

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 June 1, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.**

April 30, 2020 at 10:30 a.m.

1.	<u>20-21000-A-7</u> <u>TBK-1</u>	FRANK/VERONICA FERRIERA Taras Kurta	MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13 4-10-20 <u>[22]</u>
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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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 15, 2020. By the court's calculation, 15 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 **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, -----
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The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is denied.

Frank John Ferriera and Veronica Ferriera (“Debtors”) seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007). The Declaration of Taras Kurta (“Debtor’s Counsel”) was filed in support of the Motion. Dckt. 25.

Debtor’s Counsel asserts that the case should be converted because at the time of filing the Chapter 7 case there was reason to believe that Debtors could proceed as a Chapter 7 case but after Debtors provided additional financial documentation and information, Debtors are able to pay some of their debts through a Chapter 13 Plan. *Id.* ¶¶ 3-4. Counsel believes that Debtors will be able to proceed with the already filed proposed Chapter 13 Plan. *Id.* ¶ 5.

INSUFFICIENT NOTICE OF MOTION

Applicant provided 15 days’ notice of this Motion. Federal Rule of Bankruptcy Procedure 2002(a)(4) requires a minimum of twenty-one days’ notice of the hearing. Applicant has provided 15 fewer days than the minimum. Therefore, the Motion is denied without prejudice.

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 Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 filed by Frank John Ferriera and Veronica Ferriera (“Debtors”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

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

Here, Debtor’s case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties. No opposition has been filed.

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

~~**IT IS ORDERED** that the Motion to Convert is granted, and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code.~~

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.

Sufficient Notice **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on April 2, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien is granted.

April 30, 2020 at 10:30 a.m.
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A. Hausler (“Debtor”) commonly known as 143 Rocky Hill Road, Vacaville, California (“Property”).

Insufficient Notice

Debtor failed to file a Certificate of Service for the Amended Notice of Hearing amending the courtroom number for the April 30 hearing.

Debtor may address this oversight. At the hearing, **XXXXXX**

A judgment was entered against Debtor in favor of Creditor in the amount of \$73,050.84. Exhibit A, Dckt. 25. An abstract of judgment was recorded with Solano County on February 26, 2015, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$115,300.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$104,000.00 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000.00 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

_____~~The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Joseph R. Hausler, Jr. And Nicole A. Hausler (“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 Kelkris Associates, Inc., dba Credit Bureau Associates, California Superior Court for Solano County Case No. FCS037176, recorded on February 26, 2015, Document No. 201500014850, with the Solano County Recorder, against the real property commonly known as 143 Rocky Hill Road, Vacaville, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.~~

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 16, 2020. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

<p>The Motion to Compel Abandonment is granted.</p>
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After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b).^{FN.1.} 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).

FN.1. The court notes that the notice provided does not meet the standard of Local Bankruptcy Rules 9014-1(d)(3)(B)(ii) and (iii). Notice does not include statement about viewability of tentative rulings on court website. Because the notice complies substantially with all other requirements and the nature of the property abandoned, the court will waive the defect. However, counsel is reminded failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

The Motion filed by Consuelo Veronica Morrison (“Debtor”) requests the court to order Sheri L. Carello (“the Chapter 7 Trustee”) to abandon property commonly known as 5821 Ponderosa

Way, Magalia, California (“Property”). The Property is encumbered by the first mortgage of Provident Credit Union, securing a claim of \$198,966.62. An additional amount of approximately \$111,346.43 is owed to Wells Fargo for a home equity loan. The Declaration of Consuelo V. Morrison has been filed in support of the Motion and values the Property at \$450,000.00.

Trustee has no opposition to the abandonment. Trustee’s April 22, 2020 Docket Entry Statement.

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 Consuelo Veronica Morrison (“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 5821 Ponderosa Way, Magalia, California and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Sheri L. Carello (“Trustee”) to Consuelo Veronica Morrison by this order, with no further act of the Trustee required.

**TOYOTA MOTOR CREDIT
CORPORATION VS.**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on March 18, 2020. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Toyota Motor Credit Corporation, Servicer for Toyota Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2019 Toyota Tacoma, VIN ending in 2926 ("Vehicle"). The moving party has provided the Declaration of Rahnae Spooner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Jesse James Foster ("Debtor"). Debtor is the lessee of the Vehicle.

Movant argues Debtor has not made two post-petition payments, with a total of \$745.80 in post-petition payments past due. Declaration, Dckt. 34. Movant also provides evidence that there are seven pre-petition payments in default, with a pre-petition arrearage of \$2,610.30. *Id.*

TRUSTEE'S NON-OPPOSITION

Trustee has no opposition to the relief requested. Trustee's April 30, 2020 Docket Entry Statement.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the

debt secured by this asset is determined to be \$25,686.90 (Declaration, Dckt. 34), while the value of the Vehicle is determined to be \$25,850.00, as stated in Schedule B filed by Debtor.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Toyota Motor Credit Corporation, Servicer for Toyota Lease Trust (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2019 Toyota Tacoma, VIN ending in 2926 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.

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 Chapter 7 Trustee, Creditor, and Office of the United States Trustee on January 15, 2020. 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). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of Sierra Central Credit Union ("Creditor") against property of the debtor, Patricia Lynn Archuleta ("Debtor") commonly known as 615 Spring Creek Court, Yuba City, California ("Property").

The Motion alleges that a judgment was entered against Debtor in favor of Creditor in the amount of \$9,320.60. Debtor refers to Exhibit A. However, no exhibits were filed with this Motion. There is no copy of the abstract of judgment filed in support of the Motion.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$340,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$177,326.86 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 \$162,673.14 on Schedule C. Dckt. 1. Debtor asserts that Creditor's lien impairs the exemption to which the Debtor has claimed.

Debtor provides her Declaration, which states the following testimony:

1. At the time of filing her petition, the Property was encumbered by a first deed of trust, held by California Department of Veteran Affairs

in the amount of \$177,326.86.

2. There is a judicial lien against me and recorded in favor of Sierra Central Credit Union in the County of Sutter, recorded on January 24, 2017 as number 2017-0001027. A True and Correct copy of the Abstract recorded as described is attached herewith as Exhibit A.
3. Debtor claimed an exemption to the property under C.C.P. §704.730 in the amount of \$162,673.14 which can be found on the Amended Schedule C.

Though Debtor also refers to Exhibit A, no such exhibit was filed.

Creditor's Opposition

Creditor filed an Opposition on January 30, 2019. Dckt. 23. Creditor asserts that liens are only avoided to the extent they impair an exemption claimed by Debtor. Dckt. 23. That a Court determines impairment if a lien impairs an exemption to the extent that the amount of the lien, plus the amount of all other liens on the property plus the amount the debtor could claim as exempt if there were no liens on the property, exceeds the value the debtor's interest in the property would have in the absence of any liens. *Id.* Additionally, Creditor states that value should be determined *as of the date of the filing of the petition. Id.* (Emphasis added).

Creditor then claims that debtor's valuation of the home of \$340,000.00 is incorrect and provides the Court higher valuations of the home from online real estate databases. *Id.* These databases value the home at \$375,143.00 to \$384,000.00 and are time-stamped January 30, 2020. Dckt. 25. Yet, these valuations lack a determination date of the filing of the petition as Creditor so forcefully argues.

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

Debtor's Reply

Debtor filed a Reply on February 4, 2020. Dckt. 27. Debtor asserts Creditor's declaration of Stephanie Terrell contains nothing to suggest that Mrs. Terrell is personally qualified to give an expert opinion regarding the value of the Property. Dckt. 27. Debtor also asserts that the declaration is problematic because:

- (1) the reports are dated months after the filing date of the petition and fail to shed any light on the value of the Property as of the petition filing date, and
- (2) there is nothing to suggest that any applicable hearsay exception applies to the website where the figures were obtained by Creditor. *Id.*

Though filing a Reply, Debtor again failed to provide the court with a copy of the judgment.

Supplemental exhibits, including the abstract of judgment, were filed on February 13, 2020. Dckt. 29.

DISCUSSION

With respect to the value of the Property, the court has been provided with evidence in the form of the Debtor's owner's opinion of value. That is \$340,000.

For Creditor, the Declaration of Stephanie Terrell makes its asserted valuation problematic. Ms. Terrell states that she is employed as a "Bankruptcy Repossession Legal Specialist" by Creditor. Ms. Terrell provides no explanation of what such specialist title means and what specialized knowledge she has.

Ms. Terrell testifies that she performed online searches for values of the Property. She then directs the court to exhibits so that the court can see what Ms. Terrell heard the online "persons" say to her about value. The court finds that Ms. Terrell telling the court what she heard said by another online person not to be credible testimony.

Creditor's obligation is \$9,320.60. It may be that such small amount does not warrant the cost and expense of providing the court with proper testimony of value and properly authenticated evidence of value. But that is not an exception for Creditor to ignore the Federal Rules of Evidence or not have to present credible evidence.

The court has computed the amount of value in the Property for Creditor's lien for purposes of this avoidance Contested Matter as shown in the chart below.

	Debtor's Assertions	Creditor's Assertions
Value	\$340,000	\$380,000
Dept. of Veteran Affairs Secured Claim	(\$177,326)	(\$177,326)
Debtor's Exemption	(\$162,673)	(\$162,673)
Value for Creditor's Lien	\$1	\$40,001

Debtor states that an exemption of \$162,673 is claimed on Schedule C. A review of Schedule C shows that this odd amount exemption is claimed pursuant to California Code of Civil Procedure § 704.730. That provision of California exemption law provides for the following amounts of homestead exemptions:

§ 704.730. Amount of homestead exemption

(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars (\$75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars (\$100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars (\$25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars (\$35,000) and the sale is an involuntary sale.

It appears, though not stated, Debtor asserts the right to a homestead exemption amount of \$175,000 pursuant to California Code of Civil Procedure § 704.730. It appears that rather than stating the full amount of the homestead exemption, on Schedule C Debtor merely stated the amount estimated to be the equity in the property above the senior lien, so the amount on Schedule C is a little understated.

Given the evidence of value at \$370,000, the senior lien on the property being (\$177,326), and the Debtor electing to claim an exemption of only \$162,673, there is \$1 in value to secure Creditor's claim.

Supplemental Pleadings

On April 2, 2020, Debtor filed a Reply updating the court as to the Property appraisal. Dckt. 36. After a mutually selected appraiser was hired by Sierra Central, the appraised value came in at \$350,000, an amount within Debtor's allowable homestead exemption. *Id.* at p.1. Indeed, this amount is closer to Debtor's valuation of the Property at \$340,000.00 than that of Creditor's original valuation.

As a result, Debtor asserts that she amended her exemption to include any amount up to the statutory maximum allowable. *Id.* at p. 2. On April 1st, Debtor filed an Amended Schedule C. Dckt. 31. On this Amended Schedule, Debtor now asserts the right to a homestead exemption as 100% of fair market value, up to any applicable statutory limit pursuant to California Code of Civil Procedure § 704.730. *Id.* p. 3.

On April 2, 2020, Creditor filed a Notice of Withdrawal. Dckt. 33.

The court finds that 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 Patricia Lynn Archuleta ("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 Sierra Central Credit Union, California Superior Court for Sutter County Case No. CVC16-1305, recorded on January 24, 2017, Document No. 2017-0001027 with the Sutter County Recorder, against the real property commonly known as 615 Spring Creek Court, Yuba City, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Tentative Ruling: The Motion to Avoid Lien and For Return of Monies 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 Creditor on March 16, 2020. By the court's calculation, 45 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).

However, as addressed below, the Motion and supporting pleadings have not been served as required by Federal Rule of Bankruptcy Procedure 9014(b).

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of GCFS, Inc. ("Creditor") against property of the debtor, Steven Lloyd Blankenship ("Debtor") identified as \$451.72 in garnished funds held in custody by the Los Angeles County Sheriff ("Property").

According to Debtor, on February 29, 2012, a judgment was entered against Debtor in favor of Creditor in the amount of \$20,334.54. See Exhibit 2, p. 2, Dckt. 18. A Writ of Execution on the judgment was issued on March 9, 2019. See Exhibit 3, p. 1.

Service of Pleadings

The Certificate of Service states that Margie Vergara served the Notice of Hearing on the GCFS, Inc.'s agent for service of process, GCFS, Inc. at a street address, and the Los Angeles County Sheriff. Dckt. 19. It further states that the notice has a summary of relief requested by motion "per Local Bankruptcy Rule 9014-1(d)(3)(B)(iv).

However, there is no evidence that the motion itself and the supporting pleadings have been served on anyone against whom the relief is requested.

Beginning with Local Bankruptcy Rule 9014-1(d)(3)(B)(iv), that provision merely requires that the notice of hearing on a motion or application include a summary of the relief requested. The reason for this is that for some motions, in addition to service of the pleadings the persons against whom relief is requested, other parties in interest in the case must be given notice of the motion. For example, see Federal Rule of Bankruptcy Procedure 2002(a)(2), (3). This does not establish the requirements for service of the pleadings on the persons against whom relief is requested.

Federal Rule of Bankruptcy Procedure 9014(a) requires that the motion and supporting pleadings in the same manner as a summons and complaint. Here, the Motion and the supporting pleadings have not been served.

Review of Motion

As discussed above, Debtor seeks to avoid a judgment lien on a garnishment obtained by Creditor.

Pursuant to Debtor's Schedule A, the subject personal property has an approximate value of \$451.72 as of the petition date. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$1,000.00 on Schedule C. Dckt. 1.

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

Unfortunately, effective service on the party against whom the relief is requested, Creditor, has not been documented.

Additionally, in the prayer, Debtor requests injunctive relief against the Los Angeles County Sheriff. First, service of the pleadings has not been document for service on a government official. Second, no basis for injunctive relief by motion has been provided. See, Fed. R. Bankr. P. 7001.

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Steven Lloyd Blankenship ("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 avoid the judgment lien of GCFS, Inc., is denied without service due to a defect in service.

7. 20-21156-A-7 SARAH DAVIS
SLH-1 Seth Hanson

**MOTION TO COMPEL
ABANDONMENT
4-7-20 [15]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 7, 2020. By the court's calculation, 23 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 Sarah Anne Davis (“Debtor”) requests the court to order Hank Spacone (“the Chapter 7 Trustee”) to abandon property commonly known as 6950 Woodmore Oaks, Orangevale, California (“Property”). The Property is encumbered by the lien of Longbridge Financial LLC, securing

a claim of \$165,059.39. The Declaration of Sarah Anne Davis has been filed in support of the Motion and values the Property at \$320,000.00.

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 Sarah Anne Davis (“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 6950 Woodmore Oaks, Orangevale, California and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Hank Spacone (“Trustee”) to Sarah Anne Davis by this order, with no further act of the Trustee required.

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

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 April 9, 2020. By the court's calculation, 21 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, -----.

<p>The Motion for Allowance of Professional Fees is granted.</p>

J. Michael Hopper, the Chapter 7 Trustee, ("Applicant") for the Estate of Acacia Cremation and Burial Society, Inc. ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period May 19, 2019, through February 3, 2020.

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 Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by a trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; see also *Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include general case administration; sale of estate assets; employment of professionals; and engaged in negotiations to solve several estate matters. The Estate has \$217,140.34 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.

Case Administration: Applicant spent 53.60 hours in this category. Applicant performed general case administrations duties such as reviewing Debtor's petition, related documents, proofs of claim; investigated assets; reviewed bank statements; employed counsel; communicated with counsel of need to abandon property at the leased properties; engaged in negotiations with various third parties to solve claims, sale of assets, and stipulations; employed tax professionals; reviewed tax returns; communicated extensively with counsel on the above matters; and prepared the proposed claims distribution.

Applicant requests the following fees:

25% of the first \$5,000.00	\$1,250.00
10% of the next \$45,000.00	\$4,500.00
5% of the next \$950,000.00	\$11,110.09
3% of the balance of \$0.00	\$0.00
Calculated Total Compensation	\$16,860.09
Plus Adjustment	\$0.00
Less Previously Paid	\$0.00
Total First and Final Fees Requested	\$16,860.09

The fees are computed on the total sales generated \$272,201.82 of net monies (exclusive of these requested fees and costs.

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$16,860.09 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has \$217,140.34 of unencumbered monies to be administered. The Chapter 7 Trustee engaged in the following: general case administration; sale of estate assets; employment of professionals; and engaged in negotiations to solve several estate matters. Applicant's efforts have resulted in a realized gross of \$272,201.82 recovered for the estate. Exhibit B, Dckt. 86.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

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

Fees	\$16,860.09
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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 J. Michael Hopper, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that J. Michael Hopper is allowed the following fees and expenses as a professional of the Estate:

J. Michael Hopper, the Chapter 7 Trustee

Fees in the amount of \$16,860.09.

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.

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 April 9, 2020. By the court's calculation, 21 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, -----.

<p>The Motion for Allowance of Professional Fees is granted.</p>

Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") for J. Michael Hopper, 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, 2019, through March 23, 2020. The order of the court approving employment of Applicant was entered on May 30, 2019. Dckt. 16. Applicant requests fees in the amount of \$21,547.50 and costs in the amount of \$441.44.

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 general case administration; assisted Trustee with the sale of estate assets and prepared the necessary related documents; prepared applications for employment of professionals; and assisted Trustee in negotiations to solve several real estate matters. The Estate has \$217,140.34 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 Disposition: Applicant spent 36.6 hours in this category. Applicant communicated with Trustee; assisted Trustee in investigating the estate's interest in potential assets; prepared the sale agreement for Trustee's sale of the sale assets; and prepared the motion for approval of the sale.

Fee/Employment Applications: Applicant spent 7.6 hours in this category. Applicant prepared the employment applications; prepared the application for approval of Trustee's compensation and prepared this final fee application.

Asset Analysis and Recovery: Applicant spent 5.6 hours in this category. Applicant prepared Trustee's motion to abandon property at the leased properties; and assisted Trustee in negotiating the allowed claim for the Landlord.

Settlement: Applicant spent 5.6 hours in this category. Applicant prepared stipulation and the motion for approval of the stipulation.

Case Administration: Applicant spent 2.1 hours in this category. Applicant reviewed Debtor's petition; communicated with Trustee and third parties regarding personal property left behind on premises, emailing with Trustee regarding closing the case and dismissal of state court case.

Tax Matters: Applicant spent 1.6 hours in this category. Applicant prepared the motion for administrative expenses and authority to pay the Franchise Tax board's administrative tax claims.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
J. Russell Cunningham	36.5	\$425.00	\$15,512.50
Nicholas L. Kohlmeyer	3.6	\$225.00	\$810.00
	19.0	\$275.00	<u>\$5,225.00</u>
Total Fees for Period of Application			\$21,547.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$441.44 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	\$0.10	\$52.30
Postage		\$150.05
Advances (Service Fees and Recording Fee)		\$239.09
		\$0.00
Total Costs Requested in Application		\$441.44

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$21,547.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$441.44 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	\$21,547.50
Costs and Expenses	\$441.44

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

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

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

The Motion for Allowance of Fees and Expenses filed by Desmond, Nolan, Livaich & Cunningham (“Applicant”), Attorney for J. Michael Hopper, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Desmond, Nolan, Livaich & Cunningham is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Livaich & Cunningham, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$21,547.50
Expenses in the amount of \$441.44,

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

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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 14, 2020. By the court's calculation, 47 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss Duplicate Case 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 Dismiss Duplicate Case is granted, and Case No. 20-21167 is dismissed.

Chapter 7 Debtor, Veronica Preciado ("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. The Declaration of Michael Johnson ("Debtor's Counsel") (Dckt. 14) and the Declaration of Veronica Preciado (Dckt. 16) have been filed in support of the Motion.

DISCUSSION

On November 19, 2019, Debtor filed a voluntary Chapter 7 petition, case number 2019-27036. The case was discharged on February 24, 2020, and terminated on February 28, 2020. Johnson Declaration at 2, ¶ 1. Debtor's Counsel testifies under penalty of perjury that on February 28, 2020, due to an inadvertent computer-generated, clerical error, not intended by Debtor, the instant case was filed as a duplicate case, case number 20-21167. *Id.* ¶ 2.

A review of Case No. 2019-27036 shows that the case was filed on November 19, 2019 and discharged on February 24, 2020. Dckts. 1, 15. Additionally, a look at the petition and other documents filed on both cases reflect that they are in fact identical cases.

Thus, the motion is granted, and Case Number 20-21167 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, Veronica Preciado (“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 20-21167 is dismissed as being an erroneous duplicate filing for Debtor.

IT IS FURTHER ORDERED that the Clerk of the Court is directed to close this case.

DEBTOR DISMISSED: 01/30/2020

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 in Possession and Office of the United States Trustee on April 9, 2020. By the court's calculation, 21 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 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.
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Goodrich & Associates, the Attorney ("Applicant") for United Charter, LLC, the Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 31, 2017, through February 21, 2019. The order of the court approving employment of Applicant was entered on June 15, 2017. Dckt. 28. Applicant requests fees in the amount of \$214,235.00 and costs in the amount of \$1,378.80.

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 general case administration, assisting with asset recovery and disposition, business operations, cash collateral issues, defending motions for relief from the stay and a motion to dismiss or convert, claims objections, preparing fee and employment applications, determination of insurance proceeds, obtaining post-petition financing, and drafting plan and disclosure statements. The Clerk of the Court is presently holding the sum of \$198,779 for the purpose of paying Applicant’s compensation and reimbursement of expenses to the extent allowed by an order of this court. 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 58.9 hours in this category. Applicant provided the following services but are not limited to: representing the DIP at the Initial Debtor Interview, the Section 341 hearing, and at each Status Conference; assisting the DIP in opening appropriate debtor in possession bank accounts, filed operating reports and properly disclosed and performed its fiduciary duties to creditors; and maintained adequate insurance for all estate property.

Asset Recovery: Applicant spent 11 hours in this category. Applicant assisted DIP with the engagement of an appraiser and successfully negotiated a tolling agreement and, as part of its original reorganization plan, the transfer of such preference/fraudulent conveyance claims to a Liquidating Trustee.

Business Operations: Applicant spent 11.3 hours in this category. Applicant assisted the DIP in navigating legal issues arising in the operation of its leasing activities, such as lease disputes, lease negotiations and a “lot line adjustment” that the DIP initially hoped would allow sufficient liquidity for a partial sale of its multi-unit warehouse property.

Cash Collateral Issues: Applicant spent 106.8 hours in this category. Applicant assisted and

communicated extensively with DIP and East West Banks's ("EWB") counsel in dealing with issues arising from East West Bank's demands for all excess rents.

Relief from the Stay: Applicant spent 93.7 hours in this category. Applicant defended the estate from secured creditors attempting to foreclose on estate property. It also sometimes includes services in defending against companion motions, such as the three motions the East West Bank unsuccessfully added to their relief from stay motion (motion for turnover of cash collateral, motion to convert, motion to dismiss and motion for relief from stay).

Claims Objections: Applicant spent 170.1 hours in this category. Applicant assisted DIP in objecting to two claims, those of East West Bank and Wayne Bier (including the court's four and half days evidentiary hearing over this claim).

Asset Disposition: Applicant spent 4.7 hours in this category. Applicant assisted DIP in efforts to liquidate the DIP's real property or to collect rental income from the DIP's tenants. In this case, the primary such activity was the failed attempt to sell the DIP's real estate at public auction soon after the case was filed.

Fee/Employment Applications: Applicant spent 44.1 hours in this category. Applicant ensured DIP performed its fiduciary duties by obtaining court approval of the employment of all professionals. In this case, such professionals included Applicant, the Debtor's prepetition accountants (Mok Accountancy), Team VRG/John Anderson, and Ten-X.

United States Trustee Motion to Dismiss/Convert: Applicant spent 40.9 hours in this category. Applicant opposed the motion by a single party in interest, the United States Trustee, which sought to dismiss or convert the case. Applicant successfully defended the motion, which was also opposed by both secured creditors.

Plan and Disclosure Statement: Applicant spent 123.3 hours in this category. Applicant assisted DIP with the two proposed plans filed during this case. The first plan was eventually supported by EWB after they tried unsuccessfully to obtain relief from the automatic stay and foreclose on the DIP's property or, alternatively, to wrest control of it with the appointment of a trustee, either under Chapter 11 or Chapter 7. The second plan was filed in late 2019 after EWB received approximately \$3,660,000 of insurance proceeds and, as a result, the DIP was able to use the equity in its non-fire damaged property to refinance both EWB's and Bier's remaining claims, even at a discount. The combined discount totaled over \$200,000, more than Applicant's fees and costs incurred over the past several years.

Insurance Proceeds: Applicant spent 7.5 hours in this category. Applicant assisted DIP in determining whether DIP should use a public adjuster or accept the settlement proceeds offered by Farmers. Applicant also assisted the DIP in determining that EWB was entitled to received the full insurance proceeds as its collateral if the DIP was unable or unwilling to rebuild. Applicant worked with the DIP's insurance agent, Sheila Quan, as well as with an outside consultant Applicant located, Guy Kornblum, who facilitated a prompt settlement of the DIP's insurance claim.

Financing: Applicant spent 46.6 hours in this category. Applicant worked to obtain Court approval of the refinance with Grand Pacific for post-petition financing and persuaded Grand Pacific to

drop requirement that the case be dismissed prior to its loan being funded.

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
Jeffrey Goodrich	612.1	\$350.00	\$214,235.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$214,235.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,378.80 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
PACER		\$959.50
Postage		\$419.30
		\$0.00
Total Costs Requested in Application		\$1,378.80

FEES AND COSTS & EXPENSES ALLOWED

Fees and Expenses

Applicant seeks to be paid a single sum of \$175,000.00 for its fees and expenses incurred for Client, after application of pre-petition retainer of \$25,000.00. First and Final Fees and Costs in the amount of \$200,000.00 are approved pursuant to 11 U.S.C. § 330 and \$175,000.00 are authorized to be paid by Debtor in Possession / Clerk of the Court from the available funds held by the Clerk of the Court in a manner consistent with the order of distribution in a Chapter 11 case. Applicant is authorized to apply the \$25,000.00 pre-petition retainer held.

Applicant is allowed the following as compensation as counsel for the Debtor in possession:

Fees and Expenses	\$200,000.00
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for which Applicant shall first apply the \$25,000.00 pre-petition retainer, the Clerk of the Court shall disburse \$175,000.00 from the \$198,779 of monies deposited with the Clerk pursuant to the Order of this Court (Dckt. 500) for the purpose of paying Applicant's compensation and reimbursement of expenses allowed by an order of this court,

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 Goodrich & Associates (“Applicant”), Attorney for United Charter, LLC, the Debtor in Possession, (“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 Goodrich & Associates is allowed the following fees and expenses as a professional of the Estate:

Goodrich & Associates, Professional employed by the Debtor in Possession

Fees and Expenses in the amount of \$200,000.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor in Possession.

IT IS FURTHER ORDERED that the Clerk of the Court is authorized to pay Applicant the sum of \$175,000.00 from the funds held. The Clerk of the Court shall disburse any remaining monies deposited by the Debtors with the Clerk pursuant to the prior order of the court (Dckt. 500) back to the Debtors.

IT IS FURTHER ORDERED that Applicant shall apply the \$25,000.00 pre-petition retainer towards the fees and expenses allowed by this Order.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 7, 2020. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Motion to Sell Property is XXXXX.

The Bankruptcy Code permits Geoffrey Richards, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the bankruptcy estate's interest in the estate of Rebecca Alda Cordero (deceased mother of Debtor Rodina Cordero Ventura) ("Inheritance Interest"), including the interest over five properties in the Phillippines held by Ms. Cordero at the time of her death ("Phillippines Property") (collectively "Property"). Debtor Rodina Cordero Ventura is a surviving heir and also specifically named as a beneficiary under Ms. Cordero's will.

The proposed purchaser of the Property is Michael J. Harrington ("Buyer"), and the terms of the sale are (for the full terms of the Sale and Assignment Agreement see Exhibit D, Dckt. 276):

- A. Purchase price of \$10,000.00 plus 25% of any gross recoveries in excess of \$40,000.00 received by Harrington on account of the inheritance interest. Initial deposit of \$2,500.00. The remaining amount of \$7,500.00

is due within 14 days of a final non-appealable order from the court.

- B. The sale is subject to overbidding.
- C. In the event that Buyer has not complied with Agreement provisions, Trustee will provide Buyer with written notice providing 10 days for Buyer to comply or acknowledge lack of compliance. Period may be extended by mutual agreement.
- D. Upon entry of order granting the motion and after Trustee has received the initial funds of \$10,000.00, all of the Bankruptcy estate's interest shall be assigned to Buyer. Trustee will execute all documents reasonably required to effectuate the assignment.
- E. If and when Phillippines Property interest is sold, Trustee's share is to be maintained in a trust account and sent directly to the trust account of the Chapter 7 Trustee for this matter.
- F. As it pertains to the unsecured claims: fifty percent (50%) of the portions of Gaunia's Proof of Claim No. 2-1 and Villanueva's Proof of Claim No. 3-3 attributable to attorneys' fees owed to Harrington, \$23,000.00 and \$94,782.50 respectively, shall be subordinated to all other general unsecured claims. The portions of Gaunia and Villanueva's respective proofs of claim not subordinated shall receive distribution pursuant to 11 U.S.C. section 726.
- G. Buyer will submit an accounting report and a declaration every time a sale of the Phillippines Interest occurs and Buyer realizes any proceeds on account of the Inheritance Interest. Buyer shall communicate commencing on June 1st, 2020, with Trustee reporting actions taken to collect on the Inheritance Interest. At Trustee's request, Buyer is to submit documents supporting the report within ten (10) days. In the event Buyer fails to provide reports, Trustee will provide Buyer with written notice providing 10 days for Buyer to comply or acknowledge lack of compliance. Period may be extended by mutual agreement.
- H. The Agreement is subject to court's approval.

Overbidding Procedures

Trustee proposes the following overbidding procedures:

- 1. Prior to the hearing on this motion, proposed overbidder must provide the Trustee with a cashier's check in the amount of \$3,500.00 (\$2,500.00 + 1st overbid in the amount of \$1,000.00) and proof of funds of an additional \$15,000.00.
- 2. Any further overbidding proceed in increments of at least \$1,000.00.

3. Prior to the hearing on this motion, any proposed overbidder must provide the Trustee with, and file with a court, a written declaration detailing the proposed overbidder's abilities to successfully liquidate the Inheritance Interest.

OPPOSITION

Debtor filed an Opposition on April 16, 2020. Dckt. 279. Debtor opposes on the basis that:

- A. There is a material dispute fact, as land value of the Phillippines Properties of \$406,697.07 is not minimal.
- B. The sale is not in the best interest of the estate because given the proposed sale of the asset valued by the Motion as \$406,697.07, while the estate will net zero, the attorneys and the priority creditors all will not be paid.
- C. Trustee's attempt to negotiate the unsecured claims attributable to attorneys' fees owed to Buyer into a priority position is improper.

Moreover, Debtor proposes to be an overbidder and will match the present bidder with: (1) a cashier's check in the amount of \$3,500, and (2) proof of funds of an additional \$6,500 within 10 days. Additionally, to the \$10,000 as requested, debtors offer would have no \$40,000 limitation, and a 40% gross recovery to the Estate. Thus, in comparison, according to Debtors, the proposed overbid will match Buyer, have no excess limitation of \$40,000, and increase the gross recovery to 40%. Thus, Debtors conclude their bid would result in a \$210,000 recovery, which would pay Trustee, counsel, and priority creditors.

On April 24, 2010, Creditors Benjamin Zamora Villanueva and Adela Bon Gaunia filed an Objection to Over-Bid of Debtor Rodina Ventura and Supporting Declaration and Exhibits of Michael J. Harrington ("Buyer"). Dckt. 287. Buyer opposes Debtors as a proposed overbidder on the basis that:

- A. Overall, Buyer argues that Debtors have issues with credibility and trustworthiness.
- B. In their Certificate of Dissolution for RML Children Home, Inc. Debtor in her own handwriting stated that "the corporation never incurred any known debts or liabilities." And then went on to falsely state "I declare under penalty of perjury under the laws of State of California that the matters set forth in this certificate are true and correct of my own knowledge." Declaration, ¶ 8. Even though Debtor was part of two state court actions: Benjamin Villanueva's and Adela Gaunia's 2015 ongoing state court actions. *Id.* ¶ 4, 5.
- C. State court action's conclusions of fact found Debtors to have "conspired together to defraud Plaintiff [Creditor Benjamin Villanueva] by creating a new corporation under which to conduct business; and dissolving RML

Children's Home. In an effort to evade payment to Plaintiff under the Settlement Agreement." *Id.* ¶ 9.

- D. Buyer refers to Alta Regional ("ACRC"), apparently a vendor of Debtors' corporation. According to their notice of termination of vendorization (approval to operate) found Debtors to have "wilfully and knowingly made false representation" of required documents to government agencies. *Id.* ¶ 13. Further, that Debtors had forged training information. *Id.* ¶ 14. The organization's letter concludes that "ACRC determines that RML Manteca and RML Pebble Group Homes knowingly and willfully presented false documentation/information to ACRC during quarterly reviews of patient [medical records]." *Id.* ¶ 15.
- E. Debtors have misused the privileges of the bankruptcy court's protections and powers. Debtors failed to inform Creditors that they were closing their business due to having their licenses revoked due to fraudulent documents and lies to the Department of Social Services. *Id.* ¶ 17.
- F. The DCSS letter advising Debtors of the shut down was recently provided to Creditors and outlines that Debtors provided DSS false documents and made false oaths, failed to report injuries to their patients and failed to provide counseling services. Based on the DSS letter, it appears Debtors lied in both state court actions regarding their expenses. *Id.* ¶ 18.
- G. Buyer argues that as shown above, Debtors have significant and continuing challenges regarding veracity and trustworthiness and neither the court nor Trustee should entrust to Debtors this significant asset. Adding that if Debtor Rodina has control of the Phillippines Properties the funds "will likely disappear in the South Pacific like Amelia Earhart did, without a trace." *Id.* ¶ 19.
- H. Further, Buyer argues that Trustee's waiver of the initial \$40,000 is appropriate because the purchase of the interest will require at least \$40,000 in out of pocket funds to purchase this asset, hire counsel in New Jersey and Cebu, and to travel to those places for investigation and court hearings. *Id.* ¶ 20.
- I. The land collection and sale will require eight signatures for there are five other relatives plus the three children. Buyer believes that with his connections and background doing work in the Phillippines, he is best suited to deal with this process. *Id.* ¶ 21.
- J. He believes that unsecured creditors will do better with his deal because in his estimates he estimates that creditors with unsecured claims will get almost 20% in recovery. *Id.* ¶ 22.

DISCUSSION

In the highest of bankruptcy tradition, the proposed purchaser is the litigation mortal enemy of the Debtors. As shown on the court's 11:00 calendar for April 30, 2020, the proposed buyer appears to be seeking to have this court amend an order, with such amendment being advantageous only to the Debtors. The love of litigation is in the air between these parties.

The Trustee's Motion recounts a number of large dollar creditors who are asserting claims in this case. The Trustee acknowledges that he is "uncertain of the scope of the Philippines Property Interest" in light of it not being clear whether it will be under the will or succession law will determine what is distributed to who.

The Trustee reports that the real properties have a high value of approximately \$2.4 Million. Motion ¶ 14, Dckt. 273. Further, that 16.67% of this would be for the bankruptcy estate. On the gross number, the bankruptcy estate's interest has a value of \$400,080. Assuming a 20% overstatement of value and expenses of sale, the court computes that would leave "only" \$320,064 for the bankruptcy estate's interest.

By selling the \$320,064 interest, the Bankruptcy Estate would recover \$10,000 now, and then an additional \$70,016 (25% of amounts over \$40,000). However, that \$70,016 would not be paid until the Trustee would have otherwise received the full \$320,064 (conservatively projected above).

Thus, the benefit for the bankruptcy estate as advanced by the Trustee is that the estate can get \$10,000 today, in exchange for giving away \$240,048 (based on the conservative projection above).

The Motion makes it clear that the bankruptcy estate will remain open, there will be extensive monthly accountings and reports provided by Harrington, and this case will remain open and active until all of the properties are sold and the monies disbursed.

In effect, it appears that this is little more than a contingent fee collection contract, in which the contingent fee is 75%,

$$\frac{\$320,064 \text{ recovery} - (\$10,000 \text{ paid up front} + \$70,016 \text{ received as the property is sold})}{\$320,064 \text{ Total Recovery}}$$

At the hearing, the Trustee explained the underpinnings of his "business judgement" for selling the estate's interest to be paid a discounted amount only when disbursements on those interests are made in the future.

The Trustee explained **XXXXXXXXXX**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

<p>The Motion to Compel Abandonment is XXXXX.</p>

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

The Motion filed by Reece Ventura and Rodina Cordero Ventura ("Debtors") requests the court to order Geoffrey Richards ("the Chapter 7 Trustee") to abandon the following property:

1. Real property commonly known as 10171 McCarron Way, Sacramento, CA, and
2. Personal property listed on Schedule B- Three vehicles: 2006 Ford F250; 2008 Harley Davidson Roadglide; 2006 Ford Econoline E50;
3. Personal Property to be identified as Household Items:

- a. Household goods and furnishings including “furniture, beds, tables, etc.”;
 - b. Electronics including “TV and radios, cellphones”;
 - c. Clothing including “misc. clothes”;
 - d. Jewelry including “costume and valuables”;
 - e. Other household goods including “household good and effects worth \$5k times 2 homes”; and
 - f. Inventory of Safe: 4 passports, 38 special, 3 bullet cartridges, motorcycle glasses,. old rock n republic key chain, airsoft lubricant, last stand parts, mother's personal bible, winchester bullets, fiocchi long rifle bullets, m-223 mount for platform rifles, pearl handles for the 38 special, 2 laser binoculars, pad lock and key, pearl necklaces, pearl costume jewelry, kids costume jewelry, 22 bullets, rifle scope, gun drum, gun nozzle, small safe, marriage certificate, birth certificates, social security cards, bombay jewelry box, and office box full of mother's: bills and personal documents, medical bills, medical records, taxes, household bills, mother's purse, wallet, passport, cell-phone, and calendar.
3. Interest in the Inheritance Interest in other Property than Phillippines Property Interest. (See Chapter 7 Trustee’s Motion to Approve Sale and Assignment. Exhibit D.) (“Property”).

According to Debtor, the Property listed above is exempted as evidenced in schedules A/B and C, and that more than 30 days have passed since the filing of the Schedules and no objection to the claimed exemptions have been filed.

OPPOSITION

Trustee filed an Opposition on April 27, 2020. Dckt. 289. Trustee objects on the basis that:

- A. As it pertains to the real property 10171 McCarron Way, Sacramento, CA- Trustee has not had the opportunity to evaluate the fair market value of the Property and requests a 60 days continuance to allow him to consult with a real estate professional and determine whether a liquidation would result in a meaningful return to unsecured creditors.
- B. As it pertains to the personal property of the 3 vehicles- Trustee has not an opportunity to evaluate the fair market value of the Vehicles and requests a 60 days continuance to allow him to consult with an

auctioneer and determine whether a liquidation would result in a meaningful return to unsecured creditors.

- C. As it pertains to the personal property identified above as “Household Items- Trustee has no opposition to abandoning these items.
- D. As to the Inheritance Interest in other Property than Philippines Property Interest- Trustee asserts that as the entire Inheritance Interest is the subject of a pending sale motion, abandonment of any portion of the same is improper.

Thus, Trustee requests that the motion be denied in part and continued in part.

Creditors Benjamin Zamora Villanueva and Adela Bon Gaunia (“Creditors”) filed an Opposition on April 27, 2020. Dckt. 291. Creditor objects on the following basis:

- A. There are ongoing investigation into Debtors’ misuse of funds from the operation of their business, as well as the obfuscation of the value of assets such as their motor vehicles, and assets which may constitute assets of the probate estate which is subject to a motion to sell.
- B. Debtor does not provide evidence to support their assertion that the assets described are burdensome to the estate.
- C. Debtor assert that the assets have no value to the estate, but Creditors and Trustee are seeking additional time to determine if they are of value to the estate. That discovery is being adversely affected by the current health emergency and Creditors assert that the discovery needed will likely take several months.

Therefore, Creditors request deny the motion as premature and allow Trustee a minimum of six (6) months to complete his review.

DISCUSSION

Household Items

The court determines that the following is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property:

- 3. Personal Property to be identified as Household Items:
 - a. Household goods and furnishings including “furniture, beds, tables, etc.”;
 - b. Electronics including “TV and radios, cellphones”;
 - c. Clothing including “misc. clothes”;

- d. Jewelry including “costume and valuables”;
- e. Other household goods including “household good and effects worth \$5k times 2 homes”; and
- f. Inventory of Safe: 4 passports, 38 special, 3 bullet cartridges, motorcycle glasses,. old rock n republic key chain, airsoft lubricant, last stand parts, mother's personal bible, winchester bullets, fiocchi long rifle bullets, m-223 mount for platform rifles, pearl handles for the 38 special, 2 laser binoculars, pad lock and key, pearl necklaces, pearl costume jewelry, kids costume jewelry, 22 bullets, rifle scope, gun drum, gun nozzle, small safe, marriage certificate, birth certificates, social security cards, bombay jewelry box, and office box full of mother's: bills and personal documents, medical bills, medical records, taxes, household bills, mother's purse, wallet, passport, cell-phone, and calendar.

Remaining Property

As to the remaining property listed above as follows,

- 1. Real property commonly known as 10171 McCarron Way, Sacramento, CA, and
- 2. Personal property listed on Schedule B- Three vehicles: 2006 Ford F250; 2008 Harley Davidson Roadglide; 2006 Ford Econoline E50; and
- 4. Interest in the Inheritance Interest in other Property than Phillippines Property Interest,

the court determines that there are material disputes as to the value of this property and thus as to its benefit to the Estate. Further, both Trustee and Creditors request that enough time be allowed to properly assess values and accommodate for the current health crisis. Trustee requests a 60 day continuance whereas Creditors request a minimum of six months.

At the hearing, **xxxxx**

The Motion is **xxxxx**.

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 Reece Ventura and Rodina Cordero Ventura (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted as to the Property identified as Personal Property to be identified as Household Items:

- a. Household goods and furnishings including “furniture, beds, tables, etc.”;
- b. Electronics including “TV and radios, cellphones”;
- c. Clothing including “misc. clothes”;
- d. Jewelry including “costume and valuables”;
- e. Other household goods including “household good and effects worth \$5k times 2 homes”; and
- f. Inventory of Safe: 4 passports, 38 special, 3 bullet cartridges, motorcycle glasses,. old rock n republic key chain, airsoft lubricant, last stand parts, mother's personal bible, winchester bullets, fiocchi long rifle bullets, m-223 mount for platform rifles, pearl handles for the 38 special, 2 laser binoculars, pad lock and key, pearl necklaces, pearl costume jewelry, kids costume jewelry, 22 bullets, rifle scope, gun drum, gun nozzle, small safe, marriage certificate, birth certificates, social security cards, bombay jewelry box, and office box full of mother's: bills and personal documents, medical bills, medical records, taxes, household bills, mother's purse, wallet, passport, cell-phone, and calendar.

and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Geoffrey Richards (“Trustee”) to Reece Ventura and Rodina Cordero Ventura by this order, with no further act of the Trustee required.

IT IS FURTHER ORDERED that the Motion to Compel Abandonment is **XXXXX**

14. [16-21585-E-11](#) AIAD/HODA SAMUEL
14 thru 16

STATUS CONFERENCE RE:
DOCUMENT FILED BY
DEBTOR AIAD SAMUEL
3-4-20 [[1455](#)]

Debtor's Atty: Pro Se

Notes:

Set by order of the court filed 3/10/20 [Dckt 1456]. Aiad Samuel ordered to appear. Set to be heard in conjunction with other matters on the calendar.

Operating Report filed: 4/20/20

Plan Administrator's Status Report Regarding Aiad Samuel's Letter Document filed 4/16/20 [Dckt 1462]; Exhibits filed 4/16/20 [Dckt 1463]

The Status Conference is XXXXXXXXXX

APRIL 30, 2020 STATUS CONFERENCE

This Chapter 11 Case has continued forward, with a series of status reports filed by the Plan Administrator, former Chapter 11 Trustee in this case. The court reviews them below collectively, as the issues overlap.

At the April 30, 2020 Status Conference XXXXXXXXXX

Status Conference re: Debtor Aiad Samuel filed document titled "Failure, False, and Fake Bankruptcy Services and More, See Record." Order, Dckt. 1456

On March 10, 2020, the court issued its order for a status conference concerning documents filed by Aiad Samuel. While the Document does not rise to the level of a pleading that could be construed as a motion under the Federal Rules of Bankruptcy Procedure, it set the Status Conference to afford Debtor Aiad Samuel to address the court.

Plan Administrator Status Report

The Plan Administrator has filed a Status Report for the April 30, 2020 Conference. Dckt. 1462. The Plan Administrator states that he was not provided with a copy of the notice by the Debtor, it having been sent to the Debtor's residence. Having notice, the Plaintiff Administrator reports as to the actions he has taken with respect to these matters.

In December 2019, the Plan Administrator went to the property and met with the tenant. The tenant stated that the car was his son's and it would be removed.

The Plan Administrator returned in January 2020. The car had not been moved, but the tenant again stated it would be moved and she was "working to get the key." Additionally, that tenant would get the damaged fence fixed. The Plan Administrator had a handyman go to the property to inspect the fence.

In March 2020, the vehicle still had not been removed and the tenant had not met with the handyman. This is when the Plan Administrator first learned of the City notice. On March 23, 2020, the Plan Administrator received confirmation that the vehicle had been removed.

In April 2020, the handyman advised the Plan Administrator that he was quarantined. The Plan Administrator made arrangements with the neighbor to have the fence fixed, with the neighbor splitting the costs. The Plan estate's share is \$617.00.

Debtor Aiad Samuel Status Report

On April 29, 2020, a Status Report from Debtor Aiad Samuel was filed. In the Report Mr. Samuel makes a number of statements asserting misconduct by the Chapter 11 Trustee, that Trustee's counsel, and the court (appearing to reference the prior judge to whom this case was assigned). It is asserted that properties were intentionally damaged to get the insurance monies, that properties have not been properly maintained, and that bills and taxes relating to properties were not paid.

Mr. Samuel also makes reference to the court not taking action to protect the property, not taking action on the wrongs he identified. He states that no action was taken because "the court (J) want to destroyed all my properties to buy it to themself, and this privite plan at Sacramento, Ca. And now you know WHY? [sic]."

He continues, asserting that the Debtors' assets were sold for pennies on the dollar, that the Trustee and his attorney are deleting records, and that he and witnesses are suffering retaliation, harassment, discrimination, and harm. He then states:

This is part of evidence until YOU and Chief Judge handle my case investigation for my safety and witness safety and no more harm.

Debtor Report, p. 3. Through the Report he makes reference to as shown in the court record and files, as if he is directing the court to investigate, assemble, and advocate for Debtors.

In a prior hearing, the court had a long discussion with Mr. Samuel that the court was not the "administrator" or cases, did not undertake investigations, and did not prosecute cases for one party or the other. That is was necessary for the Debtors to obtain counsel to represent their interests, since they believe that they have been "thwarted by the system" and unable to so do. The court cannot undertake such representation or investigation.

Mr. Samuel states he has the right to go to "a different court, media and more - - - -." *Id.* He may so properly exercise his rights.

Debtor concludes, stating that he is requesting to dismiss the bankruptcy case, have all of his assets returned. He is requesting to get the Trustee and Trustee's attorney thrown out of the case.

**Updated Status Report on Motion for Allowance of Administrative Expense
For Scott Sackett, Pre-Confirmation Chapter 11 Trustee**

The Pre-Confirmation Trustee reports that the District Court Action to which the expenses relate continues. At this time, the amount of the expense cannot be determined.

Additionally, the Debtor continues with the appeal of a state court action, which may result in the increase in the claim of the creditor in that proceeding. There is also an action in the District Court effecting the United States' claim in this case, which will be in favor of the United States. The Plan Administrator anticipates further appears by Debtor, which will delay the payment on the claim of the United States.

The report discusses the management of the Plan estate's assets.

**Updated Status Report on Motion for Allowance of Administrative Expense
For Counsel to the Pre-Confirmation Chapter 11 Trustee**

Counsel's report parallels the report of the Pre-Confirmation Trustee.

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 Status Conference for the Document Filed by Debtor Aiad Samuel having been conducted by court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is **XXXXXXXXXX**

The hearing on the Motion for Administrative Expenses is continued to 10:30 a.m. on XXXXXXXXXX

APRIL 30, 2020 HEARING

This Chapter 11 Case has continued forward, with a series of status reports filed by the Plan Administrator, former Chapter 11 Trustee in this case. The court reviews them below collectively, as the issues overlap.

At the April 30, 2020 Status Conference XXXXXXXXXX

Status Conference re: Debtor Aiad Samuel filed document titled “Failure, False, and Fake Bankruptcy Services and More, See Record.” Order, Dckt. 1456

On March 10, 2020, the court issued its order for a status conference concerning documents filed by Aiad Samuel. While the Document does not rise to the level of a pleading that could be construed as a motion under the Federal Rules of Bankruptcy Procedure, it set the Status Conference to afford Debtor Aiad Samuel to address the court.

Plan Administrator Status Report

The Plan Administrator has filed a Status Report for the April 30, 2020 Conference. Dckt. 1462. The Plan Administrator states that he was not provided with a copy of the notice by the Debtor, it having been sent to the Debtor’s residence. Having notice, the Plaintiff Administrator reports as to the actions he has taken with respect to these matters.

In December 2019, the Plan Administrator went to the property and met with the tenant. The tenant stated that the car was his son’s and it would be removed.

The Plan Administrator returned in January 2020. The car had not been moved, but the tenant again stated it would be moved and she was “working to get the key.” Additionally, that tenant would get the damaged fence fixed. The Plan Administrator had a handyman go to the property to inspect the fence.

In March 2020, the vehicle still had not been removed and the tenant had not met with the handyman. This is when the Plan Administrator first learned of the City notice. On March 23, 2020, the Plan Administrator received confirmation that the vehicle had been removed.

In April 2020, the handyman advised the Plan Administrator that he was quarantined. The Plan Administrator made arrangements with the neighbor to have the fence fixed, with the neighbor splitting the costs. The Plan estate's share is \$617.00.

Debtor Aiad Samuel Status Report

On April 29, 2020, a Status Report from Debtor Aiad Samuel was filed. In the Report Mr. Samuel makes a number of statements asserting misconduct by the Chapter 11 Trustee, that Trustee's counsel, and the court (appearing to reference the prior judge to whom this case was assigned). It is asserted that properties were intentionally damaged to get the insurance monies, that properties have not been properly maintained, and that bills and taxes relating to properties were not paid.

Mr. Samuel also makes reference to the court not taking action to protect the property, not taking action on the wrongs he identified. He states that no action was taken because "the court (J) want to destroyed all my properties to buy it to themself, and this prvite plan at Sacramento, Ca. And now you know WHY? [sic]."

He continues, asserting that the Debtors' assets were sold for pennies on the dollar, that the Trustee and his attorney are deleting records, and that he and witnesses are suffering retaliation, harassment, discrimination, and harm. He then states:

This is part of evidence until YOU and Chief Judge handle my case investigation for my safety and witness safety and no more harm.

Debtor Report, p. 3. Through the Report he makes reference to as shown in the court record and files, as if he is directing the court to investigate, assemble, and advocate for Debtors.

In a prior hearing, the court had a long discussion with Mr. Samuel that the court was not the "administrator" or cases, did not undertake investigations, and did not prosecute cases for one party or the other. That is was necessary for the Debtors to obtain counsel to represent their interests, since they believe that they have been "thwarted by the system" and unable to so do. The court cannot undertake such representation or investigation.

Mr. Samuel states he has the right to go to "a different court, media and more - - - -." *Id.* He may so properly exercise his rights.

Debtor concludes, stating that he is requesting to dismiss the bankruptcy case, have all of his assets returned. He is request to get the Trustee and Trustee's attorney thrown out of the case.

Updated Status Report on Motion for Allowance of Administrative Expense For Scott Sackett, Pre-Confirmation Chapter 11 Trustee

The Pre-Confirmation Trustee reports that the District Court Action to which the expenses relate continues. At this time, the amount of the expense cannot be determined.

Additionally, the Debtor continues with the appeal of a state court action, which may result in the increase in the claim of the creditor in that proceeding. There is also an action in the District Court

effecting the United States' claim this case, which will be in favor of the United States. The Plan Administrator anticipates further appears by Debtor, which will delay the payment on the claim of the United States.

The report discusses the management of the Plan estate's assets.

**Updated Status Report on Motion for Allowance of Administrative Expense
For Counsel to the Pre-Confirmation Chapter 11 Trustee**

Counsel's report parallels the report of the Pre-Confirmation Trustee.

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 hearing on the Motion for Administrative Expense having been presented to court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to 10:30 a.m.
on **XXXXXXXXXX**

The hearing on the Motion for Administrative Expenses is continued to 10:30 a.m. on XXXXXXXXXX

APRIL 30, 2020 HEARING

This Chapter 11 Case has continued forward, with a series of status reports filed by the Plan Administrator, former Chapter 11 Trustee in this case. The court reviews them below collectively, as the issues overlap.

At the April 30, 2020 Status Conference XXXXXXXXXX

Status Conference re: Debtor Aiad Samuel filed document titled “Failure, False, and Fake Bankruptcy Services and More, See Record.” Order, Dckt. 1456

On March 10, 2020, the court issued its order for a status conference concerning documents filed by Aiad Samuel. While the Document does not rise to the level of a pleading that could be construed as a motion under the Federal Rules of Bankruptcy Procedure, it set the Status Conference to afford Debtor Aiad Samuel to address the court.

Plan Administrator Status Report

The Plan Administrator has filed a Status Report for the April 30, 2020 Conference. Dckt. 1462. The Plan Administrator states that he was not provided with a copy of the notice by the Debtor, it having been sent to the Debtor’s residence. Having notice, the Plaintiff Administrator reports as to the actions he has taken with respect to these matters.

In December 2019, the Plan Administrator went to the property and met with the tenant. The tenant stated that the car was his son’s and it would be removed.

The Plan Administrator returned in January 2020. The car had not been moved, but the tenant again stated it would be moved and she was “working to get the key.” Additionally, that tenant would get the damaged fence fixed. The Plan Administrator had a handyman go to the property to inspect the fence.

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In April 2020, the handyman advised the Plan Administrator that he was quarantined. The Plan

Administrator made arrangements with the neighbor to have the fence fixed, with the neighbor splitting the costs. The Plan estate's share is \$617.00.

Debtor Aiad Samuel Status Report

On April 29, 2020, a Status Report from Debtor Aiad Samuel was filed. In the Report Mr. Samuel makes a number of statements asserting misconduct by the Chapter 11 Trustee, that Trustee's counsel, and the court (appearing to reference the prior judge to whom this case was assigned). It is asserted that properties were intentionally damaged to get the insurance monies, that properties have not been properly maintained, and that bills and taxes relating to properties were not paid.

Mr. Samuel also makes reference to the court not taking action to protect the property, not taking action on the wrongs he identified. He states that no action was taken because "the court (J) want to destroyed all my properties to buy it to themself, and this prvite plan at Sacramento, Ca. And now you know WHY? [sic]."

He continues, asserting that the Debtors' assets were sold for pennies on the dollar, that the Trustee and his attorney are deleting records, and that he and witnesses are suffering retaliation, harassment, discrimination, and harm. He then states:

This is part of evidence until YOU and Chief Judge handle my case investigation for my safety and witness safety and no more harm.

Debtor Report, p. 3. Through the Report he makes reference to as shown in the court record and files, as if he is directing the court to investigate, assemble, and advocate for Debtors.

In a prior hearing, the court had a long discussion with Mr. Samuel that the court was not the "administrator" or cases, did not undertake investigations, and did not prosecute cases for one party or the other. That is was necessary for the Debtors to obtain counsel to represent their interests, since they believe that they have been "thwarted by the system" and unable to so do. The court cannot undertake such representation or investigation.

Mr. Samuel states he has the right to go to "a different court, media and more - - - -." *Id.* He may so properly exercise his rights.

Debtor concludes, stating that he is requesting to dismiss the bankruptcy case, have all of his assets returned. He is request to get the Trustee and Trustee's attorney thrown out of the case.

Updated Status Report on Motion for Allowance of Administrative Expense For Scott Sackett, Pre-Confirmation Chapter 11 Trustee

The Pre-Confirmation Trustee reports that the District Court Action to which the expenses relate continues. At this time, the amount of the expense cannot be determined.

Additionally, the Debtor continues with the appeal of a state court action, which may result in the increase in the claim of the creditor in that proceeding. There is also an action in the District Court effecting the United States' claim this case, which will be in favor of the United States. The Plan

Administrator anticipates further appears by Debtor, which will delay the payment on the claim of the United States.

The report discusses the management of the Plan estate's assets.

**Updated Status Report on Motion for Allowance of Administrative Expense
For Counsel to the Pre-Confirmation Chapter 11 Trustee**

Counsel's report parallels the report of the Pre-Confirmation Trustee.

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 hearing on the Motion for Administrative Expense having been presented to court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to 10:30 a.m.
on **XXXXXXXXXX**

FINAL RULINGS

17. [19-27512-A-7](#) **DOUGLAS BLUNKALL** **CONTINUED MOTION FOR RELIEF**
[ALG-1](#) **Bruce Dwiggin** **FROM AUTOMATIC STAY**
2-28-20 [13]
ARVEST CENTRAL MORTGAGE
COMPANY VS.

Final Ruling: No appearance at the April 30, 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, Chapter 7 Trustee, and Office of the United States Trustee on February 28, 2020. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

According to Movant's Proof of Service, Debtor's Attorney, Bruce Charles Dwiggin, was not served. However, the stay has already terminated as to the Debtor, his discharge having been entered.

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

Pursuant to prior order of the court, this Motion for relief from the Automatic Stay is granted. Dckt. 28. The matter is removed from the calendar.

April 13, 2020 Decision and Order

At the April 9, 2020 hearing, the parties were required to file the filing of a supplemental pleading was required to clearly have a correct record in this Contested Matter. The court continued the hearing to April 30, 2020, to allow for the filing of the supplemental pleading, for the court to consider the full records, and, if the documentation warranted it, removing the matter from the April 30, 2020 calendar

Such supplemental pleading was filed on April 9, 2020. Dckt. 22. The record being complete, the matter is removed from the April 30, 2020 calendar and the court issues the Decision and Order pursuant thereto granting Movant's Motion for Relief from the Automatic Stay. Dckt. 27, 28.

WITHDRAWN BY M.P.

April 30, 2020 at 10:30 a.m.
Page 55 of 93

U.S. BANK NATIONAL
ASSOCIATION VS.**Final Ruling: No appearance at the April 30, 2020 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on March 31, 2020. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

U.S. Bank National Association, as Trustee for Lehman XS Trust Mortgage Pass-Through Certificates, Series 2006-18N by Ocwen Loan Servicing, LLC as servicing agent ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3938 Zeally Lane, Stockton, California ("Property"). The moving party has provided the Declaration of Todd Whitehorn to introduce evidence as a basis for Movant's contention that Daryl C. Chang, Sr. ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on May 23, 2018. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of San Joaquin on September 14, 2018. Exhibit 3, Dckt. 33.

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant also states that this is the third recent bankruptcy case filed which has stayed Movant's efforts to prosecute the unlawful detainer action. The two prior cases are summarized as follows:

Chapter 7 Case 18-23504

Chapter 7 Case 18-23504 was filed on June 4, 2018, by Daryl Chang, Sr. and Cheri Chang, in *pro se*. That case was closed on November 8, 2018, with no entry of a discharge. 18-23504; Dckt. 65.

On Schedule A/B in Case 18-23505, Daryl Chang and Cheri Chang stated under penalty of perjury that they had no interest in any real property. *Id.*; Dckt. 27 at 3-4. Daryl and Cheri Chang also stated under penalty of perjury that they have no leases. *Id.* at 2. No foreclosures as listed on the Statement of Financial Affairs, which is also made under penalty of perjury. *Id.*; Dckt. 28 at 5.

However, on the Bankruptcy Petition state that their residence asset is the 3938 Zeally Lane Property.

In Bankruptcy Case 18-23504, Movant was granted relief from the stay to proceed with prosecuting the state court action to obtain possession of the Property. *Id.*; Order, Dckt. 49.

Chapter 7 Case 19-20897

Daryl Chang, Sr. commenced another Chapter 7 case on February 15, 2019, Case 19-20897. He again listed his residence as being the 3938 Zeally Lane Property. 19-20897; Dckt. 1 at 3. On Schedule A/B Daryl Chang stated under penalty of perjury that he was the sole owner of the 3938 Zeally Property, owning it as community property. *Id.* at 9.

Movant filed a Motion for Relief From the Stay in Case 19-20897, and was granted relief from the stay to proceed with actions to obtain possession of the Property. *Id.*; Order, Dckt. 37.

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

Ruling

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

Request for Waiver of Fourteen-Day Stay of Enforcement

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

stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by U.S. Bank National Association, as Trustee for Lehman XS Trust Mortgage Pass-Through Certificates, Series 2006-18N by Ocwen Loan Servicing, LLC as servicing agent (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 3938 Zeally Lane, Stockton, California.

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

No other or additional relief is granted.

DAIMLER TRUST VS.

Final Ruling: No appearance at the April 30, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on March 17, 2020. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Daimler Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2019 Mercedes-Benz E300W, VIN ending in 1164 ("Vehicle"). The moving party has provided the Declaration of Monica Senter to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Clyde Peterkin ("Debtor"). Debtor is the lessee of the Vehicle.

Movant provides evidence that there are four pre-petition payments in default, with a pre-petition arrearage of \$4,195.92. Declaration, Dckt. 15.

TRUSTEE'S NON-OPPOSITION

Trustee has no opposition to the relief requested. Trustee's April 30, 2020 Docket Entry Statement.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$61,231.02 (Declaration, Dckt. 15), while the value of the Vehicle is determined to be \$42,583.00, as stated in Schedules B and D filed by Debtor.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

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

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Daimler Trust (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2019 Mercedes-Benz E300W, VIN ending in 1164 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.

Final Ruling: No appearance at the April 30, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 27, 2020. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion for Allowance of Administrative Expenses is granted.</p>

The Chapter 7 Trustee, Susan K. Smith (“Movant”) in his capacity as Trustee for the bankruptcy estate of Green Belt Carriers requests payment of administrative expenses in the amount of \$800.00, resulting from taxes incurred by the estate that became due and owing post-petition to the Franchise Tax Board for the estate’s 2020 California corporate tax liability.

DISCUSSION

Movant argues that these taxes are expenses incurred by the estate that are payable as an administrative expense.

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 employed an tax professional, Gene Gonzales, on behalf of the bankruptcy estate. The tax professional has estimated the estate’s California corporate tax liability due to the Franchise Tax Board for the year 2020 is \$800.00.

Movant having demonstrated that the expenses were necessary, the court finds that Movant

providing for the 2020 California corporate tax liability was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay the administrative expenses in the amount of \$800.00.

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

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

The Motion for Allowance of Administrative Expense filed by Susan K. Smith (“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 \$800.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

22.	<u>11-41343-A-7</u> <u>CLH-1</u>	TRACY/MELODY PHILLIPS Charles Hastings	MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A. 3-25-20 <u>23</u>
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Final Ruling: No appearance at the April 30, 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 Creditor, and Office of the United States Trustee on March 25, 2020. By the court’s calculation, 36 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.
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This Motion requests an order avoiding the judicial lien of Capital One Bank (USA) N.A. (“Creditor”) against property of the debtor, Tracy Glen Phillips and Melody Jean Phillips (“Debtors”)

commonly known as 9250 South Peltier Road, Acampo, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$6,712.79. Exhibit A, Dckt. 26. An abstract of judgment was recorded with San Joaquin County on December 21, 2010, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$350,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$732,221.00 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.104(b)(1) in the amount of \$1.00 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Tracy Glen Phillips and Melody Jean Phillips (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Capital One Bank (USA) N.A., California Superior Court for San Joaquin County Case No. 39-2010-00241970-CL-CL-LOD, recorded on December 21, 2010, Document No. 2010-165423, with the San Joaquin County Recorder, against the real property commonly known as 9250 South Peltier Road, Acampo, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the April 30, 2020 hearing is required.

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 March 19, 2020. The court computes that 42 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 March 3, 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.

Final Ruling: No appearance at the April 30, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on March 30, 2020. By the court’s calculation, 30 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 Garrett Stephen Bossio (“Debtor”) requests the court to order Sheri L. Carello (“the Chapter 7 Trustee”) to abandon property identified as all assets of the Debtor’s sole proprietorship State of the Art Construction including but not limited to, furniture, equipment, inventory, cash, cash equivalents, accounts, receivables, and other property, specifically:

ASSET	VALUE	EXEMPTION
Wells Fargo Bank checking account ending 6902	\$246.00	C.C.P. §703.140(b)(5)- \$246.00
Wells Fargo Bank business checking account ending 0896	\$1,300.00	C.C.P. §703.140(b)(5)- \$1,300.00
Wells Fargo Bank business savings account ending 0536	\$0.00	\$0.00

Wells Fargo Bank checking account ending 4589	\$0.00	\$0.00
dba State of the Art Construction	\$0.00	\$0.00
Tools of the trade	\$300.00	C.C.P. §703.140(b)(6)- \$300.00
2005 Chevrolet Silverado 4500	\$8,303.00	C.C.P. §703.140(b)(6)- \$8,303.00
American Contractors Indemnity Co. Bond	\$0.00	\$0.00
Associated Industries Insurance Co. Liability Insurance	\$0.00	\$0.00

(“Property”).

The Declaration of Garrett Stephen Bossio has been filed in support of the Motion and values the Property at the values above, as listed in his Schedules A/B and C.

Chapter 7 Trustee has no opposition to relief requested. Trustee’s April 16, 2020 Docket Entry Statement.

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

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

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

The Motion to Compel Abandonment filed by Garrett Stephen Bossio (“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 all assets of the Debtor’s sole proprietorship State of the Art Construction including:

Wells Fargo Bank checking account ending 6902
Wells Fargo Bank business checking account ending 0896
Wells Fargo Bank business savings account ending 0536
Wells Fargo Bank checking account ending 4589

dba State of the Art Construction
Tools of the trade
2005 Chevrolet Silverado 4500
American Contractors Indemnity Co. Bond
Associated Industries Insurance Co. Liability Insurance

("Property").

and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Sheri L. Carello ("Trustee") to Garrett Stephen Bossio by this order, with no further act of the Trustee required.

Final Ruling: No appearance at the April 30, 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, parties requesting special notice, and Office of the United States Trustee on March 17, 2020. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.
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This Motion requests an order avoiding the judicial lien of Wells Fargo Bank, National Association ("Creditor") against property of the debtor, Christopher Scott Weaver and Carolyn Grace Weaver ("Debtors") commonly known as 1981 Benita Drive #2, Rancho Cordova, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$100,233.69. Exhibit B, Dckt. 22. An abstract of judgment was recorded with Sacramento County on February 26, 2013, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$205,000.00 as of the petition date. Dckt. 1. There are no consensual liens on the Property. The unavoidable judgment liens that total \$30,379.91 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 \$175,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of

the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Christopher Scott Weaver and Carolyn Grace Weaver (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Wells Fargo Bank, National Association, California Superior Court for Sacramento County Case No. 34-2012-00127551, recorded on February 26, 2013, Book 20130729 and Page 0493, with the Sacramento County Recorder, against the real property commonly known as 1981 Benita Drive #2, Rancho Cordova, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the April 30, 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, parties requesting special notice, and Office of the United States Trustee on March 17, 2020. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of Blue & Gold Fleet, Inc. ("Creditor") against property of the debtor, Christopher Scott Weaver and Carolyn Grace Weaver ("Debtors") commonly known as 1981 Benita Drive #2, Rancho Cordova, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$96,653.29. Exhibit C, Dckt. 27. An abstract of judgment was recorded with Sacramento County on January 15, 2014, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$205,000.00 as of the petition date. Dckt. 1. There are no consensual liens on the Property. The unavoidable judgment liens that total \$30,379.91 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 \$175,000.00 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Christopher Scott Weaver and Carolyn Grace Weaver (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Blue & Gold Fleet, Inc., California Superior Court for San Francisco County Case No.CGC-12-519730, recorded on January 15, 2014, Book 20140115 and Page 0622, with the Sacramento County Recorder, against the real property commonly known as 1981 Benita Drive #2, Rancho Cordova, 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.

STEVE HODGE VS. DEBTOR
DISMISSED: 03/31/20

Final Ruling: No appearance at the April 30, 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, and Office of the United States Trustee on March 19, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case.

Steve P. Hodge ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 8692 Char Avenue, Orangevale, California ("Property"). The moving party has provided the Declaration of Steve P. Hodge to introduce evidence as a basis for Movant's contention that Geoff Matthew Glass ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento. Exhibit B, Dckt. 16.

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The instant case was dismissed on March 31, 2020 for failure to timely file documents. Dckt. 24.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) *revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.*

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of March 31, 2020, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on March 31, 2020.

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

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

The Motion for Relief from the Automatic Stay filed by Steve P. Hodge (“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 denied without prejudice as moot, this bankruptcy case having been dismissed on March 31, 2020 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Geoff Matthew Glass (“Debtor”) pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 8692 Char Avenue, Orangevale, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the March 31, 2020 dismissal of this bankruptcy case.

Final Ruling: No appearance at the April 30, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2020. By the court's calculation, 43 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.

Barry H. Spitzer, the Attorney ("Applicant") for Geoffrey Richards, 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 September 4, 2019, through March 18, 2020. The order of the court approving employment of Applicant was entered on October 8, 2019. Dckt. 36. Applicant requests fees in the amount of \$12,995.50 and costs in the amount of \$148.64.

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 assisted Trustee in all matters related to the selling of a previously undisclosed interest in real property. The Estate has \$62,161.71 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.

Efforts to Assess and Recover Property of the Estate: Applicant spent 32.90 hours in this category. Applicant communicated with Trustee; reviewed the file and title report; prepared employment application; prepared stipulation to sell entire real property; communicated with tenants, third parties, and counsel for third parties; prepared realtor's employment application; prepared motion to sell; attended hearing on motion for sale of real property; reviewed closing statements; and prepared fee 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
Barry H. Spitzer	32.90	\$395.00	\$12,995.50
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$12,995.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$148.64 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	\$0.15 per page	\$33.30

Postage		\$21.45
SMUD		\$93.89
		\$0.00
Total Costs Requested in Application		\$148.64

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$12,995.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$148.64 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	\$12,995.50
Costs and Expenses	\$148.64

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 Barry H. Spitzer (“Applicant”), Attorney for Geoffrey Richards, 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 Barry H. Spitzer is allowed the following fees and expenses as a professional of the Estate:

Barry H. Spitzer, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$12,995.50
Expenses in the amount of \$148.64,

29.	<u>10-53472-A-7</u> <u>GMR-3</u>	ESTATE OF MARK BELL Len Reynoso	MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY, ACCOUNTANT(S) 3-13-20 [64]
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 13, 2020. By the court's calculation, 48 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.

Gabrielson & Company, the Accountant (“Applicant”) for Geoffrey Richards, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 1, 2019, through March 11, 2020. The order of the court approving employment of Applicant was entered on October 17, 2019. Dckt. 37. Applicant requests fees in the amount of \$3,1250.50 and costs in the amount of \$83.75.

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 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 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 assisting Trustee with tax impact analysis related to sale of real estate and preparing income tax returns. 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.

Administrative Functions: Applicant spent 1.7 hours in this category. Applicant assisted Trustee in analyzing tax impact of selling estate’s interest in real estate and preparing first and final 2020 federal and California estate income tax returns, including review and revisions to tax elements of closing statement and consultation with trustee.

Tax Analysis for Real Estate and Preparation of Tax Returns: Applicant spent 6.2 hours in this category. Applicant prepared accountant declaration and related employment documents for trustee review; and prepared first and final fee application, including detailed description of tax services.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Michael Gabrielson	7.9	\$395.00	\$3,120.50
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$3,120.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$83.75 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$0.20	\$52.60
Postage		\$31.15
		\$0.00
		\$0.00
Total Costs Requested in Application		\$83.75

The costs requested by Applicant include copying at \$0.20 per page. No information has been provided to the court by Applicant explaining the actual cost of \$0.20 per page, when the standard copying cost for which reimbursement is sought in this court by professionals employed to represent a bankruptcy estate and its representative is \$0.10 per page.

The court disallows \$26.30 of the requested costs.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$3,120.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$83.75 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	\$3,120.50
Costs and Expenses	\$57.45

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 Gabrielson & Company (“Applicant”), Accountant for Geoffrey Richards, 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 Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:

Gabrielson & Company, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$3,120.50

Expenses in the amount of \$57.45,

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

Final Ruling: No appearance at the April 30, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 23, 2020. By the court’s calculation, 38 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion for Allowance of Administrative Expenses is granted.</p>

The Chapter 7 Trustee, J. Michael Hopper (“Movant”) in his capacity as Trustee for the bankruptcy estate of Acacia Cremation and Burial Society, Inc. (“Debtor”) requests payment of administrative expenses in the amount of \$800.00, resulting from taxes incurred by the estate that became due and owing post-petition to the Franchise Tax Board for the estate’s 2020 California corporate tax liability.

DISCUSSION

Movant argues that these taxes are expenses incurred by the estate that are payable as an administrative expense.

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 employed an accountant on behalf of the bankruptcy estate. The accountant prepared the estate’s income tax return and has estimated the estate’s California corporate tax liability due to the Franchise Tax Board for the 2020 tax year is \$800.00.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing for the 2020 California corporate tax liability was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of \$800.00.

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

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

The Motion for Allowance of Administrative Expense filed by the Chapter 7 Trustee, J. Michael Hopper (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the Chapter 7 Trustee is authorized to pay the Franchise Tax Board \$800.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

31. [20-20986](#)-A-7 **JENNIFER GEREHTY** **MOTION FOR RELIEF FROM**
[RDW-1](#) **Thomas Amberg** **AUTOMATIC STAY**
4-2-20 [14]

LOGIX FEDERAL CREDIT UNION
VS.

Final Ruling: No appearance at the April 30, 2020 hearing is required.

The Motion for Relief from the Automatic Stay is dismissed without prejudice.

Logix Federal Credit Union (“Creditor”) having filed a “Withdrawal of Motion”, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on April 28, 2020, Dckt. 26; no prejudice to the responding party appearing by the dismissal of the Motion; Creditor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Jennifer Gerehty (“Debtor”); the *Ex Parte* Motion is granted, Creditor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion for Relief from the Automatic Stay filed by Logix Federal Credit Union (“Creditor”) having been presented to the court, Creditor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil

Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 26, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is dismissed without prejudice.

32. [14-20890-E-7](#) **TODD RADKE** **MOTION FOR COMPENSATION FOR**
[MPD-3](#) **Michael Hays** **MICHAEL P. DACQUISTO, TRUSTEES**
ATTORNEY(S)
3-26-20 [51]

Final Ruling: No appearance at the April 30, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors, interested party, and Office of the United States Trustee on March 26, 2020. By the court’s calculation, 35 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.
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Michael P. Dacquisto, the Attorney (“Applicant”) for Nikki Farris, the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period July 9, 2020, through April 30, 2020. The order of the court approving employment of Applicant was entered on July 25, 2019. Dckt. 45. Applicant requests a reduced fee in the amount of \$6,500.00 for fees and expenses.

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 assisting Trustee with negotiating, documenting, and obtaining court approval of a stipulation to settle all claims related to the interpled funds from the state court litigation. The Estate has \$10,968.18 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.

Interpled Funds from State Court Litigation Applicant spent 16.5 hours in this category. Applicant assisted Trustee analyzing the petition, schedules and statement of financial affairs after the case was reopened; examined pending state court litigation involving interpled funds of \$25,000.00; reviewed lien claims against the interpled funds; negotiated, documented and drafted motion for approval of the stipulation to settle all claims to the interpled funds; filed the stipulation and related papers in the state court litigation; obtained payment of the interpled funds to the respective parties; and prepared the motion for employment and the instant fees 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
Michael Dacquisto	16.5	\$450.00	\$7,425.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$7,425.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$510.59 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage and Federal Express		\$47.79
Copying	\$0.10 per page	\$27.60
State Court fees		\$435.20
Total Costs Requested in Application		\$510.59

FEES AND COSTS & EXPENSES ALLOWED

Fees and Costs

Applicant seeks to be paid a single sum of \$6,500.00 for its fees and expenses incurred for Client. First and Final Fees and Costs in the amount of \$6,500.00 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.

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

Fees and Costs	\$6,500.00
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pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Michael P. Dacquisto (“Applicant”), Attorney for Nikki Farris, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Michael P. Dacquisto is allowed the following fees and expenses as a professional of the Estate:

Michael P. Dacquist, Professional employed by the Chapter 7 Trustee

Fees and Expenses in the amount of \$6,500.00,

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

33. [10-22720-A-7](#) **JUSTIN/JUDITH DECKER** **MOTION TO APPROVE STIPULATION**
[DNL-2](#) **Elaine Cerven** **RE: EXEMPTIONS**
3-26-20 [\[79\]](#)

Final Ruling: No appearance at the April 30, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor’s Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2020. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

The Motion to Approve Stipulation Regarding 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.

<p>The Motion to Approve Stipulation Regarding Exemptions is granted.</p>
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Chapter 7 Trustee, J. Michael Hopper (“Trustee”) requests that the court approve a stipulation with the Debtors Justin Turner Decker and Judith Decker (“Judith”) (collectively “Debtors”) settling their claim over exemption against the state court personal injury judgment award (“Mesh Award”).

STIPULATION

Trustee and Debtor stipulate to an order regarding the state court personal injury judgment award, subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Dckt. 82):

- A. Debtor relied on the exemptions available under the California Code of Civil Procedure Section 703 (“703 Exemptions”) to Fully exempt their equity in the scheduled assets in their original and amended scheduled filed on April 4, 2010 and May 11, 2010, respectively.
- B. On November 19, 2019, the court granted the motion to reopen the Chapter 7 case and appoint a trustee to administer an approximate \$104,000.00 settlement arising from personal injuries sustained by Debtor Judith pre-petition (“Mesh Award”).
- C. After deducting related professional fees and costs, the net amount of the award is expected to be \$57,000.00 (“Net Award”).
- D. Under the 703 Exemptions, the aggregate personal injury (\$22,075.00) and remaining wild card (\$2,237.75) exemption available to the Debtors if \$24,312.75.
- E. On January 25, 2020, Debtors filed another schedule amendment to disclose the Mesh Award and assert the same as fully exempted by now relying on California Code of Civil Procedure Section 704 exemptions. AS a result of that change, based on values provided by Debtors in 2010, Trustee contends that other property aggregating \$18,574.47 would no longer be exempt. (For the specific property listed refer to the Stipulation.)
- F. Parties have agreed that allowance of the January 25, 2020 exemption amendment shall be conditioned upon reimbursement of \$18,574.47 to the estate as set forth below.
- G. Parties stipulate that the Net Award shall be distributed as follow:
 - (1) the first \$24,312.75 to Debtors as an exemption;
 - (2) the next \$18,574.47 to Trustee for the benefit of unsecured claims; and
 - (3) the balance, if any, to Debtors as an exemption.

DISCUSSION

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

- 1. The probability of success in the litigation;
- 2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

Probability of Success

Trustee argues that this factor weighs heavily in favor because though Trustee could potentially argue that the entire Mesh Award is not fully exempt, Trustee is not confident in the merits of such an argument.

Difficulties in Collection

Trustee asserts this factor is neutral as Trustee is in a defensive position with respect to the Debtors' claim of exemption against the Mesh Award.

Expense, Inconvenience, and Delay of Continued Litigation

Trustee contends that this factor also weighs in favor on the basis that while the issues might not be particularly complex, litigation would be expensive and inconvenient as it would require expensive testimony of expert witnesses regarding Debtor Judith's injuries and the necessity of settlement funds for her continued support. Moreover, through the Stipulation the estate is receiving a sure recovery from the Net Award, and allows the Trustee to administer the case and issue a distribution to creditors while avoiding further delays and administrative costs.

Paramount Interest of Creditors

Lastly, Trustee argues that the Stipulation resolves the exemptions dispute while avoiding costly litigation. Adding that by providing for an efficient administration of the Debtors' estate, the Stipulation is in the paramount interest of creditors.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the Stipulation is in the best interest of the creditors and the Estate because the estate will recover \$18,574.47 for the benefit of creditors, avoid litigation, and allow the Trustee to administer the case without further delay or administrative costs. The Motion is granted.

Debtors and Trustee have responsibly addressed these issues, and unsecured creditors will benefit from this negotiation.

The Motion is granted.

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

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

The Motion to Approve Stipulation filed by Chapter 7 Trustee, J. Michael Hopper (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Stipulation between Trustee and Debtors is granted, and the respective rights and interests of the parties are settled on the terms set forth in the Stipulation filed as Exhibit A in support of the Motion (Dckt. 82).