UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 28, 2022 at 10:30 a.m.

1.	**22-20494-E-7** **EJS-1**	**MANUEL/RUTH CURIEL** **Eric Schwab**	**MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13** **6-30-22 [16]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 30, 2022. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

Under the facts and circumstances of this Motion, the court shortens the time to the 28 days given.

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

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is granted and the Case is converted to one under chapter 13.

Manuel Curiel and Ruth E. Curiel ("Debtor") seek to convert this case from one under Chapter 7 to one under Chapter 13. 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).

Discussion

Debtor asserts that the case should be converted because after the Chapter 7 Trustee challenged the valuation of Debtor's trailer and found its value beyond Debtor's exemption, they now wish to avoid the cost of litigating and to instead retain their assets and pay their debts through a Chapter 13 Plan.

Here, Debtor's case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties. No opposition has been filed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert filed by Manuel Curiel and Ruth E. Curiel ("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 Convert is granted, and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code.

2. **22-21000-E-7** **ROBYN JOHNSON** **CONTINUED MOTION TO AVOID LIEN**
DBJ-1 **Douglas Jacobs** **OF AMERICAN BUILDERS &**
COMPANY SUPPLY CO., INC.
5-31-22 [16]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on May 31, 2022. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

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

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

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $762,250.00 as of the petition date. Dckt. 12. The unavoidable consensual liens that total $362,250.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 12. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a)(1) in the amount of $400,000.00 on Schedule C. Dckt. 12.

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

Parties Stipulation

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

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

July 28, 2022 Hearing

At the hearing, XXXXXXXXXX

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by American Builders & Company Supply Co., Inc. ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of American Builders & Company Supply Co., Inc., California Superior Court for Butte County Case No. 21CV02987, recorded on February 9, 2022, Document No. 2022-0004553, with the Butte County Recorder, against the real property commonly known as 1212 West Wind Drive, Chico, California 95926, 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.

3.	**20-25541-E-7** **DNL-6**	**ANATOLY TKACHUK** **Mark Shmorgon**	**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ANATOLY TKACHUK AND ELENA TKACHUK** **7-7-22 [65]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2022. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

The Motion for Approval of Compromise is granted.

Michael Hopper, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Debtor and Debtor's former spouse Elena Tkachuk ("Settlor"). The claims and disputes to be resolved by the proposed settlement are regarding the dissolution of marriage between Debtor and Settlor.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit B in support of the Motion, Dckt. 68):

A. $100,000.00 Homestead Exemption Allocation

B. Wells Fargo Judgment Satisfaction

C. Spouse Release

D. Debtor Release

E. Unknown Claims: Waiver of California Civil Code Section 1542

F. Exclusions from Provided Releases

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met. This proposed settlement allows Movant to recover for the Estate $20,000.00 without further cost or expense.

Under the terms of the settlement, all claims of the Estate, including any pre-petition claims of Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

Movant states the probability of success in the litigation is difficult to predict and generally hazardous to both parties.

Difficulties in Collection

Movant states the difficulties to be encountered in litigation are moot because Movant is in a defensive position with respect to the expected proceeds of sale of the community's interest in the real

property commonly known as 23005 Forest Hill Road, Forest Hill, CA 95631, Placer County ("Property").

Expense, Inconvenience, and Delay of Continued Litigation

Movant states the complexity, expense, and inconvenience of the litigation factor supports settlement because any further litigation would further drive up expenses to the estate.

Paramount Interest of Creditors

Movant states the paramount interest of the creditors supports settlement. Movant asserts that absent settlement, Movant would be required to litigate a marginal interest in the portion of the proceeds that are subject to competing claims by three other parties. Unsecured creditors would also be funded by Movant's use of the remaining $10,000.00 from the $20,000.00 Homestead Exemption carve-out.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the four factors under *In re A & C Props.* have been satisfied and all claims of the Estate, including any pre-petition claims of Debtor, are fully and completely settled. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Mark Hopper, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Debtor and Debtor's former spouse Elena Tkachuk ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit B in support of the Motion (Dckt. 68).

4.	**20-23267-E-7** **DNL-18**	**SHON/JILL TREANOR** **Pro Se**	**MOTION FOR COMPENSATION FOR BACHECKI, CROM & CO., LLP, ACCOUNTANT(S)**
	4 thru 6		**6-27-22 [465]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on June 27, 2022. By the court's calculation, 31 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Bachecki, Crom, & Co., LLP, the Accountant ("Applicant") for Hank Spacone, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 2, 2022, through April 28, 2022. Declaration, Dckt. 467. The order of the court approving employment of Applicant was entered on February 10, 2022. Dckt. 420. Applicant requests fees in the amount of $3,747.50 and costs in the amount of $48.28.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the

circumstances of the professional's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

recovery?

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

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

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

A review of the application shows that Applicant's services for the Estate include assessment of the bankruptcy estate's capital gain exposure for a real property sale, computation of tax basis for real property, and tax return preparation. The Estate has $593,212.89 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Task Billing Analysis

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Here, Trustee has failed to provide a summarized breakdown of services provided by accountant. However, given the modest amount of fees requested, the court will overlook the additional work required to organize Applicant's fee request.

Applicant provides supporting evidence for the services provided, which are described in the following main categories.

Assessment of Capital Gain Exposure: Applicant spent 0.4 hours in this category. Applicant reviewed tax history and exchanged emails.

Computation of Tax Basis: Applicant spent 1.4 hours in this category. Applicant assessed, reviewed, and analyzed tax issues and tax bases for real property.

Tax Return Preparation: Applicant spent 6.7 hours in this category. Applicant reviewed and prepared federal and California 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**
Jay D. Crom	1.6	$575.00	$920.00
Kimberly Lam	0.8	$520.00	$416.00
Virginia Huan-Lau	4.5	$415.00	$1,867.50
Jason Tang	1.6	$340.00	$544.00
Total Fees for Period of Application			$3,747.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $48.28 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copy Charge		$19.40
Postage		$25.58
Pacer		$3.30
Total Costs Requested in Application		$48.28

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $3,747.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case

Costs & Expenses

First and Final Costs in the amount of $48.28 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 from the available funds of the Estate in a manner consistent with

the order of distribution in a Chapter 7 case.

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

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

Fees	$3,747.50
Costs and Expenses	$48.28

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Bachecki, Crom, & Co., LLP ("Applicant"), Accountant for Hank Spacone, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Bachecki, Crom, & Co., LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Bachecki, Crom, & Co., LLP, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $3,747.50
> Expenses in the amount of $48.28,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

5.	**20-23267-E-7** **DNL-19**	**SHON/JILL TREANOR** **Pro Se**	**MOTION FOR COMPENSATION FOR HANK M. SPACONE, CHAPTER 7 TRUSTEE(S)** **6-27-22 [471]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on June 27, 2022. By the court's calculation, 31 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Hank Spacone, the Chapter 7 Trustee, ("Applicant") for the Estate of Shon Jason Treanor and Jill Diana Treanor ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period October 20, 2020, through June 14, 2022. The Trustee requests approval of Fees in the amount of $64,360.60 and Costs and Expenses in the amount of $800.00.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

> (1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an

examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

> (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
>
> (B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a professional employed by a trustee, the professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

> (7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

the likelihood of the disputed issues being resolved successfully?

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

A review of the application shows that Applicant's services for the Estate include abandonment, asset analysis and recovery, asset investigation, asset marketing and sales, case administration, claims administration/objections, and tax matters. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

Abandonment: Applicant spent 4.3 hours in this category. Applicant communicated with various parties regarding the abandonment of scheduled causes of action, personal property, and Debtor's travel trailer.

Asset Analysis and Recovery: Applicant spent 26.20 hours in this category. Applicant inspected estate properties, communicated with various parties to facilitate asset recovery, and reviewed documents related to Debtor's property both real and personal.

Asset Investigation: Applicant spent 19.40 hours in this category. Applicant reviewed and communicated with Debtors regarding allegations from a variety of interested parties.

Asset Marketing and Sales: Applicant spent 56.30 hours in this category. Applicant interviewed and worked with professionals to successfully market and sell the estate property.

Case Administration: Applicant spent 40.60 hours in this category. Applicant performed general case administration tasks such as reviewing documents, conversing with parties of interest, and preparing Trustee reports.

Claims Administration and Objections: Applicant spent 29.50 hours in this category. Applicant prepared control schedules, reviewed all claims, and incorporated all claim amounts into the property liquidation analysis.

Tax Matters: Applicant spent 4.30 hours in this category. Applicant prepared schedules, reviewed tax information, and signed all filed estate tax returns.

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $950,000.00	$47,500.00
3% of the next $370,353.46	$11,110.60

Calculated Total Compensation	**$64,360.60**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$64,360.60
Costs and Expenses	$800.00
Less Previously Paid	$0.00
Total First and Final Fees and Costs Requested	$65,160.60

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. Applicant provided a fee calculation based on an hourly rate of $300/hour and 180.60 hours, which totaled $54,180.00. Dckt. 471. The maximum compensation payable to Applicant based upon disbursements is $64,360.60. Though the disbursement fee is higher than the hourly rate, the court finds this difference nominal in light of services rendered. First and Final Fees and in the amount of $65,160.60 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has $593,212.89 of unencumbered monies to be administered. The Chapter 7 Trustee's services included abandonment, asset analysis and recovery, asset investigation, asset marketing and sales, case administration, claims administration/objections, and tax matters. Applicant's efforts have resulted in a realized gross of $1,370,353.48 recovered for the estate. Dckt. 471.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

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

Fees	$64,360.60
Costs and Expenses	$800.00

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Hank Spacone, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Hank Spacone is allowed the following fees and expenses as trustee of the Estate:
>
> Hank Spacone, the Chapter 7 Trustee
>
> Fees in the amount of $64,360.60
> Expenses in the amount of $800.00,
>
> **IT IS FURTHER ORDERED** that the Chapter 7 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.

6. **20-23267-E-7 DNL-20** **SHON/JILL TREANOR Pro Se** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM TRUSTEES ATTORNEY(S) 6-27-22 [476]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 27, 2022. By the court's calculation, 31 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Hank M. Spacone ("Client"), makes a first and final Request for the Allowance of Fees and Expenses in this case in order to compensate their attorneys, the firm Desmond, Nolan, Livaich & Cunningham ("Applicant").

Fees are requested for the period October 6, 2020, through June 23, 2022. The order of the court approving employment of Applicant was entered on November 9, 2020. Dckt. 42. Applicant requests fees in the amount of $106,415.50 and costs in the amount of $3,546.30.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

(a) Is the burden of the probable cost of legal [or other professional] services

disproportionately large in relation to the size of the estate and maximum probable recovery?

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

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

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

A review of the application shows that Applicant's services for the Estate include the litigation of adversary proceedings and contested matters, investigating and recovering assets, attempts at alternative dispute resolution, and general case administration. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Marketing and Sales: Applicant spent 10.70 hours in this category. Applicant investigated property of the debtors, prepared for the sale of the property, etc.

Case Administration: Applicant spent 3.20 hours in this category. Applicant reviewed the debtors' filings, prepared status reports, etc.

Litigation & Contested Matters: Applicant spent 166.50 hours in this category. Applicant prosecuted the Sanders Adversary Proceeding, investigated criminal allegations, researched and prepared motions on a variety of legal issues, etc.

Asset Analysis & Recovery: Applicant spent 37.00 hours in this category. Applicant communicated with Trustee regarding real and personal property of the estate, malpractice claims asserted by debtors, researched issues regarding turnover of property, etc.

Asset Disposition: Applicant spent 29.60 hours in this category. Applicant prepared motions regarding the abandonment of real and personal property, appeared in court regarding those motions, etc.

Fee/Employment Applications: Applicant spent 13.30 hours in this category. Applicant prepared motions to employ themselves, the estate's accountant, and the estate's broker, communicated with those entities regarding their responsibilities, motioned for compensation for them, etc.

Claims Administration & Objections: Applicant spent 2.00 hours in this category. Applicant analyzed claimants' interests in debtors' property, communicated with claimants to resolve each claim, etc.

Settlement/Non-Binding ADR: Applicant spent 20.60 hours in this category. Applicant negotiated settlement agreements and stipulations, prepared motions to approve those agreements, etc.

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	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
"Former Law Clerk" and "Courier Services"	3.00	$66.67	$200.00
J. Russell Cunningham	214.50	$425.08	$91,180.50
Edward K. Dunn	0.70	$275.00	$192.50
Benjamin C. Tagert	60.30	$221.52	$13,357.50
Nicholas L. Kohlmeyer	5.40	$275.00	$1,485.00
Total Fees for Period of Application			$106,415.50

The court notes that Applicant appears to include an additional three hours of work, one for "courier services" and two for a "former law clerk," each at unlisted hourly rates. It is unclear to the court why courier services would not be an expense, and it is likewise unclear to the court why the hourly rate of law clerks and courier workers are not known to Applicant. The table above lists the average hourly rate which would be necessary to arrive at the total fees of $200.00 requested for those services. Although the total amount requested for these mystery individuals is negligible in this case, parties would do well to provide further information in the future.

The court further notes that both J. Russell Cunningham and Benjamin C. Tagert have two different hourly rates listed on Applicant's motion. The average rate listed is included in the table above. The court is unclear as to exactly what rate was billed for what things; although that information might be discernable from scouring Applicant's task code billing reports, the court generally declines to read through movants' motions and exhibits in order to reassemble information which should have been clearly stated. Although the variation in this case appears negligible, and thus not cause for significant consternation, parties would do well to explain to the court how many hours were performed at which rates in the future.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $3,016.14 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**

Photocopies	$0.10 per page	$285.60
Postage	N/A	$279.27
Court and County Records Fees	N/A	$794.58
Travel Expenses	N/A	$15.60
Court Costs	N/A	$2,171.25
Total Costs Requested in Application		$3,546.30

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $106,415.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $3,546.30 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 Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	$106,415.50
Costs and Expenses	$3,546.30

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by the Chapter 7 Trustee, Hank M. Spacone ("Client"), for their attorneys' firm Desmond, Nolan,

Livaich & Cunningham ("Applicant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Desmond, Nolan, Livaich & Cunningham is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Livaich & Cunningham, firm employed by the Chapter 7 Trustee

Fees in the amount of $106,415.50
Expenses in the amount of $3,546.30,

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

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

7.	**22-20699-E-7 KJH-1**	**CARLOS ALVARADO LOPEZ Travis Poteat**	**TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 6-24-22 [17]**

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

Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 29, 2022. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Motion to Dismiss is granted, and the case is dismissed.

The Chapter 7 Trustee, Kimberly J. Husted ("Trustee"), seeks dismissal of the case on the grounds that Carlos Humberto Alvarado Lopez ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Dckt. 17.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which was set for 10:30 a.m. on July 8, 2022. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S ATTORNEY'S OPPOSITION

Debtor's attorney filed an Opposition on July 13, 2022, improperly labeled as a Notice of Hearing. Dckt. 20. Debtor's attorney states that they have been unable to contact Debtor and do not know why Debtor has fallen out of communication. Debtor therefore requests an additional chance to appear at a Meeting of Creditors.

DISCUSSION

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

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Kimberly J. Husted ("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.

8. **22-21314-E-13 KSR-1** **NADIA ZHIRY** **Peter Macaluso**

CONTINUED MOTION TO EXCUSE TURNOVER AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
5-31-22 [12]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, on May 31, 2022. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Excuse Turnover and Confirm Exemption from Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Opposition was filed.

The Motion to Excuse Turnover and Confirm Exemption from Automatic Stay is XXXXXXXXXXXXX.

Gerard F. Keena II ("Movant-Receiver") moves the court for an order confirming that the ongoing receivership for real properties commonly known as 1039 and 1049 Claire Ave, Sacramento, California (the "Properties") deemed a public nuisance is excused from the automatic stay in effect in this case pursuant to 11 U.S.C. § 362(b)(4). Movant-Receiver also requests they should be excused from turnover under 11 U.S.C. § 543.

In the Motion, the grounds stated with particularity (Fed. R. Bankr. P. 9013) include the following (as summarized by the court unless shown in "quotation marks"):

A. The Receiver was appointed in the State Court Action based on the properties being a public nuisance.

B. The Properties were littered with trash and debris. There were numerous vehicles in various states of dismantling.

C. The Properties appeared to be an automotive scrap yard.

D. The Debtor was making hazardous, unpermitted construction and renovations on the Property.

E. Debtor had excessive animals on the Properties in violation of local law, and appears to have been attempting to run a breading business

F. The Receiver was appointed "over a year ago", but have been unable to "fully rehabilitate the Properties while the Properties are subject to the jurisdiction of the Bankruptcy Court.

G. The current Bankruptcy Case was filed one week after the abandonment and the day before the hearing on the Receiver's plan in the State Court Nuisance Action.

H. The Trustee seeks to proceed to fulfill his duties in the State Court Nuisance Action.

Motion; Dckt. 12

In Movant-Receiver's Memorandum of Points and Authorities (Dckt. 19), Movant-Receiver states the Properties will likely be sold subject to State Court approval to fund and carry about their abatement. Dckt. 19 at 14. Movant-Receiver can only abate the nuisances once they receive authorization from the State Court approving their proposed receivership plan, however, Movant-Receiver can only move forward with the State Court action if they are granted relief from the automatic stay. *Id.* at 15.

Prior Bankruptcy Case

On June 29, 2021, Debtor Nadia Zhiry commenced a Chapter 7 bankruptcy. Case No. 21-22759. There, Movant-Receiver filed a Motion for relief from the automatic stay from real properties. *Id.*, Dckt. 67. Movant-Receiver's Motion was made pursuant to 11 U.S.C. § 362(b)(4) to continue the enforcement of a receivership order and abatement of a nuisance on the Properties. The Motion was granted on September 16, 2021. *Id.*, Order, Dckt. 67. The Movant-Receiver's Order granting relief in the prior case was entered seven months prior to the commencement of the Current Chapter 13 case.

Debtor received a discharge in the prior the Chapter 7 case on April 20, 2022. *Id.*, Dckt. 85. In the prior

This Chapter 13 Case was filed on May 25,2022. The prior Chapter 7 Case has not yet been closed. A review of the Docket for the prior Chapter 7 Case discloses that on May 17, 2022 the court entered an order abandoning the Properties. *Id.*; Order, Dckt. 96. However, the Order does not state to whom the Properties have been abandoned.

Debtor's Opposition

Debtor filed an opposition to this motion on June 7, 2022 (Dckt. 24). Debtor states the following to be disputed material facts:

1. The subject property is not in the same condition as the time of Receivership/Court Order on May 3, 2021.

2. There are not 13-24 vehicles on either property.

3. There are no illegal apartments on either property.

4. There are no cages nor kennels on either property.

5. The Receiver has rejected any plan to address the deficiencies and has opposed correction by the debtor.

6. The Receiver's Motion to exercise control of subject property.

Debtor states there is substantial equity in the property to remedy the issues at hand and that there is more than enough equity to pay claims by the Receiver and the City. Debtor also states the Movant is a person and not a governmental unit and therefore cannot take advantage of the police and regulatory exception. In support of the proposition that a State Court appointed receiver to address a public nuisance is a person and the provisions of 11 U.S.C. § 362(b)(4), Debtor cites to *In re Commonwealth Oil Ref. Co*, 805 F.2d 1175 (5th Cir. 1986), (without quoting the decision or providing a pin cite) which states in relevant part:

> This case presents the question of whether a debtor, who has filed a petition under Chapter 11 of the Bankruptcy Code, can be forced to comply with federal and state environmental laws designed to protect the public health and safety, before that debtor has filed its plan of reorganization.
> . . .
> We agree with the conclusion of the bankruptcy court and the district court that the automatic stay does not apply to the EPA's actions in this case. The EPA has the authority to enforce its regulatory power, that is, to require CORCO to comply with the federal and state environmental laws and regulations at issue in this case. The enforcement actions of the EPA in this case do not come within the ambit of § 362(a)(1) because they are actions to enforce police and regulatory powers, thus falling within the § 362(b)(4) exception to the automatic stay. The EPA's actions are not an attempt to enforce a money judgment, proscribed by § 362(b)(5), notwithstanding the fact that CORCO will be forced to expend funds in order to comply.
>
> The exception from the automatic stay for proceedings to enforce police and regulatory powers is not, as appellants suggest, limited to those situations where "imminent and identifiable harm" to the public health and safety or "urgent public necessity" is shown. The words of §§ 362(b)(4) and 362(b)(5) allow for no such reading. The language of these exceptions is unambiguous -- it does not limit the exercise of police or regulatory powers to instances where there can be shown imminent and identifiable harm or urgent public necessity.

> . . .
> We turn now to the question of whether, under the facts of this case, the bankruptcy court abused its discretion in refusing to issue a stay of EPA proceedings under 11 U.S.C. § 105.
> . . .
> The district court agreed with the bankruptcy court's conclusion that CORCO had failed to establish the prerequisites for a § 105 stay, since "they concede they cannot prevail on the merits by their admissions that no Plan B has been filed and no groundwater monitoring system exists." 17Link to the text of the note Slip op. at 3.

In re Commonwealth Oil Refining Co., 805 F.2d 1175 at 1171, 1183-1184, 1188, 1189.

With respect to the Receiver being a person, in the State Court Action, the Plaintiff is the City of Sacramento. Exhibit A, Order Appointing Receiver; Dckt. 14. The City obtained the appointment of a receiver to, under court supervision and providing Debtor with a forum to enforce her rights, to undertake the acts necessary to address the asserted nuisance.

Also, Debtor disputes the fact that the public nuisance is no longer at issue they believe the action should be dismissed. Additionally, Debtor states that a Chapter 13 Plan has been filed which seeks to remedy all issues through a comprehensive review plan that will allow the family to repair the home. [Fn.1.]

FN. 1. Neither in the Opposition or the Declaration in Support does Debtor address why Debtor is not in the State Court Action, demonstrating that there is no nuisance, that Debtor and Debtor's family has "seen the light," corrected some of the problems, and that the duties of a receiver to abate the nuisance will not be required, though the receiver could document Debtor and Debtor's family complying with the orders of the State Court to complete certain actions.

Evidence Presented in Opposition

Vera Zhiry, identified as the daughter of Debtor, provides her personal knowledge testimony (Fed. R. Evid. 601, 602) in a Declaration in Opposition to the Motion. Dec. Dckt. 25. In her Declaration, Vera Zhiry testifies (identified by paragraph number in the Declaration):

> 3. We have removed all the cars from the property.

The "we" is not identified, how this was accomplished is not explained, and where these cars have either been disposed of or relocated is not stated.

> 4. There are no illegal apartments on the property.

Vera Zhiry provides the court with her legal conclusion that there are no "illegal apartments" on the "property" (testifying in the singular). No information is provided as to what corrective acts were taken, whether they were done in compliance with a State Court order or violation notice from the City of Sacramento.

5. There are no Cages and there are no kennels on the property.

No explanation is given as to what happened to cages, kennels, and dogs on the property. How they were re-homed, or merely "temporarily relocated" and likely to return in short order.

No other evidence is provided in Opposition to the Motion.

Statement of Disputed Facts

Debtor has also provided a Statement of Disputed Facts as part of the Opposition. In looking at these "Disputed Facts," they generally appear to be "Facts" within the province of the State Court Judge in whether that Judge's receivership order should continue in force and effect, as well as whether the Receiver's proposes plan in State Court should be ordered by the State Court Judge, of should Debtor's plan of action be ordered (Debtor and Debtor's family having demonstrated that they have corrected many of the "ills" that led to the appointment of the Receiver and that such "intervention" to complete the abatement of any nuisance is no longer necessary.

The fifth stated Material Disputed Fact is that, "The Receiver Has rejected any plan to address the Properties' deficiencies" with Debtor's Counsel, and has opposed ANY corrections by the Debtor." Dckt. 26. The Receiver is not operating as an omnipotent sovereign, but only to the extent as authorized by the State Court Judge in the State Court Receivership Action. Debtor does not offer any explanation as to why Debtor and her family do not have the "access to justice" in the State Court Action by presenting any such disputes to the State Court Judge.

APPLICABLE LAW

No Existence of Automatic Stay
Under 11 U.S.C. § 362(b)(4)

The court begins with considering the provisions of 11 U.S.C. § 362(b)(4) which excepts actions and proceedings from the automatic stay to enforce police or regulatory powers of a governmental unit. 3 COLLIER ON BANKRUPTCY ¶ 362.05[5] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). This includes the enforcement of certain judgments other than money judgments, except those pursuant to § 362(a)(2). *Id.* at [5][a].

Legislative history indicates enforcing environmental laws is a permissive use of a governmental unit's police or regulatory powers. 3 Collier on Bankruptcy P 362.05 (16th 2022) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 52 (1978)). Collier on Bankruptcy goes in detail with this approach:

> In [*Penn Terra Ltd. v. Department of Environmental Resources*], the debtor had operated its coal mines in violation of state environmental protection laws. After the debtor commenced a bankruptcy case, the state Department of Environmental Resources sought an injunction directing the debtor to comply with a prebankruptcy consent order requiring it to clean up the environmental damage on its property. The debtor maintained that the action was stayed because it was in essence an attempt to enforce a money judgment. According to the debtor, because the action would require the debtor to spend money to remediate

> the environmental problems, the state was merely seeking to have the debtor finance the cleanup so the state would not have to do so. The court rejected that argument, finding that there is a difference between an equitable action to require or prevent particular behavior and a legal action to recover a money judgment. The court found that when the state sought an injunction requiring certain action, it was not seeking money, but rather was seeking performance.
>
> On the other hand, in *Ohio v. Kovacs* the Supreme Court held that an action by the State of Ohio to require an individual debtor to clean up environmental damage was a "claim" and the debtor's cleanup obligation was a "debt" that could be discharged in bankruptcy. The court found that the state did not expect the debtor to engage in the cleanup himself; rather it expected the debtor to expend funds to effect the cleanup. Since the debtor's obligation could be satisfied by the payment of funds, the state's action was a claim that could be discharged.
>
> At first blush, *Kovacs* seems at odds with *Penn Terra*. After all, *Kovacs* found that a debtor's cleanup obligation was a debt because the obligation could be satisfied by payment of money. *Penn Terra* found that an order requiring a cleanup was not a monetary judgment, even though presumably the order could be satisfied by the payment of money to finance a cleanup.
>
> Yet it is important to remember the different contexts in which the cases arose. Clearly, if the debtor's obligation can be satisfied by the payment of money, it is a claim under the definition of that term in section 101 and, therefore, is a dischargeable debt. Nevertheless, former section 362(b)(5), under which the case was decided, does not bar enforcement of a "claim"; instead, it bars enforcement of a money judgment. Thus, it would appear that the cases can be reconciled by recognizing that the state can enforce a judgment or order against the debtor requiring the expenditure of funds but that the debtor's obligation may be discharged in bankruptcy and, in any event, the state may not enforce the obligation by requiring the debtor to pay money damages for breach of the obligation.

3 Collier on Bankruptcy P 362.05 (16th 2022) (distinguishing *Penn Terra, Ltd. v. Dep't of Envtl. Res.*, 733 F.2d 267 (3d Cir. 1984) from *Ohio v. Kovacs*, 469 U.S. 274 (1985)).

Under the current provisions of 11 U.S.C. § 362(b)(4), the fact an action may have economic consequences on a debtor is not determinative. *In re Basinger*, No. 01-02386, 2002 Bankr. LEXIS 1925, at *12 (Bankr. D. Idaho Jan. 31, 2002). Rather, two tests have been developed to determine whether the judgment will be enforced: the pecuniary purpose test and the public policy test.

Under the pecuniary purpose test, the court asks whether the governmental unit is acting pursuant to a matter of public safety and welfare rather than a governmental pecuniary interest. *Id.*; *In re Berg,* 230 F.3d 1165 (9th Cir. 2000); *In re First All. Mortg. Co.*, 264 B.R. 634 (C.D. Cal. 2001); See *generally PBGC v. LTV Corp.*, 496 U.S. 633 (1990).

Under the public policy test, the court asks whether the government action is designed to

effectuate public policy rather than to adjudicate private rights. *Id.*; *Lockyer v. Mirant Corp*., 398 F.3d 1098 (9th Cir. 2005); *NLRB v. Edward Cooper Painting, Inc.*, 804 F.2d 934, 942 (6th Cir. 1986). Actions that advantage a discrete and identifiable set of individuals would fail the public interest test. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005); *City & Cty. of San Francisco v. PG & E Corp*., 433 F.3d 1115 (9th Cir. 2006).

Prior cases have recognized environmental enforcement actions do not interfere with pecuniary purpose or public policy tests. *Basinger*, 2002 Bankr. LEXIS 1925, at *29; *Dykes v. TD Dev., LLC,* No. HHD-CV206126173S, 2021 Conn. Super. LEXIS 2097, at *7 ([T]he purpose of the County's wetland permitting laws, as well as the injunctive and enforcement proceedings pursuant thereto, are for the purpose of deterring the Debtor's ongoing environmental misconduct.); *In re Fernandez*, 22 Fla. L. Weekly Fed. B 367 (U.S. Bankr. S.D. Fla. 2010) ([P]laintiff, acting in her official capacity as commissioner of a governmental unit, is exercising her duty to protect the environment and Connecticut's natural resources . . . and . . . the public safety and welfare . . . ."); *Diaz v. Tex. (In re Gandy)*, 327 B.R. 796, 805 (Bankr. S.D. Tex. 2005) ("The action meets the pecuniary interest test because the governmental units were pursuing a matter of public safety and welfare through injunctive relief rather than seeking a monetary award. . . . The action also satisfies the public policy test because the purpose of the proceeding is to further public policy instead of adjudicating private rights.").

The current enforcement action at issue was brought by the City of Sacramento under California Health and Safety Code. Memorandum of Points and Authorities, Dckt. 19 at 11:11-12. The Movant-Receiver was appointed to abate the nuisances in accordance with California Health and Safety Code § 17980.7. It is more than clear to this court that the city, as a governmental unit for purposes of 11 U.S.C. § 362(b)(4), is seeking to use enforce their police and regulatory power.

At the time the enforcement action commenced, Movant-Receiver describes the Properties in:

> [D]eplorable condition, littered with trash, junk, and debris. Numerous vehicles in various states of dismantling lay about the Properties, as Debtor appears to be using (or allowing her family members to use) the Properties as an unauthorized automotive scrap yard in violation of local zoning ordinances. Debtor has also continued with hazardous, unpermitted construction and renovations at the Properties. Finally, Debtor houses excessive animals in violation of local law in gross, inhumane conditions, in what appears to be attempts to breed them.

Motion, Dckt. 12 at 2:11-18. Movant-Receiver describes the Properties presently as continuing to deteriorate and become a greater hazard to the community. Additionally, Movant-Receiver states the action is to "abate the public nuisances for the health and safety of the community, not to preserve the private pecuniary interests of any creditors or government entity." *Id.* at 2-3.

Similar to the environmental enforcement actions, here, the purpose of the nuisance enforcement action is clearly for the purpose of public safety, welfare, and policy, rather than a pecuniary purpose or adjudicating private rights. The enforcement action falls squarely into a governmental unit's police and regulatory powers. The Properties as described are not only an eye sore, but were presented in the State Court Action to present grave public health and safety concerns that should be remedied. Therefore, the enforcement action is clearly excused from the automatic stay under 11 U.S.C. § 362(b)(4).

Movant-Receiver Not a Custodian
Under 11 U.S.C. § 543

Movant-Receiver additionally contends they are not a "custodian" under 11 U.S.C. § 543. 11 U.S.C. § 543 requires a custodian with knowledge of the commencement of a case to deliver to the trustee any property of the debtor held by or transferred to the custodian.

The Bankruptcy Code defines custodian as a receiver or trustee of any property of the debtor appointed in a case or proceeding not under this title, which Congress states as:

> (11) The term "custodian" means—
>
> (A) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title;
>
> (B) assignee under a general assignment for the benefit of the debtor's creditors; or
>
> (C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors.

11 U.S.C. § 101(11). On its face, the first description in § 101(11)(A) uses the simple word "receiver."

Congress provides in 11 U.S.C. § 543 for a "custodian" to turnover property of the bankruptcy estate in the custodian's possession to the trustee (which would include a Chapter 13 debtor exercising the powers, duties, and responsibilities of a trustee) unless such custodian was excused by the court as provided in 11 U.S.C. § 543(d).

In reviewing the cases, a "clear weight of authority" and legislative history establish a custodian under § 101(11) "must be primarily concerned with the prepetition liquidation of a debtor's property or the protection of creditor's rights." *MacMullin v. Poach*, No. CV-08-0768-PHX-FJM, 2009 U.S. Dist. LEXIS 19730, at *5 (D. Ariz. Mar. 4, 2009). The cases and Legislative History cited in *MacMullin v. Poach* include: (1) *Cash Currency Exchange v. Shine* (*In re Cash Currency Exchange*), 762 F.2d 542, 553 (7th Cir. 1985); (2) *In re Camdenton United Super, Inc.*, 140 B.R. 523, 525 (Bankr. W.D. Mo. 1992); (3) *In re Gold Leaf Corp.*, 73 B.R. 146, 148 (Bankr. N.D. Fla. 1987); (4) *In re Kennise Diversified Corp.*, 34 B.R. 237, 244-45 (Bankr. S.D.N.Y. 1983); and H.R. No. 95-595, 95th Cong. 1st Sess. 310 (1977),

> Paragraph (11) [enacted as (10)] defines "custodian." There is no similar definition in current law. It is defined to facilitate drafting, and means a prepetition liquidator of the debtor's property, such as an assignee for the benefit of creditors, a receiver of the debtor's property, or administrator of the debtor's property. The definition of custodian to include a receiver or trustee is descriptive, and not meant to be limited to court officers with those titles. The definition is intended to include other officers of the court if their functions are substantially similar to those of a receiver or trustee.

Here, Movant-Receiver's responsibilities are to correct the various violations of California's Health and Safety Codes. Movant-Receiver's actions are not aimed at pre-petition liquidation of debtor's property nor preserving any creditors rights. *See In re Kennise Diversified Corp.*, 34 B.R. 237, 245 (Bankr. S.D.N.Y. 1983). It is clear to the court that Movant-Receiver is not a custodian under 11 U.S.C. § 543, and therefore, turnover of the Properties are not required.

Review of the Current Chapter 13 Bankruptcy Case

Debtor commenced this Chapter 13 Bankruptcy Case on May 25, 2022. On June 8, 2022, Debtor filed her Schedules and Statement of Financial Affairs. Dckt. 28. In reviewing the Schedules, the court notes the following:

A. The two Properties are stated to have values of $750,000 and $300,000. Schedule A/B, ¶¶ 1.1, 2.1; Dckt. 28.

B. Debtor's cash and bank account balances total $300. *Id*., ¶¶ 16, 17.

C. Debtor's total personal property value is stated to be $6,900. *Id*., ¶¶ 55-62.

D. On Schedule C, Debtor claims a homestead exemption pursuant to California Code of Civil Procedure § 704.730 in two different properties, the 1049 Claire Ave, Sacramento, CA property, and the 1039 Clair Ave, Sacramento, CA property. Schedule C, § 2; *Id*.

E. Debtor lists the two Properties as being cross-collateralized to secure two obligations to JPMorgan Chase Bank; the first in the amount of ($173,244.94) and the second in the amount of ($83,769.34), for total debt of ($257,014.28) being secured by the two Properties. Schedule D, ¶ 2.2, 2.3; *Id*.

F. On Schedule I Debtor states that she is disabled and her only income is Social Security benefits of $505.57 a month. For her Non-Debtor Spouse, while stating that he is employed, no wage or business income is shown for him. The only income for the Non-Debtor Spouse is identified as "SSI" of $1,000.00 a month.

Debtor's aggregate household gross income is $1,505.57 a month. Schedule I; *Id*. at 19-20.

G. On Schedule J, Debtor lists as reasonable and accurate monthly expenses of ($1,005.57) for Debtor and her Non-Debtor Spouse. Schedule J; *Id*. at 21-22. The court notes these monthly expenses include:

1. Mortgage/Rental Expense.....$0.00

2. Homeowner's Insurance.....$0.00

3. Property Taxes.....$0.00

4. Home maintenance and repair.....$0.00

5. Clothing/Laundry.....($10) per month for household

6. Personal care products/services.....($10) per month for household

7. Medical/dental.....($20) per month for household

8. Transportation.....($100) (Debtor listing one vehicle on Schedule A/B)

9. Vehicle Insurance.....($50)

Debtor then concludes that Debtor's household has $500.00 of monthly net income.

On the Statement of Financial Affairs Debtor states that neither Debtor nor Non-Debtor Spouse had any gross income from wages, commissions, or operating a business in 2022, 2021, and 2020. Statement of Financial Affairs, Question 4; *Id*.

Debtor lists having only Social Security income for both Debtor and Non-Debtor Spouse, which totals $7,500 in 2022, $18,200 in 2021, and $18,000 in 2020. *Id*., Question 5.

With respect to payments made within 90 days of filing bankruptcy, Debtor lists payments to JPMorgan Chase Bank, stating that the payments were made by her daughter. *Id*., Question 6.

Chapter 13 Plan Filed

On June 8, 2022, Debtor filed her Chapter 13 Plan. Dckt. 29. Debtor seeks to apply her $500 monthly net income to fund the Plan for 36 months. Plan, ¶¶ 2.01, 2.03. For Administrative Expenses, Debtor is to pay the Trustee's Fees and $2,500 for her attorney's fees. *Id*., ¶ 3.05.

The Plan provides for the following payments to creditors through the Chapter 13 Plan:

1. Class 1 Secured Claims.....$0.00

2. Class 2 Secured Claims.....$0.00

3. Class 3 Secured Claims Surrender.....None

4. Class 4 Secured Claims Paid Directly

   a. JPMorgan Chase Bank to be paid $1,500 and $250 a month by Debtor's daughter.

5. Unsecured Priority Claims.....$0.00

6. General Unsecured Claims, 100% Dividend.....$61,464

To fund the payment of the $61,464 in general unsecured claims, the Additional Provisions, § 7.01 and § 7.02 state that the Debtor's Adult Children shall purchase the "Subject Property" (not a defined term) within eighteen months (of some non-specified date), or in the alternative sell the Property (singular) to a third party.

It further provides that Debtor's children will fund all of the cleanup of some property, intending to have it done within 60 days of filing of the bankruptcy case (July 24, 2022), then have City inspections done, Debtor will obtain permits within six months to do the work for which the inspections are to be done, and Debtor will have all of the corrective work done within twelve months.

Looking back to the prior Chapter 7 Case, Debtor stated having only $505.57 a month in Social Security income, and did not list any income information for her Non-Debtor Spouse. 21-22759; Schedule I; Dckt. 14 at 31-32. On the Statement of Financial Affairs Debtor stated that she was not married. *Id.*; Statement of Financial Affairs, Question 1; Dckt. 14 at 37. On Schedule J in the prior Chapter 7 Case, in 2021 Debtor stated under penalty of perjury that her household monthly expenses included:

1. Home maintenance.....($150)

2. Clothing/laundry.....($50)

3. Personal care products/services.....($75)

4. Transportation.....($150)

In the current Chapter 13 Case, Debtor states that now a year later, the above expenses are substantially lower. It is unclear how such conflicting statements under penalty of perjury can be made by Debtor.

It appears that a serious question exists as to whether Debtor has the financial, physical, and mental ability to engage in the property remedation, hiring the necessary construction professionals, obtaining permits, clearing inspections, and then marketing and selling the Properties in the an eighteen month period.

Debtor and her family has had the opportunity to address the problems with the Properties, deal with the City, then address them in the State Court Action, but could not do so. This raises concerns about the Debtor, her finances, and who has been (or has not been) looking out for Debtor. Debtor's current counsel likely has insights into that situation and any special needs his client may have, or which may need to be addressed.

JUNE 14, 2022 HEARING

The court, after substantial advocacy and interaction between the court and respective counsel, the court determined that continuation of the hearing to allow for constructive discussion between the parties and counsel to occur. While the grounds stated by the Receiver have merit, there is the question of whether a good faith Chapter 13 Plan can be prosecuted, with the court exercising the exclusive federal court jurisdiction over property of the Bankruptcy Estate. 28 U.S.C. § 1334(e).

In is clear that over the past several years that the Debtor and her family have not managed the Properties, the situation, or the State Court Action well. Debtor's daughter was at the hearing and indicated that she laid the blame (the court's characterization) on their state court counsel. However, from what has been presented to the court, it appears that Debtor and Debtor's family continued in the use of the Properties inconsistent with not only the City ordinances, but in a manner to increase the violations which led to the State Court Action and the Receiver being appointed. This is part of what often is the redemptive process of bankruptcy

Though if Debtor was appearing on her own the conclusion would likely be that the court allow the State Court Receiver to fulfill his duties and have the State Court Action Judge "run the show." However, there has been a significant change that may offer Debtor and her family a narrow opportunity to avoid a receivership sale of the Properties. Debtor has now engaged an experienced counsel who in the past has demonstrated an ability to get previously uncooperative, set in their way debtor clients in this type of situation to toe the line, follow the law, and properly address the issues and maximize their economic return in a bad situation.

The court discussed at the June 14, 2022 hearing, how Debtor and her family could comply with the law, address the violations on the Properties, and promptly market and sell the Properties through the federal bankruptcy process.

For the City of Sacramento and the people in Debtor's neighborhood, such would be done with tight federal court orders in place for prompt performance of the corrections and marketing and sale of the Properties. Rather than the bankruptcy process being a delay of the City having its ordinances enforced, the bankruptcy process would provide the City with tight orders to get things done or the Receiver will proceed in the State Court Action. As the court noted, Congress created the bankruptcy judgeships so that bankruptcy judges have only one focus – to address the bankruptcy and bankruptcy related matters in the cases before such judges. Bankruptcy judges are not distracted by other areas of the law (such as criminal, probate, family, immigration, and the like), but are there focused and ready to address any and all issues relating to the bankruptcy case.

It appearing that there may be the seed of a good faith, rapidly performed Chapter 13 Plan the court has continued the hearing. An orderly cleanup and sale though the bankruptcy process may allow Debtor to salvage more than if the property goes through a receivership sale.

JUNE 30, 2022 HEARING

Debtor has filed a Status Report, asserting that communications with the City of Sacramento concerning this Property and what remains to be addressed has been impaired. Status Report; Dckt. 37. The Status Report does not address what Debtor and Debtor's family members have been doing to commit the monies necessary to address the asserted remaining cleanups and corrections, nor has the Debtor sought to obtain authorization to employ a real estate broker (which broker could advise the Debtor of what improvements enhance the prompt sale value of the Property and which would be "lost value" for potential purchasers.

At the hearing, counsel for the Debtor expressed frustration, stating that the Receiver was telling the City of Sacramento to not communicate with Debtor and Debtor's counsel. Counsel for the Receiver stated that he issued a letter Sunday (6/26/2022) stating that the City was to talk directly with Debtor and Debtor's counsel. Further, that he sent a copy of the letter and communicated with the

Bankruptcy counsel for the City to insure that there was no confusion on this issue.

The court continues the hearing, as agreed by the Parties to allow for the Debtor's counsel to communicate with the City and the City to document for Debtor and Debtor's counsel the corrections that need to be made so that the Debtor may promptly sell the Property at issue.

JULY 12, 2022 HEARING

At the hearing, the Debtor and Debtor's counsel expressed confusion on moving forward. Believing that counsel for the Receiver had instructed Debtor's counsel and contractor not to contact the Building Department about the status of any permits and what would be required, no contractor is in place, has not inspected the property, and the scope of work to be done is not estimated. Debtor's counsel stated that $5,000 is being held in his trust account for having the contractor provide some initial work, but that would only begin after the court ordered that Debtor was in control of the Property.

As the court has previously stated, and re-stated at the July 12, 2022 hearing, this Debtor and her family must be moving forward to show that there is an ability to promptly addressed the deficiencies in the Property, has the monies in place to do the work, and is prepared to move forward if the court exercises the exclusive jurisdiction over the Property that is property of this bankruptcy estate.

The Receiver's attorney stated that no such prohibition on contacting the Building Department and determining what permits would be required was made. It appears that there may have been some miscommunication between the attorneys.

Debtor must have in place a contractor and the scope of what needs to be done identified and a bid from the contractor to do the work. Debtor and her family must have the funding in place to pay for the work and to move promptly thereon. As each day passes and the real estate market cools (with interest rates rising), the potential sales price of the Property drops.

The court is mindful of the years of Debtor's failure to address these issues. The reported (by the Receiver) of failure to comply with the injunction concerning the use of the Property. The failure of Debtor (who blames her prior attorney) to assert her rights and address these problems in the multiple years of the Receivership Action. Only now, with the Receipt seeking to get approval of his Plan to correct the problems and sell the Property is Debtor in this bankruptcy case.

This is the final continuance to a final hearing on the Motion. Debtor must show the court that her practices have changed, she and her family have the funds in place to do the necessary work, and that she, working with her counsel, have the contractor ready to go, the scope of the work determined (to the extent that it can be by the final hearing date), and manifest the clear ability to act herself much like a receiver:

- Fix The Deficiencies In the Property so That It May Be Sold;
- Determine What Repairs and Improvements Enhance the Value of the Property For Sale AS Compared to Just Removing Non-Code Compliant Structures; and
- Debtor is Ready To Move Forward To Promptly Sell The Property in a Commercially Reasonable Manner. [Fn.1.]

FN. 1. In this Case Debtor's plan is to get the Property sold and maximize the recovery of the benefit of the Debtor and her bankruptcy estate, and not to rehabilitate the Property and retain it.

The City's Complaint relating to the assertion that Debtor's Property was a public nuisance and a danger to health and safety was filed in 2017. Debtor's default in that State Court Action was entered when she failed to response to the Complaint. Then, Debtor and the City entered in a Stipulation for a permanent injunction, requiring Debtor to cease and correct the Code violations. This Permanent Injunction was entered in October 2017. The terms of the Injunction are stated in the Minute Order filed as Exhibit filed with Exhibit A; Dckt. 91. The Receiver was then appointed May 3, 2021 by the Judge in the State Court Action. Order, Exhibit A; *Id*. In appointing the Receiver, the State Court Judge concluded that Debtor had not acted to abate the nuisance, that it would continue unless a receiver was appointed, and that the Receiver was to proceed with a plan correct the nuisance, whether such was rehabilitating or demolition of the violations that constituted the nuisance. (The forgoing is only a partial summary of the Receiver's powers and duties as ordered by the Superior Court Judge, which powers include the sale of the Property by the Receiver through the State Court Action.) [Fn.2.]

FN. 2. The April 7, 2021 Minute Order attached to the Order Appointing the Receiver contains an extensive review of the history of the State Court Action and the violations on the Property constituting the nuisance.

The court has added further discussion of the issues and shortcomings to date of Debtor with respect to her seeking to wrench control of the Property from the Receiver, correct the deficiencies constituting the nuisance, pay any monies owed in the State Court Action, and market and sell the Property in a prompt, speedy commercially reasonable sale of the Property.

The court has copied and pasted below the text added for the July 12, 2022 hearing from the Civil Minutes below for the convenience of the Parties and their counsel.

> At the hearing, the Debtor and Debtor's counsel expressed confusion on moving forward. Believing that counsel for the Receiver had instructed Debtor's counsel and contractor not to contact the Building Department about the status of any permits and what would be required, no contractor is in place, has not inspected the property, and the scope of work to be done is not estimated. Debtor's counsel stated that $5,000 is being held in his trust account for having the contractor provide some initial work, but that would only begin after the court ordered that Debtor was in control of the Property.
>
> As the court has previously stated, and re-stated at the July 12, 2022 hearing, this Debtor and her family must be moving forward to show that there is an ability to promptly addressed the deficiencies in the Property, has the monies in place to do the work, and is prepared to move forward if the court exercises the exclusive jurisdiction over the Property that is property of this bankruptcy estate.

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Debtor must have in place a contractor and the scope of what needs to be done identified and a bid from the contractor to do the work. Debtor and her family must have the funding in place to pay for the work and to move promptly thereon. As each day passes and the real estate market cools (with interest rates rising), the potential sales price of the Property drops.

The court is mindful of the years of Debtor's failure to address these issues. The reported (by the Receiver) of failure to comply with the injunction concerning the use of the Property. The failure of Debtor (who blames her prior attorney) to assert her rights and address these problems in the multiple years of the Receivership Action. Only now, with the Receipt seeking to get approval of his Plan to correct the problems and sell the Property is Debtor in this bankruptcy case.

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- ♦ Fix The Deficiencies In the Property so That It May Be Sold;
- ♦ Determine What Repairs and Improvements Enhance the Value of the Property For Sale AS Compared to Just Removing Non-Code Compliant Structures; and
- ♦ Debtor is Ready To Move Forward To Promptly Sell The Property in a Commercially Reasonable Manner. [Fn.1.]

FN. 1. In this Case Debtor's plan is to get the Property sold and maximize the recovery of the benefit of the Debtor and her bankruptcy estate, and not to rehabilitate the Property and retain it.

The City's Complaint relating to the assertion that Debtor's Property was a public nuisance and a danger to health and safety was filed in 2017. Debtor's default in that State Court Action was entered when she failed to response to the Complaint. Then, Debtor and the City entered in a Stipulation for a permanent injunction, requiring Debtor to cease and correct the Code violations. This Permanent Injunction was entered in October 2017. The terms of the Injunction are stated in the Minute Order filed as Exhibit filed with Exhibit A; Dckt. 91. The

Receiver was then appointed May 3, 2021 by the Judge in the State Court Action. Order, Exhibit A; *Id*. In appointing the Receiver, the State Court Judge concluded that Debtor had not acted to abate the nuisance, that it would continue unless a receiver was appointed, and that the Receiver was to proceed with a plan correct the nuisance, whether such was rehabilitating or demolition of the violations that constituted the nuisance. (The forgoing is only a partial summary of the Receiver's powers and duties as ordered by the Superior Court Judge, which powers include the sale of the Property by the Receiver through the State Court Action.) [Fn.2.]

FN. 2. The April 7, 2021 Minute Order attached to the Order Appointing the Receiver contains an extensive review of the history of the State Court Action and the violations on the Property constituting the nuisance.

July 28, 2022 Hearing

At the hearing, XXXXXXXXXX

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

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

The Motion to Excuse Turnover and Confirm Exemption from Automatic Stay filed by Gerard F. Keena II ("Movant-Receiver") 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 Excuse Turnover and Confirm Exemption from Automatic Stay is XXXXXXXXXXXX.

FINAL RULINGS

9.	**21-24291-E-7** **JWC-1**	**JIWAN KAUR** **Peter Cianchetta**	**OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **5-18-22 [33]**

9 thru 10

Final Ruling: No appearance at the July 27, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, May 18, 2022. By the court's calculation, 71 days' notice was provided. 28 days' notice is required. An amended notice of hearing was served on Debtor, Debtor's Counsel, Chapter 7 Trustee, and Office of the United States Trustee on May 23, 2022. By the court's calculation, 66 days' notice was provided.

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

The hearing on the Objection to Claimed Exemptions is continued to 10:30 a.m. on September 22, 2022.

BMO Harris Bank N.A. ("Creditor") objects to Jiwan Kaur's ("Debtor") claimed exemptions under California law because there is serious question as to whether the exempted property is actually Debtor's homestead. California Code of Civil Procedure § 704.730 provides an "automatic" homestead exemption for debtors, because the filing of a bankruptcy petition is the equivalent to a forced sale of a homestead. *E.g., In re Diaz*, 547 B.R. 329, 334 (B.A.P. 9th Cir. 2016).

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

B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

Although California homestead exemption legislation should be construed liberally and in favor of the debtor (*E.g., In re Gilman*, 887 F.3d 956, 964 (9th Cir. 2018)), to qualify as a homestead a property must still be the principal dwelling of either the debtor or their spouse. California Code of Civil Procedure § 704.710(c). Debtor has claimed a $248,110.00 exemption in the property commonly known as 5918 Meeks Way, Sacramento, CA 95835 ("Property") on their Schedule C. Dckt. 1.

However, Debtor also stated at the meeting of creditors held March 1, 2022, that they hold bare legal title for the benefit of senior citizens who reside at the Property. Declaration, Dckt. 35. Debtor has further stated on their Schedule I that they are a caregiver for "In Home Supportive Services," implying that the Property may, in fact, be Debtor's place of employment rather than their homestead. Dckt. 1. Therefore, there is serious doubt as to whether the claimed homestead is, in fact, Debtor's principal dwelling.

Status Report

On July 14, 2022, Creditor and Debtor filed a Joint Status Report (Dckt. 45) stating:

1. Creditor has subpoened documents and received a response from AmerHome Mortgage, Bank of America, JP Morgan Chase, and TriCounties Bank.

2. Creditor subpoenaed documents from Debtor's employer IHSS Public Authority and is waiting for the employer to respond.

3. Creditor has provided Rule 26 disclosures to Debtor.

4. Debtor responded to written discovery.

5. Debtor's deposition is set for July 29, 2022.

6. Debtor's Counsel is out of state August 3-12, 2022.

7. Parties request a continuance for 30-60 days.

The Parties reporting that they are actively working on this matter and having identified scheduling conflicts, the court continues the hearing on this Objection to Claim of Exemptions to 10:30 a.m. on September 22, 2022.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by BMO Harris Bank N.A. ("Creditor") 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 Objection to Claimed Exemptions is continued to **10:30 a.m. on September 22, 2022.**

10. 21-24291-E-7 PLC-1 — JIWAN KAUR — Peter Cianchetta — CONTINUED MOTION TO AVOID LIEN OF BMO HARRIS BANK — 2-2-22 [12]

Final Ruling: No appearance at the July 27, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, Creditor, parties requesting special notice, and Office of the United States Trustee on February 3, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Avoid Judicial Lien is continued to 10:30 a.m. on September 22, 2022.

This Motion requests an order avoiding the judicial lien of BMO Harris Bank ("Creditor") against property of the debtor, Jiwan Kaur ("Debtor") commonly known as 5918 Meeks Way, Sacramento, California ("Property").

A judgment was entered against SSSP Trucking Inc., in favor of Creditor in the amount of $787,091.84. Exhibit 2, Dckt. 15. An abstract of judgment was recorded with Sacramento County on July 27, 2021, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $560,500.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $312,390.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $248,110.00 on

Schedule C. Dckt. 1.

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

CREDITOR'S OPPOSITION

On February 17, 2022, BMO Harris Bank, Creditor, filed an Opposition to Debtor's Motion to Avoid Judicial Lien. Dckt. 21. The Opposition states the court should not adjudicate the Motion without holding an evidentiary hearing after an adequate opportunity for discovery. Creditor has serious questions on whether or not the Debtor is entitled to a homestead exemption on the Property. Creditor would like an evidentiary hearing to take place to determine:

> (a) whether the Property is an investment property for use in Debtor's home health care business;
>
> (b) whether Debtor actually resides in the Property; and
>
> (c) if Debtor currently resides in the Property, and whether Debtor has resided in the Property for the period required to give rise to a homestead exemption.

Creditor requests the court to treat the Motion as a "long cause" matter; use the March 3, 2022, hearing date as a scheduling conference; establish deadlines for discovery and the presentation of evidence; and set a date for an evidentiary hearing.

CREDITOR'S SEPARATE STATEMENT

Creditor filed a Separate Statement along with their Opposition. Dckt. 22. The Statement provides for Creditor's arguments for their allegation that the real property of 5918 Meeks Way, Sacramento, California, is actually an investment property. Creditor points to Debtor's Declaration, Dckt. 14, that Debtor states the Property is her real property and has claimed an exemption. Further, Debtor is being served with pleadings at 2248 Coroval Drive, Sacramento, California. Additionally, the Deed of Trust for the Property, Debtor indicates her residence is the Coroval Property. Lastly, Debtor's boyfriend/partner, Sukhwinder Singh Kang, has advised Creditor on at least two occasions that Debtor acquired the Property for the purpose of running an in-home elder care business for friends and relatives.

Counsel for Creditor reported that based on the information provided at the First Meeting of Creditors, there are other issues for which discovery is required. The Parties agreed to continue the hearing so that they may proceed with orderly discovery on these issues.

Creditor's Objection to Debtor's Claim of Exemptions

On May 18, 2022, Creditor filed an Objection to Debtor's Claim of Exemptions. Dckt. 33. Creditor's objections consist of essentially the same arguments as Creditor's opposition in this motion. Creditor requests that both contested matters be heard and litigated together.

Status Report

On July 14, 2022, Creditor and Debtor filed a Joint Status Report (Dckt. 45) stating:

1. Creditor has subpoened documents and received a response from AmerHome Mortgage, Bank of America, JP Morgan Chase, and TriCounties Bank.

2. Creditor subpoenaed documents from Debtor's employer IHSS Public Authority and is waiting for the employer to respond.

3. Creditor has provided Rule 26 disclosures to Debtor.

4. Debtor responded to written discovery.

5. Debtor's deposition is set for July 29, 2022.

6. Debtor's Counsel is out of state August 3-12, 2022.

7. Parties request a continuance for 30-60 days.

The Parties reporting that they are actively working on this matter and having identified scheduling conflicts, the court continues the hearing on this Motion to Avoid Judicial Lien to 10:30 a.m. on September 22, 2022.

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Jiwan Kaur ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Avoid Judicial Lien is continued to **10:30 a.m. on September 22, 2022**.