UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

August 29, 2019 at 10:30 a.m.

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1. **19-90122-E-11**
MF-26

MIKE TAMANA FREIGHT LINES, LLC
Matt Olson

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MACDONALD FERNANDEZ LLP FOR MATTHEW J. OLSON, DEBTORS ATTORNEY(S)
8-2-19 [326]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty (20) largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on August 2, 2019. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Macdonald Fernandez LLP, the Attorney ("Applicant") for Mike Tamana Freight Lines, LLC, the Debtor in Possession ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 10, 2019, through June 27, 2019. The order of the court approving employment of Applicant was entered on March 1, 2019. Dckt. 65. Applicant requests fees in the amount of $118,491.00 and costs in the amount of $9,417.64.

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

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

A review of the application shows that Applicant's performed significant services for the Estate, describe more fully below. Applicant is in possession of a $72, 901.33 retainer, which will cover the majority of the requested fees here. 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.

Commencement of the Case: Applicant spent 73.1 hours in this category. Applicant's services here included preparing and filing the chapter 11 petition, preparing and filing the schedules of assets and liabilities and statement of financial affairs, preparing the initial status report and appearing at the hearing thereon, preparing for and appearing at the initial debtor interview (the "IDI") by the United States Trustee, preparing for and appearing at the meeting of creditors held pursuant to Section 341(a) of the Bankruptcy Code, educating the Debtor in Possession with respect to its duties and assisting with issues regarding opening Debtor in Possession accounts, among other tasks.

Retention of Professionals: Applicant spent 14.4 hours in this category. Applicant's services included prosecuting motions to employ professionals of the Estate, including Applicant, certain accountants, special counsel for certain non-bankruptcy litigation and a financing broker.

Cash Collateral: Applicant spent 9 hours in this category. Applicant prosecuted motions seeking authority to use cash collateral.

Financing: Applicant spent 54.8 hours in this category. Applicant assisted in the procurement and court approval of financing.

Asset Investigation: Applicant spent 21.9 hours in this category. Applicant investigated possible fraudulent transfers and preference claims.

Executory Contracts: Applicant spent 46 hours in this category. Applicant assessed prepetition agreements to determine their nature as executory or otherwise, and prosecuted motions to assume or reject executory leases.

Relief From Stay: Applicant spent 93 hours in this category. Applicant handled adequate protection stipulations with multiple lenders, correspondence with parties to litigation and claims, and prosecuting a violation of the automatic stay by HSD Trucking.

Use, Sale, Or Lease of Assets: Applicant spent 7.9 hours in this category. Applicant prepared for the sale or replacement of vehicles.

Claims Analysis ad Objections: Applicant spent 26.8 hours in this category. Applicant has analyzed claims, including those of the Nevada County DA.

Plan and Disclosure Statement: Applicant spent 3.5 hours in this category. Applicant has begun to explore a plan of reorganization.

Adversary Proceedings and Contested Matters: Applicant spent 8.8 hours in this category. Applicant has reviewed issues connected with potential litigation against third parties and certain former officers of the Debtor in Possession.

Case Administration: Applicant spent 43.3 hours in this category. Applicant's services included evaluating the Debtor in Possession's operations, reviewing and filing monthly operating reports and other reports, drafting status reports, handling issues regarding the Debtor in Possession's bank accounts, and developing and implementing an overall strategy for the management of the case.

Fee Applications: Applicant spent 2.3 hours in this category. Applicant prepared this fee application.

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**
Reno Fernandez	57	$390.00	$22,230.00
Matthew Olson	277.4	$290.00	$80,446.00
Samantha Brown	2.9	$100.00	$290.00

Daniel Vaknin	67.5	$230.00	$15,525.00
Total Fees for Period of Application			$118,491.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $9,417.64 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Cost**
Filing Fees	$555.00
Fax	$0.70
FedEx	$1,089.58
Inside Photocopies	$138.00
Mileage, Tolls, Parking	$356.17
Outside Printing and Mailing	$6,237.90
Postage	$182.39
UCC Search Fees	$29.00
Witness and Service Fees	$828.90
Total Costs Requested in Application	$9,417.64

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. First Interim Fees in the amount of $118,491.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

First Interim Costs in the amount of $9,417.64 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

The court authorizes Debtor in Possession to pay 80% of the fees and 100% of the costs allowed by the court.

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

Fees	$118,491.00
Costs and Expenses	$9,417.64

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Macdonald Fernandez LLP ("Applicant"), Attorney for Mike Tamana Freight Lines, LLC, the Debtor in Possession, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Macdonald Fernandez LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Macdonald Fernandez LLP, Professional employed by the Debtor in Possession
>
> Fees in the amount of $118,491.00
> Expenses in the amount of $9,417.64,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that Debtor in Possession is authorized to pay 80% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

2.	**19-90122-E-11 MF-4**	**MIKE TAMANA FREIGHT LINES, LLC Matt Olson**	**CONTINUED MOTION TO USE CASH COLLATERAL 2-12-19 [21]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on February 12, 2019. By the court's calculation, 2 days' notice was provided. The court set the hearing for February 14, 2019. Dckt. 29.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion for Authority to Use Cash Collateral is granted.

REVIEW OF INITIAL MOTION TO USE CASE COLLATERAL
AND
HISTORY OF PRIOR PROCEEDINGS AND AUTHORIZATIONS

Debtor in Possession Mike Tamana Freight Lines, LLC filed this First Day Motion to use cash collateral to pay necessary expenses for the estate to continue to operate the transportation business that is included in the estate. The Debtor in Possession is continuing to operate on interim post-petition financing terms.

The Expenses to be paid with cash collateral are set forth in Exhibit C (Dckt. 23) filed in support of this Motion.

FEBRUARY 14, 2019 HEARING

At the February 14, 2019 hearing creditor Transportation Alliance Bank, Inc., holding the senior lien on the collateral, which was represented to be over encumbered, represented non-opposition to the Motion. Dckt. 43.

The court issued an Order granting the Motion, providing for replacement liens, and continuing the hearing on the Motion. Order, Dckt. 47.

CREDITOR WELLS FARGO'S OPPOSITION

Creditor Wells Fargo Equipment Finance, Inc. holding a secured claim ("WFB") filed a Limited Opposition on March 13, 2019. Dckt. 95. Wells Fargo asserts an interest certain equipment of the Debtor, including trucks and trailers, and their proceeds.

While Wells Fargo does not oppose the proposed $100,000.00 weekly adequate protection payment, WFB argues the Motion is silent as to which creditors are to be paid, the amount of payment, and when payment will be provided.

WFB asserts that as of the filing of its Limited Opposition no payment had been received.

TCF'S OPPOSITION

Creditor TCF Equipment Finance, a division of TCF National Bank or its assigns, holding a secured claim ("TCF")filed a Limited Opposition on March 14, 2019. Dckt. 98. TCF asserts it has an interest in multiple trucks and trailers used by Debtor in the operation of its business.

While not opposing the use of its cash collateral, TCF asserts Debtor's Motion and budget fail to identify which secured creditors will be paid or the amounts of such payments. TCF argues Debtor in Possession should be required, as a form of adequate protection, to specify to whom payments will be made, the amount of the payments, and the dates that the payments will be made.

TCF asserts it has received one adequate protection payment totaling $12,789.89.

DEBTOR IN POSSESSION'S REPLY

Debtor in Possession filed an Omnibus Reply on March 21, 2019. Dckt. 110. Debtor in Possession states WFB and TCF oppose the motion to the extent that the underlying agreement purports to prime their liens on certain equipment assets of the Debtor in Possession. Debtor in Possession states further it does not oppose limiting any replacement lien granted under the order approving the use of cash collateral.

MARCH 28, 2019 HEARING

At the March 28, 2019 hearing, counsel for the Debtor in Possession reported that cash collateral stipulations are being executed.

The court issued an Order on April 1, 2019, extending its Interim Order (Order, Dckt. 47) through and including April 19, 2019, and continuing the hearing on the Motion to April 4, 2019. Order, Dckt. 149.

APRIL 9, 2019 HEARING

At the April 9, 2019 hearing the court discussed the First Declaration of Amanjot Tamana, the Responsible Representative of the Debtor in Possession. Dckt. 155. Filed with the Declaration is Exhibit "D," which is identified to be the amended post-petition operating budget for the estate during the 13-week period starting on February 10, 2019. The Debtor in Possession projected the following financial consequences of operating under the cash collateral budget:

Total Revenue.....$6,805,000
Total Expenses.....($6,494,037)

Net Operating Income For the 13 Week Period.....$310,963

No opposition was presented at the hearing and financing alternatives still being explored, the court issued an Interim Order extending the prior Interim Order (Dckt. 47) and continuing the hearing to May 2, 2019. Dckt. 191.

MAY 2, 2019 HEARING

At the May 2, 2019 hearing the court granted the Motion and further continued the hearing to August 1, 2019. Dckt. 260.

CURRENT REQUEST FOR USE OF CASH COLLATERAL,

THIRD SET OF SUPPLEMENTAL PLEADINGS
FOR AUGUST 1, 2019 HEARING

On July 18, 2019 Debtor in Possession filed its Third Set of Supplemental Exhibits and Declaration of Amanjot Tamana, the Responsible Representative of the Debtor in Possession. Dckts. 314, 315.

The Debtor in Possession projected the following financial consequences of operating under the cash collateral budget for the 13 week period starting August 11, 2019:

Total Revenue.....$5,265,000
Total Expenses.....($5,307,255)

Net Operating Income For the 13 Week Period.....($42,259)

Exhibit F, Dckt. 315.

WFB'S STATEMENT OF POSITION

Well's Fargo filed a Statement of Position on August 1, 2019. Dckt. 319. The Statement asserts that Debtor in Possession is delinquent payments of $59,058.45 for both February and July 2019 as required under the Cash Collateral Stipulation. WFB asserts further that the proposes budget modifies the Stipulation by providing for 13 weekly payments, but also admits the prior cash collateral budgets were also done on a 13 week basis and states it does not oppose the weekly payments.

WFB also notes that the August 11, 2019 budget provides for "Cure Pmts," but that the cure amount is less than the $59,058.45 monthly adequate protection payment, leaving uncertain when Debtor in Possession plans to make the February, July, and August 2019 payments.

WFB requests that if the Motion is granted, the order thereon should include the additional specific provisional language:

(i) Specify the date when the July, 2019, adequate protection payment will be made,

(ii) Specify the date when the when the February, 2019, adequate protection payment will be made,

(iii) Specify the date when the when the adequate protection payments that cone due in the first week of August, 2019 will be made,

(iv) Specify what the "Cure Pmts" are for (to what they shall be applied); and

(b) That the granting of the Motion is not a finding that WFEFI is adequately protected.

Dckt. 319.

AUGUST 1, 2019 HEARING

At the August 1, 2019 hearing counsel for the Debtor in Possession reported that:

1. The Debtor in Possession will provide WFB additional documentation of payments as they relate to the loan.

2. With the switch to weekly payments, some may have been missed.

3. The parties request the hearing be continued to August 29, 2019, with interim authorization through the first week of September 2019.

In light of the parties' request, the court continued the hearing.

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for expenses necessary for the estate to continue to operate the transportation business that is included in the estate. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period August 11, 2019 through November 3, 2019, including required adequate protection payments. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by Debtor in Possession. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

The court continues the hearing to xx:xx x.m. on xxxx, 201x, for Debtor in Possession to file a Supplement to the Motion to extend authorization. That Supplement is due by xxxx, 201x , with any opposition to be presented orally at the continued hearing.

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 Authority to Use Cash Collateral filed by Mike Tamana Freight Lines, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that hearing on the Motion to Use Cash Collateral is continued to xx:xx x.m. on xxxx, 201x.
>
> **IT IS FURTHER ORDERED** that the use cash collateral as set forth in the budget filed as Exhibit G (Dckt. 337) is authorized on an interim basis for the period August 11, 2019 through November 3, 2019, pending further order of this court.

3. **17-90346-E-7** **ENRIQUEZ/LISA SANCHEZ** **MOTION FOR COMPENSATION FOR**
HSM-29 **Thomas Hogan** **RYAN, CHRISTIE, QUINN AND HORN, ACCOUNTANT(S)**
8-8-19 [172]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Ryan, Christie, Quinn & Horn, the Accountant ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period July 19, 2017, through August 29, 2019. The order of the court approving employment of Applicant was entered on July 24, 2017. Dckt. . Applicant requests fees in the amount of $9,900.00 and costs in the amount of $98.68.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis 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 a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

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

A review of the application shows that Applicant's services for the Estate include tax preparation. With the assistance of Applicant, Chapter 7 Trustee recovered $13,000.00 after the sale of real property. 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.

Administration: Applicant spent 3.1 hours in this category. Applicant discussed the bankruptcy case with the Chapter 7 Trustee and assisted in the preparation of this Application.

Tax Return Preparation: Applicant spent 33.3 hours in this category. Applicant prepared Debtor's 2018 and 2019 tax returns, and prepared multiple tax projections.

Correspondence: Applicant spent 3.2 hours in this category. Applicant drafted letters to the IRS, FTB, and FTB Bankruptcy Advisors.

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**
Paul Quinn	39.6	$250.00	$9,900.00
Total Fees for Period of Application			$9,900.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $98.68 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Cost**
Postage	$84.18
Copies	$14.50
Total Costs Requested in Application	$98.68

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $9,900.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $98.68 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	$9,900.00
Costs and Expenses	$98.68

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 Ryan, Christie, Quinn and Horn ("Applicant"), Accountant for Gary Farrar, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Ryan, Christie, Quinn and Horn is allowed the following fees and expenses as a professional of the Estate:

Ryan, Christie, Quinn and Horn, Professional employed by the Chapter 7 Trustee

Fees in the amount of $9,900.00
Expenses in the amount of $98.68,

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

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

4. 17-90346-E-7 HSM-30

ENRIQUEZ/LISA SANCHEZ
Thomas Hogan

MOTION FOR COMPENSATION FOR GARY FARRAR, CHAPTER 7 TRUSTEE(S)
8-8-19 [178]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Gary Farrar, the Chapter 7 Trustee, ("Applicant") for the Estate of Enriquez Sanchez and Lisa Mona Sanchez ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period April 27, 2017, through August 8, 2019.

Applicant requests $22,638.12 in fees and $768.01 in costs.

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

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also*

Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio), 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include efforts to recover and sell of debtor's real property and other assets. Applicant's services resulted in $448,441.94 disbursed on claims in this case. Declaration, Dckt. 180. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

General Case Administration: Applicant spent 93.2 hours in this category.

Efforts to Assess and Recover Property of the Estate: Applicant spent 16.5 hours in this category.

Asset Disposition Applicant spent 13.8 hours in this category.

Accounting/Tax: Applicant spent 10.6 hours in this category.

Litigation: Applicant spent 2 hours in this category.

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $950,000.00	$19,922.10
Calculated Total Compensation	$25,672.10
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$25,672.10
Less Previously Paid	$0.00

Total First and Final Fees Requested	$22,638.12

Gross proceeds of $410,500.00 were received by Trustee for the sale of real property, and $448,441.94 disbursed on claims in this case. Declaration, Dckt. 180.

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $22,638.12 are approved pursuant to 11 U.S.C. § 330 are authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	$22,638.12
Costs and Expenses	$768.01

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Gary Farrar, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gary Farrar is allowed the following fees and expenses as a professional of the Estate:
>
> Gary Farrar, the Chapter 7 Trustee
>
> Fees in the amount of $22,638.12
> Expenses in the amount of $768.01,
>
> The fees and costs pursuant to this Motion, and costs of $1,554.02 previously authorized by the court are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

5. **17-90346-E-7** **ENRIQUEZ/LISA SANCHEZ** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK AND MAROIS, LLP FOR AARON A. AVERY, TRUSTEES ATTORNEY(S)**
HSM-31 **Thomas Hogan** **8-8-19 [183]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2019. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Hefner, Stark & Marois, LLP, the Attorney ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 1, 2018, through August 29, 2019. The order of the court approving employment of Applicant was entered on July 19, 2017. Dckt. 21. Applicant requests fees in the amount of $23,822.00.

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?

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

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

A review of the application shows that Applicant's services for the Estate include general case administration, asset disposition, litigation, and claims administration. The Trustee reports that the administration of this case has resulted in $448,441.94 disbursed on claims in this case. Declaration, Dckt. 180. The Estate has $85,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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 28.30 hours in this category. Applicant drafted stipulations and orders to extend deadlines to object to discharge while settlement of other disputes were explored. Applicant also performed general services related to categories below.

Asset Disposition: Applicant spent 57.70 hours in this category. Applicant worked extensively on a global compromise regarding real property of the Estate, successfully opposed a motion for relief from stay, and advised Client on case wrap-up.

Litigation: Applicant spent 12.40 hours in this category. Applicant worked on various stipulations, orders, and applications for their approval regarding adversary proceeding and state court litigation.

Claims Administration: Applicant spent 1.2 hours in this category. Applicant communicated with Client regarding claims in this case.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
A. Avery	90.2	$340.00	$30,668.00
H. Nevins	5.2	$420.00	$2,184.00
J. Levy	4.2	$400.00	$1,680.00
Total Fees for Period of Application			$34,532.00
Total Fees Requested			$23,822.00

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

Application	Interim Approved Fees	Interim Fees Paid
First Interim	$69,203.00	$62,283.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$69,203.00	

FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of $23,822.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay the fees allowed by the court.

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

Fees $23,822.00.

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 Hefner, Stark & Marois, LLP ("Applicant"), Attorney for Gary Farrar, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Hefner, Stark & Marois, LLP is allowed the following fees and expenses as a professional of the Estate:

Hefner, Stark & Marois, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of $23,822.00.

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

The fees and costs pursuant to this Motion, and fees in the amount of $69,203.00 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

6.	**19-90454-E-7** **SMJ-2**	**NINOUS/MARY SARGIZIAN** **Scott Johnson**	**MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13** **7-29-19 [18]**

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

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on July 29, 2019. By the court's calculation, 31 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice).

However, no service list was attached indicating what parties, if any, actually were served. Without evidence of proper service, the Motion shall be denied with prejudice.

At the hearing, xxxxxxxxxxxxxx.

The Motion to Convert 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 Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is denied without prejudice

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert filed by Ninous Nino Sargizian and Mary Enfijian Sargizian ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is denied without prejudice.

Alternative Ruling Prepared in the Event Service is Shown to be Proper

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is denied without prejudice.

Ninous Nino Sargizian and Mary Enfijian Sargizian ("Debtor") seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor asserts that the case should be converted to allow Debtor to pay unsecured claims through a Chapter 13 Plan. Declaration, Dckt. 20.

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

The Motion filed provides little insight why Debtor wants to convert this case. No grounds are stated, other than that the court has the authority to convert the case and that is what the Debtor "wishes."

Debtor's Declaration, Dckt. 20, provides no factual testimony relating to Debtor's "wish" to convert the case. In fact, the Declaration puts in doubt Debtor's good faith in this case. The Declaration, signed under penalty of perjury after Debtor's careful review that they each have personal knowledge of all that Debtor testifies to, does have the Debtor providing the court with each of their personal legal conclusions that he satisfies all of the requirement of 11 U.S.C. § 109(e). It is unclear how these two debtors (who list their current employment on Schedule I as a forklift operator and a billing clerk) have such personal legal knowledge.

Debtor continues, affirmatively stating that each of the two debtors do not "violate" 11 U.S.C. § 1307(c).

The Declaration does conclude that the two debtors want to convert the case so that they can pay the priority unsecured debt through a Chapter 13 plan (presumably rather than just addressing upon the conclusion of this case).

Debtor has filed a Chapter 13 Plan which the court has reviewed to see how it fits with Debtor seeking to convert this case to one under Chapter 13. Plan, Dckt. 25. The salient points of the Plan are:

1. Monthly Plan Payment.....$100 Plan ¶ 3.07

2. Plan Term..... 36 months

3.	Class 1 Secured Claims.....	None	
4.	Class 2 Secured Claims.....	None	Plan ¶ 3.08
5.	Class 3 Surrender.....	None	Plan ¶ 3.09
6.	Class 4 Secured Claims Direct Pay.....	None	
7.	Class 5 Priority Unsecured Claims.....	$1,371.28	Plan ¶ 3.12
8.	Class 6 Special Unsecured Claims.....	None	Plan ¶ 3.13
9.	Class 7 General Unsecured Claims.....	4% Dividend on $48,940 in Claims	Plan ¶ 3.14

A review of Schedules I and J indicate that Debtor has no ability to fund a Chapter 13 Plan. Schedule I states under penalty of perjury that Debtor has $4,791.46 a month in take home income. But on Schedule J, Debtor struggles have expenses of ($5,115.22), resulting in Debtor having a monthly shortfall of ($323.76). Debtor's statements under penalty of perjury show that they cannot be moving forward in good faith. Schedules I and J, Dckt. 1 at 41-45.

In looking at the plan, it appears to make little sense. Debtor owes only $1,371.28 on the priority debt. This is an unsecured obligation owed to Stanislaus County. Schedule E/F, Dckt. 1 at 27. To pay the $1,371.28 through a plan, Debtor will have to pay into the Plan $3,600.00 (Plan requiring $100 a month for 36 months). That results in a "financing cost" of $2,229. Using the Microsoft Excel Loan Calculator program, this is computed to be an effective interest rate of 76.8% - a very expensive financial decision.

The court further notes that Debtor and their counsel have failed to appear at the initial First Meeting of Creditors and the Continued Meeting of Creditors, which were conducted on July 11, 2019 and August 8, 2019. See Chapter 7 Trustee 341 Meeting Reports, July 11, 2019 and August 8, 2019 Docket Entry Reports. Debtors and their counsel have affirmatively failed to comply with their obligations having commenced this Chapter 7 case.

The repeated failure to appear creates the appearance that Debtor, and each of them, are attempting to hide information and themselves from the Chapter 7 Trustee who has an obligation to review Debtor's conduct and assets of the bankruptcy case.

Based on the files in this case; each of the debtors' lack of factual testimony and appearing to merely parrot legal conclusions written by their counsel, the two debtors not appearing at the first meeting of creditors, and the proposed plan making no financial sense, Debtor is not seeking to convert this case in good faith with this Motion. It may well be that there is a good faith reason for converting the case, but Debtor has worked hard to hide it from/not disclose it to the court.

While the Debtor's attempts and conduct are highly suspicious, the court denies the Motion without prejudice.

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

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

The Motion to Convert filed by Ninous Nino Sargizian and Mary Enfijian Sargizian ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Convert is denied without prejudice.

7. 19-90556-E-7 RKW-2 | **GIRARD GOODMAN** Randy Walton | **MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13** 7-29-19 [30]

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, Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 29, 2019. By the court's calculation, 31 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

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

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

Girard Goodman ("Debtor") seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor filed his Declaration testifying that a document preparer helped him file Chapter 7, and that he desires conversion after learning his inherited home would be sold given non-exempt equity. Declaration, Dckt. 32. Debtor explains he lives at his residence, but also rents the residence, generating $1,000.00 monthly. *Id*. Debtor states his son will assist him in making Chapter 13 Plan payments. I*d.*

A proposed Chapter 13 Plan is attached as Exhibit 1. Dckt. 33.

TRUSTEE'S RESPONSE

The Chapter 7 Trustee, Gary Farrar ("Trustee"), filed a Response August 1, 2019. Dckt. 36. Trustee does not oppose the motion so long as the following conditions are set:

1. The Motion is not one to confirm a Plan.

2. All approved administrative expenses of the Chapter 7 shall be included in the Chapter 13 Plan.

3. If Debtor defaults in Chapter 13 Plan payments,

DEBTOR'S REPLY

Debtor filed a Reply on August 3, 2019. Dckt. 38. Debtor states he does not oppose including Trustee's requests in the conversion order.

DISCUSSION

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

The court shall issue 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 Convert filed by Girard Goodman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is granted, and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code.

8. **19-90464-E-7** **RICHARD RICKS** **MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR**
MAS-2 **Pro Se** **8-8-19 [48]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on August 8, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to 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 Extend Deadline to File a Complaint Objecting to Discharge is granted.

Creditor Hirst Law Group, P.C. ("Movant") moves to extend the deadline to file a complaint objecting to Richard Arland Ricks's ("Debtor") discharge to allow further investigation of Debtor's financial affairs after Debtor failed to appear at the noticed 2004 examination.

The deadline for filing a complaint objecting to discharge was September 13, 2019. Dckt. 7. The Motion requests that the deadline to object to Debtor's discharge be extended to December 12, 2019.

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

The instant Motion was filed on August 8, 2019, before the deadline to object to the discharge of Debtor. Dckt. 7.

The court finds that in the interest of Movant to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge is extended to December 12, 2019.

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 Extend Deadline to File a Complaint Objecting to Discharge filed by Hirst Law Group, P.C., Creditor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the deadline for Movant to object to Richard Arland Ricks's ("Debtor") discharge is extended to December 12, 2019.

9. 19-90482-E-7 DOROTHY YOUNG MOTION TO DISMISS CASE
Carl Combs 8-5-19 [12]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on August 7, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss 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 Dismiss is denied without prejudice.

The debtor, Dorothy Mae Young, filed this Motion on August 5, 2019 requesting voluntary dismissal of the case.

Failure To Comply With Local Rules

Debtor filed the Notice of Motion, Declaration, and Memorandum of Points and Authorities in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other

pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Grounds For Dismissal

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

I have decided not to go forward with my bankruptcy and request the court dismiss the case.

Motion, Dckt. 12. In Debtor's Declaration, she explains further that she seeks dismissal to protect real property she thought had been gifted to her daughter many years ago. Declaration, Dckt. 14.

In the Memorandum supporting the Motion, Debtor's counsel argues that Debtor may dismiss the case pursuant to 11 U.S.C. § 1307. However, this being a Chapter 7 case, that section is inapplicable.

No argument has been presented to demonstrate cause for dismissing this case. Debtor failed to appear at the First Meeting of Creditors. Trustee's July 24, 2019 Docket Entry Report.

At the hearing, xxxxxxxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion To Dismiss filed by Living Centers of Fresno, Inc., ("ΔIP") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

10. 10-90281-E-7 ADJ-5 | **LORRAINE/GARY ERWIN** **Martha Passalaqua** | **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH LORRAINE DENNISE ERWIN** **7-24-19 [165]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Ethicon, Inc. and Johnson & Johnson ("Settlor"). The claims and disputes to be resolved by the proposed settlement relate to debtor, Lorraine Dennise Erwin's ("Debtor"), personal injury allegedly caused by Tension-free Vaginal Tape.

On August 8, 2014, a complaint was filed in the United States District Court for the Southern District of West Virginia, Charleston Division, captioned *In Re: Ethicon Inc. , Pelvic Repair System Products Liability Litigation* MDL No. 2327, Civil Action No. 2:14-24583 ("Civil Litigation").

Movant and Settlor have resolved the claims and disputes asserted in the Civil Litigation, 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 C in support of the Motion, Dckt. 172):

A. Settlor shall pay $200,000.00.

B. Movant shall release all claims against Settlor.

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.

Probability of Success

Movant argues the "success" achieved by settlement is unlikely to be surpassed by continued and duplicative litigation.

No evidence was actually provided to demonstrate what the likelihood of success at trial would be. No testimony from the Movant's Special Counsel was provided explaining the strength of claims held by the Estate. No evidence having been presented, this factor is neutral.

Difficulties in Collection

Movant argues that without settlement, Movant would have to hire counsel to pursue enforcement of the judgement if successful at trial.

While this argument does not provide any factual detail as to the difficulty of recovery here, as a general matter Movant's argument is well-taken. Unless voluntarily address by Settlor, the Movant would have to secure counsel to pursue collection. This factor weighs in favor of settlement.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues that because this is a class action product liability case, extensive fees and costs would be generated by further litigation.

Movant's argument is well-taken. This is a complex personal injury and products liability case, which if forced to go to trial would be extremely costly. This factor weighs in favor of settlement.

Paramount Interest of Creditors

Movant argues this factor supports settlement because of the certainty of recovery and avoidance of expense.

This argument is also well-taken. Any recovery at trial would be significantly diminished if the case were pursued on its merits.

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 settlement results in a net recovery of $116,388.26 for the Estate. 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 Michael D. McGranahan, 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 Ethicon, Inc. and Johnson & Johnson ("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 C in support of the Motion (Dckt. 172).

11. 18-90764-E-7 DAWN CHRISTENSEN MOTION TO VACATE
19-9002 RK-1 7-20-19 [43]
JONES V. CHRISTENSEN

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 (*pro se*), and Chapter 7 Trustee's Attorney, on July 20, 2019. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion to Vacate 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 Vacate is granted.

On January 17, 2019, this Adversary Proceeding, No. 19-09002, was filed by Plaintiff, Cynthia Jones ("Plaintiff") objecting to the discharge of the debtor, Dawn Christensen ("Defendant-Debtor"). Dckt. 1. Subsequently, Defendant-Debtor defaulted, judgement was entered, and a Motion for Entry of Default Judgment was grated. Dckts. 15, 36, 40.

On July 20, 2019, Defendant-Debtor filed this Motion seeking to have the Default Judgment vacated, per Federal Rule of Civil Procedure 60(b).

Defendant-Debtor argues that she was denied access to her mail, and thereby did not receive notice, because of her abusive boyfriend. The Motion provides extensive allegations as to the abusive relationship in an attempt to explain Defendant-Debtor's failure to respond to the Complaint.

PLAINTIFF'S OPPOSITION

Plaintiff filed an Opposition on August 13, 2019. Dckt. 52. Plaintiff argues as follows:

1. None of the mail notice given by Plaintiff was returned.

2. Tracking information shows the notice was effectively delivered to Defendant-Debtor.

3. Defendant-Debtor's presence at the Meeting of Creditors and other noticed hearings shows she received notice.

4. Granting the Motion would force Plaintiff to hire new counsel for this Adversary Proceeding.

DEFENDANT-DEBTOR'S REPLY

Defendant-Debtor filed a Reply on August 22, 2019. Dckt. 55. Defendant-Debtor argues that numerous mistakes were made in this Adversary Proceeding because Defendant-Debtor was previously proceeding in *Pro Se.* Defendant-Debtor also argues that Defendant-Debtor should not be held to a reasonable person standard given she is a "battered woman."

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

Here, Defendant-Debtor argues that her failure to defend this Adversary Proceeding constituted excusable neglect because she was suffering domestic abuse, did not receive all notices, and because Defendant-Debtor was proceeding in *Pro Se.*

It is not certain what Defendant-Debtor received and did not receive notice of.

What is clear is that Defendant-Debtor was incapable of proceeding in *Pro Se.* After Defendant-Debtor filed her first Motion To Vacate the Default Judgement (Dckt. 28), the court issued an Order requiring the Defendant-Debtor to amend that motion, set it for hearing, serve it, and support it with admissible evidence. Order, Dckt. 30. Defendant-Debtor failed to meet any of those requirements, and her motion was denied.

Since her last motion to vacate was denied, Defendant-Debtor "saw the light" and retained counsel. Her pleadings now demonstrate an intent to prosecute this case on its merits.

The court finds on the evidence presented that Defendant-Debtor's default was the result of excusable neglect.

Therefore, in light of the foregoing, the Motion is granted, and the Judgement (Dckt. 40) is vacated.

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 Vacate filed by debtor, Dawn Christensen ("Defendant-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 the Judgement (Dckt. 40) is vacated.
>
> **IT IS FURTHER ORDERED** that Defendant-Debtor shall file her responsive pleading to the Complaint on or before September 14, 2019.

12. 15-90680-E-7 JO GIBSON **MOTION FOR SUMMARY JUDGMENT**
18-9001 USA-1 **7-8-19 [72]**
GIBSON V. NATIONAL RECOVERIES
ET AL

Final Ruling: No appearance at the August 29, 2019 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 Plaintiff (*pro se*), on July 8, 2019. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

The Motion for Summary Judgment 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 Summary Judgment is granted.

On April 5, 2019, the plaintiff, Jo Anne Gibson ("Plaintiff-Debtor") filed this Adversary Proceeding, No. 18-09001, seeking a determination of undue hardship and that the student loan claim of the defendant, United States Department of Education ("Defendant"), be discharged. Dckt. 1.

On July 8, 2019, Plaintiff filed the instant Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56, incorporated into bankruptcy through Federal Rule of Bankruptcy Procedure 7056. Dckt. 72.

The Motion argues the following:

1. Plaintiff-Debtor cannot show, by a preponderance of the evidence, that she is entitled to a discharge under the Brunner test because Plaintiff-Debtor does not have any medical issue affecting her ability to work and earn income.

2. Plaintiff-Debtor made no effort to address her student loans until 2014.

3. Because Plaintiff-Debtor received a discharge of her other debts, she should not have a problem maintaining a minimal standard of living while paying the loans.

4. No additional circumstances exist indicating that Plaintiff-Debtor, an individul with a Master's degree's, situation will persist.

5. Plaintiff-Debtor borrowed funds in 2009 through 2011, filed bankruptcy in 2015, and never applied for flexible payment options. Therefore, Plaintiff-Debtor did not make good faith efforts to repay the loan.

6. Plaintiff-Debtor misstates the legal standard as a "totality of circumstances" test.

Motion, Dckt. 72.

On August 22, 2019, Defendant filed a Reply notifying the court that Plaintiff-Debtor failed to file written response and thereby defaulted. Dckt. 78.

DISCUSSION

Motion For Summary Judgement

In an adversary proceeding, summary judgment is proper when "[t]he movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), incorporated by Fed. R. Bankr. P. 7056. The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P. 56(c), incorporated by Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248–50 (1986); 11 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 56.11[1][b] (3d ed. 2000). "[A dispute] is 'genuine' only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is 'material' only if it could affect the outcome of the suit under the governing law." *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008), citing *Anderson v. Liberty Lobby, Inc*., 477 U.S. at 248 (1986).

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that a fact cannot be genuinely disputed, the moving party must "cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ..., admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A), incorporated by Fed. R. Bankr. P. 7056.

In response to a sufficiently supported motion for summary judgment, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial. *Barboza*, 545 F.3d at 707, citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055–56 (9th Cir. 2002). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists. *Id.* (citing *Bhan v. NME*

Hosps., Inc., 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *County. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court "generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented." *Agosto v. INS*, 436 U.S. 748, 756 (1978). "[A]t the summary judgment stage [,] the judge's function is not himself to weigh the evidence and determine the truth of the matter[,] but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249.

Student Loan Discharge

A discharge does not discharge an educational loan unless excepting such debt from discharge would impose an undue hardship. 11 U.S.C. § 523(a)(8).

A debtor shows "undue hardship" by showing: (1) that the debtor could not maintain, based on current income and expenses, a minimal standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances existed indicating that this state of affairs was likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor had made good faith efforts to repay the loans. *Brunner v. New York State Higher Educ. Servs. Corp*., 831 F.2d 395, 396 (1987); *United Student Aid Funds v. Pena (In re Pena)*, 155 F.3d 1108, 1111 (1998).

Debtor has not filed an opposition or response to the Motion.

In the Complaint, Plaintiff-Debtor provides a breakdown of her expenses and income, showing no disposable income. Complaint, Dckt. 1 at p7:3-14.

As to additional circumstances evidencing persisting conditions, Plaintiff-Debtor asserts in the Complaint she has hypothyroid, high anxiety, bipolar, two artificial knees, Ro heart ailment, and fibromyalgia, all which prevent her from working. *Id.* at 8:8-14. However, what is missing is specific factual detail explaining why these conditions prevent Plaintiff-Debtor from working.

Many persons with high anxiety, or bipolar disorder, etc, can find gainful employment. It was Plaintiff-Debtor's burden to show specific facts to demonstrate a genuine factual dispute. *Barboza*, 545 F.3d at 707. Plaintiff-Debtor chose not to respond to the Motion.

Plaintiff-Debtor alleges in the Complaint that she made good faith efforts throughout her career to repay Defendant's claim. Complaint, Dckt. 1 at p. 6:21-24. Defendant argues that there is no dispute as to good faith where Debtor borrowed funds in 2009 through 2011, filed bankruptcy in 2015, and never applied for flexible payment options.

Plaintiff-Debtor has not responding showing specific facts demonstrating good faith. Rather, Plaintiff-Debtor chose not to respond to the Motion.

Based on the undisputed facts, and Plaintiff-Debtor's default, Plaintiff-Debtor will not be able to meet her burden to show undue hardship. The Motion is granted, and judgement shall be entered in favor of the Defendant.

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 Summary Judgment filed by defendant, United States Department of Education ("Defendant") 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 Summary Judgment is granted. The court shall enter judgment for Defendant denying Plaintiff Jo Ann Gibson relief on all claims in the Complaint in which she seeks relief from the nondischargeability provisions of 11 U.S.C. § 523(a)(8).
>
> Counsel for Defendant shall lodge within fourteen days of the entry of this Order a proposed judgment consistent with this Order.
>
> Requests for costs, expenses, and fees, if any, shall be made as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054.

FINAL RULINGS

13.	**19-90110-E-7** **SHA-2**	**CAMPBELL WINGS, INC.** **Reno Fernandez**	**MOTION FOR ADMINISTRATIVE EXPENSES** **6-26-19 [40]**

Final Ruling: No appearance at the August 29, 2019 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 25, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion for Allowance of Administrative Expenses is continued to October 17, 2019 at 10:30 a.m.

Hamilton and Bascom, LLC ("Movant") requests payment of administrative expenses in the amount of $379,863.02 incurred in relation to a lease agreement for property commonly known as 1555 S. Bascom Avenue, Campbell, California.

On August 26, 2019, the parties to this Matter filed a Stipulation seeking to continue the hearing in light of settlement talks. Dckt. 57.

In light of the parties' request and good cause appearing, the hearing on the Motion is continued to October 17, 2019 at 10:30 a.m.

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 Allowance of Administrative Expense filed by Hamilton and Bascom, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion is continued to October 17, 2019 at 10:30 a.m.

14. 17-90981-E-11 **THE LIVING CENTERS OF FRESNO, INC.**
David Johnston

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
12-1-17 [1]

Final Ruling: No appearance at the August 29, 2019 Status Conference is required.

Debtor's Atty: David Johnston

Notes:
Continued from 8/1/19 to be heard in conjunction with the Motion to Dismiss filed by the Debtor in Possession.

Operating Report filed: 8/13/19

The Court having ordered the case dismissed, **the Status Conference is concluded and removed from the Calendar.**

15. 17-90981-E-11 DCJ-2 | **THE LIVING CENTERS OF FRESNO, INC. David Johnston** | **MOTION TO DISMISS CASE 7-30-19 [119]**

Final Ruling: No appearance at the August 29, 2019 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 in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2019. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Dismiss is granted.

The debtor in possession, Living Centers of Fresno, Inc.,, ("ΔIP") filed this Motion seeking dismissal of the Chapter 11 case pursuant to 11 U.S.C. §§ 305(a)(1) and 1112(b)(1).

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

1. The case was filed on December 1, 2017.

2. No trustee has been appointed.

3. ΔIP owned real property in Fresno, California where the Debtor had been operating a 16 bed in-patient drug and alcohol rehabilitation facility. The Debtor believed the value to be $500,000, and it was subject to a seller carry back note of $380,000, property taxes of $28,000, and federal tax liens of $22,000. The note due to the seller had matured and could not be paid unless the property was refinanced or sold (to a supportive buyer).

4. On June 26, 2018, an order was entered which granted relief to the lender on the Fresno facility to foreclose.

5. The ΔIP now operates a 6 bed facility in a much smaller home in Fresno, and a small outpatient office in Turlock. The staff and expenses have been reduced.

6. Other than nominal bank accounts, he only other assets on the Petition Date were computers and office equipment ($10,000), beds, dressers, kitchen equipment, etc. used in the 16 bed facility ($30,000), and accounts receivable ($168,020). ΔIP has had difficulty collecting on accounts receivables.

7. Management and counsel of the ΔIP have determined that the ΔIP is not likely to reorganize. The net income is simply too low to provide for payment of all priority tax claims as required by Chapter 11.

8. Appointment of a Chapter 11 trustee is not likely to be successful because the United States Trustee is unlikely to find a trustee willing to serve in a case with nominal assets and to operate a business which requires a license from the California Department of Health Services.

9. Conversion to a case under Chapter 7 is not likely to result in any dividend on general unsecured claims due to the minimal assets and priority tax claims.

10. Dismissal of the case is in the best interest of creditors to avoid further expense and allow creditors to enforce their rights outside bankruptcy.

Motion, Dckt. 119.

ΔIP filed the Declaration of Troy D. Dorman,, ΔIP's president, to provide testimony attesting to the facts asserted in the Motion. Declaration, Dckt. 121.

DISCUSSION

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

The Bankruptcy Code Provides:

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

11 U.S.C. § 1112(b)(1).

Here ΔIP argues the Chapter 11 is not feasible because ΔIP's net income is too low to pay claims, including priority tax claims.

ΔIP's arguments are well taken. On the evidence provided, a successful reorganization through Chapter 11 does not appear likely. No party in interest has opposed the Motion. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is dismissed.

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

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

The Motion To Dismiss filed by Living Centers of Fresno, Inc., ("ΔIP") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

16. 17-90516-E-7 HCS-2 | **VERA JOHNSON** Thomas Hogan | **AMENDED MOTION TO EMPLOY TAMIE L. CUMMINS AS SPECIAL COUNSEL . 8-1-19 [27]**

Final Ruling: No appearance at the August 29, 2019 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 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 1, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 Employ is granted.

The Chapter 7 Trustee, Gary R. Farrar ("Trustee") filed this Motion seeking to reauthorize employment of Borton Petrini, LLP, with Tamie Cummings as lead counsel ("Special Counsel") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330.

The initial motion to employ Special Counsel as to family court litigation against the debtor's husband was filed April 3, 2018. Dckt. 22. The court issued an Order granting the motion April 4, 2018. Dckt. 26.

Subsequently, Steven Altmen joined Borton Petrini, LLP, as "of counsel," and began representing debtor's husband with regard to this bankruptcy case.

Due to a possible conflict, this Motion was filed to acquire reauthorization.

The Declaration of Tamie Cummins provides testimony that an ethical wall was implemented by Borton Petrini, LLP, with respect to Steven Altmen and litigation involving debtor and her husband.

Declaration, Dckt. 45. Cummins testifies further there is no incentive for her to act contrary to the best interest of the debtor and Estate. Declaration, Dckt. 31.

The Declaratiuon of Dana Suntag provides testimony that Altman is an independent contractor with Borton Petrini, LLP, not sharing in revenues generated or expenses incurred. Declaration, Dckt. 30.

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 Counsel, considering the declaration demonstrating that Special Counsel's representation will not be hindered by imputed conflicts, the Motion is granted and Trustee is authorized to continue employing Special Counsel.

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 Gary R. Farrar ("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 Trustee is authorized to continue employing Borton Petrini, LLP, with Tamie Cummings as lead counsel ("Special Counsel") on the same terms provided in the court's prior Order granting Motion To Employ. Dckt. 26.

17. 19-90245-E-7 RPK-1 | **FATIMA BORDNER** Ryan Keenan | **MOTION TO AVOID LIEN OF RIVERWALK HOLDINGS, LTD** 7-24-19 [24]

Final Ruling: No appearance at the August 29, 2019 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 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on July 31, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Avoid Judicial Lien is continued to 10:30 a.m. on September 19, 2019, to allow Debtor to supplement the record.

This Motion requests an order avoiding the judicial lien of Riverwalk Holdings, LTD. ("Creditor") against property of the debtor, Fatima De'Shawn Bordner ("Debtor") commonly known as 800 Salina Drive, Modesto, California ("Property").

Failure To Comply With Local Rules

Debtor filed Debtor's Declaration and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other

pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Failure To File Recorded Judgment

Exhibit D filed in support of the Motion is a copy of the Abstract of Judgement. Dckt. 25. However, no recorded judgement has been filed. From the evidence provided, it is unclear if Creditor has a judgment lien on the Property, or if there is just a judgment.

The court continues the hearing to allow the Debtor to supplement the record with admissible, properly authenticate evidence of the judgment lien that has been recorded and the recording information.

The motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Fatima De'Shawn Bordner ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is continued to 10:30 a.m. on September 19, 2019. On or before September 6, 2019, Debtor shall supplement the record with admissible, properly authenticate evidence of the judgment lien that has been recorded and the recording information.

18. 19-90451-E-7 SSA-1 | **FEDERMAN ACHURY AND GUISELLE BALLESTEROS** Steve Altman | **MOTION TO ABANDON 7-26-19 [37]**

Final Ruling: No appearance at the August 29, 2019 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 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Compel Abandonment is granted.

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

The Motion filed by Federman Achury and Guisell J. Ballesteros ("Debtor") requests the court to order Gary Farrar ("the Chapter 7 Trustee") to abandon the following real and personal property listed on Debtor's Schedules A/B (Dckt. 1):

Property	Value	Liens	Exemption	Net To Estate
2641 Tradition Way, Modesto, California	$428,862	$393,571.90	$175,000	$0

Household belongings, 6 piece furniture set	$8,000	$0	$8,000	$0
Electronics, 3 Tvs, DVD Player, Computers and Printer, Laptop, Stereo Equipment, Cell Phones	$4,000	$0	$4,000	$0
Books, Pictures, etc.	$100	$0	$100	$0
2009 BMW 535i; Round Dining Table Chairs	$6,900	$8,463	$2,750	$0
Clothes	$2,500	$0	$2,500	$0
Jewelry	$650	$0	$650	$0
Cash	$60	$0	$60	$0
Chase Bank Checking - 7237	$45	$0	$45	$0
BOA Checking - 823	$400	$0	$400	$0
SF Federal Credit Union Checking - 823	$200	$0	$200	$0
Roth IRA with Merill Edge - 24Z77W45	$6,000	$0	$6,000	$0
Chase Bank Savings - 1401	$19	$0	$19	$0
SF Federal Credit Union Savings - 17	$5	$0	$5	$0
SF Federal Credit Union Savings - 84	$7.18	$0	$7.18	$0

SF Federal Credit Union Savings - 84	$1	$0	$1	$0
Thrift Savings Retirement Thrift Savings Plan	$30,763.58	$0	$30,763.58	$0
Husband's VA Benefits	$3,352.41	$0	$3,352.41 (x12 months)	$0
Husband's Disability Retirement	$2,023	$0	$2,023 (x 12 months)	$0
2008 Kia Optima	$600	$0	$600	$0

Debtor filed his Declaration in support of the Motion, confirming the values stated above. Declaration, Dckt. 39.

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

CHAMBERS PREPARED ORDER

The court shall issue an Order (not 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 Compel Abandonment filed by Federman Achury and Guiselle J. Ballesteros ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the following real and personal property listed on Debtor's Schedules A/B (Dckt. 1):

Property	**Value**	**Liens**	**Exemption**	**Net To Estate**
2641 Tradition Way, Modesto, California	$428,862	$393,571.90	$175,000	$0

Household belongings, 6 piece furniture set	$8,000	$0	$8,000	$0
Electronics, 3 Tvs, DVD Player, Computers and Printer, Laptop, Stereo Equipment, Cell Phones	$4,000	$0	$4,000	$0
Books, Pictures, etc.	$100	$0	$100	$0
2009 BMW 535i; Round Dining Table Chairs	$6,900	$8,463	$2,750	$0
Clothes	$2,500	$0	$2,500	$0
Jewelry	$650	$0	$650	$0
Cash	$60	$0	$60	$0
Chase Bank Checking - 7237	$45	$0	$45	$0
BOA Checking - 823	$400	$0	$400	$0
SF Federal Credit Union Checking - 823	$200	$0	$200	$0
Roth IRA with Merill Edge - 24Z77W45	$6,000	$0	$6,000	$0
Chase Bank Savings - 1401	$19	$0	$19	$0
SF Federal Credit Union Savings - 17	$5	$0	$5	$0
SF Federal Credit Union Savings - 84	$7.18	$0	$7.18	$0

SF Federal Credit Union Savings - 84	$1	$0	$1	$0
Thrift Savings Retirement Thrift Savings Plan	$30,763.58	$0	$30,763.58	$0
Husband's VA Benefits	$3,352.41	$0	$3,352.41 (x12 months)	$0
Husband's Disability Retirement	$2,023	$0	$2,023 (x 12 months)	$0
2008 Kia Optima	$600	$0	$600	$0

is abandoned by the Chapter 7 Trustee, Gary Farrar ("Trustee") to Federman Achury and Guiselle J. Ballesteros by this order, with no further act of the Trustee required.

19. 10-90281-E-7 ADJ-6 | **LORRAINE/GARY ERWIN** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF FLINT LAW FIRM, LLC FOR ANDREW FELDMAN, SPECIAL COUNSEL(S)**
Martha Passalaqua | **7-24-19 [173]**

Final Ruling: No appearance at the August 29, 2019 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 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2019. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Michael D. McGranahan, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case on behalf of his Joint Special Counsel, the Lowe Law Group and the Flint Law Firm, LLC ("Applicant").

Fees are requested for the period November 3, 2017, through July 24, 2019. The order of the court approving employment of Applicant was entered on November 3, 2017. Dckt. 155. Applicant requests fees in the amount of $72,000.00 and costs in the amount of $2,636.74.

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?

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

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

A review of the application shows that Applicant's services for the Estate include representation in state court litigation personal injury and products liability claims. The Estate received $2000,000.00 in gross recovery from the state court litiagtion. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in personal injury and product liability litigation, for which Client agreed to a contingent fee of 40% of the gross. $200,000.00 of gross monies (exclusive of these requested fees and costs) was recovered for Client.

Applicant has voluntarily reduced the requested fee to 36% of the recovery.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $2,636.74 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Cost**
Costs Advanced by Flint Law	$274.04
Costs Advanced by Lowe Law	$612.07
Lien Payment	$275.63
Lien Resolution Fees	$1,475.00
Total Costs Requested in Application	$2,636.74.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $72,000.00 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Chapter 7 Trustee is authorized to pay from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $2,636.74. are approved pursuant to 11 U.S.C. § 330] and authorized to be paid by the Chapter 7 Trustee is authorized to pay from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	$72,000.00
Costs and Expenses	$2,636.74.

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 Lowe Law Group and Flint Law Firm, LLC ("Applicant"), Attorney for Michael D. McGranahan, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Lowe Law Group and Flint Law Firm, LLC is allowed the following fees and expenses as a professional of the Estate:
>
> Lowe Law Group and Flint Law Firm, LLC, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $72,000.00
> Expenses in the amount of $2,636.74

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

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

20. 19-90382-E-7 MDM-1 | **TRACY SMITH** **Pro Se** | **MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR** **7-24-19 [42]**

Final Ruling: No appearance at the August 29, 2019 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 (*pro se*), and Office of the United States Trustee on July 24, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge 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 Extend Deadline to File a Complaint Objecting to Discharge is granted.

Michael D. McGranahan, Chapter 7 Trustee, ("Movant") moves to extend the deadline to file a complaint objecting to Tracy Emery Smith's ("Debtor") discharge because Debtor has not provided requested financial documents to Movant. .

The deadline for filing a complaint objecting to discharge was July 29, 2019. Dckt. 6. The Motion requests that the deadline to object to Debtor's discharge be extended to October 28, 2019.

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

The instant Motion was filed on July 24, 2019, before the deadline to object to the discharge of Debtor. *See* Dckt. 6.

The court finds that in the interest of Movant to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge is extended to October 28, 2019.

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 Extend Deadline to File a Complaint Objecting to Discharge filed by Michael D. McGranahan, Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the deadline for Movant to object to Tracy Emery Smith's ("Debtor") discharge is extended to October 28, 2019.

21. 19-90382-E-7 TRACY SMITH
UST-1 Pro Se

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS CASE UNDER SEC. 707(B)
7-29-19 [47]

Final Ruling: No appearance at the August 29, 2019 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 (*pro se*), Chapter 7 Trustee,and parties requesting special notice on July 29, 2019. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge and to Dismiss Case under 11 U.S.C. 707(b) 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 Extend Deadline to File a Complaint Objecting to Discharge is granted.

Tracy Hope Davis, the United States Trustee, ("Movant") moves to extend the deadline to file a complaint objecting to Tracy Emery Smith's ("Debtor") discharge, and the deadline for filing a motion to dismiss pursuant to 11 U.S.C. § 707(b), because Debtor has not provided requested financial documents to Movant, including corporate tax returns.

The deadline for filing a complaint objecting to discharge was July 29, 2019. Dckt. 6. The Motion requests that the deadline to object to Debtor's discharge be extended to October 28, 2019.

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

The instant Motion was filed on July 29, 2019, before the deadline to object to the discharge of Debtor. *See* Dckt. 6.

The court finds that in the interest of Movant to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge, and the deadline for filing a motion to dismiss pursuant to 11 U.S.C. § 707(b), are extended to October 28, 2019.

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 Extend Deadline to File a Complaint Objecting to Discharge filed by Michael D. McGranahan, Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the deadline for Movant to object to Tracy Emery Smith's ("Debtor") discharge is extended to October 28, 2019.
>
> **IT IS FURTHER ORDERED** that the deadline for filing a motion to dismiss pursuant to 11 U.S.C. § 707(b) is extended to October 28, 2019.

22. 19-90588-E-7 MSN-1

CESAR QUINTERO PENA AND NANCY CABREA LEON
Mark Nelson

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
7-10-19 [12]

Final Ruling: No appearance at the August 29, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 10, 2019. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Wells Fargo Bank, N.A. ("Creditor") against property of the debtor, Cesar Alberto Quintero Pena and Nancy Cabrea Leon ("Debtor") commonly known as 1924 Robertson Road, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $12,459.11. Exhibit A, Dckt. 15. An abstract of judgment was recorded with Stanislaus County on April 12, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $138,226.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $72,626.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $138,226.00 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Cesar Alberto Quintero Pena and Nancy Cabrea Leon ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Wells Fargo Bank, N.A., California Superior Court for Stanislaus County Case No. 2028257e, recorded on April 12, 2019, Document No. 2019-0022200-00, with the Stanislaus County Recorder, against the real property commonly known as 1924 Robertson Road, Modesto, 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.

23. 18-90029-E-11 DAC-1 | **JEFFERY ARAMBEL** Matt Olson | **MOTION TO FILE CLAIM AFTER CLAIMS BAR DATE O.S.T. 8-15-19 [892]**

Final Ruling: No appearance at the August 29, 2019 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 15, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Debtor in Possession has filed his statement of nonopposition.

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 in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Allow Late Filed Claim is granted.

Creditor, CNH Industrial Capital America LLC ("Movant") filed this motion seeking an order deeming its Proof of Claim, No. 37 ("Claim"), to be timely filed. Movant filed its Claim on August 12, 2019. Proof of Claim, No. 37, after the court set bar date of May 16, 2018. Dckt. 11.

Movant asserts Debtor, Jeffery Edward Arambel, entered into a contract with Garton Tractor to finance the purchase of two Rears model LSH08K946 mowers, which contract was assigned to Movant. Movant argues that its claim was not listed on Debtor's Schedules, and no notice was provided to Movant of this case.

Movant argues its Claim should be deemed timely based on excusable neglect.

On August 15, 2019, the Debtor in Possession, , Jeffery Edward Arambel, filed an Opposition. Dckt. 899. The Opposition does not actually oppose the Motion, but only reserves the right to later object to Movant's Claim.

Here, Movant's claim was not listed on Debtor's Schedules, no notice was provided to Movant of this case, and Debtor in Possession does not oppose the Motion. Therefore, 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 Allow Late Filed Claim filed by CNH Industrial Capital America 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 granted, and Movant's Claim, No. 37, is deemed filed timely.

24. 18-90029-E-11 NAR-4 | **JEFFERY ARAMBEL** **Matt Olson** | **MOTION TO FILE CLAIM AFTER CLAIMS BAR DATE** **8-1-19 [872]**

Final Ruling: No appearance at the August 29, 2019 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 1, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Allow Late Filed Claim 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 Debtor in Possession has filed his statement of nonopposition.

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 in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Allow Late Filed Claim is granted.

Creditor, Growers Link ("Movant") filed this motion seeking an order deeming its Proof of Claim, No. 36 ("Claim"), to be timely filed. Movant filed its Claim on May 20, 2019. Proof of Claim, No. 36, after the court set bar date of May 16, 2018. Dckt. 11.

Movant asserts Debtor, Jeffery Edward Arambel, was engaged with and received services from Movant prepetition. Movant argues that its claim was not listed on Debtor's Schedules, and no notice was provided to Movant of this case.

Movant argues its Claim should be deemed timely based on excusable neglect.

On August 15, 2019, the Debtor in Possession, Jeffery Edward Arambel, filed an Opposition. Dckt. 897. The Opposition does not actually oppose the Motion, but only reserves the right to later object to Movant's Claim.

Here, Movant's claim was not listed on Debtor's Schedules, no notice was provided to Movant of this case, and Debtor in Possession does not oppose the Motion. Therefore, 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 Allow Late Filed Claim filed by Growers Link ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Movant's Claim, No. 36, is deemed filed timely.

25. 19-90345-E-7 **STEPHANIE BURTON**
Pro Se

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
7-8-19 [14]

Final Ruling: No appearance at the August 29, 2019 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 (*pro se*) and Office of the United States Trustee on July 10, 2019. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

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 in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Dismiss is denied without prejudice.

The Chapter 7 Trustee, Irma Edmonds ("Trustee"), seeks dismissal of the case on the grounds that Stephanie Marie Burton ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 12:00 p.m. on August 5, 2019. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DISCUSSION

On August 22, 2019, the Trustee entered a Trustee Report on the docket indicating Debtor appeared at the continued Meeting of Creditors. The Trustee further reported that there would be no distribution in this case.

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

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

The Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Irma Edmonds ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

26. 19-90262-E-7 **MARTIN GIVARGIS**
Pro Se

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
7-18-19 [26]

Final Ruling: No appearance at the August 29, 2019 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 (*pro se*) and Office of the United States Trustee on July 20, 2019. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The hearing on the Motion to Dismiss is continued to October 3, 2019 at 10:30 a.m.

The Chapter 7 Trustee, Irma Edmonds ("Trustee"), seeks dismissal of the case on the grounds that Martin Givargis ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Dckt. 26.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 12:00 p.m. on August 19, 2019. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 2, 2019. Dckt. 31.Debtor states he did not receive notice of the continued Meeting of Creditors, and was instructed by Trustee that the case would need to be refiled after 6 months.

TRUSTEE'S REPLY

Trustee filed a Reply on August 22, 2019. Dckt. 32. Trustee clarifies that at the first Meeting of Creditors, May 20, 2019, Trustee learned Debtor has not been a California resident long enough to file bankruptcy here.

Trustee referred this case to the U.S. Trustee for dismissal. However, U.S. Trustee did not file a dismissal motion.

Subsequently, when Debtor failed to appear at the continued Meeting of Creditors, Trustee filed this Motion.

DISCUSSION

Debtor appeared at the continued August 19, 2019, Meeting of Creditors. Debtor has also appeared at the May 20, 2019 and July 1, 2019 Meetings.

Trustee comments in the Reply that Debtor fails the residency requirement of 28 U.S.C. § 1408. However, the present Motion seeks dismissal only on the basis of Debtor's failure to appear at the Meeting of Creditors.

The hearing on the Motion shall be continued to October 3, 2019 to allow Debtor to appear at the continued Meeting of Creditors on September 19, 2019.

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 the Chapter 7 case filed by The Chapter 7 Trustee, Irma Edmonds ("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 hearing on the Motion to Dismiss is continued to October 3, 2019 at 10:30 a.m.
>
> This continuance is to allow Debtor to appear at the continued hearing, as well as to allow the U.S. Trustee or the Chapter 7 Trustee to file a motion to dismiss if the U.S. Trustee or Chapter 7 Trustee believe that there is a legal impediment to Debtor filing the current bankruptcy case in the Eastern District of California.