UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

June 8, 2017, at 10:30 a.m.

1.	**16-90500-E-11** **HSM-8**	**ELENA DELGADILLO** **Len ReidReynoso**	**AMENDED MOTION FOR APPROVAL OF INTERIM DISTRIBUTION TO CREDITOR SACRAMENTO LOPEZ** **5-17-17 [173]**

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 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2017. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion for Approval of Interim Distribution is granted.

Irma Edmonds, the Chapter 7 Trustee, moves for approval of interim distribution to Sacramento Lopez and holders of general unsecured claims ("Creditors") pursuant to 11 U.S.C. § 363(b).

The Trustee notes that the court approved a sale of forty acres of property in this case on May 9, 2017, by which the Trustee estimates net proceeds of $644,000.00. Now, the Trustee seeks to distribute $322,000.00 to Sacramento Lopez and $7,775.21 to general unsecured claims.

The Trustee's investigation in this case revealed that Sacramento Lopez received "a large judgment against the Debtor and a non-debtor in 2012." The Trustee does not dispute the claim in this case and states that issuing an interim distribution now will reduce ongoing interest that has been accruing on Sacramento Lopez's claim at $225.54 per day. The Trustee filed an amendment to the Motion to include general unsecured claims in this Motion after communicating with the U.S. Trustee.

Based upon the Trustee demonstrating to the court that there are sufficient net proceeds to make an interim distribution and that Sacramento Lopez's claim continues to accrue interest, the court determines that an interim distribution is in the best interest of the Estate. The Motion is granted, and the Trustee is authorized to make an interim distribution of $322,000.00 to Sacramento Lopez and $7,775.21 to general unsecured claims.

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 Approval of Interim Distribution filed by Irma Edmonds, Chapter 11 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 Motion for Approval of Interim Distribution is granted, and the Trustee is authorized to distribute $322,000.00 to Sacramento Lopez and $7,775.21 to general unsecured claims in this case.

2. **11-91706-E-7** **GILBERTO/CECILIA LUNA** **MOTION TO AVOID LIEN OF**
SDM-2 **Scott D. Mitchell** **CITIBANK SOUTH DAKOTA, N.A.**
4-27-17 [22]

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 26, 2017. By the court's calculation, 43 days' notice was provided. 14 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.

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Citibank South Dakota N.A. ("Creditor") against property of Gilberto Luna and Cecilia Luna ("Debtor") commonly known as 3420 Shaye Lane, Modesto, California ("Property").

INSUFFICIENT NOTICE PROVIDED

The Proof of Service for this Motion indicates that it was served by **First Class Mail** on Creditor.

Service by Certified Mail Required

Federal Rule of Bankruptcy Procedure 9014(b) requires that motions and their contested matter-initiating documents (such as objections and applications) must be served in the same manner as a summons in an adversary proceeding. Federal Rule of Bankruptcy Procedure 7004(h) [emphasis added] requires:

> "h) **Service** of process **on an insured depository institution**. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding **shall be made by certified mail addressed to an officer** of the institution unless–

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

The correct address for service can be confirmed at the FDIC webpage for federally insured financial institutions. FN.1. Either service was not made to those addresses, or service was not addressed to an officer by name or "Attn: Officer for Service of Process." Service was not made by certified mail. Service has not been adequately made on the federally insured financial institutions in this case.

FN.1. https://research.fdic.gov/bankfind/detail.html?bank=23360&name=Citibank%20(South%20Dakota),%20N.A.&searchName=citibank%20south%20dakota%20na&searchFdic=&city=&state=&zip=&address=&searchWithin=&activeFlag=&searchByTradename=false&tabId=2.

Moreover, the FDIC webpage reports that Citibank (South Dakota), N.A. has been inactive since July 1, 2011, and the successor institution is Citibank, National Association (FDIC No. 7213).

Additionally, for seven years this court has made it clear that parties, be they debtors or creditors, must comply with the requirements under the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, Federal Rules of Evidence, the Bankruptcy Code, and other applicable laws. As part of this, the court has provided parties and counsel with the following quote:

> Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92–93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

In addition to having failed to comply with the service requirements of Federal Rule of Bankruptcy Procedure 9014(b) and Federal Rule of Bankruptcy Procedure 7004(h), the pleadings have been dumped into a Post Office Box. This is insufficient service.

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 Avoid Judicial Lien filed by filed by 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 Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT PROVIDES SUFFICIENT NOTICE UPON ALL CREDITORS

A judgment was entered against Debtor in favor of Creditor in the amount of $7,054.10. An abstract of judgment was recorded with Stanislaus County on January 12, 2011, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $221,000.00 as of the date of the petition. The unavoidable consensual liens that total $358,637.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Schedule C.

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 the 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 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Citibank South Dakota N.A., California Superior Court for Stanislaus County Case No. 652424, recorded on January 12, 2011, with the Stanislaus County Recorder, against the real property commonly known as 3420 Shaye Lane, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

3. **11-91706-E-7** **GILBERTO/CECILIA LUNA** **MOTION TO AVOID LIEN OF AMERICAN EXPRESS CENTURION BANK**
SDM-3 **Scott D. Mitchell** **4-27-17 [27]**

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 Not 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 26, 2017. By the court's calculation, 43 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.

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of American Express Centurion Bank ("Creditor") against property of Gilberto Luna and Cecilia Luna ("Debtor") commonly known as 3420 Shaye Lane, Modesto, California ("Property").

INSUFFICIENT NOTICE PROVIDED

The Proof of Service for this Motion indicates that it was served by **First Class Mail** on Creditor.

Service by Certified Mail Required

Federal Rule of Bankruptcy Procedure 9014(b) requires that motions and their contested matter-initiating documents (such as objections and applications) must be served in the same manner as a summons in an adversary proceeding. Federal Rule of Bankruptcy Procedure 7004(h) [emphasis added] requires:

> "h) **Service** of process **on an insured depository institution**. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act)

> in a contested matter or adversary proceeding **shall be made by certified mail addressed to an officer** of the institution unless–
>
> (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
>
> (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
>
> (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

A correct address for service can be confirmed at the FDIC webpage for federally insured financial institutions. FN.1. Either service was not made to those addresses, or service was not addressed to an officer by name or "Attn: Officer for Service of Process." Service was not made by certified mail. Service has not been adequately made on the federally insured financial institutions in this case.

FN.1. https://research.fdic.gov/bankfind/detail.html?bank=27471&name=American%20Express%20Centurion%20Bank&searchName=american%20express%20centurion%20bank&searchFdic=&city=&state=&zip=&address=&searchWithin=&activeFlag=&searchByTradename=false&tabId=2.

Additionally, for seven years this court has made it clear that parties, be they debtors or creditors, must comply with the requirements under the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, Federal Rules of Evidence, the Bankruptcy Code, and other applicable laws. As part of this, the court has provided parties and counsel with the following quote:

> Service upon a post office box is deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92–93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

In addition to having failed to comply with the service requirements of Federal Rule of Bankruptcy Procedure 9014(b) and Federal Rule of Bankruptcy Procedure 7004(h), the pleadings have been dumped into a Post Office Box. This is insufficient service.

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 Avoid Judicial Lien filed by filed by 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 Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT PROVIDES SUFFICIENT NOTICE UPON ALL CREDITORS

A judgment was entered against Debtor in favor of Creditor in the amount of $7,368.51. An abstract of judgment was recorded with Stanislaus County on June 16, 2011, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $221,000.00 as of the date of the petition. The unavoidable consensual liens that total $358,637.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Schedule C.

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 the 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 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 American Express Centurion Bank, California Superior Court for Stanislaus County Case No. 659702, recorded on June 16, 2011, Document No. 2011-0050114-00, with the Stanislaus County Recorder, against the real property commonly known as 3420 Shaye Lane, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

4. **16-90309-E-7** **MARK/JULIANNA RUNYON** **CONTINUED STATUS CONFERENCE**
16-9011 **RE: COMPLAINT**
HERRA V. RUNYON ET AL **7-1-16 [1]**

Plaintiff's Atty: David C. Johnston
Defendant's Atty: unknown

Adv. Filed: 7/1/16
Answer: none

Nature of Action:
Objection/revocation of discharge

Notes:
Continued from 2/23/17 to allow Plaintiff's counsel to address the filing of the motion for entry of default judgment.

JUNE 8, 2017 STATUS CONFERENCE

At the June 8, 2017 Status conference xxxxxxxxxxxxxxxxxxxx.

Summary of Complaint

Diego Herra, the Plaintiff, filed a Complaint objecting to the discharge of Mark Runyon and Julianna Runyon ("Defendant-Debtor"). The grounds for denying Defendant-Debtor a discharge in the bankruptcy case are summarized as: (1) Defendant-Debtor failed to disclose prior bankruptcy cases filed. It is alleged that Defendant-Debtor filed and received a discharge in a Chapter 7 bankruptcy case filed in the Central District of California in 2008. C.D. Cal. Bankr. 08-120155.

Plaintiff alleges that federal court jurisdiction exists pursuant to 28 U.S.C. § 1334(a) and the reference of the bankruptcy case to the bankruptcy judges in this District. It is further alleged that this is a core proceeding as provided in 28 U.S.C. § 157(b)(2)(J), the claims asserted arising under the Bankruptcy Code, 11 U.S.C. § 727(a)(4)(A) and (a)(8).

Summary of Answer

No answers or other responsive pleadings have been filed.

FEBRUARY 22, 2017 STATUS CONFERENCE

This Adversary Proceeding was commenced on July 1, 2016. The Defaults of Defendant-Debtor were entered on September 6, 2016. Dckts. 12, 13. The Status Conference has been continued twice, the first time to allow for the filing of a motion for entry of a default judgement. The second time (December 1, 2016) it was continued due to the illness of Plaintiff's counsel.

Notwithstanding the continuances, no motion for entry of default judgment has been filed. Counsel requested a further continuance, in light of his recent medical issues, to now address the filing of the motion for entry of default judgment.

DECEMBER 1, 2017 STATUS CONFERENCE

On September 7, 2016, the default of the Defendant-Debtor was entered. The court continued the September 8, 2016 Status Conference to December 1, 2016, to allow for the filing of a motion for entry of default judgment. The court has been advised in other cases of an illness affecting Plaintiff's counsel and his inability to work during the Fall of 2016. Courtesy counsel appeared, and communicated that Plaintiff's counsel of record was preparing the motion for entry of default judgment, while home ill, and would have it filed in the next two weeks.

5. 15-90811-E-7 ASSN., GOLD STRIKE MOTION TO AMEND
15-9061 HEIGHTS HOMEOWNERS 5-11-17 [131]
JLB-1
INDIAN VILLAGE ESTATES, LLC V.
GOLD STRIKE HEIGHTS

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 Defendants on May 11, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Leave to File Amended Complaint 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 Leave to File Amended Complaint is denied.

Indian Villages Estates, LLC ("Plaintiff") filed a Motion for Leave to File Amended Complaint pursuant to Federal Rule of Bankruptcy Procedure 7015 and Federal Rule of Civil Procedure 15(a)(1) on

May 11, 2017. Plaintiffs asserts that filing an amended complaint will allow Plaintiff to fully test its claims in this adversary proceeding and that no party will suffer significant prejudice.

The Pre-Trial Conference in this case was held on April 27, 2017. Dckt. 127. On May 2, 2017, trial was set for October 30 & 31, 2017. Dckt. 128. The discovery cutoff date was October 30, 2016, and dispositive motions were to be heard by December 2, 2016. Dckt. 27.

REVIEW OF MOTION

Plaintiff argues that the proposed changes would reduce the number of causes of action from six to three while maintaining the core issues in dispute. Plaintiff proposes the following changes:

A. The First Cause of Action is deleted because the parties agree that declaratory relief is inapplicable.

B. The Second Cause of Action is deleted because it is duplicative of the Fifth Cause of Action to quiet title.

C. The Third Cause of Action is deleted because its central allegation is that the foreclosure sale and subsequent Trustee's deeds were void (not voidable), and thus, there is nothing to cancel because cancellation connotes an admission that the deed validly transferred an interest that must be rescinded.

D. The proposed complaint is verified in response to the claims asserted by Defendant Community Assessment Recovery Services ("CARS") in its motion for summary judgment that the complaint (as to the cause of action to quiet title) must be verified.

E. The proposed complaint adds allegations that both Gold Strike Heights Association and Gold Strike Heights Homeowners Association failed to comply with the pre-lien and pre-foreclosure statutes set out in the "Davis-Stirling Common Interest Development Act," and as a result, the assessment lien that formed the basis for undertaking the non-judicial foreclosure upon the thirty-one lots owned by Plaintiff was never perfected.

F. The proposed complaint provides further allegations regarding damages Plaintiff suffered when the Federal Emergency Management Agency decided to seek another location for the installation of temporary housing when the thirty-one lots owned by Plaintiff could not be used because of the uncertainty of their ownership.

    1. Plaintiff alleges that it lost an opportunity to obtain an estimated $500,000.00 in revenue and benefits from an eighteen month emergency housing contract.

G. The proposed complaint clarifies that Plaintiff seeks an award of attorney's fees under two separate statutes, including Civil Code § 1354.

H. The proposed complaint is verified in response to the claim by CARS that it must be verified for the quiet title cause of action to be viable.

DEFENDANT-TRUSTEE'S OPPOSITION

Gary Farrar, the Chapter 7 Trustee and Defendant, filed an Opposition on May 25, 2017. Dckt. 137. The Trustee argues that Plaintiff failed to request or show good cause for modifying the scheduling order in addition to failing to show how the proposed amendments are in the interest of justice. The Trustee states that Plaintiff admits that the proposed amendments do not change any of the issues that will be tried in this case, making the proposed amendments unnecessary.

The Trustee argues that allowing Plaintiff to amend its complaint would prejudice Defendants by causing them to waste resources that could (and should) be spent preparing for trial, instead of responding to an unnecessary amended complaint.

The Trustee argues that Plaintiff has relied upon Federal Rule of Bankruptcy Procedure 7015 incorrectly because Federal Rule of Bankruptcy Procedure 7016 is the applicable rule describing that modifying a pre-trial scheduling order must be for "good cause." *See* FED. R. CIV. P. 16(b)(4). The Trustee also cites to *Johnson v. Mammoth Recreations, Inc.* for the proposition that Rule 16(b) rather than Rule 15 governs the ability to amend a complaint after the scheduling order deadline has passed. 975 F.2d 604, 608 (1998).

The Trustee emphasizes that the court's scheduling order stresses that requests for amendments are not favored and will be denied unless the moving party "makes a strong showing of diligence in complying with this scheduling order." Dckt. 27, at 8. The Trustee argues that Plaintiff has not been diligent because it could have done so before December 2, 2016. According to the Trustee, Plaintiff has not presented evidence that it did not know about any alleged non-compliance with the Davis-Stirling Act, which presumably occurred during the foreclosure process in 2013. Additionally, the Trustee argues that Plaintiff knew about its damages allegations as early as April 26, 2016, more than seven months before the deadline to hear a motion for leave to amend. *See* Dckt. 134.

The Trustee also opposes the Motion because the proposed complaint does not change any of the issues that have been scheduled for trial. The Trustee believes that the changes in the complaint are merely stylistic.

CARS'S OPPOSITION

Defendant CARS filed an Opposition on May 25, 2017. Dckt. 139. CARS opposes the Motion because Plaintiff has not presented a legitimate reason for waiting until after the pre-trial conference before seeking this Motion. CARS argues that Plaintiff has not presented a persuasive reason for the delay in filing this Motion and argues that it will be prejudiced because discovery has been closed and because it will not have an ability to determine the true, factual bases for Plaintiff's amendments.

CARS cites the court to various Ninth Circuit precedent for its position that amendments to the complaint normally occur before the close of discovery. *See, e.g.*, *AmerisourceBergen Corp. v. Dialysis*

West, Inc., 465 F.3d 946, 952–53 (9th Cir. 2006); *Electra v. Central Credit Union*, 439 F.3d 1018, 1024–27 (9th Cir. 2006); *Zivkovic v. So. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002).

CARS argues that Plaintiff's "LATE, LATE, LATE attempt to amend the complaint to add new damages, theories, evidence and the like must be DENIED." Dckt. 139, at 3.

PLAINTIFF'S REPLY

Plaintiff filed a Reply on June 1, 2017. Dckt. 141. Plaintiff states that the Trustee argues that the issues *do not* change, while CARS argues that the issues *do* change, but regardless, Plaintiff counters by arguing that the Defendants have not shown any actual prejudice.

Plaintiff claims that the court's ruling on CARS's summary judgment motion granted leave for Plaintiff to file a verification for its complaint in state court, and if this Motion is not granted, then Plaintiff plans to file such a verified complaint.

Plaintiff argues that the Trustee's grounds for opposing the Motion are all procedural and not substantive in showing prejudice. Plaintiff states that the Trustee will not be prejudiced because he will either have to file an answer to the amended complaint or he will have to file a verified answer to the verified complaint Plaintiff will file if this Motion is denied.

Plaintiff argues that CARS cannot be prejudiced by the addition of amended claims relating to wrongful foreclosure because CARS did not become liable until the non-judicial foreclosure began. Plaintiff states that CARS has been on notice for a long time regarding the considerable damages Plaintiff suffered by losing an opportunity to lease the thirty-one lots to FEMA.

Plaintiff argues that amending the complaint does not violate the purpose of the March 23, 2016 scheduling order because the complaint is shortened from six causes of action to three, because the Trustee does not assert any claim of prejudice stemming from the proposed amendments, because CARS's concern about pre-lien and pre-foreclosure allegations is unfounded, because CARS's concern about entitlement to attorney's fees is unfounded by not being impacted by the proposed amendments, because the Trustee does not assert any concerns about clarification of damages, because CARS is not being surprised by claims of damages from lost opportunity to lease property, and because CARS has not discussed what discovery it would need to conduct for the amended complaint.

Plaintiff states that neither defendant will be prejudiced because each one has all of the documents and information it needs for trial.

DISCUSSION

Federal Rule of Civil Procedure 15(a)(2) states that "a party may amend its pleading only with the opposing party's written consent or the court's leave" and directs the court to "freely give leave when justice so requires." Leave to amend pleadings is freely given unless the opposing party makes a showing of undue prejudice, bad faith, or dilatory motive on the part of the moving party. *Sonoma County Ass'n of Retired Employees v. Sonoma County*, 708 F.3d 1109 (9th Cir. 2013).

The Ninth Circuit noted that amendment was proper when there was a change in controlling precedents during the litigation. *Sonoma County Ass'n of Retired Employees v. Sonoma County*, 708 at 1117. That panel considered the various factors stated by the Supreme Court in *Foman*, which are as follows:

> "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be "freely given." Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules."

Foman v. Davis, 371 U.S. 178, 182 (1962).

Moore's Federal Practice provides insight as to how this 1962 cornerstone of federal pleading practice is to be applied:

> "In determining whether justice requires granting leave to amend, a court should balance the factors set forth by the Supreme Court in *Foman v. Davis*, especially **prejudice to the non-moving party (see [2], below), against any harm to the movant if leave is not granted**. Prejudice to the moving party if leave is denied should be considered, even if there is substantial reason to deny leave based on the other factors.
>
> A court should also consider judicial economy and its ability to manage the case. In determining the impact of granting leave on judicial economy, **a court should consider how the amendment would affect the use of judicial resources and the impact on the judicial system.** The court should also temper the favoring freely granting leave to amend with consideration of the ability of the district court to manage the case adequately if amendment is allowed. **Another factor occasionally considered by a court is whether a party previously amended or had the opportunity to amend the pleading**."

Moore's Federal Practice, Civil § 15.15[1] (emphasis added).

> "2] Court Will Deny Leave If Amendment Will Result in Prejudice
>
> One of the key factors considered by a court in ruling on a motion for leave to amend is whether permitting the amendment would result in undue prejudice to the non-moving party. Prejudice may result from delay by the movant in requesting leave to amend, but the passage of time alone is usually not enough to deny leave to

> amend; in most cases, a court will deny leave to amend only if the non-moving party is in fact prejudiced by the delay. **Prejudice is especially likely to exist if the amendment involves new theories of recovery or would require additional discovery.** Whether a defendant would be prejudiced by a "new" theory of recovery does not depend on whether the earlier pleading formally pleaded the theory, but on whether the earlier pleading put defendant on sufficient notice of the potential claim. **If delay is unduly excessive, however, the court may deny leave based on that factor alone**.
>
> **If the delay is particularly egregious, some decisions shift the burden to the moving party to show that its delay was due to oversight, inadvertence, or excusable neglect before the court will allow the amendment.** These decisions do not explicitly explain the initial allocation of a burden of production in amendment cases. Presumably, the liberal ethos of amendment means that the party opposing amendment bears a burden of production to come forward with reasons or evidence to deny leave to amend. These decisions would then shift the burden to the movant to come forward with reasons justifying an especially lengthy delay in moving to amend.

Moore's Federal Practice, Civil § 15.15[2] (emphasis added).

DENIAL OF MOTION

It is shocking to the court that in an Adversary Proceeding that has been pending for one and one-half years (which in bankruptcy court is a long time, with parties commonly able to have trials completed in that time, *if* they are diligently prosecuting the action), with trial being set, that Plaintiff seeks to now amend the Complaint. Plaintiff's Attorney has practiced in the bankruptcy courts in this District for decades and is very familiar with the practices and procedures in this court. He well knows that when setting a matter for trial, it is a real date, not as in state court merely an opportunity for the court to have to continue the matter two or three times for it to rise to a high enough priority to actually be assigned to a judge.

By its own admission, Plaintiff states that the requested amendments are not "necessary" and of little legal significance:

> "It is out of an abundance of caution that Plaintiff now brings this motion to amend. While the clarifying allegations do not vary with what has previously been pled, it is best for the parties as well as this Court that such clarifications be formally presented at this time."

Motion, p. 8:26–28; Dckt. 131. Taken at face value, Plaintiff vehemently disagrees with Defendants' contentions that Plaintiff is trying to change the Complaint. Accepting this statement as true, the court concurs with Plaintiff that amendments are not necessary for the court to properly and fairly adjudicate any and all claims asserted by Plaintiff.

For this Motion, the Trustee has demonstrated that Plaintiff may have known about its allegation of non-compliance with the Davis-Stirling Act during 2013 when the foreclosure sale occurred and may have known in 2015 of the potential to lease property to FEMA and the damages from not being able to do so.

> "At the deposition conducted upon Mark Weiner by counsel for CARS, Mark Weiner disclosed details as to the damages suffered by INDIAN VILLAGE when FEMA decided to seek another location for the lease of temporary housing for fire victims when the ownership of the 30 lots available for lease to FEMA could not be resolved to the satisfaction of FEMA. Dec. James Brunello, ¶ 8."

Id., p. 7:24–28. Attorney Brunello testifies that this deposition was conducted on April 26, 2016. Declaration, p. 3:10–14.

The Motion continues, stating that the damages arising from the asserted foreclosure sales were clearly understandable for the Chapter 7 Trustee, and correspondingly for Plaintiff, in 2015, stating:

> "3) When the opportunity to lease 30 lots to FEMA became a reality in late 2015, the Chapter 7 Trustee was informed by INDIAN VILLAGE of this very time-sensitive opportunity in an attempt to "make a deal" to lease the 30 lots regardless of their true ownership."

Motion, p. 7:1–3; Dckt. 131. Plaintiff admits that in 2015 the loss of the ability to lease the thirty lots, and the damages therefrom, became a reality, well know to everyone—including Plaintiff.

The court does not find persuasive Attorney Brunello's testimony that it is only in 2017 that Plaintiff could state in the Complaint the additional allegations.

> "7) The further pleading on damages is required because the FEMA opportunity came after the complaint was brought 2015 and after the bankruptcy was filed in 2015. Only recently have the FEMA related damages become entirely certain and thus devoid of any speculation."

Declaration, p. 3:6–9; Dckt. 134. While it may have been later in 2015, after the state court complaint was filed, that the loss of the ability to rent property to FEMA was a reality, merely because Plaintiff's Attorney believes that sometime later those damages became "devoid of any speculation" (whatever that phrase may mean), it does not mean that Plaintiff could intentionally hide such allegations in its vest pocket and play it after the court has ruled on two summary judgment motions, made detailed findings and conclusions not in genuine dispute, and having set the matter for trial to be diligently prosecuted by the parties. Order, p. 1:28, 2:1–2; Dckt. 121. The court denied summary judgment as to the other causes of action—"without prejudice as to all issues, defenses, and claims at trial." *Id.*, p.2:3–4.

As stated in the Memorandum Opinion and Decision, with respect to the affirmative defense of privilege, based on the evidence presented, the court could not determine that CARS met the requirements of the statutory privileges. Memorandum Opinion and Decision, p. 14:6–8, 15:7–16; Dckt. 120. The

determination of some of the asserted affirmative defenses will require the court to assess the credibility of witnesses presented by Plaintiffs and CARS.

On the issue of whether a verified complaint was required and the failure of Plaintiff to so do was the basis for judgment for CARS, the court rejected this eve of trial contention by CARS. The court concluded that CARS's failure to waive the alleged deficiency constituted a waiver of the requirement that the Complaint be verified. *Id.*, p. 12:10–28, 13:1–3.

The court noted that if CARS believes that such a verification is required, it can be easily remedied by the filing of the verification, a simple one-page document in which a representative of the Plaintiff states that the allegations in the Complaint are true under penalty of perjury. *Id.*, p. 13:1–3. Further, if Plaintiff believes that such verification is necessary, notwithstanding CARS's waiver, it could file the verification—the simple one-page statement that all of the allegations in the Complaint are true under penalty of perjury. No amendment of the Complaint is required.

The Purported Amendments Sound in An Attempt to Render the Prior Rulings of this Court Mere "Advisory Opinions"

On April 20, 2017, this court issued its eighteen-page Memorandum Opinion and Decision addressing the summary judgment motion filed by CARS. Dckt. 120. The court carefully reviewed and ruled on the various factual and legal contentions advanced by CARS and Plaintiff. Contrary to Plaintiff's characterization, the court did not just "deny" the motion for summary judgment and determine that CARS could not assert the affirmative defense of its conduct being privileged. As stated above, ruling on such defenses will require the court to determine conflicting evidence.

The court also went further, making twenty-two (22) specific determinations of material facts and matters not in genuine dispute. Order, Dckt. 121. From the timing, it appears that now, after the court had conducted extensive proceedings, made determinations, and have this matter set for trial, Plaintiff seeks to free itself from those determinations and how it has chosen to litigate this case.

Plaintiff offers no credible explanation as to why in 2015 it did not seek to amend the Complaint. The court does not find credible Plaintiff's Attorney's statement under penalty of perjury that in 2015 Plaintiff knew, and had communicated to the Chapter 7 Trustee, that it lost the opportunity to lease property to FEMA, because it was not "devoid of speculation," amendment was not proper. Plaintiff offers no reason why such amendment was not done in January 2016, February 2016, March 2016, and thereon through December 2016. Nor is there a reason why such amendment was not sought in January 2017, or February 2017, and thereafter until now, after the court has ruled on the summary judgment motion and made the various findings and determinations that apply in the upcoming scheduled trial.

Plaintiff has not been diligent in seeking this amendment. Plaintiff may present its evidence in support of its Complaint, subject to the determinations previously made by this court. The complaint requests in the prayer, "For civil penalties pursuant to the applicable statutes and reasonable attorneys fees according to proof." Complaint, p.18:19–20; Exhibit A, Dckt. 5. Plaintiff may seek attorneys' fees and costs as permitted in a post-judgment motion as provided in Federal Rule of Bankruptcy Procedure 7054(b). (The

former requirements of FED. R. BANKR. P. 7008(b) requiring a request for attorney's fees to be stated as a separate claim for relief having been amended out of the Rules.)

An amended complaint is not necessary for Plaintiff to delete the causes of action it now concedes are duplicative or improper. Plaintiff does not seek to assert any new causes of action or claims for relief. Rather, Plaintiff merely wants to add new allegations, as if seeking to gird itself from a motion pursuant to Federal Rule of Civil Procedure 12(b)(6) and Federal Rule of Bankruptcy Procedure 7012 for failure to state a claim.

The Complaint asserts a Cause of Action for Slander of Title, in which it is asserted that Plaintiff has incurred damages arising from the allegedly invalid foreclosure deeds having been recorded. In the prayer, Plaintiff asks for "compensatory, special, general, and punitive damages." Plaintiff asserts that the proposed amendments are of little moment because all of this information has been provided in discovery. If so, then Plaintiff has provided it in support of its claim for damages in the existing Complaint.

The Motion is denied. Plaintiff can prosecute the Complaint it filed more than two years ago and all of the causes of action stated in that Complaint, which are the same causes of action, which causes of action it does not propose to change in the proffered amended complaint. Plaintiff may prepare and file a stipulation to dismiss those causes of action Plaintiff has now determined are improper to prosecute. If Defendants unreasonably refuse to so stipulate, Plaintiff may seek a court order dismissing the causes of action.

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 Leave to File Amended Complaint filed by Plaintiff having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

6. **14-91520-E-7** **JOANN TEEM**
WFH-5 **Gilbert B. Vega**

CONTINUED MOTION FOR ORDER CLOSING CASE WITHOUT ABANDONING ASSETS TO DEBTOR
4-20-17 [58]

Final Ruling: No appearance at the June 8, 2017 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 April 20, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Order Closing Case Without Abandoning Assets to Debtor 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 hearing on the Motion for Order Closing Case Without Abandoning Assets to Debtor is continued to 10:30 a.m. on August 24, 2017.

JoAnn Teem ("Debtor") received a discharge in this case on March 16, 2015. Dckt. 26. On April 20, 2017, Michael McGranahan, the Chapter 7 Trustee, filed this Motion for Order Closing Case Without Abandoning Assets to Debtor pursuant to 11 U.S.C. § 554(c) on the basis that the Estate holds an interest in shares of a corporation that the Trustee has sought offers for, but no offers have materialized. The Trustee believes that the Estate's interest has significant value, but it is not liquid at this time.

NOTICE OF CONTINUED HEARING

On May 5, 2017, the Trustee filed a Notice of Continued Hearing for this matter. Dckt. 63. The Notice states that the hearing is continued to 10:30 a.m. on June 8, 2017.

MAY 18, 2017 HEARING

At the hearing, the court continued the hearing to 10:30 a.m. on June 8, 2017.

INTERESTED PARTY'S OPPOSITION

Albert Pinasco ("Interested Party") filed an Opposition on May 23, 2017. Dckt. 71. He is the President of Varni Corporation, a member of the corporation's Board of Directors, and he is the Trustee of the Varni Trust. Interested Party states that he "does not care whether the assets in question are abandoned or sold," but he objects to the Trustee's proposition that they should be part of the Estate indefinitely because the Trustee has not received an offer he likes.

Interested Party argues that he will be harmed by granting this Motion because he will not be able to executive his fiduciary duties to shareholders and to the trust fully. For example, Debtor's shares of the Corporation are voting shares, and without someone to exercise voting rights, the balance of power in the corporation will shift. Additionally, Interested Party does not know where dividends would be sent. The corporation's share value will also be damaged by having 2% of the corporation's shares remain in an inactive bankruptcy case.

Interested Party argues that the Trustee has had almost three years to value and sell the shares. Interested Party argues that the Trustee has not attempted to sell the shares in a reasonably expeditious manner.

***EX PARTE* MOTION TO CONTINUE HEARING**

The Trustee filed an *Ex Parte* Motion to Continue the Hearing on June 1, 2017. Dckt. 73. The Trustee requests that the hearing be continued to August 24, 2017, because the parties have reached a settlement regarding the Motion.

RULING

The parties having reported that a settlement has been reached that needs to be documented and filed, and having requested that the hearing be continued, the court continues the hearing on this Motion to 10:30 a.m. on August 24, 2017.

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 Order Closing Case Without Abandoning Assets to Debtor filed by Michael McGranahan, the Chapter 7 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to 10:30 a.m. on August 24, 2017.

7.	**12-93224-E-7** **JES-2**	**ABELARDO/ALEXIS CASAS** **Mark S. Nelson**	**MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT** **4-27-17 [76]**

Final Ruling: No appearance at the June 8, 2017 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 April 27, 2017. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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.

James Salven, the Accountant ("Applicant") for Irma Edmonds, 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 5, 2016, through April 19, 2017. The order of the court approving employment of Applicant was entered on October 5, 2016. Dckt. 34. Applicant requests fees in the amount of $2,900.00 and costs in the amount of $320.26.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including reviewing and issuing tax returns for Debtor and Debtor's spouse. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Review and Preparation of Returns of Debtor and Debtor's Spouse: Applicant spent 8.9 hours in this category. Applicant reviewed docket items, reviewed Debtors returns, processed Debtor's returns, processed returns of Debtor's spouse, and finalized returns with determination letters.

Prepared Employment and Fee Applications: Applicant spent 2.7 hours in this category. Applicant reviewed conflicts in employment application and prepared and filed 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**
James Salven, CPA	11.6 hours	$250.00	$2,900.00
			$0.00
			$0.00
			$0.00

			$0.00
			$0.00
			$0.00
Total Fees For Period of Application			$2,900.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $320.26 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copies (x249)	$0.15	$37.35
Envelopes (x5)	$0.20	$1.00
Lacerte Tax Proc: Debtor return processing, Debtor's spouse processing	$120.96	$241.92
File and service fee (x31)	$1.29	$39.99
Total Costs Requested in Application		$320.26

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 $$2,900.00 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

Costs & Expenses

First and Final Costs in the amount of $320.26 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

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 James Salven ("Applicant"), Accountant for the 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 James Salven is allowed the following fees and expenses as a professional of the Estate:
>
> James Salven, Professional employed by the Trustee
>
> Fees in the amount of $2,900.00
> Expenses in the amount of $320.26,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as accountant.
>
> **IT IS FURTHER ORDERED** that the 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.

8. **16-90830-E-7** **BRIAN BETTENCOURT** **MOTION TO AVOID LIEN OF ALABAMA METAL INDUSTRIES CORPORATION**
WRB-4 **Elizabeth Berke-Dreyfuss** **5-18-17 [86]**

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, Creditor, and Office of the United States Trustee on May 18, 2017. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Alabama Metal Industries Corporation ("Creditor") against property of Brian Bettencourt ("Debtor") commonly known as 609 Roxbury Lane, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $21,546.88. An abstract of judgment was recorded with Stanislaus County on October 5, 2012, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $415,000.00 as of the date of the petition. Debtor asserts that his interest as a joint tenant in the Property is $207,500.00. The unavoidable consensual liens that total $320,682.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure §704.730 in the amount of $50,000.00 on Schedule C.

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 the 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 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 Alabama Metal Industries Corporation, California Superior Court for Stanislaus County Case No. 676164, recorded on October 5, 2012, with the Stanislaus County Recorder, against the real property commonly known as 609 Roxbury Lane, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

9. 16-90736-E-11 RONALD/SUSAN SUNDBURG
Edward A. Smith

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
8-11-16 [1]

Debtors' Atty: Edward A. Smith; Stephan M. Brown

The Status Conference is xxxxxxxxxxxxxxxxxxx.

Notes:
Continued from 3/23/17. Debtor reported that they were reviewing the appraisals with Bank of America, N.A. to determine the secured claim to be provided for in the Plan.

Operating Reports filed: 4/14/17; 5/17/17

JUNE 8, 2017 STATUS CONFERENCE

At the Status Conference, xxxxxxxxxxxxxxxxx.

MARCH 23, 2017 STATUS CONFERENCE

A review of the Monthly Operating Report for February 2017 discloses that the total cash receipts in this case since the August 2016 filing have been $88,534. No Chapter 11 Plan has been filed by the Debtor in Possession.

At the Status Conference, the Debtor in Possession reported that they are now reviewing the appraisals with Bank of America, N.A. to determine the secured claim to be provided for in the Plan.

10. 12-93049-E-11 MARK/ANGELA GARCIA
Mark J. Hannon

CONTINUED STATUS CONFERENCE
RE: VOLUNTARY PETITION
11-30-12 [1]

Debtors' Atty: Mark J. Hannon
Trustee's Atty: Estela O. Pino

The Status Conference is xxxxxxxxxxxxxxxxxxx.

Notes:
Continued from 2/23/17

Monthly Operating Reports filed: 3/14/17; 4/14/17; 5/15/17

Quarterly Post Confirmation Reports filed: 4/18/17

[MJH-19] Order granting motion for replacement of Plan Administrators filed 2/28/17 [Dckt 939]

[UST-4] Order denying motion to convert or dismiss filed 2/28/17 [Dckt 940]

[MJH-20] Order denying motion to employ Kevin V. Lagorio as replacement Plan Administrator filed 2/28/17 [Dckt 941]

JUNE 8, 2017 POST-CONFIRMATION STATUS CONFERENCE

At the Status Conference, xxxxxxxxxxxxxxxxxxxxxxxx.

11. **16-91155-E-12** **LYNN/DONNA PORTER**
David C. Johnston

CONTINUED STATUS CONFERENCE
RE: VOLUNTARY PETITION
12-30-16 [1]

Debtors' Atty: David C. Johnston

The Status Conference is xxxxxxxxxxxxxxxxxxx.

Notes:
Continued from 2/23/17

[DCJ-1] Chapter 12 Plan filed 3/30/17 [Dckt 34]

[DCJ-1] Debtors' Motion to Confirm Chapter 12 Plan filed 3/30/17 [Dckt 32]; Order denying filed 5/9/17 [Dckt 44]

JUNE 8, 2017 STATUS CONFERENCE

At the Status Conference, xxxxxxxxxxxxxxxxxxxxx.

Confirmation of Debtor's in Possession was denied due to Debtor in Possession failing to provide credible, good faith financial testimony. Civil Minutes, Dckt. 41.

12. **11-93560-E-7** **VIRGIL/CARRIE MARTIN** **MOTION TO AVOID LIEN OF HARRIETT MCGUIRE**
PBG-1 **Patrick B. Greenwell** **5-17-17 [69]**

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, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2017. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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 Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Harriett McGuire ("Creditor") against property of Virgil Martin and Carrie Martin ("Debtor") commonly known as 19891 Eastview, Twain Harte, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $58,575.96. An abstract of judgment was recorded with Tuolumne County on March 1, 2011, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $260,000.00 as of the date of the petition. The unavoidable consensual liens that total $515,756.00 as of the commencement of this case are stated on Debtor's Schedule D.

Debtor expressly states in the Motion that this relief is requested pursuant to 11 U.S.C. § 522(f)(2)(A). However, 11 U.S.C. § 522(f)(2) merely defines what constitutes an impairment of

exemption, not the statutory grant of power to avoid a judicial lien. Congress provides in 11 U.S.C. § 522(f)(1):

> "(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor **may avoid the fixing of a lien** on an interest of the debtor in property to the extent that such lien **impairs an exemption** to which the debtor would have been entitled under subsection (b) of this section, if such lien is—
>
> (A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5); . . ."

Debtor has not claimed an exemption for this Property on Schedule C, even though stating in the Memorandum of Points and Authorities that Debtor could have exempted $100,000.00. There is no exemption being impaired as Debtor does not assert, on Schedule C, any exemption in the property.

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien filed by filed by 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 Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT AMENDS SCHEDULE C TO CLAIM AN EXEMPTION OF AT LEAST $1.00 IN THE PROPERTY

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 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 Harriett McGuire , California Superior Court for Tuolumne County Case No. CV 55418, recorded on March 1, 2011, Document No. 2011002338, with the Tuolumne County Recorder, against the real property commonly known as 19891 Eastview, Twain Harte, 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.

13. 12-92570-E-12 COELHO DAIRY
Thomas O. Gillis

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
9-28-12 [1]

Debtor's Atty: Thomas O. Gillis

The Status Conference is xxxxxxxxxxxxxxxxxxx.

Notes:
Continued from 12/1/16

Status Report of Chapter 12 Trustee filed 5/18/17 [Dckt 632]

Debtor's Status Report/Request for Continuance of Status Conference filed 5/25/17 [Dckt 634]

JUNE 8, 2017 STATUS CONFERENCE

Debtor/Plan Administrator reports that all payments are current under the Plan. Status Report, Dckt. 634. It is further reported that a dispute as to the amount of West America Bank's claim (attorney's fees added to the claim) is being addressed by the Parties. At the Status Conference, xxxxxxxxxxxxx

14. **17-90283-E-7** **ELIZABETH BRAMBILA** **MOTION FOR DENIAL OF DISCHARGE**
UST-1 **Pro Se** **OF DEBTOR UNDER 11 U.S.C. SECTION 727(A)**
4-28-17 [16]

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

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, creditors, parties requesting special notice, and Office of the United States Trustee on April 28, 2017. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion for Denial of Discharge is granted.

The United States Trustee ("Objector"), filed the instant Motion for Denial of Debtor's Discharge on April 28, 2017. Dckt. 16.

Objector argues that Elizabeth Brambila ("Debtor") is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on April 3, 2013. Case No13-90627. Debtor received a discharge on July 16, 2013. Case No. 13-90627, Dckt. 31.

The instant case was filed under Chapter 7 on April 10, 2017.

11 U.S.C. § 727(a)(8) provides that a court shall not grant a discharge if a debtor has received a discharge in a case filed under chapter 7 or 11 within eight years before the filing date of the instant case. 11 U.S.C. § 727(a)(8).

Here, Debtor received a discharge under 11 U.S.C. § 727 on July 16, 2013, which is less than eight years preceding the date of the filing of the instant case. Case No. 13-90627, Dckt. 31. Therefore, pursuant to 11 U.S.C. § 727(a)(8), Debtor is not eligible for a discharge in the instant case.

Therefore, the Motion is granted. Upon successful completion of the instant case (Case No. 17-90283), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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 Denial of Discharge filed by the United States 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 Motion for Denial of Discharge is granted, and upon successful completion of the instant case, Case No. 17-90283, the case shall be closed without the entry of a discharge.

15. 16-90984-E-7 EDWARD/SUSAN LARSEN MOTION TO COMPEL ABANDONMENT
MRG-2 Michael Germain 5-19-17 [48]

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 May 19, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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 the 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 Edward Larsen and Susan Larsen ("Debtor") requests the court to order the Trustee to abandon property commonly known as 335 Prospect Court, Angels Camp, California ("Property"). The Property is encumbered by the lien of Nationstar Mortgage, LLC, securing a claim of $459,625.00. Debtor claim an exemption of $120,375.00 on Schedule C. The Declaration of Edward Larsen has been filed in support of the Motion and values the Property at $580,000.00. Movant argues that any sale of the Property would include at least $17,400.00 for a broker's commission.

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 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 Edward Larsen and Susan Larsen ("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 335 Prospect Court, Angels Camp, California, and listed on Schedule A by Debtor is abandoned by Michael McGranahan, the Chapter 7 Trustee, to Edward Larsen and Susan Larsen by this order, with no further act of the Trustee required.

16. **16-90386-E-7** **RUBEN/SOFIA AMAYA** **MOTION FOR COMPENSATION FOR**
BB-1 **Patrick B. Greenwell** **PMZ REAL ESTATE, REALTOR(S)**
5-5-17 [86]

Final Ruling: No appearance at the June 8, 2017 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 May 5, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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.

Bob Brazeal, formerly of PMZ Real Estate, the Real Estate Broker ("Applicant") for Gary Farrar, 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 20, 2016, through May 26, 2016. The order of the court approving employment of Applicant was entered on December 7, 2016. Dckt. 66. Applicant requests fees in the amount of $275.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including researching the equity of the property located at 308 Orange Ave., Modesto, physically inspecting the property, and developing a valuation of the property. The estate has $45,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy 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 2.5 hours in this category. Applicant researched the public record to establish possible equity for the property located at 308 Orange Avenue, Modesto; inspected the property; and reviewed comparable sales to update the projected value/equity of the property.

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**
Bob Brazeal	2.5	$110.00	$275.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$275.00

FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $275.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the 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 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $275.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Bob Brazeal, formerly of PMZ Real Estate ("Applicant"), Real Estate Broker for the 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 Bob Brazeal, formerly of PMZ Real Estate is allowed the following fees and expenses as a professional of the Estate:
>
> Bob Brazeal, formerly of PMZ Real Estate, Professional employed by the Trustee
>
> Fees in the amount of $275.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as broker for the Trustee.
>
> **IT IS FURTHER ORDERED** that the 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.

17. **16-90386-E-7** **RUBEN/SOFIA AMAYA** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF HERUM, CRABTREE & SUNTAG FOR DANA A. SUNTAG, TRUSTEE'S ATTORNEY**
HCS-4 **Patrick B. Greenwell** **5-5-17 [80]**

Final Ruling: No appearance at the June 8, 2017 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 May 5, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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.

Herum\Crabtree\Suntag, the Attorney ("Applicant") for Gary Farrar, 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 23, 2016, through March 30, 2017. The order of the court approving employment of Applicant was entered on June 7, 2016. Dckt. 19. Applicant requests fees in the amount of $16,719.50 and costs in the amount of $174.40.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including opposing Debtor's multiple attempts at conversion, hiring a real estate broker to investigate the property located at 308 Orange Avenue, Modesto, and preparation of a settlement with Debtor's counsel. The estate has $45,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy 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 8.8 hours in this category. Applicant prepared its own employment application, advised the Trustee on issues related to Debtor's schedules, prepared the Real Estate broker's (Bob Brazeal) application for compensation, and prepared its own application for compensation.

Opposition to Debtor's Multiple Attempts at Conversion: Applicant spent 38.8 hours in this category. Applicant filed a response to a Notice of Conversion to Chapter 13 on June 20, 2016. Applicant attended a hearing on August 4, 2016, on the Debtor's Notice of Conversion. Applicant reviewed the Debtor's supplemental pleadings and attended another hearing on September 15, 2016, and presented oral opposition to the motion. Applicant filed an opposition to the motion on November 10, 2016. Applicant reviewed the Debtor's reply which was filed on November 18, 2016, and provided legal advice to the Trustee. Applicant attended a hearing on December 1, 2016, and provided the Trustee with legal advice related to the real property after the court's order was issued on December 7, 2016.

Investigation of Real Property for Sale; Obtain Employment of Realtor; Compromise: Applicant spent 27.8 hours in this category. Applicant transcribed and reviewed the Section 341 meeting of creditors and the Debtor's schedules. Applicant filed an application for authority to employ realtor Bob Brazeal. Applicant contacted Mr. Brazeal and discussed his inspection of the real property located at 308 Orange Avenue, Modesto. Applicant provided legal advice to the Trustee regarding Mr. Brazeal's findings. Applicant reviewed the title report obtained by the Trustee. Applicant provided the Trustee with legal advice regarding the real property. Applicant engaged in settlement discussions with Debtor's counsel and prepared a signed settlement agreement.

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
Dana Suntag, shareholder	22.6	$345.00	$7,797.00
Benjamin Codog, associate	49.1	$175.00	$8,592.50
	1.2	$87.50	$105.00
Deanna Fillon, paralegal	2.5	$90.00	$225.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$16,719.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $174.40 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$48.03
Copying		$65.80
Request for Certified Petition		$14.50
Recording Petition		$41.00
Mileage		$5.07
Total Costs Requested in Application		$174.40

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 $16,719.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $174.40 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the 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 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$16,719.50
Costs and Expenses	$174.40

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Herum\Crabtree\Suntag ("Applicant"), Attorney for the 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 Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:
>
> Herum\Crabtree\Suntag, Professional employed by the Trustee
>
> Fees in the amount of $16,719.50
> Expenses in the amount of $174.40
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Trustee.

IT IS FURTHER ORDERED that the 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.