UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

September 21, 2023 at 10:30 a.m.

1.	**22-21000-E-7** **GMR-2**	**ROBYN JOHNSON** **Douglas Jacobs**	**MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY, ACCOUNTANT(S)** **7-31-23 [155]**

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 31, 2023. By the court's calculation, 52 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Professional Fees is granted.

Gabreilson & Company, the Accountant ("Applicant") for Geoffrey Richards, the Chapter 7 ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 25, 2022, through July 26, 2023. The order of the court approving employment of Applicant was entered on August 30, 2022. Dckt. 58. Applicant requests fees in the amount of $1,870.00 and costs in the amount of $89.85.

DISCUSSION

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A

professional must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include a summary of Accounting and Tax Services Provided to Estate. 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.

Analyzed Tax Impact of Selling Real Estate and Preparation of Estate Tax Returns: Applicant spent 3.0 hours in this category. Applicant assisted trustee and counsel in reviewing and analyzing tax impact of selling estate's interest in real estate and preparing first and final June 30, 2023 federal and California estate income tax returns, including review and revisions to tax elements of closing statement and consultation with trustee.

Administrative Functions: Applicant spent 1.4 hours in this category. Applicant Prepared accountant declaration and related employment documents for trustee review. Applicant also prepared first and final fee application, including detailed description of tax services. .

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**
Michael Gabrielson	4.4	$425.00	$1,870.00
Total Fees for Period of Application			$1,870.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $89.85 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$52.40
Copying Charges		$37.45
Total Costs Requested in Application		$89.85

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 $1,870.00 are approved and subject to final review 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 $89.95 and subject to final review pursuant to 11 U.S.C. § 330 are approved 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.

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

Fees $1,870.00

Costs and Expenses $89.95

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 Gabreilson & Company, Accountant for Geoffrey Richards, the Chapter 7 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gabreilson & Company is allowed the following fees and expenses as a professional of the Estate:
>
> | | |
> |---|---|
> | Fees | $1,870.00 |
> | Costs and Expenses | $89.95, |
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as Accountant for the Chapter 7 Trustee, and subject to final review and allowance pursuant to 11 U.S.C. § 330.

2. 23-21822-E-12 BSH-8 | **RUSSELL LESTER** | **MOTION FOR SANCTIONS**
Brian Haddix | **8-22-23 [158]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on attorneys of record who have appeared in the case on August 22, 2023. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Sanctions 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.

However, Federal Rule of Bankruptcy Procedure 9011 imposes notice requirements on this motion in addition to the Local Rules. The "safe harbor" provision requires a movant to serve a motion requesting sanctions under Rule 9011 to respondents twenty-one (21) days before filing with the court. Federal Rule of Bankruptcy Procedure 9011(c)(1)(A). Because this procedure was not followed, sufficient notice has not been provided. This requirement is discussed in more depth below.

The Motion for Sanctions is xxxxxxx .

Russell Wayne Lester ("Movant," "Debtor in Possession") petitions this court for sanctions imposed against First National Bank of Dixon and/or its counsel, Douglas Kraft and Valery Loumber ("FNB"). Motion, Dckt. 158. The moving party has provided the Declaration of Brian S. Haddix, Debtor in Possession's attorney, to introduce evidence to authenticate the documents upon which it bases its Motion. Declaration, Dckt. 160. Movant also filed a Memorandum of Points and Authorities advocating for sanctions. Dckt. 161. In its memo, Movant argues:

1. FNB has adamantly opposed the Chapter 12 attempted reorganization at every opportunity.

2. FNB's arguments concerning abstention, *res judicata*, and judicial estoppel are without merit and worthy of sanctions.

3. Furthermore, FNB's motion was filed for an improper purpose, namely to harass Debtor.

4. FNB has cumulatively filed the very same motion it previously filed, thus needlessly adding legal fees in this case and otherwise distracting Debtor.

Dckt. 161.

The totality of the grounds stated with particularity in the Motion (as required by Federal Rule of Bankruptcy Procedure 9013 enacted by the United States Supreme Court), constituting the entire Motion itself, consists of:

> Russell Wayne Lester, debtor(s) in the above-referenced matter (hereinafter Debtor in possession, pursuant to Fed. R. Bank. Proc. Rule 9011(c), moves for sanctions against First National Bank of Dixon and/or its counsel Douglas Kraft and Valery Loumber (collectively "FNB") on the grounds that the motion in this case contains allegations that are not warranted by existing law, and that the motion was filed solely for the purpose of harassing the Debtor in possession by increasing litigation of this case and further frustrating DIP's attempt to reorganize by increasing costs. Debtor in possession further seeks an award of reasonable attorney's fees and other expenses incurred as a result of violation

Motion, p. 1:20-27; Dckt. 158. While stating the Debtor in Possession's conclusions, the grounds for such conclusions are not stated. The Motion concludes stating that it is supported by a memorandum of points and authorities. Such points and authorities provides the legal authorities and legal arguments for which the grounds stated with particularity in the Motion, and are not an alterative place to state the grounds with particularity.

The Points and Authorities focuses on FNB's Motion to Abstain and twenty-eight (28) page Points and Authorities filed by FNB in support thereof. P&A, § I; Dckt. 161.

The Debtor in Possession's Points and Authorities continue, with a Statement of Facts making reference to FNB filing pleadings that improperly combined multiple claims for relief and not complying with the Local Bankruptcy Rules. Debtor in Possession references the Motion to Abstain, and then makes reference to requests for relief based on the doctrines of *res judicata* and collateral estoppel for nonexistent issues. *Id*., § II.

The Points and Authorities then has its Legal Arguments section (*Id.*; § III) which provides an analysis of the application of Rule 9011 and when abstention is proper. The Debtor in Possession argues that FNB's course of conduct demonstrates that it has engaged in a course of conduct of harassing and vexatious litigation.

Debtor in Possession's counsel has provided his Declaration projecting that the legal fees incurred with respect to the Motion to Abstain and the present Motion for Sanctions to total approximately ten (10) hours, with counsel's billing rate being $400.00 an hour. Dec.; Dckt. 160.

FNB OPPOSITION

FNB responded to Movant's motion and filed an Opposition on September 7, 2023. Dckt. 179. In its Opposition, FNB argues:

1. FNB did not file its motion to harass Debtor, but contends that FNB has a good faith basis for making valid legal arguments concerning abstention, *res judicata*, and judicial estoppel.

2. FNB originally filed its motions as one collective document, of which the court disapproved. Dckt. 53. At the hearing on June 23, 2023 the court then authorized FNB to refile its motions separately. Moreover, Debtor expressed in open court at the June 23 hearing that he would rather respond to the motions separately. Therefore, FNB has not cumulatively filed its motions, but has complied with this court's orders and given Debtor an opportunity to respond to the motions separately.

3. Movant's own Motion for Sanctions is worthy of sanctions, but in order to de-escalate, FNB is not petitioning the court to sanction Debtor.

Dckt. 179. With respect to the Abstention Request, FNB asserts that such request is valid since it is requesting the federal bankruptcy court to abstain from conducting the non-core pending State Court Action. (This "Pending State Court Action is not identified in the Opposition.) It is further argued that the Motion to Abstain "is also a part of a bundle of requests, including a relief from stay motion, a motion to dismiss, and a motion for excusal of turnover, each of which make an abstention request and analysis is critical." Opposition, p. 2:10.5-13.

The Opposition continues, citing to two motions filed by FNB - (1) Motion for Relief From the Stay for the Pending State Court Action, which also sought abstention by this court with respect to those matters, and (2) Motion to Dismiss this Chapter 12 Case and sanctions for Debtor violating the confirmed Chapter 11 Plan in Debtor's other case.

Additionally, though FNB had improperly combined multiple claims for relief in its several motions, the court afforded the Debtor in Possession the opportunity of allow FNB to so combine the relief (the court granting relief from the Local Bankruptcy Rules for those motions) or whether the Debtor in Possession would prefer the Rules to be followed and have them presented as separate motions. FNB states that counsel for the Debtor in Possession requested that the Rules be complied with and the different types of relief be requested by separate motions.

On July 19, 2023, FNB filed a separate Motion to Abstain, which was set for hearing on August 23, 2023, in conjunction with the Motion for Relief Form the Stay and Motion to Dismiss. At the August 23, 2023 hearing the court denied the Motion to Abstain without prejudice. Neither in the Motion for Sanctions or in the Opposition address or quote the court's extensive findings in the Ruling (Civ. Minutes; Dckt. 169) on the Motion to Abstain.

FNB focuses on the court denying the Motion to Abstain without prejudice, believing that the court was implying that the Motion was "not entirely devoid of legal merit." Opposition, p. 6:8-10; Dckt. 179. This is a big assumption, and ignores that the court may have denied it without prejudice to preclude

further litigation between these two litigious parties and their counsel that such an order barred a request for abstention at some future date, in the event that some possible issue could arise – say a party sought to remove the State Court Action to this court or commenced a proceeding to adjudicate the same issues raised in the State Court Action in this court.

FNB argues that since it was seeking relief from the stay and to preclude this federal court from adjudicating matters herein, the request for abstention was proper. FNB's logic is that since it was seeking a shotgun load of relief in the combined relief motions, which were properly refiled as separate motions, the Motion for Abstention was proper.

FNB also notes that the Motion for Sanctions does not address the actual legal merits and arguments asserted on the Motion to Abstain, but only draws the conclusions that it was improper.

DISCUSSION

An attorney is subject to Federal Rules of Civil Procedure 11 sanctions when he "presents to the court 'claims, defenses, and other legal contentions. . . [not] warranted by existing law or by a nonfrivilous argument.'" *Holgate v. Baldwin*, 425 F.3d 671, 675-76 (9th Cir. 2005) (quoting Fed. R. Civ. P. 11(b)(2)). To determine when a legal contention is frivolous, the court must determine if a filing is "both baseless and made without a reasonable and competent inquiry." *Moore v. Keegan Mgmt. Co*, 78 F.3d 431, 434 (9th Cir. 1996). The Ninth Circuit defines the reasonable inquiry prong of this test by asking whether an attorney, "after conducting an objectively reasonable inquiry into the facts and law, would have found the complaint to be well-founded." *Holgate*, 425 F.3d at 676. Therefore, if the court determines that an attorney's motion contains baseless allegations that are not supported by existing law, and a reasonable inquiry should have revealed these deficiencies to the movant attorney, then Rule 11 sanctions are appropriate.

Looking at the Motion to Abstain, the court first notes that the State Court Action has not been removed and that there was not an effort being made for the court to adjudicate the issues in the State Court Action. Though ignored by the Debtor in Possession and FNB, the court actually reviews the grounds stated with particularity in the Motion to Abstain. The court summarizes the grounds stated with particularity in the Motion to Abstain as follows:

A. The grounds are summarized by FNB at the start of the Motion to Abstain as:

> (1) the mandatory abstention rules of 28 U.S.C. § 1334(c)(2) mandate the Court to abstain;
>
> (2) the discretionary abstention rules of 28 U.S.C. § 1334(c)(1) strongly favor abstention; and
>
> (3) abstention is also required because this Chapter 12 case also interferes with the Debtor's Chapter 11 Case (defined below) in that the Pending State Court Action arises from FNB exercising its rights and remedies granted to FNB under the Confirmed Chapter 11 Plan (defined below) and the Court's order confirming the Confirmed Chapter 11 Plan.

Motion to Abstain, p. 2:3-10.

B. FNB commenced the State Court Action to enforce its contractual rights, as modified by the confirmed Chapter 11 Plan when the Debtor defaulted under the Chapter 11 Plan. *Id*., p. 2:10-14.

C. A Receiver as appointed and a dispute existed with respect to monies of the Debtor. *Id*., p. 2:11-14.

D. A dispute arose whether Debtor had cured the default on FNB's claim provided for under the Chapter 11 Plan. *Id*., p. 2:14-18.

E. The confirmed Chapter 11 Plan governs the financial relationship between the Debtor and FNB. *Id*., p. 2:22-3:2. Debtor is barred by res judicata and judicial from seeking any relief different from what is provided in the Chapter 11 Plan. *Id*.

F. The bankruptcy court should abstain to allow FNB to enforce its default rights through the State Court Action. *Id*.; p. 3:3-12.

G. Further, even if the modifying rights and interests of FNB through a bankruptcy case was proper, the bankruptcy court "[h]as no constitutional authority to enter final orders or judgments regarding those claims because the claims arise from state created private rights and not the adjustment of the debtor-creditor relationship. The Bank also does not consent to this Court entering final orders or judgments regarding those claims." *Id*.; p. 3:14-18.

H. Much of FNB's argument is that since there was a confirmed Chapter 11 Plan, whatever happens under the Plan is no longer the subject of the prior Chapter 11 proceedings and that there can be no further bankruptcy cases filed.

FNB did provide an extensive, thirty-two (32) page Points and Authorities in support of the Motion to Abstain. Dckt. 104.

The court's Ruling, in denying the Motion to Abstain without prejudice was very clear as to the court's determination of the merits of the Motion to Abstain as asserted. The court's Ruling on the Motion to Abstain includes the following:

> It appears that the "comity with State courts or respect for State law" advanced by Creditor is to allow the State Court to dismember the assets of the bankruptcy estate in this case. *See* Motion, Dckt. 100 at 7; Memorandum of Points and Authorities, Dckt. 104 at 20-25. That is nothing more than any other situation in which a creditor asserts the right to avail itself of a debtor's assets outside of bankruptcy and is then derailed from that dismembering by a bankruptcy case being filed.
>
> For mandatory abstention there must be a State law claim or cause of action that is related to a case under Title 11, for which such action could not have otherwise been commenced in this federal court absent jurisdiction arising under 28 U.S.C. § 1334, and for which there is a pending action in which such claim can be timely adjudicated. 28 U.S.C. § 1334(c)(2).

Here, what is asserted is that this federal court must abstain from exercising the exclusive (not merely original, but non-exclusive) jurisdiction that Congress has created pursuant to 28 U.S.C. § 1334(e)(1) over all property of the debtor as of the commencement of the bankruptcy case and all property of the bankruptcy estate. *See* Motion, Dckt. 100 at 6-7 ("The Pending State Court Action involves purely state law questions (under California contract law and the California Civil and Commercial Codes), also meaning that the claims are non-core. Aside from this Chapter 12 case, the Court has no jurisdiction over the Bank's claims in the Pending State Court Action.")

What Creditor argues is that this court must abstain so that the State Court can administer property of the bankruptcy estate. *Id.* If this were a valid argument, this logic would allow creditors in every bankruptcy case filed to assert that the federal court should abstain so that the creditor could finish the prosecution of its debt collection action and then execute against the property of the bankruptcy estate.

Creditor's Admission That Filing of This Chapter 12 Case is Proper

Creditor has chosen to file this Motion that "merely" seeks to have this court abstain from properly exercising the federal court jurisdiction for a bankruptcy case properly filed by the Debtor in Possession. Creditor does not assert and has not sought the dismissal of this bankruptcy case.

In the pages and pages of the Motion and arguments in the Points and Authorities, reference is made that a second reorganization case should not be allowed after the confirmation of a Chapter 11 plan in a prior case. Motion, Dckt. 100 at 8:15-19. That is merely asserted as a basis for the court to continue with this second Bankruptcy Case, but abstain to allow the State Court to administer the property of the Bankruptcy Estate (for which this court has exclusive jurisdiction).

. . .

Upon review of the ten-page Motion, Creditor does not mention "dismiss" or "dismissal" once. Upon review of the thirty-two page Points and Authorities, Dckt. 104, the word "dismissal" appears twice, but only to reference when dismissal of a second Chapter 11 case may be proper.

However, Creditor is clear in its Motion that it does not seek dismissal of the Chapter 12 case before the court, but merely requests the court to allow it to stay before this court while Creditor seeks to have the State Court administer property of this Bankruptcy Estate.

Creditor references 11 U.S.C. § 305 in their Reply. Reply, Dckt. 150 at 2. 11 U.S.C. § 305 provides:

. . .

While, as Creditor states, this Code Section is titled "Abstention," [it] affords the court the authority to either dismiss the bankruptcy case or suspend all proceedings (not "merely" abstain from adjudicating a specific issue or claim) if the

interests of both the debtor and creditor are served by such suspension or dismissal.

However, such suspension or dismissal may be done only after "notice and hearing." Here, no notice was given that Creditor would be seeking a dismissal or suspension, but only for this court to abstain to allow the State Court receivership proceedings proceed as to Creditor's collateral.

. . .

Prior Case, Plan, and Asserted Default

As the court discussed with counsel for the Debtor in Possession and counsel for Creditor, the substance of the dispute that led to the filing of his second Bankruptcy Case is the confirmed Chapter 11 Plan in the prior case, Case No. 20-24123, whether there is a default under the confirmed Plan in that case, and whether such default was cured.

The Parties discussed, making it clear how unreasonable they found the other Party and that Party's counsel to be, the default that occurred, the "cure" payment made, and the post-payment assertion by Creditor that the cure payment "merely" cured the default on the real property nonjudicial foreclosure sale, but not Creditor's ability to take control of and sell personal property collateral.

It appears that Creditor asserts that the default arising under the confirmed Chapter 11 Plan is not curable, that the Chapter 11 Plan is in irrecoverable default, and that it may exercise its rights against all of its collateral.

. . .

Then, the battle in connection with the Chapter 12 Bankruptcy Case is whether the Chapter 12 Plan can modify the Confirmed Modified Amended Chapter 11 Plan. If not, then there is no reason for this court to maintain an active, ongoing federal judicial proceeding, but then it would appear the Chapter 12 case should then be dismissed. However, Creditor does not seek dismissal, but to have this court retain jurisdiction while allowing a limited, specialized State Court proceeding to be concluded and then have that judgment brought back to this federal court to be included in this second Bankruptcy Case.

Creditor does note the provisions of 11 U.S.C. § 1127 which provide for modification of a Chapter 11 Plan and the ability of the Reorganized Debtor in the Chapter 11 Case to modify the Plan. Motion, Dckt. 100 at 8:13-19. . . .

In requesting "abstention," Creditor notes that it appears that this Chapter 12 Case is an attempt to modify the Modified Amended Chapter 11 Plan outside of the provisions of 11 U.S.C. § 1127. Motion, Dckt. 100 at 8 ("By prosecuting this Chapter 12 case, the Debtor violates and collaterally attacks the Court's order confirming the Confirmed Chapter 11 Plan; he is in effect modifying the Confirmed Chapter 11 Plan without
a notice and hearing or filing a motion under 11 U.S.C. § 1127 (where he has the burden of proof)").

7 Collier on Bankruptcy P 1127.04 discusses this ability of a debtor to modify a confirmed Chapter 11 plan, even if it has been substantially consummated, and directs the reader to Federal Rule of Bankruptcy Procedure [3019](b) which governs the procedure for modification of an individual's confirmed Chapter 11 plan.

> Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case
> . . .
> (b) Modification of plan after confirmation in individual debtor case. If the debtor is an individual, a request to modify the plan under § 1127(e) of the Code is governed by Rule 9014. The request shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed to file objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee, together with a copy of the proposed modification. Any objection to the proposed modification shall be filed and served on the debtor, the proponent of the modification, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee.

This provides a simpler process then the original confirmation, with the court and parties focusing on the Party(ies) whose claim(s) are subject to the modification of the already confirmed Chapter 11 Plan.

August 24, 2023 Hearing

Movant asserts that the filing of this Chapter 12 case in improper and not permitted under the Bankruptcy Code. As clearly addressed in Movant's pleadings, it is asserted that this Bankruptcy Case should not exist. Movant then takes the position that it is fine if the Bankruptcy Case exists, a bankruptcy estate is created, and that federal court jurisdiction is exercised – but just let Movant take the property of the Bankruptcy Estate in which Movant asserts an interest out of the Bankruptcy Estate, allow a State Court to administer that property of the Bankruptcy Estate, and then leave this court to exercise federal court jurisdiction over the remnants of the Bankruptcy Estate (for which exclusive federal court jurisdiction is granted as provided in 28 U.S.C. § 1334(e).

These asserted ground are not sufficient for this court abstaining (and abdicating) responsibility for the exercise of federal court jurisdiction under the Bankruptcy Code if an when a bankruptcy case is properly filed.

> The real issue – whether this Bankruptcy Case was filed for a properly permitted purpose under federal law – can and will be addressed in Movant's separate Motion to Dismiss.
>
> The Motion for this court to abstain is denied without prejudice.

Civil Minutes; Dckt. 169.

As one can see from the above, the court concluded that the request for abstention was part of the shotgun round of multiple reliefs sought. The court concluded that there was not a basis for abstention based on that Motion. The court was also clear that FNB's request ran contrary to the exclusive grant of federal court jurisdiction over property of the bankruptcy estate. 28 U.S.C. § 1334(e). While the court may abstain from exercising such jurisdiction for a specific issue or unique area of state law (such as probate or dissolution proceedings), it is not proper for the court to "abstain" so that one creditor can gut the property of the bankruptcy estate to its own benefit and to the detriment of other creditors and the bankruptcy estate.

As the court referenced and has addressed on several occasions, FNB's real heartburn and issue is whether this bankruptcy case is properly filed and whether it should be dismissed. At the heart of FNB's abstention argument is that a confirmed Chapter 11 Plan is "debtor purgatory" from which debtor can never escape or seek subsequent relief. FNB does recognize that a debtor can seek to modify the confirmed plan (even after substantial consummation if the debtor is an individual), but takes the position that there can never be a second bankruptcy case.

For as clear as the court was in the Ruling on the Motion to Abstain, neither FNB quotes the Ruling in its Opposition nor the Debtor in Possession in a Reply pleading. It appears that the court's ruling is just ignored by the Parties. FNB does reference for the purpose of stating that since it was without prejudice the court must have believed that there was some sintilla of merit in that Motion. Such reference is clearly contrary to the Ruling. Though the court did not stay it in that Ruling, to try and calm down the litigiousness of the Parties and prevent the Debtor in Possession from contending that any requests for abstention were barred forever in this Bankruptcy Case, FNB's motion was lacking in merit.

While the Motion to Abstain was denied, the present Motion for Sanctions raises serious concerns for the court. While the Debtor in Possession was on the "sit back and smile" side of the courtroom while the court took FNB to task for its failure to comply with the Bankruptcy Rules, the present Motion fails to comply with the basic requirement to state grounds with particularity as required by the Supreme Court in Federal Rule of Bankruptcy Procedure 9013 (and which the court has repeatedly cited to for almost fourteen years in this Department).

Though Debtor in Possession's Points and Authorities contains legal arguments addressing the issues, there are not clearly the grounds stated. Rather, the Points and Authorities contain mere assertions of conclusions by the Debtor in Possession. The court is concerned that to grant monetary relief to the Debtor in Possession based on these pleadings would just foster further litigation, ignoring of the Local and Federal Bankruptcy Rules, and create the appearance of the court favoring one side or the other.

In determining an appropriate corrective sanction, the court can order that the payment of the sanction be made to the Clerk of the Court for deposit in the U.S. Treasury. Such corrective sanction would be to deter FNB from filing future motions long on argument and short of legal basis.

At the hearing, **xxxxxxx**

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

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

The Motion for Sanctions filed by Movant, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion for Sanctions pursuant to Federal Rules of Civil Procedure 11 is **xxxxxxx** .

3. 22-21864-E-11 DAVID FOYIL
UST-1 David Foyil

MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7
8-15-23 [148]

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, parties requesting special notice, and creditors on August 15, 2023. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The United States Trustee , Tray Hope Davis ("UST"), filed this Motion seeking dismissal of the Chapter 11 case pursuant to o 11 U.S.C. § 1112(b)(1) and 11 U.S.C. § 1112(b)(4)(F) and (K).

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

1. The debtor in possession, David Eugene Foyil ("DIP"), filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on July 28, 2022.

2. On his petition, the DIP designated himself as a "small business debtor."

3. On April 20, 2023, the DIP filed an amended plan of reorganization (ECF No. 114 (the "Plan") and the related disclosure statement (ECF No. 113) (the "Disclosure Statement").

4. The continued hearing to consider approval of the Disclosure Statement is October 19, 2023.

5. The DIP has not filed his monthly operating reports for May and June of 2023.

6. The UST's records reflect that the DIP owes quarterly fees under 28 U.S.C. § 1930(a)(6) in the estimated amount of $1,396.43 through the Second Quarter of 2023.

7. The DIP cannot effectuate a plan. The DIP has not obtained confirmation of the Plan within the 45-day period applicable to small business debtors. Because this case is more than 300 days old, the DIP is now statutorily precluded from filing a new plan.

Motion, Dckt. 148.

DEBTOR IN POSSESSION'S OPPOSITION

On September 5, 2023 Debtor in Possession filed an Opposition to UST's Motion to Dismiss or Convert this Case from Chapter 11 to Chapter 7. Dckt. 154. Debtor in Possession states:

1. The delinquent operating reports have been concurrently filed with this Opposition.

2. The delinquent fees due to UST are tendered concurrently with this Opposition.

3. Debtor in Possession timely filed a plan and sought approval of a disclosure statement.

4. The primary issue before the court is the value of Debtor in Possession's residence. The valuation is necessary to fix the secured claim of the United States Department of the Treasury and California Franchise Tax Board, both of whom have recorded several liens. The court set a continued hearing for October 19, 2023, to hear the Debtor's motions in relation to the valuation issue.

5. Debtor in Possession should have more time to fix its disclosure statement, arguing that valuation problems in Debtor in Possession's residence must be resolved first.

Dckt. 154.

UST'S REPLY TO DEBTOR IN POSSESSION'S OPPOSITION

On September 12, 2023 UST filed a Reply to Debtor in Possession's Opposition. Dckt. 161. UST states:

1. Debtor in Possession still owes quarterly fees in the estimated amount of $57.00 through the Second Quarter of 2023.

2. Debtor in Possession was 76 day late in filing its May operating report and 46 days late in filing its June operating report. This delay gives rise to "cause" for dismissal as defined in 11 U.S.C. § 1112(b)(4)(F).

3. Small business debtors, as is the case here, have a 45-day period to file a plan. 11 U.S.C. § 1129(e). Because this case is more than 300 days old, the Debtor in Possession is now statutorily precluded from filing a new plan. 11 U.S.C. § 1121(e)(2).

4. Debtor in Possession's inability to file a plan is further "cause" for dismissal as defined in 11 U.S.C. § 1112(b)(4)(F).

Dckt. 161.

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, UST asserts that Debtor in Possession has essentially dropped the ball in this case, and its attempts to cure its tardiness are too little, too late. UST contends that Debtor in Possession had plenty of time within its 45-day window to file for an extension to have a plan confirmed, even having received a warning from the UST about the upcoming deadline. Dckt. 161. Moreover, UST argues Debtor in Possession's delay in filing appropriate operating reports is simply inexcusable. *See In Re Roots Rents, Inc.*, 420 B.R. 28 at 37 (Bankr. D. Idaho 2009).

Congress provides in 11 U.S.C. § 1129(e) that:

> (e) In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3).

Going to 11 U.S.C. § 1121 (e), Congress further provides (emphasis added):

> (e) In a small business case—
>
> > (1) only the **debtor may file a plan until after 180 days after the date of the order for relief, unless** that period is—
> >
> > > (A) **extended as provided by this subsection**, after notice and a hearing; or
> >
> > > (B) the **court, for cause, orders** otherwise;
> >
> > (2) the **plan and a disclosure statement (if any) shall be filed not later than 300 days after** the date of the order for relief; and
> >
> > (3) the **time periods specified in paragraphs (1) and (2)**, and the time fixed in section 1129(e) within which the plan shall be confirmed, **may be extended only if**—
> >
> > > (A) the debtor, after providing notice to parties in interest (including the United States trustee), **demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time**;
> > >
> > > (B) a **new deadline is imposed at the time the extension is granted**; and
> > >
> > > (C) the **order extending time is signed before the existing deadline has expired**.

In reviewing the Docket, the court notes the following orders that have been entered. The court has extended the time for approval of the Disclosure Statement in this Case to October 19, 2023, which hearing will be conducted in conjunction with the Motion to Value Secured Claims. Order; Dckt. 147. As the court states in the Civil Minutes from the hearing for which the extension order was granted;

> As stated in the Tentative Ruling on the Motion to Value, the U.S. Treasury Opposition states conclusions of value that have been drawn and indicate that discovery (as provided in Federal Rule of Bankruptcy Procedure 9014(c), adopting Federal Rules of Civil Procedure 25, 26, and 28-37, which are incorporated into Federal Rules of Bankruptcy Procedure 7025, 7026, and 7028 - 7037, for Contested Matters.
>
> It appears that until that valuation is completed, or a bankruptcy plan incorporates that litigation, a plan as set forth in the Disclosure Statement cannot be confirmed.

> At the hearing, the court determined that continuance of the hearing was appropriate in light of the necessary litigation on the issue of the value of the Internal Revenue Service and California Franchise Tax Board secured claims.

Civil Minutes; Dckt. 144. Part of the reason for the delay in proceeding with confirmation is the need for the United States Treasury's need to conduct discovery.

The Amended Plan now before the court, for which there is the hearing is scheduled for October 19, 2023, was filed on April 20, 2023, which is 266 days after the filing of this case. The court has extended the deadline for the disclosure statement and confirmation proceedings given the discovery that is being sought. Order; Dckt. 1. [Fn.1.]

FN. 1. As stated in the Civil Minutes from the June 8, 2023, hearing on the Motion to Value the United States' Secured claim:

> Creditor [United States Treasury] provides the declaration of Dennis Thornton-Wiatt, a Senior Bankruptcy Specialist employed by Creditor. Dckt. 135. Declarant states that he is providing expert testimony as to the value of the property, concluding that the real provides evidence that the real property should be valued at $1,091,500, rather than $700,000, and argues Debtor's credibility is questionable, given their history of filings in the bankruptcy court.
>
> . . . [court's discussion of Federal Rule of Evidence 702 regarding expert witness opinion testimony]
>
> While the witness dictates his findings to the court, he does not provide the court with evidence of how he reached his conclusion. Commonly, an expert testifying as to value of real property provides the analysis of comparable properties, why and how adjustments are made to comparable properties, and evidence of comparable properties that have been sold or listed for sale.
>
> The witness does provide his testimony of what he has read somewhere that Amador County Assessor has assessed the property for tax purposes at $1,089,000, and his hearsay testimony that the online real estate website operated by Redfin values it at $1,089,000.
>
> However, such "argument" in the Declaration shows that Creditor intends to provide the court with competent, credible, admissible evidence of value.

DISCUSSION

It appears to the court there is a genuine dispute as to the value Movant's real property. Although a debtor's opinion is evidence of an asset's value, Movant has not provided additional evidence, such as an appraisal or otherwise, evidencing the real property's value as $700,000.

At the very least, Creditor has the right to conduct discovery and obtain the opinion of an expert to provide evidence of the value of the real property.

At the hearing the parties agreed to continue the hearing to allow for discovery and further discussion, setting the following dates and deadlines:

Discovery Closes, including hearing of any discovery motions, September 25, 2023.

Supplemental Pleadings by Debtor and Creditor shall be filed and served on or before
October 6, 2023.

The continued hearing shall be conducted at 2:30 p.m. on October 19, 2023.

Civil Minutes; Dckt. 140.

At the hearing, **xxxxxxx**

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

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

The Motion To Dismiss filed by Tracy Hope Davis, 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 **xxxxxxx** .

FINAL RULINGS

4.	**17-21973-E-7** **ICE-1**	**JOSE/MARIA PIMENTEL** **G. Michael Williams**	**MOTION FOR COMPENSATION FOR IRMA EDMONDS, CHAPTER 7 TRUSTEE(S)** **8-16-23 [235]**

Final Ruling: No appearance at the September 21, 2023 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, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on August 16, 2023. 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 Trustee 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). The defaults of the non-responding parties and other parties in interest are entered.

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

The Motion for Allowance of Trustee Fees is granted.

Irma Edmonds, the Chapter 7 Trustee, ("Applicant") in this Bankruptcy Case, makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period June 14, 2017, through March 8, 2023, in the amount of $6,239.20 and expenses in the amount of $97.96.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

> (1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —
>
> > (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
> >
> > (B) reimbursement for actual, necessary expenses.

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

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

> (7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According 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 Trustee Compensation Report. The Estate has $11,963.56 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 REQUESTED

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	$489.20
3% of the balance of $0.00	$0.00
Calculated Total Compensation	**$6,239.20**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$6239.20
Less Previously Paid	$0.00
Total First and Final Fees Requested	$6,239.20

COSTS AND EXPENSES REQUESTED

The Trustee requests reimbursement of $97.96 in expenses for copy and postage. Exhibit A; Dckt. 238. The court concludes that these are reasonable and necessary expenses to be allowed.

FEES AND EXPENSES 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 $6,239.20 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.

In this case, the Chapter 7 Trustee currently has $11,963.56 of unencumbered monies to be administered. Chapter 7 Trustee's Final Report, Dckt. 225. Applicant's efforts have resulted in a realized gross amount of $59,783.93 recovered for the estate. Dckt. 225.

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	$6,239.20
Costs and Expenses	$97.96

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 Irma Edmonds, 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 Irma Edmonds is allowed the following fees and expenses as trustee of the Estate:
>
> Irma Edmonds, the Chapter 7 Trustee
>
> Fees in the amount of $6239.20
> Expenses in the amount of $97.96.
>
> **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. 23-21394-E-7 JESSE CRUZ
UST-1 David Henshaw

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE WITHOUT ENTRY OF DISCHARGE
8-4-23 [20]

Final Ruling: No appearance at the September 21, 2023 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, and Chapter 7 Trustee on August 4, 2023. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion to Approve Stipulation to Dismiss the Case Without Entry of 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 respondent 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 Approve Stipulation to Dismiss Chapter 7 Case Without Entry of Discharge is granted, and the case is dismissed.

The United State's Trustee, Tracy Hope Davis ("UST"), seeks the court's approval of a stipulation between UST and Jesse S Cruz ("Debtor") agreeing to dismiss this Chapter 7 case without entry of default. Stipulation, Dckt. 22.

DISCUSSION OF STIPULATION

Debtor filed a voluntary Chapter 7 bankruptcy case with this court on April 28, 2023. Dckt. 22. UST in her motion informed the court that UST is prepared to file a motion to dismiss case for abuse pursuant to 11 U.S.C. §§ 707(b)(1) and 707(b)(3) based on the totality of circumstances. *Id.* Debtor does not wish to defend this allegation and seeks to avoid potentially costly litigation. *Id.*

Counsel, Debtor, and Trustee have responsibly addressed these issues, allowed Counsel to participate in the solution, and have presented a Stipulation that allows Debtor to move on. Based on the foregoing, the court approves this Stipulation to Dismiss the Case. The Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Stipulation to Dismiss the Case Without Entry of Discharge filed by Tracy Hope Davis, 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 Bankruptcy Case is dismissed, no discharge to be entered.

6.	**23-21317-E-7** **HLG-2**	**DAVID LAVY** **Kristy Hernandez**	**MOTION TO AVOID LIEN OF FIRST NATIONAL BANK OF OMAHA, N.A.** **8-1-23 [26]**

6 thru 7

Final Ruling: No appearance at the September 21, 2023 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 Chapter 7 Trustee, creditors, parties in interest, and Office of the United States Trustee on August 1, 2023. By the court's calculation, 51 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). The defaults of the non-responding parties and other parties in interest are entered. The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of First National Bank of Omaha, N.A. ("Creditor") against property of the debtor, David Scott Lavy ("Debtor") commonly known as 1519 Sanborn Road, Yuba City, California 95993 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $11,174.35. Exhibit B, Dckt. 29. An abstract of judgment was recorded with Sutter County on August 31, 2022, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $365,300.00 as of the petition date. Dckt. 29. The unavoidable consensual liens that total $102,749.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed a homestead exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $300,000.00 on Amended Schedule C. Dckt. 29.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided in excess of $11,174.35 subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by David Scott Lavy, 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 First National Bank of Omaha, N.A. , California Superior Court for Sutter County Case No. CVCM20-0002221, recorded on August 31, 2022, Document No. 2022-0011964, with the Sutter County Recorder, against the real property commonly known as 1519 Sanborn Road, Yuba City, California 95993, subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

7.	**23-21317-E-7** **HLG-3**	**DAVID LAVY** **Kristy Hernandez**	**MOTION TO AVOID LIEN OF CITIBANK, N.A.** **8-1-23 [31]**

Final Ruling: No appearance at the September 21, 2023 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 Chapter 7 Trustee, creditors, parties in interest, and Office of the United States Trustee on August 1, 2023. By the court's calculation, 51 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). The defaults of the non-responding parties and other parties in interest are entered. The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against property of the debtor, David Scott Lavy ("Debtor") commonly known as 1519 Sanborn Road, Yuba City, California 95993 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $9,210.54. Exhibit C, Dckt. 34. An abstract of judgment was recorded with Sutter County on March 19, 2021, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $365,300.00 as of the petition date. Dckt. 29. The unavoidable consensual liens that total $102,749.00 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 $300,000.00 on Amended Schedule C. Dckt. 29.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided in excess of $9,210.54 subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Name of Debtor ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Citibank N.A., California Superior Court for Sutter County Case No. CVCM20-0001941, recorded on March 19, 2021, Document No. 2021-0005370, with the Sutter County Recorder, against the real property commonly known as 1519 Sanborn Road, Yuba City, California 95993 ("Property"), is avoided in its entirety for all amounts in excess of $9,210.54 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.

8. **23-21899-E-12 WF-8** | **JAKOB/GLADYS WESTSTEYN** | **MOTION FOR ORDER APPROVING STIPULATION WITH THE CALIFORNIA FRANCHISE TAX BOARD**

Daniel Egan

8 thru 9 | **8-17-23 [73]**

Final Ruling: No appearance at the September 21, 2023 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, Debtor's Attorney, Chapter 12 Trustee, creditors, attorneys of record who have appeared in the case, and Office of the United States Trustee on August 17, 2023. By the court's calculation, 35 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 Stipulation Between Debtor and California Franchise Tax Board is granted.

The debtor, Jakob and Gladys Weststeyn ("Debtor") requests that the court approve a stipulation with the California Franchise Tax Board ("FTB") which provides that FTB's tax lien of $1,389,408.15 shall be an allowed unsecured claim in the full amount. The allowed claim shall represent Debtor's tax liability for the 2020 and 2021 tax years. Prior to entering into this stipulation, FTB recorded a notice of tax lien with the Glenn County Recorder's Office. Declaration, Dckt. 75. FTB proceeded to levy on Debtor's bank accounts. The funds were removed from Debtor's accounts, but Debtor's bank has not turned over the funds to FTB.

STIPULATION

FTB and Debtor stipulate to an order regarding FTB's tax lien, subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Dckt. 76):

A. The lien established by the filing of the May 17, 2023 Notice of Tax Lien is avoided pursuant to Section 547 of the Bankruptcy Code.

B. FTB shall direct the Debtor's bank to take appropriate steps to cancel its levy and return the levied funds to Debtor's account.

C. If the FTB receives any monies on account of its prepetition levy and returns such funds to Debtor, FTB shall be entitled to amend its proof of claim to add the amount of such funds returned to Debtor.

D. FTB shall have an allowed claim in the bankruptcy case in the amount of $1,396,408.15. This claim shall be classified as a general unsecured claim.

E. The allowed claim shall represent Debtor's tax liability for the 2020 and 2021 years.

F. Upon confirmation and satisfaction of this stipulation, Debtor shall dismiss its pending objection to FTB's claim.

Dckt. 76.

DISCUSSION

The Motion to Approve the Stipulation was filed and was set for hearing. A total of 35 days notice was provided with oppositions and responses to be heard at the hearing. The Motion's Certificate of Service provides for all who received notice of this Stipulation.

No opposition to the Stipulation has been filed. By the terms of the Stipulation, the California Franchise Tax Board lien on the property of the Debtor is being released, putting the Franchise Tax Board in the status of having an unsecured claim in this case. On Proof of Claim 6-1 the California Franchise Tax Board states that none of its claim is entitled to priority status.

Upon review of the terms of the Stipulation, the California Franchise Tax Board's claim being "reduced" to an unsecured claim, and no opposition having been filed, the Motion is granted and the Stipulation is approved.

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 Stipulation filed by Jakob and Gladys Weststeyn, 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 Stipulation between Movant and Debtor and California Franchise Tax Board is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Stipulation filed as Exhibit 76 in support of the Motion (Dckt. 73).
>
> **IT IS FURTHER ORDERED** that pursuant to the terms of the Stipulation the lien of the California Franchise Tax Board Tax Lien recorded on June 15, 2022, with the Glenn County Recorder's Office is avoided pursuant to 11 U.S.C. § 547.

9. 23-21899-E-12 WF-4 | **JAKOB/GLADYS WESTSTEYN** | **CONTINUED OBJECTION TO CLAIM OF CALIFORNIA FRANCHISE TAX BOARD, 6-20-23 [23]**

Daniel Egan

THE COURT SHALL CONDUCT THE HEARING AND SET THE CONTINUED HEARING DATE FOR THIS OBJECTION AT 11:30 A.M. ON SEPTEMBER 21, 2023, IN CONJUNCTION WITH THE HEARING ON THE MOTION TO CONFIRM THE CHAPTER 12 PLAN.

The court having entered an order approving a Stipulation that resolves this Objection, the hearing on the Objection to Claim is continued to 10:30 a.m. on xxxxxxx , 2023, to allow for the conditions precedent to the dismissal of this Objection to be satisfied.

September 21, 2023 Hearing

The court has granted the Motion to Approve the stipulation between the Debtor in Possession and California Franchise Tax Board pursuant to which California Franchise Tax Board releases its lien and will have an unsecured claim in this case.

At the hearing, XXXXXXXXXX