UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

August 6, 2020 at 10:30 a.m.

1.	**19-91122-E-7** **BLF-3**	**MARIBEL SOTO RIVERA** **Pro Se**	**CONTINUED MOTION TO COMPEL** **6-3-20 [59]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2020. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion for Turnover 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 for Turnover is xxxxxx.

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 6225 Howard Avenue, Riverbank, California ("Property"). Movant requests the Debtor immediately turn over the Property to Movant and vacate the Property within five (5) days of the entry of the order.

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to

obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

> (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Maribel Soto Rivera ("Debtor") to deliver property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

While a review of the Docket shows Debtor claimed the Property as exempt in her Schedule C as "100% of fair market value," (Dckt. 20), the court entered an order on April 6, 2020 sustaining Trustee's objection due to Debtor failing to specify the code section for the exemption and alternatively, if the exemption is claimed under Section 703.140(b)(5) of the California Code of Civil Procedure, Debtor would exceed the permitted exemption amount (Dckt. 48). Since then, Debtor has "hindered and delayed" Trustee's efforts by failing to cooperate with the Trustee and his realtor to list and market the Property. Motion, Dckt. 59.

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

July 16, 2020 Hearing

At the July 16, 2020 hearing, the court continued the hearing to afford the Debtor the opportunity to obtain counsel and obtain a family member, friend, or other person to provide her with a

translation of what is occurring and that she needs to act to protect her right.

August 6, 2020 Hearing

At the hearing, **xxxxxxxxx**

2. **19-90989-E-7** **JAMIE/MELISSA BILLMAN** **MOTION TO ABANDON**
WF-4 **Walter Dahl** **7-10-20 [192]**

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 9, 2020. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon is granted.

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

The Motion filed by Michael D. McGranahan ("the Chapter 7 Trustee") requests that the court authorize him to abandon the following:

a. real property commonly known as 4498 S. Burson Road, Valley Springs, California;

b. vacant land located on Burson Road in Valley Springs, as more particularly described in the deed of trust recorded on July 2, 2019 in the Calaveras County Recorder's Office, recording number 2019007286;

c. real property commonly known 3968 Burson Road, Valley Springs, California; and

d. real property commonly known 12309 Shooting Star Court, Groveland, California ("Property").

The Property is encumbered by the liens of First Savings Bank, securing claims of $1,967,833.59. The Declaration of Michael D. McGranahan has been filed in support of the Motion and provides testimony that the value of the Property is both burdensome to the estate and of inconsequential value to the bankruptcy estate.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by Michael D. McGranahan ("the Chapter 7 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the following:
>
> a. real property commonly known as 4498 S. Burson Road, Valley Springs, California;
>
> b. vacant land located on Burson Road in Valley Springs, as more particularly described in the deed of trust recorded on July 2, 2019 in the Calaveras County Recorder's Office, recording number 2019007286;

c. real property commonly known 3968 Burson Road, Valley Springs, California; and

d. real property commonly known 12309 Shooting Star Court, Groveland, California

are abandoned to Jamie Benjamin Billman and Melissa Marnell Billman by this order, with no further act of the Chapter 7 Trustee required.

3. 12-92479-E-12 NFG-6 DAVID/ESPERANZA AGUILAR Nelson Gomez MOTION TO ENFORCE TERMS OF CONFIRMED AMENDED CHAPTER 12 PLAN AND FOR ADDITIONAL RELIEF 6-1-20 [150]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, Chapter 12 Trustee, Creditor, and Office of the United States Trustee on June 1, 2020. By the court's calculation, 66 days' notice was provided. 28 days' notice is required.

The Motion to Enforce Terms of Confirmed Amended Chapter 12 Plan 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 Enforce Terms of Confirmed Amended Chapter 12 plan is xxxxxxxxxx.

The present Motion to Enforce Terms of the Confirmed Amended Chapter 12 Plan was filed by the debtors, David Tafolla Aguilar and Esperanza Aguilar ("Debtors"), against creditor OneWest Bank ("Creditor"), asserting that Creditor has violated the terms of the Confirmed Amended Chapter 12 Plan ("Plan") by, through its current service, proceeding with a pending foreclosure of Debtors' business property.

REVIEW OF THE MOTION

In asserting these claims, Debtors state with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

A. The August 21, 2014 confirmed Amended Plan called for monthly payments of $994.00.

B. The Amended Plan provided for Debtors to make payments on their Business Property, located at 5001 E. Monte Vista Avenue, Denair, California, through the Plan.

C. Creditor did not object to the confirmation of the Plan.

D. Creditor through its current servicer, LoanCare, LLC ("LoanCare"), has continued to ignore and disregard the order of this court regarding the confirmation of the Amended Plan, to the detriment of Debtor, including the pending foreclosure on Debtors' Business Property by Creditor.

Motion, Dckt. 150.

Prayer for Relief

Debtor requests the following relief:

1. For an evidentiary hearing to determine the amount owed by Debtors under terms of the confirmed Amended Chapter 12 Plan;

2. For an order dismissing the amounts claimed by LoanCare as owing which were part of the unsecured portion of Debtors' Amended Chapter 12 Plan;

3. For damages for emotional distress incurred by Debtors as a result of LoanCare's unlawful foreclosure action, according to proof;

4. For attorney's fees incurred by Debtors in defending them against LoanCare's unlawful foreclosure action, according to proof; and

5. For any additional relief which the court may deem appropriate.

Review of Evidence

Debtors have provided the Declaration of Nelson F. Gomez in support of the Motion. Dckt. 152. Declarant is Debtors' Counsel who testifies to the following:

A. No opposition to the entry of discharge was filed and an order granting Debtors' discharge was entered on February 22, 2018.

B. Once the thirty six payments were made to the Chapter 12 Trustee, Counsel communicated with the servicer of the loan, CIT Bank, to inquire as to where Debtors should make the remaining 204 payments called for by the Amended Chapter 12 Plan. He was informed that the Bankruptcy Department of CIT Bank would provide a response. See Exhibit A.

C. Counsel's attempt to communicate with Creditor was unsuccessful and the communication was returned as undeliverable. See Exhibit B.

D. CIT Bank informed Counsel that the servicing of the loan was being transferred to LoanCare. See Exhibit C.

E. On March 12, 2018, Counsel received a Debt Validation Letter ("Debt Letter") from LoanCare, which stated that the loan was in delinquency and that the arrears amount for Principal and Interest was $18,121.97. See Exhibit D.

F. On March 26, 2018, Counsel responded to the Debt Letter, challenging it as inaccurate on the grounds that the amount owed by Debtors was $5,450.76, which amounted to six payments of $908.46. Counsel never received a response to his letter.

G. On May 31, 2018, Counsel forwarded to LoanCare all the relevant documents from the Bankruptcy showing that this borrower only owed payments from October, 2017 to May, 2018. See Exhibit F.

H. Debtors sent payments to LoanCare beginning in March of 2018, until November of 2018. The payments were not accepted by the servicer, but later claimed that they did not receive them. Debtors have since received the funds from Bank of America. See Exhibit G.

I. On December 17, 2018, LoanCare informed Debtors that the loan was in default and that a foreclosure proceeding had commenced. The Notice of Default included sums which were part of the unsecured claim of Creditor, which had been dismissed when the Discharge of Debtors was entered. See Exhibit H.

J. Multiple attempts to communicate with LoanCare's individual in charge were unsuccessful. The foreclosure action resulted in a Notice of Trustee Sale issued by Trustee Corps, the company hired by LoanCare to conduct the foreclosure on June 24, 2019. See Exhibit I.

K. On May 22, 2019, after Creditor and LoanCare failed to respond to Debtor, through their attorney, Counsel asked this court to reopen the Bankruptcy Case for the purpose of filing the instant Motion.

L. Since the reopening of the case, LoanCare has continued to maintain the

Trustee Sale of Debtors' property, only postponing it for terms of 30 days.

M. Counsel adds that Creditor and LoanCare are attempting to recover an unsecured component through the foreclosure action against the terms of the confirmed Plan, and Debtor requests the court to enforce the terms of the plan by issuing a ruling for Creditor and LoanCare to comply with the order so the foreclosure action is based solely on the amount legally owed by Debtor as outline in the Plan.

The following Exhibits are provided as part of the Declaration:

- Exhibit A: copy of October 9, 2017 Debtor's Counsel Letter to CIT Bank, NA and a copy of undeliverable envelope as Exhibit B.

- Exhibit C: copy of Notice of Servicing Transfer dated February 8, 2018

- Exhibit D: copy of March 6, 2018 LoanCare Debt Validation Letter

- Exhibit E: copy of March 26, 2018 Debtor's Counsel Letter to LoanCare

- Exhibit F: copy of Fax Transmission Cover Sheet and May 30, 2018 Letter to LoanCare with accompanying bankruptcy related documents

- Exhibit G: copies of nine (9) Bank of America Cashier's Checks in the amount of $908.46 dated March 2018 through November 2018.

- Exhibit H: copy of December 17, 2018 LoanCare Letter to Debtor regarding default and foreclosure proceedings

- Exhibit I: copy of Notice of Trustee's Sale

Dckt. 152.

RESPONDENT'S OPPOSITION

Respondent filed an Opposition on July 23, 2020. Dckt. 154. Respondent opposes the Motion on the following grounds:

A. Debtors do not allege that their loan is current and fail to explain how, specifically, the March 2018 Debt letter is inaccurate.

B. Debtors have not, and are unable to, produce proof of payments from October 2017 until now. LoanCare has no record of receiving the cashier's checks in question that Debtors contend were sent between March 2018 and November 2018 prior to the commencement of the foreclosure.

C. Debtors have failed to asserts how LoanCare violated the terms of the confirmed plan on the basis that the delinquent amount stated in the Debt Letter in the amount of $18,413.79 is not a portion of the unsecured claim that was to be wiped out upon discharge.

D. Instead, the delinquent amount included in the Debt Letter contains payments that were to be paid subject to the Amended Stipulation Resolving Debtors' Motion to Value Collateral on Subject Business Property and Setting Forth Chapter 12 Plan Treatment, but were, instead, paid at the lower amount of $779.19 (instead of the stipulated monthly plan payment of $908.46) coupled with the Debtors' lack of payments between October 2017 and March 2018 after the closing of the case.

E. Debtors failed to show that LoanCare violated the terms of the Plan and that they suffered any emotional distress damages.

F. The Motion fails to provide evidence or a calculation of the alleged attorney's fees and costs associated with the alleged violation of plan terms, hourly rate paid, or any other details that would allow a court to award fees and costs. Thus, Debtors are not entitled to an award of attorney's fees and costs.

DISCUSSION

The court begins with the Confirmed Amended Chapter 12 Plan, the modified contract between the parties. With respect to the secured claim at issue, the Confirmed Amended Plan provides:

> Class 3: Secured claim of One West Bank.
>
> This class consists of the claim of One West Bank which is secured by a Deed of Trust on the Real Property located at 5001 E. Monte Vista Avenue, Denair, California.
>
> (The Bank filed a claim in the sum of $179,923.80. The Debtors and the Bank reached a Stipulation regarding the secured and unsecured portions of The Bank's claim, and the Court accepted this Stipulation.)

Confirmed Amended Plan, p. 2:22-25, 3:1-3, attached to Confirmation Order; Dckt. 79.

> Class 3: Secured claim of One West Bank.
>
> The holder of the claim in this class will receive $115,630.00, together with interest at the rate of 5% per annum, from September 1, 2014, in 240 fully amortized monthly payments of $779.17.
>
> Prior to confirmation of the Amended Plan, the Debtor will make adequate protection payments of $779.17 to the holder of the claim in this class commencing November 1, 2013. Debtor has made these payments from

November 1, 2013 to July 10, 2014.

> The Trustee will make a total of 36 payments to the holder of the claim in this class from the funds paid to him, and the Debtors will make the remaining 204 payments. The holder of the claim in this class will retain its Deed of Trust against the Real Property.

Id., p. 3:13-24.

Thus, the confirmed plan provides that Creditor's secured claim is $115,630.00, with fully amortized payments of $779.17 a month until paid in full at the end of 20 years.

There does not appear that there can be many complex issues over whether the required payments under the Note, as modified by the confirmed Amended Plan, have been made - $779.17 per month commencing September 1, 2014.

The court notes that the Stipulation filed on August 20, 2014, a month before the Amended Plan is confirmed. The Stipulation provides for a 5.25% interest rate and for the pre-confirmation adequate protection payments to be $908.46, of which $129.29 to be applied to "escrow."

Using the Microsoft Excel Loan Calculator Program, the court computes the monthly payment for a fully amortized repayment of $115,630.00 over 240 months at 5.25% interest to be $779.17. So, while it appears that the interest rate stated in the plan, 5%, the monthly payment amount was computed consistent with the Stipulation at $779.17. No reference is made in the Plan to amounts for "escrow" (but presumably the portion of the loan documents not modified provide for such amounts if that is the asserted default).

At the hearing, the court addressed with the Parties identifying the real financial issues that exist and how to clearly and accurately identify the payments required and the payments made.

The Parties **xxxxxxxxxx**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Enforce Terms of Confirmed Amended Chapter 12 Plan by debtors David Tafolla Aguilar and Esperanza Aguilar ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is **xxxxxxxxxx** .

4. **19-90122-E-11 MF-36** | **MIKE TAMANA FREIGHT LINES, LLC** **Reno Fernandez** | **MOTION TO DISMISS CASE O.S.T. 7-23-20 [535]**

No 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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2020. By the court's calculation, 13 days' notice was provided. The court set the hearing for August 6, 2020. Dckt. 539.

The Debtor in Possession requested an order shortening time and lodged with the court a proposed order for service, which states:

> 2. Notice of the hearing on the Motion to Dismiss shall be timely if served by overnight delivery, fax, or email on or before the close of business on business day immediately following entry of this order; and . . . .

Order, p. 1:25-27; Dckt. 539.

However, the Certificates of Service filed by the Debtor in Possession state that service was made as follows:

> [s]erved for delivery by the United States Postal Service, via First Class United States Mail, postage prepaid, with sufficient postage thereon to the parties listed on the mailing list exhibit, a copy of which is attached hereto and incorporated as if fully set forth herein.

Dckts. 541, 542.

The above stated service is not consistent with that stated in the order shortening time that the Debtor in Possession lodged with the court. At the hearing, Counsel for the Debtor in Possession addressed this service issue, **XXXXXXXXXX**

The Motion to Dismiss was ~~properly set for hearing on the notice required~~ by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the U.S. Trustee, and any other parties in interest were

not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Dismiss is xxxxxxxxxx.

The debtor in possession, Mike Tamana Freight Lines, LLC, ("Debtor in Possession") filed this Motion seeking dismissal of the Chapter 11 case pursuant to 11 U.S.C. §§ 305(a)(1) and/or 1112(b)(1).

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. Debtor in Possession's operations are in good order, and it is expected that operations will continue without disruption, subject to access to sufficient cash to fund its operations during the current COVID-19 Pandemic.

2. Debtor in Possession wishes to take advantage of the Paycheck Protection Program ("PPP") provided for in the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") to obtain a forgivable loan to cover payroll expenditures to aid in the retention and rehiring of employees, which would allow for the continued performance of delivery contracts for essential goods during this period of economic uncertainty.

3. PPP Loans do not require personal guarantees or collateral as they are guaranteed by the Small Business Administration ("SBA") and are being offered fee-free. Any amounts of the loan that are not forgiven will be subject to one percent (1%) interest with a minimum maturity of five (5) years, and all payments will be deferred until the date the SBA sends the borrower's loan forgiveness amount to the lender or if the borrower does not apply for forgiveness, ten (10) months after the end of the covered period of twenty-four (24) weeks.

4. When Debtor in Possession initially applied for a PPP Loan, it was informed that but for its involvement in an active bankruptcy it would have qualified for a PPP Loan.

5. SBA issued an official borrower application form for PPP Loans, and subsequent guidelines and interim final rules, which among other things, indicates that if an applicant is presently involved in any bankruptcy proceeding, a PPP Loan will not be approved.

6. Debtors across the nation have filed adversary complaints against the SBA to challenge the guidelines and official borrower application that

disqualified otherwise qualified borrowers based solely on the borrower being involved in a bankruptcy proceeding.

7. Due to the significant uncertainty of the success of an adversary complaint, cost of litigation, limited operational impact of COVID-19 (at the time), prior funding allocations being exceeded and prior loan application deadlines, Debtor in Possession previously intended to proceed with reorganization without access to PPP Loan funds.

8. However, after three of Debtor in Possession's employees tested positive for COVID-19, drivers refusing to work until COVID-19 cases surge ceases, and shipping partners shutting down, Debtor in Possession has been directly impacted and is forced to reconsider its decision to forgo a PPP Loan.

9. After the program expired with billions in funding remaining, the application period for PPP loans was extended and expires August 8, 2020. However, Debtor in Possession has been barred by what appears to be arbitrary and capricious rules established by the SBA against any individual or entity presently involved in a bankruptcy.

10. Debtor in Possession estimates that the PPP financing will supplement operations and provide sufficient cash to fund its operations, consistent with the budget offered in support of the motion to use cash collateral.

11. Debtor in Possession believes that a forgivable PPP loan will enable it to retain employees and/or hire more employees while it continues to address its debts and liabilities.

12. The interest of creditors will be served by the dismissal of the case as a PPP Loan will permit Debtor in Possession to continue operating and as such continue to address its secured claims over time and increase possible returns to general unsecured creditors. On the other hand, a liquidation would only bring minimal returns if any.

13. Based upon preliminary calculations, Debtor in Possession has been informed that they qualify for an estimated $1.4 million dollar loan once it can answer "No" on the first question on the PPP Application regarding being presently involved in a bankruptcy.

14. PPP Loan funds will be segregated from a general operating account in a separate account that will only be drawn upon as needed for employment expenditures.

Motion, Dckt. 535.

Debtor in Possession filed the Declaration of Amanjot Tamana, Debtor in Possession's responsible individual, to provide testimony attesting to the facts asserted in the Motion. Declaration,

Dckt. 537.

DISCUSSION

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

Here, Debtor in Possession asserts that in order to qualify for the PPP loan that would allow the company to continue operating through the COVID-19 situation and hopefully beyond, Debtor in Possession must not be going through bankruptcy. Debtor in Possession argues that without this assistance the corporation might not make it. Further, Debtor in Possession plans on using PPP Loan funds as directed in SBA guidelines to maximize loan forgiveness and the PPP Loan funds will be segregated from a general operating account in a separate account that will only be drawn upon as needed for employment expenditures.

Debtor in Possession argues there is cause to dismiss the case because continuing in bankruptcy during the current pandemic would deplete property of the Estate without any greater recovery to creditors and allowing Debtor in Possession to apply and receive the PPP loan would better serve the interests of both Debtor in Possession and the creditors.

The Debtor in Possession has actively prosecuted this Chapter 11 case. Though no plan has been confirmed, there is nothing indicating that the Debtor in Possession has not been acting in good faith.

The Debtor in Possession now presents the court with a rationale explanation as to why dismissal and utilizing other special governmental economic programs is a valid option.

At the hearing, **xxxxxxx**

~~Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is dismissed.~~

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

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

hearing.

The Motion To Dismiss filed by Mike Tamana Freight Lines, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

5. **16-90603-E-7** **MARK ONE CORPORATION** **CONTINUED MOTION FOR**
DB-3 **Cecily Dumas** **SUPPLEMENTAL ORDER TO ORDER APPROVING SETTLEMENT**
5-7-20 [181]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, Attorney for Settling Party, and parties requesting special notice on May 7, 2020. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise 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 for Supplemental Order to Order Approving Settlement is granted, with the court determining that any claims based on or derived from alleged preferential transfers or fraudulent conveyances were claims and rights of the bankruptcy estate and bankruptcy trustee which were sold to John Sims, individually and as trustee of the G&M Baker 1994 Trust.

FINAL RULINGS

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

Final Ruling: No appearance at the August 6, 2020 Hearing is required.

Pursuant to this court's July 23, 2020 order, Dckt. 113, and as stipulated by the parties, **the hearing on the Motion for Administrative Expenses is continued to 10:30 a.m. on November 19, 2020.**

7.	**12-92345-E-7** **MSN-1**	**SHANALE PHIPPS** **Mark Nelson**	**MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A.** **6-8-20 [20]**

Final Ruling: No appearance at the August 6, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on June 8, 2020. By the court's calculation, 59 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 Citibank (South Dakota) N.A. ("Creditor") against property of the debtor, Shanale Phipps ("Debtor") commonly known as 1409 El Pueblo Drive, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $26,433.33. Exhibit A, Dckt. 23. An abstract of judgment was recorded with Stanislaus County on September 7, 2011, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $297,700.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $467,490.00 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 § 703.140(b)(1) in the amount of $5,000.00 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).

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Shanale Phipps ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Citibank (South Dakota) N.A., California Superior Court for Stanislaus County Case No. 658652, recorded on September 7, 2011, Document No. 2011-0073644-00, with the Stanislaus County Recorder, against the real property commonly known as 1409 El Pueblo Drive, Modesto, California, is avoided in its entirety to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

8. **12-93049-E-11 GRF-11** **MARK/ANGELA GARCIA** **Mark Hannon** **MOTION FOR COMPENSATION FOR GARY R. FARRAR, OTHER PROFESSIONAL(S)** **6-23-20 [1119]**

Final Ruling: No appearance at the August 6, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2020. By the court's calculation, 44 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Gary Farrar, the Plan Administrator ("Applicant") for Mark and Angela Garcia, the Chapter 11 Debtors ("Client"), makes a third Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 22, 2019, through June 23, 2020. The order of the court approving employment of Applicant was entered on February 28, 2017. Dckt. 939. Applicant requests fees in the amount of $5,610.00. Applicant is not requesting costs through this Motion.

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 accounting, auditing, and 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.

Accounting & Auditing: Applicant spent 11.7 hours in this category. Applicant communicated on multiple occasions with Debtors and creditors, and made monthly payments to creditors.

Case Administration: Applicant spent 7.0 hours in this category. Applicant appeared at status conferences, prepared and filed status reports, monitored the financing on real property, and reviewed and responded to creditor issues. Additionally, Mr. Farrar filed three quarterly reports.

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**
Gary R. Farrar	18.7	$300.00	$5,610.00
Total Fees for Period of Application			$5,610.00

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

Application	**Interim Approved Fees**	
First Interim	$14,160.00	
Second Interim	$13,890.00	

Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$28,050.00	

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. Third Interim Fees in the amount of $5,610.00 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 Plan Administrator under the confirmed plan from the available Plan Funds in a manner consistent with the order of distribution in a Chapter 11 case.

The court authorizes the Plan Administrator under the confirmed plan to pay 100% of the fees allowed by the court.

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

Fees $5,610.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gary R. Farrar ("Applicant"), Plan Administrator for Mark and Angela Garcia, the Chapter 11 Debtor's, ("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 Gary R. Farrar is allowed the following fees and expenses as a professional of the Estate:
>
> Gary R. Farrar, Professional employed by the Chapter 11 Debtor's
>
> Fees in the amount of $5,610.00
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330. The Plan Administrator is authorized to pay 100% of the authorized Interim Fees in this case.

9. **18-90190-E-7** **CHARAE GILBERT** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Brian Haddix **7-16-20 [67]**

Final Ruling: No appearance at the August 6, 2020 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Chapter 13 Trustee as stated on the Certificate of Service on July 18, 2020. The court computes that 19 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $25.00 due on July 6, 2020.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.