UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

August 23, 2018 at 10:30 a.m.

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1. 15-90811-E-7 15-9062

LEE V. GOLD STRIKE HEIGHTS ASSOCIATION ET AL

ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS NB-2

MOTION FOR COMPENSATION BY THE LAW OFFICE OF NEUMILLER & BEARDSLEE FOR JOSHUA P. HUNSUCKER, TRUSTEES ATTORNEY(S) 7-26-18 [122]

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. Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff (*pro se*), and Defendant's Attorney on July 26, 2018. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has not been properly 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 Allowance of Professional Fees filed as Dckt. 122, is dismissed without prejudice as being moot, the Motion having been refiled the same day as Dckt. 128, replacing this filing in its entirety.

The Motion for Compensation filed by the Law Office of Nuemiller & Beardslee, a Professional Corporation ("Applicant") having been refiled, the Motion is dismissed as moot. FN. 1.

FN.1. The court notes that both Motions submitted by Applicant use the same Docket Control Number. In fact, the same DCN has been perpetually used for the past two years. The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1©). Not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

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 Compensation filed by the Law Office of Nuemiller & Beardslee, a Professional Corporation ("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 the Motion filed on July 26, 2018, Docket Entry 122, is dismissed without prejudice, having been rendered moot by the subsequent refiling of the same motion on July 26, 2018 as Dckt. 128.

2. 15-90811-E-7 ASSN., GOLD STRIKE HEIGHTS HOMEOWNERS NB-2
15-9062

LEE V. GOLD STRIKE HEIGHTS ASSOCIATION ET AL

MOTION FOR COMPENSATION BY THE LAW OFFICE OF NEUMILLER & BEARDSLEE FOR JOSHUA P. HUNSUCKER, TRUSTEES ATTORNEY(S) 7-26-18 [128]

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. Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff (*pro se*), and Defendant's Attorney on July 26, 2018. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has not been properly 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 Allowance of Professional Fees is granted.

Gary Farrar, the Chapter 7 Trustee, moves for prevailing party attorney's fees pursuant to *Fed. R. Ban P.* 7054 and *Cal. Civ. Code* § 5975. Applicant argues it is entitled to attorney's fees on the grounds that Applicant prevailed in Plaintiff's action to enforce the Governing Documents.

Fees are requested for the period August 23, 2016, through June 21, 2018. The order of the court affirming appeal in favor of Applicant was entered on July 12, 2018. Dckt. 120. Applicant requests fees in the amount of $6,507.75.

STATUTORY BASIS FOR PROFESSIONAL FEES

California Civil Code provides:

©) In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs.

Cal. Civ. Code § 5975.

The Federal Rules of Bankruptcy Procedure states:

> The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on 14 days' notice; on motion served within seven days thereafter, the action of the clerk may be reviewed by the court.

Fed. R. Ban P. 7054(b)(1)

APPLICABLE LAW

As the court has previously determined, which has been affirmed on appeal, Defendant-Trustee has a statutory right to attorney's fees pursuant to California Civil Code § 5975. "The mandatory attorney's fees and costs award under section [5975], applies when a plaintiff brings an action to enforce such governing documents, but is unsuccessful because he or she does not have standing to do so." *Martin v. Bridgeport Cmty. Ass'n, Inc.*, 173 Cal. App. 4th 1024, 1039 (2009) (citing *Farber v. Bay View Terrace Homeowners Assn*. (2006) 141 Cal. App. 4th 1007, 1014 (2006). The law is clear that whether attorneys' fees may be allowed pursuant to the statute is not dependent on a determination of dispute concerning the Governing Documents but that it was put at issue in the action.

Computation of Prevailing Party Attorney's Fees

Unless authorized by statute or contractual provision, attorney's fees ordinarily are not recoverable as costs. Cal. Code Civ. Proc. § 1021; *International Industries, Inc. v. Olen*, 21 Cal. 3d 218, 221 (Cal. 1978). The prevailing party must establish that a contractual provision exists for attorney's fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). Having this discretion is appropriate "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

The court having determined that the Defendant-Trustee is the prevailing party and that California Civil Code § 5975©) provides that the prevailing party shall be awarded attorneys' fees, the court determines that the requested $6,501.75 in attorneys' fees is reasonable in this Adversary Proceeding for the additional services in defending the Judgment on Appeal. Applying the normal lodestar analysis, the court begins with the billing rates for the attorneys for which the attorneys' fees are requested. The hourly rates for the work done by the attorney at $225, $240, and $255 an hour are reasonable. For an appellate attorney, they are very moderate when considering the regular billing rates in the community, as well as commensurate with the level of legal experience for the issues on appeal from this Adversary Proceeding.

The court notes that there are no costs requested, all of that having been included in the hourly rate for the attorney.

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.

Interviews and Conferences: Applicant spent 2.0 hours in this category. Applicant formatted appellee's brief and consulted with C. Stevens regarding the appellee's brief arguments.

Obtaining and Reviewing Records: Applicant spent 2.95 hours in this category. Applicant reviewed the pleadings in the appeal, reviewed the bankruptcy court's minutes regarding the judgment on the pleadings, reviewed the record, reviewed various orders, motions and briefs, and consulted with C. Stevens regarding supplementing the record on appeal.

Legal Research: Applicant spent 1.1 hours in this category. Applicant consulted with C. Stevens regarding the court order and the appeal, researched Federal Rules of Appellate Procedure regarding briefs, reviewed Appellant's Opening Brief and researched the standard of review.

Preparing Briefs: Applicant spent 20.20 hours in this category. Applicant Revised and edited Appellee's brief, conferred with C. Stevens regarding Appellee's brief, finalized Appellee's brief and reviewed Appellant's Reply Brief regarding judgment on the pleadings appeal.

Preparing for & Attending Oral Argument: Applicant spent 2.30 hours in this category. Applicant prepared the hearing binder, prepared for the hearing, traveled to Sacramento and attended two oral argument hearings.

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:

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
Joshua Hunsucker	25.65	$225.00	$5,771.25
Joshua Hunsucker	0.60	$240.00	$144.00
Joshua Hunsucker	2.30	$255.00	$586.50
Total Fees for Period of Application			$6,501.75

PREVAILING PARTY FEES AND COSTS AWARDED

The court finds that the hourly rates, time expended, and services provided were reasonable and necessary for the Defendant-Trustee to defend his judgment on appeal, and the court awards the Defendant-Trustee $6,507.75 in prevailing party attorney's fees, which shall be enforced as part of the judgment in this Adversary Proceeding. No costs are awarded (nor were any requested).

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 Prevailing Party Attorney's Fees and Costs filed by Gary Farrar, the Defendant Chapter 7 Trustee in this Adversary Proceeding and prevailing party on appeal 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 Defendant Chapter 7 Trustee is awarded prevailing party attorney's fees against Don Lee, the Plaintiff, in the additional amount of $6,507.75, and that such additional prevailing party attorney's fees shall be enforced as part of this judgment.

3.	**18-90030-E-11 STJ-6**	**FILBIN LAND & CATTLE CO., INC. Michael St James**	**CONTINUED MOTION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11 PLAN AND MOTION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11 PLAN AND DISCLOSURE STATEMENT FILED BY DEBTOR 6-21-18 [185]**

Tentative Ruling

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

FN.1. Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held, and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon language that there may submissions at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance at the July 12, 2018 hearing.

The Motion to Extend Exclusivity Period is xxxxxxxxxxxxxxx

Jeffery Arambel ("Debtor in Possession") requests that the court extend the time period in 11 U.S.C. § 1121(b) & (c)(3) by 120 days pursuant to 11 U.S.C. §§ 105(a) and 1121(d). Debtor in Possession argues that this is a large case (more than $200 million in assets and $50 million in debt) that has several sales of real property either closing or pending. In particular, Debtor in Possession stresses that the non-governmental claim deadline passed recently, and several claims were filed around it, including one claim for $40 million that Debtor in Possession has not had sufficient time to analyze.

APPLICABLE LAW

Debtor in Possession does not direct the court to the provisions of 11 U.S.C. § 105(d), in which Congress provides that the district court or bankruptcy court judge before whom the bankruptcy case is pending:

> (d) The court, on its own motion or on the request of a party in interest–
>
> > (1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and
> >
> > (2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that–
> >
> > > (A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or
> > >
> > > (B) in a case under chapter 11 of this title–
> > >
> > > > **(I) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;**
> > > >
> > > > (ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;
> > > >
> > > > **(iii) sets the date by which a party in interest other than a debtor may file a plan;**
> > > >
> > > > (iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;
> > > >
> > > > (v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or
> > > >
> > > > (vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

11 U.S.C. § 105(d) (emphasis added). Though not cited to by Debtor in Possession, the court considers this basis.

11 U.S.C. § 1121 creates statutory deadlines and dates when persons other than the debtor in possession may file a plan, and 11 U.S.C. § 105(d) provides a statutory basis for the court to modify those dates.

Section 1121 states, in part:

> (b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.
>
> . . . .
>
> (d) (1) Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsection (b) and ©) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.
>
> (2) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

11 U.S.C. § 1121(b), (d). A party moving for the period to be extended must establish that there is cause for an extension. *See In re New Meatco Provisions, LLC*, No. 2:13-bk-22155-PC, 2014 Bankr. LEXIS 914, at *7–8 (Bankr. C.D. Cal. March 10, 2014) (citing *In re Dow Corning Corp.*, 208 B.R. 661, 663 (Bankr. E.D. Mich. 1997); *In re Newark Airport/Hotel Ltd. P'ship*, 156 B.R. 444, 451 (Bankr. D.N.J. 1993), *aff'd*, 155 B.R. 93 (D.N.J. 1993)).

Determining whether cause exists depends upon the facts presented to the court. *See, e.g.*, *In re Adelphia Commc'ns Corp.*, 352 B.R. 578, 586 (Bankr. S.D.N.Y. 2006). A number of factors may indicate cause, including:

A. The size and complexity of a case;

B. The necessity of sufficient time to permit a debtor to negotiate a plan of reorganization and to prepare adequate information;

C. The existence of good faith progress toward reorganization;

D. Whether a debtor is paying bills as they become due;

E. Whether a debtor demonstrates reasonable prospects for filing a viable plan;

F. Whether a debtor has made progress in negotiating with creditors;

G. How much time as elapsed in the case;

H. Whether a debtor seeks an extension to pressure creditors into submitting to demands; and

I. Whether an unresolved contingency exists.

208 B.R. at 664–65; *see also Official Comm. of Unsecured Creditors v. Henry Mayo Newhall Mem'l Hosp. (In re Henry Mayo Newhall Mem'l Hosp.)*, 282 B.R. 444, 452 (B.A.P. 9th Cir. 2002) (explaining that there are several factors analyzed commonly upon an extension request).

CONTINUANCE OF HEARING

The hearing on the Motion has been continued to 10:30 a.m. on August 23, 2018, by prior order. Dckt. 206.

REPLY OF DEBTOR IN POSSESSION

Filbin Land & Cattle Co., Inc., Debtor in Possession (DIP) filed a Reply brief in support of the Motion to Extend Exclusivity on August 17, 2018. Dckt. 266. DIP argues as follows:

1. The Court should extend exclusivity for 120 days so as to permit the satisfaction of the secured debt and the negotiation of a consensual Plan of Reorganization while sparing the estate the unnecessary expense and distraction of pointless litigation over a Plan proposed by the Secured Creditors.

2. As the Court is aware, Filbin Land & Cattle Co., Inc., Debtor in Possession herein ("Filbin DIP")seeks to sell a 10-acre parcel (the "Sale Property"), which sale has been set for hearing and an auction on August 30, 2018. An Initial Overbid has been submitted for $2.75 million dollars; Dkt #258, ¶6; Dkt #259; Ex. A; within spitting distance of the amount required to satisfy all secured claims in full; $2,795,526.83 million. See, Claim No. 10. Several overbidders have qualified by presenting acceptable sale contracts and $100,000 non-refundable good faith deposits. It is overwhelmingly likely that the Auction, set for August 30, 2018, will satisfy the alleged $45,000 shortfall between the secured debt and the Initial Overbid and make it possible to pay off the Secured Creditors in full. In the event that there is no subsequent overbid, the Secured Creditors will have approximately 84 acres of collateral to secure payment of the $45,000 shortfall. That remaining property has been valued at $10.339 million dollars. Dkt #257, Ex A. The Secured Creditors are subject to no perceptible risk respecting collection of their claim.

3. The instant case involves more than $10 million in assets and more than $40 million in debts; coupled with the related case, they involve approximately $200 million in assets and more than $50 million in debts and appear to be the largest filed in this District in at least the past five years. The overlap of approximately $40 million in debt to Summit, owed directly by the related Debtor but guaranteed by the instant Debtor, increase the complexity of the case and suggests that a coordinated reorganization with the related case will prove most beneficial to creditors. Accordingly, this factor supports extension of the exclusivity periods.

4. In collaboration with the Chapter 11 professionals representing the companion estate of Jeffrey Arambel ("Arambel"), Filbin DIP has been negotiating an overall resolution with Summit. As part of that effort, Filbin DIP recently sought and obtained dismissal of its lawsuit against Summit. The negotiations with Summit have proceeded to the point of reviewing and commenting on draft documentation. Filbin DIP (and Arambel) need some additional time to attempt to formulate a consensual Plan of Reorganization. Accordingly, this factor supports extension of the exclusivity periods.

5. Filbin DIP filed an Initial Plan; Dkt #135; and thereafter a Plan and Disclosure Statement; Dkt #165, 166. Filbin DIP decided to cancel its Disclosure Statement hearing because it concluded that completing the pending sale would make its reorganization alternatives clearer. It presently appears that the sale will generate sufficient funds to pay-off the Secured Creditors, rendering the formulation of a readily confirmable Plan of Reorganization more likely. Filbin DIP is in negotiations with Summit, its other substantial creditor and is making good faith progress toward its reorganization. Accordingly, this factor supports extension of the exclusivity periods.

6. Filbin DIP has proposed an Initial Plan and a subsequent Plan of Reorganization and Disclosure Statement. Through the sale, it expects to satisfy the Secured Creditors who have opposed virtually all of Filbin DIP's efforts in this case. While it believes that it can negotiate a consensual Plan of Reorganization with its other significant creditor and is making progress toward doing so, it believes that its prior Plans were viable and it can and will prosecute a non-consensual Plan of Reorganization if the current negotiations with Summit fail. Accordingly, this factor supports extension of the exclusivity periods.

7. As noted, Filbin DIP is making tremendous progress respecting the only issue of concern to the Secured Creditors: a prompt cash-out. Filbin DIP is also making significant progress in its negotiations with Summit. While a nonconsensual reorganization is viable, there is good reason to believe that a consensual reorganization with Summit is achievable, and that such a resolution would be substantially preferable to creditors and the estates. Accordingly, this factor supports extension of the exclusivity period.

8. The case has been pending for about eight months. The Court is now conducting the first, albeit continued, hearing on Filbin DIP's first request to extend the exclusivity periods.

9. There is no indication that Filbin DIP in Possession is seeking an extension to pressure creditors.

10. The principal contingencies at present are: (a) outcome of the pending auction of the Sale Parcel, and (b) whether a consensual resolution of the treatment of Summit can be achieved. This factor supports extension of the

exclusivity periods. It has been suggested that the "the overriding factor [for the Court's consideration] is whether [extending or] terminating Filbin DIP's exclusivity would facilitate moving the case forward." COLLIER ON BANKRUPTCY ¶ 1121.06 (16th Ed. 2018), citing In re Dow Corning Corp., 208 B.R. 661, 670 (Bankr. E.D. Mich. 1997). Here, Filbin DIP in Possession has been moving promptly toward an effective, and optimally consensual, reorganization. On the other hand, if exclusivity is allowed to expire, the prospect of a disruptive creditor Plan of Reorganization – especially from the Secured Creditors – is substantial, since the Secured Creditors are substantially over-secured and have never foregone an opportunity to oppose Filbin DIP's reorganization efforts. Terminating exclusivity would likely harm creditors and the estate, and would waste judicial resources, by requiring consideration of multiple competing plans and disclosure statements.

11. Filbin DIP seeks a 120-day extension of all of the Section 1121©) deadlines, without prejudice to the granting of further extensions for good cause shown. Granting this relief would not violate the outside deadlines of Section 1121(d)(2).

DISCUSSION

At the hearing, **XXXXXXXXXXXXXXXXXXXXXX**

4.	**18-90431-E-7** **SCB-3**	**WILKINS PUMP** **KNICKERBOCKER ELECTRIC,** **Steven Altman**	**MOTION TO SELL** **7-6-18 [23]**

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, and Office of the United States Trustee on July 6, 2018. By the court's calculation, 48 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 R. 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 personal property commonly known as 2001 Dodge Ram 3500, VIN ending in 5123 (the "Vehicle").

The proposed purchaser of the Property is Mike Gratigny, and the terms of the sale are:

A. The Buyer shall purchase the bankruptcy estates's nonexempt interest in the Vehicle for $4,500.00 (the "Purchase Amount")

B. The Buyer shall pay the Purchase Amount by delivering cashier's checks made payable to "Gary R. Farrar, Chapter 7 Trustee, *In re Wilkins Pump Knickerbocker Electric, Inc.."*

C. The Buyer shall deliver a cashier check in the amount of $1,500.00 at the time of signing the Agreement with Seller; and

D. The $3,000.00 remainder shall be paid in 3 monthly payments of $1,000.00 to be received by the Trustee no later than the close of business on the first day of each month, beginning 30 days after Bankruptcy Court approval of the transaction.

There are no creditors with a lien or interest in the Vehicle. Dckt. 25, ¶ 2.

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: xxxxxxxxxxxxxxx.

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 Movant to collect $4,500.00 for the estate, which exceeds Debtor's valuation of and is the best available price for the Vehicle.

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 Gary R. 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 R. Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Mike Gratigny or nominee ("Buyer"), the Property commonly known as 2001 Dodge Ram 3500, VIN ending in 5123 ("Vehicle"), on the following terms:
>
> A. The Property shall be sold to Buyer for $4,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 26, 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.

5.	**18-90431-E-7** **SCB-4**	**WILKINS PUMP** **KNICKERBOCKER ELECTRIC,** **Steven Altman**	**MOTION TO SELL** **7-19-18 [28]**

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, and Office of the United States Trustee on July 19, 2018. By the court's calculation, 35 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 R. 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 property (various trucks and trailers) commonly known as:

A. 2001 Ford Pump Truck, VIN ending in 6850;

B. 2001 Chevrolet, VIN ending in 7277:

C. 2003 Chevrolet 1500, VIN ending in 8626;

D. 2003 Chevrolet 2500, VIN ending in 0648;

E. 2007 Chevrolet 1500, VIN ending in 1784;

F. 1999 Carson Utility Trailer, VIN ending in 9045and

G. 1999 GMC, VIN ending in 6760 (collectively, the "Vehicles").

The proposed purchaser of the Property is Nationwide Fleet ("Buyer"), and the terms of the sale are:

A. Buyer shall purchase the Estate's non-exempt interest in the Vehicles for $11,000.00.

B. The Buyer shall pay the Purchase Amount by delivering cashier's checks made payable to "Gary R. Farrar, Chapter 7 Trustee, *In re Wilkins Pump Knickerbocker Electric, Inc.."*

Debtor has not Scheduled and Trustee is not aware of any liens or interests of creditors in the Vehicles. Dckt. 30.

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: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Purchaser has offered the highest available price for the Vehicles, and because the offer will save the Estate an estimated $2,200.00 in auctioneer's commissions. Dckt. 30.,

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 Gary R. 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 R. Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Nationwide Fleet or nominee ("Buyer"), the Property commonly known as:
>
> A. 2001 Ford Pump Truck, VIN ending in 6850 ("Vehicle");
> B. 2001 Chevrolet, VIN ending in 7277 ("Vehicle"):
> C. 2003 Chevrolet 1500, VIN ending in 8626 ("Vehicle");
> D. 2003 Chevrolet 2500, VIN ending in 0648 ("Vehicle");
> E. 2007 Chevrolet 1500, VIN ending in 1784 ("Vehicle");
> F. 1999 Carson Utility Trailer, VIN ending in 9045 ("Vehicle") and
> G. 1999 GMC, VIN ending in 6760 ("Vehicle").
>
> on the following terms:

A. The Property shall be sold to Buyer for $11,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 37, and as further provided in this Order.

D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

6.	**17-90432-E-12 FW-10**	**CARLOS/BERNADETTE ESTACIO Peter Fear**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR PETER L. FEAR, DEBTORS ATTORNEY(S) 7-26-18 [197]**

DEBTOR DISMISSED:
04/29/2018
JOINT DEBTOR DISMISSED:
04/29/2018

NO APPEARANCE BY APPLICANT REQUIRED
THE COURT POSTS AS A TENTATIVE RULING TO ALLOW APPLICANT TO ADDRESS ANY ISSUES IN THE TENTATIVE WITH THE COURT IF APPLICANT SO DESIRES

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, Chapter 12 Trustee, and Office of the United States Trustee on July 26, 2018. By the court's calculation, 28 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

In light of the specific facts of this case, it having been dismissed, and the Debtor in Possession having commenced a second case with other counsel who has previously been in tune with the need for this application and the services provided by Applicant, the court shortens the notice period to the time actually given.

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

The Motion for Allowance of Professional Fees is granted.

Fear Waddell, P.C., counsel ("Applicant") for Carlos Estacio and Bernadette Estacio, the Debtors ("Client"), makes a first and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 24, 2017, through July 26, 2018. The order of the court approving employment of Applicant was entered on June 5, 2017. Dckt. 17. Applicant requests fees in the amount of $65,015.50 and costs in the amount of $2,651.64.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> ©) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or
(ii) services that were not—
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney 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)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

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 cab 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?
>
> ©) 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 disposition, oppositions to relief from stay motions, conferencing with Creditors, preparation of fee and employment applications, organization of cash collateral account, and development of a Chapter 12 plan and appropriate disclosures. Applicant prepared and filed a case for the purpose of preserving two of Debtors' properties and preventing foreclosure, which would have resulted in no distribution to unsecured creditors. 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 65.60 hours in this category. Applicant worked with Debtors to complete schedules and statements, conferred with Debtors and Creditors , attended status conferences, and communicated with CPA regarding monthly filing of operating reports by Debtors.

Asset Disposition: Applicant spent 2.60 hours in this category. Applicant advised Debtors on listing and marketing of real property to be disposed.

Adversary Proceedings: Applicant spent 32.10 hours in this category. Applicant opposed motions for relief from the automatic stay filed by Wells Fargo and Khatri Brothers LP in briefing and telephonically.

Meetings of and Communications with Creditors: Applicant spent 8.0 hours in this category. Applicant prepared for and attended the 341 meeting.

Fee and Employment Applications: Applicant spent 10.7 hours in this category. Applicant prepared application for employment and prepared application to secure employment of accountant for filing of Debtors' monthly operating reports.

Motions to Approve Leases: Applicant spent 10.5 hours in this category. Applicant prepared and filed motions to have leases of portions of Debtors' ranches approved as means of generating income.

Financing and Cash Collateral: Applicant spent 3.5 hours in this category. Applicant worked with Debtors to prepare a proposed budget and to keep cash collateral in a segregated account.

Plan and Disclosure Statement: Applicant spent 95.4 hours in this category. Applicant worked with Debtors to draft a viable Chapter 12 plan, and additionally worked with Debtors to compile documentation supporting their ability to pay $9,000 monthly lease payments to Creditors on which the proposed plan relied. When it became apparent the plan was not viable, an alternative predicated on the sale of one of the ranches was prepared for and Applicant defended the plan against opposition by secured creditors, Wells Fargo and Khatri Brothers LP.

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**
Peter L. Fear (2017)	77.00	$360.00	$27,720.00
Peter L. Fear (2018)	38.50	$375.00	$14,437.50
Gabriel J. Waddell (2017)	0.10	$280.00	$28.00
Gabriel J. Waddell (2018)	0.30	$295.00	$88.50
Katie Waddell (2017)	12.10	$180.00	$2,178.00
Katie Waddell (2018)	3.80	$195.00	$741.00
Peter A. Sauer (2017)	16.90	$195.00	$3,295.50
Peter A. Sauer (2018)	78.30	$210.00	$16,443.00

Kayla Schlaak	1.40	$60.00	$84.00
Total Fees for Period of Application			$65,015.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $2,651.64 pursuant to this application. The court has allowed costs of $2,651.64.

The costs requested in this Application are,

Description of Cost	**Cost**
Copying	$1,644.65
Postage	$854.79
Court Fees	$152.20
Total Costs Requested in Application	$2,651.64

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Final Fees in the amount of $65,015.50 are approved pursuant to 11 U.S.C. § 330, and authorized to be paid by the Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 12 case.

In approving these fees, the court notes that counsel had "challenging" clients to deal with. While in this case, Debtors in Possession could not prosecute a Chapter 12 Plan. That was not because of counsel's inability to act, but the Debtors in Possession's inability to act consistent with their obligations and the reality of Chapter 12 relief. In granting the Motion to Dismiss this case, the court's findings include the following:

> "Debtor in Possession has been provided more than reasonable time to prosecute this case in good faith. Debtor in Possession has taken several attempts at a plan, failing to obtain confirmation. As this court has addressed previously, **Debtor in Possession first chose to take a "financially impractical" (charitably stated) approach of having Debtor in Possession's elderly parents "lease" the farm property**. Then, when **Debtor in Possession** "decided" to proceed with liquidating some of the properties, Carlos Estacio, III, as debtor in possession, **did not engage the services of a real estate professional to market and facilitate the sale of the property** to achieve the fair market value for the estate, but instead took it upon himself to "list" and "market" the property.

> **There has now been unreasonable delay caused in this Chapter 12 case.** Debtor in Possession has not been able to confirm a plan. Debtor in Possession has not presented facially colorable attempts at moving forward with a confirmable plan. **Debtor in Possession, as the fiduciary of the bankruptcy estate, has not managed the property of the estate in a manner consistent with that position**. Rather, the management of this case appears to have been **done for Debtor's personal benefit in delaying any action to address creditors' claims.**"

Civil Minutes, Dckt. 184 at 3. To the extent that the Debtor in Possession would complain that $65,000 for a Chapter 12 that crashed and burned does not appear reasonable, the Debtor in Possession got everything from counsel that the Debtor wanted. A year's worth of delay and the floating of impractical, improbable, and financially infeasible schemes.

In Debtors' second Chapter 12 case, 18-90376, filed on May 22, 2018, and dismissed on August 6, 2018, they did not fare much better as Debtors in Possession. Ultimately, the Debtor in Possession and their new counsel in the second case agreed to dismissal of that case, with the Debtors agreeing to a bar on filing any future bankruptcy cases, other than under Chapter 7, for 42 months. 18-90376; See discussion in Civil Minutes, Dckt. 38. While the court ordered the case dismissed, it did not order the purported forfeiture of the Debtors' rights. As noted by the court in the above civil minutes, the stipulation by the Debtors in Possession and trying to get the court to issue such a forfeiture order could appear to be a scheme to fool the court into issuing a void order to be later challenged by the Debtors.

Debtors have had the advantage of being represented by independent counsel in the second case who had the duty to advise them as Debtors in Possession of the claim of the current Applicant for fees as it would impact the second case. They have not objected or opposed the request, adding substance to the court's conclusion that Debtor got $65,000 worth of delay work and floating unconfirmable financial schemes out of Applicant. Because of the value of Debtor's property, such is not being paid by creditors, but will ultimately be paid by Debtors. FN.1.

FN.1. The court provides this additional insight to disabuse any casual observer who might believe that bankruptcy cases exist for the various attorneys and other professionals to plunder. This is a unique situation in which the Debtors, acting as the fiduciary Debtors in Possession got the legal services they sought and now get to pay for. If the issue being presented to the court was a competition between creditors getting paid cents on the dollar and Applicant requesting the current fees, the court may well have taken a closer, more critical look. But that is not the situation and Debtors, having the benefit of independent counsel, do not oppose.

Costs & Expenses

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include copying and postage. No information has been provided to the court by Applicant that these cost items were extraordinary expenses than one would expect for Applicant providing professional services to Client to be charged in addition to the professional fees requested as compensation. The court disallows $2499.44 of the requested costs.

Final Costs in the amount of $2,651.64 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by Debtors in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 12 case.

The court authorizes Debtor in Possession to pay 100% of the fees and 100% of the costs allowed by the court.

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

Fees	$65,015.50
Costs and Expenses	$2,651.64

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 Peter L. Fear ("Applicant"), Attorney for Carlos Estacio and Bernadette Estacio, the Debtors, ("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 Fear Waddell, P.C. is allowed the following fees and expenses as a professional of the Estate:
>
> Fear Waddell, P.C., Professional employed by the Debtors,
>
> Fees in the amount of $65,015.50
> Expenses in the amount of $2,651.64,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor in Possession.
>
> **IT IS FURTHER ORDERED** that the court makes no determination as to what priority any portion of these fees as allowed may have in a third or other case filed by Debtors if challenged by someone other than the Debtors.

7. 13-90643-E-12 ADJ-7 | **GARY/CHRISTINE TAYLOR** **Anthony Johnston** | **MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE AND/OR MOTION FOR WAIVER OF DOMESTIC SUPPORT CERTIFICATION 7-19-18 [180]**

Final Ruling: No appearance at the August 23, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 19, 2018. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion for Exemption from Financial Management Course and for Waiver of Domestic Support Certificate is granted.

Gary Taylor ("Debtor"), on behalf of himself and his deceased wife Christine Taylor (collectively "Debtors") filed this Motion for Exemption from Financial Management Course and for Waiver of Domestic Support Certificate on July 19, 2018. Dckt. 180. Debtor's grounds for seeking exemption and waiver are that Christine Taylor died on August 25, 2017. *Id.*

Debtor asserts that when a debtor dies prior to a bankruptcy closing, Federal Rule of Bankruptcy Procedure 7018 and 9014©) apply to remaining claims, where relief may be requested in a single motion. Debtor certifies that he and his wife owed no domestic support payments at filing and have not incurred new obligations post-petition. The court entered an order confirming Chapter 12 Plan on October 22, 2013 (DCkt. 124.) and Debtors are current on all payments under the plan. An additional requirement of the Plan was to complete a personal financial management course.

Christine Taylor died prior to the completion of all Plan payments and cannot complete the financial management course. 11 U.S.C. § 727(a)(11) denies discharge to a debtor who fails to complete the

financial management course. However, that section permits waiver of the requirement with respect to a debtor for incapacity under 11 U.S.C. § 109(h)(4). Debtor argues the death of Christine Taylor renders her incapable of realizing and making rational decisions with respect to her financial responsibilities, thus excusing her from completion of the course. Debtor requests relief from the requirements of completing a financial management course and making a domestic support certificate.

DISCUSSION

Debtor's arguments are well-taken. Christine Taylor died on August 25, 2017, prior to the completion of her Chapter 12 Plan. Exhibit A, Dckt. 183. Christine Taylor no longer possesses capacity to understand her case, and under 11 U.S.C. § 727(a)(11) she is relieved from the requirement to take a financial management course.

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 Exemption from Financial Management Course and for Waiver of Domestic Support Certificate filed by Gary Taylor ("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 Christine Taylor, deceased August 25, 2017, is relieved of the requirement under the confirmed Chapter 12 Plan to complete the financial management course.
>
> **IT IS FURTHER ORDERED** that all other relief requested in the Motion is denied.

8. 16-90157-E-7 **DARYL FITZGERALD** **MOTION TO DISMISS NAVIENT**
18-9011 **RSL-1** **AND/OR MOTION FOR SUMMARY JUDGMENT**

FITZGERALD V. NAVIENT ET AL **7-18-18 [10]**

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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 Plaintiff on July 18, 2018. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Navient as a Defendant and/or Motion for Summary Judgment Dismissing Navient as a Defendant 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 Dismiss Navient as a Defendant and/or Motion for Summary Judgment Dismissing Navient as a Defendant is xxxxxxxxxxxxxxxx.

Navient Solutions, LLC ("Movant") filed a Motion to Dismiss Navient as a Defendant and/or Motion for Summary Judgment Dismissing Navient as a Defendant on July 18, 2018. Dckt. 10. Daryl Darnell Fitgerald ("Plaintiff-Debtor") filed a voluntary petition on February 29, 2016. Plaintiff-Debtor filed this Adversary Proceeding on June 25, 2018, naming "Navient" as a Defendant. Dckt. 1.

Movant asserts the following:

1. There is no actual legal entity in existence known as "Navient" Dckt. 10, ¶ 3.

2. Navient Solutions, LLC was a servicer of one Federal Family Education Loan Program ("FFELP") guaranteed student loan, on which the Plaintiff is or was liable ("FFELP Loan"). *Id.*, ¶ 4.

3. The original FFELP guarantor on the Plaintiff's FFELP Loan was Texas Guaranteed Student Loan Corporation ("TGSLC"), also known as Trellis Company ("Trellis"). *Id.*, ¶ 5.

4. Prior to the filing of Plaintiff's Complaint, all interests in all of the FFELP Loan serviced by Navient were transferred to the TGSLC in May 2016, due to default on the loan obligation. *Id.*, ¶ 6.

5. Navient has continued some servicing responsibilities with respect to the FFELP Loan, but Navient has no interest in the FFELP Loan other than servicing. *Id.*, ¶ 7.

6. As a servicer of the FFELP Loan, neither Navient Solutions, LLC, nor named Defendant "Navient", nor any of their other related companies, corporations or entities, has any authority to litigate the discharge of any of Plaintiff's FFELP loan. *Id.*, ¶ 8.

7. Fed.R.Civ.P. 21 provides that: "… On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party." *Id.*, ¶ 11.

8. Because the Plaintiff owes no debt to Navient Solutions, LLC, nor to named Defendant "Navient", nor to any of their other related companies, corporations or entities, these are not proper defendants in this adversary proceeding seeking to discharge debt. *Id.*, ¶ 13.

9. "[W]here certain defendants are clearly without authority or power to effect any of the relief sought by the plaintiffs," those defendants may be dropped. Severance of a party is appropriate unless the party is "indispensable." *Id.*, ¶ 14.

10. The Summons and Complaint were sent to a post office box only, not naming any recipient by name, title, or otherwise. Therefore, Service of the Summons and Complaint were ineffective, as not having been made in accordance with Fed.R.Bankr.P 7004(b)(3). Id., ¶¶ 17-18.

DEBTOR'S OPPOSITION

Debtor filed an Opposition to the Motion on July 30, 2018, and the refiled the same Opposition on August 1, 2018 attaching an additional document entitled "Proof of Service." Dckt. 21. Debtor opposes the Motion on the grounds that Movant has a history of using variations of their name, unclear information, and non-response to inquiries, which led to "Disputed" back in 2016. Dckt. 20, ¶ I. Debtor states "the clerk's office can confirm my conversation with them about Navient using various names and confusing tactics along with Texas Guarantee known as the Trellis Company. Therefore, we listed company as Navient et al..." *Id.*

Debtor also asserts that the Trellis Ombudsmen, Federal Student Aid (FSA), Debtor's 2016 Credit Report, and other documents confirm Navient (presumably as creditor and holder of the claim). Dckt. 20, ¶¶ II.-VII.

DISCUSSION

Federal Rule of Civil Procedure 21 applies in bankruptcy adversary proceedings. *Fed. R. Bankr. P.* 7021. On motion or on its own, the court may at any time, on just terms, add or drop a party. *Fed. R. Civ. P.* 21.

The facts of this case seem fairly straight forward. Movant was servicing the student loan of Plaintiff-Debtor on behalf of the guarantor Texas Guaranteed Student Loan Corporation ("TGSLC"). Exhibit A, Dckt. 12. After Debtor defaulted on her loan in May 2016, all interests were transferred to TGSLG. *Id.* Movant currently has no interest in the loan and is not a proper party to this action. *Id.* Because "Navient" and Movant are not proper defendants to this action, the court exercises its ability to drop them as parties to this Adversary Proceeding. *Fed. R. Civ. P.* 21.

The Complaint, as read by the court does not name "Navient" as a defendant, but Navient Solutions, Inc. Complaint § II, p.2; Dckt. 1. The Complaint further alleges that Plaintiff-Debtor seeks a determination that any student loan obligation owed to Navient Solutions, Inc. be determined discharged by the court. *Id.*

The present Motion asserts that there is no entity named "Navient;" coincidentally, in the Motion Navient Solutions, LLC defines itself as "Navient." The Affidavit of Petra Shipman is improperly filed as an exhibit. While this exhibit Affidavit is notarized, nowhere in it does it state that the statements therein are made under penalty of perjury. Congress provides in 28 U.S.C. § 1746 that unsworn declarations under penalty of perjury must comply with the following:

> § 1746. Unsworn declarations under penalty of perjury
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or **affidavit**, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), **such matter may**, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> > (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
> >
> > (Signature)".
> >
> > (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
> >
> > (Signature)".

The court notes that on the Exhibit Affidavit the Notary merely certifies that Petra Shipman identified herself and signed the document. No certification is provided that Ms. Shipman was sworn in and that the

statements are made under penalty of perjury. In a quick review of Indiana Law (where the Affidavit was notarized), as of July 1, 2018, placing the official seal on a document makes the document self-authenticating.

> 33-42-10-4. Official seal makes record self-authenticating.
>
> A notary public's official seal, when properly:
> (1) executed; and
>
> (2) affixed, associated, or attached to a record;
>
> shall make the record self-authenticating for the purpose of a court proceeding.

Ind. Code 33-42-10-4. In reviewing the definitions statute for the Indiana Notary Laws the court notes that "(15) "Verification on an oath or affirmation" means a declaration that a statement in a record is true." Ind. Code 33-42-0.5-1(15). Such "Verification on an oath or affirmation" is just one of many tasks a notary may do under Indiana law.

> (4) "Notarial act" means any act that a notarial officer may perform. The term includes the following acts:
>
> (A) Taking an acknowledgment.
>
> (B) Administering an affirmation or oath.
>
> ©) Taking a verification on an oath or affirmation.
>
> (D) Attesting to or witnessing a signature.
>
> (E) Attesting to or certifying a copy of a document or record.
>
> (F) Noting a protest of a negotiable record.

Id., (4). From the notary stamp on the Exhibit Affidavit, it appears that it merely attests to the signature, not to the administration of an oath or affirmation.

Additional Information at the Hearing

Plaintiff-Debtor's *pro se* frustration and Navient Solutions, LLC's desire to summarily "get out of the adversary proceeding" appear to have clouded the simple solution. Navient Solutions, LLC could simply provide the written documentation and confirmation that it has not interest in the debt, has no right to be paid, and confirm to whom the debt has been assigned with properly authenticated transfer documents.

> At the hearing **xxxxxxxxxxxxxxxxxxxxxxxxxx**

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 Navient as a Defendant and/or Motion for Summary Judgment Dismissing Navient as a Defendant filed by Navient Solutions, 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 xxxxxxxxxxxxxxxxxxxx.

9. 18-90258-E-7 MF-1

ANDREAS ABRAMSON
Iain Macdonald

CONTINUED MOTION TO AVOID LIEN OF HELEN MCABEE, INVESTMENT RETRIEVERS, INC., AMERICAN EXPRESS COMPANY, ET AL.
7-11-18 [74]

Final Ruling: No appearance at the August 2, 2018 hearing is required.

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on July 20, 2018. By the court's calculation, 13 days' notice was provided. 14 days' notice is required.

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

~~**The Motion is denied without prejudice as to all named parties e**~~

This Omnibus Motion requests an order avoiding the judicial liens of:

- Helen McAbee;
- Investment Retrievers, Inc.;
- American Express Company;
- Guy Martin dba Martin Appraisals;
- Portfolio Recovery Associates, LLC;

- Pentech Funding, LLC;
- Peninsula Estates;
- Capital One Bank (USA); and
- Persolve, LLC (collectively "Creditors")

against property of Andreas Abramson ("Debtor") commonly known as 83 Sanguinetti Court, Copperopolis, California ("Property").

Deficiency of Notice

Movant provided thirteen days' notice of this Motion. Local Bankruptcy Rule 9014-1(f)(2) requires a minimum fourteen days to set a matter for hearing. Movant has provided one fewer day than the minimum.

Improper Combination of Parties and Claims in One Motion

Debtor has sought to have this court adjudicate the lien rights of nine different creditors in one motion. The common thread is that the judgment liens are all asserted to be on the same property in which Debtor claims her exemption.

The Supreme Court provides in Federal Rule of Bankruptcy Procedure 3007 for there to be an omnibus objection to claims in one contested matter. No such provision is made in Federal Rule of Bankruptcy Procedure 4003(d) relating to avoiding judicial liens. Rule 4003(d) expressly states that such request to avoid the judicial lien shall be made by motion as provided in Federal Rule of Bankruptcy Procedure 9014.

In Federal Rule of Bankruptcy Procedure 9014, the Supreme Court incorporates specific rules relating to adversary proceedings into the contested matter practice. One of the rules not included is Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018, which allows a plaintiff to join multiple persons and multiple claims for relief into one complaint. Combining multiple claims for relief and multiple parties into one motion is not permitted—unless the bankruptcy judge makes Federal Rule of Bankruptcy Procedure 7018 applicable to that specific contested matter. FED. R. BANKR. P. 9014©).

No request has been made for the court to make Rule 7018 applicable in this Contested Matter.

While the Motion fails procedurally because it does not provide the minimum service to the parties and it combines multiple claims for relief against multiple parties, it also fails on another ground.

Possible Deficiency of Service

This Contested Matter must be properly served on the creditors whose property rights are to be terminated in the same manner as the service of a summons and complaint. Federal Rule of Bankruptcy Procedure 4003(d) provides that the avoidance of a lien shall be by motion as provided in Federal Rule of

Bankruptcy Procedure 9014. The Supreme Court provides in Federal Rule of Bankruptcy Procedure 9014(b) that:

> "(b) Service. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004 and within the time determined under Rule 9006(d). Any written response to the motion shall be served within the time determined under Rule 9006(d). Any paper served after the motion shall be served in the manner provided by Rule 5(b) F. R. Civ. P."

The relevant provisions of Federal Rule of Bankruptcy Procedure 7004 provide for the correct service of the present motion on the nine various creditors to be:

> (b) Service by First Class Mail. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:
>
> > (1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.
> > . . .
> > (3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.
>
> . . .
> (h) Service of Process on an Insured Depository Institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—
>
> > (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
> >
> > (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
> >
> > (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

For the nine different creditors for whom Debtor seeks to have their property rights terminated as provided in 11 U.S.C. § 522(f), the Certificate of Service filed on July 20, 2018, (Dckt. 90) states the following addresses for service by mail:

- Helen McAbee;

  Helen McAbee
  c o Richard B Gullen Esq
  Rossi Hammerslough Reishl Chuck
  1960 The Alameda Ste 200
  San Jose CA 95126-1451

It is not clear whether Mr. Gullen is the agent for service of process for Ms. McAbee for this Contested Matter litigation.

- Investment Retrievers, Inc.;

  Investment Retrievers Inc
  P O Box 4733
  El Dorado Hills CA 95762-0023

California Secretary of State lists agent for service of process Corporate Service Company Which Will Do Business as CSC-Lawyers Incorporating Service. The business address shown on the Secretary of State Webpage for Investment Retrievers, Inc. is not a post office box.

- American Express Company;

  Amex
  P O Box 3666
  Fort Lauderdale FL 33329-7871

  Amex
  c o Law Office of Steven Booska
  P O Box 194650
  San Francisco, CA 94119-5050

The court cannot identify which "American Express" entity is referred to in the Motion when reviewing the Secretary of State Website.

- Guy Martin dba Martin Appraisals;

  Guy Martin
  dba Martin Appraisals
  945 Morning Star Dr
  Sonora CA 95370-9249

- Portfolio Recovery Associates, LLC;

  Portfolio Recovery Associates
  c o Hunt Henriques
  151 Bernal Rd Ste 8
  San Jose CA 95119-1306

California Secretary of State lists agent for service of process Corporate Service Company Which Will Do Business as CSC-Lawyers Incorporating Service.

- Pentech Funding, LLC;

  Pentech Funding LLC
  Attn Glenda Millerbis
  1620 Bella Cir
  Lincoln CA 95684-7971

Matches California Secretary of Website Information.

- Peninsula Estates;

  Peninsula Estates Association
  c o Associa Northern California
  1225 Alma Rd Ste 100
  Richardson TX 75081-2298

  Peninsula Estates Association
  c o Severaid Glahn PC
  1787 Tribute Rd Ste D
  Sacramento CA 95815-4404

The California Secretary of State Website shows the following person and address as the agent for service of process: Sharon Johnson 601 Commerce Dr. ST 150, Roseville, CA 95678

- Capital One Bank (USA);

  Capital One Bank USA N A
  P O Box 30285
  Salt Lake City UT 84130-0285

The court notes that Capital One Bank USA NA is a federally insured financial institution, with the FDIC website listing the headquarters address for this bank as 4851 Cox Road Glen Allen, Virginia.

- Persolve, LLC;

  Persolve LLC
  dba Account Resolution Associates
  Attn Shayan Heidarzadeh Esq
  9301 Corbin Ave Ste 1600
  Northridge CA 91324-2515

California Secretary of State lists agent for service of process Corporate Service Company Which Will Do Business as CSC-Lawyers Incorporating Service. The above address is the state business address for Persolve, LLC. Shayan Heidarzadeh, Esq. is listed by the California State Bar as an attorney with the Foley & Mansfield, PLLP law firm in Walnut Creek, California.

It appears that the proper and sufficient service on some of the above has not been made by Movant. Some attorneys may argue that it should not be the court's work if a void order is entered, just counsel's and Movant's. The court is concerned and does not enter orders unless it determines that the evidence and law warrants the relief and the court has both subject matter and in personam jurisdiction over the person whose rights are being adjudicated.

Substantive Issues

First, Movant has not provided the court with a recorded copy of any of judicial liens to be avoided. Movant must provide the court with a copy of the actual lien for which he wants an order avoiding.

While Debtor and counsel may be confident that counsel can allege in the motion all of the correct recording information for each of the creditors and each of the liens, such a process only creates the possibility for a simple clerical error into having the court enter an ineffective order, or worse, inadvertently purporting to avoid a judgment lien of a person not before the court.

More significantly, the court is not presented with any evidence to support the alleged recording information. Debtor does not purport to testify to it, and there are no exhibits (adequately authenticated, such as by the runner or counsel who obtained the copies from the county recorder).

The Motion is dismissed without prejudice. While not dismissing this Motion, it appears that Debtor has filed a series of new motions for adjudication of the rights and interests.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Andreas Abramson ("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 Omnibus Motion to Avoid Liens is denied without prejudice.

10. 18-90258-E-7 MF-10 | **ANDREAS ABRAMSON** Iain Macdonald | **MOTION TO AVOID LIEN OF PERSOLVE, LLC** 8-8-18 [131]

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)©).

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 Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 8, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Persolve, LLC, a limited liability company, dba, Account Resolution Associates ("Creditor") against property of Andreas Abramson ("Debtor") commonly known as 83 Sanguinetti Court, Copperopolis, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $120,000.00. An abstract of judgment was recorded with Calaveras County on June 28, 2016, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $1,160,027.00 as of the petition date. Dckt. 6. The unavoidable consensual liens that total $1,206,968.92 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 6. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $75,000

.00 on Amended Schedule C. Dckt. 71. These unavoidable consensual liens and homestead exemption are identified as:

Select Portfolio Servicing.....($925,557.92).....First Deed of Trust (2005)

Michael Abramson.....($265,411.00).....Deed of Trust (2009)
Goss and Goss.....($ 16,000.00).....Deed of Trust (2009)
Homestead Exemption.....($ 75,000.00)

Total consensual liens and homestead exemptions.....($1,281,968.92)

Value of Property Testified to by Debtor.....$1,160,027.00

Value/(No Value) for Judgment Liens.....($ 121,941.92)

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 Andreas Abramson ("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 Persolve, LLC, a limited liability company, dba, Account Resolution Associates, California Superior Court for Calaveras County Case No. CU1300149, recorded on June 28, 2016, Document No. 2016-7847 , with the Calaveras County Recorder, against the real property commonly known as 83 Sanguinetti Court, Copperopolis, 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.

11. 18-90258-E-7 MF-11

ANDREAS ABRAMSON
Iain Macdonald

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
8-8-18 [136]

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)©).

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 Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 8, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Portfolio Recovery Associates, LLC ("Creditor") against property of Andreas Abramson ("Debtor") commonly known as 83 Sanguinetti Court, Copperopolis, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $15,642.81. An abstract of judgment was recorded with Calaveras County on July 24, 2013, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $1,160,027.00 as of the petition date. Dckt. 6. The unavoidable consensual liens that total $1,206,968.92 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 6. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $75,000 .00 on Amended Schedule C. Dckt. 71. These unavoidable consensual liens and homestead exemption are identified as:

Select Portfolio Servicing.....($925,557.92).....First Deed of Trust (2005)

Michael Abramson.....($265,411.00).....Deed of Trust (2009)
Goss and Goss.....($ 16,000.00).....Deed of Trust (2009)
Homestead Exemption.....($ 75,000.00)

Total consensual liens and homestead exemptions.....($1,281,968.92)

Value of Property Testified to by Debtor.....$1,160,027.00

Value/(No Value) for Judgment Liens.....($ 121,941.92)

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 Andreas Abramson ("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 Portfolio Recovery Associates, LLC, California Superior Court for Calaveras County Case No. 13CF10776, recorded on July 24, 2018, Document No. 2013-10551, with the Calaveras County Recorder, against the real property commonly known as 83 Sanguinetti Court, Copperopolis, 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. 18-90258-E-7 MF-2 | **ANDREAS ABRAMSON** **Iain Macdonald** | **MOTION TO DELAY DISCHARGE** **7-19-18 [86]**

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)©).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 20, 2018. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Motion to Delay Discharge 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 Delay Discharge is granted.

Andreas Abramson ("Debtor"), filed an Application to Extend Time for Entry of Order of Discharge on July 19, 2018. Dckt. 86. Debtor states he requires the extension in order to maintain the protections of automatic stay, as it affects the enforcement of liens against Debtor's residence. Debtor has filed a motion to avoid several liens under §522(f), which is set for hearing on August 23, 2018. *Id.*, ¶ 3. Debtor moves for entry of an order extending the time for entry of discharge for thirty 30 days pursuant to F.R.B.P. 4004(c)(2).

Federal Rule of Bankruptcy Procedure 4004(c)(2) provides:

> Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain.

Debtor has requested a delay in the entry of an order granting discharge for 30 days so that he may resolve pending motions to avoid judicial liens. Without an extension, Debtor asserts the stay affecting enforcement of the judicial liens will be gone. Debtor has shown cause to delay the entry of discharge and the application is granted.

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 Application to Extend Time for Entry of Order of Discharge pursuant to Federal Rule of Bankruptcy Procedure 4004(c)(2) filed by Andreas Abramson ("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 time for entry of discharge is extended pursuant to Federal Rule of Bankruptcy Procedure 4004(c)(2) to September 30, 2018.

13. 18-90258-E-7 MF-3 | **ANDREAS ABRAMSON** **Iain Macdonald** | **MOTION TO AVOID LIEN OF AMERICAN EXPRESS COMPANY 8-8-18 [96]**

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)©).

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 Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 8, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of American Express Company ("Creditor") against property of Andreas Abramson ("Debtor") commonly known as 83 Sanguinetti Court, Copperopolis, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $9,553.83. An abstract of judgment was recorded with Calaveras County on August 29, 2011, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $1,160,027.00 as of the petition date. Dckt. 6. The unavoidable consensual liens that total $1,206,968.92 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 6. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $75,000 .00 on Amended Schedule C. Dckt. 71.These unavoidable consensual liens and homestead exemption are identified as:

Select Portfolio Servicing.....($925,557.92).....First Deed of Trust (2005)

Michael Abramson.....($265,411.00).....Deed of Trust (2009)
Goss and Goss.....($ 16,000.00).....Deed of Trust (2009)
Homestead Exemption.....($ 75,000.00)

Total consensual liens and homestead exemptions.....($1,281,968.92)

Value of Property Testified to by Debtor.....$1,160,027.00

Value/(No Value) for Judgment Liens.....($ 121,941.92)

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 Andreas Abramson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of American Express Company, California Superior Court for Calaveras County Case No. 10CF9257, recorded on August 29, 2011, Document No. 2011-9721, with the Calaveras County Recorder, against the real property commonly known as 83 Sanguinetti Court, Copperopolis, 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.

14. 18-90258-E-7 MF-4

ANDREAS ABRAMSON
Iain Macdonald

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA)
8-8-18 [101]

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)©).

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 Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 8, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of Andreas Abramson ("Debtor") commonly known as 83 Sanguinetti Court, Copperopolis, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $6,904.00. An abstract of judgment was recorded with Calaveras County on June 12, 2014, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $1,160,027.00 as of the petition date. Dckt. 6. The unavoidable consensual liens that total $1,206,968.92 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 6. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $75,000 .00 on Amended Schedule C. Dckt. 71.These unavoidable consensual liens and homestead exemption are identified as:

Select Portfolio Servicing.....($925,557.92).....First Deed of Trust (2005)

Michael Abramson.....($265,411.00).....Deed of Trust (2009)
Goss and Goss.....($ 16,000.00).....Deed of Trust (2009)
Homestead Exemption.....($ 75,000.00)

Total consensual liens and homestead exemptions.....($1,281,968.92)

Value of Property Testified to by Debtor.....$1,160,027.00

Value/(No Value) for Judgment Liens.....($ 121,941.92)

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 Andreas Abramson ("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 Capital One Bank (USA), N.A., California Superior Court for Calaveras County Case No. 14CF11107, recorded on June 12, 2014, Document No.2014-5771, with the Calaveras County Recorder, against the real property commonly known as 83 Sanguinetti Court, Copperopolis, 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.

15. 18-90258-E-7 MF-5 | **ANDREAS ABRAMSON** **Iain Macdonald** | **MOTION TO AVOID LIEN OF GUY MARTIN** **8-8-18 [106]**

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)©).

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 Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 8, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Guy Martin dba Martin Appraisals ("Creditor") against property of Andreas Abramson ("Debtor") commonly known as 83 Sanguinetti Court, Copperopolis, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $1,157.50. An abstract of judgment was recorded with Calaveras County on March 15, 2013, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $1,160,027.00 as of the petition date. Dckt. 6. The unavoidable consensual liens that total $1,206,968.92 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 6. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $75,000 .00 on Amended Schedule C. Dckt. 71. These unavoidable consensual liens and homestead exemption are identified as:

Select Portfolio Servicing.....($925,557.92).....First Deed of Trust (2005)

Michael Abramson.....($265,411.00).....Deed of Trust (2009)
Goss and Goss.....($ 16,000.00).....Deed of Trust (2009)
Homestead Exemption.....($ 75,000.00)

Total consensual liens and homestead exemptions.....($1,281,968.92)

Value of Property Testified to by Debtor.....$1,160,027.00

Value/(No Value) for Judgment Liens.....($ 121,941.92)

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 Andreas Abramson ("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 Guy Martin dba Martin Appraisals, California Superior Court for Calaveras County Case No. 12SC6810, recorded on March 15, 2013, Document No. 2013-4117, with the Calaveras County Recorder, against the real property commonly known as 83 Sanguinetti Court, Copperopolis, 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.

16. 18-90258-E-7 MF-6

ANDREAS ABRAMSON
Iain Macdonald

AMENDED MOTION TO AVOID LIEN OF HELEN MCABEE
8-8-18 [141]

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)©).

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 Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 8, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Helen McAbee ("Creditor") against property of Andreas Abramson ("Debtor") commonly known as 83 Sanguinetti Court, Copperopolis, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $770,000.00. An abstract of judgment was recorded with San Benito County on May 27, 2011, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $1,160,027.00 as of the petition date. Dckt. 6. The unavoidable consensual liens that total $1,206,968.92 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 6. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $75,000 .00 on Amended Schedule C. Dckt. 71. These unavoidable consensual liens and homestead exemption are identified as:

Select Portfolio Servicing.....($925,557.92).....First Deed of Trust (2005)

Michael Abramson.....($265,411.00).....Deed of Trust (2009)
Goss and Goss.....($ 16,000.00).....Deed of Trust (2009)
Homestead Exemption.....($ 75,000.00)

Total consensual liens and homestead exemptions.....($1,281,968.92)

Value of Property Testified to by Debtor.....$1,160,027.00

Value/(No Value) for Judgment Liens.....($ 121,941.92)

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 Andreas Abramson ("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 Helen McAbee, California Superior Court for San Benito County Case No. CU-10-00017, recorded on May 27, 2011 Document No. 2011-6122, with the San Benito County Recorder, against the real property commonly known as 83 Sanguinetti Court, Copperopolis , 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.

17. 18-90258-E-7 MF-7
ANDREAS ABRAMSON
Iain Macdonald
MOTION TO AVOID LIEN OF INVESTMENT RETRIEVERS, INC.
8-8-18 [116]

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)©).

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 Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 8, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Investment Retrievers, Inc., a California Corporation ("Creditor") against property of Andreas Abramson ("Debtor") commonly known as 83 Sanguinetti Court, Copperopolis, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $189,000.00. An abstract of judgment was recorded with Calaveras County on July 25, 2013, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $1,160,027.00 as of the petition date. Dckt. 6. The unavoidable consensual liens that total $1,206,968.92 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 6. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $75,000 .00 on Amended Schedule C. Dckt. 71. These unavoidable consensual liens and homestead exemption are identified as:

Select Portfolio Servicing.....($925,557.92).....First Deed of Trust (2005)

Michael Abramson.....($265,411.00).....Deed of Trust (2009)
Goss and Goss.....($ 16,000.00).....Deed of Trust (2009)
Homestead Exemption.....($ 75,000.00)

Total consensual liens and homestead exemptions.....($1,281,968.92)

Value of Property Testified to by Debtor.....$1,160,027.00

Value/(No Value) for Judgment Liens.....($ 121,941.92)

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 Andreas Abramson ("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 Investment Retrievers, Inc., a California Corporation, California Superior Court for Calaveras County Case No. 11CV37864, recorded on July 25, 2018, Document No. 2013-10630, with the Calaveras County Recorder, against the real property commonly known as 83 Sanguinetti Court, Copperopolis, 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.

18. 18-90258-E-7 MF-8 | **ANDREAS ABRAMSON** **Iain Macdonald** | **MOTION TO AVOID LIEN OF PENINSULA ESTATES ASSOCIATION** **8-8-18 [121]**

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)©).

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 Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 8, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Peninsula Estates Association, a California nonprofit mutual benefit corporation ("Creditor") against property of Andreas Abramson ("Debtor") commonly known as 83 Sanguinetti Court, Copperopolis, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $1,450.00. An abstract of judgment was recorded with Calaveras County on June 13, 2011, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $1,160,027.00 as of the petition date. Dckt. 6. The unavoidable consensual liens that total $1,206,968.92 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 6. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $75,000 .00 on Amended Schedule C. Dckt. 71. These unavoidable consensual liens and homestead exemption are identified as:

Select Portfolio Servicing.....($925,557.92).....First Deed of Trust (2005)

Michael Abramson.....($265,411.00).....Deed of Trust (2009)
Goss and Goss.....($ 16,000.00).....Deed of Trust (2009)
Homestead Exemption.....($ 75,000.00)

Total consensual liens and homestead exemptions.....($1,281,968.92)

Value of Property Testified to by Debtor.....$1,160,027.00

Value/(No Value) for Judgment Liens.....($ 121,941.92)

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 Andreas Abramson ("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 Peninsula Estates Association, a California nonprofit mutual benefit corporation, recorded on June 13, 2011, Document No. 2011-6555, with the Calaveras County Recorder, against the real property commonly known as 83 Sanguinetti Court, Copperopolis, 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.

19. 18-90258-E-7 MF-9 | **ANDREAS ABRAMSON** **Iain Macdonald** | **MOTION TO AVOID LIEN OF PENTECH FUNDING, LLC** **8-8-18 [125]**

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)©).

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 Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 8, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Pentech Funding, LLC ("Creditor") against property of Andreas Abramson ("Debtor") commonly known as 83 Sanguinetti Court, Copperopolis, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $11,415.69. An abstract of judgment was recorded with Calaveras County on December 3, 2013, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $1,160,027.00 as of the petition date. Dckt. 6. The unavoidable consensual liens that total $1,206,968.92 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 6. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $75,000 .00 on Amended Schedule C. Dckt. 71. These unavoidable consensual liens and homestead exemption are identified as:

Select Portfolio Servicing.....($925,557.92).....First Deed of Trust (2005)

Michael Abramson.....($265,411.00).....Deed of Trust (2009)
Goss and Goss.....($ 16,000.00).....Deed of Trust (2009)
Homestead Exemption.....($ 75,000.00)

Total consensual liens and homestead exemptions.....($1,281,968.92)

Value of Property Testified to by Debtor.....$1,160,027.00

Value/(No Value) for Judgment Liens.....($ 121,941.92)

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 in its entirety subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Andreas Abramson ("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 Pentech Funding, LLC, California Superior Court for Calaveras County Case No. 13CF10926, recorded on December 3, 2013, Document No. 2013-16597, with the Calaveras County Recorder, against the real property commonly known as 83 Sanguinetti Court, Copperopolis, 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.

20. 18-90162-E-7 SSA-2 | **LISA BONADONA** Martha Passalaqua | **MOTION TO EMPLOY CHRISTOPHER DER MANUELIAN AS SPECIAL COUNSEL** 7-5-18 [19]

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)©).

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, creditors, parties requesting special notice, and Office of the United States Trustee on July 5, 2018. By the court's calculation, 49 days' notice was provided. 14 days' notice is required.

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

Irma Edmonds ("the Chapter 7 Trustee") seeks to employ the Law Offices of Christopher Der Manuelian ("Special Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. The Chapter 7 Trustee seeks the employment of Special Counsel to pursue a car accident claim valued at $40,000.00.

The Chapter 7 Trustee argues that Special Counsel's appointment and retention is necessary to continue to prosecute, settle, and secure funds due the bankruptcy estate regarding a present personal injury suit. The Agreement Terms are summarized as follows:

1. If no settlement is obtained, the bankruptcy estate and Trustee will owe no fees or expense to Special Counsel appointed.

2. Special Counsel will receive 33 1/3% of the gross recovery of all money received if the case settles without litigation and 40% if a complaint or demand for arbitration is filed.

3. Special Counsel shall be entitled to reimbursement of all expenses if there is a monetary recovery.

4. It will be the responsibility of the Special Counsel to provide the Trustee, as representative for the Debtor's bankruptcy estate, the gross proceeds of settlement arising out of the present personal injury case, with the understanding the Trustee, through the assistance of Special Counsel, their agents and employees, will distribute and pay the residual costs and lines, if applicable, attributable to the settlement.

5. Special Counsel shall have a lien upon any recovery if Special Counsel Withdraws or is discharged by the Trustee.

Christopher Der Manuelian, an attorney at Law Offices of Christopher Der Manuelian, testifies that he and his firm are experienced in personal injury claims, and that he has special knowledge of Debtor's claim because he was formerly Debtor's counsel on this matter. Dckt. 21. Christopher Der Manuelian testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.*, ¶ 5.

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

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

Taking into account all of the relevant factors in connection with the employment and compensation of Special Counsel, considering the declaration demonstrating that Special Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Christopher Der Manuelian as [Special Counsel for the Chapter 7 Estate on the terms and conditions set forth in the Contract filed as Exhibit 1, Dckt. 22. Approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by Irma Edmonds ("the Chapter 7 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and the Chapter 7 Trustee is authorized to employ Christopher Der Manuelian as Special Counsel for the Chapter 7 Trustee on the terms and conditions as set forth in the Contract filed as Exhibit 1, Dckt. 22.

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

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

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

21. 18-90071-E-7 PRAVINKUMAR/MADHUKANTA ORDER TO SHOW CAUSE
18-9006 GANDHI RHS-1 8-5-18 [8]

DHALIWAL V. GANDHI ET AL

NO APPEARANCE IS REQUIRED IF PARTY DOES NOT OBJECT TO THE COURT DISMISSING THE ADVERSARY PROCEEDING WITHOUT PREJUDICE

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)©).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney, Defendant's, Chapter 7 Trustee, Debtor's Attorney and Office of the United States Trustee on August 8, 2018. By the court's calculation, 15 days' notice was provided. The court set the hearing for August 23, 2018. Dckt. 8.

The Order to Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 Order to Show Cause is sustained and this Adversary Proceeding is dismissed without prejudice.

The court issues an Order to Show Cause Why Adversary Proceeding Should Not Be Dismissed Without Prejudice on August 5, 2018. Dckt. 8. The Order compels Plaintiff Joginder Dhaliwal why this Adversary Proceeding should not be dismissed without prejudice, having been rendered moot by the dismissing of the Defendant-Debtors' bankruptcy case.

The Adversary Proceeding having been rendered moot by the Dismissal of the Defendant-Debtor's bankruptcy case, the Adversary Proceeding is dismissed 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 hearing on the Order to Show Cause having been conducted, no opposition to dismissal without prejudice having been presented, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is sustained and this Adversary Proceeding is dismissed without prejudice. The Clerk of the Court may close the file for this Adversary Proceeding.

22. 17-90577-E-7 SSA-3 | **WILSON SARHAD** / **David Johnston** | **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH WILSON SARHAD AND AVELAIN SARHAD**
7-13-18 [44]

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)©).

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, Parties Requesting Special Notice, and Office of the United States Trustee on July 13, 2018. By the court's calculation, 41 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

The Motion for Approval of Compromise is granted

Irma Edmonds, the Chapter 7 Trustee ("Movant" or "Trustee"), requests that the court approve a compromise and settle competing claims and defenses of Debtor, Wilson Sarhad ("Debtor"), and Debtor's non-filing spouse, Avelain Sarhad (collectively "Settlor"). The claims and disputes to be resolved by the proposed settlement center around the Estate's interest in the assets of W.S. Towing, a business the non-filing spouse continued to run after Debtor filed this case.

Debtor disclosed a prior ownership of W. S. Towing, Inc., and W.S. Towing (a sole proprietorship) on his Statement of Financial Affairs, but had not listed any current interest except for office equipment (Computers, desks, chairs, copy machine) for which Debtor claimed a $1,500.00 exemption. Dckt. 18. The Trustee discovered possible interests through a review of Debtor's Petition and Schedules, testimony at the 341 Meeting, and documents obtained through 2004 examination requests. Dckt. 46 at ¶4.

Movant and Settlor have resolved this dispute, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 47):

A. Debtor Wilson Sarhad and his wife, Avelain Sarhad, shall pay the Trustee the sum of $20,000.00, which subject to Court approval, will be used to pay claims and administrative expenses. The foregoing is deemed the "Settlement Payment." In exchange, the Trustee will give up any interest in W.S. Towing and its assets. Debtor and his wife shall have five (5) months from execution of this agreement to tender the Settlement Payment in certified funds. It is contemplated by the parties that the funds will be generated by the Debtor obtaining a new loan on his exempt home.

B. The parties agree that the Court will retain jurisdiction in this matter.

C. Each party will bear their own fees and costs. However, if Debtor and Debtor's wife fail to make the Settlement Payment when due and the Trustee and her counsel have to enforce the terms and conditions of this agreement, then the Trustee and her counsel can file a separate motion with the court and move for an award of reasonable fees and costs incurred occasioned by the default in this Agreement.

D. Following execution of this Agreement by the Parties, the Trustee agrees to promptly and without unnecessary delay file and prosecute a motion approving compromise (the "Settlement Motion" or "Comprise Motion") for approval of the Agreement with the Court. Once an order granting the Settlement Motion is entered on the Court's docket (the "Effective Date"), which becomes final, the Trustee may assert full and unrestricted custody and control over the Settlement Payment once received.

E. Debtor and his wife agree that they shall have no claim of exemption concerning the proceeds of settlement and they will not file any amended claim of exemption to assert a right, claim or interest in any of the Settlement Payment received and to be administered in the bankruptcy estate by the Trustee.

F. Provided the Debtor and Debtor's wife make the Settlement Payment, the Trustee will not intervene in or pursue the adversary complaint filed by creditor Leonani Garcia which seeks both a determination of the dischargeability of a claim and the denial of the Debtor's discharge.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Under the settlement, Movant shall recover $20,000.00 in satisfaction of the Estate's claim for recovery of the property (value not stated) from Settlor. Dckt. 47. Movant asserts that she considers "W.S. Towing to be an asset of Debtor's bankruptcy estate by virtue of 11 U.S.C. § 541 of the Bankruptcy Code." Dckt. 46, ¶ 5. The proposed settlement allows Movant to recover for the Estate $20,000.00 without further cost or expense, where the Trustee identifies that the "towing concern is a small business of "limited assets," and that the $20,000.00 settlement is nearly twice W.S. Towing's net earnings for 2017. Dckt. 46, ¶ 8. Trustee notes in her declaration "the wife could stop business activities anytime, irrespective of whether this matter were litigated to conclusion." *Id.*

Ownership of W.S. Towing

Unfortunately, Movant has not provided the court with significant and much-needed detail within the Motion. At outset, it is important to note that W. S. Towing, Inc. dissolved in 2015, and what allegedly remains is W.S. Towing, a sole proprietorship. Dckt. 19 at 7. While Movant states she considers W.S. Towing an asset of Debtor's Estate, a sole proprietorship is not an entity distinct from its owner. Debtor's and the Estate's interest would be in assets, which just happen to be used in the W.S. Towing business (this is not to say the business could not be sold as a whole asset).

However, it is unclear that W.S. Towing was a sole proprietorship and not a partnership. A partnership is an association of two or more persons to carry on as co-owners a business for profit. Unif.Partnership Act 1914 § 6. It seems likely from the limited facts provided that Debtor and his non-filing spouse were running W.S. Towing as a partnership, operating as co-owners until "early 2017" when Debtor transferred his entire interest to his non-filing spouse. Dckt. 19 at 7. Under that scenario, it may be that the Trustee would consider avoiding the transfer pursuant to 11 U.S.C. § 548 and retaining an interest in the partnership.

Community Property

A possible reason for the Movant's lack of detail is that she intends to pursue either assets of or an interest in W.S. Towing (depending on business form) by virtue of it being community property, which would apply in either situation. 11 U.S.C. § 541(2)(A) provides property of the estate includes:

"(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or . . ."

California provides the following regarding community property:

Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property.

Cal. Fam. Code § 760. (a)

"(a) Except as provided in subdivisions (b), ©), and (d) and Sections 761 and 1103, either spouse has the management and control of the community personal property, whether acquired prior to or on or after January 1, 1975, with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse . . .

. . . (d) Except as provided in subdivisions (b) and ©), and in Section 1102, a spouse who is operating or managing a business or an interest in a business that is all or substantially all community personal property has the primary management and control of the business or interest. Primary management and control means that the managing spouse may act alone in all transactions but shall give prior written notice to the other spouse of any sale, lease, exchange, encumbrance, or other disposition of all or substantially all of the personal property used in the operation of the business (including personal property used for agricultural purposes), whether or not title to that property is held in the name of only one spouse. Written notice is not, however, required when prohibited by the law otherwise applicable to the transaction."

Cal. Fam. Code § 1100

Movant has not provided enough detail for the court to say definitively, but it appears Debtor and his non-filing spouse began their business after marrying, and that the associated property is therefore presumed community property. Cal. Fam. Code § 760. (a). Under California law, each spouse has control and management. Cal. Fam. Code § 1100(a). Therefore, the entirety of either the business interest or assets (depending on business form), presuming it is community property based on the facts provided, would be property of the estate. 11 U.S.C. § 541(2)(A).

Factors for Approval of Compromise

Probability of Success

Movant states here that the result achieved by settlement is more advantageous than through litigation. Dckt. 46, ¶ 8. Movant notes W.S. Towing is a small business with limited assets, and which could cease its operations anytime. *Id.* Movant also asserts that the settlement amount is more than twice W.S. Towing's net profit of 2017. *Id.*

Movant has not provided the court with any actual argument as to the probability of success. The most relevant statement Movant makes in support of this factor is that she believes "W.S. Towing to be an asset of Debtor's bankruptcy estate by virtue of 11 U.S.C. § 541 of the Bankruptcy Code." Movant appears confident in success, but based on Movant's Motion the court is left to guess why. Relying on the court's discussion, *supra*, it appears that either assets of or an interest in the business would be community property and therefore property of the estate. Additionally, Debtor individually would either have a current interest in the assets of the business or the Trustee would be able to avoid Debtor's transferred interest in the business. Therefore, despite no real discussion provided by Movant, it appears almost certain Trustee would prevail.

Difficulties in Collection

Movant presents this argument as "Difficulties to Be Encountered in This Litigation." Dckt. 44 at 4:5. Movant notes that attorney's fees could range $5,000.00 to $7,500.00, and CPA or business valuation expert might be needed (estimated $5,000.00). Dckt. 46 at 4:18

While Movant presents the issue as "difficulty associated with the litigation," Movant only actually provides the expense of litigation, and possible expense of collection if a valuation expert is needed. The cost of liquidating is not relevant for this factor.

Elsewhere, Trustee states the hard assets of W.S. Towing include a used work truck, a small amount of business equipment, and a tow service contract with the CHP subject to yearly renewal. Dckt. 46 at 5:5-7. As a whole, the business might be hard to sell, and its contract difficult to value. However, the court perceives no difficulty liquidating the assets of the business severally. Based on the foregoing, the court finds little difficulty in collection.

Expense, Inconvenience, and Delay of Continued Litigation

Movant presents this argument as only "Complexities of Litigation." Dckt. 44 at 4:12.5. Movant has been advised by its counsel that the litigation is not overly complex, and would largely revolve around factual probing, including the valuation of assets. Dckt. 46 at 5:1-10.

As stated, *supra*, the expense of litigation could reach up to $7,500.00 in attorney's fees and $5,000.00 in other expert fees. Dckt. 46 at 4:18. W.S. Towing does not seem to have significant value in assets or as a whole asset, given its net income is $11,000.00. Dckt. 46 at 5:8. The complexity and resulting expense, inconvenience, and delay is significant in the context of the issues here, where litigation would deplete much if not all of the Estate's assets.

Paramount Interest of Creditors

Movant asserts here that the resolution of issues enhances the Estate which is presently insolvent. Dckt. 46 at 5:13-16. Trustee has used her business discretion in arriving at the settlement figure, balancing the costs associated with litigation. *Id.* at 5:17-20.

Movant's arguments here are well-taken. Despite not providing significant detail as to the value of the business as a whole or its assets severally, it seems likely litigation would deplete much of the value recoverable. Therefore, it is the paramount interest of creditors for this matter to be settled.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the value of W.S. Towing as a whole or determined by its assets is modest, and would be depleted through litigation and collection. The Motion 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 Approve Compromise filed by Irma Edmonds, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Wilson Sarhad and Avelain Sarhad ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit 1 in support of the Motion (Dckt. 47).

23. 15-90680-E-7 **JO GIBSON**
18-9001 **DEF-1**

GIBSON V. NATIONAL RECOVERIES ET AL

MOTION TO SUBSTITUTE PROPER PARTIES AS DEFENDANTS AND VERIFIED FIRST AMENDED COMPLAINT
6-21-18 [32]

Final Ruling: No appearance at the August 23, 2018 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 Defendant's, Defendant's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 21, 2018. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

The Motion to Substitute Proper Parties as Defendants 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 Substitute Proper Parties as Defendants is granted.

Jo Anne Gibson, Plaintiff-Debtor (Plaintiff), seeks an order approving the motion to substitute Proper Parties as Defendants. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 7025 & FRCP 25©). FN.1.

FN.1. Plaintiff's Motion actually states that it is moving pursuant to FRCP 25(d). Dckt. 32. The court notes that cited provision regards public officers and death or separation from office. FRCP©) pertains to a transfer of interest, which is the apparent proper legal support. Furthermore, FRCP 25©) applies through the Federal Rules of Bankruptcy Procedure 7025. Plaintiff's failure to plead the correct grounds for relief means the Motion did not meet pleadings standards under FRBP 9013.However, Plaintiff pleaded facts upon which this court infers the correct legal support, and there appearing no prejudice to the parties, the court waives the defect and considers the Motion.

Plaintiff filed for relief under Chapter 7 on July 14, 2015. Dckt. 1. On December 8, 2015, Plaintiff received a discharge. Case No. 15-90680, Dckt. 25. On April 5, 2018, commenced this adversary proceeding by filing a Complaint, naming, inter alia, Navient Corporation as one of the Defendants, seeking a discharge of educational loan debt. Dckt. 1. Prior to the filing of Plaintiff's Complaint, all interests in all of the FFELP Loans serviced by Navient were transferred to the FFELP guarantors due to default on the loans obligations. Dckt. 34 at ¶ 4.

As a former servicer of the FFELP Loans, neither Navient Solutions, LLC, nor named Defendant Navient Corporation, nor any of their other related companies, corporations or entities, has any authority to litigate the discharge of any of Plaintiff's FFELP debt. *Id.* at ¶ 5.

On information and belief only, the current holders of Plaintiff's FFELP Loans include United Student Aid Funds (USAF), Great Lakes Higher Education Corporation (GLHEC) (successor in interest to United Student Aid Funds' FFELP interests and responsibilities), Illinois Student Aid Commission (ISAC), and / or Educational Credit Management Corporation (ECMC)(specialized guarantee agency under the FFELP program, that takes assignment of FFELP loans from other FFELP guarantors under certain specific conditions, including the commencement of an adversary proceeding seeking discharge). *Id.* at ¶ 6. Therefore, United Student Aid Funds (USAF), Great Lakes Higher Education Corporation (GLHEC), Illinois Student Aid Commission (ISAC), and Educational Credit Management Corporation (ECMC) are additional defendants ("Proper Defendants").

Pursuant to Federal Rule of Bankruptcy Procedure 7025, Plaintiff requests authorization to substitute in Proper Defendants for Navient Corporation in an Adversary Proceeding regarding the discharge of any of Plaintiff's FFELP debt.

APPLICABLE LAW

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that:

> If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

Federal Rule of Civil Procedure 25(a)(3) provides further:

> A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district

DISCUSSION

Here, Plaintiff has provided sufficient evidence to show that Navient Corporation has transferred its interest in claims subject to these Adversary Proceedings. Navient Corporation no longer holding an interest in or rights under the litigation, it would not be in the interest of the parties to deny substitution for

the Proper Defendants. Furthermore, service has been proper under Federal Rule of Civil Procedure 5. *See*, Dckt. 36. There The court grants the Motion to Substitute Party.

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 Substitute After Death filed by 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 granted, and United Student Aid Funds (USAF), Great Lakes Higher Education Corporation (GLHEC), Illinois Student Aid Commission (ISAC), and Educational Credit Management Corporation (ECMC) (collectively "Proper Defendants") are substituted as the successor-in-interest to Navient Corporation and is permitted to represent itself in this Adversary Proceeding.