

IT IS FURTHER ORDERED that the total compensation, including all expenses, shall not exceed 5% of the gross sales price of the real property commonly known as 1119 Maple Drive, Oakdale, California, from the sale which is the subject of the Trustee's Motion to Sell, DCN: SCB 3 (Dckt. 28). No predetermined amount or percentage fee, other than the maximum of 2.5% (50% of the 5% commission which is to be split under the contract for the sale of the Property), is determined by the court as compensation for this professional.

IT IS FURTHER ORDERED that Ms. Bernal and Trifecta Real Estate, Inc. May seek the allowance of fees and costs for the service provided by separate motion after the sale has been completed. The court will not approve compensation for this professional as part of the order approving the sale of the property.

Dckt. 49. Applicant requests final approval of fees in the amount of \$6,750.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

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- (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). 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.

Benefit to the Estate

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including placing the Property for sale on leading Internet search sites, reviewing two separate offers to purchase the Property, discussing with Debtor his filing of bankruptcy, communicating with the Trustee, providing the Trustee with a preliminary title report, communicating with the realtor for "buyers," and revising the offer and addendum. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

The court granted the motion to employ Applicant on the terms and conditions that the total compensation, including all expenses, shall not exceed 2.5% (50% of the 5% commission which is to be split under the contract

for the sale of the Property) of the gross sales price of the real property. Dckt. 44. Thus, Applicant seeks approval of a 2.5% real estate commission, in the amount of \$6,750.00, of the selling price from the sale proceeds at the close of escrow. The Applicant is seeking that the First and Final Request for the Allowance of Fees be approved as final fees pursuant to 11 U.S.C. § 330.

FEES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. The First and Final Request for the Allowance of Fees in the amount of \$6,750.00 are approved as final pursuant to 11 U.S.C. § 330.

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

Fees	\$6,750.00
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pursuant to this Application First and Final Request for the Allowance of Fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Margeley Bernal of Trifecta Real Estate, Inc., dba RE/MAX Executive ("Applicant"), the Realtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Margeley Bernal of Trifecta Real Estate, Inc., dba RE/MAX Executive is allowed the following fees and expenses as a professional of the Estate:

Margeley Bernal of Trifecta Real Estate, Inc., dba RE/MAX Executive, Professional Employed by Trustee

Fees in the amount of \$ 6,750.00

The Fees pursuant to this Applicant, in the amount of \$6,750.00 are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Final Ruling: No appearance at the July 23, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on January 14, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Extend Time to File Objections to Debtors' Claims of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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>The hearing on the Motion to Extend Time to File Objections to Debtors' Claims of Exemptions is continued to 10:30 a.m. on September 3, 2015.</p>

Gary Farrar, the Chapter 7 Trustee, filed the instant Motion for Order Extending Time to File Objections to the Debtors' Claims of Exemptions. Dckt. 1161.

The current deadline to file objections to the Debtors' claims of exemptions is presently set for December 15, 2014. Dckt. 1092, Notice of Conversion to Chapter 7, Meeting of Creditors, and Deadlines. The Trustee requests that the deadline for the Trustee to object to the Debtors' claims of exemptions be extended until February 16, 2015. The Motion to Extend the deadline was filed on December 12, 2014.

The Trustee argues that cause exists because, prior to the conversion of the case to Chapter 7, the Debtors filed a number of schedule amendments. The Debtors' most recent Schedule B, filed September 20, 2013, lists the following assets:

<p>Sawtantra Chopra MD, Inc., Profit Sharing Plan Assets in the Profit Sharing Plan including the following:</p> <p>Chase Acct# ending in 7539 - \$463,755</p> <p>Wells Fargo Investment Account - Approximate value of \$1 million</p> <p>Note & Deed of Trust in favor of Sawtantra Chopra MD, Inc., Profit Sharing Plan as Beneficiary, Onkar Inc., as Trustor secured by properties with the following APNs 033-044-099, 033-044-010, 033-044-012, 033-044-013, 033-044-014, and 033-044-019 - The face value of this note is \$350,000, but Debtor is not sure of the actual value of the note due because Debtor is not sure how much equity exists in these properties.</p> <p>Other Notes - See Attached.</p>	H	\$1,813,755.00
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In the Debtors most recent Schedule C, filed September 20, 2013, the Debtors claimed the retirement plans as exempt in their entirety pursuant to 11 U.S.C. § 522(b)(3)(C).

Prior and subsequent to the Meeting of Creditors, the Trustee and his counsel have requested current account statements for the retirement plans and original documentation related to the loans scheduled as assets of this estate, including those purportedly in the retirement plans, but non have been provided. By email dated November 6, 2014, Debtors' counsel informed the Trustee that the Debtors do not have the originals of the promissory notes although they are still looking for them. Dckt. 1165, Exhibit C.

At the Meeting of Creditors, held November 13, 2014, the Trustee requested on the record that the Debtors provide the Trustee with a current account statement for the Debtors' retirement assets. The Debtors have not provided him with the requested statements. The only documents the Trustee states the Debtors have provided in response to the Trustee's request are tax returns for their pension plan for the years 2001-2012.

Additionally at the Meeting of Creditors, the Trustee questioned the Debtors concerning the carious deeds of trust, for which the Debtors and/or the Sawtantra Chopra MD Profit Sharing Plan were scheduled as beneficiaries the Debtors' responses did not satisfy the Trustee's inquiry into the process and reasons by which one or more deeds of trust, of which Joint-Debtor Aruna Chopra, individually, was the original beneficiary, came to be included in the Debtors' retirement plans.

Trustee states that on November 18, 2014, Trustee's counsel reiterated to Debtors' counsel the Trustee's request for current account statement for the Debtors' retirement plans and discussed issues related to the notes/deeds of trust purportedly in the plans. Trustee's counsel followed up the call with an email to Debtors' counsel. By email on November 21, 2014, Trustee's counsel followed up with a more detailed email to Debtors' counsel, reiterating the Trustee's request again. Trustee states that no current account statement has been provided to the Trustee or Trustee's counsel.

Obtaining a precise accounting of the retirement plans, their balance, and information concerning exactly what assets are currently contained in the plans, and how those assets came to be in the plans, is important to the Trustee's evaluation of the Debtors' claims of exemptions.

DEBTORS' OPPOSITION

The Debtors filed an opposition to the instant Motion on January 29, 2015. Dckt. 1187. The Debtors state that the Motion should be denied because it: (1) it fails to establish cause to grant relief; (2) the Trustee is guilty of laches; and (3) granting the Motion would significantly impair Debtors' Sixth Amendment right to representation. The Debtors make the following arguments:

1. The time frame for objection to Debtors' exemptions has expired under applicable Ninth Circuit law. Under *In re Smith*, 235 F.3d 472 (9th Cir. 2000), 11 U.S.C. § 348 "preserve[s] actions already taken in the case before conversion. . . section 348(a) establishes the general rule that, in a converted case, the dates of filing, the commencement of the case, and the order for relief remain unchanged." *Id.* at 477. In short, the Debtors argue that once the time frame for objecting to an exemption has expired, the exempt property reverts in the debtor and is no longer subject to objection. In this case, the Debtors state that the time to object to Debtors' claim of objection expired in April 2014.
2. The recent changes to Fed. R. Bankr. P. 1019 cannot change the substantive law on the issue. The Debtors argue that 28 U.S.C. § 2075 sets forth the rule making power of the court and the limitations thereon, making the Bankruptcy Court rules procedural and not creating substantive rights. The 2010 amendment to Fed. R. Bankr. P. 1019 that added section (2)(B) cannot affect this case since it attempts to change the substantive law of the Ninth Circuit. The provision purports to create a new time period for filing objections to exemptions after a conversion. However, since the *Smith* court established the law on this issue in the ninth Circuit and ruled that the exempt property vested in the debtor and that there was no provision in the Bankruptcy Code that could bring the exempt property back into an estate after conversion. The Bankruptcy Rules cannot create substantive rights that are not provided under the Bankruptcy Code. As such, the Trustee cannot rely on Fed. R. Bankr. P. 1019 to bring this Motion and the Motion should be denied.
3. The Motion fails to establish cause for the requested relief. Even if the motion were timely, the Trustee has failed to establish the requisite "cause" under Fed. R. Bankr. P. 4003. Although Rule 4003 does not provide any clarification regarding the meaning of cause, it should be presumed that cause means good cause not just any excuse. As the Bankruptcy Court are courts of equity, the issue of good cause should be determined by balancing the respective benefits and burdens of parties along with other equitable considerations including the principles of laches. The time period to object to the exemptions has been extended at least five times for a total time period of almost three years. The Trustee has been a party to the last four of the extension. The Trustee entirely fails to adequately explain why it has

taken almost two years to determine whether to object to the exemptions, why he has not been able to make the decision at this time, and why he should be entitled to more time to do so. The Debtors contend that the Motion fails to provide any specificity regarding the information the Trustee is looking for and what issues, if any, he has with the exemptions. The Debtors argue that an extension of time is extremely prejudicial to Debtors because they are under criminal prosecution and need access to exempt assets to fund their defense. Debtors have been unable to use the funds to pay their criminal attorneys and will soon be deprived of representation in their cases which implicates their Sixth Amendment rights.

4. The motion should be denied because it will significantly impair Debtors' Sixth Amendment Rights. The Trustee has sent letters that have effectively frozen the accounts. Debtors have been unable to use the funds to pay for their criminal attorneys. The trustee is interfering with Debtors' Sixth Amendment right to representation and any extension of time to file the objections will further impair Debtors' constitutional rights. In the present case, the Trustee has sent letters to the investment managers for Debtors' profit sharing plan, effectively freezing the accounts in violation of the Debtors' Sixth Amendment rights. See *United States v. Stein*, 541 F.3d 130, 154 (2d Cir. 2008).

ORDER CONTINUING THE HEARING

On February 9, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1197.

On February 10, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on March 26, 2015.

ORDER CONTINUING THE HEARING

On March 19, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1208.

On March 23, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on May 21, 2015. Dckt. 1222.

ORDER CONTINUING THE HEARING

On May 15, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1295.

On May 18, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on June 11, 2015. Dckt 1302.

ORDER CONTINUING THE HEARING

On June 4, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1318.

On June 5, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on July 23, 2015.

APPLICABLE LAW

Fed. R. Bankr. P. 1019 states in relevant part:

When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:...

(2) New filing periods

....

(B) A new time period for filing an objection to a claim of exemptions shall commence under Rule 4003(b) after conversion of a case to chapter 7 unless:

(I) the case was converted to chapter 7 more than one year after the entry of the first order confirming a plan under chapter 11, 12, or 13; or

(ii) the case was previously pending in chapter 7 and the time to object to a claimed exemption had expired in the original chapter 7 case.

Fed. R. Bankr. P. 1019

The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b)(1). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 4004(b)(1).

DISCUSSION

On July 16, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1346.

On July 16, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on September 3, 2015.

3. [11-94410-E-7](#) SAWTANTRA/ARUNA CHOPRA
HSM-32 Robert M. Yaspan

CONTINUED MOTION TO EXTEND
DEADLINE TO FILE A COMPLAINT
OBJECTING TO DISCHARGE OF THE
DEBTOR
12-23-14 [[1167](#)]

Final Ruling: No appearance at the July 23, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on December 23, 2014. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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>The hearing on the Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor is continued to 10:30 a.m. on September 3, 2015.</p>
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Gary Farrar, the Chapter 7 Trustee, filed the instant Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor on December 23, 2014. Dckt. 1167.

The Trustee states that the deadline to file a complaint objecting to the discharge of the Debtors is set for December 29, 2014. The Trustee requests that the deadline for the Trustee to file a complaint objecting to the discharge of the Debtors be extended until February 27, 2015.

The Trustee argues that cause exists because this is an extraordinarily complex case, involving many assets, and intense disputes between the Debtors and creditors regarding allegations of pre-petition criminal wrongdoing. This case was pending for some time in a Chapter 11 to provide the Debtors an opportunity to confirm a plan based around the Dale Road Project. The efforts to reorganized failed and all the estate's real property assets were abandoned

except a single Dale Road Parcel and an office building in Modesto. The case was converted to a Chapter 7 and the Trustee is attempting to administer the estate's remaining assets.

The Trustee states that he has been diligent in his investigation of the Debtors' financial affairs. An undisclosed issue which arose in the Debtors' disclosure statement filed prior to the conversion of the case was a \$310,000.00 loan from the Debtors' adult son and daughter-in-law which was discovered at the Meeting of Creditors. The Trustee requires additional time to consider the responses of the Debtors concerning this loan and whether additional investigation is needed. Furthermore, the Debtors stated that they would file amended schedule of creditors who were not previously listed.

The Trustee is also awaiting records of the current account statement for the Debtors' retirement assets as well as information concerning various notes and deeds of trusts, which the Debtors have not yet provided. The Trustee states that he expects the Debtors will provide this information voluntarily or the Trustee will make additional motions for the production of such information.

ORDER CONTINUING THE HEARING

On February 9, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1200.

On February 10, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on March 26, 2015.

ORDER CONTINUING THE HEARING

On March 19, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1211.

On March 22, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on May 21, 2015. Dckt. 1223.

ORDER CONTINUING THE HEARING

On May 15, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1298.

On May 18, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on June 11, 2015. Dckt. 1303.

ORDER CONTINUING THE HEARING

On June 4, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1322.

On June 5, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on July 23, 2015.

APPLICABLE LAW

Federal Rule of Bankruptcy Procedure 1017(e)(1) provides that the court may extend for cause the time for filing a motion pursuant to 11 U.S.C. § 707(b). The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 9006(b)(1).

DISCUSSION

On July 16, 2015, the Trustee filed an ex-parte Motion to Approve Stipulation to continue the hearing based on the agreement of Debtors and Trustee. Dckt. 1350.

On July 16, 2015, the court signed an Order Approving the Stipulation between Debtors and Trustee and continued the hearing on the instant Motion to 10:30 a.m. on September 3, 2015.

4. [15-90316-E-7](#) ROBERT/DONNA MCNEILL
SLH-1 Seth L. Hanson

MOTION TO AVOID LIEN OF
CITIBANK, N.A.
5-30-15 [[13](#)]

Tentative Ruling: The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditors, Chapter 7 Trustee, and Office of the United States Trustee on May 30, 2015. By the court's calculation, 54 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against property of Robert and Donna McNeill ("Debtor") commonly known as 805 Tully Road, Unit 15, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$21,033.63. An abstract of judgment was recorded with Stanislaus County on December 23, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$148,418.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.950 in the amount of \$175,000.00 on Schedule C. However, a review of California Code of Civil Procedure § 704.950 does not entitle the Debtor to any claimed exemption. Instead, the code section cited by Debtor describes when a judgment lien does not attach to a declared homestead. This section does not grant a debtor an exemption. Schedule C, Dckt. 1 at 16.

In the Motion, the Debtor states that they claimed an exemption of \$175,000.00 under California Code of Civil Procedure § 703.140(b)(1). However, this section provides:

(1) The Debtor's aggregate interest, not to exceed twenty-four thousand sixty dollars (\$24,060) in value, in real property or personal property that the debtor or a dependant of the debtor uses as a residence, in a cooperative that owns property that the debtor or dependent of the debtor uses as a residence.

On Schedule C, Debtor has elected to go with the non-bankruptcy exemptions under state law, not the California Code of Civil Procedure § 704.140 state bankruptcy exemptions. A debtor cannot toggle back and forth through the two different exemption schemes. Cal. C.C.P. § 703.140(a).

Debtor has not provided the court with an exemption claimed in this property which exists under applicable law. It is Debtor's burden to present the court not only with the evidence of value, but that there is a bona fide exemption claimed in the property for which the lien is to be avoided. See recent discussion of the burden of proof in claiming and enforcing California state law exemptions in *In re Tallerico*, Bankr. E.D. Cal. 15-22117, Opinion filed June 30 2015, Dckt. 48.

Therefore, because the court is unable to determine what, if any, exemptions the Debtor is attempting to claim on the Property, the court is unable to determine if, pursuant to 11 U.S.C. § 522(f), the aforementioned lien may be avoided. Therefore, the Motion is denied without prejudice.

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 denied without prejudice.

5. [15-90316](#)-E-7 ROBERT/DONNA MCNEILL
SLH-1 Seth L. Hanson

MOTION TO AVOID LIEN OF WELLS
FARGO BANK, N.A.
5-30-15 [[18](#)]

Tentative Ruling: The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Creditor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on May 30, 2015. By the court's calculation, 54 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Wells Fargo Bank, N.A. ("Creditor") against the property of Robert J. McNeill and Donna J. McNeill ("Debtors") commonly known as 805 Tully Road, Unit 15, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$106,715.31. An abstract of judgment was recorded with Stanislaus County on March 28, 2012, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$148,418.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.950 in the amount of \$175,000.00 on Schedule C. However, a review of California Code of Civil Procedure § 704.950 does not entitle the Debtor to any claimed exemption. Instead, the code section cited by Debtor describes when a

judgment lien does not attach to a declared homestead. In the Motion, the Debtor states that they are claiming an exemption of \$175,000.00 under California Code of Civil Procedure § 703.140(b)(1). However, this section provides:

(1) The Debtor's aggregate interest, not to exceed twenty-four thousand sixty dollars (\$24,060) in value, in real property or personal property that the debtor or a dependant of the debtor uses as a residence, in a cooperative that owns property that the debtor or dependent of the debtor uses as a residence.

In none of the cited "exemptions" does the Debtor properly claim \$175,000.00 exemption.

Therefore, because the court is unable to determine what, if any, exemptions the Debtor is attempting to claim on the Property, the court is unable to determine if, pursuant to 11 U.S.C. § 522(f), the aforementioned lien may be avoided. Therefore, the Motion is denied without prejudice.

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) 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: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct 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, creditors, and Office of the United States Trustee on June 24, 2015. By the court's calculation, 29 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

The Motion to Sell Property is granted.
--

The Bankruptcy Code permits the Debtor in Possession ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

A. 1509 Rose Avenue, Modesto, California

The proposed purchaser of the Property is Marvin G. Dole and Gail C. Dole and the terms of the sale are:

1. Purchase price of \$82,500.
2. "As is" condition

3. Purchase price is cash with no real estate brokers commission.
4. From the purchase price, the existing encumbrance of \$50,450.00 will be paid and nominal expenses of sale will be paid. The Dole Trust is responsible for payment of title insurance and escrow expenses contrary to the custom in Stanislaus County.
5. The Debtor-in-Possession will receive approximately \$32,000.00 in net proceeds which will be used to pay real property taxes on the shopping center owned by the Debtor-in-Possession once a plan of reorganization is confirmed.

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: xx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Property is in substantial need of renovation and the proposed sale allows for the satisfaction of secured by and generates \$32,000.00 of proceeds the Debtor-in-Possession can apply to real property taxes.

The Debtor-in-Possession also requests that the 14-day stay of Fed. R. Bankr. P. 6004(g) be waived because the Property is vacant and does not generate any rent. Based on the foregoing, the court waives the 14-day stay for cause.

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 Joseph R. Tedesco the 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 Joseph R. Tedesco, the Debtor in Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Marvin G. Dole and Gail C. Dole or nominee ("Buyer"), the Property commonly known as 1509 Rose Avenue, Modesto, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$82,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 91, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

3. The Debtor in Possession be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The 14-day stay of Fed. R. Bankr. P. 6004(g) is waived.
5. The Debtor-in-Possession is authorized to deposit the net proceeds in an interest-bearing "Debtor-in-Possession" account, pending further order of the court.

7. [14-91633](#)-E-11 SOUZA PROPANE, INC.
FWP-6 David C. Johnston

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FELDERSTEIN
FITZGERALD WILLOUGHBY &
PASCUZZI, LLP FOR DONALD W.
FITZGERALD, TRUSTEE'S
ATTORNEY(S)
6-24-15 [[165](#)]

Final Ruling: No appearance at the July 23, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 11 Trustee, parties requesting special notice, and Office of the United States Trustee on June 24, 2015. By the court's calculation, 29 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Felderstien, Fitzgerald, Willoughby, & Pascuzzi, LLP, counsel ("Applicant") for David D. Flemmer, the Chapter 11 Trustee ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period January 22, 2015 through May 31, 2015. The order of the court approving employment of Applicant was entered on January 31, 2015, Dckt. 95. Applicant requests fees in the amount of \$79,245.50 and costs in the amount of \$1,785.80.

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). 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.

Benefit to the Estate

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including work done on administrative expense motions, asset analysis and recovery, asset marketing and sales, attendance at 341 the meeting, business operations, cash collateral/financing issues, claims issues, lease and executory contract issues, fact investigation, general case administration, work on Debtor's petition, schedules, and statement of financial affairs, reporting, and tax work. The estate has \$215,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and 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.

Administrative Expense Motions: Applicant spent 0.2 hours in this category. Applicant assisted Client with reviewing and responding to correspondence received regarding a damage claim from Enterprise Rent-A-Car.

Asset Analysis & Recovery: Applicant spent 2.0 hours in this category. Applicant dealt with issues such as delinquent accounts receivable, funds held under a bank levy, disputed ownership of tanks at Debtor's bulk plant, Debtors' individual case Schedules, the possibility of filing a proof of claim in Debtors individual case, and general correspondence with IMG Barter credit.

Asset Marketing & Sales: Applicant spent 34.2 hours in this category. Applicant dealt with the Wholesale Agreement and purported right of refusal with Kiva Energy, and spent many hours over phone, email, and in person, discussing day-to-day issues arising out of the marketing of the business.

Attendance at 341 Meeting, Debtor's Conference: Applicant spent 9.7 hours in this category. Applicant prepared for and participated in the questioning at the first meeting of creditors and in continued first meeting.

Business Operations: Applicant spent 6.9 hours in this category. Applicant assisted Client in negotiating with Kiva Energy and Turner Gas Company regarding Debtor's post-petition gas sales, as well as communicating with the Trustee about general day-to-day operational issues that arose.

Cash Collateral/Financing: Applicant spent 43.1 hours in this category. Applicant assisted Client by participating in negotiations with counsel for the Debtor's secured creditors regarding the use of cash collateral and post-petition financing.

Claims Administration& Analysis: Applicant spent 8.3 hours in this category. Applicant assisted Client with reviewing and analyzing UCC filings against the Debtor, as well as with reviewing and analyzing various other claims.

Executory Contracts/Leases: Applicant spent 42.1 hours in this category. Applicant assisted Client with reviewing Debtor's non-residential leases, and performing legal research and analysis regarding the various lease issues as they arose.

Fact Investigation/Development: Applicant spent 0.3 hours in this category. Applicant assisted Client with reviewing post-petition cash transaction spreadsheet and communicating with the Trustee about the same.

General Case Administration: Applicant spent 16.6 hours in this category. Applicant assisted Client with general case matters, such as drafting and filing status reports, maintaining a calendar of deadlines, participating in numerous telephone conferences with the Trustee to discuss general issues as they arose, and corresponding with the Trustee over potential new creditors.

Petition/Schedules/SOFA: Applicant spent 2.3 hours in this category. Applicant assisted Client with reviewing case background information including schedules, pleadings, and related court rulings.

Plan of Reorganization/Disclosure Statement: Applicant spent 2.4 hours in this category. Applicant assisted Client with preparing and participating in a meeting with the Trustee regarding plan structure, alternatives, strategy, and lease issues..

Professional Employment Applications: Applicant spent 13.3 hours in this category. Applicant assisted Client with drafting, filing, and serving the application to employ Felderstien, Fitzgerald, Willoughby, & Pascuzzi, LLP, as well as others employed in the administration of the case.

Reporting (Including Monthly, Quarterly, and other Accounting Reports): Applicant spent 4.3 hours in this category. Applicant assisted Client by drafting disclaimer language for the Trustee to use in his monthly operating reports, as well as reviewing, filing, and serving the Trustee's status conference reports.

Tax Matters: Applicant spent 0.1 hours in this category. Applicant assisted Client with reviewing correspondence regarding the Debtor's tax returns.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Steven H. Felderstein	0.4	\$595.00	\$238.00
Donald W. Fitzgerald	103.4	\$495.00	\$51,183.00
Jennifer E. Niemann	57.7	\$395.00	\$22,791.50
Holly A. Estioko	1.9	\$350.00	\$665.00
Karen L. Widder	22.4	\$195.00	\$4,368.00
Total Fees For Period of Application			\$79,245.50

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,785.80 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Delivery/Messenger Services		\$50.60
Document Retrieval		\$77.57
Photocopies		\$677.80
Postage		\$394.45
Telephone		\$59.27
Telephonic Court Appearances		\$97.00
On-Line Legal Research		\$429.11
Total Costs Requested in Application		\$1,785.80

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of \$ pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee under the confirmed plan from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

Costs and Expenses

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as on-line access to bankruptcy and state law and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include: (1) Telephone (\$59.27); (2) Telephonic Court Appearances (\$97.00); (3) On-line Legal Research (\$429.11) and; (4) Document Retrieval/PACER (\$77.57) . No information has been provided to the court by Applicant that these cost items were extraordinary expenses than one would expect for Applicant providing professional services to Client to be changed in additional to the professional fees requested as compensation. The court disallows \$626.95 of the requested costs.

The First Interim Costs in the amount of \$1,158.85 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case under the confirmed Plan.

Applicant is allowed, and the Trustee under the confirmed plan is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$ 79,245.50
Costs and Expenses	\$ 1,158.85

pursuant to this Application as First Interim Fees pursuant to 11 U.S.C. § 331 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 Felderstien, Fitzgerald, Willoughby, & Pascuzzi, LLP ("Applicant"), Attorney for the Trustee having been presented

to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Felderstien, Fitzgerald, Willoughby, & Pascuzzi, LLP is allowed the following fees and expenses as a professional of the Estate:

Felderstien, Fitzgerald, Willoughby, & Pascuzzi, LLP,
Professional Employed by Trustee

Fees	\$ 79,245.50
Costs and Expenses	\$ 1,158.85

IT IS FURTHER ORDERED that the costs of \$626.95 are not allowed by the court.

The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee under the confirmed plan is authorized to pay ninety percent (90%) of the fees and all of the costs and expenses, allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case prior to confirmation of a Plan.

8. [14-91334-E-7](#) CATHERINE BENDER
JB-1 Jason Borg

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
6-19-15 [[18](#)]

Final Ruling: No appearance at the July 23, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Creditor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 19, 2015. By the court's calculation, 34 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Capital One Bank (USA), N.A. ("Creditor") against property of Catherine T. Bender ("Debtor") commonly known as 5461 Boardwalk Way, Riverbank, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,477.69. An abstract of judgment was recorded with Stanislaus County on July 3, 2014, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$249,900.00 as of the date of the petition. The unavoidable consensual liens total \$302,539.49 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$14,000.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) 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 Capitol One Bank (USA), N.A., California Superior Court for Stanislaus County Case No. 2002726, recorded on July 3, 2014, Document No. 2014-0045416-00, with the Stanislaus County Recorder, against the real property commonly known as 5461 Boardwalk Way, Riverbank, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

9. [15-90439](#)-E-7 THOMAS/CINDY BISSON
MLP-1 Martha Lynn Passalacqua

MOTION TO AVOID LIEN OF
STANISLAUS CREDIT CONTROL
SERVICE, INC.
6-26-15 [[14](#)]

Tentative Ruling: The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditors, Chapter 7 Trustee, and Office of the United States Trustee on June 26, 2015. By the court's calculation, 27 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). The 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. At the hearing -----.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Stanislaus Credit Control Service, Inc. ("Creditor") against property of Thomas and Cindy Bisson ("Debtor") commonly known as 827 Walnut Way, Modesto, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$6,167.56. An abstract of judgment was recorded with Stanislaus County on May 7, 2014, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$348,272.00 as of the date of the petition. The

unavoidable consensual liens total \$228,393.84 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$119,878.16 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 this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided in its entirety 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 the Debtor(s) 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 Stanislaus Credit Control Service, Inc., California Superior Court for Stanislaus County Case No. 2002480, recorded on May 7, 2014 Document No. 2014-0028470 with the Stanislaus County Recorder, against the real property commonly known as 827 Walnut Way, 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.

10. [15-90240-E-7](#) MICHAEL/LEANN RESH
UST-2 Robert D. Rodriguez

MOTION TO DISMISS CASE PURSUANT
TO 11 U.S.C. SECTION 707(B)
6-8-15 [[24](#)]

Final Ruling: No appearance at the July 23, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 8, 2015. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss Pursuant to 11 U.S.C. Section 707(b) is granted and the case is dismissed.

Tracy Hope Davis, the United States Trustee, filed the instant Motion to Dismiss pursuant to 11 U.S.C. § 707(b) on June 8, 2015. Dckt. 24. The United States Trustee makes the following arguments:

1. The Debtors' Chapter 7 case is presumptively abusive under 11 U.S.C. § 707(b)(1)

Section 707(b)(1) provides for dismissal of a Chapter 7 case upon a finding of "abuse" by an individual debtor with primarily consumer debts. 11 U.S.C. § 707(b)(1). The United States Trustee asserts that a review of Debtors Schedules D (\$0), E (\$2,470 owed to the Internal Revenue Service), and F (\$49,952.60 owed primarily on charge cards, but some on personal loans, and \$14,007.00 on an education loan), suggest that the Debtors' have primarily consumer debt. The case should therefore be dismissed, pursuant to 11 U.S.C. § 707(b)(1).

2. The Debtors' Chapter 7 case is presumptively abusive under 11 U.S.C. § 707(b)(2)(A)

The United States Trustee asserts that the Debtors' stated that their monthly disposable income is \$899.00. *See* Dckt. 16, Means Test, Line 39c. The UST alleges that given the fact that the Debtors' monthly income of \$899.00

exceeds the statutory threshold of \$207.92, the presumption of abuse is triggered. See 11 U.S.C. § 707(b)(2)(A). The presumption of abuse arises, and the case should be dismissed.

3. The Debtors' Chapter 7 case is an abuse under 11 U.S.C. § 707(b)(3)

The Debtors' have the ability to repay all of their general unsecured debt. With the Debtors' general unsecured debts totaling \$49,952.60, under the terms of a hypothetical 60-month, Chapter 13 plan, the debtors would have the ability to pay a 100% dividend to the general unsecured claims in this case.

Therefore, the Trustee states when evaluating the "totality of the circumstances," of the Debtors' financial situation demonstrates abuse. The Debtors have the ability to repay 100% of their general unsecured debts, totaling \$49,952.60, under a hypothetical Chapter 13 Plan.

4. The Debtors' Chapter 7 case is abusive under 11 U.S.C. § 707(b)(7)

The Trustee asserts that in California, the median family income for a household of 4 is \$78,15.00. Debtors' state annualized CMI of \$90,600.00, thus exceeding the amount permissible. 11 U.S.C. § 707(b)(7). Therefore, cause exists for dismissing the case.

APPLICABLE LAW

11 U.S.C. § 707(b) allows for the court on its own motion or on motion by a party in interest to dismiss a case when there is cause. Specifically, 11 U.S.C. § 707(b) provides, in relevant part:

(b)(1) After notice and a hearing, the court, on its own motion or on a motion by the United States Trustee, trustee in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter . . .

(2)(A)(I) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of --

(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or \$7,475, whichever is greater; or

(II) \$12,475 . . .

(B)(I) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances that justify additional expenses or adjustment of current monthly income for which there is no reasonable alternative.

(ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide --

(I) documentation for such expense or adjustment to income; and

(II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (I) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of --

(I) 25 percent of the debtor's nonpriority unsecured claims, or \$7,475, whichever is greater; or

(II) \$12,475 . . .

(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(I) does not arise or is rebutted, the court shall consider --

(A) whether the debtor filed the petition in bad faith; or

(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

DISCUSSION

The United States Trustee's points are well-taken.

With annualized income of \$90,600.00, Debtors' appear to have monthly disposable income of \$899.00 which exceeds the statutory threshold of \$207.92 and thus triggers the presumption of abuse. Debtors' have available disposable income to repay creditors. Additionally, and of greater concern, Debtors' obligations are primarily consumer debts.

The Debtors have failed to file a response to the Motion. The Debtor has failed to provide any evidence, testimony, or argument to rebut the presumption of bad faith, which after reviewing the Debtors' finances, is attached pursuant to 11 U.S.C. § 707(b).

Furthermore, the presumption of abuse arises in this case under 11 U.S.C. § 707(b)(2). The totality of the circumstances of the Debtor's financial situation demonstrates abuse under 11 U.S.C. § 707(b)(3)(B). Such abuse warrants dismissal of the case under 11 U.S.C. § 707(b)(1).

Accordingly, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 7 case filed by the United States Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

11. [15-90544-E-7](#) GUSTAVO/SARA ARAGON MOTION TO COMPEL ABANDONMENT
JDP-1 Christian J. Younger 6-19-15 [[11](#)]

Final Ruling: No appearance at the July 23, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on June 19, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Abandon Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Motion to Abandon Property is granted.
--

After notice and hearing, the court may order the 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(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 Gustavo Aragon and Sara Maria Aragon ("Debtor") requests the court to order the Trustee to abandon property commonly known as:

1. Business name "Arlu Construction;"
2. The business checking account with Bank of America with an approximate balance of \$8,812.96;
3. accounts receivable owed to the business in the amount of \$3,000.00;
4. a 2004 Ford F150 Super Cab truck worth \$3,811.00;

5. 2004 Ford F250 Super Duty Crew Cab Truck worth \$7,254.00; and
6. equipment used in the business (which includes one generator, one jack hammer, one utility trailer, 5 ladders, two air compressors and miscellaneous hand and power tools) worth \$5,750.00

(the "Property"). This Property is exempted in the totality of its value pursuant to California Code of Civil Procedure § 703.140(b)(5) and (6) as listed on the Debtor's Schedule C. Dckt. 1. The Declaration of Debtor Gustavo Aragon has been filed in support of the motion.

The court finds that the exemptions claimed in the Property exceeds the value of the Property, and that there are negative financial consequences to the Estate 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.

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 Abandon Property filed by Gustavo Aragon and Sara Maria Aragon ("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 that the Property identified as:

- I. Business name "Arlu Construction;"
- II. The business checking account with Bank of America with an approximate balance of \$8,812.96;
- III. accounts receivable owed to the business in the amount of \$3,000.00;
- IV. a 2004 Ford F150 Super Cab truck worth \$3,811.00;
- V. 2004 Ford F250 Super Duty Crew Cab Truck worth \$7,254.00; and
- VI. equipment used in the business (which includes one generator, one jack hammer, one utility trailer, 5 ladders, two air compressors and miscellaneous hand and power tools) worth \$5,750.00

and listed on Schedule B by Debtor is abandoned to Gustavo Aragon and Sara Maria Aragon by this order, with no further act of the Trustee required.

12. [15-90545](#)-E-7 ALBERT/VALERIE BURCIAGA MOTION TO AVOID LIEN OF CAPITAL
CJY-1 Christian J. Younger ONE BANK, N.A.
6-9-15 [[9](#)]

Final Ruling: No appearance at the July 23, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditors, Chapter 7 Trustee, and Office of the United States Trustee on June 9, 2015. By the court's calculation, 44 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Capital One Bank, N.A. ("Creditor") against property of Albert and Valerie Burciaga ("Debtor") commonly known as 4661 Sunnyway Drive, Turlock, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,917.12. An abstract of judgment was recorded with Stanislaus County on December 23, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$335,000.00 as of the date of the petition. The unavoidable consensual liens total \$284,633.74 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided in its entirety 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 the Debtor(s) 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 Capital One Bank, N.A., California Superior Court for Stanislaus County Case No. 682919, recorded on December 23, 2013, Document No. 2013-0104984 with the Stanislaus County Recorder, against the real property commonly known as 4661 Sunnyway Drive, Turlock, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

13. [14-90249-E-7](#) SCOTT MYERS
TJP-2 Thomas J. Polis

MOTION TO DISMISS CASE
6-26-15 [[90](#)]

Tentative Ruling: The Motion to Dismiss the Bankruptcy Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, parties requesting special notice, creditors, and Office of the United States Trustee on June 26, 2015. By the court's calculation, 27 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss the Bankruptcy Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion to Dismiss the Chapter 7 Bankruptcy Case is continued to 10:30 a.m. on September 3, 2015..</p>

This Motion has been filed by Scott Myers ("Debtor") to dismiss this case. The Debtor seeks to have the case dismissed pursuant to 11 U.S.C. § 707(a) because the cost of litigating IMH financial Corporation's Adversary Proceeding No. 14-09026 has become too costly. While the Debtor received his discharge on June 3, 2014, the Adversary Proceeding seeks to revoke the Debtor's discharge under § 727(d). The Debtor states that he has obtained the consent of IMH Financial Corporation as to the dismissal. The Debtor asserts that no creditor would be prejudiced because they would be able to pursue their rights outside the bankruptcy.

Additionally, the Debtor argues that the case should be dismissed without prejudice because there are no extenuating circumstances and there have been no findings that Debtor engaged in any bad faith that has caused prejudiced.

IMH FINANCIAL CORPORATION RESPONSE

IMH Financial Corporation filed a response on July 7, 2015. Dckt. 96. IMH Financial Corporation states that it does not oppose the Debtor's requests to dismiss the bankruptcy case, provided that the Debtor's discharge is revoked concurrent with or prior to the dismissal of the Debtor's case so that IMH Financial Corporation may pursue any and all post-judgment collection and general execution remedies available. IMH Financial Corporation states that it does not take any position over whether a bar on the Debtor refiling is proper.

TRUSTEE'S OPPOSITION

Gary Farrar, the Chapter 7 Trustee, filed a conditional opposition on July 9, 2015. Dckt. 98. The Trustee states that he and his professions have incurred fees and expenses that will not be compensated if the case is dismissed and the estate has no funds to pay those fees. The Trustee states that the dismissal should be conditioned on paying the fees and expenses. The Trustee asserts that the administrative claims to date are approximately \$31,000.00.

The Trustee states that IMH Financial Corporation is the largest creditor who does not oppose the Motion to Dismiss as long as the Debtor's discharge is revoked. The Trustee also states that Pacific Western Bank, the second largest creditor, has notified the Trustee that it does not oppose the Debtor's Motion.

DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's conditional opposition on July 16, 2015. Dckt. 101. The Debtor states that the Trustee's counsel does not provide any detail or explanation of the fees and costs incurred. Additionally, the Debtor states that the Trustee's counsel has not provided admissible evidence of how the \$30,460.94 of fees and costs in any way benefitted the estate. The Debtor points to the fact that only two sets of uploaded documents by the Chapter 7 Trustee's counsel has been filed. Dckt. 25, 26, 27, 28, and 29 (Motion to Employ) and Dckt. 98, 99, and 100 (Opposition to the Instant Motion). The Debtor argues that the Trustee's counsel has failed to meet the requirements of 11 U.S.C. § 330.

DISCUSSION

11 U.S.C. § 707(a) provides the following:

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including--

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees or charges required under chapter 123 of title 28; and

(3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

When determining whether a dismissal should be with or without prejudice, 11 U.S.C. § 349 states the following:

(a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

Review of Activity in Case

A review of this case shows that the main parties in both the bankruptcy case and the adversary proceeding have been the Debtor and IMH Financial Corporation. The case was filed on February 24, 2015 and the Debtor received his discharge on June 3, 2014. Dckt. 34.

The Trustee performed a Meeting of Creditors on May 1, 2014 which was continued due to Debtor and Debtor's counsel not appearing. The Continued Meeting of Creditors took place on May 29, 2014, where once again Debtor and Debtor's counsel did not appear. The next Continued Meeting of Creditors took place on June 26, 2014, where once again the Debtor and Debtor counsel did not appear. Finally, on July 24, 2014, the continued Meeting was held and concluded and the Trustee issued his Notice of Assets. The only substantive motion filed by the Trustee was the Motion to Employ Trustee's counsel. Dckt. 25. These were the only actions taken by the Trustee as reflected by the case docket.

The remaining matters to arise in the case came from IMH Financial Corporation in the form of Motion for Examination and for Production of Documents (Dckt. 19), Objection to Debtor's Claim of Exemptions (Dckt. 38), Motion to Dismiss Case (Dckt. 44), Objection to Debtor's Claim of Exemptions (Dckt. 54), and Motion to Dismiss the Case (Dckt. 60).

Reviewing the Debtor's schedules, it appears that the Debtor has only two assets which may have value for the estate: (1) 2009 Mercedes Benz 180C (\$17,500.00) and (2) Debtor's interest in Father's Trust (\$10,000.00). However, the Trustee does not provide any evidence nor is it apparent from the docket that the Trustee has taken any action in order to liquidate these assets for the benefit of the estate.

This case has been much more challenging for the Trustee due to the Debtor's conduct in moving assets out of the country. As asserted by IMH,

"Movant asserts that the case should be dismissed based on the following grounds:

A. Debtor demonstrates in his Schedules and Statements that he has only minimal assets in the United States. In Schedule A, Debtors lists that he has no interest in real property. In Schedule B, Debtor claims he owns only \$89,750.00 in personal property, but acknowledges that artwork and furniture valued at \$55,000.00 may be located either in California or at Debtor's address in Germany. Debtor later admitted under oath that the artwork valued at \$45,000.00 is actually located in Germany. Further, since Debtor's California address is listed online as being only 800 square feet, it is plausible that most of the furniture is in Germany, as well. This leaves only \$34,750.00 in personal property in the United States, consisting of a car valued at \$17,500.00, a trust account with \$10,000.00, a \$5,000.00 watch, and \$1,000.00 in clothing.

B. Debtor's testimony during his Rule 2004 Examination demonstrates that many assets Debtor claimed were in the United States are actually in Germany, leaving de minimus property in the U.S. Debtor further stated that he has 3,800.00 in a German bank account, which is about \$5,100.00, not the \$500.00 as stated on his Schedules. Debtor's testimony also disclosed Debtor's intent to return to Germany after he discharges his debts. Debtor's wife and children still reside in Germany, and Debtor pays rent of about 3,900.00 (\$5,250.00) for his family's residence in Germany, in addition to expenses for that residence. In contrast, Debtor pays \$590 in monthly rent for the 800 square-foot property in Modesto. Additionally, Debtor transferred about \$10,000.00 in funds held by one of his trusts in the United States to Germany and is using those funds for living expenses, all after filing the instant case. Movant alleges that Debtor is merely renting a residence in Modesto to create the facade of eligibility to file bankruptcy here and return to Germany after he has discharged his debt to U.S. creditors."

Civil Minutes, Dckt. 85. This information indicates that this is a significantly complex Chapter 7 case, well beyond the norm.

One of the most basic, and easiest, duties of a bankruptcy debtor and his counsel is to attend the First Meeting of Creditors. All debtors seeking relief under the Bankruptcy Code have a duty to "appear and submit to examination under oath at the meeting of creditors" (11 U.S.C. § 343), to "cooperate with the trustee as necessary" to enable him or her to perform his or her duties as trustee (11 U.S.C. § 521(a)(3)), and to "surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate." 11 U.S.C. § 521(a)(4). See *In re Lebbos*, No. 06-22225-D-7, 2007 WL 2859781, at *3 (Bankr. E.D. Cal. Sept. 24, 2007). The Supreme Court has emphasized its concern with keeping the bankruptcy process moving by insisting on firm, explicit deadlines. See *Taylor v. Freeland & Fronz*, 503 U.S. 638, 644, 112 S.Ct. 1644. "The purpose of the creditors meeting is to question the debtor about his debts, and to examine him about his claimed exemptions. Where more information must be gathered, the meeting can be adjourned to a definite time; there is no limit on the number of adjournments." See *id.*

The failure to attend such a meeting often signals a less than good faith motive in filing a bankruptcy case or in the prosecution of the case. Such failure significantly impacts the credibility of the debtor and the information provided by Debtor under penalty of perjury on the Schedules and Statement of Financial Affairs. Such inaction can cause a trustee to expend otherwise unnecessary time and expense in beginning investigations as to what assets may not have been disclosed or what "game" is afoot in the case.

Though not stated in the Opposition, in Trustee's counsel's declaration it is stated that counsel has incurred fees and costs totaling \$30,460.94 in representing the Trustee. No billing statement, task billing analysis, or other description of what legal services were provided for a \$30,000.00+ attorneys' fee bill in this case.

A review of the Docket in this case does not show pleadings by which the court could see that such fees were "obviously" incurred.

Dismissal of Case and Revocation of Discharge

The Debtor requests that the case be dismissed, and as agreed with IMH, that the discharge be "vacated." Rather than filing a points and authorities, Debtor has improperly conflated the motion with a points and authorities, interspersing extensive citations and quotations with the "grounds" which must be stated with particularity in the motion. Fed. R. Bankr. P. 9014. This makes the "motion" portion much more difficult to read.

In reviewing a request by the debtor to dismiss a Chapter 7 case, the court considers the interests of creditors, as well as that of the Debtor. *Dionne v. Simmons (In re Simmons)*, 200 F.3d 738, 743 (11th Cir. 2000). Debtor asserts that creditors will not be prejudiced because they will retain their rights against the Debtor and that Debtor agrees that the discharge in this case may be "vacated." The Chapter 7 Trustee does not expressly address this issue, but does state that of the \$274,370,260 in general unsecured claims, creditors holding \$275,654,059 in general unsecured claims have affirmatively stated that they do not oppose the dismissal. Implicit in this is an indication by the Chapter 7 Trustee that he does not believe that dismissal of this case, with the revocation of the discharge, would not be of prejudice to creditors.

The Bankruptcy Code expressly addresses the effect of a dismissal in 11 U.S.C. § 349(a)(b) provides that, unless the court orders otherwise, automatically:

- (1) reinstates proceedings or custodianships which were superceded under 11 U.S.C. § 543;
- (2) reinstates any transfer avoided under 11 U.S.C. §§ 522, 544, 545, 547, 548, 549, or 724(a), or preserved under 11 U.S.C. §§ 510(c)(2), 522(i)(2), or 551;
- (3) vacates any order, judgment, or transfer ordered under 11 U.S.C. §§ 522(i)(1), 542, 550, or 553; and
- (4) reverts property of the estate in the entity which held it immediately before the commencement of this case.

This Code section does not address any discharge entered in the bankruptcy case.

Once entered, 11 U.S.C. § 727(d) addresses when a discharge may be revoked. On request of the trustee, creditor, or U.S. Trustee, the court shall revoke a discharge if,

- (1) The discharge was obtained through fraud;
- (2) Debtor knowingly and fraudulently failed to report property of the estate to the trustee;
- (3) Debtor failed to obey orders of the court to respond to material questions or testify; and
- (4) Debtor failed to satisfactorily explain a material misstatement in an audit pursuant to 28 U.S.C. § 586(f), or provide the documents requested for such audit pursuant to 28 U.S.C. § 586(f).

Here, creditor IMH filed a complaint to revoke the Debtor's discharge pursuant to 11 U.S.C. § 727(d). It is alleged that (1) \$45,000 of artwork is located in Germany, (2) \$10,000 of household goods are located in Germany, (3) Debtor's children do not live with him in California, and (4) post-petition Debtor transferred \$10,000 in monies of the estate from an account in the United States to an account in Germany.

It appears that in addition to dismissing the bankruptcy case, Debtor also wants to enter into a stipulation for the dismissal of the Adversary Proceeding, with said stipulation providing that an order be entered revoking Debtor's discharge, with that revocation being without prejudice to the Debtor filing a new bankruptcy case and obtaining a discharge of debts in that new bankruptcy case.

The Bankruptcy Code does not provide for a debtor requesting a revocation of the discharge. That power is limited to creditors, trustee's, and the U.S. trustee. 11 U.S.C. § 727(d); see *In re Gomez*, 456 B.R. 574 (Bankr. MD Fla. 2011), and *In re McQuality*, 5 BR 302 (Bankr. S.D. NY 1980).

Thus, it is necessary for the court to set this matter for further hearing and the filing of related motions:

- a. On or before August 3, 2015, Debtor and IMH shall file, notice all creditors and parties in interest, and set for hearing at 10:30 a.m. on September 3, 2015, a motion to approve settlement of Adversary Proceeding and entry of order revoking the discharge entered in this case.
- b. On or before August 3, 2015, the Chapter 7 Trustee shall file and serve any motions for payment of administrative expenses by the Debtor as a condition of the dismissal of this case. Such motion shall be set for hearing at 10:30 a.m. on September 3, 2015, a motion to approve settlement of Adversary Proceeding and entry of order revoking the discharge entered in this case.

The hearing on this Motion is continued to 10:30 a.m. on September 3, 2015, a motion to approve settlement of Adversary Proceeding and entry of order revoking the discharge entered in this case.

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

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

The Motion to Dismiss filed by Scott Myers 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 Dismiss is continued to 10:30 a.m. on September 3, 2015.

IT IS FURTHER ORDERED that:

- A. On or before August 3, 2015, Debtor and IMH shall file, notice all creditors and parties in interest, and set for hearing at 10:30 a.m. on September 3, 2015, a motion to approve settlement of Adversary Proceeding and entry of order revoking the discharge entered in this case.
- B. On or before August 3, 2015, the Chapter 7 Trustee shall file and serve any motions for payment of administrative expenses by the Debtor as a condition of the dismissal of this case. Such motion shall be set for hearing at 10:30 a.m. on September 3, 2015, a motion to approve settlement of Adversary Proceeding and entry of order revoking the discharge entered in this case.

14. [14-90558-E-7](#) KENNETH/TRACYE ASSENG
HCS-5 Charles L. Hastings

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF
HERUM\CRABTREE\SUNTAG FOR DANA
A. SUNTAG, TRUSTEE'S
ATTORNEY(S)
6-25-15 [[52](#)]

Final Ruling: No appearance at the July 23, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 25, 2015. By the court's calculation, 28 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Herum\Crabtree\Suntag, the Attorney ("Applicant") for Eric J. Nims the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period October 19, 2014 through May 14, 2014. The order of the court approving employment of Applicant was entered on November 24,, 2014, Dckt. 21. Applicant requests fees in the amount of \$4,571.50 and costs in the amount of \$83.22.

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). 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.

Benefit to the Estate

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According 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?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including drafting, reviewing and revising legal documents, conducting research, corresponding with interested parties, case preparation, and engaging in settlement agreement regarding an exemption dispute. The estate has \$6,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Legal Case Administration: Applicant spent 7.30 hours in this category. Applicant assisted Client with conducting a conflict of interest check, preparing HCS's employment application, reviewing the Debtors' schedules and providing legal advice to the Trustee, preparing two stipulations to extend objection to exemption deadline, reviewing Debtors' motion to compel abandonment, corresponding with interested parties, preparing the instant motion, and attending court hearing.

Compromise of Exemption Dispute: Applicant spent 12.90 hours in this category. Applicant corresponded telephonically and via e-mail with interested parties, conducted legal research regarding the exemption of matured life insurance policy, review and revised legal documents, prepared for and attended a hearing, and drafted a settlement agreement, a motion to compromise, and supporting documents.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Dana A. Suntag, Esq.	3.1	\$325.00	\$1,007.50

Wendy a. Locke, Esq.	15	\$225.00	\$3,375.00
Audrey Dutra, paralegal.	2.1	\$90.00	\$189.00
Total Fees For Period of Application			\$4,571.50

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$83.22 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage	HCS Employment Application	\$2.76
Postage	Motion to Compromise	\$26.86
Postage	HCS Fee Application	\$18.50
Copying Cost	HCS Employment Application	\$3.20
Copying Cost	Motion to Compromise	\$18.90
Copying Cost	HCS Fee Application	\$13.00
Total Costs Requested in Application		\$83.22

Applicant seeks to be paid a single sum of \$2,900.00 for its fees and expenses incurred for the Client. First and Final Fees and Costs in the amount of \$2,900.00 are approved pursuant to 11 U.S.C. § 330, and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees, Costs and Expenses - \$2,900.00

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

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

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

The Motion for Allowance of Fees and Expenses filed Herum\Crabtree\Suntag ("Applicant"), Attorney having been

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

IT IS ORDERED that Herum\Crabtree\Suntag is allowed the following fees and expenses as a professional of the Estate:

Herum\Crabtree\Suntag, Professional Employed by Trustee

Fees, Costs and Expenses	\$2,900.00
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IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

15. [15-90558-E-7](#) CHARLES/GRACE DICKINSON MOTION TO COMPEL ABANDONMENT
BSH-1 Brian S. Haddix 6-30-15 [[9](#)]

Tentative Ruling: The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on June 30, 2015. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. At the hearing -----
-----.

The Motion to Abandon Property is granted.

After notice and hearing, the court may order the 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(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 Charles John Dickinson and Grace Carmen Dickinson ("Debtor") requests the court to order the Trustee to abandon property commonly known as:

Asset	Value	Encumbrances	Exemption
5008 Horsetail Falls Ct., Riverbank, California	\$290,000.00	\$194,951.00	C.C.P. § 704.730 (\$95,049.00)
Cash on Hand	\$9.00		C.C.P. § 704.070 (\$6.75)
Bank of America Checking, Account Ending in 8990	\$0		
Wells Fargo Savings, Account Ending in 6243	\$0.00		
Household Goods and Furnishings	\$880.00		C.C.P. § 704.020 (\$880.00)
Debtor's Personal Clothing	\$100.00		C.C.P. § 704.020 (\$100.00)
Men's Watch	\$600.00		C.C.P. § 704.040 (\$600.00)
Women's Engagement and Wedding Ring	\$5,000.00		C.C.P. § 704.040 (\$5,000.00)
Women's Ring	\$50.00		C.C.P. § 704.040 (\$50.00)
Women's Earrings	\$300.00		C.C.P. § 704.040 (\$300.00)
Costume Jewelry	\$35.00		C.C.P. § 704.040 (\$25.00)
Dependent Child Term Life Insurance (through Sysco Employer) Face Value = \$10,000.00	\$0.00		
Voluntary AD&D Insurance (through Sysco Employer) (\$500,000.00)	\$0.00		

Term Life Insurance Policy (throw Sysco Employer) Husband is Insured, Face Value = \$428,000.00	\$0.00		
401(k) Retirement Savings Account (through Sysco Employer)	\$15,590.47		C.C.P. § 704.115(a)(1) and (2), (b) - \$15,590.47

(the "Property").

The Declaration of David Van Horn has been filed in support of the motion and values the Property to be the stated above values.

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 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.

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 Abandon Property filed by Charles John Dickinson and Grace Carmen Dickinson ("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 that the Property identified as:

<u>Asset</u>
5008 Horsetail Falls Ct., Riverbank, California
Cash on Hand
Bank of America Checking, Account Ending in 8990
Wells Fargo Savings, Account Ending in 6243
Household Goods and Furnishings
Debtor's Personal Clothing
Men's Watch
Women's Engagement and Wedding Ring
Women's Ring

Women's Earrings
Costume Jewelry
Dependent Child Term Life Insurance (through Sysco Employer) Face Value = \$10,000.00
Voluntary AD&D Insurance (through Sysco Employer) (\$500,000.00)
Term Life Insurance Policy (throw Sysco Employer) Husband is Insured, Face Value = \$428,000.00
401(k) Retirement Savings Account (through Sysco Employer)

and listed on Schedule A and B by Debtor is abandoned to Charles John Dickinson and Grace Carmen Dickinson by this order, with no further act of the Trustee required.

16. [15-90569](#)-E-7 MARY MCCALLUM
Colleen F Van Egmond

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-6-15 [[20](#)]

Final Ruling: No appearance at the July 23, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Mary Elizabeth McCallum ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on July 6, 2015. The court computes that 17 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$30.00 due on June 22, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.
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The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the case shall proceed in this court.

17. [15-90483](#)-E-7 MARION LUNDBERG
SCB-2 Michael R. Germain

MOTION TO EMPLOY SUGAR PINE
REALTY, INC. AS REALTOR(S)
6-25-15 [[18](#)]

Final Ruling: No appearance at the July 23, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, creditors, and Office of the United States Trustee on June 25, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Employ has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Employ is granted.

Chapter 7 Trustee, Gary Farrar, seeks to employ Realtor Brenda Ernst of Sugar Pine Realty, Inc., pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Counsel to assist the Trustee in the marketing and sale of real property commonly known as 19429 Michigan Drive, Twain Harte, California (the "Property").

The Trustee argues that Realtor's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present through the marketing and sale of the Property and to settle any liens held on the Property.

Brenda Ernst, a realtor of Sugar Pine Realty, Inc., testifies that she is representing the Trustee in marketing and selling the Property. Ms. Ernst testifies she and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors,

creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Sugar Pine Realty, Inc. as realtor for the Chapter 7 estate on the terms and conditions set forth in the Motion. FN.1. The approval of the sale commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

FN.1. Under normal circumstances, the failure of the Trustee to provide a copy of the employment agreement would be grounds to deny the Motion or, at the very least, continue the hearing to allow the Trustee to file a supplemental copy of the agreement. However, the Motion specifically states that the compensation that would be sought pursuant to 11 U.S.C. § 330 would be "six percent of the gross sales price." As such, the court approves the employment on those terms only.

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 Employ filed by 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 Employ is granted and the Chapter 7 Trustee is authorized to employ Sugar Pine Realty, Inc. as realtor for the Chapter 7 Trustee for the marketing and sale of the real property commonly known as

19429 Michigan Drive, Twain Harte, California, on the terms and conditions as set forth in the Motion and this order.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that the compensation shall not exceed 6% of the gross sales price of the Property.

18. [14-91197-E-7](#) NICOLAS PEREZ AND MARIA MOTION TO DISMISS CASE
TOG-1 MOSQUEDA DEPEREZ 6-9-15 [[75](#)]

Tentative Ruling: The Motion to Dismiss the Bankruptcy Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Joint Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors and Office of the United States Trustee on June 9, 2015. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss the Bankruptcy Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss the Chapter 7 Bankruptcy Case is denied.

This Motion has been filed by Maria Mosqueda DePerez to dismiss this case. Debtor asserts that the case should be dismissed pursuant to 11 U.S.C. § 707(a) because the Debtors are not eligible for Chapter 7. The Debtor states that according to Schedule I, Debtor has disposable income of \$248.50 per month which exceeds eligibility for Chapter 7.

BACKGROUND

On August 28, 2014, Nicolas Perez and Maria Mosqueda DePerez ("Debtors") commenced this voluntary Chapter 7 case ("Chapter 7 Case") in pro se. Dckt. 1. No attorney signed the Petition, and a Non-Bankruptcy Petition Preparer, Anna Gonzales, is reported to have been paid \$125.00 for preparing

the Petition, Schedules, Statement of Financial Affairs, and supporting documents. *Id.* at 3, 30, 34, and 41.

The Debtors provide the following information under penalty of perjury in their Petition, Schedules, and Statement of Financial Affairs:

- A. They both reside at 1613 7th Street, Hughson, California ("7th Street Property"). Petition, *Id.* at 1.
- B. Debtors own only one piece of real property, the 7th Street Property. Schedule A, *Id.* at 10
- C. Debtors have only one creditor with a secured claim, "Wells Fargo Mortgage," which claim is secured by the 7th Street Property. Schedule D, *Id.* at 15.
- D. Debtor Nicolas Perez is unemployed and has \$0.00 average monthly income. Schedule I, *Id.* at 26.
- E. Debtor Maria DePerez is employed, within monthly gross income of \$2,560.00. *Id.*
- F. No other income is listed by the Debtors. *Id.*
- G. Debtors list having \$26,774 in income in 2013 and \$25,980 in income in 2012. Though the bankruptcy case was filed August 27, 2014, no income information is provided for 2014. Statement of Financial Affairs ("SOFA") Question 1, *Id.* at 31-32.

On the Chapter 7 Statement of Currently Monthly Income, Debtors state that their income for the six months prior to the commencement of the case is an annualized amount of \$25,440. *Id.* at 42-44. Further, that this is less than the applicable median income of \$29,685 for a family of three persons and the presumption of abuse does not arise. *Id.*

After the First Meeting of Creditors, the Chapter 7 Trustee issued a Notice of Assets in this case. November 5, 2014 Docket Entry Report. On December 12, 2015, the Trustee filed a motion to employ counsel. Dckt. 15. On November 26, 2014, Modesto Irrigation District filed a Motion to Extend Deadlines for the filing of objections to discharge and to determine nondischargeability of debt. Dckt. 18. That Motion alleges that Ms. DePerez held title to real property commonly known as 4904 Ebbett Way which was transferred to a Jose Luis Moctezum on June 19, 2013 for no consideration. No disclosure of this the Ebbett Way Property was made in the Schedules or the transfer disclosed on the Statement of Financial Affairs.

The Chapter 7 Trustee filed his own motion to extend the deadline to objection to discharge. Dckt. 27. The Trustee's motion further alleges that Debtor DePerez testified at the first meeting of creditors that the Ebbett Way property had been transferred to her brother-in-law approximately fourteen months prior to the commencement of the Debtor's Chapter 7 case.

The Chapter 7 Trustee then filed two adversary proceedings to recover real property transferred by Debtors to third parties. In Adversary Proceeding

14-9030 the Chapter 7 Trustee sought to avoid the transfer of the Ebbett Way property. On March 11, 2015, the Chapter 7 Trustee filed a notice of dismissal of the Adversary Proceeding, stating, "With the assistance of new counsel, Thomas Gillis, secured the voluntary transfer of the real property [Ebbett Way] back to Maria Mosqueda DePerez..." 14-9030, Dckt. 16.

In the second adversary proceeding the Chapter 7 Trustee sought to avoid the transfer by Debtors of the real property commonly known as 136 Algen Avenue." 14-9031. In this second Adversary Proceeding the Chapter 7 Trustee filed a dismissal, stating, "With the assistance of new counsel, Thomas Gillis, secured the voluntary transfer of the real property [Ebbett Way] back to Maria Mosqueda DePerez..." 14-9031, Dckt. 16.

On December 17, 2014, the Chapter 7 Trustee filed a motion to employ accountants. Dckt. 34. This motion was granted. Order, Dckt. 38.

The court granted the Trustee's Motion to Extend the Deadline to Object to Discharge. Order, Dckt. 56. On April 27, 2015, the Chapter 7 Trustee filed a Motion to Compel Debtors to Turnover Property of the Estate consisting of the 490 Ebbett Way Property and the 136 Algen Avenue Property. Dckt. 59.

Debtors opposed the Motion to Turnover Property of the Estate, asserting that the Chapter 7 case had been filed by mistake. Response, Dckt. 68. Debtors stated that they would be filing a motion to dismiss the Chapter 7 case. Further, Debtors argue that they filed and prosecuted the Chapter 7 case in pro se, and did not understand the requests of the Trustee, until they engaged the service of Thomas Gillis. On June 11, 2015, the court filed its order requiring Debtors to turn over both real properties and related personal property to the Trustee by June 19, 2015. Order, Dckt. 81.

DEBTOR NICHOLAS PEREZ'S MOTION TO DISMISS

On July 7, 2015, Debtor Nicholas Perez, in pro se, filed a Motion to Dismiss the bankruptcy case. Dckt. 92. It appears identical to the Motion to Dismiss that Thomas Gillis filed for Maria DePerez on June 9, 2015. Dckt. 75. In the Motion to Dismiss, it is asserted,

- A. Debtors have disposable income of \$248.50 a month, and asserts that this "exceeds eligibility for Chapter 7." (No reference is made to the basis for such "eligibility" limitation for filing Chapter 7.)
- B. Debtors assert that over a five year period, they would have \$10,000.00 of disposable income.
- C. Debtor Nicholas Perez is unemployed and uneducated (having only attended through the sixth grade in Mexico).
- D. Co-Debtor Maria DePerez is also asserted to being uneducated, and unable to read or write English.
- E. Debtors obtained a \$100,000 life insurance payment when their son died in 2008.

- F. Debtors (who are stated to be uneducated) then used the \$100,000 to invest in two rental properties located in Modesto, California.
- G. Co-Debtor was suffering from depression when the Chapter 7 Case was filed.
- H. Debtors did not know that the tenant in the Everett Street Property was growing marijuana on the property and was stealing electricity from Modesto Irrigation District.
- I. When Debtors were served with a complaint filed by Modesto Irrigation District they state that they were told by an unidentified employee of the District to "file some papers" and that the employee recommended a "typing service."
- J. Debtors went to a paralegal who prepared the bankruptcy for Debtors. They further state that the documents were filed out in pen and not explained to them.
- K. Debtors further assert that they did not read or understand what they were signing.

Dckt. 75.

A declaration, prepared by counsel for Ms. DePerez, has also been filed by Co-Debtor Nicholas Perez. Dckt. 78. Mr. Perez states:

- A. Mr. Perez is uneducated, having only attended through second grade in Mexico.
- B. He is disabled and unable to work.
- C. The bankruptcy petition preparer did not explain the documents and Mr. Perez did not know what he was signing.

Declaration, Dckt. 78. Again, no declaration of a translator is provided and there is no evidence that Mr. Perez read or had read to him, translated into a language he could understand, the Declaration and competently state the information therein is true and correct.

In addition to the copied motion that Mr. Perez purports to have prepared and filed in pro se to dismiss this case (Dckt. 92), declarations purporting to have been prepared by Mr. Perez for himself and for Ms. DePerez providing testimony under penalty of perjury have been filed. Dckts. 94 and 95. These are just copies of the declarations prepared and filed by counsel for Ms. DePerez. No declaration of a translator is provided and there is no evidence that Mr. Perez read or had read to him, translated into a language he could understand, the Declaration and competently state the information therein is true and correct. FN.1.

FN.1. The court finds it interesting, that while Mr. Perez and Ms. DePerez state that Mr. Perez is uneducated (and provide no statements on his ability to read, write, and understand English), Mr. Perez would purport to understand the Local Bankruptcy Rules requiring the use of Docket Control Numbers and how

to designate in a notice of hearing that the motion was being filed under subparagraph (2) of paragraph (f) of Local Bankruptcy Rule 9014-1. This appears to be inconsistent with the statements that Mr. DePerez is "uneducated."

DEBTOR MARIA DEPEREZ DECLARATION

On June 9, 2015, the declaration of Maria DePerez was filed in support of the Motion to Dismiss. Dckt. 77. The Declaration, written in English, is signed under penalty of perjury by Ms. DePerez attesting to all of the statements in English therein are true and correct. No declaration of a translator is provided and there is no evidence that Ms. DePerez read or had read to her, translated into a language she could understand, the Declaration and competently state the information therein is true and correct.

In her Declaration, Ms. DePerez purports to state under penalty of perjury:

- A. She is uneducated, having attended school only through the sixth grade in Mexico.
- B. She is not able to read or write English.
- C. The Co-Debtor Nicholas Perez is also uneducated, having attended school only through the second grade in Mexico. Further, the Co-Debtor is not employed.
- D. Debtor and Co-Debtor have been "separated" [not stating in common, uneducated language what is meant by using this legal term] for eight years.
- E. Debtors used the \$100,000 in life insurance proceeds to purchase two rental properties in Modesto, California. [No explanation is provided as to how the two "uneducated" Debtors came to buy investment rental properties.]
- F. Ms. DePerez states that she is under medical treatment for depression [not stating in common, uneducated language what is meant by using this medical term] arising from several different sources.
- G. Debtors were not aware that their tenant for the Everett Street Property was using it for illegal purposes and was stealing electricity.
- H. She states that she and the Co-Debtor never reviewed the bankruptcy documents filed with the court, and did not understand them when she signed them [under penalty of perjury].
- I. Finally, Ms. DePerez goes so far as to provide her personal legal conclusion that "We are not eligible for Bankruptcy." [No basis is given for the uneducated declarant having a basis

for, after reading and understanding this declaration, making such payment under penalty of perjury.]

Declaration, Dckt. 77.

OPPOSITION TO MOTION

The Chapter 7 Trustee has filed his Opposition to the Motion to Dismiss filed by Ms. DePerez. The Trustee reports that during this case, both before and after the employment of counsel by Debtor DePerez, the Debtors have repeatedly failed to turn over property of the estate. Further, notwithstanding the court ordering the Debtors to turnover the two real properties and the related personal property, Debtors have failed to comply with the court's order. Opposition, Dckt. 85. Based on the claims filed, the Trustee asserts that there is \$97,831.41 in claims filed. The Trustee asserts that it would not be in the best interests of creditors to dismiss the case and allow Debtors control over the two investment rental properties which were conveyed away, and not disclosed, when this case was filed. The Trustee believes that this showing is bolstered by Debtors not only having failed, even after employing counsel, to turnover to the Trustee property of the estate, but also by Debtors failing to comply with the order of this court to turnover the real and personal property by June 18, 2015.

The Trustee also states that Modesto Irrigation District has filed a judicial lien against the real properties. If the case were dismissed, such lien could season and move Modesto Irrigation District ahead of the other creditors holding general unsecured claims. The Trustee states that Modesto Irrigation District has a claim of \$66,228.99, and other creditors have claims totaling \$97,831.41.

Further, the Trustee states that Debtors admit having only \$248.50 a month in disposable income. In light of the Modesto Irrigation District lien, it appears inevitable that the properties will be liquidated through the state judicial sale process. Such a forced judicial sale, not by a real estate broker after appropriate marketing of the property, is not a process destined to generate the fair market value of the property for either creditors or the Debtors.

The Trustee also asserts that due to the non-responsiveness of Debtors, the estate has incurred administrative expenses of approximately \$20,000.00. The Debtors make no provision for addressing these expenses which have been incurred by the Trustee pursuing his duties as the fiduciary of the bankruptcy estate in this Chapter 7 case.

DISCUSSION

11 U.S.C. § 707(a) provides the following:

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including--

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees or charges required under chapter 123 of title 28; and

(3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

When determining whether a dismissal should be with or without prejudice, 11 U.S.C. § 349 states the following:

(a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

It is possible that cause may not exist for dismissal under 11 U.S.C. § 707 if the debtor has a history of abuse of the bankruptcy system and dismissal would allow the debtor to hinder creditors and secrete assets. See *In re Simmons*, 200 F.3d 738 (11th Cir. 2000).

A review of the case shows that the case has been riddled with Debtor's attempt to hide behind alleged misunderstanding of the bankruptcy process to hinder the Trustee and the court from gaining not only a full understanding of the Debtor's estate but also hindering the Trustee from properly administering the estate. The prime example of this hindrance is seen in the Motion to Turnover filed by the Trustee on April 27, 2015. Dckt. 59. Based on the evidence and testimony given, the court issued a chambers prepared order that specifically required that the Debtor and co-Debtor turnover possession of tax returns, accounting of rents, copies of keys for the properties and copies of insurance. Dckt. 81. In the civil minutes, the court specifically stated that "The Debtor and Debtor's counsel appear to have not responded to any of the Trustee's correspondences and instead requires that the court continue the hearing to be heard with the Debtor's Motion to Dismiss." Dckt. 84. The failure of the Debtor and Debtor's counsel to communicate effectively with the Trustee raises concerns of the Debtor's good faith prosecution, especially in light of the properties having been transferred post-filing.

The Debtor's Motion is based on the argument that they entered and filed the instant bankruptcy case without knowing the full extent of the responsibilities and consequences of such. However, the narrative provided by the Debtor does not rise to the level of cause that would justify the dismissal of the case, especially when there appears to not only be assets in the estate which can be liquidated for the benefit of creditors but also based on the apparent bad faith of the Debtor.

Both Debtors have demonstrated that they are incapable of providing for creditor claims or administering the assets which are now property of the bankruptcy estate. Debtors have engaged in a sophisticated "game" of asset transfers to try and hide assets from creditors. Recently Debtor DePerez who

is represented by counsel, has provided the Trustee (pursuant to order of the court) with an accounting of rent monies received. Exhibit 2, Dckt. 108. On this accounting Debtor DePerez states that she has paid the paralegal \$2,000 for bankruptcy services during the period "Aug-Mar." This conflicts with her statement under penalty of perjury that only \$125 was paid to the paralegal for bankruptcy services. Statement of Financial Affairs, Question 9; Dckt. 9.

If the court were to dismiss this case, Modesto Irrigation District would be put in a position to swoop up all of the assets by virtue of the state court litigation which both Debtors have demonstrated they are unable to defend. The pre-petition lien asserted by this creditor, which can be avoided by the Trustee would deprive other creditors of any participation in these assets which would likely be sold at a sheriff's sale - not a process designed to recover the full fair market value as would a sale by a bankruptcy trustee. In reviewing a request by the debtor to dismiss a Chapter 7 case, the court considers the interests of creditors, as well as that of the Debtor. *Dionne v. Simmons (In re Simmons)*, 200 F.3d at 743 (11th Cir. 2000).

The court also does not find credible the testimony, now prepared with the assistance of counsel, that these two Debtors are uneducated, unsophisticated consumers who have merely stumbled into bankruptcy by a bankruptcy petition preparer who was dealing from the bottom of the deck. The two Debtors have invested in residential real estate property. Unsophisticated debtors would likely have just deposited the \$100,000 and other monies in the bank instead of becoming landlords.

Then, when facing litigation with Modesto Irrigation District, these "unsophisticated" Debtors had deeds executed to place title to their real property in the name of another family member. A truly unsophisticated debtor would not have hatched such a fraudulent conveyance scheme. Then the Debtors sought out and obtained a bankruptcy petition preparer to file bankruptcy, having fraudulently transferred the real property to a family member, so that they could just discharge their debt and walk away from creditors, their real property hidden in the name of the family members. This pattern of conduct not only shows a level of sophistication, but an intentional plan to defraud creditors and the court.

Quite possibly counsel for Debtor, in weaving the current arguments, is confusing "unsophisticated" with "dishonest, or "not smart" with "conniving." Often times "conniving" or "dishonest" people know what they are doing, but to a third-party observer it is clear that the conduct is not "smart."

Even after the appointment of counsel, Debtor and co-Debtor have refused to comply with orders of this court and turn over properties of the estate to the Trustee. When pressed, they "assisted" the Trustee by having the family member reconvey title to the two real properties fraudulently conveyed. But when they did, it has been reported to the court that title was not reconveyed to the Trustee, who as the representative of the estate was entitled to the property, but back to Debtor DePerez, who is not entitled to the property of the estate. 11 U.S.C. §§ 541, 704.

The Motion to Dismiss the case is denied.

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 Convert filed by Maria Mosqueda DePerez having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied.

19. [14-91197](#)-E-7 NICOLAS PEREZ AND MARIA MOTION TO DISMISS CASE
NP-1 MOSQUEDA DEPEREZ 7-7-15 [[92](#)]

Tentative Ruling: The Motion to Dismiss the Bankruptcy Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Joint Debtor, Joint Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 6, 2015. By the court's calculation, 17 days' notice was provided. 21 days' notice is required. Fed. R. Bank. P. 2002(a)(4) 21-day notice for Chapter 7, 11, and 12 cases.

The Motion to Dismiss the Bankruptcy Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The 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. At the hearing -----.

The Motion to Dismiss the Chapter 7 Bankruptcy Case is denied.

This Motion has been filed by Nicolas Perez ("Debtor") to dismiss this case. The Bankruptcy Code authorizes a one-time, near absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

However, the Debtor has not provided sufficient notice as required by Fed. R. Bankr. P. 2002(a)(4). The Debtor only provided 17 days notice when a minimum

of 21 days notice is required. Therefore, the Motion is denied without prejudice.

Additionally, this motion is the clone of the Motion prepared and filed by counsel for Co-Debtor Maria DePerez (DCN: TOG-1). The court has denied that motion and incorporates herein the findings of facts and conclusions of law from the July 21, 2015 hearing on the DePerez Motion to Dismiss, DCN: TOG-1.

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

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

The Motion to Dismiss filed by Nicolas Perez having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied.

20. [14-91197-E-7](#) NICOLAS PEREZ AND MARIA MOTION TO EMPLOY PMZ REAL
MDM-3 MOSQUEDA DEPEREZ ESTATE AS BROKER(S)
7-7-15 [[89](#)]

Tentative Ruling: The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Order Setting Hearing on Motion by Chapter 7 Trustee for Order to Employ Real Estate Broker states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 9, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The 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. At the hearing -----
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The Motion to Employ is granted.

Chapter 7 Trustee, Michael D. McGranahan, seeks to employ Broker Robert Brazeal of PMZ Real Estate, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of Broker to assist the Trustee in selling the real properties commonly known as: (1) 4904 Ebbett Way, Modesto, California and (2) 136 Algen Ace., Modesto, California.

The Trustee argues that Broker's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present real properties owned by Debtor.

Robert Brazeal, a broker of PMZ Real Estate, testifies that he is representing the Trustee in marketing the Properties. Mr. Brazeal testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ PMZ Real Estate as broker for the Chapter 7 estate on the terms and conditions set forth in the Motion which states that:

In consideration for said services broker will receive a commission, upon consummation of any such sale, a real estate broker's commission in an amount equal to six percent (6%) of the purchase price. In the event that any of the properties are sold on an over bid to a buyer not procured by the broker employed by the applicant, said broker will nonetheless be entitled to receive a real estate broker's commission equal to three percent (3%) of the consummated sales bid for his/her services rendered in representing the estate in marketing the properties. In the event that any of the properties are sold on an over bid to a buyer represented by another broker, other than the broker employed by the applicant, said other broker representing such buyer, shall not receive a commission of more than three (3%) of the accepted and consummated sale price.

FN. 1. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

FN.1. Under normal circumstances, the failure of the Trustee to provide a copy of the employment agreement would be grounds to deny the Motion or, at the very least, continue the hearing to allow the Trustee to file a supplemental copy of the agreement. However, the Motion specifically states that the compensation that would be sought pursuant to 11 U.S.C. § 330 would be "six percent of the gross sales price." As such, the court approves the employment on those terms only.

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 Employ filed by 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 Employ is granted and the Chapter 7 Trustee is authorized to employ PMZ Real Estate as broker for the Chapter 7 Trustee on the terms and conditions as set forth in the Motion.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

21. [15-90214-E-7](#) DAVID/JODY LEANDRO
BSH-5 Brian S. Haddix

MOTION TO AVOID LIEN OF JULIE
FAGUNDES JOHNSON O.S.T.
7-14-15 [[46](#)]

CLOSED: 07/10/2015

Tentative Ruling: The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Stanislaus County Counsel, and Office of the United States Trustee on July 14, 2015. By the court's calculation, 9 days' notice was provided.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The 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. At the hearing -----.

The Motion to Avoid Judicial Lien is granted.
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This Motion requests an order avoiding the non-purchase money, non-possessory lien of Julie Fagundes Johnson against the garnished wages of David Leandro and Jody Leandro ("Debtors").

An Earnings Withholding Order was entered against Debtor in favor of Julie Fagundes in the amount of \$9,213.63 on October 30, 2014. The Earnings Withholding Order was served on the Debtor's employer on December 3, 2014.

Debtor alleges that garnished wages are exempt under 11 U.S.C. § 522(f), and as such is entitled to an exemption in the amount of \$8,483.17. Debtor seeks to avoid the lien in the amount of \$1,236.70. Debtor has claimed an

exemption pursuant to Cal. Civ. Proc. Code § 704.140(b)(5) in the amount of \$1,236.70 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 this judicial lien impairs the Debtor's exemption of the garnished wages 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 David and Jody Leandro ("Debtors") 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 recorded on October 30, 2014 in favor of Julie Fagundes Johnson, levied by the Stanislaus County Sheriff's Office, Case No. 451748, based on the Earnings Withholding Order, is avoided in the amount of \$1,236.70 pursuant to 11 U.S.C. § 522(f)(1). The Sheriff and Sheriff's officers and agents are authorized to disburse the \$1,236.70 to the Debtors pursuant to this order.