**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

**Honorable Ronald H. Sargis**
Chief Bankruptcy Judge
Modesto, California

**June 24, 2021 at 10:30 a.m.**

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| **1.** | **19-90464-E-7**<br>**BLF-3**<br>**1 thru 2** | **RICHARD RICKS**<br>**Pro Se** | **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JOY HUGHES**<br>**5-26-21 [117]** |

**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).**
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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 (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 26, 2021. By the court's calculation, 29 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

**The Motion for Approval of Compromise is granted.**

Irma C. Edmonds, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Joy Hughes ("Settlor"). The claims and disputes

to be resolved by the proposed settlement are the bankruptcy estate's interest in the adversary proceeding, *Irma Edmonds v. Joy Hughes*, United States Bankruptcy Court, Eastern District Adv. Pro. Case No. 20-09013, filed by Movant against Joy Hughes in order to recover voidable and/or fraudulent transfers of property of the bankruptcy estate.

On November 19, 2020, Movant filed Adversary Proceeding alleging that at the time Hirst Law Group P.C (which represented Debtor in a *qui tam* action in the United States District Court for the Eastern District of California) obtained the arbitration award against Debtor, Debtor and Defendant were sole owners and holders of all membership interests in and to Solomon Solutions, LLC ("Solomon"). Movant states that less than two (2) years before filing this bankruptcy case, and at a time when (a) the liquidation value of Solomon was worth $100,000.00 and (b) no part of the arbitration award had been paid, Debtor transferred to Defendant all of his right, title and interest in Solomon. Movant contending that Debtor received no money or property in exchange for the transfer of right, title, and interest in Soloman.

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 C in support of the Motion, Dckt. 121):

A. Movant shall be entitled to obtain a judgment against Defendant in the principal amount of $127,681.89 plus interest at the legal rate of interest in California from and after April 20, 2021.

B. Defendant will convey the real property in Oklahoma by deed to Movant. Movant will market an sell the property and apply net proceeds thereof to the debt of Defendant.

C. Defendant to make an initial payment of $5,000.00 on or before May 30, 2021. Defendant will then make monthly payments by the tenth day of each month commencing in June 2021 in the amount of $1,000.00 per month for 24 consecutive months.

D. If Defendant fully and timely conveys the real property and pays set forth above, then Movant will dismiss this action with prejudice.

E. This Stipulation may be executed in one or more counterparts.

F. This Agreement is solely for the benefit of Movant and Defendant, there are no third party beneficiaries.

**DISCUSSION**

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

**Probability of Success**

Movant asserts that resolving the Adversary Proceeding would require difficult factual and legal issues to be litigated and it is therefore difficult to predict the manner in which these issues will resolve. According to Movant, Defendant has possession of all knowledge and information regarding the transfer. Furthermore, Movant states that there is no certainty the Trustee would prevail in litigation because of the various disputed factual issues. Although Movant is confident in her position, there is no certainty of a more significant recovery in the Adversary Proceeding.

**Difficulties in Collection**

Movant's argues that any recovery in the Adversary Proceeding through litigation would be limited by litigation costs. Movant states that even if she as Trustee is successful at trial, the Defendant may file her own bankruptcy case or, the defense may elect to appeal and any recovery would be further reduced in litigating the appeal. Movant highlights that Defendant has provided a financial statement suggesting personal bankruptcy is a serious threat. Movant and Special Counsel contend that settlement is reasonable given the risk of continued litigation and the costs associated with such litigation.

**Expense, Inconvenience, and Delay of Continued Litigation**

Movant argues that continuing to prosecute the Adversary Proceeding could lead to further delay as the parties prepare for trial. Movant states there could also be post-trial motions and appeals that would further delay the final outcome and thus, the Compromise avoids expenses, inconvenience, and delay.

**Paramount Interest of Creditors**

Movant argues that the proposed Compromise results in significant savings in time and administrative expenses by avoiding further litigation. Movant notes that the Settlement Agreement would allow her to collect approximately $68,300.00 for the bankruptcy estate without expense, uncertainty, or delay of costly litigation.

**Consideration of Additional Offers**

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because settlement that allows for certain recovery and payment of approximately $68,300.00 to the estate. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Irma C. Edmonds, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Joy Hughes ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit C in support of the Motion (Dckt. 121).

**2.** **19-90464-E-7** **RICHARD RICKS** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF SERLIN & WHITEFORD, LLP FOR MARK A. SERLIN, SPECIAL COUNSEL(S)**
**BLF-4** **Pro Se** **5-26-21 [123]**

**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).**
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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 (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 26, 2021. By the court's calculation, 29 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

**The Motion for Allowance of Professional Fees is granted.**

Serlin & Whiteford, LLP, the Special Counsel ("Applicant") for Irma C. Edmonds, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 2, 2020, through May 25, 2021. The order of the court approving employment of Applicant was entered on October 2, 2020. Dckt. 115. Applicant requests fees in the amount of $24,282.80 and costs in the amount of $377.80.

## APPLICABLE LAW

### Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

### Lodestar Analysis

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

### Reasonable Billing Judgment

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

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that Applicant's services for the Estate include acting as Special Counsel for the Chapter 7 Trustee in the prosecution of the adversary proceeding filed to recover voidable and/or fraudulent transfers of property of the bankruptcy estate. 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.

Adversary Proceeding: Applicant prepared and filed the adversary complaint (to recover voidable and/or fraudulent transfers of property of the bankruptcy estate) and filed a motion for summary judgment which is currently under submission. These tasks ultimately led to the settlement in the adversary proceeding.

**Contingency Fee: Litigation**

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in litigation to recover voidable and/or fraudulent transfers of property of the bankruptcy estate, for which Client agreed to a contingent fee of 35% of the Defendant's initial payment per the Settlement Agreement, 35% of net proceeds of sale of real property, and 35% of the Defendant's 24 monthly payments per the Settlement Agreement. In approving the employment of applicant, the court approved the contingent fee, subject to further review pursuant to 11 U.S.C. § 328(a). An estimated $68,300 of net monies (exclusive of these requested fees and costs) was recovered for Client.

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $377.80 pursuant to this application.

The costs requested in this Application are,

| **Description of Cost** | **Per Item Cost, If Applicable** | **Cost** |
|---|---|---|
| Photocopying | $0.10 | $27.80 |
| Court Filing Fees | | $350.00 |
| | | $0.00 |
| **Total Costs Requested in Application** | | $377.80 |

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

**Percentage Fees**

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $24,282.80 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Chapter 7 Trustee is authorized to pay from the available funds of the Estate.

**Costs & Expenses**

First and Final Costs in the amount of $377.80 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.

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 | $24,282.80 |
| Costs and Expenses | $377.80 |

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Serlin & Whiteford, LLP ("Applicant"), Special Counsel for Irma C. Edmonds, 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 Serlin & Whiteford, LLP is allowed the following fees and expenses as a professional of the Estate:

Serlin & Whiteford, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of $24,282.80
Expenses in the amount of $377.80,

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

**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.

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| **3.** | **19-90989-E-7**<br>**WF-14**<br>**3 thru 7** | **JAMIE/MELISSA BILLMAN**<br>**Walter Dahl** | **OBJECTION TO CLAIM OF JOHN F. SIEBEN JR., CLAIM NUMBER 26**<br>**5-19-21 [247]** |

**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).**
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Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtors, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on May 19, 2021. By the court's calculation, 36 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 26-1 of John F. Sieben Jr. is sustained, and the claim is disallowed in its entirety.**

Michael D. McGranahan, the Chapter 7 Trustee, ("Objector") requests that the court disallow the claim of John F. Sieben Jr. ("Creditor" or "Claimant"), Proof of Claim No. 26-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $200,000.00 for "commission earned on a contract," and entitled to priority. Objector asserts that Proof of Claim 26-1 fails to allege facts sufficient to support Debtor's Liability to Claimant.

**DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In*

*re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Here, Objector argues that Claim 26-1 fails to allege facts sufficient to support a finding Debtors are the party liable to Claimant. Upon the filing of the voluntary petition, the petition created the bankruptcy estate of debtors Jamie Benjamin Billman and Melissa Marnell Billman, not the bankruptcy estate of Cool Roofing Systems, Inc. ("CRS"). CRS is a California corporation registered with the California Secretary of State with an Entity Number C2648120; thus, as a corporation, CRS is a different legal entity than Debtors.

According to Objector, in Proof of Claim 26-1, Claimant asserts he was "retained by Cool Roofing Systems" and that "CRS agreed to pay me $3,200 per week" and while this might be sufficient to support a finding CRS holds some liability to Claimant, it does not establish Debtors are liable to Claimant. Instead, Objector argues that Claimant's declaration indicates Debtors are not liable to Claimant for the type of claim alleged in Claim 26-1 absent a contractual guarantee.

A review of Proof of Claim 26-1 shows that there is nothing in the record for the court to conclude such a contractual agreement exists between Debtor and Claimant. Claimant asserts that he is owed commissions earned on a contract made with Cool Roofing Systems.

Looking at the attachments to Proof of Claim 26-1, the first is a letter, which is stated to be a claim on Payment Bond, written on Mr. Sieben's letterhead to Philadelphia Indemnity Insurance Company. POC 26-1, p. 4. The statements in the letter include the following:

> Cool Roofing Systems (CRS) entered into a contract with United States of America, Army Corps of Engineers (USACE), known as Multiple Award Task Order Contract (MATOC) at Tinker Air Force Base, Oklahoma City, Oklahoma, Contract No. W912BV-15-D-0025, Delivery No. W912BV-18-F-0098, (Roof Replacement B9001 CSAG TAC Sections 24, 37, 230, 234, 271, 272, 67, and 67A (Phase Two) Tinker Air Force Base, Oklahoma).
>
> I was retained by Cool Roofing Systems (CRS) to provide labor to the Project and to provide services as Project Manager for which CRS agreed to pay me $3,200 per week through completion of the project (est. completion date 12/31/2019) with additional compensation of $100,000.00 per roof section awarded, the latter amount payable through monthly draws from the progress payments. CR5 was awarded two roof sections ($200,000.00) during my tenure.
>
> . . .
>
> The last day I performed work on the project was on 5/31/2019. CRS failed to pay all amounts owed to me. I, therefore, am submitting this claim for the following

1. Wages from (5/31/2019) through (est. completion date 12/31/2019)(unpaid contract wages-31 weeks at $ 3,200.00 per week = $ 99,200.00); if project completed on 12/31/2019. Claim increases for each week past that date.

2. Additional Compensation on awarded Roof Section 230/234 $ 100,000.00;

3. Additional Compensation on awarded Roof Section 37 $ 100,000.00;

Total Presently Due: $(299,000.00)

No copies of any contracts or other documentation is provided with Proof of Claim 26-1. The information provided states that Creditor had a contact with CRS and it was CRS who owed him money. On Amended Schedule A/B Debtor lists owning 100% of Cool Roofing Systems, Inc., a California Corporation. Schedule A/B, Dckt. 27 at 16.

Claimant stating having a claim against CRS, but not the Debtor. Thus, Claimant has not alleged "facts sufficient to support the claim" against Debtor.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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 Objection to Claim of John F. Sieben Jr. ("Creditor"), filed in this case by Michael D. McGranahan, the Chapter 7 Trustee, ("Objector") 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 Objection to Proof of Claim Number 26-1 of Creditor is sustained, and the claim is disallowed in its entirety.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

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|---|---|---|---|
| **4.** | **19-90989-E-7**<br>**WF-15** | **JAMIE/MELISSA BILLMAN**<br>**Walter Dahl** | **OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER 4**<br>**5-19-21 [251]** |

**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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtors, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on May 19, 2021. By the court's calculation, 36 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 4-1 of Wells Fargo Bank, N.A. is sustained, and the claim is disallowed in its entirety.**

Michael D. McGranahan, the Chapter 7 Trustee, ("Objector") requests that the court disallow the claim of Wells Fargo Bank, N.A. ("Claimant" or "Creditor"), Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $4,957.77. Objector asserts that Claim 4-1 fails to allege facts sufficient to support Debtor's Liability to Claimant for a business credit card.

**DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright*

*v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Here, Objector argues that Proof of Claim 4-1 fails to allege facts sufficient to support a finding Debtors are the party liable to Claimant. Objector asserts that upon the filing of the voluntary petition, the petition created the bankruptcy estate of debtors Jamie Benjamin Billman and Melissa Marnell Billman not the bankruptcy estate of Cool Roofing Systems, Inc. ("CRS"). CRS is a California corporation registered with the California Secretary of State with an Entity Number C2648120. As a corporation, CRS is different legal entity than Debtors.

**Review of Proof of Claim 4-1**

In Proof of Claim 4-1, Claimant attached credit card statements for a "Wells Fargo Business Card" issued to Cool Roofing System. Trustee argues that while this might be sufficient to support a finding that CRS holds some liability to Claimant, it does not establish Debtors are liable to Claimant. Instead, Objector argues that Claimant's credit card statements indicate Debtors are not liable to Claimant for the type of claim alleged in Claim 4-1 absent a contractual guarantee.

A review of Proof of Claim 4-1 shows that the Wells Fargo business card was for the Cool Roofing Business. Claimant did not provide evidence of a guarantee signed by the debtors for this debt. Thus, there is nothing in the record to conclude such a contractual agreement exists between Debtors and Claimant.

**Review of Amended Proof of Claim 4-2**

The court notes that Claimant filed Amended Proof of Claim 4-2 on June 11, 2021. Attached to Amended Proof of Claim is a document titled "Loan Application Wells Fargo Business Banking." POC 4-2, p. 14-15. Unfortunately, this Application document is a very poor copy, with much of the text illegible.

Unfortunately, all the court can decipher from this attachment, which presumably is the best copy available since Janet Samuelson, who is identified as a Bankruptcy Specialist for Wells Fargo Bank, N.A., is signing Amended Proof of Claim 4-2 under penalty of perjury and with more than sufficient time to get a legible copy of what appears to be the critical document before filing the amended proof of claim.

Claimant has not provided the court with any supporting documentation that shows the Debtor is personally obligated for the debt owed by what was added to the proof of claim.

Based on the evidence before the court, Creditor's Proof of Claim 4-1 and Amended Proof of Claim 4-1 (which Claimant filed while this Contested Matter was pending, attempting to collaterally change this Contested Matter) is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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 Objection to Claim of Wells Fargo Bank, N.A. ("Creditor"), filed in this case by Michael D. McGranahan, the Chapter 7 Trustee, ("Objector") 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 Objection to Proof of Claim Number 4-1 and to the Amended Proof of Claim 4-2, filed while this Contested Matter was pending and relating directly to this Contested Matter, of Creditor is sustained, and the claim is disallowed in its entirety.
>
> Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

| | | | |
|---|---|---|---|
| **5.** | **19-90989-E-7**<br>**WF-16** | **JAMIE/MELISSA BILLMAN**<br>**Walter Dahl** | **OBJECTION TO CLAIM OF VIRGINIA MECHANICAL HEATING & AIR CONDITIONING, CLAIM NUMBER 9-1**<br>**5-25-21 [255]** |

**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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtors, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on May 25, 2021. By the court's calculation, 30 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 9-1 of Virginia Mechanical Heating & Air Conditioning is sustained, and the claim is disallowed in its entirety.**

Michael D. McGranahan, the Chapter 7 Trustee, ("Objector") requests that the court disallow the claim of Virginia Mechanical Heating & Air Condition ("Creditor"), Proof of Claim No. 9-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $13,079.07 for "labor and material to complete the job." Objector asserts that Claim 9-1 fails to allege facts sufficient to support Debtor's Liability to Claimant.

**DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright*

*v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

**Discussion of Objection**

Here, Objector argues that Proof of Claim 9-1 fails to allege facts sufficient to support a finding Debtors are the party liable to Claimant. Objector asserts that upon the filing of the voluntary petition, the petition created the bankruptcy estate of Debtors Jamie Benjamin Billman and Melissa Marnell Billman not the bankruptcy estate of Cool Roofing Systems, Inc. ("CRS"). CRS is a California corporation registered with the California Secretary of State with an Entity Number C2648120. As a corporation, CRS is different legal entity than Debtors.

In Claim 9-1, Claimant asserts they provided "materials and labor to complete a job". In support of this, Claimant has attached an invoice issued for Cool Roofing Systems. Objector argues that while this might be sufficient to support a finding CRS holds some liability to Claimant, it does not establish Debtors are liable to Claimant. Instead, Claimant's invoice indicates Debtors are not liable to Claimant for the type of claim alleged in Claim 9-1 absent a contractual guarantee. Objector points the court that no such evidence has been provided. Thus, Objector argues that Claimant has not alleged "facts sufficient to support the claim" and Claim 9-1 should be disallowed in its entirety.

**Review of Proof of Claim 9-1**

A review of Proof of Claim 9-1 shows that Claimant provided evidence in the form of invoices which are to the name of Cool Roofing Systems, Inc. Only this corporate entity is identified in the invoices. Claimant did not provide evidence of a guarantee signed by the debtors for this debt incurred by Cool Roofing Systems, Inc. Thus, there is nothing in the record to conclude such a contractual agreement exists between Debtors and Claimant.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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 Objection to Claim of Virginia Mechanical Heating & Air Conditioning ("Creditor"), filed in this case by Michael D. McGranahan, the Chapter 7 Trustee, ("Objector") 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 Objection to Proof of Claim Number 9-1 of Creditor is sustained, and the claim is disallowed in its entirety.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

| | | | |
|---|---|---|---|
| **6.** | **19-90989-E-7**<br>**WF-17** | **JAMIE/MELISSA BILLMAN**<br>**Walter Dahl** | **OBJECTION TO CLAIM OF SRS DISTRIBUTION INC., CLAIM NUMBER 14-1**<br>**5-25-21 [259]** |

**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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtors, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on May 25, 2021. By the court's calculation, 30 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 14-1 of SRS Distribution Inc. is sustained, and the claim is disallowed in its entirety.**

Michael D. McGranahan, the Chapter 7 Trustee, ("Objector") requests that the court disallow the claim of SRS Distribution Inc. ("Creditor"), Proof of Claim No. 14-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $33,334.42 for "goods sold". Objector asserts that Claim 14-1 fails to allege facts sufficient to support Debtor's Liability to Claimant.

**DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In*

*re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

**Discussion of Objection**

Here, Objector argues that Proof of Claim 14-1 fails to allege facts sufficient to support a finding Debtors are the party liable to Claimant. Objector asserts that upon the filing of the voluntary petition, the petition created the bankruptcy estate of Debtors Jamie Benjamin Billman and Melissa Marnell Billman not the bankruptcy estate of Cool Roofing Systems, Inc. ("CRS"). CRS is a California corporation registered with the California Secretary of State with an Entity Number C2648120. As a corporation, CRS is different legal entity than Debtors.

In Claim 14 -1, Claimant asserts they provided "goods sold" to the Debtor. In support of this, Claimant attached an invoice issued for Cool Roofing Systems, Inc. Objector argues that while this might be sufficient to support a finding CRS holds some liability to Claimant, it does not establish Debtors are liable to Claimant. Instead, Claimant's invoice indicates Debtors are not liable to Claimant for the type of claim alleged in Claim 14-1 absent a contractual guarantee. Objector asserts that no such evidence has been provided by Claimant. Thus, Claimant has not alleged "facts sufficient to support the claim" and Claim 14-1 should be disallowed in its entirety.

**Review of Proof of Claim 14-1**

A review of Proof of Claim 14-1 shows that Claimant provided evidence in the form of invoices and a statement which are to the name of Cool Roofing Systems, Inc. Only this corporate entity is identified in the invoices. Claimant did not provide evidence of a guarantee signed by the debtors for this debt incurred by Cool Roofing Systems, Inc. Thus, there is nothing in the record to conclude such a contractual agreement exists between Debtors and Claimant.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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 Objection to Claim of SRS Distribution Inc. ("Creditor"), filed in this case by Michael D. McGranahan, the Chapter 7 Trustee, ("Objector") 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 Objection to Proof of Claim Number 14-1 of Creditor is sustained, and the claim is disallowed in its entirety.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

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| **7.** | **19-90989-E-7**<br>**WF-18** | **JAMIE/MELISSA BILLMAN**<br>**Walter Dahl** | **OBJECTION TO CLAIM OF VIRGINIA MECHANICAL HEATING & AIR CONDITIONING, CLAIM NUMBER 15-1**<br>**5-25-21 [263]** |

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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtors, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on May 25, 2021. By the court's calculation, 30 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(2).

The Objection to Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 15-1 of Virginia Mechanical Heating & Air Conditioning is sustained, and the claim is disallowed in its entirety.**

Michael D. McGranahan, the Chapter 7 Trustee, ("Objector") requests that the court disallow the claim of Virginia Mechanical Heating & Air Condition. ("Creditor"), Proof of Claim No. 15-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $13,079.07 for "goods sold, services preformed[sic]" . Objector asserts that the Claim fails to allege facts sufficient to support Debtors' liability to Claimant.

**DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

**Review of Objection**

Objector alleges that Claim 15-1 is asserted on the same amount as Claim 9-1 filed by Virginia Mechanical on December 16, 2019, which attaches a statement for an invoice issued in the name of Cool Roofing System. There is no evidence provided to establish that Debtors have guaranteed this debt or are otherwise personally liable for it.

**Review of Proof of Claim 15-1**

A review of Proof of Claim 15-1 and Proof of Claim 9-1 shows that although they are for the same amounts the basis for the claim are different. Proof of Claim 9-1 states "labor and material to complete a job" as the basis for the claim. However, Proof of claim 15-1 states "goods sold, services preformed[sic]" as the basis for the claim. Proof of Claim 9-1 has an attachment, which are a series of invoices. Proof of Claim 15-1 does not have an attachment.

From the information provided, whether stated as "labor and materials to complete a job" or "good sold and services performed," Claimant is stating the same thing, in exactly the same dollar amount, to the court and the Trustee. Proof of Claim 15-1 fails to show that the Debtors are the party liable for the debt as Claimant has failed to provide evidence of a guarantee from Debtors.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Virginia Mechanical Heating & Air Conditioning ("Creditor"), filed in this case by Michael D. McGranahan, the Chapter 7 Trustee,

("Objector") 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 Objection to Proof of Claim Number 15-1 of Creditor is sustained, and the claim is disallowed in its entirety.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

**8. 20-90607-E-7 BIMLESH SINGH MOTION TO DISMISS ADVERSARY**
**21-9004 KTK-1 PROCEEDING/NOTICE OF REMOVAL**
**SINGH V. MOREHOUSE HOMES ET AL 5-19-21 [10]**

**Adversary Status Conference 2:00 p.m., June 24, 2021**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff-Debtor (*pro-se*) on May 19, 2021. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Dismiss Adversary Proceeding is granted.**

Select Portfolio Servicing, Inc. and JPMorgan Chase Bank, N.A. ("Defendants") moves for the court to dismiss all claims against it in Bimlesh Bikash Singh's ("Plaintiff-Debtor") Complaint according to Federal Rule of Civil Procedure 12(b)(6).

**REVIEW OF COMPLAINT**

The Complaint states the following:

A. The Complaint is entitled "Adversary Complaint Objecting to Entry of Discharge Pursuant to 11 U.S.C. 727 (A) and (D)

B. Plaintiff object to the discharge of his bankruptcy case because of false representation and actual fraud regarding his property on 1833 Darby Lane, Ceres CA 95307.

C. Plaintiff is initiating an adversary proceeding objecting to entry of discharge and for false representation and actual fraud by creditors (SPS) Select Portfolio Services; Morehouse Homes; and J.P. Morgan - Chase Bank.

**APPLICABLE LAW**

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that a complaint have a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. FED. R. CIV. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.* (citing 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235–36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action")).

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether to grant a motion to dismiss should be resolved in favor of the pleader. *Pond v. Gen. Elec. Co.*, 256 F.2d 824, 826–27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *see also Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Under the Supreme Court's formulation of Federal Rule of Civil Procedure 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal*, 556 U.S. 662, 687 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) ("[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do.").

In ruling on a motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6), the Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court "required to"accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be

drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994) (citations omitted).

A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: either a lack of a cognizable legal theory, or insufficient facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988) (citation omitted).

**REVIEW OF MOTION**

The Motion responds to the Complaint's claims with the following grounds:

A. Debtor fails to plead facts of any particular cause of action in the complaint. MPA, at 6:1-7:9.

B. Debtor's citation to 11 U.S.C. 727(A) and (C) is misplaced. *Id*., at 7:10-17.

C. Debtor is not the real party in interest. *Id*., at 7:13-8:9.

D. Debtor alleges no role by Movants relating to the sale under the second deed of trust. *Id*., at 8:10-21.

E. Debtor has not filed the motion or complain upon which the reopening of his bankruptcy case was based. *Id*., at 8:22-9:6.

**Review of the Memorandum of Points and Authorities**

In support of the Motion, Defendant filed a Memorandum of Points and Authorities ("MPA") which the court summarizes as follows:

A. Movants argue that Debtor fails to state any particular cause of action as against any party. MPA, 6. Debtor also does not plead a fraud claim with sufficient facts, especially in light of the heightened pleading standard of Rule 9(b). *Id*., 6:17-18. Debtor fails to allege any misrepresentation by either of the Movants, any acts of intentional conduct by them, an act of detrimental reliance, or injury resulting from the alleged fraud. *Id*., 7:4-9.

B. Debtor "objects to the discharge," but no discharge was entered in this case. *Id.*, 7:11-12. The bankruptcy case was closed without discharge on February 16, 2021, because Debtor had not fully paid the filing fee and administrative fee. Dckt. 14, Ex. 17.

C. Movants assert that Debtor is not the real party in interest to assert any claims relating to the rights and obligations present in the Deeds of Trust. MPA, 8:6-7. Debtor is not a party to either the First or Second Deed of Trust. Dckt. 14, Exs. 2, 3. A review of the docket shows that Sati Singh is the borrower on both Deeds of Trust. *Id*. Sati Singh transferred title of the Property to Debtor, recorded September 25, 2015. *Id.*, Ex. 5. Debtor then transferred the Property to Bikrant Bikash Singh, recorded August 31,

2016. *Id*., Ex. 6. On January 25, 2019, a Notice of Default was recorded on the Property due to the borrower's default on loan secured by the Second Deed of Trust. *Id*., Ex. 8. On June 11, 2019, Bikrant Bikash Singh transferred title of the property back to Debtor. *Id*., Ex. 10. On January 6, 2020, the Property sold at a nonjudicial foreclosure sale due to borrower's default on the Second Deed of Trust. *Id*., Ex. 11.

D. Movants are not alleged to have any role relating to the foreclosure sale or to the Second Deed of Trust upon which borrower Sati Singh defaulted. MPA, at 8:10-14. Notably, Select Portfolio Servicing, Inc., is the servicing agent for the beneficiary of the First Deed of Trust on the Property. *Id*., at 8:15-16.

E. Movants argue that Debtor has failed to file the Motion or Complaint on which the reopening of his bankruptcy case was based. On September 2, 2020, Debtor filed the underlying Chapter 7 Bankruptcy case. He filed Schedules on September 16, 2020. *Id*., Ex. 15. The bankruptcy case was dismissed on September 21, 2020 due to failure to timely file documents, but the dismissal was vacated on October 22, 2020. The underlying bankruptcy case was closed without discharge on February 16, 2021, because Debtor had not paid in full the filing fee or administrative fee. *Id*., Ex. 17.

F. On March 15, 2021, Debtor filed a Motion to Reopen the case, citing "extreme financial hardship caused by COVID19" for his failure to pay the fees. *Id*., Ex. 18. The case was reopened that same date. *Id*., Ex. 19. In the Order Reopening Case, the Court stated the "case will be closed without further notice if the debtor/party does not also file the motion complaint, or statement on which the reopening is based within 30 days." *Id*. Movants contend that the reopening here was based upon Debtor's request to seek relief related to his failure to pay fees. MPA, at 9:2. Debtor filed this Adversary Complaint on April 19, 2021. Dckt. 1. Movants argue that his complaint does not address anything related to his failure to pay fees, and therefore that the Complaint should be dismissed and the bankruptcy case should again be closed. MPA, at 9:4-6.

**DISCUSSION**

It appears from the face of the Adversary Complaint that Plaintiff-Debtor does not appreciate the legal distinctions between discharge and dismissal, and that a discharge of debts (the Plaintiff-Debtor's personal obligation to pay, but not an extinguishment of the debt, which may be secured) does not alter or affect the rights of the bankruptcy estate (which acquires the rights and property of the debtor upon the commencement of a bankruptcy case, 11 U.S.C. § 541(a)) or which may be abandoned back to Plaintiff-Debtor upon the closing of the bankruptcy case against third-parties.

A review of Plaintiff-Debtor's bankruptcy case Docket discloses that on February 16, 2021, the Chapter 7 case was closed without the entry of a discharge. 20-90607; Final Decree, Dckt. 66. The reason

stated in the Final Decree for the discharge not being entered was because the Debtor had not paid the fees as required by 28 U.S.C. § 1930.

On March 15, 2021, the Clerk of the Court issued an order Reopening the Chapter 7 Bankruptcy Case. *Id*. Plaintiff Debtor filed Applications for the waiver of filing fees. *Id*.; Dckt. 70, 74. The court issued orders granting the Applications to waive the filing fees. *Id*.; Orders, Dckts. 79, 80.

In looking at the Docket in the Chapter 7 Case, it appears that Plaintiff-Debtor has not filed a Certificate of Completion for the required Financial Management Course.

The Motion to Dismiss Adversary Proceeding is warranted because Debtor pled less than "bare elements of his cause of action." Indeed, it is not fully understandable what relief Debtor may properly seek for the statutes cited - 11 U.S.C. § 727(A) and (C). Such actions are brought against debtors, not by debtors, and seek to have the debtor denied a discharge as to any and all obligations. The court does not believe that Plaintiff-Debtor is seeking to have his discharged denied.

The Motion is granted and the Complaint is dismissed without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss Adversary Proceeding filed by Select Portfolio Servicing, Inc. and JPMorgan Chase Bank, N.A. ("Defendants") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted and the Adversary Complaint, Dckt. 1, is dismissed without prejudice.

# FINAL RULINGS

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| **9.** | **19-90110-E-7**<br>**SHA-2** | **CAMPBELL WINGS, INC.**<br>**Reno Fernandez** | **CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES**<br>**6-26-19 [40]** |

**Final Ruling:** No appearance at the June 3, 2021 hearing is required.

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Debtor's Atty: Reno F.R. Fernandez
Trustee's Atty: Anthony D. Johnston
Creditor's [Hamilton and Bascom, LLC] Atty: Stanford H. Atwood, Jr.

Notes:
Set by order of the court filed 11/23/20 [Dckt. 119] for the Parties to identify and diligently undertake discovery, identify the issues in dispute, and diligently prosecute this contested matter.

**Pursuant to Order of the court (Dckt. 148), the hearing on the Motion for Administrative Expenses has been continued to 10:30 a.m. on August 19, 2021.**

**JUNE 3, 2021 HEARING**

The Parties have invested substantial time, and corresponding money, into providing the court with detailed briefing, supplemental briefing, and evidence. Unfortunately, the court has not been able to provide the time for the detailed review required for conducting a productive oral argument and ultimately issuing a ruling.

Therefore, the court continues the hearing to 10:30 a.m. on June 24, 2021, to provide the parties and their respective counsel with as productive of an oral argument as can be conducted by the court.

**JUNE 24, 2021 HEARING**

Creditor Hamilton and Bascom, LLC, filed an Ex Parte Motion to Continue Hearing on Motion of Creditor Hamilton and Bascom, LLC for Payment of Administrative Expense ("Motion") on June 10, 2021. Dckt. 146. The court granted Creditor's Ex Parte Motion, and the hearing was continued to 10:30 a.m. on August 19, 2021. Dckt. 148.

**10. 21-90022-E-7** **ROBERT MITTERWALD**
**Pro Se**

**CONTINUED TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS**
**3-29-21 [13]**

**Final Ruling:** No appearance at the June 24, 2021 hearing is required.
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on March 31, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

**The Motion to Dismiss is denied without prejudice.**

The Chapter 7 Trustee, Eric J. Nims ("Trustee"), seeks dismissal of the case on the grounds that Robert William Mitterwald ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 11:30 a.m. on May 24, 2021. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on April 9, 2021. Dckt. 15. Debtor states that on March 29th at 11:30 he called the 1-877-994-0589 number he was provided and waited forty-five minutes with no response. Debtor asserts having followed the directions given. Debtor attempted to reach out to Trustee by telephone and asserts Trustee's "mail-box" was full. Debtor is sixty-nine years old and "not understanding the phone, computers etc."

**DISCUSSION**

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

Debtor asserts having called but having issues with the court call system. The Meeting of Creditors has been continued to May 24, 2021 at 11:30 a.m. A continued meeting having been scheduled, Debtor has another opportunity to seek assistance and appear at the meeting.

Debtor responding and demonstrative an effort to prosecute his case in this COVID-19 restricted environment, the court continues the hearing on this Motion to 10:30 a.m. on June 24, 2021, which is after the continued First Meeting Date. That is the first available regular law and motion date at least ten days after the continued First Meeting of Creditors, allowing Debtor and Trustee to address any additional information issues prior to the continued date.

Based on the foregoing, cause exists to extend the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, to July 24, 2021. This is necessary to afford all parties and interest the opportunity to participate in a Meeting of Creditors sufficient in advance of any such deadlines.

**CHAPTER 7 TRUSTEE REPORT**

On May 27, 2021, Trustee, Eric J. Nims, reported that Debtor, Robert William Mitterwald, appeared *pro se* and the Section 341 meeting was concluded on May 24, 2021.

Trustee filed a Notice of Filing Report of No Distribution on May 28, 2021. Dckt. 25. In the "Report of No Distribution," Trustee states there are no finds available from the estate for distribution to creditors. *Id.*

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by the Chapter 7 Trustee, Eric J. Nims ("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 Dismiss is denied without prejudice.

**11. 20-90633-E-7 BLF-5**

**TERESA TAYLOR**
**Pro Se**

**MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)**
**5-14-21 [86]**

**Final Ruling:** No appearance at the June 24, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*),Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 14, 2021. By the court's calculation, 41 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.**

Loris L. Bakken, the Attorney ("Applicant") for Gary R. Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 13, 2020, through June 24, 2021. The order of the court approving employment of Applicant was entered on October 16, 2020. Dckt. 23. Applicant requests fees in the amount of $15,155.00 and costs in the amount of $190.35.

**APPLICABLE LAW**

**Reasonable Fees**

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

**Lodestar Analysis**

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

**Reasonable Billing Judgment**

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

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

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

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

A review of the application shows that Applicant's services for the Estate include general case administration; communication and negotiations related to the turn-over and sale of real property and distribution of proceeds of the sale; employment of the realtor and the sale of real property; preparing an opposition to motion for relief from the automatic stay; and preparing a stipulation to facilitate the vacating of the Property. The Estate has $46,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

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

General Case Administration: Applicant spent 4.5 hours in this category. Applicant prepared Applicant's fee agreement, employment application, and fee application.

Negotiation of Turnover, Sale of the Property, and Distribution of Proceeds: Applicant spent 9.9 hours in this category. Applicant reviewed Debtor's Marriage Settlement Agreement and discussed it with Trustee. Under the direction of the Trustee, Applicant communicated with third parties regarding the effect of the bankruptcy filing on the Property and the Trustee's wish to sell the Property. Applicant also discussed issues regarding the tenant occupying the Property with the only child.

Employment of Realtor and Sale of Property: Applicant spent 21.9 hours in this category. Applicant prepared and filed the application to employ broker to assist Trustee in valuing the Property and listing it for sale. Applicant filed the motion to sell and attended the hearing on the motion.

Motion for Relief from the Automatic Stay: Applicant spent 11.5 hours in this category. Applicant reviewed Creditor Lakeview Loan Servicing LLC's Motion for Relief from the Automatic Stay; prepared and filed an Opposition; and appeared at the hearing.

Stipulation Regarding Incentive Payment to Occupant to Vacate Real Property: Applicant spent 3.1 hours in this category. However, Applicant did not bill for this time.

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 |
|---|---|---|---|
| Loris L. Bakken, Attorney | 43.3 | $350.00 | $15,155.00 |
| | 0 | $0.00 | $0.00 |
| **Total Fees for Period of Application** | | | $15,155.00 |

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $190.35 pursuant to this application.

The costs requested in this Application are,

| Description of Cost | Per Item Cost, If Applicable | Cost |
|---|---|---|
| Postage | | $78.95 |
| Copying | $0.10 per page | $111.40 |
| | | $0.00 |
| **Total Costs Requested in Application** | | $190.35 |

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

**Reduced Rate**

Applicant seeks to be paid a single sum of $15,155.00 for its fees and expenses incurred for Client. First and Final Fees and Costs in the amount of $15,155.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**Costs & Expenses**

First and Final Costs in the amount of $190.35 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 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 | $15,155.00 |
| Costs and Expenses | $190.35 |

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Loris L. Bakken ("Applicant"), Attorney for Gary R. Farrar, 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 Loris L. Bakken is allowed the following fees and expenses as a professional of the Estate:
>
> Loris L. Bakken, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $15,155.00
> Expenses in the amount of $190.35,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.
>
> **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.

**12. 21-90181-E-7 LRR-1** | **HARRY BOURASSA** Len ReidReynoso | **CONTINUED MOTION TO COMPEL ABANDONMENT** 4-28-21 [9]

**Final Ruling:** No appearance at the June 24, 2021 hearing is required.

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Local Rule 9014-1(f)(2) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2021. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

**The Motion to Compel Abandonment is granted.**

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

The Motion filed by Harry J. Bourassa Jr. ("Debtor") requests the court to order Sheri L. Carello ("the Chapter 7 Trustee") to abandon property commonly known as Equiptech Services, of which Debtor is one-half partner, with the following assets: vehicle, utility trailer, trade tools, equipment and material associated with the business ("Property"). The Declaration of Harry J. Bourassa, Jr. has been filed in support of the Motion declaring that Equiptech is a business of installing commercial washer and dryers and related equipment. Declaration, Dckt. 11. Further, Debtor testifies that the assets have been listed by Debtor and exempted and have no equity for the benefit. *Id.*

The Trustee reported that the meeting of creditors has been continued to June 8, 2021, and she is addressing with Debtor's counsel an issue with the exemptions claims. The Trustee and Debtor requested a continuance.

**June 24, 2021 Hearing**

Trustee has stated Non-Opposition to the Motion to Compel Abandonment filed by Debtor. Trustee's June 9, 2021 Docket Entry Statement.

The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment of Property filed by Harry J. Bourassa Jr. ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as Equiptech Services, of which Debtor is one-half partner, with the following assets: vehicle, utility trailer, trade tools, equipment and material associated with the business, is abandoned to Harry J. Bourassa Jr., the Debtor by this order, with no further act of the Chapter 7 Trustee required.

**13. 20-90692-E-7** **NAVDEEP BALI**
**G. Michael Williams**

**CONTINUED STATUS CONFERENCE RE: INVOLUNTARY PETITION**
**10-21-20 [1]**

**DISMISSED 6-7-21**

Involuntary Petition

Debtor's Atty: G. Michael Williams

Notes:
[GMW-2] Alleged Debtor's Motion to Dismiss Involuntary Bankruptcy Petition filed 5/20/21 [Dckt 39]

[GMW-1] Stipulation and Consent to Dismissal of Involuntary Bankruptcy filed 6/2/21 [Dckt 50]

[GMW-2] Order granting Alleged Debtor's Motion to Dismiss Involuntary Bankruptcy Petition filed 6/7/21 [Dckt 53]

The Bankruptcy Case having been dismissed (Order, Dckt. 53), **the Status Conference is concluded and removed from the Calendar.**

**14. 20-90692-E-7 DCJ-1** | **NAVDEEP BALI** / **G. Michael Williams** | **CONTINUED MOTION TO SET TRIAL DATE** **12-9-20 [18]**

**DISMISSED 6-7-21**

**Final Ruling:** No appearance at the May 20, 2021 hearing is required.
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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se), creditors, parties requesting special notice, and Office of the United States Trustee on December 9, 2020. By the court's calculation, 64 days' notice was provided. 28 days' notice is required.

The Motion to Set Trial Date 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 case having previously been dismissed, **the Motion to set Involuntary Petition Trial Date is dismissed as moot.**

The case having previously been dismissed, the Motion is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Set Trial Date having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the bankruptcy case having been dismissed pursuant to prior Order (Dckt. 53) of the court.

**15. 21-90157-E-7 SLC-1** | **PAOLA JIMENEZ** Pro Se | **TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 5-11-21 [12]**

**DEBTOR DISMISSED: 06/14/2021**
**DISMISSAL ORDER VACATED : 06/15/2021**

**Final Ruling:** No appearance at the June 24, 2021 hearing is required.
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and the Chapter 7 Trustee on May 14, 2021. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate

**The Motion to Dismiss is denied without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 7 Trustee, Sheri L. Carello ("Trustee"), seeks dismissal of the case on the grounds that Paola Rocio Jimenez ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 1:30 p.m. on June 22, 2021. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on June 14, 2021. Dckt. 18. Debtor states that shortly after filing for bankruptcy, Debtor had to address severe medical complication and mental health related issues. Debtor states that recently she has sought professional help and acknowledges that she made mistakes but would like to move forward with the case. *Id*.

**DISCUSSION**

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

However, Debtor fulfilled her obligation by attending the Continued Meeting of Creditors, and on June 22, 2021, Trustee entered a Docket Entry Statement stating that Debtor attended the continued Meeting of Creditors and it has now been concluded.

Debtor having attended the continued Meeting of Creditors, and Trustee having concluded said meeting, the Motion is denied, and the case shall proceed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by the Chapter 7 Trustee, Sheri L. Carello ("Trustee"), having been presented to the court, the Trustee reporting that Debtor attended the Continued First Meeting of Creditors and that this is a no asset case, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice.
>
> **IT IS FURTHER ORDERED** that the deadlines to file objections to discharge by Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including August 21, 2021.

**16. 19-90495-E-7 DCJ-1**

**CURTIS PAULUS**
**David Johnston**

**MOTION TO AVOID LIEN OF STATE FARM GENERAL INS. CO.**
**5-19-21 [74]**

**Final Ruling:** No appearance at the June 24, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Trustee's Attorney, Creditor, and Office of the United States Trustee on May 19, 2021. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of State Farm General Insurance Co. ("Creditor") against property of the debtor, Curtis Paulus ("Debtor") commonly known as 525 Bodem Street, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $144,354. Exhibit 4, Dckt. 76. An abstract of judgment was recorded with Stanislaus County on February 25, 2013, that encumbers the Property. Motion, ¶ 11.

Pursuant to Debtor's Schedule A/B, the subject real property has an approximate value of $218,000, of which Debtor states owning a portion valued at $106,800 as of the petition date. [FN.1.] Dckt. 1. The unavoidable consensual liens that total $143,131.36 as of the commencement of this case are stated on Debtor's Schedule D. [FN.2.] Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $109,000.00 on Schedule C. Dckt. 72.

---

FN.1. Debtor testifies that the value of his share of the property was stated erroneously. Debtor owns 50% of the residence.

FN.2. Debtor believes Bank of America holds a claim of about $44,000 in debt on the residence incurred by his late mother, but his sister has failed to provide information regarding the balance. The $44,000 is not reflected in Schedule D. Dckt. 74, at ¶ 7. Bank of America is not listed as a creditor.
---

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

**ISSUANCE OF A COURT-DRAFTED ORDER**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Curtis Paulus ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of State Farm General Insurance Co., California Superior Court for Stanislaus County Case No. 668210, recorded on February 25, 2013, Document No. 2013-0015988-00, with the Stanislaus County Recorder, against the real property commonly known as 525 Bodem Street, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.