

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

June 6, 2024 at 10:30 a.m.

1. [11-93415-E-7](#)
[KMT-2](#)

CLARENCE PRATHER
Brian Haddix

**MOTION TO COMPROMISE
CONTROVERSY/APPROVE
SETTLEMENT AGREEMENT WITH
CLARENCE DOUGLAS PRATHER
5-2-24 [39]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on May 2, 2024. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Nikki B. Farris, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with debtor Clarence Prather ("Settlor," "Debtor"). The claims and disputes to be resolved by the proposed settlement involve a prepetition personal injury claim that Debtor became aware of recently, entitling Debtor to a payout of \$71,502.20 on behalf of his personal injury claim.

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Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 42):

1. Property of the Estate. The parties agree that the Personal Injury Claims are property of the bankruptcy estate pursuant to 11 U.S.C. section 541.
2. Distribution of Net Recovery from the Personal Injury Claims. The parties agree that the net recovery from the Personal Injury Claims (meaning after costs associated with recovering sums from the Personal Injury Claims, including Special Counsel's fees, expenses, costs, etc.) shall be distributed as follows: (a) fifty percent (50%) to the bankruptcy estate and fifty percent (50%) to the Debtor until the Debtor receives \$17,972.38 on account of the split; and (b) the balance, to the bankruptcy estate.
3. No Further Exemption Amendments Against the Personal Injury Claims. Other than as agreed to in the Agreement, the Debtor may not amend his claimed exemption against the Personal Injury Claims or any other exemption that would in any way impact the terms or the intent of the Agreement as it pertains to the Personal Injury Claims.

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

Movant argues this factor weighs in favor of the Settlement Agreement as the probability of success is ultimately unknown. Absent the Agreement, the Trustee would have to litigate what portion of any recovery on account of the Personal Injury Claims are attributable to “pain and suffering.” Mot. 3:24-4:2, Docket 39.

Difficulties in Collection

Movant states this factor is neutral.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues this factor weighs in favor of the Settlement Agreement as the estate would incur a fair amount of expense litigating the dispute over the exemption. The Trustee would have to litigate what portions of any potential recovery are attributable to pain and suffering, which would also be inconvenient. *Id.* 4:5-10.

Paramount Interest of Creditors

Movant argues this factor weighs heavily in favor of the Settlement Agreement as the Agreement avoids the need for litigation and provides a sure return to the Estate on account of the Personal Injury Claims. Without the Agreement, it would not be a given that the Estate would be able to net any recovery on account of the Personal Injury Claims (if she did not prevail on any objection) and the structure of the Agreement ensures the Trustee shares in any net proceeds immediately. *Id.* at 4:12-20.

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 **XXXXXXX**.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the Estate can avoid costly litigation over uncertain pain and suffering damages, while Debtor and the Estate still receive a monetary benefit. The Motion is granted.

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 Approve Compromise filed by Nikki B. Farris, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and debtor Clarence Prather (“Settlor,” “Debtor”) is granted, and the

respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 42).

2. [20-90159-E-7](#)
[WF-3](#)

BENJAMIN CHIPPONERI
Michael Benavides

**MOTION FOR COMPENSATION BY THE
LAW OFFICE OF WILKE FLEURY LLP
FOR JASON ELDRED, TRUSTEES
ATTORNEY(S)
5-9-24 [\[61\]](#)**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, creditors, and Office of the United States Trustee on May 9, 2024. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

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

Fees are requested for the period January 1, 2022, through June 6, 2024. The order of the court approving employment of Applicant was entered on January 31, 2022. Dckt. 45. Applicant requests fees in the amount of \$9,669.17 and costs in the amount of \$330.83 at a total capped amount of \$10,000.

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 representing the Estate in recovering assets, in particular recovering proceeds from Debtor's non-filing spouse's personal injury award. The Estate has \$30,000 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.

General Case Administration: Applicant spent 4.8 hours in this category. Applicant communicated with Client, Client's prior counsel, and counsel in the personal injury case regarding the status of that case. Mot. 3:8-12, Docket 61.

Asset Analysis and Recovery: Applicant spent 13.8 hours in this category. Applicant investigated a potential trust asset and assisted Client in obtaining proceeds of the personal injury case. *Id.* at 3:13-20.

Fee/Employment Applications: Applicant spent 3.5 hours in this category. Applicant prepared its own fee and employment applications.

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
Daniel L. Egan, Attorney	14.4	\$475.00	\$6,840.00

Daniel L. Egan, Attorney	4.8	\$495.00	\$2,376.00
Daniel L. Egan, Attorney	1.2	\$545.00	\$654.00
Jason G. Eldred, Attorney	1.7	\$395.00	\$671.50
Total Fees for Period of Application			\$10,541.50

Applicant is seeking capped fees of \$9,669.17, reduced from the total earned fees of \$10,541.50.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$330.83 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Court Reporter Services	-----	\$300.00
Postage	-----	\$30.83
Total Costs Requested in Application		\$330.83

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly 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 \$9,669.17 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 \$330.83 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	\$9,669.17
Costs and Expenses	\$330.83

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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 Wilke Fleury LLC (“Applicant”), [Attorney] for Michael D. McGranahan, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Wilke Fleury LLC is allowed the following fees and expenses as a professional of the Estate:

Wilke Fleury LLC, Professional employed by the Chapter 7 Trustee

Fees	\$9,669.17
Costs and Expenses	\$330.83.

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on April 24, 2024. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise and Motion for Approval of Special Counsel Fees and Costs has been set for hearing on the notice required by Local Bankruptcy Rules 9014-1(f)(1) and (d)(5)(B)(v). 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 Approval of Compromise is granted.

The Motion for Approval of Special Counsel Fees and Costs is granted.

Gary Farrar, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with the product liability Company ("Settlor")¹.

¹The name of the product liability company has been kept confidential under the settlement agreement in the products liability action. The Movant states that if the name of the Defendant is necessary for approval of this Settlement Agreement, the name of Defendant can be provided to the court.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court:

1. The Defendant to pay to the Trustee a gross settlement award of \$90,850.00 (“Settlement Amount”) under a Settlement Program (“Program”); and
2. A release of claims.

The court notes the actual terms of the Settlement Agreement have not been submitted with the court, apart from a closing statement showing a disbursement of settlement funds. Exhibit A, Docket 55. It appears that the terms are simply that the Defendant will pay \$90,850.00 to the bankruptcy estate by some unstated date.

At the hearing, **XXXXXXX**

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

This factor weighs in favor of the Agreement. Trustee understands that there are risks with continued litigation because warning labels placed on the Defendant’s products were apparently approved by the government. Moreover, as noted below, the Settlement Amount is based on an award issued by a special master – specifically appointed in the class action lawsuit for this purpose – who reviewed the Debtor’s claims and injuries sustained. Mot. 4:15-21, Docket 50.

Difficulties in Collection

This factor is neutral.

Expense, Inconvenience, and Delay of Continued Litigation

This factor supports the Agreement. Any continued litigation would be costly as medical experts would be required for any damage award. The case is also part of a class action lawsuit, which adds additional complexity and inconvenience. Moreover, the Settlement Amount is based on the Program, which provides for the appointment of a special master, who reviews medical records and the claims made. Under a tiering structure, the special master determined the amount of the Settlement Amount after reviewing medical records and claims made. *Id.* at 4:25-5:2.

Paramount Interest of Creditors

This factor also weighs in favor of the Agreement. The Agreement is based on a resolution determined by a special master, who reviewed the Debtor's claims and medical records. Moreover, the Agreement results in net proceeds to the estate in the approximate amount of \$30,000. *Id.* at 5:5-10.

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 **XXXXXXX**.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the Estate is able to avoid costly and uncertain class action litigation while realizing a benefit to the Estate and Debtor. Moreover, it would be a waste of judicial resources to challenge the special master's monetary award in this case. The Motion is granted.

APPROVAL OF COMPENSATION FOR SPECIAL COUNSEL FEES AND COSTS

Movant also requests the court approve Ventura Law, the Saiontz Firm and the Miller Firm's (collectively "Special Counsel") commission of fees in the amount of \$36,340 and costs in the amount of \$1,576.66 in accordance with the Order approving Special Counsel's employment. *See* Order, Docket 47. The Estate has \$90,850.00 of unencumbered settlement monies to be administered as of the filing of the application.

Percentage Fees

The court finds that the fees computed on a percentage basis recovery for the Bankruptcy Estate are reasonable and a fair method of computing the fees in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of \$36,340 pursuant to 11 U.S.C. § 330 for these services provided to the Estate by Special Counsel. The Chapter 7 Trustee is authorized to pay from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs

Movant has not submitted any itemized evidence of costs in this case. The court cannot grant blanket approval of costs without some showing of costs incurred.

At the hearing, **XXXXXXX**

~~Costs in the amount of \$1,576.66 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.~~

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 Approval of Compromise and Motion for Approval of Special Counsel Fees and Costs filed by Gary Farrar, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and products liability Company (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit **xx** in support of the Motion (Dckt. **xx**).

IT IS FURTHER ORDERED that the Trustee is authorized to pay the \$22,789.72 secured claim of Medicare that encumbers the Settlement Proceeds.

IT IS FURTHER ORDERED that Ventura Law, the Saiontz Firm and the Miller Firm’s (collectively “Special Counsel”) is allowed the following fees and expenses as a professional of the Estate:

Special Counsel, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$36,340

Costs in the amount of ~~\$1,576.66~~,

as the final allowance of fees and costs pursuant to 11 U.S.C. § 330 as Special Counsel for the Chapter 7 Trustee. These fees are to be distributed in accordance with the Attorney Contingency Fee Retaining Agreement filed as Exhibit A at Docket 45.

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

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

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

Sufficient Notice Provided. There has been no Certificate of Service form filed with this Motion, so the court was initially unable to determine whether service requirements have been met.

On June 4, 2024, counsel for the Debtor/Debtor in Possession rectified the situation, with the Certificate of Service being filed. Dckt. 489. It documents that the Motion, Supporting Pleadings, and Notice were served on June 3, 2024.

By the court's calculation, 3 days' notice was provided. Judge Klein set the hearing for June 6, 2024 to be heard with Judge Sargis in the Modesto courthouse at 10:30 a.m. Order, Dckt. 478.

The Motion to Sell Free and Clear of Liens was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 granted.

The Bankruptcy Code permits Victoria M. Gewalt, the Debtor / Debtor in Possession, ("Movant") to sell property of the estate under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1107. Here, Movant proposes to sell the real property commonly known as 9649 Sterling Pointe Court, Loomis, Placer County, California 95650 ("Property"). The Property is further described in the Motion as Lot Number: 58, described as 1.9 acre lot 58 Sterling Pointe EST T-93, APN 036-310-022-000.

The proposed purchaser of the Property is David Brower and Sandra Burch ("Buyer"), and the terms of the sale are:

A. The sale is a cash sale in the amount of \$2,210,000.

B. The sale is as is, where is, without any warranty express or implied.

The full terms of the sale are included in the California residential Purchase Agreement and Joint Escrow Instructions and accompanying offer and counter offer filed as Exhibits 1-3 at Docket 486.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the first priority lien of Mechanic's Bank in the amount of \$1,400,000 and a second deed of trust in favor of Safy Khalida in the amount of \$125,000, as well as unpaid property taxes owing to Placer County. The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The trustee, [debtor in possession] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has requested authorization to sell free and clear of liens pursuant to 11 U.S.C. § 363(f)(2). There is no evidence submitted with the court that shows that Mechanic's Bank or Safy Khalida have consented to the sale. It may be the case that Debtor / Debtor in Possession has not had time to get Declarations from the creditors showing consent to the sale as the Motion has been provided on shortened notice. Of note, the court has reviewed the audio recording of the hearing held on May 31, 2024, showing that the sale is consensual and interested parties are "wholeheartedly" in agreement with the proposed sale.

At the hearing, **XXXXXXX**

Moreover, there is authority to sell free and clear of liens as the record makes clear that the price at which such property is to be sold is greater than the aggregate value of all liens on such property. Therefore, the court finds that the sale can be completed free and clear of liens pursuant to 11 U.S.C. § 363(f)(3).

Suggested Overbid Procedures

Debtor / Debtor in Possession requests approval of overbid procedures that require a proposed overbidder, prior to this hearing, to provide debtor / Debtor in Possession's counsel a deposit by cashier's check in the amount of \$30,000, amounting to a \$25,000 deposit and a first overbid of at least \$5,000, and provide proof of funds for the balance of the purchase price. Mot. 2:12-17, Docket 483. If the sale cannot complete, this initial deposit shall be retained by the estate as liquidated damages.

The court finds these procedures to be reasonable in light of this sale and adopts these overbidding procedures.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will result in all liens and taxes owed on the Property being paid in full and, in combination with the sale of 801 Wheelock Franklin, Texas, approved by Order at Docket 472, all creditors being paid in full. The sale will also generate funds for the Debtor / Debtor in Possession's new start.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court so the sale can move forward immediately, paying all creditor and realizing a dividend for the Estate. Mot. 3:14-19, Docket 483.

Movant has 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 6004(h), and this part of the requested relief is granted.

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 Sell Property filed by Victoria M. Gewalt, the Debtor / Debtor in Possession, ("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 Victoria M. Gewalt, the Debtor / Debtor in Possession, ("Movant"), is authorized to sell pursuant to 11 U.S.C. §§ 363(b) and (f)(2), (3) to David Brower and Sandra Burch or nominee ("Buyer"), the Property commonly known as 9649 Sterling Pointe Court, Loomis, Placer County, California 95650 ("Property"). The Property is further described in the Motion as Lot Number:

58, described as 1.9 acre lot 58 Sterling Pointe EST T-93, APN 036-310-022-000. The Property is to be sold on the following terms:

- A. The Property shall be sold to Buyer for \$2,210,000, on the terms and conditions set forth in the California residential Purchase Agreement and Joint Escrow Instructions and accompanying offer and counter offer filed as Exhibits 1-3 at Docket 486, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Property is sold free and clear of the liens of Mechanic's Bank and Safy Khalida, creditors asserting secured claims, pursuant to 11 U.S.C. §§ 363(f)(2) and (3), with the lien of such creditors attaching to the proceeds. The Debtor / Debtor in Possession shall hold the sale proceeds after payment of the closing costs, other secured claims, and amount provided in this order, pending further order of the court.
- D. Debtor / Debtor in Possession is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. After payment of the amounts provided above, any remaining net sale proceeds may be disbursed directly from escrow to the Debtor / Debtor in Possession.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

FINAL RULINGS

5. [24-90022-E-7](#)
[TMO-1](#)

SARITA SOLORZANO
Mark O'Toole

MOTION TO AVOID LIEN OF FIRST
TECHNOLOGY FEDERAL CREDIT
UNION
4-25-24 [\[17\]](#)

Final Ruling: No appearance at the June 6, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on April 25, 2024. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of First Technology Federal Credit Union ("Creditor") against property of the debtor, Sarita Hammer Solorzano ("Debtor") commonly known as 1500 Huntermaster Court, Hughson, California 95326 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$27,353.57. Exhibit A, Dckt. 20. An abstract of judgment was recorded with Stanislaus County on January 24, 2024, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$605,000 as of the petition date. Schedule A/B 11, Dckt. 1. The unavoidable consensual liens that total \$278,399 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D 19, Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$339,000 on Schedule C. Schedule C 17, 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 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 Sarita hammer Solorzano ("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 First Technology Federal Credit Union, California Superior Court for Stanislaus County Case No. CV-23-003154, recorded on January 24, 2024, Document No. 2024-0002975, with the Stanislaus County Recorder, against the real property commonly known as 1500 Huntermaster Court, Hughson, California 95326, 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.