

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 13, 2020 at 10:30 a.m.

1. <u>20-22812-E-7</u>	LORI REED	MOTION TO SELL
<u>BLF-2</u>	Mary Anderson	7-22-20 <u>[27]</u>

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 22, 2020. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

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The Motion to Sell Property is granted.
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The Bankruptcy Code permits Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the estate's non-exempt interest in Debtor's 50% share of the real property located at 19941 Lomo Ranchos Road, Volcano, California ("Property").

The proposed purchaser of the Property is Lori Marie Reed (“Debtor/Buyer”), and the terms of the sale are summarized as follows :

- A. Debtor will purchase the estate’s non-exempt interest in the 50% share the Property for \$19,846.00.
- B. Debtor will direct payment to Trustee from the close of escrow on the pending sale of the entire Property to an unrelated third party, or from the close of escrow on a future sale to close no later than December 31, 2020.
- C. Debtor shall not claim any of the Purchase Amount as exempt.
- D. As security for the obligation of the Debtor under this Agreement, Debtor shall sign and deliver to Trustee, concurrently with the signing of this Agreement, a Stipulation for Entry of Order of Turn Over. If the Debtor breaches this Agreement or if the sale of the Property is not complete by the close of business on December 31, 2020, then Trustee shall be entitled to file the Stipulation without further notice to Debtor, and immediately obtain an order for turnover without a hearing.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it allows Trustee to collect \$19,846.00 for the benefit of the estate and avoid the uncertainty and expenses related to litigation that may be incurred if Trustee were to file an adversary proceeding if she elected to sell the entire Property.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because waiver would allow Debtor and her former spouse to proceed with the sale of the entire Property and escrow can close as soon as possible after the entry of an order approving this sale.

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

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

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

The Motion to Sell Property filed by Kimberly J. Husted, 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 Kimberly J. Husted, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Lori Marie Reed or nominee (“Debtor/Buyer”), the estate’s non-exempt interest in Debtor’s 50% share of the real property located at 19941 Lomo Ranchos Road, Volcano, California (“Property”) on the following terms:

- A. The Property shall be sold to Buyer for \$19,846.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit D, Dckt. 30, and as further provided in this Order.
- B. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, creditors holding the twenty (20) largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on July 23, 2020. By the court's calculation, 21 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 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

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

The Bankruptcy Group, P.C., the Attorney ("Applicant") for Haeshing Hwang, the Debtor in Possession ("DIP"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The court approved Applicant's employment on November 29, 2020. Dckt. 23. Fees are requested for the period October 29, 2019, through August 13, 2020. Applicant requests fees in the amount of \$20,000.00 and costs in the amount of \$45.60.

DIP compensated Applicant \$3,840.00 for pre-petition services and costs, including the Chapter 11 filing fee. This amount was earned and billed prior to filing, and there was \$143.00 in the trust account upon filing this case. These funds were paid out of DIP's bank account prior to

filing. This amount was not shared with any other firm, and Applicant has not received any other compensation in connection with this case.

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 general case administration, asset analysis, attending initial Debtor interview and 341 meeting, preparing and filing applications to employ and for fees, preparing and filing motion to sell property, drafting status reports and attending status conferences, drafting stipulation for relief from stay, preparing monthly operating reports, and preparing motion to dismiss. 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.

General Case Administration: Applicant spent 10.3 hours in this category. Applicant communicated with the client and third parties, researched and established the Debtor in Possession account, held in-firm meetings, service of documents, conducted research on case deadlines, and docket maintenance.

Asset Analysis: Applicant spent 8.5 hours in this category. Applicant prepared, filed, and served the petition and attached schedules, researched the statute of limitations for unsecured creditors, and prepared, filed, and served amended schedules.

Initial Debtor Interview and 341 Hearing: Applicant spent 14.4 hours in this category. Applicant prepared and submitted the Initial Debtor Interview documents provided by the United States Trustee’s (“UST”) checklist, communicated with the UST’s counsel, and prepared and attended the Initial Debtor Interview and 341 Hearing.

Application to Employ and Application for Fees: Applicant spent 6.4 hours in this category. Applicant researched applicable law, prepared, filed, and served the application to employ Applicant as

counsel for Debtor in Possession, and attended the hearing. Applicant also prepared, filed, and served the first and final motion to approve professional fees.

Application to Employ Broker and Sale of Property: Applicant spent 15.3 hours in this category. Applicant prepared, filed, and served the application to employ Sotheby Realty as a broker for Debtor in Possession, attended the hearing, and communicated with the Broker, client, and potential buyers.

Stipulation for Relief from Stay: Applicant spent 13.7 hours in this category. Applicant communicated with counsel for the secured creditor 1824 Swan Lakes, LLC, reviewed a stipulation for relief from stay, attended the relevant hearings, and communicated with creditor's counsel.

Status Reports and Conferences: Applicant spent 10.4 hours in this category. Applicant prepared, filed, and served status reports, and attended the status conferences throughout the case.

Monthly Operating Reports: Applicant spent 17.2 hours in this category. Applicant prepared, filed, and served the monthly operating reports, and communicated with the client and UST's counsel. All work performed in connection with the monthly operating reports, regardless of the staff member who performed the work, is being billed at the administrative rate of \$90 per hour.

Motion to Dismiss: Applicant spent 1.6 hours in this category. Applicant prepared, filed, and served the motion to dismiss the above captioned case.

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
Stephan M. Brown Attorney	45 0.7	\$400.00 \$90.00 ^{FN.1}	\$18,000.00 \$63.00
Daniel J. Griffin Attorney	18.1	\$300.00	\$5,430.00
Eric T. Welch Legal Administrator	14.7 1.9	\$240.00 \$90.00	\$3,528.00 \$171.00
Robert Brown EA	14.6	\$90.00	\$1,314.00
Karen Davis Paralegal	0.7	\$200.00	\$140.00
Kristi LaRoche Administrative Assistant	2.1	\$90.00	\$189.00

	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$28,835.00

FN.1. All work on monthly operating reports is defaulted to the administrative rate of \$90 per hour.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$45.60 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$45.60
		\$0.00
Total Costs Requested in Application		\$45.60

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of \$20,000.00 for its fees incurred for Client. First and Final Fees and Costs in the amount of \$20,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

First and Final Costs in the amount of \$45.60 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

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

Fees	\$20,000.00
Costs and Expenses	\$45.60

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 Bankruptcy Group, P.C. (“Applicant”), Attorney for Haeshing Hwang, the Debtor in Possession, (“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 The Bankruptcy Group, P.C. is allowed the following fees and expenses as a professional of the Estate:

The Bankruptcy Group, P.C., Professional employed by the Debtor in Possession

Fees in the amount of \$20,000.00

Expenses in the amount of \$45.60,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor in Possession.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on July 23, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

<p>The Motion to Dismiss Case is granted, and the case is dismissed.</p>

The debtor in possession, Haeshing Hwang, ("ΔIP") filed this Motion seeking dismissal of the Chapter 11 case pursuant to 11 U.S.C. §1112(b)(4).

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

1. Cause exists to dismiss this case
2. After the parties stipulated to relief from stay, the primary asset of the estate, real property commonly known as 9220 Royal Crest Court, Granite Bay, CA ("Property"), was repossessed by the largest secured creditor 1824 Swan Falls LLC ("Creditor"). *See* Dckt. 68.
3. Without this asset, ΔIP cannot propose a confirmable plan of rehabilitation.
4. Dismissal is in the best interests of all other creditors and the estate.

5. Creditor was allowed to exercise its rights under applicable state law against the Property, and all other creditors will be able to exercise their rights under applicable law.
6. The estate will not incur further fees and costs in prosecuting a plan, which preserves assets and promotes the interests of all other creditors and the estate.

Motion, Dckt. 75.

Though no declaration has been filed by the Debtor, the file in this case documents how and why this case cannot be prosecuted as a Chapter 11.

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, ΔIP asserts that after its Property was foreclosed on, the case ceased to make financial sense. ΔIP has no other assets that would allow for a proposed plan to be confirmed for rehabilitation.

ΔIP argues there is cause to dismiss the case because continuing in bankruptcy would incur additional fees and costs that could be preserved for other creditors and the estate.

ΔIP’s arguments are well taken. The requested dismissal allows ΔIP to preserve assets to be used for the benefit of other creditors and the estate. No party in interest has opposed the Motion. 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 Haeshing Hwang (“ΔIP”) 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.

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 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 12, 2020. By the court's calculation, 32 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.

Walter R. Dahl, the Chapter 11 Subchapter V Trustee, ("Applicant") for the Estate of Robert Kelly McLean and Sherry Annette McLean ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period February 23, 2020, through July 9, 2020. Applicant requests fees in the amount of \$7,049.00 and costs in the amount of \$223.35.

Debtor filed a Non-Opposition to the compensation requested on July 16, 2020. Dckt. 96.

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 receive, 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 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 general case administration; reviewing monthly reports; reviewing and attending asset disposition proceedings; preparing fee and employment applications and attending related hearings; reviewing and communicating with parties regarding plan and disclosure statement. 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.

Accounting: Applicant spent 0.20 hours in this category. Applicant reviewed March and April monthly operating reports.

Asset Disposition Proceedings: Applicant spent 4.10 hours in this category. Applicant reviewed motion and supporting pleadings related to the sale of Central Way commercial real property; communicated with Debtors' counsel regarding the sale; attended hearing on motion to approve sale of commercial property; reviewed motion and supporting pleadings related to the sale of Congressional Drive residential real property; and attended hearing on motion to approve sale of residential property.

General Case Administration: Applicant spent 6.7 hours in this category. Applicant communicated with US Trustee personnel regarding case assignment and dates for initial debtor interview and meeting of creditors; communicated with Debtors' counsel; prepared for and attended initial debtor interview; attended meeting of creditors; reviewed Debtors' first status report; and attended first Chapter 11 status conference.

Fee/Employment Applications: Applicant spent 1.20 hours as Trustee and 2.5 hours as paralegal in this category. Applicant attended hearing on Debtors' counsel fee application; prepared, filed and served Subchapter V Trustee fee application; and expects to attend hearing on Subchapter V Trustee fee application.

Plan and Disclosure Statement: Applicant spent 3.40 hours in this category. Applicant reviewed and revised Debtors' draft plan of reorganization; conducted legal research and communicated with S. Reynolds regarding consensual or non-consensual confirmation and other plan issues; reviewed objection to plan confirmation; communicated with Debtors' counsel, and others regarding issues to address in confirmation order; revised draft confirmation order; prepared for plan confirmation hearing and attended a portion of hearing; and reviewed and approved plan confirmation order.

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
Walter R. Dahl	15.4	\$435.00 (Trustee)	\$6,699.00
Walter R. Dahl	2.5	\$140.00 (Paralegal Services)	\$350.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$7,049.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$223.35 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
CourtCall		\$135.00
Parking		\$6.35
Photocopies	\$0.05 per page	\$18.60
Postage		\$63.40
Total Costs Requested in Application		\$223.35

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. First Final Fees in the amount of \$7,049.00 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 11 Plan Administrator from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 Subchapter V case.

This case required significant work by the Chapter 11 Subchapter V 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 11 Subchapter V Trustee.

Applicant is allowed, and the Chapter 11 Plan Administrator is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$7,049.00
Costs and Expenses	\$223.35

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 Walter R. Dahl, the Chapter 11 Subchapter V 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 Walter R. Dahl is allowed the following fees and expenses as trustee of the Estate:

Walter R. Dahl, the Chapter 11 Subchapter V Trustee

Fees in the amount of \$7,049.00
Expenses in the amount of \$223.35,

IT IS FURTHER ORDERED that the Chapter 11 Plan Administrator is authorized to pay to the Subchapter V Trustee 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 11 Subchapter V case.

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

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

Sufficient Notice Not Provided. No Proof of Service was filed; thus, the court is unable to determine if and when the Motion and supporting pleadings were served.

The Motion for Entry of Discharge has not been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

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

The Motion for Entry of Discharge has been filed by Robert Kelly McLean and Sherry Annette McLean ("Debtors"). 11 U.S.C. § 1141(d)(5)(A) permits the court's discharge of debts provided for in a plan when all payments have been made.

Debtors' Counsel Declaration (Dckt. 95) certifies that:

- A. He received funds from the sales escrow from the sale of Debtors residence into the Reynolds Law Corporation Attorney Client Trust Account.
- B. On July 1, 2020, he mailed check no. 1355 in the amount of \$43,969.33 to the Internal Revenue Service to the address listed on Proof of Claim No. 23.
- C. He has paid the fees awarded to Counsel by the court on June 10, 2020 and has reserved funds sufficient to pay the claim of Walter Dahl as Subchapter V Trustee.
- D. With the payment of the IRS, Counsel's fees and the fees of Walter Dahl, all of the payments contemplated by the Plan of Reorganization will have been completed.
- E. No further action is required by the Court save entering Debtor's discharge.

F. Under these circumstances the case may be closed.

Further, the Motion asserts the following:

- A. Debtors have exempted property in excess of the \$170,350 limit imposed by 11 U.S.C. §522(q)(1) in force when this case was filed.
- B. Debtors have not been convicted of a felony, do not owe a debt arising from a violation of Federal or State Securities law, racketeering as contemplated by 18 U.S.C. §1962, any criminal act, intentional tort, or willful or reckless misconduct as contemplated by 522(q)(1)(B).
- C. Further, the Property exempted in this case (primarily the \$175,000 homestead exemption provided by the C.C.P. 704.140(a)(3)) are reasonably necessary for the support of the Debtors, who are now living on their social security income.
- D. Debtors will complete the course required by 11 U.S.C. §1007(b)(7)(B) prior to the hearing of this motion.

Motion, Dckt. 93, at p. 2.

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

The court notes that this is not only one of the first Subchapter V cases in the District, but the first completed case. The Debtor in Possession, counsel for the Subchapter V Debtor and Debtor in Possession, and the Subchapter V Trustee worked to coordinate a smoothly run case and engendered the cooperation of creditors. A text book (even if the “book” hasn’t been written yet) handling of a Subchapter V case.

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

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

The Motion for Entry of Discharge filed by Robert Kelly McLean and Sherry Annette McLean (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the court shall enter the discharge for Robert Kelly McLean and Sherry Annette McLean in this case.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

<p>The Motion to Pay Insurance Premiums on Real Estate is granted.</p>

Michael D. McGranahan, Chapter 7 Trustee ("Movant") requests payment of administrative expenses in the amount of \$1,049.00, to be incurred for the period of July 8, 2020, to October 8, 2020, for providing insurance coverage and to pay insurance premiums for real property commonly known as 6494 Garner Place, Valley Springs, California ("Property").

Movant also seeks authority to renew such coverage, and pay an additional premium, for an additional three month period if the Trustee finds that the marketing period should be extended.

DISCUSSION

Movant argues he has decided to sell the Property, and needs to obtain insurance on the property during the marketing period.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate" Here, Movant has obtained a quote

from Trustee Resource group to provide coverage from July 8, 2020 through October 8, 2020 for the sum of \$1,049.00.

Movant having demonstrated that the expenses were necessary, the court finds that Movant providing for insurance coverage and pay insurance premiums for property of the estate was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay administrative expenses in the amount of \$1,049.00.

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 Pay Insurance Premiums on Real Estate filed by Michael D. McGranahan, 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 is granted, and the Chapter 7 Trustee is authorized to pay \$1,049.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

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 Chapter 13 Trustee's, parties requesting special notice, and Office of the United States Trustee on July 2, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion for Orders Respecting Disposition of Funds to be Paid to Thomas O. Gillis Under the Terms of Confirmed Plans 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 Orders Respecting Disposition of Funds to be Paid to Thomas O. Gillis Under the Terms of Confirmed Plans is denied without prejudice.

Thomas O. Gillis ("Gillis") requests an order regarding disposition of the funds in question under the terms of confirmed plans in approximately 351 Chapter 13 cases for which Gillis was engaged as an attorney and had elected the "no look" fee.

Gillis suggests that the court enter an order decreeing that the funds due to him be paid to an intermediary to be disbursed only by court order and, specifically, that said funds be made available to pay any attorney who substitutes into one of the 351 cases. Further, Gillis suggests that the substituting attorney must agree to accept the case under the Fee Rubric set for the Gillis cases.

Mr. Gillis notes that because he is currently working for Mr. Mark Hannon, Mr. Hannon may substitute in to handle problems in any of the 351 cases but would not be entitled to payment from funds held by the intermediary.

Further, Gillis requests that he receive a credit for the funds paid against the amount he owes to the 351 debtors.

DISCUSSION

On June 26, 2020, the court issued a joint memorandum decision adopting a district-wide Fee Rubric for deciding the amount of a reasonable fee, to be used to resolve the reasonableness of fees in other Chapter 13 cases in which Mr. Gillis was counsel of record. Case No. 20-00202, Dckt. 150.

The request is based on funds received for the disgorgement of fees paid to Mr. Gillis in excess of the allowed amounts (whether paid directly by Mr. Gillis or paid by distributions from the Chapter 13 Trustees for payments due Mr. Gillis for allowed fees) for the debtors to whom he can no longer fulfill his obligations of representation due to his suspension from the practice of law beginning February 2020. By order of the court, Trustees to these cases were ordered to pay the funds to the Clerk of the Court, “who shall hold such moneys pending further order of the court directing the disbursement of such funds for application to Mr. Gillis’ disgorgement obligations.” *Id.*, at 4. The joint memorandum decision specifically provides:

The disbursement methodology for the monies received and held by the Clerk of the Court for the attorney’s fees disbursement shall be determined by further order of the court. At the June 18, 2020 Status Conference, Mr. Gillis suggested that any such disbursement methodology should include consideration of the cases in which there is additional legal work required for which compensation of a successor will be paid.

Id., at 5.

Tracy Hope Davis, the United States Trustee (“U.S. Trustee”), filed a Response arguing that the motion should be denied as it does not meet the standard for relief under Fed. R. Civ. P. 59 and 60 on the basis that Mr. Gillis seeks to either alter or amend a judgement, or seek relief from the District-Wide Fee Rubric Order. Dckt. 211.

Citing to *Turner v. Burlington N. Santa Fe R. Co.*, U.S. Trustee asserts that there are four grounds upon which a Rule 59(e) motion may be granted: 1) the motion is "necessary to correct manifest errors of law or fact upon which the judgment is based;" 2) the moving party presents "newly discovered or previously unavailable evidence;" 3) the motion is necessary to "prevent manifest injustice;" or 4) there is an "intervening change in controlling law." *Turner v. Burlington N. Santa Fe R. Co.*, 338, F.3d 1058, 1063 (9th Cir. 2003) Dckt. 211, at 5, ¶ A, 13-17.

U.S. Trustee argues that Mr. Gillis has failed to meet these grounds because Mr. Gillis agreed at the Status Conference that the Chapter 13 Trustees shall make any and all monthly disbursements for any fees due him under the Rubric directly to the Clerk of the Court; Mr. Gillis has not asserted how the court committed “clear error” in ordering the Chapter 13 Trustees to make disbursements for any fees due him under the Rubric to the Clerk of the Court or why the District-Wide Fee Rubric Order is “manifestly unjust;” and lastly, granting Mr. Gillis’ Motion would provide him with a “second bite at the apple” concerning the issue of funds going to the Clerk of the Court registry when that issue has been

decided and is final. *Id.*, at 5- 6.

U.S. Trustee then turns to Fed. R. Civ. P 60, and citing *United States v. Alpine Land & Reservoir, Co.*, Trustee asserts that to prevail under Rule 60(b)(6), a moving party must show that he suffered an injury as a result of the judgment from which he seeks relief and that circumstances beyond his control prevented him from taking timely action to protect his interests. *United States v. Alpine Land & Reservoir, Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993). *Id.*, at 6, ¶ B, 15-17.

Here, U.S. Trustee argues that Gillis has failed to show that he suffered an injury from the adopted Fee Rubric. U.S. Trustee also contends that the Motion does not explain the need for an “intermediary,” who would be qualified to take such a role; fails to define “credit” or provide any explanation how he would “receive credit for the funds paid to the intermediary”; fails to explain his duties while “working for Mr. Hannon;” among other things. *Id.*, at 7, 5-13.

GILLIS DECLARATION

On August 4, 2020, Mr. Gillis filed a Declaration clarifying his motion and asserting that motion’s purpose is to ask the court to ponder and answer some of the following questions (Dckt. 237):

[W]ho should the Clerk pay first?
Should substitute counsel be paid from the funds held?
Should the Rubric limit the funds requested by said substitute counsel?
What if a debtor’s case successfully closed before he is paid?
What if there is not enough money to pay everyone?
Is the clerk the right intermediary or should the Trustees administer the funds? If so, should the Trustees receive a fee?

Declaration, at ¶ 6.

Gillis further testifies that the motion does not seek relief under Rule 59 or 60. *Id.*, at ¶ 8.

DECISION

This Motion does raise an important point - how will the monies recovered, whether voluntarily paid by Mr. Gillis, recovered through the Chapter 13 disbursements in cases in which Mr. Gillis is owed money on allowed attorney’s fees, or recovered by the Chapter 13 Trustee or U.S. Trustee through enforcement of judgment proceedings under the Adoption of Fee Rubric Orders be properly disbursed from the fund currently being held by the Clerk of the Court. But Mr. Gillis’ request is premature in that there is no showing that the monies deposited with the Clerk of the Court are sufficient to have a proper distribution to or for the benefit of the clients and their bankruptcy estate in which Mr. Gillis was overpaid.

The Fee Rubric and establishing the fund into which the monies disgorged (either by voluntary payment by Mr. Gillis or enforcement of judgement) or disbursed by the Chapter 13 Trustee was agreed to by all the parties. The establishment of this “common fund” resolves what could have been some very tricky conflict of interest issues for the Chapter 13 Trustees and the U.S. Trustee. If they sought to recover money from Mr. Gillis in a case, for whose benefit would they be recovering it? There are many former clients of Mr. Gillis who overpaid fees. The court was concerned that it would have to

appoint 400+ independent fiduciaries for each of the bankruptcy estates who would then engage in a wasteful rush to the courthouse to try and get the money from Mr. Gillis first. By having the common fund, for which the disbursement of monies will be later determined, the Chapter 13 Trustees, the U.S. Trustee, and even the successor attorneys in the hundreds of Mr. Gillis' cases are not put in the position of having a conflict of interest.

Mr. Gillis requests that instead of the Clerk of the Court securely holding these moneys, they should instead be turned over to Mark Hannon, Esq., an attorney who has taken over Mr. Gillis' law corporation, Latino Law, Inc., (which does not appear to be the corporation through which Mr. Gillis represented his clients) and has taken on representing some of Mr. Gillis' former clients. In proceedings relating to the establishment of the Fee Rubric, Mr. Hannon has represented that for debtors in cases in which there was already a confirmed plan and nothing more than filing the final certification and getting the discharge entered, Mr. Hannon would do that for no charge as a courtesy to Mr. Gillis' former clients.

Mr. Hannon is also now employing Mr. Gillis as a paralegal to work at Latino Law, Inc. where Mr. Gillis is only to be doing the work of a paralegal and Mr. Hannon is the attorney responsible for the legal services provided.

With respect to an intermediary holding the monies, one exists, the Clerk of the Court.

While not coming out and clearly saying it, it appears that Mr. Gillis is suggesting that Mr. Hannon be the intermediary. Then, he suggests that whenever someone comes to the intermediary for work, that attorney then be paid from the funds. It has been represented to the court that Mr. Hannon was to substitute in, so in effect whenever someone came/was directed to Mr. Hannon, then Mr. Hannon would be authorized to disburse monies for such services - which would be provided by Mr. Hannon and Mr. Gillis, as a paralegal.

Unfortunately, Mr. Hannon does not come to this court as an independent third-party or an untarnished legal reputation. In connection with the Gillis cases, Mr. Hannon first attempted to substitute in Latino Law, Inc. as the corporate attorney of record for the debtors. As the court explained in the orders denying such corporate substitutions, it was clearly in violation of the Local District Court Rules.

Then Mr. Hannon filed substitutions in which he purported to be a corporation, Latino Law, Inc., listing that corporate name as his "dba." As the court explained in the orders rejecting those substitutions, an individual purporting to have a corporate dba was a violation of California law.

Both of these attempts by Mr. Hannon to somehow qualify his substituting in as the attorney of record for some of Mr. Gillis' former clients was quite unusual and not something that this judge has seen by attorneys appearing in federal court and fulfilling their obligations as officers of the court.

Mr. Hannon also has serious issues concerning his conduct and false testimony presented in an unrelated Chapter 11 case in which he represented the Debtor in Possession and then the Plan Administrator under a "creditor" plan. Mark and Angela Garcia, 12-93049. Mr. Hannon's peccadillos, personally and the declaration testimony he filed for his client, are discussed in various rulings in that case, including:

Civil Minutes - Appointment of Trustee (the Debtors in Possession gross violation of their duties). 12-93049, Dckt. 254.

Civil Minutes - Denial of Motion by Debtor Chapter 11 Plan Administrator to Sell Property. *Id.*, Dckt. 868.

Civil Minutes - Granting Motion to Sell Property. *Id.*, Dckt. 896.

Memorandum Opinion and Decision re Application for Attorney's Fees by YP Advertising & Publishing, LLC, including Addendum A, titled "Dysfunctional Conduct of Parties." *Id.*, Dckt. 899.

Civil Minutes, Motion to Appoint Replacement Plan Administrator. *Id.*, Dckt. 933.

Civil Minutes - Order to Show Cause. *Id.*, Dckt. 1006.

The court is not going to put Mr. Hannon in charge of the monies which are being recovered from Mr. Gillis for the overpayment of fees that he has received.

When Mr. Gillis has made substantial payment or the Chapter 13 Trustees or U.S. Trustee has recovered substantial monies so that a comprehensive distribution scheme fair and equitable to all of Mr. Gillis' former clients can be established (and not just those who may go to an attorney, say Mr. Hannon, and request his legal services), the court will entertain a motion from parties in interest, which would include Mr. Gillis assuming that he is making substantial repayments/disgorging of the overpaid fees, to establish such a distribution scheme. If the parties in interest do not act, when the court believes that an adequate amount exists, it will via supplemental order to show cause "ask" the parties in interest to step up with their suggestions as to how the comprehensive distribution scheme should be established.

Thus, the Motion is denied without prejudice.

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

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

The Motion for Orders Respecting Disposition of Funds to be Paid to Thomas O. Gillis Under the Terms of Confirmed Plans filed by Thomas O. Gillis having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

FINAL RULINGS

8. [10-27435-E-7](#) THOMAS GASSNER
[19-2006](#) RHS-1
HUSTED V. MEPCO LABEL SYSTEMS
ET AL

ORDER FOR DETERMINATION OF
CORE OR NON-CORE STATUS
OF COUNTS 1 AND 2 OF
COUNTERCLAIM RELATING
TO STOCK ASSERTED TO BE
PROPERTY OF THE BANKRUPTCY
ESTATE, ETC.
7-10-20 [[129](#)]

Final Ruling: No appearance at the August 13, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff-Trustee, Plaintiff's Attorney, Defendant's Attorney's, Debtor, Debtor's Attorney, Chapter 7 Trustee's Attorney, and Office of the United States Trustee on July 12, 2020. By the court's calculation, 32 days' notice was provided. The court set the hearing for August 13, 2020. Dckt. 129.

The Order for Determination of Core or Non-Core Status of Counts 1 and 2 of Counterclaim Relating to Stock Asserted to be Property of the Bankruptcy Estate was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 hearing on the Order for Determination of Core or Non-Core Status of Counts 1 and 2 of Counterclaim Relating to Stock Asserted to be Property of the Bankruptcy Estate is continued to 10:30 a.m. on September 3, 2020.

9. [10-27435-E-7](#) **THOMAS GASSNER**
[19-2038](#)
GASSNER V. GASSNER ET AL

CONTINUED STATUS CONFERENCE
RE: AMENDED COMPLAINT
7-12-19 [20]

Plaintiff's Atty: Holly A. Estioko

Defendant's Atty:

Scott G. Beattie [Carol L. Gassner; Alfred M. Gassner]

Charles L. Hastings [Laura Strombom]

Adv. Filed: 3/12/19

Answer: 4/11/19 [Laura Strombom]

4/11/19 [Alfred M. Gassner; Carol L. Gassner]

Amd. Cmplt. Filed: 7/12/19

Answer: 8/5/19 [Alfred M. Gassner; Carol L. Gassner]

8/13/19 [Laura Strombom]

Amd. Answer: 8/13/19 [Alfred M. Gassner; Carol L. Gassner]

8/26/19 [Alfred M. Gassner; Carol L. Gassner]

Nature of Action:

Sanctions for willful violation of automatic stay (against Settlers and Strombom)

Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Declaratory judgment

Injunctive relief - other

Notes:

Continued from 8/5/20. The Court continuing to stay this Adversary Proceeding.

The Status Conference is continued to 10:30 a.m. on September 3, 2020.

Final Ruling: No appearance at the August 13, 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 Chapter 7 Trustee, Creditor, and Office of the United States Trustee on July 16, 2020. 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of Wells Fargo Bank, N.A. ("Creditor") against property of the debtor, Jason Otto Pecha ("Debtor") commonly known as 112 Irene Avenue, Roseville, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$108,061.03. Exhibit A, Dckt. 34. An abstract of judgment was recorded with Placer County on July 20, 2020, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$267,500.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$217,622.00 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 \$49,878.00 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 Jason Otto Pecha (“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 Wells Fargo Bank, N.A., California Superior Court for Placer County Case No. SVC0027854, recorded on July 20, 2020, Document No. 2012-0065189-00, with the Placer County Recorder, against the real property commonly known as 112 Irene Avenue, Roseville, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.