

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

October 19, 2017, at 10:30 a.m.

1. <u>16-90500-E-11</u> ELENA DELGADILLO HSM-16 Len Reid Reynoso	MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK AND MAROIS, LLP FOR HOWARD S. NEVINS, TRUSTEE'S ATTORNEY(S) 9-8-17 [230]
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Final Ruling: No appearance at the October 19, 2017 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 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 8, 2017. By the court's calculation, 41 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.

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

Hefner, Stark & Marois, LLP, the Attorney ("Applicant") for Irma Edmonds, the Chapter 11 ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

October 19, 2017, at 10:30 a.m.

Fees are requested for the period December 16, 2016, through July 31, 2017. The order of the court approving employment of Applicant was entered on January 2, 2017. Dckt. 98. Applicant requests fees in the amount of \$70,433.83 and costs in the amount of \$253.83.

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

103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization

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

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

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

A review of the application shows that Applicant’s services for the Estate include advising and aiding Client in administering various real properties. The Estate has \$491,850.25 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 45.40 hours in this category, including 1.10 hours billed at no charge. Applicant performed case initiation services, including review of selected documents, petition, and schedules; reviewed with Client and U.S. Trustee’s office regarding Chapter 11 case status and strategy issues; reviewed reporting issues; performed initial tasks supporting Client’s administration of real properties and litigation assets; advised Client in connection with evaluation and selection of professionals; communicated with Debtor’s original counsel (Mr. Johnston) and successor counsel (Mr. ReidReynoso); reviewed certain exemptions issues; communicated with counsel for active creditor, Sacramento Lopez; attended Chapter 11 status conference, advised Client regarding same, and worked on Chapter 11 status reports; reviewed issues related to Client’s monthly operating reports; analyzed certain loan transactions proposed by Debtor and advised Client regarding same; drafted motion for allowance of and authorization to pay administrative tax; analyzed insurance issues; performed conflicts analysis for employment of counsel; drafted application to employ counsel and related papers; drafted applications employment of other estate professionals, including two real estate professionals, and special counsel; drafted compensation application for Client’s special counsel; analyzed legal issues in connection with Client’s compensation; and performed initial work on counsel’s first interim compensation application.

Asset Investigation: Applicant spent 43.50 hours in this category, including 3.05 hours billed at no charge. Applicant reviewed documents, analyzed issues, and advised Client regarding numerous assets, including real property assets, and strategy related to administration; analyzed issues related to pre-petition transfers of assets; advised Client in connection with investigation of estate assets, and reviewed with the U.S. Trustee's office regarding same; communicated with counsel for creditor Sacramento Lopez regarding estate assets, Client's strategy for case administration; reviewed audio from lengthy First Meeting of Creditors; prepared for and participated in meeting in Modesto with Client, Debtor's counsel, and others regarding case, assets and liabilities, Debtor's duties, etc.; advised Client regarding issues related to management of rental properties, possible engagement of property manager; analyzed refinance proposal from Debtor, and advised and represented Client regarding same; analyzed issues concerning undisclosed pending appeal in the Third District Court of Appeals; coordinated with, and reviewed analysis from, Client's special counsel in connection with analysis of estate's interest in pre-petition civil rights action; and analyzed numerous litigation matters in which Debtor was involved pre-petition, including six large boxes of files from Debtor's deceased counsel, and advised Client regarding status of litigation, estate's interests.

Asset Disposition: Applicant spent 70.30 hours in this category, including 0.70 hours billed at no charge. Applicant advised Client in asset administration activities, including engagement of and consultations with real estate professionals in connection with Oakland and Vernalis properties, securing insurance, and making demand for payment from tenants and others; advised and represented Client in connection with Debtor's proposal to fund payment to creditors through loan secured by estate assets, including analysis of legal and procedural issues, and communications with interested parties; analyzed Sacramento Lopez lien claim with respect to various real properties; drafted and prosecuted motion to abandon estate's interest in pending civil rights action; analyzed issues related to offer to purchase 40 acre Vernalis property, advised and represented Client in connection with documentation of sale and communications with interested parties concerning terms, assignability of agreement, drafted and prosecuted motion to approve sale, and advised Client in connection with overbidding; reviewed purchase and sale agreement for property at 1920 82nd Avenue, Oakland, drafted and prosecuted motion to approve same, and analyzed and resolved issues concerning discrepancies in order granting sale motion; communicated with counsel for Sacramento Lopez concerning payment of a residual portion of sales proceeds from 82nd Avenue property at close of escrow; communicated with escrow officer handling 82nd Avenue sale in connection with title issues to be resolved prior to closing; analyzed draft motion to compel abandonment prepared by Debtor's counsel; and communicated with Client's CPA in connection with analysis of tax consequences of real property sales, and prudent reserves from sales proceeds to cover taxes.

Claims: Applicant spent 29.00 hours in this category, including 3.50 hours billed at no charge. Applicant reviewed and analyzed legal and factual issues in connection with filed proofs of claims; communicated with counsel for judgment creditor Sacramento Lopez; analyzed legal issues related to interim creditor distribution; and drafted and prosecuted motion to approve interim distribution.

Litigation: Applicant spent 0.90 hours in this category. Applicant communicated with attorneys ReidReynoso, Ditlevsen, and with court of appeal, in connection with various litigation issues.

Plan and Disclosure Statement: Applicant spent 0.30 hours in this category. Applicant performed tasks related to discussion of potential loan option advanced by Debtor.

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
Aaron Avery, attorney	35.70 hours		\$8,900.00
Howard Nevins, attorney	153.70 hours		\$61,280.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$70,180.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$253.83 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Travel to Modesto hearing		\$193.83
CourtCall		\$60.00
		\$0.00
		\$0.00
Total Costs Requested in Application		\$253.83

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 \$70,180.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include CourtCall fees. No information has been provided to the court by Applicant that these cost items were extraordinary expenses than one would expect for Applicant providing professional services to Client to be charged in addition to the professional fees requested as compensation. The court disallows \$60.00 of the requested costs.

First Interim Costs in the amount of \$193.83 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 Chapter 11 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

The court authorizes the Chapter 11 Trustee to pay 80% of the fees and 100% of the costs allowed by the court.

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

Fees	\$70,180.00
Costs and Expenses	\$193.83

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 Hefner, Stark & Marois, LLP (“Applicant”), Attorney for Irma Edmonds (“the Chapter 11 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 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 11 Trustee

Fees in the amount of \$70,180.00

Expenses in the amount of \$193.83,

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 costs of \$60.00 are not allowed by the court.

IT IS FURTHER ORDERED that the Chapter 11 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 11 case.

2. [17-90105](#)-E-7 **RICK/THERESA UNRUH**
ADJ-3 Steven Altman

**MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FORES-MACKO, INC.
FOR ANTHONY D. JOHNSTON,
TRUSTEES ATTORNEY(S)
9-26-17 [52]**

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 September 26, 2017. By the court's calculation, 23 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, -----
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The Motion for Allowance of Professional Fees is granted.

Fores Macko, a Professional Law Corporation, the Attorney ("Applicant") for Michael McGranahan, 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 May 23, 2017, through September 25, 2017. The order of the court approving employment of Applicant was entered on June 5, 2017. Dckt. 36. Applicant requests fees in the amount of \$2,365.00 and costs in the amount of \$149.35.

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). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

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

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913

n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

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

A review of the application shows that Applicant’s services for the Estate include preparing a motion for approval of compromise with Rick Unruh and Theresa Unruh (“Debtor”). The Estate has \$8,479.72 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 3.30 hours in this category. Applicant prepared the employment application for himself as well as the present compensation application.

Asset Analysis and Recovery: Applicant spent 5.30 hours in this category. Applicant prepared a motion for approval of a compromise, prepared a settlement agreement, and presented it to the court.

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
Anthony Johnston, attorney	8.60 hours	\$275.00	\$2,365.00
	0	\$0.00	\$0.00

	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$2,365.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$149.35 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	\$0.10	\$72.60
Postage		\$76.75
		\$0.00
		\$0.00
Total Costs Requested in Application		\$149.35

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 \$2,365.00 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 \$149.35 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.

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

Fees	\$2,365.00
Costs and Expenses	\$149.35

pursuant to this Application as final fees 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 Fores Macko, a Professional Law Corporation (“Applicant”), Attorney for Michael McGranahan (“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 Fores Macko, a Professional Law Corporation is allowed the following fees and expenses as a professional of the Estate:

Fores Macko, a Professional Law Corporation, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$2,365.00
Expenses in the amount of \$149.35,

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 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.

3. [13-91525-E-7](#) OSCAR RAMOS AND CYNTHIA MOTION TO AVOID LIEN OF CAPITAL
JAD-2 MOLINA-RAMOS ONE BANK (USA), N.A.
James Pitner 9-18-17 [\[20\]](#)

Final Ruling: No appearance at the October 19, 2017 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, and Office of the United States Trustee on September 18, 2017. By the court's calculation, 31 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 Capital One Bank (USA), N.A. ("Creditor") against property of Oscar Ramos and Cynthia Molina-Ramos ("Debtor") commonly known as 3105 Casa Court, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$15,617.82. An abstract of judgment was recorded with Stanislaus County on May 10, 2013, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$135,000.00 as of the date of the petition. The unavoidable consensual liens that total \$165,821.34 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 26. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$100.00 on Schedule C.

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 Oscar Ramos and Cynthia Molina-Ramos (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Capital One Bank (USA), N.A., California Superior Court for Stanislaus County Case No. 678314, recorded on May 10, 2013, Document No. 2013-0040537-00, with the Stanislaus County Recorder, against the real property commonly known as 3105 Casa Court, 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.

4.	<u>15-90943-E-7</u> PGM-2	ANNE GAGNON Peter Macaluso	MOTION TO REDEEM 9-12-17 <u>[76]</u>
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Final Ruling: No appearance at the October 19, 2017 hearing is required.

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

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 September 13, 2017. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

The Motion to Redeem 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 to Redeem is continued to 10:30 a.m. on November 9, 2017.

Anne Gagnon (“Debtor”) seeks to redeem a 2010 Hyundai Genesis (“Property”) from the claim of Ally Bank (“Creditor”) pursuant to 11 U.S.C. § 722. Under that provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Property, not just to Debtor’s exempt interest in it. *See* H.R. Rep. No. 95-595, at 381 (1977). To redeem the Property, Debtor must pay the lien holder “the amount of the allowed secured claim of [the lien] holder that is secured by such lien in full at the time of redemption.” 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). The court looks to 11 U.S.C. § 506 to determine the amount of the secured claim.

The Motion is accompanied by the declaration of Anna Gagnon. Debtor seeks to value the Property at a replacement value of \$5,400.00 as of the Motion’s filing date, not the petition date as specified by 11 U.S.C. § 506(a)(2). As the owner, Debtor’s opinion of value is evidence of the Property’s value. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

CREDITOR’S OPPOSITION

Creditor filed an Opposition on October 5, 2017. Dckt. 88. Creditor argues that the Motion does not meet the requirements of 11 U.S.C. § 722 because the Property has not been exempted on Schedule C.

Additionally, Creditor argues that Debtor’s approximation of the replacement value is not realistic because Creditor obtained a higher valuation from a NADA Valuation Report. Creditor argues that it obtained the retail value of the Property as of the date of conversion of this case to Chapter 7. That value is \$9,725.00 according to Creditor.

STIPULATION TO CONTINUE HEARING

On October 12, 2017, the parties filed a Stipulation concurring that the hearing be continued to 10:30 a.m. on November 9, 2017. Dckt. 96. Additionally, the parties seek an extension for Debtor to respond to Creditor’s Opposition to November 2, 2017. The court has issued an order pursuant to their Stipulation.

Final Ruling: No appearance at the October 19, 2017 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, and Office of the United States Trustee on September 19, 2017. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Extend Deadline 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 is removed from the calendar.

Americredit Financial Services, Inc. dba GM Financial (“Movant”) seeks a court order extending the deadline to file a complaint to determine the dischargeability of debt pursuant to Federal Rule of Bankruptcy Procedure 4007.

Movant argues that cause exists to extend the deadline to file a complaint because Movant and John Avila & Angela Avila (“Debtor”) have stipulated to extend the deadline to file a reaffirmation agreement. Movant argues that it will be harmed if the reaffirmation agreement is rescinded by Debtor or disapproved by the court without Movant having an opportunity to file a complaint.

On September 26, 2017, the court entered an order approving a stipulation between the parties to extend the deadline for Movant to file a complaint. Dckt. 29. The court extended the deadline to “up to and including the 15th day following the expiration of Debtors’ right to rescind the Reaffirmation Agreement under 11 U.S.C. § 524(c)(4), or, if the court enters an order denying or disapproving the Reaffirmation Agreement, up to an including the 15th day following the Court’s entry of an order denying or disapproving the Reaffirmation Agreement.” *Id.* Entry of the court order has resolved this Motion, and it is removed from calendar.

6.

[15-90358](#)-E-7
WFH-6

LAWRENCE/JUDITH SOUZA
David Johnston

TRUSTEE'S MOTION TO AMEND
ORDER REGARDING BLOCKED
ACCOUNT
9-28-17 [[670](#)]

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 September 28, 2017. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Amend Order 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, filed on September 28, 2017, to Amend the Order entered on June 16, 2016, (469 days earlier) is denied.

Michael McGranahan ("the Chapter 7 Trustee") moves for the court to amend its prior order requiring that certain funds be placed in a blocked account pursuant to Federal Rule of Civil Procedure 59. The Chapter 7 Trustee states Lawrence Souza and Judith Souza ("Debtor") sought and received court approval of a compromise with family members and Turlock Air Park in June 2016. Dckt. 347. Part of that order required settlement proceeds paid to Debtor to be deposited into a separate, blocked, interest-bearing account and Rabobank and not to be disbursed except by further court order.

The Chapter 7 Trustee states that after conversion of this case and after his appointment as trustee, control of the account was given to him. He has not sought court approval to use the funds, and the current balance is approximately \$327,000.00.

The Chapter 7 Trustee argues that funds were directed to the blocked account while the case was in Chapter 11 and that given the case's current posture, they should be transferred to the Chapter 7 Trustee's general estate account. Accordingly, the Chapter 7 Trustee moves for the court to enter an order directing Rabobank to release the blocked-account funds to the Chapter 7 Trustee and also authorizing the Chapter 7 Trustee to deposit those funds into the general estate account in this case.

CONSIDERATION OF MOTION TO AMEND

The Motion states that Federal Rule of Civil Procedure 59 allows the court to alter or amend judgments. Because the former Debtor in Possession was the proper fiduciary for the bankruptcy estate at the time the order was entered, and now that the Chapter 7 Trustee is now appointed, the Chapter 7 Trustee asserts that the Order should be "amended." No points and authorities is filed to provide the court with a basis for amending an order 469 days after it was entered because a replacement fiduciary has been appointed in this bankruptcy case.

Federal Rule of Civil Procedure 59, incorporated by Federal Rule of Bankruptcy Procedure 9023, governs amendments of judgments, and allows a trial court to "open the judgment if one has been entered . . . and direct the entry of a new judgment." Federal Rule of Bankruptcy Procedure 9023 specifies that:

"A motion for new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after the entry of judgment."

Federal Rule of Bankruptcy Procedure 9006(b)(2) expressly provides that the court may not enlarge the time for taking the required action (filing the motion) seeking relief pursuant to Federal Rule of Bankruptcy Procedure 9023. The term "judgment" is defined to include an "appealable order." FED. R. BANKR. P. 9001(7).

The time in which the court could properly consider a motion to amend has expired.

RECASTING MOTION AS REQUEST FOR SUPPLEMENTAL ORDER

The Order Approving the Compromise and requiring the monies to be held in a blocked account provides:

"IT IS FURTHER ORDERED that the settlement proceeds shall be deposited by the Debtors in Possession into a separate blocked interest bearing account at Rabo Bank, or the client trust account of counsel for the Debtor in Possession, from which no monies will be disbursed **except upon further order of the court.**"

Order, Dckt. 347 (emphasis added).

On its face, the court's prior order stated the method by which money from the blocked account would be released—a further order of the court. That procedure is used commonly when there is a dispute as to whether liens exist on the property or there is a non-independent fiduciary, such as a trustee, who would

be holding the monies. As addressed in the Civil Minutes for the hearing from which the Order was issued, the Settlement resolved the asserted lien claim. Civ. Min. Dckt. 345.

The Motion can be read as one in which the Chapter 7 Trustee states that, pursuant to his duties as the independent fiduciary for the bankruptcy estate, it is his responsibility to assemble the property of the estate (including these monies) and provide for distributing them as required under the Bankruptcy Code. The Chapter 7 Trustee requests that the court issue an order allowing him to withdraw the monies from the blocked account so that he may deposit them in the Chapter 7 Trustee's general bankruptcy estate account. Motion, p. 3:12.5–14.5.

The court grants that request and issues a Supplemental Order authorizing Rabobank to release such funds to the Chapter 7 Trustee and for the Chapter 7 Trustee to deposit the monies in his general bankruptcy estate account, which monies shall then be administered in this case.

The court shall issue an order in 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 Order filed by Michael McGranahan ("the Chapter 7 Trustee") having been presented to the court, the Motion seeking a Supplemental Order as provided in the prior order of this court (Dckt. 347) for the disbursement of monies from a blocked account, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and this court issues this Supplemental Order to Amend Order authorizing Rabobank to release the monies in the heretofore blocked account, Account Number ending in **XXXXXX** (which was originally established by Lawrence and Judith Souza in their prior capacity as the then Debtors in Possession) to Michael D. McGranahan, the Chapter 7 Trustee appointed in this case (it having been converted from Chapter 11 on June 26, 2017; Order, Dckt. 599).

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 September 28, 2017. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

The Bankruptcy Code permits Michael McGranahan, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 97 W. Canal Drive, Turlock, California ("Property").

The proposed purchaser of the Property is Diego Camorlinga and Emiliano Camorlinga, and the terms of the sale are:

- A. Purchase price of \$196,000.00;
- B. Half of net proceeds paid to Internal Revenue Service (\$37,546.37) in exchange for selling free and clear of its lien;
- C. Initial deposit of \$2,500.00;

- D. Partially financed by a second loan of \$180,500.00, with a five percent interest rate;
- E. Property sold “as is;”
- F. Buyer to conduct any and all inspections or other investigations;
- G. Property tenant to have been given sixty-day notice to vacate the Property upon any court approval of the sale;
- H. Seller to pay for a natural hazard zone disclosure report and for county transfer taxes or fees;
- I. Buyer and Seller to split the cost of the escrow fee equally;
- J. Escrow to be held by Stewart Title; and
- K. Broker’s commission of six percent for total of \$11,760.00.

The Motion seeks to sell the Property free and clear of the lien of the Internal Revenue Service (“Creditor”). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

“(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

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

(2) such entity consents;

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

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

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

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established he spoke with a representative from the Internal Revenue Service, and the parties have agreed pay 50% of the net proceeds from the sale to the Internal Revenue Service in exchange for selling the property free and clear of the lien of the Internal Revenue

Service. The Chapter 7 Trustee expects the Internal Revenue Service to file confirmation of its consent, and the anticipated payment amount is \$37,546.37 from escrow.

The consent was filed on October 17, 2017. Dckt. 692.

The Chapter 7 Trustee indicates that a tax analysis of the sale by the Estate's accountant shows that the sale produces a net positive result for the Estate. Also, the Chapter 7 Trustee moves to waive the fourteen-day stay of Federal Rule of Bankruptcy Procedure 6004(h) because the closing date is October 26, 2017, and the Buyer has extended the closing date several times already.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it pays off a loan owed to Provident Central Credit Union and because it provides a positive net result for the bankruptcy estate (with the Internal Revenue Service agreeing to accept less than its full claim).

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$11,760.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a six percent commission.

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

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

The Motion to Sell Property filed by Michael McGranahan ("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 Michael McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(2) to Diego Camorlinga and Emiliano Camorlinga or nominee ("Buyer"), the Property commonly known as 97 W. Canal Drive, Turlock, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$196,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit C, Dckt. 677, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens,

other customary and contractual costs and expenses incurred in order to effectuate the sale.

- C. The Property is sold free and clear of the lien of the Internal Revenue Service, Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), with the lien of such creditor attaching to 50% of the net proceeds (as defined in the Stipulation, Dckt. 692).
 - 1. Pursuant to the Stipulation the Chapter 7 Trustee shall disburse the 50% of the net proceeds subject to the lien to the Internal Revenue Service; with the balance of the monies, free and clear of any lien of the Internal Revenue Service, disbursed to the Chapter 7 Trustee in this case as unencumbered monies of the bankruptcy estate.
- D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount equal to six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to the Chapter 7 Trustee's broker, PMZ Real Estate.

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 September 28, 2017. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 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 Sell Property is granted.
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The Bankruptcy Code permits Michael McGranahan, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 121 W. Syracuse Avenue, California ("Property").

The proposed purchaser of the Property is Ashley Hart, and the terms of the sale are:

- A. Purchase price of \$156,000.00;
- B. Half of net proceeds paid to Internal Revenue Service (\$28,239.99) in exchange for selling free and clear of its lien;
- C. Initial deposit of \$10,000.00;
- D. Property sold "as is;"

- E. Buyer to conduct any and all inspections or other investigations;
- F. Seller to remove all stored items and equipment from Property on or before ninety days from close of escrow;
- G. Seller to provide insurance on personal property and equipment until removed from the Property;
- H. Any personal property (including storage tanks) that remain on the Property after ninety days from close of escrow shall become Buyer's property;
- I. All persons entering the Property after close of escrow are to be approved by Buyer before access will be granted; all persons to provide satisfactory insurance documentation holding Buyer harmless;
- J. Seller to pay for a natural hazard zone disclosure report, owner's title insurance policy, and for county transfer taxes or fees;
- K. Buyer and Seller to split the cost of the escrow fee equally;
- L. Escrow holder to be selected by Seller; and
- M. Broker's commission of 3.5% to PMZ Real Estate for a total of \$5,460.00, and a commission of 2.5% to Burkett Realty Group for a total of \$3,900.00.

The Motion seeks to sell the Property free and clear of the lien of the Internal Revenue Service ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

"(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

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

(2) such entity consents;

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

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

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

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established he spoke with a representative from the Internal Revenue Service, and the parties have agreed pay 50% of the net proceeds from the sale to the Internal Revenue Service in exchange for selling the property free and clear of the lien of the Internal Revenue Service. The Chapter 7 Trustee expects the Internal Revenue Service to file confirmation of its consent, and the anticipated payment amount is \$28,239.99 from escrow.

The consent was filed on October 17, 2017. Dckt. 693.

The Chapter 7 Trustee indicates that a tax analysis of the sale by the Estate’s accountant shows that the sale produces a net positive result for the Estate. Also, the Chapter 7 Trustee moves to waive the fourteen-day stay of Federal Rule of Bankruptcy Procedure 6004(h) because the closing date is October 26, 2017, and the Buyer has extended the closing date several times already.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it pays off a loan owed to Maiman Revocable Trust A and because it provides a positive net result for the bankruptcy estate (with the Internal Revenue Service agreeing to accept less than its full claim).

Movant has estimated that a six percent broker’s commission from the sale of the Property will equal approximately \$9,360.00, \$5,460.00 to PMZ Real Estate and \$3,900.00 to Burkett Realty Group. As part of the sale in the best interest of the Estate, the court permits Movant to pay a six percent commission to the brokers.

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

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

The Motion to Sell Property filed by Michael McGranahan (“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 Michael McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(2) to Ashley Hart or

nominee (“Buyer”), the Property commonly known as 121 W. Syracuse Avenue, Turlock, California (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$156,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit C, Dckt. 682, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
- C. The Property is sold free and clear of the lien of the Internal Revenue Service, Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), with the lien of such creditor attaching to 50% of the net proceeds (as defined in the Stipulation, Dckt. 693).
 - 1. Pursuant to the Stipulation the Chapter 7 Trustee shall disburse the 50% of the net proceeds subject to the lien to the Internal Revenue Service; with the balance of the monies, free and clear of any lien of the Internal Revenue Service, disbursed to the Chapter 7 Trustee in this case as unencumbered monies of the bankruptcy estate.
- D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. The Chapter 7 Trustee is authorized to pay a real estate broker’s commission in an amount equal to six percent of the actual purchase price upon consummation of the sale. Of the 6% commission, 3.5% shall be paid to the Chapter 7 Trustee’s broker, PMZ Real Estate, and 2.5% shall be paid to Buyer’s agent, Burkett Realty Group.

9. [10-93085](#)-E-7 SUSAN SAVAGE
TOG-3 Thomas Gillis

**MOTION TO AVOID LIEN OF BATISTA
S. VIEIRA AND DOLORES M. VIEIRA,
TRUSTEE UNDER THE BATISTA AND
DOLORES VIEIRA REVOCABLE LIVING
TRUST**
9-14-17 [[49](#)]

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, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2017. By the court's calculation, 30 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 Motion to Avoid Judicial Lien is granted.
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This Motion requests an order avoiding the judicial lien of Batista S. Vieira & Dolores M. Vieira, trustee under the Batista and Dolores Vieira Revocable Living Trust ("Creditor") against property of Susan Savage ("Debtor") commonly known as 1828 Margate Way, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$16,746.00. An abstract of judgment was recorded with Stanislaus County on November 30, 2009, that encumbers the Property.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on October 4, 2017. Dckt. 59. Creditor argues two grounds: (1) Debtor has not properly exempted \$75,000.00 as argued in the Motion, and (2) the Property should be valued at its current value, instead of at the petition date, which would account for almost \$160,000.00 appreciation that could be used to satisfy Creditor's judgment lien.

DISCUSSION

Creditor has argued to the court that Motion should use the Property's current value, instead of the value at the petition date. That argument is unpersuasive.

Courts have debated whether to value a property on the petition date or on the avoidance motion's filing date. Bankruptcy courts in the Ninth Circuit, and others across the country, have held that a court determines a property's value as of the petition date when considering to avoid a lien under 11 U.S.C. § 522(f). *See, e.g., In re Salanoa*, 263 B.R. 120, 122–23 (Bankr. S.D. Cal. 2001); *In re Levinson*, 372 B.R. 582, 587 (Bankr. E.D.N.Y. 2007). When the valuation-date issue reached the Bankruptcy Appellate Panel for the Ninth Circuit, the Panel declared:

The bankruptcy court correctly interpreted the law in focusing on the petition date, not the current date, in this regard: “It is well settled that the petition date is the operative date to value the debtor's residence and the homestead exemption for section 522(f) purposes.”

Mbaba v. Clark Fergus & Assocs. (In re Mbaba), No. CC-05-1401-PaBK, 2006 Bankr. LEXIS 4873, at *13–14 (B.A.P. 9th Cir. Aug. 15, 2006) (quoting *B.F.P. v. Resolution Trust Corp.*, 511 U.S. 531, 537 (1994)) (citing *In re Salanoa*, 263 B.R. at 123; *Culver, LLC v. Chiu (In re Chiu)*, 304 F.3d 905 (9th Cir. 2002)); *see also Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 392 (B.A.P. 9th Cir. 2003) (“A debtor's § 522(f) lien avoidance rights are also determined as of the petition date. Because lien avoidance is part and parcel of the exemption scheme, the right to avoid a judicial lien must also be determined as of the petition date.”) (quoting *Culver, LLC v. Chiu (In re Chiu)*, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001)).

The Eastern District of California discussed the date determination issue and noted that the parties had not presented any authority suggesting that a right to an exemption that is impaired “is determined with reference to any time but the date of filing” a petition. *Ohanian v. Irwin (In re Irwin)*, 338 B.R. 839, 849 (E.D. Cal. 2006). Most recently, the Bankruptcy Appellate Panel for the Ninth Circuit once again addressed the matter in an unpublished ruling and held that a property's value and lien amounts against it are determined as they existed on the bankruptcy petition date. *Rosen v. Chiu (In re Chiu)*, No. X, 2017 Bankr. LEXIS 821, at *8 fn. 2 (B.A.P. 9th Cir. Mar. 27, 2017) (discussing how the Ninth Circuit's interpretation of Congress's 1994 amendments to the Bankruptcy Code established that “to the extent equity . . . did not exist at the time of the bankruptcy filing, the lien impaired the exemption, could be avoided under § 522(f)(1), and any postpetition appreciation would be preserved for the debtors or the estate free and clear of the avoided lien.”) (citing *Hanger v. Bank of Am. Nat'l Trust & Sav. Ass'n (In re Hanger)*, 196 F.3d 1292 (9th Cir. 1999)).

Creditor argues that the ruling by the Ninth Circuit Court of Appeals in *In re Hyman*, 967 F.3d 312 (9th Cir. 1992), supports a conclusion that it is Creditor who gets the value of the post-petition appreciation in this case. In *Hyman*, the Ninth Circuit concluded that *for property of the bankruptcy estate, the post-petition appreciation is the property of the bankruptcy estate*, which is administered by the Chapter 7 trustee as *property of the bankruptcy estate*. Here, the property at issue is not property of the bankruptcy estate, it having been abandoned back to Debtor with the original closing of this bankruptcy case on April

1, 2011. Order, Dckt. 31; 11 U.S.C. § 554(c). A creditor does not succeed to property of the estate that has been abandoned to Debtor.

This court agrees with the determination that a property's value should be determined as of the petition date for purposes of a motion brought under 11 U.S.C. § 522(f). That is consistent with the reasonable expectations of the parties, and absent extraordinary circumstances, does not improperly prejudice the judgment creditor while maintaining the consumer's bankruptcy fresh start.

Failure to Claim the Exemption

As set forth on Debtor's Schedule A, the subject real property had a value of \$140,246.00 as of the date of the petition. The unavoidable consensual liens that total \$132,495.00 as of the commencement of this case are stated on Debtor's Schedule D. Thus, there is only \$7,751.00 in equity above the senior liens.

In the Motion (¶ 4, Dckt. 49), Debtor asserts to have claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$75,000.00 on Amended Schedule C (Dckt. 47). However, a review of Amended Schedule C states an exemption in the amount of \$7,751.00.

Though only claiming a \$7,751.00 exemption, applying the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A) shows:

FMV.....	\$140,246.00
- Senior Liens.....	(\$132,495.00)
- Claimed Exemption.....	<u>(\$ 7,751.00)</u>
Value Subject to Judgment Lien.....	\$ 0.00.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the evidence presented, the subject real property has an approximate value of \$140,246.00 as of the date of the petition. The unavoidable consensual liens total \$132,495.00. Debtor claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$7,751.00 in Amended Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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 this 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).

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Susan Savage ("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 Batista S. Vieira & Dolores M. Vieira, trustee under the Batista and Dolores Vieira Revocable Living Trust, California Superior Court for Stanislaus County Case No. 644319, recorded on November 30, 2009, Document No. 2009-0114395-00, with the Stanislaus County Recorder, against the real property commonly known as 1828 Margate Way, 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.

10. **17-90386-E-7 MAXIMINO ANDRADE AND MOTION TO AVOID LIEN OF**
 JAD-2 MARIA PEREZ MEJIA ATLANTIC CREDIT AND FINANCE, INC.
 Jessica Dorn 9-25-17 [22]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on September 25, 2017. By the court’s calculation, 24 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Avoid Judicial Lien is granted.
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This Motion requests an order avoiding the judicial lien of Atlantic Credit and Finance, Inc., dba: Receivables Billing International (“Creditor”) against property of Maximino Andrade and Maria Mejia (“Debtor”) commonly known as 2615 Jeannie Court, Turlock, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,345.41. An abstract of judgment was recorded with Stanislaus County on December 3, 2007, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$239,950.00 as of the date of the petition. The unavoidable consensual liens that total \$173,345.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 20. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$66,605.00 on Schedule C.

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 Maximino Andrade and Maria Mejia ("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 Atlantic Credit and Finance, Inc., dba: Receivables Billing International, California Superior Court for Stanislaus County Case No. 614958, recorded on December 3, 2007, Document No. 2007-0144847-00, with the Stanislaus County Recorder, against the real property commonly known as 2615 Jeannie Court, Turlock, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

11. [17-90386-E-7](#) **MAXIMINO ANDRADE AND** **MOTION TO AVOID LIEN OF**
JAD-3 **MARIA PEREZ MEJIA** **CITIBANK, N.A.**
 Jessica Dorn **9-25-17 [28]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on September 25, 2017. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank, N.A. dba: Citibank South Dakota, N.A. ("Creditor") against property of Maximino Andrade and Maria Mejia ("Debtor") commonly known as 2615 Jeannie Court, Turlock, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,283.45. An abstract of judgment was recorded with Stanislaus County on October 10, 2008, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$239,950.00 as of the date of the petition. The unavoidable consensual liens that total \$173,345.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 20. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$66,605.00 on Schedule C.

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 Maximino Andrade and Maria Mejia ("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. dba: Citibank South Dakota, N.A., California Superior Court for Stanislaus County Case No. 618750, recorded on October 10, 2008, Document No. 2008-0109598-00, with the Stanislaus County Recorder, against the real property commonly known as 2615 Jeannie Court, Turlock, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

12. [17-90533](#)-E-7 RUTH JOHNSON
Pro Se

**TRUSTEE’S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC. 341(A)
MEETING OF CREDITORS
9-5-17 [14]**

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—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 creditors on September 7, 2017. By the court’s calculation, 42 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 Motion to Dismiss is granted, and the case is dismissed.

Michael McGranahan (“the Chapter 7 Trustee”) alleges that Ruth Johnson (“Debtor”) did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Based on Debtor’s failure to attend the First Meeting of Creditors, the Chapter 7 Trustee requests that this case be dismissed.

Cause exists to dismiss this case. 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 the Chapter 7 case filed by Michael McGranahan (“the Chapter 7 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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