UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 17, 2021 at 10:30 a.m.

1.	**20-23253-E-7** **BHS-3**	**CHARLES/KATIE VACLAVIK** **Nikki Farris**	**MOTION TO SELL** **5-12-21 [30]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on May 12, 2021. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the estate's interest in the real property commonly known as 81 Brookvine Circle, Chico, California ("Property").

The proposed purchaser of the Property is Charles P. Vaclavik and Katie Mae Vaclavik ("Debtors"), allowing them to purchase the property from the bankruptcy estate for the "cost" of the nonexempt equity as computed by the Trustee.

The Motion and Contract provide some conflicting terms. The Motion states that the Trustee is selling the bankruptcy estate's interest to the Debtors for $207,000. However, the Debtor is paying the Trustee for the bankruptcy estate's interest $32,000 for that interest. Using the financial information in the Motion, computing the sales proceeds subject to the homestead exemption and the non-exempt interest for the bankruptcy estate is computed by the Trustee as follows:

> FMV.....$869,000
> Costs of Sale.....($ 69,520)
> Secured Debt.....($580,327)
> ========
> Sales Proceeds.....$219,153

Motion, ¶ 2; Dckt. 30.

Then, subtracting the $175,000 homestead exemption from the proceeds would leave a non-exempt equity in the Property of $44,153 for the bankruptcy estate.

However, in the Motion Movant states that the Trustee is selling the estate's interest to Debtors for $207,000, "representing the non-exempt equity, less the exemption of $175,000 . . .for a net to the estate of $32,000.00." *Id.*, ¶ 3.

Looking at the Purchase Agreement filed as Exhibit A, Dckt. 33, it contains conflicting references to the transaction amount. In the recitals it states:

> C. The Trustee wishes to sell to the Buyers the estate's interest in the Subject Property for $207,000.00, with a credit for the $175,000.00 exemption, for a net of $32,000.00 due to the Trustee, with all liens remaining on the Subject Property.

Purchase and Sale Agreement ("Agreement"), ¶ C; Dckt. 33. If the sales price is $207,000, then it could appear that the Trustee has $207,000 of income to be reported for the Estate.

However, the "Terms" portion of the Agreement states a different sales price providing in the first term of the Agreement:

> 1. Buyers shall purchase from the bankruptcy estate and the Trustee shall sell to the Buyers the estate's interest in the Subject Property for $32,000.00 by making a payment of $32,000.00 by May 21, 2021. . . .

Id., ¶ 1. This $32,000 amount is consistent with the computation of the non-exempt equity in this property of the bankruptcy estate.

The court concludes that the actual purchase price paid by Debtor to acquire the non-exempt portion of this Property is $32,000.00. As noted below, this amount is sufficient to pay all of the administrative expenses and claims in this case.

The court summarizes the terms of the sale as follows (the full terms of the Sale are set forth in the Purchase Agreement filed as Exhibit A in support of the Motion, Dckt. 33):

A. Purchase price of $32,000.00 for the bankruptcy estate's interest in the Property.

B. The sale is "as is" and "where is" with no warranties or guarantees, subject to the existing liens and encumbrances.

C. Transaction conditioned upon court approval and subject to overbidding.

D. Escrow to close within 30 days of court approval being entered.

E. Buyer to pay any and all costs or fees that may be incurred in connection with this sale.

F. Each party to bear their own attorney's fees and costs in connection with the agreement; except in the event of a breach where the breaching party will pay reasonable attorney's fees and costs of the non-breaching party incurred by reason of the breach.

Overbidding Procedures

Trustee proposes the following overbidding procedures:

1. Overbidding to start at $208,000 with overbids in minimum $1,000 increments.

2. Successful bidder, if not Debtor, is required to sign a Purchase and Sale Agreement with the same terms as those listed in Exhibit A to this Motion.

3. Any and all costs of transfer, including but not limited to Realtor fees, would be the sole responsibility of the buyer.

4. To qualify as a bidder, the bidder must send to the Trustee at the specified address, a cashier's check or a certified check for $208,000 made payable to Kimberly J. Husted to be received at the specified date and time. If successful as bidder, the deposit is non-refundable.

5. The successful bidder must deliver the overbid amount to Trustee within 48 hours of court's approval being docketed.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will allow to pay all unsecured and administrative creditors at 100%.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Debtor is in favor of the sale.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Kimberly J. Husted, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Charles P. Vaclavik and Katie Mae Vaclavik ("Debtors"), the Property commonly known as 81 Brookvine Circle, Chico, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $32,000, on the terms and conditions set forth in the Purchase and Sale Agreement, Exhibit A, Dckt. 33, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> **IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

2. **20-24123-E-11 FWP-29** **RUSSELL LESTER** **MOTION FOR AN ORDER TO AID IN EXECUTION OF SALE O.S.T. 6-11-21 [674]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on June 11, 2021. By the court's calculation, 6 days' notice was provided. The court set the hearing for June 17, 2021. Dckt. 686.

The Motion For An Order to Aid in The Execution of Sale was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion For An Order to Aid in The Execution of Sale is granted.

Russell Wayne Lester, dba Dixon Ridge Farms, the Chapter 11 Debtor in Possession ("Debtor in Possession"), requests an order to aid in the execution of the sale of estate property, identified as 70.3 acres of real property located in Yolo County, south of Madison, County Road 89 and identified by APNs 050-100-015-000 and 050-100-032-000 (the "Gordon Ranch") and all irrigation equipment including wells, pumps, and filters, and any other fixtures to the Gordon Ranch (collectively, "Sale Assets").

The Amended Plan provides that the Debtor in Possession has the power to create a Special Purpose Entity ("SPE") and transfer to the SPE specific estate properties as soon as possible after the July 1, 2021 effective date.

The sale was approved on April 5, 2021, where the buyers, Ravinderjit Singh and Gagan Mall ("Buyer") were to pay $1,400,000 for the Sale Assets with an anticipated closing date of June 22, 2021. Buyer have requested to take title to the Sale Assets in the name of an LLC. The court's order granting the motion to sell does not allow for a sale to any assignee.

Pursuant to the court's order granting the sale, the proceeds of the Sale Assets are to be transferred into a blocked account in Debtor in Possession's name with any distributions subject to a subsequent order from this court authorizing the distribution of any funds from that account. The Amended Plan provides for the specific distribution of the sale proceeds to Creditor Prudential. The title company has provided a seller closing statement estimating the net proceeds to be $1,333,165.78. (Prudential requires $2,238,948.72 to reinstate the Prudential Loans relevant to this sale).

In order to facilitate the sale by the anticipated date, Debtor in Possession requests an order providing for the following:

1. Net proceeds from the Debtor in Possession's sale of the Sale Assets be distributed in accordance with the Amended Plan;

2. Buyer are permitted to assign their rights under the purchase contract for the Sale Assets to an assignee ("Buyer Assignment") when: (a) all funds are in escrow to close the sale transaction; and (b) all necessary escrow instructions and consents to close have been received by the title company and there are no impediments to the closing of the sale transaction;

3. If the sale of the Sale Assets does not close by June 30, 2021, the Buyer Assignment shall be null and void; and

4. The Debtor in Possession is permitted to assign his rights under the purchase contract for the Sale Assets to Russ Lester, LLC if the sale of the Sale Assets does not close by June 30, 2021.

DISCUSSION

Debtor in Possession argues that the order is necessary because closing the sale by the anticipated date provided in the Amended Plan will benefit all the parties involved and avoid unnecessary delay and additional expenses.

The Amended Plan, its success depending partly on this sale, was the result of vigorous negotiations and results in the benefit of multiple parties involved. The Debtor in Possession argues that all parties involved in this sale will benefit from the sale proceeds being disbursed from escrow as opposed to the sale proceeds being transferred to a block account and later disbursed subject to court order. Moreover, Debtor in Possession asserts that if the sale is delayed until after the Effective Date, Debtor in Possession risks losing the sale, the authority to sell the Sale Assets would be transferred to SPE which would further delay the sale, and the estate would risk incurring additional, unnecessary expenses. Thus, closing the sale of the Sale Assets as soon as possible is in the best interest of all interested parties.

The Debtor in Possession points the court to section 105(a) of the Bankruptcy Code for the authority to issue the orders requested. 11 U.S.C. § 105(a) provides:

§ 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or

appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

At the hearing, counsel for the Debtor in Possession confirmed for the court that the limited liability company is owned by and the members are Ravinderjit Singh and Gagan Mall, and not other parties in interest in the case, such as the Debtor, Debtor's spouse, other members of Debtor's extended family, nor that such parties in interest have any interest in the limited liability company.

The Debtor in Possession has established the need for an order authorizing the distribution of the net proceeds as specified in the Amended Plan and allowing for the Buyer to assign title of the Sale Assets to an LLC so as to prevent delay or loss of the sale.

No other relief is granted.

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

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

The Motion For An Order to Aid in The Execution of Sale filed by Russell Wayne Lester, dba Dixon Ridge Farms, the Chapter 11 Debtor in Possession ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the net proceeds from the Debtor in Possession's sale of the Sale Assets are to be distributed in accordance with the Amended Plan.

IT IS FURTHER ORDERED that Buyer are permitted to assign their rights under the purchase contract for the Sale Assets to an assignee ("Buyer Assignment") when: (a) all funds are in escrow to close the sale transaction; and (b) all necessary escrow instructions and consents to close have been received by the title company and there are no impediments to the closing of the sale transaction.

IT IS FURTHER ORDERED that if the sale of the Sale Assets does not close by June 30, 2021, the Buyer Assignment shall be null and void.

IT IS FURTHER ORDERED that the Debtor in Possession is permitted to assign his rights under the purchase contract for the Sale Assets to Russ Lester, LLC if the sale of the Sale Assets does not close by June 30, 2021.

No further relief is granted.

3.	**20-23267-E-7** **SJT-2** **3 thru 10**	**SHON/JILL TREANOR** **Pro Se**	**MOTION REQUEST FOR FBI/ATTORNEY GENERAL CRIMINAL INVESTIGATION INTO FRAUD** **5-21-21 [249]**

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 Federal Bankruptcy Court with attention to Honorable Ronald Sargis on May 20, 2021. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Motion/Request for FBI/Attorney General Criminal Investigation Into Fraud is xxxxx.

The Chapter 7 debtors, Shon Jason Treanor and Jill Diana Treanor ("Debtor") assert that multiple attorneys, trustees, conservators, and county officials have conspired to defraud Debtor and various generations of their extended family. Through this Motion, Debtor requests that the court order the Attorney General to investigate not only to have wrongdoings relating to the Debtor in this case and the bankruptcy estate addressed, but claims for various family members going back eight years.

Debtor have provided extensive citations in the Request for FBI/Attorney General Criminal Investigation, predominantly California statutes. A federal basis for seeking such an investigation from this court is stated to be 18 U.S.C. §§ 153, 157, and 158. These particular code provisions account for specific crimes, respectively: embezzlement, bankruptcy fraud, and for the designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and

materially fraudulent statements in bankruptcy schedules.

DISCUSSION

28 U.S. Code § 157 provides for the proceedings a bankruptcy court has the power to hear stating in part,

> (a)Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.
>
> (b)
> (1)Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.
>
> (2)Core proceedings include, but are not limited to—
>
> > (A)matters concerning the administration of the estate;
> >
> > (B)allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
> >
> > (C)counterclaims by the estate against persons filing claims against the estate;
> >
> > (D)orders in respect to obtaining credit;
> >
> > (E)orders to turn over property of the estate;
> >
> > (F)proceedings to determine, avoid, or recover preferences;
> >
> > (G)motions to terminate, annul, or modify the automatic stay;
> >
> > (H)proceedings to determine, avoid, or recover fraudulent conveyances;
> > (I)determinations as to the dischargeability of particular debts;
> >
> > (J)objections to discharges;
> >
> > (K)determinations of the validity, extent, or priority of liens;

(L)confirmations of plans;

(M)orders approving the use or lease of property, including the use of cash collateral;

(N)orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(O)other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and

(P)recognition of foreign proceedings and other matters under chapter 15 of title 11.

(3)The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4)Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5)The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

28 U.S. Code § 157.

A bankruptcy court simply lacks any jurisdiction over criminal proceedings. *See e.g., Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 904 (9th Cir. BAP 1999) (holding that § 1334 grants bankruptcy courts jurisdiction only over certain "civil proceedings"); *Gruntz v. City of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1083 (9th Cir. 2000) (interpreting § 362(b)(1) as rendering the automatic stay inapplicable to all criminal proceeding consistent with "its object and policy"); *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192-95 (9th Cir. 2003)(holding that bankruptcy courts have no authority to impose criminal contempt sanctions based on their punitive nature). Nor does the bankruptcy court have discretion to compel governmental agencies to commence criminal investigations. *See e.g., Wayte v. United States*, 470 U.S. 598, 607, 105 S. Ct. 1524, 84 L. Ed. 2d 547 (1985)(finding that the decision to prosecute is "ill-suited to judicial review").

Because a bankruptcy court does not have the power to compel other independent governmental agencies to investigate criminal matters, Debtor's request falls outside any relief the

bankruptcy court could have sanctioned under 28 U.S.C. §§ 157(a) or 1334.

SUBSEQUENT PLEADING TITLED
DEBTOR'S MOTION OF OBJECTION TO
PROOF OF CLAIM

On June 14, 2021, Debtors, as trustees of a trust, filed a pleading titled Motion of Objection to Proof of Claim. Dckt. 296. While titled as "Objection to Claim," the relief sought is the same as in this Motion - the bankruptcy court is to order an investigation to be undertaken for more than eight years of alleged criminal conduct committed against various members of the Debtors' extended family.

In the Motion to Objection, Debtors (who filed it in their capacities as trustees and not as the individual debtors) make it clear that it is a criminal investigation they want ordered, that the relief is requested pursuant to 18 U.S.C. § 3057, and that the alleged wrongs are against their extended family members. The prayer stated in the Motion of Objection is:

> WHEREFORE we, JILL D. TREANOR and SHON J. TREANOR are giving our formal request for you Judge Ronald Sargis to **sign an order of the Attorney General investigation** without any delays to be excused or be heard by Hank Spacone or his legal counsel. Code Section 3057 (a) implies Judge prior to the Trustee. We know you Honorable Judge Sargis **have full authority to grant us an investigation** and can simply make it to be ordered. **U.S. Attorney Paul Hemiseth told us** we simply need **to formally request an investigation from you in writing**. So this is our request formally **requesting our overdue investigation every State official and agency refused us for the past 8 years so we could be harmed by the corrupt parties involved**. We deserve better and have the right to an Attorney General investigation that is more than fully warranted at this point.

Motion of Objection, p. 16:13-20; Dckt. 296 (emphasis added).

> **Known fraud by Fresno County Counsel** members Dan Cederborg and Heather Kruthers has been our real problem from the start. Now we obtain new evidence Hank Spacone and Russell Cunningham not only directed Pete Macaluso to draft a settlement brief to **defend the fraud used by Fresno County** he presented before us. **Every act of intentional fraud and conspiracy** was recorded for good cause. The efforts to derail our purpose of **exposing the fraud used to force our family to become injured** needs to stop immediately. You **Judge** Sargis need to end it of our entire family and **order an investigation for us all to be conducted by the U.S. Attorney to prosecute** after the **Attorney General investigates** our criminal case to be forwarded to be prosecuted. We may want to add the fraud now contributed by Hank Spacone and Russell Cunningham if they keep harassing our family and aiding known fraud by Fresno County.

Id., p. 13:5-13 (emphasis added).

The basis for seeking such an order from this court is stated to be 18 U.S.C. § 3057, which provides:

§ 3057. Bankruptcy investigations

(a) Any **judge**, receiver, or trustee having reasonable grounds for **believing that any violation under chapter 9 of this title** [bankruptcy crime statutes] or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. Where one of such officers has made such report, the others need not do so.

(b) The **United States attorney thereupon shall inquire into the facts and report thereon to the judge** and if it appears probable that any such offense has been committed, shall without delay, present the matter to the grand jury, unless upon inquiry and examination he decides that the ends of public justice do not require investigation or prosecution, in which case he shall report the facts to the Attorney General for his direction.

18 U.S.C. § 3057. The language above states that the judge, having reasonable grounds for believing that violations of law relating to specified bankruptcy laws have occurred shall report that to the United States Attorney, who will then "inquire" and then act on if appropriate.

Of first note, the statute does not provide that "On demand of a debtor or other party in interest the judge shall report to the United States Attorney any and all allegations of crimes asserted by such debtor or other party in interest, and the United States Attorney shall then investigate the allegations of crimes by the debtor or other party in interest." It requires that the judge him or herself have reasonable grounds to that judge's (not a party's) belief that there has been a violation of federal law. Here, the Debtors, as co-trustees, make various allegations and assertions of matters that have occurred in state court and with various county agencies over the past eight years for various members of their extended family. Further, they allege that the bankruptcy trustee refusing to agree with them and advance such claims of fraud for Debtors and their extended family members over the past eight years is part of the comprehensive fraud scheme against the Debtors' extended family.

While the Debtors, in their capacities as co-trustees, make such allegations in the Motion of Objection, there is no basis for the judge having "reasonable grounds" for all of those actions and events that well predated this bankruptcy case and involve parties not before the court.

Clearly Debtors feel frustrated and deprived of justice at every turn. Whether such is true or not, this court does not know. The court has on several occasions commented that if Debtors believe that crimes have occurred over the past eight years, then they go to the United States Attorney, to the extent they are federal crimes, and the Attorney General for the State of California and the District Attorneys for believed state law violations, not the court. The court is not the director or assigner of work to the Department of Justice or the various State prosecutors. As reflected in how Congress has structured 18 U.S.C. § 3507, even if the judge has "reasonable belief" that one or more of the enumerated federal crimes have occurred, the judge only reports it to the United States Attorney, and does not "order an investigation." Further, that when it is reported, Congress provides for the United States Attorney to "inquire into the facts," and if it appears probable, then to proceed with investigation or prosecution unless the ends of public justice do not require it. 18 U.S.C. § 3057(b).

At the hearing, **xxxxxxx**

The court shall issue a 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/Request for FBI/Attorney General Criminal Investigation Into Fraud filed by Shon Jason Treanor and Jill Diana Treanor, the Chapter 7 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion/Request for FBI/Attorney General Criminal Investigation Into Fraud is xxxxx.

4. **20-23267-E-7 DNL-4** | **SHON/JILL TREANOR** **Pro Se** | **CONTINUED MOTION TO COMPROMISE CONTROVERSY/ APPROVE SETTLEMENT AGREEMENT WITH DEBTORS AND SANDERS & ASSOCIATES** **2-4-21 [85]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise between the Chapter 7 Trustee and Sanders & Associates ("Settlor") is xxxxx.

Hank Spacone, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Sanders & Associates ("Settlor"). The claims and disputes to be resolved by the proposed settlement are all related state court cases and adversary proceeding related to Debtor's 100% beneficial interest in the Cheryl Gortemiller Living Trust U/T/A March 12, 2014 ("CGLT ") and Settlor's attorney's fees in successfully representing Debtor in a probate court case.

REVIEW OF THE MOTION

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 89):

A. Sanders shall receive from all funds received by the bankruptcy estate on account of the Debtors' interest in the CGLT ("Post-Petition Recovery"), the sum of $245,005 plus 30% of the Post-Petition Recovery (collectively "Settlement Payment").

B. Upon Sanders' receipt of the entire Settlement Payment, the State Court Cases and AP #20-02160 shall be dismissed with prejudice, with the parties bearing their own attorney fees and costs.

C. The Trustee and Sanders will exchange broad mutual releases.

In the Trustee's Declaration in support of the Motion, Dckt. 88, he states that the $245,000 relates to the Panama City, Florida home that Debtor obtained from the trust through the litigation prosecuted on Debtor's behalf by Settlor. The Trustee testifies:

> 6. I am informed by the Debtors that, pre-petition, they: (I) sold and received net proceeds of about $602, 154 from the Panama City home; and (2) apparently consumed all those proceeds and the $97,862 deposit funds. I am informed by Sanders that, to date, he has not received the 35% contingent fee due on account of $700,016 the Debtors distributed to themselves from the CGLT, approximately $245,005.

Trustee Declaration, ¶ 6; Dckt. 88.

In his Declaration the Trustee also states that the amount of the settlement adjusts for the expenses and other obligations relating to the contingent fee, something that was not done by the State Court judge. *Id*., ¶¶ 11, 12. Rather than the $926,658.69 in contingent fee sought by Settlor for the Fairfield property, after allowing for costs and expenses the Trustee computes that under the Settlement it is properly computed to be $514,505 (assuming that the Fairfield property sells for the projected $1.1 Million). *Id*.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

Probability of Success

The proposed Settlement Amount's formula reflects a discount of the contingency attributable to the expected Post-Petition Recovery from the Fairfield Property (reduced from 35% to 30%). Together with the proposed settlement's waiver of loans, sanctions, attorney fees and costs aggregating about $75,000, the Settlement Amount is at least $100,000 less than the best result the Trustee could hope to achieve, assuming the approximate $1 million pre-petition award is set aside. Moreover, pursuit of the Debtor's asserted damage claims against Settlor based on his work on the CGLT matter and purchase of firearms from the Debtors in 2017 would likely result in undue consumption of legal and judicial resources and expose the estate to claims for malicious prosecution and abuse of process.

Difficulties in Collection

The proposed compromise establishes a clear path to administration of the estate's interest in the CGLT, and through that the Fairfield Property, for the benefit of creditors.

Expense, Inconvenience, and Delay of Continued Litigation

Any continued litigation with Settlor will require time and expense that is avoidable by the Agreement.

Paramount Interest of Creditors

It is the Trustee's opinion that the Agreement is in the best interest of the estate because the Agreement will result in an efficient administration of the Debtor's estate as well as ensure a return to creditors on account of the CGLT, while saving estate resources otherwise associated with continued litigation.

HISTORY OF THE PRESENT MOTION

March 8, 2021 Stipulation

On March 8, 2021, the parties filed a Stipulation agreeing to continue DNL-4, DNL-5, DNL-6, and DNL-7 to April 22, 2021 at 10:30 a.m. Dckt. 160. The court granted the motion stipulating to the continuance on March 10, 2021. Dckt. 171.

Debtor's Opposition

On April 16, 2021, Debtor filed a "Motion of Objection to Fraudulent Claims by Steven

Sanders," while titled as a Motion, it is a declaration by Mark Bandy. For purposes of this hearing, the court construes this to be an "Objection" to the instant compromise sought to be approved by Trustee with Sanders & Associates. Dckt. 201. Debtor objects on the basis that according to them Settlor engaged in fraud against them as it pertained to CGLT assets while he was acting as their counsel in probate court.

This "Objection" includes allegations of fraud and improper conduct by various persons, including Debtor's former State Court counsel Steven Sanders, Cheryl Gortemiller's counsel Stan Blyth, Debtor's current counsel, Jeffery Pape (former counsel for Mark Bandy, Debtor's cousin), Donna Standard, and Terry Novack (former caregiver for Wayne and Mary Bandy).

Continuance of Hearing and Scheduling Order

At the April 22, 2021 hearing, the court approved the Stipulation for Debtor's current counsel to withdraw and each of the two debtors substituted *pro se*. In light of the concerns that Debtor stated in dealings with the withdrawing counsel, the court continues the hearing and sets a further briefing schedule to ensure that Debtor is able to state the opposition that Debtor believes should be asserted and not feel that now former counsel did not fully state such opposition.

Debtor's Objection to the Settlement

On June 14, 2021, Debtor filed an Objection to the Proposed Settlements with Steven Sanders, Jeffrey Pape, and Karen Fisher. Dckt. 295. The basis for the Objection is the alleged fraud having been committed by the settling parties. These allegations include:

> The recent lie used that our criminal statute has run on a 3 year limitations behind all fraud used to force us into Bankruptcy is not true. The Solano County Superior Court case FPR 046489 just ended upon the Vacated status forced by Judge Aleisa Jones [on July 30, 2020]

Objection, p. 1:21-24; Dckt. 295.

Reference is made to Federal Rule of Civil Procedure 60(b) as a device available for Debtor to have this court overturn rulings made in the California courts. Federal Rule of Civil Procedure 60(b), as incorporated into bankruptcy court proceedings by Federal Rule of Bankruptcy Procedure 9024, applies with respect to federal court orders and judgments issued by a federal judge. It is not a "super appeal device" by which a federal judge can overturn a decision of a judge of the State Court.

Overview of Federal Rule of
Civil Procedure 60(b)

Because the Debtors are in *pro se* and appear to be staking a substantial part of their contentions on Federal Rule of Civil Procedure 60(b), the court provides a brief overview of this Rule. The relief available pursuant to Rule 60(b) is stated as follows:

> (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Debtors seek to use this Rule of Federal Civil Procedure to overturn what has been determined in State Court. It is established law that this part of the Rule applies to a court addressing orders and judgment that court entered, not reaching out to change the rulings or other federal judges or judges in a state court. As discussed in 12 Moore's Federal Practice, Civil § 60.60:

§ 60.60 Proper Court for Motion Exists, Although Rule Is Silent on Proper Court

[1] Motion Must Usually Be Filed in District Court That Rendered Judgment

Nothing in any portion of Rule 60 addresses the particular court in which a party should file a Rule 60(b) motion for relief from a judgment, order, or proceeding. **Because a Rule 60(b) motion presupposes the existence of a prior federal court judgment, order, or proceeding, however, it is clear that the drafters of the rule contemplated that the motion (as opposed to an independent action in equity that may be brought anywhere, see § 60.84) would always be brought "in the court and in the action in which the judgment was rendered."** The few courts that have considered the question agree that the court that rendered the judgment is the court in which the Rule 60(b) motion for relief from that judgment should be filed.

This rule makes perfect sense. The court that rendered the judgment is in the best position to judge the equities as to whether it should be set aside. Furthermore, the court that rendered the judgment has automatic jurisdiction over a motion to set it aside (see § 60.61).

[2] Exception: Actions Removed to Federal Court After Judgment Rendered
The general rule that a Rule 60(b) motion must be made in the court in which the judgment was rendered has no application to judgments rendered in state courts when the proceedings are subsequently removed to federal court. Once an action is removed to federal court, the district court to which the action is removed may consider a Rule 60(b) motion, even if it attacks a judgment initially rendered in state court.

The citations to this section include *Bankers Mortgage. Company. v. United States*, 423 F.2d 73, 78 (5th Cir. 1970), which provides a succinct discussion of how Rule 60(b) applies, stating:

> Rule 60(b) contemplates two distinct procedures for obtaining relief from a final judgment. The first is by motion. 60(b) is directly involved in this procedure as it provides (a) the authority to secure relief by motion, (b) the time limitations within which the motion must be filed, and (c) the grounds on which relief can be predicated. This procedure is intended to completely replace the ancillary common law and equitable remedies of *coram nobis*, *coram vobis*, *audita querela*, bill of review and bill in the nature of a bill of review, which are specifically abolished by this rule. **The motion for relief from final judgment must be filed in the district court and in the action in which the original judgment was entered.** No independent jurisdictional ground is necessary because the motion is considered ancillary to or a continuation of the original suit. Obviously a 60(b) motion addressed to a United States District Court is not the proper vehicle for securing relief from a decision of the Tax Court.

Additionally, the Moore's Federal Practice Section and the decision in *Bankers Mortgage Company* also cite to the Notes of Advisory Committee on 1946 amendments that enacted Rule 60(b), which include.

> The reconstruction of Rule 60(b) has for one of its purposes a clarification of this situation. Two types of procedure to obtain relief from judgments are specified in the rules as it is proposed to amend them. **One procedure is by motion in the court and in the action in which the judgment was rendered**. The other procedure is by a new or independent action to obtain relief from a judgment, which action may or may not be begun in the court which rendered the judgment.

As referenced in the Notes above and also in *Bankers Mortgage Company*, there is a second path for relief through an independent action in federal court:

> The second procedure contemplated by Rule 60(b) is an independent action to obtain relief from a judgment, order, or proceeding. The first saving clause specifically provides that 60(b) does not limit the power of the court to entertain such an action. It is important to emphasize that **"independent action," as used in this clause, was meant to refer to a procedure which has been historically known simply as an independent action in equity to obtain relief from a judgment.** This action should under no circumstances be confused with ancillary common law and equitable remedies or their modern substitute, the 60(b) motion.
>
> > When a court grants relief from a judgment or decree by a new trial or rehearing, or by one of the ancillary common law or equitable remedies or their modern substitute, a motion, **it is exercising a *supervisory power* of that court over its judgment; but the original bill, or independent action, to impeach for fraud, accident, mistake or other equitable ground is founded** upon an *independent and substantive*

equitable jurisdiction. [Emphasis added.] [EN 14]

EN 14 7 Moore's Federal Practice § 60.36 [which in the current edition of Moore's Federal Practice is found in §§ 60.80 et seq.].

Bankers Mortg. Co. v. United States, 423 F.2d at 78-79 (emphasis added).

As is discussed in 12 Moore's Federal Practice, § 60.84, the federal court that issued the order or judgment at issue has jurisdiction to adjudicate an independent action to set aside that order or judgment, citing to *Pacific R. of Missouri v. Missouri P. R. Co.*, 111 U.S. 505, 521-522 (1884) for this well established principle of law, which states (emphasis added):

> Upon the question of jurisdiction, there can be no doubt that the Circuit Court, as **the court which made the** Ketchum **decree**, and had jurisdiction of the Ketchum suit, as this court, in Pacific Railroad v. Ketchum, 101 U.S. 289, held it had, **has jurisdiction to entertain the present suit to set aside that decree on the grounds alleged in the bill**, if they shall be established as facts, and if there shall be no valid defense to the suit, although the plaintiff and some of the defendants are citizens of Missouri. . . On the question of jurisdiction the suit may be regarded **as ancillary to the Ketchum suit**, so that the **relief** asked **may be granted by the court which made the decree in that suit**, without regard to the citizenship of the present parties, though partaking so far of the nature of an original suit as to be subject to the rules in regard to the service of process which are laid down by Mr. Justice Miller in Pacific Railroad v. Missouri Pacific Railway Co., 1 McCrary, 647. T

The independent action is not one to collaterally attack the order or judgment of another court.

The discussion in Moore's continues, specifically addressing the ability of a federal court to reach out and set aside a state court judgment.

> [3] Federal Court's Ability to Exercise Jurisdiction to Set Aside State Court Judgment Is Doubtful
>
> There is a great deal of older authority supporting the idea that, within certain limits, a federal court could hear an independent action in equity for relief from a state court judgment even though relief from a state court judgment is, in effect, an order enjoining a state court proceeding within the meaning of the Anti-Injunction Act. For reasons that are fully explained in Ch. 121, The Anti-Injunction Acts, it is highly doubtful that these cases remain good law today.

12 Moore's Federal Practice - Civil § 60.84 (2021). Continuing to § 121.03 of Moore's on this point:

> [b] State Courts Protected by Anti-Injunction Act
>
> The Anti-Injunction Act prohibits the federal courts from restraining parallel state court proceedings. . . A judicial body is not a "court" for purposes of the Anti-Injunction Act when it performs legislative or administrative functions.

Further, the Act does not bar an injunction against future state court proceedings (see § 121.04[4]).

. . .

[2] What Constitutes an "Injunction"

The Anti-Injunction Act extends to declaratory judgments and other orders that have essentially the same effect as an injunction. **Thus, the Anti-Injunction Act prohibits any federal court order** that, though not specifically enjoining a state proceeding, **would decide or preempt a pending state proceeding**. However, it does not prohibit judgments for money damages that, if granted, would render state court litigation nugatory due to preclusion doctrines.

Federal declaratory judgments may have injunctive effects and therefore come within the Anti-Injunction prohibition. However, a federal court is not prohibited from issuing a declaratory judgment if a claim turns on a question of federal law more familiar to the federal court, and the state court would not normally determine the issue. For a more detailed discussion of declaratory judgments, see § 121.20. . . .

17A Moore's Federal Practice - Civil § 121.03[1][b], [2]

Here, the court reads the objections to be that the judgments and orders of the State Court should be "overturned" by this federal court and not followed. From what is presented, such is beyond the powers of a federal judge, whether an Article III or Article I judge.

June 17, 2021 Hearing

At the hearing xxxxxxxx

5. **20-23267-E-7 DNL-5** **SHON/JILL TREANOR Pro Se** **CONTINUED MOTION TO COMPROMISE CONTROVERSY/ APPROVE SETTLEMENT AGREEMENT WITH KAREN L. FISHER AND JOSEPH M. MORRILL 2-4-21 [92]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise between the Chapter 7 Trustee and Karen L. Fisher and Joseph M. Morrill ("Settlor") is xxxxx.

Hank Spacone, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Karen L. Fisher and Joseph M. Morrill ("Settlor"). The claims and disputes to be resolved by the proposed settlement are final compensation claims related to Debtor's interest in the Cheryl Gortemiller Living Trust U/T/A March 12, 2014. Movant states that the principal remaining asset of which is real property improved by a residence ("Fairfield Property") commonly known as 4390 Emerald Ridge Lane, Fairfield, CA 94534.

Karen L. Fisher acted as trustee of the CGLT from 2014 through 2018 and Joseph Morrill acted as her attorney in the probate court case. The Probate Court approved her final accounting and discharged her as trustee of the trust.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set

forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 96):

A. Settlor shall: (a) consent to distribution of the Fairfield Property from the CGLT to the Trustee; and (b) from the funds recovered by the Trustee on account of the Fairfield Property, Fisher shall receive $4,342.50 and Morrill $55,657.50, for a total of $60,000.00 (collectively "Settlement Payment").

B. Upon receipt of the entire Settlement Payment, Settlor shall dismiss their final compensation applications from the Trust Case with prejudice, with the parties bearing their own attorney fees and costs.

C. The Trustee and Settlor will exchange broad mutual releases.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Movant argues that the four factors have been met.

Probability of Success

Trustee argues that Settlor would likely prevail on their $82,000 request pending before the State Court and the proposed $60,000 Settlement Payment reflects a $22,000 discount. Further, there is also little doubt that Settlor would successfully defend the Legal Malpractice Claim and Surcharge Claim because the claims are time barred as more than one year has passed since the Debtor discovered or reasonably should have discovered the cause of action.

Difficulties in Collection

The proposed compromise establishes a clear path to administration of the estate's interest in the CGLT, and through that the Fairfield Property, for the benefit of creditors.

Expense, Inconvenience, and Delay of Continued Litigation

Any continued litigation with Settlor will require time and expense that is avoidable by the Agreement.

Paramount Interest of Creditors

It is the Trustee's opinion that the Agreement is in the best interest of the estate because the Agreement will result in an efficient administration of the Debtor's estate as well as ensure a return to creditors on account of the CGLT, while saving estate resources otherwise associated with continued litigation.

HISTORY OF THE PRESENT MOTION

Debtor's Opposition

On March 3, 2021, Debtor filed an Opposition and Request for a continuance of this motion on the basis that Debtor had only recently obtained counsel and due to the complexity of the motion and the significant funds at issue, Debtor requested a 30 day continuance to allow for a comprehensive opposition.

March 8, 2021 Stipulation

On March 8, 2021, the parties filed a Stipulation agreeing to continue DNL-4, DNL-5, DNL-6, and DNL-7 to April 22, 2021 at 10:30 a.m. Dckt. 160. The court granted the motion stipulating to the continuance on March 10, 2021. Dckt. 171.

Debtor's Limited Opposition

On April 9, 2021 Debtor filed a Limited Opposition, stating that although not opposed to the settlement amount, Debtor requests a post-final order accounting of remaining assets, a post-petition accounting of expenses incurred by Fisher, the assignment of the "rights to the BP claim," and the G. Moretech, Inc. stocks which are additional assets to be distributed to Debtor so that the court can determine the "net" value in computing the contingency fee for Joseph Morrill. Dckt. 180.

Trustee's Reply

On April 13, 2021 Trustee filed a Reply. Dckt. 193. Trustee asserts that the probate court awarded Morrill $80,000 in fees, which the Trustee is compromised down to a combined $60,000, where Fisher receives $4,342.50 and Morrill receives $55,657.50. Moreover, Trustee contends that Debtor's request for accounting can be resolved through formal discovery for their objection to the Sanders & Associate claim.

The Reply does not address that Debtor asserts that if they succeed on the objection to claim it would require a change or denial, for some unstated reason, of the settlement.

Debtor's Motion of Objection

On April 16, 2021, Debtor filed a "Objection to Settlement Created to Defend Founded Fraud by Prior Legal Malpractice Contributed to Defrauding the Cheryl Gortemiller Estate Over the Treanor's Rights and Legal Wishes Officially," which motion the court has deemed to be an Objection to the instant compromise sought to be approved by Trustee with Settlor. Dckt. 199. Debtor objects on the basis that according to them Settlor engaged in fraud and improper conduct such as breach of duty and excessive attorney's fees charges as it pertained to CGLT assets.

This Objection reviews allegations of fraud and improper conduct by various persons, including the current Chapter 7 Trustee and his counsel in proposing the settlement, Debtor's former State Court counsel Steven Sanders, a Judge of the California Superior Court, Cheryl Gortemiller's counsel Stan Blyth, Debtor's current counsel, Jeffery Pape (former counsel for Mark Bandy, Debtor's cousin), Donna Standard, Terry Novack (former care giver for Wayne and Mary Bandy), Fresno Public Guardian Heather Kruthers, and Detective Larry Swain.

Continuance of Hearing and Scheduling Order

At the April 22, 2021 hearing, the court approved the Stipulation for Debtor's current counsel to withdraw and each of the two debtors substituted *pro se*. In light of the concerns that Debtor stated in dealings with the withdrawing counsel, the court continues the hearing and sets a further briefing schedule to insure that Debtor is able to state the opposition that Debtor believes should be asserted and not feel that now former counsel did not full state such opposition.

Debtor's Objection to the Settlement

On June 14, 2021, Debtor filed an Objection to the Proposed Settlements with Steven Sanders, Jeffrey Pape, and Karen Fisher. Dckt. 295. This court extensively covers this Objection in discussing the Motion to Approve the Compromise with Sanders (DCN:DNL-4) and incorporates that herein by this reference rather than repeating it.

As with the Objection to the other Motion, again Debtor seeks to have this court set aside orders of the State Court. As discussed in the ruling incorporated herein, the cited authority of Federal Rule of Civil Procedure 60(b), as incorporated through Federal Rule of Bankruptcy Procedure 9024, and any independent equitable action to vacate an order or judgment relates to orders and judgments of a federal court relates to order or judgment issued by that federal court – not orders and judgments issued by other federal courts or state courts.

June 17, 2021 Hearing

At the hearing xxxxxxxx

6. **20-23267-E-7** **SHON/JILL TREANOR** **MOTION TO ABANDON**
DNL-9 **Pro Se** **5-11-21 [240]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 11, 2021. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Abandon 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 Abandon is granted.

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). 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 Hank Spacone ("the Chapter 7 Trustee") requests that the court authorize him to abandon property commonly known as claims described in Amended Schedule A/B, Paragraph 33, entered as Docket #139, against the following parties:

Lawyer	Scheduled Value
Stan Blyth	$25,000
Richard Lee	$25,000
Mark Poochigian	$25,000
Donna Standard	$25,000
Terry Novack	$25,000

Heather Kruthers	$25,000
Anthony Ferrigno	$25,000
Scott Schewan	$25,000
Karen Goodman	$104,800
Daniel Russo	$1,000,000
Mathew Bishop	$1,000,000

(collectively "Professional Claims"). The Declaration of Hank Spacone has been filed in support of the Motion and provides testimony that the Professional Claims would be expensive and likely delay administration of the Debtor's estate.

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Chapter 7 Trustee to abandon the Property.

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

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

The Motion to Abandon Property filed by Hank Spacone ("the Chapter 7 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted, and the Property identified as claims described in Amended Schedule A/B, Paragraph 33, entered as Docket #139, against the following parties:

Lawyer	**Scheduled Value**
Stan Blyth	$25,000
Richard Lee	$25,000
Mark Poochigian	$25,000
Donna Standard	$25,000
Terry Novack	$25,000
Heather Kruthers	$25,000
Anthony Ferrigno	$25,000
Scott Schewan	$25,000

Karen Goodman	$104,800
Daniel Russo	$1,000,000
Mathew Bishop	$1,000,000

is abandoned to Shon Jason Treanor and Jill Diana Treanor by this order, with no further act of the Chapter 7 Trustee required.

7. 20-23267-E-7 DNL-8 — SHON/JILL TREANOR, Pro Se — MOTION TO VACATE, 5-6-21 [232]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 6, 2021. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Vacate 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 Vacate is granted, and the order abandoning the claims against Gary Ray Fraley (Dckt. 108) is vacated.

Shon Jason Treanor and Jill Diana Treanor ("Debtor") filed the instant case on June 30, 2020. Dckt. 1. Amended Schedules were filed on August 24, 2020. Dckt. 19.

On February 2, 2021, the Court granted Trustee's Motion to Abandon authorizing abandonment of all claims (collectively "Fraley Claims") that have been asserted or could be asserted against Fraley, including the contingent and unliquidated potential claim described in First Amended Schedule A/B, Paragraph 34.1, Dckt. 19.

On May 6, 2021, Trustee filed this instant Motion to Vacate, claiming that the abandonment

of claims against Gary Ray Fraley was based on Debtor's Amended Schedules filed on August 24, 2020 where Debtor asserted a $21,620.00 exemption pursuant to California Code of Civil Procedure ("CCP") § 703.140(b)(5) ("Wild Card Exemption") which is no longer available to Debtor now that they are asserting the suite of exemptions available under CCP § 704 according to their second Amended Schedules filed on March 3, 2021.

Trustee seeks to have the order dismissing the case vacated, per Federal Rule of Civil Procedure 60(b)(6).

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

Debtor has amended their Schedules and now assert exemptions pursuant to California Code of Civil Procedure 704. This suite of exemptions does not include a Wild Card Exemption or an equivalent. Moreover, the Second Amended Schedules do not assert any other exemption against the Fraley claims.

Debtor having changed exemptions, Debtor must now return what Trustee had abandoned since it is no longer exempt. Otherwise, the doctrine of judicial estoppel, the court relying on the earlier claim of exemption stated by Debtor, and possibly equitable estoppel in the Trustee relying on the claim of exemption stated by Debtor, in abandoning the trailer would preclude Debtor from amending Schedule C and claiming the substantially greater homestead exemption.

Vacating the abandonment order allows Debtor to protect the much more valuable homestead.

Therefore, in light of the foregoing, the Motion is granted, and the order abandoning the claims against Gary Ray Fraley (Dckt. 108) is vacated.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Hank Spacone ("Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the order abandoning any and all claims that have been asserted or could be asserted against Gary Ray Fraley, including the contingent and unliquidated potential claim related to a trailer in possession of Gary Fraley described in Amended Schedule A/B, Paragraph 34.1 (Dckt. 19) to Shon Treanor and Jill Treanor (Dckt. 108) is vacated.
>
> **IT IS FURTHER ORDERED** that the Order authorizing abandonment having been vacated and the Trustee no longer pursuing such abandonment, the

Motion to Abandon (Dckt. 70) is dismissed without prejudice.

8.	**20-23267-E-7** **DNL-6**	**SHON/JILL TREANOR** **Pro Se**	**CONTINUED MOTION FOR TURNOVER OF PROPERTY** **2-4-21 [99]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2021. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion for Turnover 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 Turnover of Property is xxxxx.

Hank Spacone, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 4390 Emerald Ridge Lane, California ("Property").

March 8, 2021 Stipulation

On March 8, 2021, the parties filed a Stipulation agreeing to continue DNL-4, DNL-5, DNL-6, and DNL-7 to April 22, 2021 at 10:30 a.m. Dckt. 160. The court granted the motion stipulating to the continuance on March 10, 2021. Dckt. 171.

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

> (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Shon Jason Treanor and Jill Diana Treanor ("Debtor") to deliver property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

Debtor filed a Statement of Non-Opposition requesting that the Motion be granted. Dckt. 142. This was filed by Debtor's current counsel, for which a Substitution of Attorney is pending.

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

Continuance of Hearing for a Status and Scheduling Conference

At the April 22, 2021 hearing, the court approved the Stipulation for Debtor's current counsel to withdraw and each of the two debtors substituted *pro se*. Debtor and the Trustee are addressing issues concerning the Objection to Exemption which then relates to the present Motion for Turnover. The court continues this for a Status and Scheduling Conference to allow the Parties to focus on addressing

the Objection to Exemption and Oppositions that Debtor has to the Settlement Motions.

June 17, 2021 Hearing

At the hearing xxxxxxxx

9.	**20-23267-E-7** **DNL-7**	**SHON/JILL TREANOR** **Pro Se**	**CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **3-8-21 [162]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 8, 2021. By the court's calculation, 45 days' notice was provided. 14 days' notice is required.

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

The Objection to Claimed Exemptions is xxxxx.

The Chapter 7 Trustee, Hank Spacone ("Trustee") objects to Shon Jason Treanor and Jill Diana Treanor's ("Debtor") claimed exemptions under California law on the basis that Debtor's claimed homestead exemption should be conditioned upon payment of $34,300 to Trustee and the claimed personal injury exemption is neither based on nor derivative of personal bodily injury.

California Code of Civil Procedure Section 704.730

California Code of Civil Procedure Section 704.730 provides in part:

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

> (1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).
>
> (2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

C.C.P. § 704.730.

Debtor claimed $100,000 as exempt over the real property 4390 Emerald Ridge Lane, Fairfield, California valued at $1,100,000. Amended Schedule C, Dckt. 139.

California Code of Civil Procedure Section 704.140

California Code of Civil Procedure Section 704.140 allows a debtor to exempt a cause of action for personal injury without making a claim:

> (a) Except as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for personal injury is exempt without making a claim.
>
> (b) Except as provided in subdivisions (c) and (d), an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.
>
> (c) Subdivision (b) does not apply if the judgment creditor is a provider of health care whose claim is based on the providing of health care for the personal injury for which the award or settlement was made.
>
> (d) Where an award of damages or a settlement arising out of personal injury is payable periodically, the amount of such periodic payment that may be applied to the satisfaction of a money judgment is the amount that may be withheld from a like amount of earnings under Chapter 5.

C.C.P. § 704.140.

Debtor claimed as exempt $500,000 of a personal injury claim in the amount of $1,000,000. The claim is described as: “Malpractice claim against Steven Sanders.” Amended Schedule C, Dckt. 139.

DISCUSSION

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

The court begins with a review of the case as it pertains to the claimed exemptions. After employing attorney Peter Macaluso as their counsel, Debtor filed amended exemptions.

Review of Schedules C

Debtor's Original Schedule C filed June 30, 2020, while Mr. Gabe Liberman was serving as Debtor's attorney, the trailer related to Mr. Fraley was exempted under the Wildcard Exemption. Dckt. 1 at 19-21.

Debtor's First Amended Schedule C filed August 24, 2020, while Mr. Liberman was still serving as Debtor's attorney, did not claim a homestead exemption nor did it claim as exempt a malpractice claim. Dckt. 19 at 9-11. This time the Wildcard Exemption for the trailer was deleted but was used for claims against Mr. Gary Fraley.

The specific schedule at issue is the Second Amended Schedule C. This Second Amended schedule was filed on March 3, 2021 by Debtor's newly hired attorney, Peter Macaluso. The Schedule was amended to change all exemptions pursuant to § 704 rather than § 703. Dckt. 139 at 9-10.

Additionally, new assets disclosed and exemptions claimed are stated as follows:

$1,100,000 interest in Gortemiller Trust
$100,000 homestead exemption claimed

$1,000,000 malpractice claim against Sanders
$500,000 personal injury exemption claimed

Id.

The Homestead Exemption

With respect to the homestead exemption, the Objection only asserts that the homestead exemption should be conditioned on Debtor paying $34,300 to the estate or reduce the homestead exemption to $65,700 from the claimed $100,000.

The Personal Injury Exemption

For the personal injury exemption, Trustee argues that the malpractice claim is for a property dispute and is not a personal injury claim. However, Trustee notes that there can be personal injury,

emotional distress, arising from malpractice.

Moreover, Trustee theorizes that this claiming of an exemption, which was in the original Schedule C, is an attempt to derail efforts by Trustee to settle with Sanders & Associates. *See* Dckt. 85.

Trustee's Declaration

Trustee filed his Declaration in support of the Objection. Dckt. 164. Trustee's declaration provides very little information as well except for statements where Trustee "understands" and tells the court what is on the court's file and what he has read in state court files.

The Trustee's declaration (Dckt. 164) includes other "grounds"and basis for contending that the Debtor should not be allowed to amend the exemptions. It should be noted that this being an objection, and not a motion, the court is unable to use these materials for purposes of obtaining grounds for the relief requested. Nevertheless, the court lists the "grounds" included: (identified by declaration paragraph number):

> 2. Debtor consumed about $700,000 in trust assets pre-petition, with there being withdrawals by attorneys Matthew Bishop and Daniel Russo. Trustee "understands" that Sanders prevailed in protracted litigation. He further "understands" that the Debtor's interest in the trust estate was determined to be $2.6MM. He "understands" this by the Trustee's reading of the state court files and then proceeds to tell the court what he "hears" the documents he read say.
>
> 3. In reliance on the prior Schedules filed by Debtor, Trustee abandoned the estate's interest in the trailer to Debtor so they could prosecute and recover on the claim against Fraley.
>
> 4. In reliance on the prior Schedules filed by Debtor, Trustee entered into a settlement with Sanders. Trustee, in reliance on the prior Schedules, incurred $2,300 in attorney's fees relating to the Fraley abandonment and $10,400 in the Sanders settlement.
>
> [. . .]
>
> 6. On March 3, 2021, Debtor's amended the schedules to state the Sanders malpractice claim has a value of $1,000,000 and they claim a $500,000 exemption in it.

Declaration at 2.

Debtor's Response

Debtor asserts that there are emotional distress damages that are part of the malpractice claim. Dckt. 183. Specifically, Debtor states with respect to Sander's claim (POC 9-1), it is asserted that the "Decision" is not based on a final order. (The court is unsure as what Decision is being referenced.) It is also asserted that the Agreement with Sanders is void on the basis that the contingency fee of 35% was based on a gross value and not "net" value.

The court notes that the June 8, 2020 decision attached to POC 9-1 appears to be final, determining that Debtor owes Sanders $1,001,372.60 in attorney's fees and costs.

The Response also discusses the dispute with Mr. Fraley and because Fraley took the trailer, which was improper, Debtor should get a $100,000 homestead exemption.

Trustee filed a Reply asserting that no evidence in opposition has been presented, and is based on baseless arguments made in the objection to claim (PGM-3). Dckt. 194.

Decision

The Objection gives very little information or grounds for such objection. First, as it pertains to the objection to the homestead exemption, the Objection fails to state why such payment condition or reduction is proper. Though citing the court to a bankruptcy court decision in another District, the Trustee offers no legal analysis or authority for the court to "wack down" an exemption. *See Law v. Siegel*, 571 U.S. 415 (2014), relating to reducing monetary exemptions. While reduction or adjustment is not per se prohibited, it must be based on applicable law.

As to the personal injury exemption, the Trustee cites to and explains that the amounts must relate to a personal injury, which can include emotional distress. The issues and claims in connection with claims against Sanders are asset based, and not emotional distress or other physical injuries.

Moreover, no analysis is provided as to limitations on amending exemptions. Indeed while arguing that Debtor should not be allowed to amend, Trustee fails to provide any legal basis as to why Debtor should not be allowed to amend or should have an offset against the exemption.

Continuance of Hearing Staying of Objection Proceeding

At the April 22, 2021 hearing, the court approved the Stipulation for Debtor's current counsel to withdraw and each of the two debtors substituted *pro se*. Debtor and the Trustee are addressing issues concerning the Objection to Exemption which then relates to the present Motion for Turnover. In light of the continued hearings on the settlement motions and possible resolution of this Objection based around Debtor transferring back to the estate the Trailer that was abandoned pursuant to the prior claim of exemption as part of Debtor now claiming a homestead exemption in the real property. The court continues this for a Status and Scheduling Conference to allow the Parties to focus on addressing the Objection to Exemption and Oppositions that Debtor has to the Settlement Motions.

June 17, 2021 Hearing

At the hearing xxxxxxxx

10. **20-23267-E-7** **SHON/JILL TREANOR** **CONTINUED STATUS CONFERENCE**
RHS-2 **Pro Se** **RE: VOLUNTARY PETITION**
6-30-20 [1]

Debtors' Atty: Pro Se

Notes:
Continued from 4/22/21 to be heard in conjunction with other matters on calendar. The court will discuss with the parties whether they believe that conducting an in-person Status Conference, with COVID-19 procedures in place and no other matters or persons for any other cases being in the courtroom, would be beneficial.

The Status Conference is xxxxxxx

11. 20-23267-E-7 SJT-30 SHON/JILL TREANOR MOTION OF OBJECTION TO PROOF OF CLAIM 6-14-21 [296]

The Motion of Objection to Proof of Claim is xxxxxxx

This Chapter 7 bankruptcy case was filed by Shon Treanor and Jill Treanor, the "Debtors," on June 30, 2020. That Chapter 7 case has been fraught with disputes, disagreements, and multiple allegations of fraud by Debtors. Debtors have had several counsel and discharged those counsel, and are now representing themselves in *pro se*.

Insufficient Notice

On Monday June 14, 2021, Debtors filed a pleading titled Debtors' Motion of Objection to Proof of Claim. Dckt. 296. The hearing date for the Motion of Objection is stated to be June 18, 2021, just three days later. The Proof of Service states that service was made by U.S. Mail on June 11, 2021. Dckt. 297. The only person stated to have been served is the judge in this bankruptcy case. *Id*.

As discussed below, the Motion of Objection appears to actually be a request for this court to order (as in issuing a mandatory injunction) for the U.S. Attorney to undertake an investigation of the various state and federal crimes which Debtors believe to have occurred.

The court issued an order for various parties in interest to appear at 10:30 a.m. on June 17, 2021, when the court has numerous matters pending in this case, including the Asst. U.S. Attorney who the Debtors name in the Motion of Objection.

With respect to the substance of this Motion, sufficient service and notice was not provided. See Local Bankruptcy Rules 9014-1(f)(1), (f)(2).

REVIEW OF MOTION OF OBJECTION

In addressing the following, the court does not attempt to lay out the various detailed objections, concerns, disputes, and claims of fraud and other torts by Debtors. The Debtors should not feel that the court is truncating or alternating the allegations, claims, or concerns relating to allegations of fraud and other crimes. This is just a summary in light of the status of this case.

Debtors assert that the Chapter 7 Trustee and that counsel, along with their second counsel in this bankruptcy case are in league with multiple attorneys, trustees, conservators, and county officials to defraud Debtors and various generations of their extended family. Various pleadings have been filed in which demand is politely made that the court order the Attorney General to investigate the various allegations of fraud and other crimes.

One issue that arises is that Debtors continue to sign their pleadings as Co-Trustee and Executor Trustee, not as themselves personally, the two debtors in this case. *See* Dckts. 249, 264, 266, 268, 295, and 296 as examples. It is not unexpected that a layperson may not appreciate the legal difference between the Debtors personally, parties to this bankruptcy case, and them acting in their fiduciary capacity as trustees and executors for other entities.

The relief sought by Debtors, who have requested such in their capacities as co-trustees, is clearly stated in the most recent pleading filed titled Debtor's Motion of Objection to Claim, which upon reading it is actually a request for this court to order the Attorney General to undertake an investigation. The prayer stated in the Motion of Objection is:

> WHEREFORE we, JILL D. TREANOR and SHON J. TREANOR are giving our formal request for you Judge Ronald Sargis to **sign an order of the Attorney General investigation** without any delays to be excused or be heard by Hank Spacone or his legal counsel. Code Section 3057 (a) implies Judge prior to the Trustee. We know you Honorable Judge Sargis **have full authority to grant us an investigation** and can simply make it to be ordered. **U.S. Attorney Paul Hemiseth told us** we simply need **to formally request an investigation from you in writing**. So this is our request formally **requesting our overdue investigation every State official and agency refused us for the past 8 years so we could be harmed by the corrupt parties involved**. We deserve better and have the right to an Attorney General investigation that is more than fully warranted at this point.

Motion of Objection, p. 16:13-20; Dckt. 296 (emphasis added). As noted above, Asst. United States Attorney Paul Hemiseth is identified as the person who told Debtors to obtain an order requiring the U.S. Attorney to undertake an investigation.

The Motion of Objection seeks not only to have wrongdoings relating to the Debtors in this case and the bankruptcy estate addressed, but claims for various family members going back eight years;

> **Known fraud by Fresno County Counsel** members Dan Cederborg and Heather Kruthers has been our real problem from the start. Now we obtain new evidence Hank Spacone and Russell Cunningham not only directed Pete Macaluso to draft a settlement brief to **defend the fraud used by Fresno County** he presented before us. **Every act of intentional fraud and conspiracy** was recorded for good cause. The efforts to derail our purpose of **exposing the fraud used to force our family to become injured** needs to stop immediately. You **Judge** Sargis need to end it of our entire family and **order an investigation for us all to be conducted by the U.S. Attorney to prosecute** after the **Attorney General investigates** our criminal case to be forwarded to be prosecuted. We may want to add the fraud now contributed by Hank Spacone and Russell Cunningham if they keep harassing our family and aiding known fraud by Fresno County.

Id., p. 13:5-13 (emphasis added).

Debtors, as co-trustees, have provided extensive citations in the Motion of Objection. The basis for seeking such an order from this court is stated to be 18 U.S.C. § 3057, which provides:

§ 3057. Bankruptcy investigations

(a) Any **judge**, receiver, or trustee having reasonable grounds for **believing that any violation under chapter 9 of this title** [bankruptcy crime statutes] or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. Where one of such officers has made such report, the others need not do so.

(b) The **United States attorney thereupon shall inquire into the facts and report thereon to the judge** and if it appears probable that any such offense has been committed, shall without delay, present the matter to the grand jury, unless upon inquiry and examination he decides that the ends of public justice do not require investigation or prosecution, in which case he shall report the facts to the Attorney General for his direction.

18 U.S.C. § 3057. The language above states that the judge, having reasonable grounds for believing that violations of law relating to specified bankruptcy laws have occurred shall report that to the United States Attorney, who will then "inquire" and then act on if appropriate.

Of first note, the statute does not provide that "On demand of a debtor or other party in interest the judge shall report to the United States Attorney any and all allegations of crimes asserted by such debtor or other party in interest, and the United States Attorney shall then investigate the allegations of crimes by the debtor or other party in interest." It requires that the judge him or herself have reasonable grounds. Here, the Debtors, as co-trustees, make various allegations and assertions of matters that have occurred in state court and with various county agencies over the past eight years for various members of their extended family. Further, they allege that the bankruptcy trustee refusing to agree with them and advance such claims of fraud for Debtors and their extended family members over the past eight years is part of the comprehensive fraud scheme against the Debtors' extended family.

While the Debtors, in their capacities as co-trustees, make such allegations, there is no basis for the judge to have "reasonable grounds" for all of those actions and events that well predated this bankruptcy case and involve parties not before the court.

Clearly Debtors feel frustrated and deprived of justice at every turn. Whether such is true or not, this court does not know. The court has on several occasions commented that if Debtors believe that crimes have occurred over the past eight years, then they go to the United States Attorney, to the extent they are federal crimes, the Attorney General for the State of California, and the District Attorneys, not the court. The court is not the director or assigner of work to the Department of Justice or the various State prosecutors. As reflected in how Congress has structured 18 U.S.C. § 3507, even if the judge has "reasonable belief" that one or more of the enumerated federal crimes have occurred, the judge only reports it to the United States Attorney, and does not "order an investigation." Further, that when it is reported, Congress provides for the United States Attorney to "inquire into the facts," and if it appears probable, then to proceed with investigation or prosecution unless the ends of public justice do not require it. 18 U.S.C. § 3057(b).

The court notes that Debtors, as co-trustees, cite to Asst. United States Attorney Paul Hemiseth as the source of Debtors, as co-trustees, believing that they merely need to request an investigation and the court would order it to occur. In an earlier pleading (which the court could not readily identify while getting this order expedited), Debtors stated that they were told by an FBI agent in the "Boston Office" that all they needed to do was file bankruptcy and then the judge would proceed with undertaking an investigation of all the alleged wrongs.

While there is a significant misunderstanding of the law as to what and when it is proper for a judge to report a matter to the United States Attorney, it appears that the Debtors, individually and as co-trustees, have found their way to the United States Attorney's Office. While the court does not have reasonable belief relating to the allegations of fraud and misconduct in the various state court proceedings and conduct of county officials and judges, and now as to the Trustee, Trustee's Counsel, and Debtors' second counsel, the court can ensure that the Debtors are able to contact the United States Attorney, provide all of the information, documentation, contacts, and other evidence of the asserted crimes to the United States Attorney who can determine what inquiry should be made, whether an investigation is warranted, and prosecution of federal crimes if proper.

At the hearing, **xxxxxxx**

FINAL RULINGS

12. 19-25248-E-7 ASF-3 — COACT DESIGNWORKS — Jason Rios — MOTION FOR ADMINISTRATIVE EXPENSES — 4-28-21 [108]

Final Ruling: No appearance at the June 17, 2021 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 28, 2021. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Administrative Expenses is granted.

The Chapter 7 Trustee, Alan Fukushima ("Movant"), requests payment of administrative expenses in the amount of $850.00, incurred during the period of 2021 for taxes incurred by the estate that became due and owing post-petition to the Franchise Tax board ("FTB") for the estate of COACT Designworks ("Debtor").

DISCUSSION

Movant argues the certified public accountant employed to prepare income tax returns on behalf of the estate in order to comply with state and federal authorities has determined that the income taxes due for the final short year ended in 2021 are $850.00 and payable to FTB by July 15, 2021.

Section 503(b)(1)(B) of the Bankruptcy Code states that "(b) after notice and a hearing, there

shall be allowed administrative expenses ..., including - (1) ... (B) any tax - (I) incurred by the estate ..." Here, Movant asserts the estate's liability to the IRS and FTB for 2021 income taxes are an administrative expense.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing for the payment of the estate's liability to the FTB for Debtor was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay Movant its administrative expenses in the amount of $850.00.

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 Administrative Expense filed by the Chapter 7 Trustee, Alan Fukushima ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Chapter 7 Trustee is authorized to pay to the Franchise Tax Board the amount of $850.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

13. **19-25248-E-7** **COACT DESIGNWORKS** **MOTION FOR COMPENSATION FOR**
ASF-4 **Jason Rios** **MICHAEL GABRIELSON,**
ACCOUNTANT(S)
4-28-21 [102]

Final Ruling: No appearance at the June 17, 2021 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 27, 2021. By the court's calculation, 51 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Gabrielson & Company, the Accountant ("Applicant") for Alan S. Fukushima, the Chapter 7 Trustee ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 25, 2020 through April 26, 2021. The order of the court approving employment of Applicant was entered on September 20, 2019. Dckt. 35. Applicant requests fees in the amount of $7,167.50 and costs in the amount of $193.63.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

A review of the application shows that Applicant's services for the Estate include preparation of Tax Returns, researching outstanding accounts receivable, and providing administrative functions. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Preparation of Tax Returns: Applicant spent 8.8 hours in this category. Applicant prepared 2020 final 2021 federal and California corporation income tax returns, and re-submittal of amended 2013 through 2015 federal corporation income tax returns to obtain substantial tax refunds for the estate.

Outstanding Accounts Receivable: Applicant spent 8.0 hours in this category. Applicant assisted Trustee in reviewing and securing detail accounts receivable information and documentation from Debtor records to support collection efforts and provide backup documents to requesting customers.

Administrative Functions: Applicant spent 1.1 hours in this category. Applicant prepared accountant declaration and related employment documents for trustee review, and second and final fee application, including detailed description of tax and accounting services.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Michael Gabrielson	8.2	$395.00 (2020)	$3,239.00
	9.7	$405.00 (2021)	$3,928.50
	0	$0.00	$0.00
Total Fees for Period of Application			$7,167.50

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	$29,111.50	$0.00
	$0.00	
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$29,111.50	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $193.63 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of $746.79.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	$0.10	$94.40
Postage		$99.23
		$0.00
Total Costs Requested in Application		$193.63

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. Second and Final Fees in the amount of $7,167.50 and prior Interim Fees in the amount of $29,111.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

Second and Final Costs in the amount of $ 193.63 and prior Interim Costs in the amount of $746.79 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

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

Fees	$7,167.50
Costs and Expenses	$193.63

pursuant to this Application and prior interim fees of $29,111.50 and interim costs of $746.79 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 Gabrielson & Company ("Applicant"), Accountant for Alan S. Fukushima, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:
>
> Gabrielson & Company, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $7,167.50
> Expenses in the amount of $193.63,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as professional for the Chapter 7 Trustee.
>
> The fees and costs pursuant to this Motion, and fees in the amount of $29,111.50 and costs of $746.79 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs 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.