

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

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

**July 7, 2022 at 10:30 a.m.**

---

|    |   |                                  |  |
|----|---|----------------------------------|--|
| 1. | <a href="#"><u>20-25541</u></a> -E-7<br><a href="#"><u>DNL</u></a> -4 | ANATOLY TKACHUK<br>Mark Shmorgan | MOTION TO ABANDON<br>6-16-22 <a href="#"><u>[51]</u></a> |
|----|---|----------------------------------|--|

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2022. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Abandon 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, -----

-----

|  |
|--|
| <b>The Motion to Abandon is granted.</b> |
|--|

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a).

Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by J. Michael Hopper (“the Chapter 7 Trustee”) requests that the court authorize them to abandon property commonly known as a collection of seven (7) vehicles (“Property”):

- A. 2011 BMW X5
- B. 2004 Mercedes SL 500
- C. 2006 Mercedes SL 500
- D. 2017 Dodge Ram
- E. 2014 Yamaha XVS19SCL
- F. 2000 Mercedes Benz S-Class
- G. 2007 Mercedes Benz C-Class

## **DISCUSSION**

Movant has provided personal knowledge testimony (Dckt. 53) regarding the value of each vehicle:

### **A. 2011 BMW X5**

Movant reviewed documents in the marital dissolution action between Elena Tkachuk and Anatoly Tkachuk (“Debtor”). Movant’s review determined the 2011 BMW X5 is Ms. Tkachuk’s separate property. Additionally, Debtor confirmed the vehicle is Ms. Tkachuk’s. Pursuant to 11 U.S.C. § 541(a)(2), separate property of the non-debtor spouse is not property of the estate. Therefore, it is proper to abandon the property.

### **B. 2004 Mercedes SL 500, and C. 2006 Mercedes SL 500**

Movant has provided evidence that the value of each of these vehicles are \$1,100.00, which, after costs of sale, would not produce a net return to creditors. Dckts. 51, 53.

### **D. 2017 Dodge Ram**

Movant has provided evidence that the 2017 Dodge Ram is encumbered by a lien of Golden 1 Credit Union, in the amount of \$50,884.32. The value of the vehicle is \$54,000.00. After costs of sale, the vehicle would not produce a net return to creditors. Dckt. 53.

### **E. 2014 Yamaha XVS19SCL**

Movant has provided evidence that the value of the 2014 Yamaha XVS19SCL is \$5,000.00. Debtor has claimed an exemption in the amount of \$3,325.00. After costs of sale, the vehicle would not produce a net return to creditors. Dckt. 53.

**F. 2000 Mercedes Benz S-Class, and  
G. 2007 Mercedes Benz C-Class**

Movant has provided evidence that both vehicles are missing parts and inoperable, thus providing no value to the estate. Dckt. 53.

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

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

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

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

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as:

- A. 2011 BMW X5
- B. 2004 Mercedes SL 500
- C. 2006 Mercedes SL 500
- D. 2017 Dodge Ram
- E. 2014 Yamaha XVS19SCL
- F. 2000 Mercedes Benz S-Class
- G. 2007 Mercedes Benz C-Class

are abandoned to Anatoly Tkachuk by this order, with no further act of the Chapter 7 Trustee required.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2022. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

**The Motion to Sell Property is granted.**

The Bankruptcy Code permits J. Michael Hopper, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 23005 Foresthill Road, Foresthill, California 95631 ("Property"). Additionally, Movant seeks:

- (1) compensation to the estate's real estate broker RE/MAX GOLD ("Broker") in the amount of \$24,600.00, six (6) percent of the gross sale price, or the appropriate commission resulting from an overbid;
- (2) a waiver of the fourteen day stay;
- (3) the sale of the Property to be free and clear of liens, encumbrances, or claims

of interest, from Creditor Wells Fargo Bank, NA, and Elena Tkachuk;

(4) authorizing Trustee to pay Creditor Wells Fargo the undisputed portion of their lien;

(5) authorizing Trustee to pay Debtor and Ms. Tkachuk their claimed homestead; and

(6) The proceeds relating to Creditor Wells Fargo Bank, NA's lien and Ms. Tkachuk's interest shall be held in a segregated account, pending written consent from the parties.

The proposed purchasers of the Property are Jeffrey Jones and Judith Jones ("Buyer"), and the terms of the sale are:

- A. The purchase price is to be \$410,000.00, subject to overbidding through conclusion of the sale hearing, to be paid through an initial deposit of \$10,000.00, with the remaining balance due prior to the close of escrow;
- B. Escrow to close within fifteen (15) calendar days of the court's approval of the Sale Agreement;
- C. Buyer to acquire the Property "as is" and "where is," and that any information relied upon in purchasing the Property shall be the result of Buyer's own due diligence;
- D. The estate is to pay for the Natural Hazard Zone Disclosure Report, smoke alarms, carbon monoxide detectors, water heater bracing, and county and city transfer taxes;
- E. The estate and Buyer shall pay for the owner's title insurance policy and the escrow fees;
- F. Buyer shall pay for septic inspection and pumping; and
- G. The sale is to be subject to overbidding and auction at the hearing on the motion to approve the Sale Agreement. Overbidding shall proceed in increments of at least \$1,000.00.

### **Sale Free and Clear of Liens**

The Motion seeks to sell the Property free and clear of any liens or interests of Wells Fargo Bank, NA and Elena Tkachuk ("Creditors"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

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

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

(2) such entity consents;

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

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

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

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established the following grounds for the sale of property free and clear of the Bank’s lien and the ownership interest of Elena Tkachuk.

### **Wells Fargo Lien**

Movant states that they dispute the validity of Wells Fargo Bank, NA’s (“Wells Fargo”) under 11 U.S.C. § 362(a)(4) because Wells Fargo’s judgment lien was recorded post-petition. Here, Wells Fargo’s Abstract of Judgment was recorded on September 15, 2021. The instant bankruptcy case was filed December 14, 2020. 11 U.S.C. § 362(a)(4) bars “any act to create, perfect, or enforce any lien against property of the estate” as a violation of the automatic stay. Trustee has established there is an “objective basis for either a factual or legal dispute as to the validity of the debt.” 3 Collier on Bankruptcy P 363.06 (16th 2022). Therefore, 11 U.S.C. § 363(f)(4) authorizes the sale free and clear of Wells Fargo’s lien.

Alternatively, 11 U.S.C. § 363(f)(3) authorizes sale free and clear of the lien the proposed sale price of the Property is \$410,000.00 and the aggregate value of all liens on the Property is approximately \$212,722.09. Dckt. 55, Pages 7-8.

### **Elena Tkachuk’s Interest**

11 U.S.C. § 362(b)(2) states that the automatic stay does not operate as a bar for an action “for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate.”

Ms. Tkachuk stipulated that the Property is community property. Stipulation, Dckt. 42. The Property is part of the estate. 11 U.S.C. § 541(a). Therefore, any state court judgment which divides the Tkachuks’ interest in the Property would be barred under the automatic stay, pursuant to 11 U.S.C. § 362(b)(2). Therefore, pursuant to 11 U.S.C. § 363(f)(4), if the dissolution proceedings divide the couple’s interest in community property, that would in *bona fide* dispute, void and ineffective.

However, it is undisputed that Ms. Tkachuks’ has a community property interest in the Property which is part of the Bankruptcy Estate in this case. See 11 U.S.C. § 541(a)(2) providing that all

community property of a debtor is included in the bankruptcy estate, not merely a fractional interest thereof. But when included, the non-debtor spouse/former spouse has certain rights concerning how the proceeds of such community property is distributed.

However, Elena Tkachuk and the Chapter 7 Trustee have entered into a Stipulation for the sale of the Property, in which Ms. Tkachuk consents to the sale thereof. Dckt. 42. With such consent, the Property may be sold of any interests of Elena Tkachuk as provided in 11 U.S.C. § 363(f)(2). The stipulation does state that Ms. Tkachuk consents to a sale by the Trustee pursuant to “11 U.S.C. § 363(b), (f), and (h). Stipulation, ¶ B; Dckt. 42.

The sale of the Property free and clear of the interests of Elena Tkachuk is proper, Ms. Tkachuk having consented to such sale as provided in 11 U.S.C. § 363(f)(2).

## **DISCUSSION**

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the unsecured creditors will benefit from the estimated \$77,200.00 in net proceeds resulting from the sale.

Movant has estimated that a six percent (6%) broker’s commission from the sale of the Property will equal approximately \$24,600.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six percent (6%) commission.

## **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because they do not anticipate any opposition to the motion.

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

**Counsel for the Trustee shall prepare a proposed order consistent with the draft below, after consulting with the Title Company to insure that the sale free and clear terms are sufficient for the close of escrow, and then lodge the proposed order with the Court:**

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

The Motion to Sell Property filed by J. Michael Hopper, 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 J. Michael Hopper, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Jeffrey Jones and Judith Jones or nominee (“Buyer”), the Property commonly known as 23005 Foresthill Road, Foresthill, CA 95631 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$410,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit F, Dckt. 59, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 7 Trustee is authorized to pay a real estate broker’s commission in an amount not more than six percent (6%) of the actual purchase price upon consummation of the sale. The six percent (6%) commission shall be paid to the Chapter 7 Trustee’s broker, Re/Max Gold.
- D. The Property is sold free and clear of:
  - 1. The Judgment Lien of Wells Fargo Bank, N.A., recorded on September 15, 2021 with the Placer County Recorder, DOC 2021-0116028-00, Wells Fargo Bank, N.A. v. Elena Tkachuk, et al., California Superior Court for the County of Placer Case No. M-CV-0078151, pursuant to 11 U.S.C. § 363(f)(4); with the lien of such Wells Fargo Bank, N.A. pursuant thereto attaching to the proceeds from the sale of the Property held by the Chapter 7 Trustee.
  - 2. The interests of Elena Tkachuk pursuant to 11 U.S.C. § 363(f)(2), with the interests of Elena Tkachuk attaching to the proceeds from the sale of the Property. The Chapter 7 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and other amounts as provided in this order; pending further order of the court.

The Chapter 7 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.

- E. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

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



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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2022. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

Susan K. Smith, the Chapter 7 Trustee, ("Applicant") files this Motion for Compensation on behalf of her counsel, Desmond, Nolan, Livaich & Cunningham ("DNLC"). This is the First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 2, 2021, through June 14, 2022. The order of the court approving employment of DNLC was entered on August 13, 2021. Dckt. 22. Applicant requests an order approving final Chapter 7 compensation to her counsel in the amount of \$3,832.00 and costs in the amount of \$33.91.

#### **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 DNLC’s services for the Estate include negotiating and creating a settlement agreement with Debtor and their ex-spouse, creating a motion to approve the compromise which resulted from those settlement agreements, preparing fee and employment applications for Applicant, and reviewing the records related to the property of Corinna Cheri Leal (“Debtor”) and their ex-spouse commonly known as 241 Turner Lane, Yakima, Washington 98901 (“241 Turner Lane”). The Estate is anticipated to have approximately \$5,500.00 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.

Litigation and Contested Matters: DNLC spent 0.40 hours in this category. DNLC prepared and submitted the Trustee’s motion to approve the compromise struck between Debtor and their ex-spouse.

Asset Analysis and Recovery: DNLC spent 2.00 hours in this category. DNLC reviewed records pertaining to 241 Turner Lane.

Fee and Employment Applications: DNLC spent 1.90 hours in this category. DNLC prepared the fee and employment applications submitted so that they could be hired by Trustee.

Settlement and Nonbinding Alternative Dispute Resolution: DNLC spent 7.10 hours in this category. DNLC negotiated with, and drafted and revised the settlement agreement between, Debtor and their ex-spouse.

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:

| <b>Names of Professionals and Experience</b> | <b>Time</b> | <b>Hourly Rate</b> | <b>Total Fees Computed Based on Time and Hourly Rate</b> |
|--|-------------|--------------------|--|
| J. Russell Cunningham, Partner               | 0.10        | \$495.00           | \$49.50  |
| J. Russell Cunningham, Partner               | 6.20        | \$425.00           | \$2,635.00   |
| Benjamin C. Tagert, Associate                | 5.10        | \$225.00           | <u>\$1,147.50</u>  |
| <b>Total Fees for Period of Application</b>  |             |                    | <b>\$3,832.00</b>  |

Although Applicant does not elaborate on the different hourly rates charged at different times by J. Russell Cunningham, the court has identified that the entirety of the work for which \$495.00 per hour was charged was an “Email from trustee regarding final fee app,” performed on June 6, 2022. Exhibit A, Dckt. 43.

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$33.91 pursuant to this application.

The costs requested in this Application are,

| <b>Description of Cost</b>                  | <b>Per Item Cost, If Applicable</b> | <b>Cost</b>    |
|---|-------------------------------------|----------------|
| Photocopies                                 | \$0.10 per page                     | \$4.70         |
| Postage                                     | N/A                                 | \$14.21        |
| Advances                                    | N/A                                 | \$15.00        |
| <b>Total Costs Requested in Application</b> |                                     | <b>\$33.91</b> |

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

#### **Hourly Fees**

The court finds that the hourly rates are reasonable and that DNLC effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$3,832.00 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 \$33.91 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.

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

|                    |            |
|--------------------|------------|
| Fees               | \$3,832.00 |
| Costs and Expenses | \$33.91    |

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 Susan K. Smith, the Chapter 7 Trustee, (“Applicant”) for her counsel, Desmond, Nolan, Livaich & Cunningham (“DNLC”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that DNLC is allowed the following fees and expenses as a professional of the Estate:

Fees in the amount of \$3,832.00  
Expenses in the amount of \$33.91,

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 the fees and 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.

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession (*pro se*), creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2022. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

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

-----

|   |
|---|
| <p><b>The Motion for Authority to Use Cash Collateral is granted.</b></p> |
|---|

Focus Management Group USA, Inc. ("Plan Administrator") moves for an order approving the use of cash collateral pursuant to stipulation with SBN V AG I LLC ("Summit"). Plan Administrator requests the use of cash collateral to operate the Reorganizing Debtor's business and pay Plan Expenses.

Plan Administrator proposes to use cash collateral for the following expenses:

Plan Expenses in accordance with the Stipulated Budget such as insurance and professional fees for the time period of July 1, 2022, through September 30, 2022.

A windup period if the estate is fully administered at that time and as may be extended by Summit's further stipulation.

The use of cash collateral is authorize for the expenses as set forth in the Budget filed as Exhibit A (Dckt. 1703), filed in support of the Motion and incorporated herein by this reference.

## **APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

## **DISCUSSION**

The Plan Administrator has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for reorganizing Debtor's business and paying Plan

expenses. The Motion is granted, and the Plan Administrator is authorized to use the cash collateral for the period July 1, 2022, through September 30, 2022, including required adequate protection payments. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by The Plan Administrator. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by the Plan Administrator.

**Counsel for the Plan Administrator shall prepare and lodge with the court a proposed order consistent with this ruling.** The Cash Collateral Budget; Exhibit A, Dckt. 1703; shall be attached to the proposed order as an Addendum and incorporated therein.

5. [18-90030-E-11](#) [FWP-2](#) **FILBIN LAND & CATTLE  
CO., INC.  
Michael St. James** **STATUS CONFERENCE RE: MOTION  
FOR ENTRY OF ORDER IN AID OF  
EXECUTION OF THE PLAN  
12-9-21 [\[522\]](#)**

Debtor’s Atty: Michael St. James; Peter L. Fear

Notes:

Set by order of the court filed 5/31/22 [Dckt 569]. Status report to be filed on or before 6/30/22.

Hearing Status Report on Plan Administrator’s Motion for Entry of Order in Aid of Execution of the Plan filed 6/30/22 [Dckt 570]

|  |
|--|
| <b>The Status Conference is <span style="color: red;">XXXXXXX</span></b> |
|--|

### **JULY 7, 2022 STATUS CONFERENCE**

Focus Management Group USA, Inc., the Confirmed Chapter 11 Plan Administrator in the Jeffery Arambel Bankruptcy Case, filed an updated Status Report on June 30, 2022. Dckt. 570. The Plan Administrator reports that the Plan Administrator, the Debtor, and Jeffery Arambel are engaged in active settlement discussions and that a potential resolution negotiation.

At the Status Conference, XXXXXXX



# FINAL RULINGS

6. [22-21000-E-7](#) **ROBYN JOHNSON** **MOTION TO AVOID LIEN OF**  
[DBJ-1](#) **Douglas Jacobs** **AMERICAN BUILDERS & COMPANY**  
**SUPPLY CO., INC.**  
**5-31-22 [16]**

**Final Ruling:** No appearance at the July 7, 2022 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on May 31, 2022. By the court's calculation, 37 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 hearing on the Motion to Avoid Judicial Lien is continued to 10:30 a.m. on July 28, 2022.**

This Motion requests an order avoiding the judicial lien of American Builders & Company Supply Co., Inc. ("Creditor") against property of the debtor, Robyn Johnson ("Debtor") commonly known as 1212 West Wind Drive, Chico, California 95926 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$208,164.97. Exhibit A, Dckt. 19. An abstract of judgment was recorded with Butte County on February 9, 2022, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$762,250.00 as of the petition date. Dckt. 12. The unavoidable consensual liens that total \$362,250.00

as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 12. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a)(1) in the amount of \$400,000.00 on Schedule C. Dckt. 12.

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).

### **Parties Stipulation**

On July 5, 2022, Creditor and Debtor filed a joint stipulation agreeing to a continuance to the next available date due to Creditor's Counsel being unavailable. Dckt. 33.

The court continues the hearing to the next available Chapter 7 date, 10:30 a.m. on July 28, 2022.

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 American Builders & Company Supply Co., Inc. ("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 hearing on the Motion to Avoid Judicial Lien is continued to **10:30 a.m. on July 28, 2022.**