

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

**July 13, 2017, at 10:30 a.m.**

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1. <a href="#"><u>11-91706-E-7</u></a> SDM-4	GILBERTO/CECILIA LUNA Scott Mitchell	MOTION TO AVOID LIEN OF CITIBANK SOUTH DAKOTA, N.A. 6-13-17 <a href="#"><u>[38]</u></a>
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**Final Ruling:** No appearance at the July 13, 2017 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, Creditor, and Office of the United States Trustee on June 13, 2017. By the court's calculation, 30 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.

<p><b>The Motion to Avoid Judicial Lien is granted.</b></p>
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This Motion requests an order avoiding the judicial lien of Citibank South Dakota N.A. (presently known as Citibank, National Association) ("Creditor") against property of Gilberto Luna and Cecilia Luna ("Debtor") commonly known as 3420 Shaye Lane, Modesto, California ("Property").

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

**July 13, 2017, at 10:30 a.m.**

**- Page 1 of 30 -**

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

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

### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Citibank South Dakota N.A., California Superior Court for Stanislaus County Case No. 652424, recorded on January 12, 2011, Document No. 2011-0003098-00 with the Stanislaus County Recorder, against the real property commonly known as 3420 Shaye Lane, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

2.

[11-91706-E-7](#)  
SDM-5

GILBERTO/CECILIA LUNA  
Scott Mitchell

**MOTION TO AVOID LIEN OF  
AMERICAN EXPRESS CENTURION  
BANK  
6-13-17 [\[43\]](#)**

**Final Ruling:** No appearance at the July 13, 2017 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, Creditor, and Office of the United States Trustee on June 13, 2017. By the court's calculation, 30 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 American Express Centurion Bank ("Creditor") against property of Gilberto Luna and Cecilia Luna ("Debtor") commonly known as 3420 Shaye Lane, Modesto, California ("Property").

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

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

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

## **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**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, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on June 22, 2017. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

This Motion requests an order avoiding the judicial lien of Sacor Financial, Inc. ("Creditor") against property of Grazildi Haskel ("Debtor") commonly known as 3537 Battleboro Court, Modesto, California ("Property"). FN1.

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FN.1. Movant filed the Motion to Avoid the Abstract Judgment Lien and the Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other

pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

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A judgment was entered against Debtor in favor of Creditor in the amount of \$14,969.16. An abstract of judgment was recorded with Stanislaus County on March 28, 2012, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$189,400.00 as of the date of the petition. The unavoidable consensual liens that total \$330,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$251.00 on Amended Schedule C.

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

#### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Sacor Financial, Inc., California Superior Court for Stanislaus County Case No. 669061, recorded on March 28, 2012, Document No. 2012-0027254-00, with the Stanislaus County Recorder, against the real property commonly known as 3537 Battleboro Court, 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.

**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 creditors, parties requesting special notice, and Office of the United States Trustee on February 21, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

**The Motion to Use Cash Collateral is denied without prejudice.**

Ronald Sundburg and Susan Sundburg ("Debtor in Possession") filed the instant Motion for Authority to Use Cash Collateral on February 21, 2017. Dckt. 70.

#### **REVIEW OF MOTION**

Debtor in Possession and Bank of America, N.A. ("BANA") entered into a number of agreements (described in Amended Stipulation at Dckt. 72), including:

- A. December 19, 2007: Loan of \$324,817.44 to Susan Sundburg evidenced by a Finance Agreement;
- B. December 21, 2007: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 5132 Yosemite Boulevard, Empire, California (recorded on January 14, 2008);
- C. December 21, 2007: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 11 South Abbie, Empire, California (recorded on January 14, 2008);

- D. December 31, 2007: Increase of Susan Sundburg's loan to \$385,228.62 evidenced by a Final Disbursement, Change and Repayment Schedule;
- E. June 20, 2012: Susan Sundburg executed a Finance Agreement, confirming terms of a restated loan and reduction of principal in a proposed amendment;
- F. June 20, 2012: Ronald Sundburg executed a Guaranty whereby he unconditionally agreed to pay all of Susan Sundburg's obligations to BANA, including any and all interest, fees, and costs, and attorneys' fees and legal expenses incurred for the enforcement of the obligations of a restated loan, in the even Susan Sundburg failed to pay;
- G. June 25, 2012: BANA and Susan Sundburg executed a Final Disbursement, Change and Repayment Schedule, finalizing and ratifying terms to a restated loan;
- H. June 27, 2012: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 7634 Adams Avenue, Valley Springs, California (recorded on July 17, 2012);
- I. June 28, 2012: BANA and Debtor in Possession executed an Amendment to Loan Agreement to consolidate, renew, replace, and refinance Susan Sundburg's loan and reduce the principal balance to \$324,817.44;
- J. Unspecified date: Susan Sundburg executed a Finance agreement that pledged certain personal property as collateral for the restated loan;
- K. October 22, 2015: BANA and Debtor in Possession executed a Loan Modification Agreement that extended the maturity date of the restated loan from July 1, 2015, to March 1, 2016;
- L. October 22, 2015: BANA and Debtor in Possession executed a Modification of Deed of Trust for the Yosemite Boulevard property (recorded on December 28, 2015); and
- M. October 22, 2015: BANA and Debtor in Possession executed a Modification of Deed of Trust for the South Abbie property (recorded on December 28, 2015).

BANA asserts that the above properties securing its claims are generating monthly net profit of approximately \$500.16 from rents and lease income. BANA asserts that the monthly net profit is its cash collateral pursuant to 11 U.S.C. §§ 552(b) and 363(a). Debtor in Possession seeks to use those funds to maintain the ongoing business of the rental properties at Yosemite Boulevard and South Abbie.

The parties report that the cash collateral will be used as follows:



- A. Cash collateral will be used to pay reasonable, ordinary, and necessary expenses of operating and maintaining the Yosemite Boulevard and South Abbie properties;
- B. Debtor in Possession shall make adequate protection payments to BANA by the tenth day of each month in the amount of \$200.00, with the first payment due on or before February 28, 2017;
- C. The collected cash collateral shall be deposited into accounts designated with the Office of the U.S. Trustee;
- D. Debtor in Possession may not use the cash collateral for any purpose other than as specified between the parties, and Debtor in Possession may not withdraw monies without BANA's express consent or Bankruptcy Court authorization;
- E. Cash collateral may not be used to make any capital investment or improvement of business without BANA's prior written authorization;
- F. The right to use cash collateral expires upon default or upon BANA providing fifteen day's written notice of termination;
- G. Debtor in Possession may exceed the budgeted amount for any particular line item expense by not more than \$50.00, provided that Debtor in Possession may not exceed the total budget on a monthly basis by more than 10%.

The parties' stipulation grants BANA a replacement lien in all post-petition collateral income securing Debtor's lien to BANA and a replacement lien on the Debtor in Possession's account opened for the use of cash collateral. To the extent that any replacement lien and security interest is insufficient to compensate BANA, BANA shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(2).

The parties submitted an Amended Stipulation on February 21, 2017. Dckt. 72. The Amended Stipulation includes the following budget as Exhibit 1:

<b>Commercial Property</b> 5132 Yosemite Blvd/ 11 S. Abbie, Empire, California 95319			
	<b>Real Property Rent</b>	\$2,750.00	
	<b>First Mortgage (Jenison)</b>		(\$1,188.67)
	<b>Bank of America AP Payment</b>		(\$200.00)
	<b>Property Taxes</b>		(\$623.88)

	<b>Utilities (Water, Sewer, Garbage)</b>		(\$113.14)
	<b>Repair/Maintenance</b>		(\$500.00)
	<b>NET INCOME</b>	\$124.31	
<b>Personal Property Collateral</b>			
	<b>Lease Income</b>	\$450.00	
	<b>Stearns Leasing (Laser Lease)</b>		(\$244.15)
	<b>Repairs/Maintenance</b>		(\$30.00)
	<b>NET INCOME</b>	\$175.85	
	<b>TOTAL NET INCOME</b>	\$300.16	

## 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 sell 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.

Fed. R. Bankr. P. 4001(b) provides the procedures in which a trustee or Debtor in Possession may move the court for authorization to use cash collateral. In relevant part, Fed. R. Bankr. P. 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 AT MARCH 23, 2017 HEARING**

In the instant case, Debtor in Possession is seeking authorization of the court to use cash collateral to pay reasonable, ordinary, and necessary expenses to operate and maintain the Yosemite Boulevard and South Abbie properties.

While the Motion seeks authorization for the use of cash collateral, the Debtor in Possession does not provide specific expenses that are necessary to avoid immediate and irreparable harm to the estate.

The budget provides a list of income and expenses, but it does not specify which of these expenses are necessary to be paid using cash collateral. Additionally, the attached budget differs from Debtor in Possession's claim regarding how much money is available in total monthly net income. Debtor in Possession states that \$500.16 is available, but the budget shows that \$300.16 is actually available.

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). Debtor in Possession has the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor's interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

Previously, Debtor in Possession and Creditor filed a stipulation in which the Creditor consented to Debtor in Possession's use of cash collateral. The adequate protection payment proposed was \$200.00, beginning February 28, 2017, and continuing thereafter on the tenth day of each month through July 11, 2017. Here, Debtor in Possession asserts that it will continue making adequate protection payments of \$200.00 to Creditor. The court finds that the adequate protection payment is sufficient given the facts of the instant case.

## **Review of Schedules**

Debtor in Possession lists personal property assets having a value of \$66,086.60 on Schedule B (of which \$571.10 are stated to be accounts receivable). Dckt. 1. Stanislaus County Tax Collector is listed on Schedule D as a creditor having a secured claim. Dckt. 24.

The unsecured claims listed on Schedule F total \$8,361.11. Dckt. 24. The Yosemite Boulevard, South Abbie, and Adams Road real properties are listed on Schedule A, and two leases are listed on Schedule G. Dckts. 1 & 24.

## **RULING AT MARCH 23, 2017 HEARING**

The Motion was granted, and Debtor in Possession was authorized to use the cash collateral for the period April 1, 2017, through July 31, 2017, including the required adequate protection payments. The court did not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Debtor in Possession. All surplus Cash Collateral from the Property was to be held in a cash collateral account and separately accounted for by Debtor in Possession.

The court continued the hearing to 10:30 a.m. on July 13, 2017, for Debtor in Possession to file a Supplement to the Motion to extend authorization. Dckt. 79. That Supplement was due by June 29, 2017.

## **RULING**

Debtor in Possession has not filed a Supplement to the Motion to extend the authorization to use cash collateral. Debtor in Possession has been authorized to use cash collateral through July 31, 2017, but no further. The court treats Debtor in Possession’s silence as intent not to seek further authorization to use cash collateral. The Motion is denied without prejudice.

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

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

The Motion for Authority to Use Cash Collateral filed by Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied without prejudice.

**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.

Adequate Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 14, 2017. By the court's calculation, 29 days' notice was provided. 30 days' notice is required. FED. R. BANKR. P. 3007(a) (thirty-day notice); LOCAL BANKR. R. 3007-1(b)(2).

However, Creditor has filed a written opposition to the Objection to Claim, which remedies the one day shortfall in the notice period. The court shortens the notice period to the actual twenty-nine days given.

The Objection to Claim was not properly set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Objection to Proof of Claim Number 1 of Wyndi Guerrero is overruled.**

Irma Edmonds, the Chapter 7 Trustee ("Objector") requests that the court disallow the claim of Wyndi Guerrero ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. FN.1. The Claim is asserted to be unsecured priority in the amount of \$4,200.00. Objector asserts that there is no valid basis set forth for which priority status may be claimed because the claim reflects attorney's fees and not a domestic support obligation pursuant to the 11 U.S.C. § 507(a)(1) basis stated in the Proof of Claim.

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FN. 1. The Objection states that it is to the claim of Creditor "Wyndi Guerrero, Hakem, Ellis & Marengo." Objection, Dckt. 48. A review of Proof of Claim No. 1 lists only Wyndi Guerrero as the creditor. Proof of

Claim No. 1, Name of Creditor Section on page one of Proof of Claim. The Law Firm of Hakeem, Ellis, & Marengo is listed in the Name and Address Where Notices Should Be Sent Section, but that does not purport to state the identity of the creditor. Proof of Claim No. 1 is signed by “Albert M. Ellis, Attorney at Law” with Hakeem, Ellis, & Marengo. Proof of Claim No. 1 Signature Section, page 2 of Proof of Claim. Mr. Ellis identifies himself as the “creditor’s authorized agent,” checking that box and not the “I am the creditor” box in the Signature Section of the Proof of Claim.

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## **CREDITOR’S OPPOSITION**

Creditor filed an Opposition on June 28, 2017. Dckt. 52. Creditor argues that the court ordered attorney fees were need-based and explicitly excluded from sanctions. Therefore, Creditor argues that the fees are “in the nature of support” as domestic support obligations under 11 U.S.C. § 101(14A).

## **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 factual basis 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).

Creditor filed a Proof of Claim in the amount of \$4,200.00 in this case and designated the claim as entitled to priority status as a “domestic support obligation” under 11 U.S.C. § 507(a)(1). This claim is an award of legal fees in a marital dissolution proceeding in California Superior Court, awarded to Creditor, the former spouse of the Chapter 7 debtor in this case, Raymond Guerrero (“Debtor”). Dckt. 52. According to the Order After Hearing from the California Superior Court, filed under Exhibit 2, Dckt. 53, Debtor was ordered to pay \$4,200.00 towards Creditor’s attorney fees and costs for the child custody trial. Creditor’s counsel testifies that “Judge Appel indicated that the award was based on ‘the significant disparity in the party’s incomes.’” Dckt. 53.

The Ninth Circuit has made clear that “an award of attorney’s fees in a marital dissolution proceeding may be in the nature of a domestic support obligation for the purposes of . . . 11 U.S.C. § 101(14A).” *Gately v. Moore (In re Gately)*, No. CC-16-1086-TaFMc, 2016 Bankr. LEXIS 3987 (B.A.P. 9th Cir. 2016). The court “must look behind the state court’s award and make a factual inquiry to determine whether the award is actually in the nature of the support.” *Gionis v. Wayne (In re Gionis)*, 170 B.R. 675, 682 (B.A.P. 9th Cir. 1994). To decide whether an award is in the nature of support, several factors are to be considered, including whether there is an “imbalance in the relative income of the parties” at the time of the divorce. *Friedkin v. Sternberg (In re Sternberg)*, 85 F.3d 1400, 1405 (9th Cir. 1996), *overruled on other grounds by, Murray v. Bammer (In re Bammer)*, 131 F.3d 788, 792 (9th Cir. 1997) (en banc).

The specific determination made in the Superior Court stated in the April 30, 2015 Amended Minute Order is:

**Based on the significant disparity in the party's incomes it is necessary and appropriate that petitioner pay an additional amount towards respondent's attorney's fees** for the trial set in August. This litigation appears to be perpetuated by the petitioner but the court is not awarding Section 271 sanctions at this time. If, after presentation of evidence at trial, the court determines 271 sanctions are appropriate, additional fees will be considered at that time.

Petitioner shall pay \$4,200 towards respondent's attorney's fees. Fees are to be paid \$1,400 by July 1, 2015, \$1,400 by August 1, 2015 and \$1,400 by September 1, 2015 and all due on default.

Exhibit 1, Dckt. 54 at 3.

Further proceedings were conducted, and the Superior Court issued a detailed Order After Hearing on May 19, 2017. Exhibit 2, Dckt. 54. The findings include that the \$4,200.00 are in the “nature of support.” *Id.* at p. 4:27–28. (Page citation is to the exhibit page number of the Order and not the gross pages of the entire exhibit document.)

Though not included as part of Proof of Claim No. 1 filed in this case, the additional evidence presented by Creditor in response to the Objection to Claim, the \$4,200.00 award in the nature of support. While this necessitated the Trustee filing the Objection, it has provided the court with the opportunity to confirm the basis for the priority and the Trustee to properly administer the estate. In fact, the state court judge found that the award was based on a “significant disparity in . . . incomes.” Consequently, the \$4,200.00 claim qualifies for priority status as a domestic support obligation, as defined under 11 U.S.C. § 101(14A).

#### **PRIORITY CLAIMS—Exception to Support Obligation Priority**

The court has noted in several other cases this issue of domestic support priority and battles with a trustee can arise based on a contention that the domestic support priority under 11 U.S.C. § 507(a)(1)(A) comes ahead of all administrative expenses, including those of the trustee and other professionals of the estate. While the priority is nearly absolute, it is not completely absolute.

With respect to expenses of the trustee and other administrative expenses of the bankruptcy estate, Congress provides in 11 U.S.C. § 507(a)(1)(C) that:

(C) If a trustee is appointed or elected under section 701, . . . , the **administrative expenses of the trustee** allowed under paragraphs (1)(A), (2), and (6) of section 503(b) **shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets** that are otherwise available **for the payment of such claims.**

If this is an issue in connection with the priority, in light of the Superior Court recitation of the family law litigation process between Creditor and Debtor, the court is confident that Creditor and the Trustee can quickly reach the proper resolution of any such dispute.

Based on the evidence before the court, the Objection to the Proof of Claim is overruled without prejudice.

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

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

The Objection to Claim of Wyndi Guerrero, Creditor filed in this case by Irma Edmonds, 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 Objection to Proof of Claim Number One of Wyndi Guerrero is overruled without prejudice.



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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2017. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

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

<b>The Motion to Compel Abandonment is granted.</b>
---

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

The Motion filed by Phyllis Young ("Debtor") requests the court to order the Trustee to abandon property commonly known as 4813 Devereaux Way, Salida, California ("Property"). The Property is encumbered by the first and second deeds of trust both held by Bank of America Home Loans in the Amounts of \$109,951.18 and \$30,220.70, respectively, and a \$45,395.23 solar panel loan with SolarCity, all of which are secured by Debtor's real property. The Declaration of Phyllis Young, Debtor, has been filed in support of the Motion and values the Property at \$280,000.00. This leaves approximately \$94,432.80 in equity. Debtor further claims this equity as exempt, pursuant to California Civil Procedure § 704.730.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Trustee to abandon the property.

### **CHAMBERS PREPARED ORDER**

The court shall issue an Order (not a minute order) substantially in the following form holding that:

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

The Motion to Compel Abandonment filed by Phyllis Young (“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 4813 Devereaux Way, Salida, California and listed on Schedule A / B by Debtor is abandoned by Gary Farrar, the Chapter 7 Trustee, to Phyllis Young by this order, with no further act of the Trustee required.

**Final Ruling:** No appearance at the July 13, 2017 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 31, 2017. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.**

Michael McGranahan, the Chapter 7 Trustee, objects to Luz Acosta's ("Debtor") claimed exemptions under the California Code of Civil Procedure. Further, the Trustee objects to a lack of showing of proof for various exemptions.

The Trustee objects to the following exemptions:

- A. Bank of the West exemption under California Code of Civil Procedure § 704.070 in the amount of \$875.00. The Trustee objects to Debtor failing to show proof that the account referenced is derived from wage garnishment for Debtor's spouse. Additionally, Debtor's spouse is listed as employed by Pacific Bell Telephone Company.
- B. Community property interest in husband's business "ATECH Laundry Equipment Service & Installation" under California Code of Civil Procedure § 704.060 in the amount of \$2,750.00. The Trustee objects to Debtor's claim of "tools of trade" as she

is a homemaker and does not work, per Schedule I. Further, the Trustee argues that a community property interest is not one of the enumerated exemptions.

- C. Community property interest in husband's "AR Business in ATECH laundry Equipment Service & Installation" under California Code of Civil Procedure § 704.060 in the amount of \$500.00. The Trustee objects to Debtor's claim of "tools of trade" as she is a homemaker and does not work, per Schedule I. Further, the Trustee argues that a community property interest is not one of the enumerated exemptions.
- D. 1997 Chevrolet Cargo Van exemption under California Code of Civil Procedure § 704.060 in the amount of \$2,250.00. The Trustee states that Debtor's non-filing spouse's primary occupation is that of "Technician" with Pacific Bell Telephone Company. The Trustee argues that no showing that the vehicle is registered as a commercial vehicle has been made.
- E. Community property interest in husband's business supplies and tools of trade exemption under California Code of Civil Procedure § 704.060 in the amount of \$2,500.00. The Trustee objects to Debtor's claim of "tools of trade" as she is a homemaker and does not work, per Schedule I. Further, the Trustee argues that a community property interest is not one of the enumerated exemptions.

Like the Trustee notes, a community property interest has not been spelled out in California Code of Civil Procedure § 704.060 for a spouse's tools of the trade. Additionally, Debtor's Schedule I lists her unemployed, meaning she would not be able to claim any "tools of the trade" for working for her spouse's business. Debtor appears to have been caught trying to exempt additional, improper moneys out of the California exemptions. The Trustee's Objection is sustained, and the claimed exemptions are disallowed in their entirety.

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 Objection to Claimed Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection is sustained, and the claimed exemptions are disallowed in their entirety.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 13, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Sell Property is granted.</b></p>
---

The Bankruptcy Code permits Michael McGranahan, the Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the Estate's interest in a 2000 Ford Expedition; VIN ending in 9519 ("Vehicle").

The proposed purchaser of the Property is Troy McCleary and Julie McCleary, Debtor, and the terms of the sale are:

- A. Debtor will purchase the non-exempt equity in the Vehicle for \$800.00, the non-exempt equity in the Vehicle after deducting potential costs of sale.
- B. The sale to Debtor is subject to no one outbidding Debtor. The Trustee demands the next highest bid must be at least \$900.00, accompanied by a deposit of \$800.00, and interested parties are advised to contact the Trustee for instruction prior to the hearing date.

## 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: **XXXXXXXXXXXXXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because after deducting potential costs of sale from the higher range of valuations both by the Kelley Blue Book and an auctioneer, it is unlikely the Trustee would be able to garner any more than \$800.00 from the Vehicle.

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 Sell Property filed by Michael McGranahan, the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Michael McGranahan, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Debtor, Troy McCleary and Julie McCleary, or nominee (“Buyer”), the Estate’s interest in a 2000 Ford Expedition, VIN ending in 9519 (“Vehicle”) on the following terms:

- A. The Vehicle shall be sold to Buyer for \$800.00, on the terms and conditions set forth in the Trustee’s Motion to Sell, Dckt. 18, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred in order to effectuate the sale.
- C. The Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

9. [15-90358](#)-E-7      **LAWRENCE/JUDITH SOUZA**  
**MHK-28**      **David Johnston**

**CONTINUED MOTION FOR  
COMPENSATION BY THE LAW OFFICE  
OF MEEGAN, HANSCHU AND  
KASSEN BROCK FOR ANTHONY  
ASEBEDO, DEBTORS ATTORNEY(S)  
5-16-17 [589]**

**Final Ruling:** No appearance at the July 13, 2017 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 in Possession, creditors, parties requesting special notice, and Office of the United States Trustee on May 16, 2017. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

<p><b>The hearing on the Motion for Allowance of Professional Fees is continued to 10:30 a.m. on September 7, 2017.</b></p>
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Meegan, Hanschu & Kassenbrock, the Attorney ("Applicant") for Lawrence Souza and Judith Souza, Debtor ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period July 1, 2016, through May 12, 2017 ("Second Period"). Additionally, final approval of compensation is requested for the period of April 10, 2015, through June 30, 2016 ("First Period"). The order of the court approving employment of Applicant was entered on April 30, 2015. Dckt. 44. Applicant requests fees in the amount of \$61,490.00 and costs in the amount of \$2,886.92.

## **JUNE 29, 2017 HEARING**

At the hearing, the court continued the matter to 10:30 a.m. on July 13, 2017, to allow the Trustee time to review the fee application and for Applicant to file supplemental pleadings providing a task billing of services. Dckt. 604.

## **APPLICANT'S SUPPLEMENT**

Applicant filed a Supplement on June 30, 2017. Dckt. 606. Applicant has provided a detailed task billing for each of the billed categories, and those categories are discussed later in this ruling with the fees requested by Applicant.

## **APPLICANT'S REQUEST TO CONTINUE HEARING**

On July 7, 2017, Applicant moved for the court to continued the hearing on this matter until 10:30 a.m. on September 7, 2017. Dckt. 612. Applicant reports that the Trustee has contacted Applicant and requested a continuance to allow the Trustee time to conduct the Meeting of Creditors in this case and to familiarize himself with the case history so far.

Applicant concurs with the Trustee that the hearing be continued to 10:30 a.m. on September 7, 2017.

## **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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



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

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

Further, the court shall not allow compensation for,

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

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

## **APPLICABLE LAW**

### **Reasonable Fees**

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

## Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis 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.”). Prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that the services provided by Applicant related to administering the case, handling claims, filing for employment and fees, and preparing a plan and disclosure statement—among other tasks.

## **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.

Asset Disposition: Applicant spent 59.3 hours in this category. Applicant moved to sell real properties and moved to abandon real property as well.

Business Operations: Applicant spent 3.5 hours in this category. Applicant communicated with Client regarding numerous matters pertaining to the operation of rental properties and the Estate, including the allowance and payment of claims against the Estate, segregation and use of cash collateral, and performance of duties under the Code.

Case Administration: Applicant spent 68.8 hours in this category. Applicant responded to inquiries and requests for information from the U.S. Trustee; responded to inquiries from and negotiated with various creditors and their agents and attorneys; communicated extensively with successive real estate brokers; communicated with Client and the IRS about processing applications for releases of a federal tax lien; reviewed, filed, and served Monthly Operating Reports; reviewed the U.S. Trustee's motion to convert or dismiss the case; drafted a stipulation to the motion to convert or dismiss; and communicated with successor counsel regarding the case.

Cash Collateral: Applicant spent 11.5 hours in this category. Applicant drafted and filed supplements to the motion, made court appearances, and obtained three court orders authorizing Client to continue to use cash collateral.

Claims Issues: Applicant spent 3.4 hours in this category. Applicant communicated with Client and an accountant regarding claims for priority income taxes and post-petition administrative tax claims.

Employment/Fee Applications: Applicant spent 32.3 hours in this category. Applicant filed an application for interim fees; filed an to employ an accountant; filed an application employ a property manager; filed a motion to withdraw as counsel; filed an application to employ another property manager; filed an application to employ a broker; and filed an application for fees for the accountant.

Plan and Disclosure Statement: Applicant spent 22.3 hours in this category. Applicant drafted updates and revisions to draft disclosure statement and plan of reorganization; updated exhibits to the disclosure statement; and communicated with Client.

Relief from Stay Issues: Applicant spent 3.0 hours in this category. Applicant relates that a portion of the services in this category were more appropriately billed in the "Employment/Compensation of Professionals" category, and another portion should have been billed in that category too.

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>
Blended rate for Anthony Asebedo, Mary Gillis, Jeanne Hutton, and David Meegan	204.1 hours	\$350.27	\$71,490.11
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	<u>\$0.00</u>
<b>Total Fees for Period of Application</b>			\$71,490.11

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

<b>Application</b>	<b>Interim Approved Fees</b>	<b>Interim Fees Paid</b>
First Interim	\$184,357.00	\$147,485.60
<b>Total Interim Fees Approved Pursuant to 11 U.S.C. § 331</b>	\$184,357.00	

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$2,886.92 pursuant to this Application. Pursuant to prior interim applications, the court has allowed costs of \$3,502.62.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Court Filing Fees		\$246.40
Postage		\$1,765.50
PACER Fees		\$14.90
Mileage	\$0.50/mile	\$97.92
Parking		\$18.50
Photocopying	\$0.05	\$743.70
<b>Total Costs Requested in Application</b>		<b>\$2,886.92</b>

10. [12-90273](#)-E-12      **MATTHEW/TRICIA PELLER**      **MOTION FOR ENTRY OF DISCHARGE**  
**DCJ-4**      **David Johnston**      **6-29-17 [139]**

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

<p><b>The Motion for Entry of Discharge is granted.</b></p>
---

The Motion for Entry of Discharge has been filed by Matthew Peller and Tricia Peller (“Debtor”). With some exceptions, 11 U.S.C. § 1228 permits the discharge of debts provided for in a plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. The Chapter 12 Trustee’s final report was filed on June 8, 2016, and no objection was filed within the specified thirty-day period. *See* FED. R. BANKR. P. 5009. The order approving final report and discharging the trustee was entered on August 1, 2016. Dckt. 127. The entry of an order approving the final report is evidence that the estate has been fully administered. *See In re Avery*, 272 B.R. 718, 729 (Bankr. E.D. Cal. 2002).

Debtor’s Declaration (Dckts. 141 & 142) certifies that Debtor:

- A. has completed the plan payments;
- B. does not have any delinquent domestic support obligations;
- C. has completed a financial management course and filed the certificate with the court;
- D. has not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge under a Chapter 13 case during the two-year period prior to filing of this case;
- E. is not subject to the provisions of 11 U.S.C. § 522(q)(1); and
- F. is not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1).

There being no objection, Debtor is entitled to a discharge.

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

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

The Motion for Entry of Discharge filed by Matthew Peller and Tricia Peller (“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 is granted, and the court shall enter the discharge for Matthew Peller and Tricia Peller in this case.