of the Property; and

5. Auctioneer to seek additional reasonable expenses currently estimated to be $1,000.00 incurred in preparing the Property for the sale, including inspecting, transporting, storing, and/or vehicle document preparation.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

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