UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

August 19, 2021 at 10:30 a.m.

1.	**16-90083-E-7** **JES-2**	**VALLEY DISTRIBUTORS, INC.** **Iain Macdonald**	**MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)** **6-30-21 [392]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 30, 2021. By the court's calculation, 50 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.

James E. Salven, the Accountant ("Applicant") for Irma Edmonds, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 5, 2016, through June 30, 2021. The order of the court approving employment of Applicant was entered on February 16, 2016. Dckt. 27. Applicant requests fees in the amount of $25,486.00 and costs in the amount of $1,262.34.

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 administrative functions, review of settlement, monthly operating reports, and tax matters. Though not presented as the grounds in support of this Motion, this is a substantial Chapter 7 bankruptcy estate, with the Estate having $405,589.48 of unencumbered monies to be administered. Civil Minutes, Motion for Compensation by Counsel for the Trustee; Dckt. 400.

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.

Administrative Functions: Applicant spent 5.6 hours in this category. Applicant provided conflict review, prepared employment application, prepared engagement letter/agreement, and prepared the instant fee application.

American Express Settlement: Applicant spent 6.5 hours in this category. Applicant reviewed the settlement reached with American Express and analyzed collections and costs incurred; and recalculated settlement determination after additional costs were discovered and incurred.

Monthly Operating Reports: Applicant spent 63.6 hours in this category. Applicant recreated the company computer records after they had been deemed non-recoverable. The monthly operating reports included review of trustee records, company records, and reports from auctioneer employed by the Trustee.

Tax Matters: Applicant spent 51.1 hours in this category. Applicant filed federal and state tax returns for the following years: 2015, 2016, 2017, 2018, 2019, 2020, and a final return for the stub period 01/01/21 through 05/31/21.

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**
James Salven	79.0	$250.00	$19,750.00
Sam Michmali	47.8	$120.00	$5,736.00
	0	$0.00	$0.00
Total Fees for Period of Application			$25,486.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $1,262.34 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copies	$0.15	$138.45
Envelopes		$5.00
Tax Processing		$814.45
Application Filing and Service		$304.44
Total Costs Requested in Application		$1,262.34

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $25,486.00 are approved

pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $1,262.34 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	$25,486.00
Costs and Expenses	$1,262.34

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 James E. Salven ("Applicant"), Accountant for Irma Edmonds, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that James E. Salven is allowed the following fees and expenses as a professional of the Estate:
>
> James E. Salven, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $25,486.00
> Expenses in the amount of $1,262.34,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**2. 21-90090-E-7 BLF-3 | EDWIN/MELINA RAMANO
David Johnston | MOTION TO SELL
7-14-21 [41]**

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, creditors, parties requesting special notice, and Office of the United States Trustee on July 14, 2021. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits Gary Farrar, 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 nonexempt interest in real property identified as "five (5) lots located in Imperial County, California" ("Property") ("Property").

The proposed purchaser of the Property is the Chapter 7 debtors, Edwin Y. Ramano and Melina J. Ramano ("Debtor"), and the terms of the sale are:

A. The Purchase Amount is $10,000.00. (Debtor having paid to Trustee this amount by delivering to Trustee a cashier's check.)

B. Debtor shall not claim any of the Purchase Amount as exempt.

C. Sale is conditional on the court's approval.

D. Debtor has provided for releases and waiver of rights.

E. The sale is on "as - is" condition.

Trustee/Movant is amenable to overbidding at the hearing on terms that are agreeable to this court. Trustee does request that the first overbid be at least $11,00.00 ($1,000.00 more than the Purchase Amount).

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: xxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale allows Trustee to collect $10,000.00 for the estate without the expense, uncertainty, or delay of listing and marketing the Property for sale. The Trustee represents that this is a commercially reasonable sale in light of the property, the buyer, and the interests of the Debtor therein.

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 Sell Property filed by Gary Farrar, 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 Gary Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Edwin Y. Ramano and Melina J. Ramano ("Debtor"), the estate's nonexempt interest in real property identified as "five (5) lots located in Imperial County, California" ("Property"), on the following terms:
>
> A. The Property shall be sold to Debtor for $10,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 44, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

3.	**20-90349-E-11 DCJ-4**	**R. MILLENNIUM TRANSPORT, INC. David Johnston**	**MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO GRANT SENIOR SECURITY INTEREST 7-29-21 [139]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on July 29, 2021. By the court's calculation, 21 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 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, ----------.

The Motion to Sell Property is denied without prejudice.

The Bankruptcy Code, 11 U.S.C. § 363(b), permits the court to authorize the sale of property of the bankruptcy estate by the bankruptcy trustee, debtor in possession, or Chapter 13 Trustee. Such sale of property of the bankruptcy estate may be made free of liens and encumbrances under specific circumstances. 11 U.S.C. § 363(f).

> (b)
> (1) The trustee [Chapter 13 debtor, debtor in possession], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, **property of the estate**, . . .
>
> (c)

(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1183, 1184, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of **property of the estate, in the ordinary course of business, without notice or a hearing**, and may use **property of the estate in the ordinary course of business without notice or a hearing**.

. . .

(f) The trustee **may sell property under subsection (b) or (c)** [applying to property of the estate] **of this section free and clear** of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 523(b), (c), and (f).

In the present Motion, Millennium Transport, Inc., the Subchapter V Debtor serving as the Subchapter V Plan Administrator ("Movant" or "Plan Administrator") to sell property under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 364. Here, Movant proposes to sell pursuant to 11 U.S.C. § 363(f)(4) and (5) and 364(d), the property identified as future accounts receivable to Crestmark, a division of MetaBank, National Association ("Crestmark") under an Accounts Receivable Purchase Agreement dated July 16, 2021 (the "Agreement") and to secure its obligations under the Agreement with a security interest in "all assets of the debtor whether now owned or hereafter acquired and wherever located" ("Property").

The proposed purchaser of the Property is Crestmark, a division of MetaBank, National Association, and a summary of the terms of the sale according to the Accounts Receivable Purchase Agreement (the complete terms can be found in the Agreement filed as Exhibit A, Dckt. 142):

A. The sale of future (acceptable) accounts receivable to Crestmark at a discount. The discount to be one percent multiplied by the gross amount of a purchased account.

B. Crestmark will be granted a security interest in all of the assets of the Debtor to guarantee performance of its obligations under the Agreement. The relationship of the parties, however, remains as that of purchaser and seller of accounts; not that of lender and borrower.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of West Coast Business Capital, LLC ("West Coast"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> (f) The trustee [debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

Plan Administrator alleges that prior to the Petition Date, the Debtor had entered into an arrangement with West Coast whereby it borrowed money at extremely high interest rates with daily deductions from the bank account, and gave West Coast a security interest in its assets. The Chapter 11 Trustee and the Plan Administrator explored bringing an action to recover payments of $190,000 in the 90 days preceding the Petition Date as preferences under 11 U.S.C. § 547 and explored other issues.

However, West Coast failed to file a proof of claim and failed to object to the Plan, which did not provide for a retention of any security interest. Plan Administrator further explains that under the confirmed Plan, if West Coast had filed a proof of claim, but for the infirmities in its claim, hypothetically, it would have received full payment of its claim over time. However, had a proof of claim been filed, there would have been an objection and an adversary proceeding to recover preferential payments made.

Plan Administrator asserts that under § 552(a), the future accounts receivable are not subject to the West Coast lien and allows Plan Administrator to eliminate any security interest West Coast may have held pre-petition.

Plan Administrator argues pursuant to § 552(a), West Coast's failure to file a proof of claim, and the effect of confirmation of the Plan under § 1141(a) and (c), are all inconsistent with West Coast's pre-petition UCC-1 financing statement which still appears of record with the Secretary of State. Therefore, under § 363(f)(4), a *bona fide* dispute exists as to the viability of their pre-petition security interest in post-petition post-confirmation assets to be created in the future. Further, section 363(f)(5) allows Plan Administrator to compel West Coast to accept a money satisfaction of their interest on the basis that West

Coast's failed to file a proof of claim and as explained above under § 552 their lien had no value at the time of the confirmation of the Plan.

11 U.S.C. § 364(d)(1)

Additionally, Plan Administrator seeks the security interest to be granted to Crestmark to be senior to any security interest of West Coast. In providing for this senior interest, the Plan Administrator asserts that such a senior interest can be allowed because they have been unable to obtain financing otherwise due to the West Coast lien and the trucking business having been affected by COVID-19. Moreover, adequate protection of the interest of West Coast consists of $0.00 because West Coast's security interest has been eliminated on the basis of § 552(a).

DISCUSSION

Plan Administrator's request appears to go beyond the "merely" authority of the court to authorize the sale of property of a bankruptcy estate free and clear of liens and interests, and have those liens and interests attach to the proceeds of the sale.

Here, there is a confirmed Chapter 11 Plan and the reorganized Debtor is moving forward. The Confirmed Subchapter V Plan provides for the means of implementing the plan as:

> **Article 7: Means for Implementation of the Plan.**
>
> The Debtor has sufficient cash to pay all unclassified claims. The Debtor has sufficient cash flow to pay all classes of creditors (except insiders). In essence, all allowed claims will be paid in full over 60 months and will receive 5% per annum interest.

Confirmed Plan, Article 7; Attachment to Order Confirming Plan; Dckt. 133. With respect to the post-confirmation jurisdiction of this court relating to the implementation of the Plan by the Plan Administrator, it provides in Section 8.08:

> 8.08. Retention of jurisdiction. The Court will retain jurisdiction after the effective date with respect to matters which are necessary to carry out the provisions of this Plan, including but not limited to the following matters:
>
> (a) To hear and determine objections to claims, and to allow or disallow claims, including claims arising from the rejection of executory contracts;
>
> (b) To hear and determine actions to avoid and recover preferential transfers under 11 U.S.C. § 547;
>
> (c) To hear and determine disputes as to the nature, extent, and validity of liens;
>
> (d) To fix and award compensation to professional persons;
>
> (e) To recover all assets of the Debtor, wherever located, to the extent necessary for the consummation of this Plan;

> (f) To interpret the provisions of this Plan, and to make any orders which may be necessary or convenient to carry out the provisions of this Plan; and
>
> (g) To administratively close the case and to reopen it in the future.

Id., § 8.08. No provision is made for the court to approve or authorize the sale of property by the Plan Administrator or Debtor post-confirmation.

The effect of confirmation of a Chapter 11 Plan is statutorily provided for in 11 U.S.C. § 1141, the provisions of which includes:

> (b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

11 U.S.C. § 1141(b). The court could not identify any terms of the confirmed plan nor any Subchapter V provisions that make the provisions of 11 U.S.C. § 1141 not applicable to the Chapter 11 Subchapter V Plan in this case.

In the Motion, the Plan Administrator requests that the court order and authorize the Plan Administrator in the performance of the Plan to:

1. Enter into the contract with Crestmark;

2. Authorize the Plan Administrator to sell future accounts receivables to Crestmark free and clear of the disputed lien of West Coast;

3. Grant Crestmark a senior security interest to the security interest of West Coast that the accounts are to be authorized to be sold free and clear of such security interest; and

4. An adjudication that West Coast has no security interest in the future accounts receivable that the Plan Administrator requests authorization to sell free and clear of the security interest of West Coast.

These requests, while appropriate for a trustee or debtor in possession in administering property of a bankruptcy estate, appear to be well in excess of the powers of a bankruptcy judge post-confirmation when no provision has been made for property of the estate to remain in the bankruptcy estate, or that the provisions of 11 U.S.C. § 363 and § 364 (providing for the court to grant a subsequent lien in property to have priority over earlier in time liens).

Additionally, if the dispute is to determine the extent, validity, and priority of the lien of West Coast, such must be adjudicated through an adversary proceeding (unless all parties thereto consented to a contested matter determination). Fed. R. Bankr. P. 7001(2).

Though proceeding in good faith, Plan Administrator has not provided the court with claims for which the requested relief can be granted post-confirmation in this case based upon the terms of the confirmed Subchapter V Plan and the Bankruptcy Code.

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 Sell Property filed by R. Millennium Transport, Inc., the Subchapter V Plan Administrator ("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 denied without prejudice.

4. **20-90115-E-7** **ALI MUTHANA** **MOTION TO REVOKE DISCHARGE OF DEBTOR(S)**
KRO-2 **Gurjeet Rai** **6-10-21 [47]**

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 Certificate of Service was filed with the court.

At the hearing xxxxxxxx

The Motion to Revoke Discharge of Debtor 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 Revoke Discharge of Debtor is denied.

KROLOFF, BELCHER, SMART, PERRY & CHRISTOPHERSON, a Professional Law Corporation, creditor with an unsecured claim in the amount of $81,393.27 ("Objector"), filed the instant Motion to Revoke Debtor's Discharge on June 11, 2021.

The instant case was filed under Chapter 7 on February 11, 2020. Debtor received a discharge on June 11, 2020. Dckt. 15. Objector argues that Ali Saeed Muthana ("Debtor") is not entitled to a discharge in the instant bankruptcy case for the following reasons:

> (1) the discharge was obtained through the fraud of the debtor and Kroloff did not know of such fraud until after the granting of such discharge, pursuant to U.S.C. § 727(d)(1); and
>
> (2) Debtor acquired property that is property of the estate or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition or entitlement to such property, or to deliver or surrender such property to the trustee, pursuant to 11 U.S.C. § 727(d)(2).

DISCUSSION

The revocation of a discharge is governed by 11 U.S.C. § 727(d), which Bankruptcy Code section provides in part,

> (d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—
>
> (1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;
>
> (2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee[.]

11 U.S.C. § 727(d). The standard for a determination of fraud that would allow for revocation of a discharge is a heightened standard. As explained in Collier on Bankruptcy,

> Section 727(d)(1) provides that, if the other requisites are present, the court may revoke the discharge if it "was obtained through the fraud of the debtor." This language requires, at a minimum, that the discharge would not have been granted but for the fraud alleged.4 The fraud required to be shown is fraud in fact,5 such as the intentional omission of assets from the debtor's schedules. The fraud required to be shown must involve intentional wrong, and does not include implied fraud or fraud in law, which may exist without the imputation of bad faith or immorality.6

6 Collier on Bankruptcy P 727.17 (16th 2021).

Here, partners at a law firm that represented the Debtor pre-petition, testify that they read, meaning "heard someone else say," that Debtor had won the lottery, that he won $5 million, and thus the money exists and must have gone somewhere. The witnesses do not testify that they have personal knowledge of such winnings, but only that they heard someone else say in newspaper articles, and then it being reference in a pleading filed in a state court action. [Fn.1.]

FN. 1. Federal Rules of Evidence 601 et seq., requiring that a witness have personal knowledge of the fact as to which that person testifies under penalty of perjury, and not merely knows that someone else states that they know.

Creditor argues that Debtor engaged in fraud because not only did Debtor did not disclose the lottery winning of $5 million four year prior to the filing but also Debtor must own additional liquid assets or other property purchased with those lottery winnings that were not disclosed in the bankruptcy petition.

First, what the Objector presents as evidence is hearsay. The information provided by creditors are details obtained from newspaper articles. With one exception, no evidence is presented by this

sophisticated party, a law firm, that is anything other than the reference to newspapers where Objector had at its disposal the tools of Discovery.

The one exception is Exhibit E, a Motion *in Limine* filed by an attorney for Debtor in a state court action, in which the attorney for Debtor states:

> This has particular relevance to this action in that one cross-defendant ALI MUTHANA was fortunate enough to be the recipient of a portion of California Lottery winnings during the pendency of this action.

Exhibit E, Motion *in Limine*, p.2:8-9; Dckt. 49. This Motion has a filed date in the upper right hand corner of September 30, 2016. That is four years before Debtor commenced this Chapter 7 bankruptcy case.

Objector presents no evidence from the California Lottery as to what Debtor won or how much he received. Objector does not mention subpoenas for bank records of the Debtor, given that the check or checks would have to be deposited and the funds therefrom traceable. Objector themselves represent that in doing research as to whether other assets were held, Objector appears to have only come across the lottery prize. Objector does not allude to any other assets and it may be that there aren't any than those listed on Debtor's Schedules.

Debtor's Response

The court then has Debtor testifying that he had won "only $1,160.001.99" and not the $5 million as argued by the Objector. Debtor has presented the court with evidence that a net payment amount of $1,160,001.99 was paid to Debtor, Debtor made an additional tax payment of $100,000.00, and that the amount paid to Debtor was deposited at a Wells Fargo account. Declaration, Dckt. 54, see also Exhibits 1 and 2, Dckt. 53.

In essence, the basis of the Objection is that Debtor won some money five years before the bankruptcy case was filed, there obviously must be assets somewhere relating thereto that could be used to pay Debtor's creditors, and therefore the Debtor's discharge should be revoked on this supposition.

The court cannot revoke and then deny a debtor his discharge where what is presented is speculative based on newspapers with a simple reason that since Debtor won the lottery the money must be or must have gone somewhere. Actual evidence is required.

Creditor is sophisticated in the law. There are many tools available to conduct discovery, whether within the contested matter through the Federal Rules of Civil Procedure (Fed. R. Civ. P. 28-37, Fed. R. Bankr. P. 7028-7037, 9014(c)) or through Federal Rule of Bankruptcy Procedure 2004. Creditor has had these tools, obviously (as attorneys) are aware of these tools, and presumably used them to the extent possible to present evidence to carry Creditor's burden of proof.

In his Declaration, attorney Kerry Dureger, a shareholder of Creditor, testifies that he personally started representing the Debtor in 2016. Then, in 2019 represented Debtor in another matter. Mr. Krueger then testifies that when Debtor obtained his discharge (which was June 11, 2020), "I did not know that Debtor had recently won $5 million in the California Lottery . . . ." Declaration, ¶ 4; Dckt. 50. The winning is alleged to have occurred five years earlier, which may be "recent" in some respects, and five long, financially crushing years in others.

While admitting in the Declaration that he was aware, apparently in 2019, that Debtor had some lottery winnings, he assumed that they were only a couple thousand dollars. It was after subsequently learning that it was higher, he had a paralegal engage in on-line research to find articles about the winnings.

In the Motion, Creditor repeatedly makes reference to the news articles making reference to the Debtor splitting a $10,000,000 lottery winning, so therefore Debtor received $5,000,000. The copy of the Lottery payment to Debtor provided as Exhibit 1, Dckt. 53, includes the following information:

a. "LOTTERY TOTAL PRIZE AMOUNT.....$1,546,666.66"

b. "INITIAL GROSS PAYMENT AMOUNT....$1,546,666.66"

c. "INITIAL FEDERAL TAX WITHHELD.....$1,160,001.99"

(emphasis in original). Thus, the amount paid to Debtor, based on evidence presented, was $1,160,000.99. The court takes judicial notice, it commonly being known in the jurisdiction, that the large lottery prices are stated in the dollar amount of the total payments made over a 30 year period. The winner has the option to elect to take a present value discounted lump sum cash payment in place of the 30 year "annuity."

The California Lottery maintains its official State website at https://www.calottery.com/. At that webpage examples of the 30 year payout and the discounted cash value are provided, with examples including:

PowerBall $274,000,000 prize, with estimated cash value of $197,700,000 (28% discount)

SuperLotto Plus $9,000,000 prize, with estimated cash value of $6,400,000 (28.8% discount)

Mega Millions $265,000,000 prize, with estimated cash value of $185,600 (30% discount)

It would not be surprising to see a Lottery winner take the lump sum cash payment.

While theorizing that assets must exist and while contending that something else must be disclosed, at the end of the day, creditor merely presents the court with conjecture, speculation, hearsay, and circumstantial, "it has to be," evidence. Creditor has not provided the court with creditor, personal knowledge evidence of the winnings, has not presented the court with bank records, has not presented with Lottery records, and not presented the court with evidence of there being Lottery winnings hidden away by the Debtor five years after the Debtor won the money.

On Schedule I, Debtor lists his employment as that of a cashier, and having been that for the six years preceding the bankruptcy filing, and as of the February 11, 2020 filing of the bankruptcy case, having gross monthly earnings of $3,000. Dckt. 1 at 29-30. After taxes and withholdings, Debtor states his take home pay is $2,870.25. *Id*. On Schedule J, Debtor lists a spouse (for whom no income is shown) and two children, who were minors during the five years preceding the filing of the bankruptcy case. *Id*. at 31-32. The expenses listed on Schedule J, for which Debtor states his expenses exceed income by ($1,329.75) a month are meager for a family of two adults and two teenage sons.

On the Statement of Financial Affairs Debtor states having wages of $18,000 in 2019 and $16,500 in 2018. *Id*. at 38.

If Debtor had $1,000,000 in 2015 and "lived like a millionaire" while making cashier wages as shown on the Statement of Financial Affairs., for 2015, 2016, 2017, 2018, and 2019, the $1,000,000 would represent "only" $200,000 a year. Monthly, that breaks down to $16,666.66 a month. Large when compared to $3,000 or less a month as a cashier, but not never-ending deep money.

Looking at Schedules D and E/F, Debtor doesn't have much in claims, other than Creditor for the legal fees and ($625,000) for being on the wrong end of a judgment. *Id*. at 19-24. That judgment creditor, identified as Maiyesa Basidiq, who is identified as the defendant in a San Joaquin County Superior Court Action, a 2014 case. Creditor's attorneys were brought into that case in 2019 to represent Debtor when his prior counsel passed away for the trial and post-trial motions.

Creditor has not carried its burden of proof, even by a preponderance of the evidence that: (1) the discharge in this case was obtained through fraud of the debtor; or (2) the Debtor acquired property that would be property of the bankruptcy estate, and knowingly and fraudulently failed to report the acquisition of such property, or failed to deliver such property to the bankruptcy trustee. These are the grounds alleged by Creditor, 11 U.S.C. § 727(d)(1) and (d)(2), as the legal bases for revoking Debtor's discharge.

The Motion is denied. [Fn.1.]

FN. 1. Though not shown by Creditor, if Debtor has hidden lottery winnings, the Chapter 7 Trustee and others using the discovery tools available should be able to ferret out where such monies are. And if so, revocation of the Debtor's discharge would be the least of Debtor's worries, and he would then likely need to engage the service of defense counsel as this matter would be elevated to the United States District Court and the United States Attorney.

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 Revoke Discharge of Debtor filed by KROLOFF, BELCHER, SMART, PERRY & CHRISTOPHERSON, a Professional Law Corporation, creditor with an unsecured claim in the amount of $81,393.27, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Revoke Discharge of Debtor is denied.

5. **19-90110-E-7** **CAMPBELL WINGS, INC.** **CONTINUED MOTION FOR**
SHA-2 **Reno Fernandez** **ADMINISTRATIVE EXPENSES**
6-26-19 [40]

Debtor's Atty: Reno F.R. Fernandez
Trustee's Atty: Anthony D. Johnston
Creditor's [Hamilton and Bascom, LLC] Atty: Stanford H. Atwood, Jr.

Notes:
Set by order of the court filed 11/23/20 [Dckt. 119] for the Parties to identify and diligently undertake discovery, identify the issues in dispute, and diligently prosecute this contested matter.

The Motion for Administrative Expenses is xxxxx.

Creditor Hamilton and Bascom, LLC ("Creditor") requests payment of administrative expenses in the amount of $379,863.02, incurred during the period of February 1, 2019, to April 7, 2019, for full rent, late charges, property taxes, insurance, and emergency roof repairs related to commercial property occupied by Campbell Wings, Inc.("Debtor"). Creditor makes such request pursuant to 11 U.S.C. § 365(d)(3) and § 503(a) for charges under the leasehold during the time from when the bankruptcy petition was filed through the date of rejection of the leasehold..

Debtor filed the bankruptcy petition on February 6, 2019. According to Creditor, Debtor defaulted on the lease when it failed to make the February 1, 2019 rent payment as well as other monetary breaches. The lease was formally rejected on April 7, 2019. Dckt. 30.

Chapter 7 Trustee's Opposition

The Chapter 7 Trustee, Irma Edmonds ("Trustee") objects to the administrative expenses on the basis that:

1. Funds sought are not actual or necessary to preserve the estate.

2. Creditor materially breached the lease by depriving Debtor full use of the premises. Creditor admits having used extensive portion of the lease property for their own profit/benefit and to the exclusion of Debtor. Thus, Trustee should not be responsible to pay the entirety of the rent and related fees and the costs should be pro-rated.

3. The expenses sought to be recovered are unreasonable and undocumented. The expenses were not incurred for the benefit of the estate and expenses must be limited to the fair and reasonable value of the Debtor's actual use. Given the extensive use of Creditor's carwash and detailing businesses of the leased property, Creditor is unable to show that the leased property retains much market value, other than for Creditor's own purposes.

4. Creditor has failed to substantiate that the expenses related to the roof repair were actual and necessary. Even if Debtor was responsible for its repair, such failure to repair would be a pre-petition expense and thus not entitled to payment as an administrative claim. Creditor offers no evidence that the roof has been replaced. Lastly, Creditor intends to remove the building.

Opposition, Dckt. 52; see also Supplemental Opposition, Dckt. 103, Response, Dckt. 128. Trustee filed a Supplemental Opposition further objecting to the expenses on additional bases including: Creditor is in violation of local regulations and Creditor cannot recover roof repair costs that would unjustly enrich Creditor. Dckt. 103.

In Creditor's latest filing, a Reply to Trustee's Response (Dckt. 128), Creditor argues that lack of control over the entire leasehold is not dispositive of whether the motion should be granted. Dckt. 139. Creditor adding that even if Trustee did not have control "over a few parking spaces at the outskirts of the leasehold" the use of those spaces did not affect Debtor's use of the property as a restaurant, who was able to fully use the building for its restaurant until closing right after the Super Bowl that year. Creditor asserts that conversations with the City of Campbell regarding violation of local regulations or removal of the building are hearsay and inadmissible for purposes of this motion.

DISCUSSION

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." The Trustee argues that the expenses are not necessary for preserving the estate.

Here, Movant argues that the expenses incurred are administrative expenses not limited by § 503 and must be paid even if they are not related to the Trustee's use of the property. Creditor argues the Ninth Circuit has held that claims arising under 11 U.S.C. § 365(d) are not limited by § 503(b)(1). Movant points the court to *Cukierman v. Uecker (In re Cukierman)* 265 F.3d 846 (9th Cir. 2001), where the court held:

> "We have held that claims arising under § 365(d)(3) are entitled to administrative priority even when they may exceed the reasonable value of the debtor's actual use of the property. *See Pacific–Atlantic*, 27 F.3d at 405. We did so because the "notwithstanding section 503(b)(1)" proviso exempts the amount of lease obligations that a trustee must timely pay under § 365(d)(3) from § 503(b)(1)'s limitation of administrative expenses to the fair value of the debtor's use of the property. *Id.* When the trustee fails to pay an obligation, the amount accorded administrative priority is similarly not subject to the § 503(b)(1) limitation. *Id.* We reasoned that to hold otherwise would reward trustees for failing to perform lease obligations, a result entirely at odds with § 365(d)(3)'s purpose of ensuring prompt payment for landlords. *Id.*"

In re Cukierman, at 850. Section 365(d) fixes the time within which the trustee must assume or reject an unexpired lease or executory contract. The time is statutory and may not be extended based on excusable neglect. Except for assumption in a plan, assumption may be accomplished only by a motion. Collier on Bankruptcy further explains this section of the bankruptcy code as it applies to Chapter 7 cases:

> In a case under chapter 7, the trustee must decide whether to assume or reject an executory contract or unexpired lease of residential real property or personal property lease within 60 days after the order for relief unless the court, for cause, within the 60-day period grants additional time.4 The trustee must file a formal motion to assume the executory contract or unexpired lease.5
>
> If the trustee fails to act within the 60-day period, the contract or lease is deemed rejected.5a

3 Collier on Bankruptcy P 365.05 (16th 2021).

Here, Movant argues it is entitled to the following expenses as administrative expenses which stem from the rejected Lease:

> 1. Three months base rent, each in the sum of $21,375.00 under Section 6 of the lease;
>
> 2. Late charges for those three months, each in the sum of $1,068.75, are allowed under Section 7 of the Lease, which requires payment of late charges if rent is not paid within five (5) days of the due date;
>
> 3. Under Section 10 of the lease, property taxes in the amount of $1,068.75 per month, are payable by the debtor-tenant as additional rent;
>
> 4. Section 15 of the lease requires the tenant to have and to maintain fire, vandalism, and general liability insurance for the Property and thus Movant is entitled to the sum of $1,219.71 paid by Movant;
>
> 5. The attorney fees in the amount of $29,521.50 incurred by Creditor from the filing of the bankruptcy up through rejection of the lease related to the issue of rejection, fall under Section 22 of the Lease. (Creditor cites to *In re Leather Factory Inc.*, 475 B.R. 710, 719-720 (Bankr. C.D. Cal. 2012) where the bankruptcy court held that attorney's fees payable under a lease are subject to immediate payment under 11 U.S.C. § 365(d)(3).); and
>
> 6. Replacement of roof and related emergency roof repairs in the amount of $273,854.00 caused by the Debtor failing to comply with lease requirements under Section 11 of the Lease after failing to timely repair the roof over the term of the lease and after severe rainstorms in the Bay Area.

Motion, at 3; MPA, 4-6. The expenses sought arise from the Lease Agreement between Debtor and Creditor. In support of the Motion, Creditor filed the Real Estate Lease. Exhibit A, Dckt. 44.

August 29, 2021 Hearing

The court seeks to be updated as to any additional information that can be provided since parties last filed responses on April 1, 2021.

An issue identified by the court is under 11 U.S.C. § 365(d)(3), a trustee has a duty to perform the obligation "arising from and after the order for relief" until the lease is rejected. If the roof damage

exists at the time the case is filed, is there an obligation "arising from and after the order for relief" to repair damage that occurred before and prior to the order for relief?

Second, if the roof is damaged when the case is filed, what damages are incurred by the landlord for the trustee not repairing the pre-petition damaged roof? Are the damages only further damage to the roof caused post-petition?

It appears that a fundamental question that must be addressed is the proper computation of damages arising from the breach of an obligation "arising from and after the order for relief." When it is a simple rent amount for a post-petition period of the lease, such as in the *Cukierman* cited by Creditor, it is an easy computation. When it relates to existing pre-petition damages, it does not appear so simple.

Given the careful statutory scheme of providing for pre-petition claims and administrative expenses for post-petition damages caused, it is questionable that Congress has drafted 11 U.S.C. § 365(d)(3) to provide a "payday" for landlords in which there is an administrative expense coming ahead of all creditors with pre-petition claims for a decade of pre-petition damages that were not pre-petition repaired. In effect, if the obligation "arose after the filing of the petition" for the trustee to make as an administrative expense repairs for all of the pre-petition defaults in repair and maintenance of the property, then one millisecond after a Chapter 7 bankruptcy case was filed, hundreds of thousands of dollars of administrative expenses have been "incurred" by the Chapter 7 bankruptcy estate and paid by the creditors of the debtor (their claims being junior in priority of payment to that of administrative expenses).

At the Hearing, **xxxxxxx**

~~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 Administrative Expense filed by Hamilton and Bascom, LLC ("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 xxxxx.~~

6.	**20-90373-E-7** **CLH-4** **6 thru 7**	**THOMAS SWARTZ** **Peter Macaluso**	**OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **7-29-21 [95]**

By Order of the Court, Peter Macaluso, Esq., Counsel for Debtor and Debtor Thomas Swartz Have Been Ordered to Appear at the August 19, 2021 Hearings 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, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 29, 2021. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is sustained, and the exemption is disallowed.

Jane M. Wright, Ron R. Skrbina, Christina A. Tripp and Gaylord W. Skrbina ("Creditors") objects to Thomas Patrick Swartz's ("Debtor") seventh amended claimed exemptions under California law for the following reasons:

1. The attempted amendment violates at least two present existing court orders;

2. Debtor is barred by *res judicata* from claiming this exemption as it was previously denied by the court on November 5, 2020 which Debtor did not appeal;

3. Debtor has improperly mixed California's separate exemption statutes;

4. Debtor is not entitled to claim a homestead exemption in real property owned by a business entity partnership;

5. Debtor has not met his burden of proof that he is entitled to the exemption claimed; and

6. Debtor's exemption claim is not in good faith.

DISCUSSION

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

California Code, Code of Civil Procedure ("C.C.P.") § 704.730 provides for the amounts allowed for a homestead exemption, and defines the parameters for the combined homestead exemptions of spouses.

In the Seventh Amended Schedule C filed by Debtor on July 19, 2021, Debtor claims a $175,000 exemption pursuant to C.C.P. § 704.730 over

> FORMER PARTNERSHIP INRTEREST, DEBTOR RESIDES ON THE PROPERTY, IN OUTBUILDING, FOR 40 yrs (4/6/1980), FORMERLY PARTNERSHIP OWNERED [sic] OF REAL PROPERTY which was subdivided and (1) parcel conveyed to The Estate of Walter F. Swartz. of plus or minus (40) acres, a[sic]

Dckt. 94 at 3, Q.2. C.C.P. § 704.730 is not the code for the claimed exemption but rather the code which defines the amounts permitted for a homestead exemption and then Debtor must specify which one whether pursuant to C.C.P. § 704.730(a)(1), (2), or (3). Debtor having claimed an amount of $175,000, the court presumes that Debtor has selected C.C.P. § 704.730(a)(3).

A review of the Seventh Amended Schedule C in its entirety shows that Debtor has claimed exemptions pursuant to C.C.P. 703.140(b)(2), (3), and (5). It seems Debtor has elected to exempt most of his property pursuant to C.C.P. 703. Thus, Debtor has exempted property under both of the exemption schemes provided by the state of California. A debtor cannot do such.

The California Legislature has specifically stated that a debtor cannot use both exemptions scheme under C.C.P. § 703.140(a):

> (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected **in lieu of all other exemptions provided by this chapter**[.]

Cal. Civ. P. § 703.140(a) (Emphasis added.).

Here, Creditor argues that Debtor has improperly mixed California's separate exemption statutes. Creditor is correct. Debtor cannot choose both exemptions schemes. Debtor has not asserted that Creditor's contention that if you elect 703 exemptions, then in turn the Debtor cannot claim pursuant to 704.

The parties continue to argue over whether the "partnership" or as it has also been described, the "joint venture," is still in existence. The court does not make any determinations through this Objection. But the court notes that evidence presented seems to indicate that there was a joint venture and though an agreement included language that the venture would exist for 10 years, Debtor has not presented evidence that a dissolution of the joint venture was or has been requested.

The Creditor's Objection is sustained. The claimed exemptions are disallowed, Debtor having elected to exempt property in this Bankruptcy Case pursuant to California Code of Civil Procedure § 703.140(b), in lieu of other exemptions in Chapter 4 of the California Code of Civil Procedure, which includes California Code of Civil Procedure § 704.730 (which actually states only the amount of a homestead exemption and not a right to a homestead exemption) claim by the Debtor on the Amended Schedule C filed on July 19, 2021.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claimed Exemptions filed by Jane M. Wright, Ron R. Skrbina, Christina A. Tripp and Gaylord W. Skrbina ("Creditors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed exemptions for "Former Partnership Interest, Outbuilding where Debtor Resides" under California Code of Civil Procedure § 704.730 are disallowed in their entirety.

7. 20-90373-E-7 THOMAS SWARTZ MOTION TO AMEND
PGM-1 Peter Macaluso 7-29-21 [99]

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, Chapter 7 Trustee, Creditor's Attorney, and Office of the United States Trustee on July 29, 2021. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Amend 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 Amend is denied.

The Chapter 13 debtor, Thomas Swartz ("Debtor") requests the court for approval to amend exemption in Schedule C pursuant to court Order, Dckt. 71. Specifically, Debtor requests that he be allowed to amend his exemption in a real property where Debtor has resided for forty (40) years pursuant to California Code of Civil Procedure ("C.C.P.") § 703.140.

Creditor Jane M. Wright, Ron R. Skrbina, Christina A. Tripp and Gaylord W. Skrbina ("Creditor") opposes the amendment on the following grounds:

1. The attempted amendment violates at least two present existing court orders;

2. Debtor is barred by res judicata from claiming this exemption as it was previously denied by the court on November 5, 2020 which Debtor did not appeal;

3. Debtor has improperly mixed California's separate exemption statutes;

4. Debtor is not entitled to claim a homestead exemption in real property owned by a business entity partnership;

5. Debtor has not met his burden of proof that he is entitled to the exemption claimed; and

6. Debtor's exemption claim is not in good faith.

Dckt. 107.

DISCUSSION

A review of the Seventh Amended Schedule C in its entirety shows that Debtor has claimed exemptions pursuant to C.C.P. 703.140(b)(2), (3), and (5). It seems Debtor has elected to exempt most of his property pursuant to C.C.P. 703. Thus, Debtor has exempted property under both of the exemption schemes provided by the state of California. A debtor cannot do such.

The California Legislature has specifically stated that a debtor cannot use both exemptions scheme under C.C.P. § 703.140(a):

> (a) In a case under Title 11 of the United States Code, all of the exemptions provided by this chapter, including the homestead exemption, other than the provisions of subdivision (b) are applicable regardless of whether there is a money judgment against the debtor or whether a money judgment is being enforced by execution sale or any other procedure, but the exemptions provided by subdivision (b) may be elected **in lieu of all other exemptions provided by this chapter**[.]

Cal. Civ. P. § 703.140(a) (Emphasis added.).

Debtor cannot choose both exemptions schemes.

Thus, the Motion to Amend is denied. The amendment sought violates California law, and attempting to claim such exemption is not "warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Fn.1.

FN. 1. It is unfortunate that after eight attempts,

Original Schedule C, Filed June 9, 2020, Dckt. 19;

First Amended Schedule C, Filed August 11, 2020, Dckt. 39;

Second Amended Schedule C, Filed September 3, 2020, Dckt. 62;

Third Amended Schedule C, Filed September 24, 2020, Dckt. 67;

Fourth Amended Schedule C, Filed October 12, 2020, Dckt. 74;

Fifth Amended Schedule C, Filed October 15, 2020, Dckt. 76;

Sixth Amended Schedule C, Filed October 30, 2020, Dckt. 85; and

Seventh Amended Schedule C, Filed July 19, 2021, Dckt. 94;

Debtor has failed to claim an exemption in the property that he claims to be his home. That has not been for a want of trying and having been provided fair access to the courts. He has chosen not to assert enforceable rights he could conceivably have. It may be that he has none in the real property itself, as evidence of the property being owned by a Joint Venture in which Debtor, and now the Bankruptcy Estate, has an interest was presented to the court in a recent adversary proceeding.

The court has just finished a trial involving the Debtor and the Objecting Creditor. Though Debtor prevailed, the disfunctionality of the business and family relationships between Debtor and his siblings concerning the Estate of Walter Swartz Joint Venture, the operation of it, and Debtor asserting and protecting his interests in the Joint Venture were evident. The court has not been presented with an opportunity to determine whether such Joint Venture exists or was terminated, what rights and interests the bankruptcy estate now has in the joint venture, and what property Debtor has in which exemptions may be claimed.

Unfortunately, after four decades of a Joint Venture, which the evidence presented to the court indicates that it was supposed to terminate in 1990, it will have to be the Chapter 7 Trustee who determines what rights and interests the Debtor had, what rights and interests in the Joint Venture are property of the Estate, and what claims, if any, the Estate has concerning the operation of the Joint Venture these past forty years.

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 Amend Schedule C filed by the debtor, Thomas Patrick Swartz ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

FINAL RULINGS

8.	**21-90321-E-7** **SSA-1**	**SEYMON BETMASHAL AND RAQUEL MIRZA** **Steve Altman**	**MOTION TO COMPEL ABANDONMENT** **7-28-21 [9]**

Final Ruling: No appearance at the August 19, 2021 hearing is required.

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, and Office of the United States Trustee on July 26, 2021. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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

Pursuant to order of this Court (Dckt. 20), the hearing on the Motion to Compel Abandonment is continued to 10:30 a.m. on September 9, 2021, and thus the matter is removed from the calendar.

The Chapter 7 debtors, Seymon Betmashal and Raquel Mirza ("Debtor"), and the Chapter 7 Trustee, Sheri L. Carello ("Trustee"), filed a Stipulation on August 13, 2021 stipulating to the continuance of the hearing on th instant motion to September 9, 2021 at 10:30 a.m. so as to give additional time for Trustee to conduct the Meeting of Creditors and examine the Debtor and consequently file any objections to exemptions if necessary. Dckt. 19.

The court entered the order on August 13, 2021 continuing the hearing. Dckt. 20.

9. 19-90344-E-7 JAD-1 **MELISSA MAGANA** **Jessica Dorn** **MOTION TO COMPEL ABANDONMENT** **7-15-21 [18]**

Final Ruling: No appearance at the August 9, 2021 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, creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment 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 Compel Abandonment is granted.

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

The Motion filed by Melissa Marie Magana ("Debtor") requests the court to order Irma Edmonds ("the Chapter 7 Trustee") to abandon property commonly known as 3234 Sierra Street, Riverbank, California ("Property"). The Property is encumbered by the lien of City of Riverbank Housing Rehabilitation, securing a claim of $165,000.00. Debtor has exempted the equity of approximately $45,000.00 pursuant to C.C.P. § 704.730. Dckt. 16. The Declaration of Melissa Marie Magana has been filed in support of the Motion and values the Property at $210,000.00. Dckt. 20.

No opposition has been filed by Trustee or any other party.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

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 Compel Abandonment filed by Melissa Marie Magana ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 3234 Sierra Street, Riverbank, California and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Irma Edmonds ("Trustee") to Melissa Marie Magana by this order, with no further act of the Trustee required.

10. 19-90464-E-7 RICHARD RICKS — MOTION TO PAY
BLF-5 Pro Se — 7-21-21 [135]

Final Ruling: No appearance at the August 19, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2021. By the court's calculation, 30 days' notice was provided. 14 days' notice is required.

The Motion to Pay 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.

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion to Pay is granted.

The Chapter 7 Trustee, Irma C. Edmonds ("Movant") requests payment of administrative expenses in the amount of $126.00, incurred during the period of July 15, 2021, to August 15, 2021, for

insurance premiums on real property commonly known as 1957 N. Boston Pl. E. Tulsa, Oklahoma ("Property") owned by Joy Hughes ("Defendant") to be transferred to Movant.

The property is the subject of Adversary Proceeding Case No. 20-09013 filed by Movant against Defendant, where Movant seeks to recover voidable and/or fraudulent transfers of property of the bankruptcy estate. The adversary proceeding was settled on June 24, 2021 when the court granted Movant's motion to compromise with the Defendant and Defendant is in the process of transferring the Property to Movant.

DISCUSSION

Movant argues that the insurance premiums are appropriate expenses under Section 503(b) because it is an actual, necessary expense of preserving the estate. Movant is preparing to move forward to list and market the Property for sale and insurance is required 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 must obtain insurance on the Property to protect herself and the bankruptcy estate from potential liability for damage or injury to persons visiting the Property and to cover the Property in the event of catastrophic damage to the Property.

Movant having demonstrated that the expenses were necessary, the court finds that Movant paying for 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 Trustee Resource Group its administrative expenses in the amount of $126.00.

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 filed by Irma Edmonds ("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 Trustee Resource Group $126.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

11. 14-90166-E-7 MOT-2 | **JORGE/PATRICIA MUNOZ** Mark O'Toole | **MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY, LLC** 7-8-21 [22]

Final Ruling: No appearance at the August 19, 2021 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 Debtors, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on July 8, 2021. By the court's calculation, 42 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 Ford Motor Credit Company, LLC ("Creditor") against property of the debtors, Jorge Munoz and Patricia Munoz ("Debtor") commonly known as 5604 Gateway Drive, Salida, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,400.96. Exhibit A, Dckt. 26. An abstract of judgment was recorded with Stanislaus County on May 23, 2013, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $219,169.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $326,133.00 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)(5) in the amount of $7,400.96 on Amended Schedule C. Dckt. 28.

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 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 Jorge Munoz and Patricia Munoz ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Ford Motor Credit Company, LLC, California Superior Court for Stanislaus County Case No. 678450, recorded on May 23, 2013, Document No. 2013-0044597-00, with the Stanislaus County Recorder, against the real property commonly known as 5604 Gateway Drive, Salida, 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.

12. 21-90181-E-7 HARRY BOURASSA
LRR-2 Len ReidReynoso
12 thru 15

CONTINUED MOTION TO AVOID LIEN OF INTERNAL REVENUE SERVICE
6-2-21 [21]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 19, 2021 hearing is required.

The Motion to Avoid Lien is dismissed without prejudice.

Harry J. Bourassa ("the Chapter 13 Debtor") having filed a "Notice of Withdrawal", which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on August 4, 2021, Dckt. 70; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by The Internal Revenue Service ("Creditor"); the *Ex Parte* Motion is granted, the Chapter 13 Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Lien filed by Harry J. Bourassa ("the Chapter 13 Debtor") having been presented to the court, the Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 70, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Avoid Lien is dismissed without prejudice.

13. 21-90181-E-7 HARRY BOURASSA
LRR-3 Len ReidReynoso

CONTINUED MOTION TO AVOID LIEN OF INTERNAL REVENUE SERVICE
6-2-21 [26]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 19, 2021 hearing is required.

The Motion to Avoid Lien is dismissed without prejudice.

Harry J. Bourassa ("the Chapter 13 Debtor") having filed a "Notice of Withdrawal", which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on August 4, 2021, Dckt. 72; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by The Internal Revenue Service ("Creditor"); the *Ex Parte* Motion is granted, the Chapter 13 Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Lien filed by Harry J. Bourassa ("the Chapter 13 Debtor") having been presented to the court, the Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 72, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Avoid Lien is dismissed without prejudice.

14. 21-90181-E-7 **HARRY BOURASSA** **CONTINUED MOTION TO AVOID LIEN OF FRANCHISE TAX BOARD**
LRR-4 **Len ReidReynoso** **6-2-21 [31]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 17, 2021 hearing is required.

The Motion to Avoid Lien was dismissed without prejudice, and the matter is removed from the calendar.

Harry J. Bourassa ("Debtor") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Avoid Lien was dismissed without prejudice, and the matter is removed from the calendar.**

15. 21-90181-E-7 **HARRY BOURASSA** **CONTINUED MOTION TO AVOID LIEN OF FRANCHISE TAX BOARD**
LRR-5 **Len ReidReynoso** **6-2-21 [36]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 17, 2021 hearing is required.

The Motion to Avoid Lien was dismissed without prejudice, and the matter is removed from the calendar.

Harry J. Bourassa ("Debtor") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Avoid Lien was dismissed without prejudice, and the matter is removed from the calendar.**