UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

October 22, 2020 at 10:30 a.m.

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1. 18-90600-E-7
MF-5

CORAZON HERNANDEZ
Brian Haddix

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CORAZON MARIA HERNANDEZ AND SOCORRO GARIBAY
9-17-20 [103]

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, and Office of the United States Trustee on September 17, 2020. 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 Compromise is granted.

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Corazon Maria Hernandez (the Debtor) and Socorro Garibay (collectively "Settlor"). The claims and disputes to be resolved by the proposed settlement

concern which parties hold interest in the subject real property at 2721 E. Orangeburg Ave, Modesto, California.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (**the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 107)**:

A. Debtor will execute a promissory note in favor in the amount of $57,000.00 at 6% rate of interest per annum. The maturity date of said promissory note is 120 days after Court approval of the Agreement.

B. Debtor and Defendant will execute a Deed of Trust, which will encumber the Property, and will list the Bankruptcy Estate of Debtor as the beneficiary.

C. Trustee will record such documents.

D. Trustee will then abandon the property under 11 U.S.C. § 554.

E. Trustee will dismiss the Adversary Proceeding without prejudice.

F. Debtor and Defendant agree that at the time of Petition Date, Debtor had full legal and equitable interest in the Property, and that Defendant did not hold equitable interest in the Property.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Probability of Success

Trustee views the probability of success in litigation as edging towards his favor, as Debtor is the only grantee in the subject real property's Grant Deed. Under California law, a record title presumption exists, meaning Debtor presumptively owns full beneficial title of the subject real property. *See In re Shapow*, 599 B.R. 51, 79 (Bankr. C.D. Cal. 2019); see also Cal. Evid. Code § 662; Cal. Civ. Code § 1105. No evidence was provided to place this presumption in doubt and the Defendant has not appeared in the Adversary Proceeding.

Difficulties in Collection

The path to obtaining proceeds from sale of the property is uncertain which poses difficulty regarding collectability. If Defendant appears in the Adversary Proceeding, a delayed fact-intensive exploration of § 363(h) of the Bankruptcy Code may be required. Even if Defendant does not appear in the Adversary Proceeding, Trustee may have to seek leave to amend its complaint to request declaratory relief regarding interests in the property, and then seek default judgment. Debtor may also seek conversion of the case to Chapter 13 or otherwise impede liquidation of the property.

Expense, Inconvenience, and Delay of Continued Litigation

Complexity

The complexity of this litigation is indeterminate at this time but involves the determination of interest in and disposition of the subject real property. The matter could become more complicated if Defendant were to appear in the Adversary Proceeding or Debtor were to interfere with the disposition of the property for her own benefit.

Expense

Both Trustee and Debtor have incurred expenses thus far but the parties have moved toward reaching a compromise. Trustee may still have to seek leave to amend his complaint in the Adversary Proceeding regarding the parties' respective interests in the property. However, if Debtor does not perform on the promissory note, Trustee recognizes that he will incur expenses in enforcing his rights or in selling the promissory note and deed of trust.

Inconvenience

The reasons for potential added expense also apply to potential additional inconvenience. Monetizing the deed of trust and promissory note will be less costly than undertaking litigation.

Delay

If this Settlement Agreement is not approved, litigation could create lengthy delay, as Trustee may have to seek leave to amend his complaint in the Adversary Proceeding for declaratory relief regarding the parties' respective interests.

Paramount Interest of Creditors

Trustee does not expect any creditor to oppose this Settlement Agreement. This Settlement Agreement would reduce costs for the estate in obtaining recovery for the benefit of creditors. It would also provide greater certainty in recovery for creditors while eliminating risks to the estate posed by litigation.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the Agreement resolves which parties hold interest in the subject real property and provides a path of greater certainty regarding obtaining recovery for the benefit of creditors. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Corazon Maria Hernandez and Socorro Garibay ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 107).

2. 20-90607-E-7 BIMLESH SINGH
Pro Se

MOTION TO RECONSIDER DISMISSAL OF CASE
9-30-20 [27]

CASE DISMISSED: 09/21/2020

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

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

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

Sufficient Notice Not Provided. No Certificate of Service was filed for the instant motion. The court is unable to determine whether the proper parties were served.

The Motion to Reconsider Dismissal of Case 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 Reconsider Dismissal of Case is granted and the order dismissing this case is vacated.

The Chapter 7 debtor, Bimlesh B. Singh ("Debtor") filed the instant case on September 2, 2020. Dckt. 1.

On September 2, 2020, the clerk of the court filed a Notice of Incomplete Filing or Filing of Outdated Forms and Notice of Intent to Dismiss Case if Documents Are Not Timely Filed due to Debtor's failure to file the supporting documents required for a voluntary petition. Dckt. 4. On January 10, 2020, a Notice of Entry of Order of Dismissal was filed and the case was dismissed for failure to timely file documents. Dckt. 23.

On September 30, 2020, Debtor filed this instant Motion to Vacate, claiming that the dismissal should be vacated because it was based on a failure to file petition documents which Debtor argues were indeed filed but that there must have been either a clerical error with the court's filing system or a clerical error when Debtor filed the documents.

APPLICABLE LAW

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

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

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

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

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

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere*

Life Ins. Co., 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

The Motion to Vacate the Dismissal states with particularity the following grounds upon which the requested relief is based:

a. Debtor filed this bankruptcy case on September 2, 2020.

b. Debtor's case was dismissed for failure to timely file documents.

c. There was an error with the court's filing system or an error made when the documents due September 16, 2020 were filed.

d. Due to this error, Debtor's case was dismissed on September 21, 2020.

e. Debtor's missing documents were filed on September 16, 2020. The Summary of Assets and Liabilities was submitted to the court but not filed.

f. Debtor is motivated and willing to make his Chapter 7 successful.

Review of Evidence Presented

Debtor filed a Declaration in support of his motion to reconsider the dismissal. Dckt. 29. Debtor testifies under penalty of perjury that Debtor filed the schedules and missing document on September 16, 2020 but that after reviewing the Pacer system, the Summary of Assets and Liabilities was not entered into system. *Id.*, at 2. Further, Debtor testifies that Debtor is motivated and willing to make this Chapter 7 successful. *Id.*

Debtor has filed Exhibit A through J in support of this Motion. Debtor's Exhibits are copies of the Schedules, Statement of Current Income, Statement of Financial Affairs and Summary of Assets and Liabilities purportedly filed with the court. Dckt. 30. The last page of the exhibits is identified by Debtor as:

> Print out from computer showing documents were created 9/15-9/16 & then was submitted to courthouse. This list includes the summary of assets & liabilities which was submitted along the rest of the documents.

Id., at 54.

A review of the docket for this case shows that Debtor filed an Amended Petition, a Statement of Current Income Form 122A-1, Schedules A through D and Schedules G through J, and a Statement of Financial Affairs on September 16, 2020. Dckts. 20, 21, 22.

Review of Schedules

On Schedule A/B Debtor lists the real property identified as 1833 Darby Lane, Ceres, California (the "Property"), and that the Property has a value of $470,000. Dckt. 22 at 1. Debtor states under penalty of perjury that he is the sole owner of this Property and that the value of his interest in the Property is the entire $470,000.

On Schedule A/B Debtor lists a claim against a third-party identified as "Lawsuit against HomeOwners First, LLC (Jury Trial)." *Id*. at 8. On Schedule C Debtor asserts a $75,000.00 homestead exemption in the Property pursuant to California Code of Civil Procedure § 704.730. *Id*. at 11.

On the Statement of Financial Affairs Debtor lists a foreclosure of the Property having been conducted by a "creditor" named "HomeOwners First, LLC." *Id*., Statement of Financial Affairs Question 10.

For litigation, Debtor lists a case *Singh v. HomeOwners First, LLC*, with the nature of the case described as "Civil, 2nd Loan Wrongful Foreclosure," at the Modesto Courthouse. *Id*., Statement of Financial Affairs Question 9. It is further stated that the status of the case is "on appeal."

Review of Related Bankruptcy Cases

The court also has pending before it a Chapter 7 case filed by Sati Sen, who is identified as the Debtor's sister. 20-90112. Ms. Sen filed her bankruptcy case on February 10, 2020. Ms. Sen is represented by counsel Mark J. Hannon, Esq. in her Chapter 7 case.

On Schedule A/B Ms. Sen stated that she has no interest in any real property. 20-90112; Dckt. 1 at 11. On her Petition Ms. Sen lists her residence as 1833 Darby Lane, Ceres, California - the Property Debtor lists on his Schedule A/B in which he owns 100% of the interests therein.

On Schedule A/B Ms. Sen lists no claims against any third parties. *Id*., Question 33.

Sati Sen filed a bankruptcy case in this District, Bankr. Case No. 20-90112. Sati Sen lists her address as 1833 Darby Lane, Ceres, California ('Property"). In that case, Sati Sen states under penalty of perjury on the Statement of Financial Affairs, Question 10, that both Select Portfolio Servicing and "Homeowners First, LLC" foreclosed on the 1833 Darby Lane, Ceres, California property on January 22, 2020. 20-90112, Petition, Dckt. 1, at 31. This is the same address Debtor in this case lists as his residential address. Dckt. 20.

In Ms. Sen's case it was subsequently presented to the court that Ms. Sen sought to challenge the alleged foreclosure sale. This led to some disconnection between what Ms. Sen sought to assert and what was her counsel's view of the situation.

Chapter 7 Status Conference Conducted
in Sen Chapter 7 Case 20-90112

The court ordered a Chapter 7 Status Conference in Ms. Sen's case, and the court's findings and conclusions stated in the Civil Minutes include:

> It is clear that Ms. Sen is working with her brother to retain a family home. Mr. Hannon, Debtor's counsel, reports that there was a foreclosure sale in January 2020, and his efforts in filing the bankruptcy case was to deter the state court unlawful detainer proceedings so that Debtor could get her property out of the foreclosed home and not have it seized by the Sheriff as part of a forced lockout.
>
> [Sati Sen] was very clear in communicating that she disputes the validity of the foreclosure sale and that, as the court understands it, she is prosecuting a state court

> action contesting the sale. She does not believe that she should be removed from her family home based on the January 2020 foreclosure sale.
>
> [. . .]
>
> There exists an issue as to what interest [Sati Sen] actually has in the property in dispute. At the hearing, the [Sati Sen] addressed with the court disputes concerning the alleged foreclosure sale and why certain deeds of trust could not enforced for the amounts asserted. As the court addressed with [Sati Sen], these are issues for the state court action she is prosecuting and not litigation that is pending in this court.

20-90112, Civil Minutes, Dckt. 62.

Vacating the Dismissal

The court grants the Motion to Vacate the Dismissal of Debtor's case. It appears that the dismissal was issued in error.

This being a Chapter 7 case, the assets of the Debtor became property of the bankruptcy estate in this case upon the filing of the bankruptcy case. 11 U.S.C. § 541(a). This includes the claims against HomeOwners First, LLC, which is then under the control of the Chapter 7 Trustee in this case. 11 U.S.C. § 707(a). The Chapter 7 Trustee is the real party in interest to prosecute or otherwise administer the state court action, or appeal, as property of the bankruptcy estate.

By continuing in this Chapter 7 case, the Debtor is handing over control for the State Court Action and Appeal, to the Chapter 7 Trustee, who then administers the asset - whether by prosecuting the Appeal and litigation, settling the litigation, or abandoning the claims/rights back to the Debtor.

In light of Debtor being in *pro se*, the court expressly identifies this "reality" of Chapter 7 to insure that Debtor is aware of the legal effect of his continuing in his Chapter 7 case.

Extension of Deadlines

The deadline to filing actions for a debt to be determined nondischargeable or to object to the discharge for Debtor in this case, is December 28, 2020. Notice of Bankruptcy, § 9; Dckt. 9. The First Meeting of Creditors was set for October 28, 2020. *Id*., § 7.

In vacating this dismissal, of which notice has been sent to Creditors and other parties in interest (Cert. of Serv., 25), it will be impossible to notify creditors and other parties in interest of the dismissal being vacated and them being given sufficient notice of a meeting that day.

Assuming that the Chapter 7 Trustee can select a rescheduled First Meeting date and time, and a Notice of rescheduled date can be issued by November 15, 2020, and the reschedule Meeting conducted by December 15, 2020, to afford Creditors and parties in interest sufficient time to consider the information provided and determine whether to prosecute an action for the nondischargeability of debt or denial of Debtor's discharge.

Therefore, in vacating the dismissal, the court also extends the December 28, 2020 Deadline provided in the original Notice of Bankruptcy, § 9, for:

9. Deadlines The bankruptcy clerk's office must receive these documents and any required filing fee by the following deadlines.	**File by the deadline to object to discharge or to challenge whether certain debts are dischargeable:** You must file a complaint: • if you assert that the debtor is not entitled to receive a discharge of any debts under any of the subdivisions of 11 U.S.C. § 727(a)(2) through (7), or • if you want to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6). **You must file a motion:** • if you assert that the discharge should be denied under § 727(a)(8) or (9).

to **XXXXX XX**, 2021.

The Clerk of the Court shall serve a copy of this Order on all persons on the Master Mailing List, as well as the Trustee, U.S. Trustee, and any other person and their attorney who have appeared in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate Dismissal of this bankruptcy case filed by Chapter 7 debtor, Bimlesh B. Singh ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the Order dismissing this case (Dckt. is vacated, having been filed in error. The bankruptcy case shall proceed in this court.
>
> **IT IS FURTHER ORDERED** that the deadlines for
>
> A. Filing a complaint for the denial of a discharge being granted Bimlesh Singh, the Debtor, under any of the subdivisions of 11 U.S.C. § 727(a)(2) through (7);

B. Filing a complaint to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2), (4), or (6); or

C. Filing a motion to assert that the discharge for Bimlesh Singh, the Debtor, should be denied under § 727(a)(8) or (9)

are extended through and including **xxxxx xx** , 2021.

The Clerk of the Court shall serve a copy of this Order on all parties in interest in this case.

Upon the Chapter 7 Trustee setting a new First Meeting of Creditor's date, which shall be before December 15, 2020, and communicate that date to the Clerk of the Court on or before November 3, 2020, the Clerk of the Court shall send a notice of the new First Meeting of Creditors date and time to all parties in interest in this case.

3. 20-90434-E-7 TONY ANGLIN MOTION TO COMPEL ABANDONMENT
GTB-1 George Burke 10-3-20 [29]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 3, 2020. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion to Compel Abandonment is granted.

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

The Motion filed by Tony Melvin Anglin III ("Debtor") requests the court to order Gary Farrar ("the Chapter 7 Trustee") to abandon property commonly known as 14729 Lucero Court, La Grange, California ("Property"). The Property is encumbered by the lien of Loancare LLC, securing a claim of $284,000.00. Amended Schedule A/B values the Property at $261,000.00. Dckt. 13.

On October 6, 2020, the court entered an order granting relief from the automatic stay to allow the creditor to proceed with exercising its rights to foreclose on the Property. Order, Dckt. 33.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court

determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not a minute order) substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Tony Melvin Anglin, III ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 14729 Lucero Court, La Grange, California and listed on Schedule A/B by Debtor is abandoned by the Chapter 7 Trustee, Gary Farrar ("Trustee") to Tony Melvin Anglin, III by this order, with no further act of the Trustee required.

4. 20-90435-E-11 DCJ-2 | **CHARLES MACAWILE** **David Johnston** | **MOTION TO EXTEND TIME 9-21-20 [34]**

SUBCHAPTER V

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 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 21, 2020. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline for Filing Plan of Reorganization 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 Extend Deadline for Filing Plan of Reorganization is denied.

The Chapter 11 debtor, Charles Collantes Macawile, Jr., ("Debtor-in-Possession") moves the Court for an order pursuant to 11 United States Code § 1189(b) extending the deadline for filing a plan of reorganization by 21 days from September 21, 2020 to October 12, 2020.

Review of the Motion

Debtor-in-Possession provides the following grounds in requesting the extension to file a plan of reorganization:

A. Debtor, its counsel, and the Subchapter V Trustee have made great efforts to prepare a plan of reorganization and had hoped to file a plan by September 21, 2020, numerous circumstances have made it impossible to prepare a meaningful plan with projections.

B. Debtor owns a non-operative residential care facility in Salida, California. The COVID-19 pandemic has created many problems in opening and operating residential care facilities.

C. Debtor's wife has applied to the California Department of Social Services for a permit to use the Debtor's facility to house homeless people who are COVID-19 positive. The state will pay $1,000 per day for each person in the facility, which will be licensed for 16 people. The application and required supporting documents total approximately 500 pages and have been submitted to the state but has not yet been approved.

D. Once the application has been approved, a physician in Ohio will become a joint venturer or partner or participate in some manner with the Debtor in utilizing the facility and in obtaining new financing to pay the existing lender on the facility. In the interim, the value of the facility, even while not operating, greatly exceeds the debt against it.

E. Until the state license is obtained, the Debtor has no active business operations and it is not possible to propose a feasible plan.

F. Section 1189(b) is much more flexible than the requirements for extending the time for filing a plan in the old "small business" cases and much more flexible than extensions of the time for a trustee to assume a non-residential lease (extension order must be prior to expiration of time under Section 362(d)(4)(B)) and extensions of the automatic stay in a second case filed within one year (motion must be heard within 30 days of the petition date under Section 362(c)(3)(B)).

G. The Subchapter V Trustee has been unable to negotiate a consensual plan without any active business operations or the proper license to operate a facility. It will become more difficult to confirm a consensual plan if the current deadline remains which will trigger the objections deadline.

Opposition

On October 8, 2020, creditor Scott R. Williams and Anastasie C. Martin Trustees of The Williams Trust Dated August 19, 2014, its successors and/or assignees ("Creditor") filed an Opposition. Dckt. 39. Creditor is the current payee of a Promissory Note dated September 6, 2018 in the principal amount of $1,000,000.00 (the "Note") secured by a First Deed of Trust on the real property located at 5412 Kieman Avenue, Salida, California (the "Property"). According to Creditor, the Note matured on April 1, 2020 and was all due and payable in the amount of $1,220,899.93. Proof of Claim 8-1.

Creditor opposes the extension to the filing of the plan on the grounds that Debtor is unlikely to confirm a plan and the various financing attempts made through the previously filed Chapter 13 bankruptcy and the instant bankruptcy have not materialized. Dckt. 39. Moreover, Creditor argues that Debtor has failed to provide sufficient evidence that the failure to file a plan is not his own fault and his statements on his attempts to obtain state licensing to open the care facility are vague. *Id*., at 5.

DISCUSSION

11 United States Code § 1189(b) provides that "The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable."

The deadline for filing a plan of reorganization in this case was September 20, 2020, a Sunday, which was extended on the Court's docket to be September 21, 2020. The motion requests that the deadline to file be extended to October 12, 2020.

As provided by § 1189(b), the court may extend the deadline for cause. The request for extension of time was filed prior to the deadline.

Background

Debtor filed bankruptcy after being unable to and defaulted in making loan payments, and a foreclosure proceeding was initiated. Status Report, Dckt. 26. The loan was made in order to renovate a care home Debtor inherited. *Id.*, at 1. However the loan did not provide sufficient funds for furniture and equipment needed so that the facility has never opened. *Id.*, at 2. The income of both Debtor-in-Possession and wife has been affected by COVID-19. *Id.* Debtor has been unable to open an account at Wells Fargo, a depository approved by the United States Trustee. *Id.*

Request for Extension of Filing of the Plan

Debtor now comes requesting this extension. In his Motion, Debtor explains the circumstances hindering the filing of a plan. Debtor-in-possession has applied for a special permit with the California Department of Social Services that will allow him to finally open the renovated facility and produce income. Although the application and supporting documents have been submitted, Debtor in Possession has yet to receive such permit. Debtor has also lined up a third party that will assist him in obtaining new financing to pay Iron Oaks Home Loans. At this juncture, it seems Debtor-in-Possession has done all he can do to keep this case moving forward.

Prior Bankruptcy Case

Debtor's prior Chapter 13 bankruptcy case, 20-90139, was commenced on February 19, 2020, and dismissed on June 17, 2020. The Chapter 13 Trustee filed a Motion to Dismiss the Case, stating in the Motion only legal conclusions that there was "Unreasonable Delay" that is prejudical to creditors, and that cause exists because the Debtor's Chapter 13 Plan was denied confirmation on April 21, 2020. 20-90139; Motion, Dckt. 38. The court's Findings and Conclusions, as stated orally on the record, include the Debtor not opposing the dismissal. The court found that there was inactivity in the prosecuting and resulting prejudice to creditors was cause to dismiss the case. Audio Recording of June 16, 2020 hearing, Dckt. 43.

Denial of Motion

The court first notes that the hearing on this Motion was filed on September 21, 2020, requested that the deadline be extended to October 12, 2020, and that this Motion was not set for a hearing until October 22, 2020 - after the requested deadline had passed. At the time of the drafting of this pre-hearing

disposition on October 20, 2020, no Chapter 11 Plan had been filed with the court. The Debtor/Debtor in Possession has failed to comply with the requested deadline.

Debtor having failed to file a Plan of reorganization by the requested date of October 12, 2020, the Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend Deadline to File a Chapter 11 Plan filed by the Chapter 11 debtor, Charles Collantes Macawile, Jr., ("Debtor-in-Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

5. **20-90652-E-7** **FRANCIS OLIVER** **MOTION TO AVOID LIEN OF CREDIT**
MRG-1 **Michael Germain** **BUREAU OF AMADOR AND**
CALAVERAS COUNTIES
10-1-20 [10]

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, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on October 1, 2020. By the court's calculation, 21 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 Credit Bureau of Amador & Calaveras Counties ("Creditor") against property of the debtor, Francis E. Oliver, Jr. ("Debtor") commonly known as 3846 Hartvickson Lane, Valley Springs, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $30,498.79. Exhibit 1, Dckt. 15. An abstract of judgment was recorded with Calaveras County on May 21, 2019, that encumbers the Property. *Id*.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $262,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $244,495.78 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $17,504.22 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Francis E. Oliver, Jr. ("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 Credit Bureau of Amador & Calaveras Counties, California Superior Court for Calaveras County Case No. CF4219, recorded on May 21, 2019, Document No. 2019-005623, with the Calaveras County Recorder, against the real property commonly known as 3846 Hartvickson Lane, Valley Springs, 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.

6. **12-91671-E-7** **BOB/CANDI CRAWFORD** **MOTION TO AVOID LIEN OF**
DCJ-8 **David Johnston** **STANISLAUS CREDIT CONTROL**
SERVICE, INC.
10-8-20 [131]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on October 8, 2020. By the court's calculation, 14 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 Stanislaus Credit Control Service, Inc. ("Creditor") against property of the debtor, Bob L. Crawford and Candi L. Crawford ("Debtors") commonly known as 16302 Morrison Road, Oakdale, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $1,928.14. Exhibit 4, Dckt. 134. An abstract of judgment was recorded with Stanislaus County on April 26, 2011, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $410,000.00 as of the petition date. Dckt. 14. The unavoidable consensual liens that total $686,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 14. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Schedule C. Dckt. 14.

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 Bob L. Crawford and Candi L. Crawford ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Stanislaus Credit Control Service, Inc., California Superior Court for Stanislaus County Case No. 661573, recorded on April 26, 2011, Document No. 2011-0035581-00, with the Stanislaus County Recorder, against the real property commonly known as 16302 Morrison Road, Oakdale, 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.

7. 20-90373-E-7 THOMAS SWARTZ
Peter Macaluso

OPPOSITION/OBJECTION TO CHAPTER 7 TRUSTEE'S REPORT OF NO DISTRIBUTION
9-3-20 [56]

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, Chapter 7 Trustee, and Office of the United States Trustee on September 3, 2020. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Objection to Trustee's Report of No Distribution 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 Objection to Trustee's Report of No Distribution is sustained.

Jane M. Wright, Ron R. Skrbina, Christina A. Tripp, and Gaylord W. Skrbina ("Objector") object to the Trustee's Report of No Distribution on the basis that Trustee has failed to investigate Debtor's financial affairs and has failed to collect and reduce to money the non-exempt property of the estate, namely Debtor's undisclosed 23.2558% interest in the general partnership known as the Estate of Walter F. Swartz which includes ownership of a 75% interest in 278.02 acres of real property located in Calaveras County.

Objector argues that the interest has now been disclosed to the Trustee. The value of the real property is estimated to be between $600,000 to $800,000. Despite knowledge, Objector argues that Trustee has not sought to collect such interest of the debtor and reduce it to money.

Counsel to Objector conducted a 2004 Examination on Donald Swartz, a general partner of the partnership and Debtor's brother, on September 1, 2020 where Mr. Swartz testified about Debtor's interest in the partnership, the partnership's ownership on the real property, and confirmed that Debtor has been a partner since 1980. Mr. Swartz also confirmed that he's had no contact with the Trustee.

In support of their Objection, Objector filed a copy of the 2004 Examination transcript. Dckt. 68.

DISCUSSION

The Trustee has not filed any response to the present Objection to the No Asset Report.

On October 8, 2020, the court filed an order substituting Peter Macaluso, Esq., in as counsel for the Debtor (who filed this case in *pro se*).

On October 12, 2020, an Amended Schedule A/B was filed by Debtor. On Schedule A/B Debtor lists 100% ownership in real property described as "Parcel Land- 60 yr. old tin roof home, west point-pine grove." Dckt. 75 at 4. Debtor states the value of the property is $483,000, but that the current value of his portion is only $115,920 (24% of the stated value).

This portion of Amended Schedule A/B then includes the following additional information relating to the Debtor's interest in the above property:

> Partnership owns 75% interest in 278.02 acres, valued between $600-$800k; $700k @ 75% = $525k -less 8% cost of sale $42K = $483k, of which the debtor owns 23.2558

Id.

In the Objection, it is stated that at the 2004 Examination Mr. Donald Swartz testified that he owns a 23.2558 interest in the Estate of Walter F. Swartz General Partnership. Further, that the Partnership owns a 75% interest in 278.02 acres of real property in Calaveras County. The Objection further states that Mr. Donald Swartz testified that the property has a value of $600,000 to $800,000.

A copy of the transcript of the 2004 Examination is provided as Exhibit 1, Dckt. 68. With respect to the value of the Property, Mr. Donald Swartz stated:

> 1 BY MR. HASTINGS
>
> 2 Q Okay. Mr. Swartz, what do you think the 278
> 3 acres is worth?
>
> 4 A We had it listed last year at $800,000, and it
> 5 did not sell, and we did not get any offers. So a
> 6 short answer to your question is something less than
> 7 that. It's somewhere maybe 600,000. That's close to
> 8 $2,000 an acre

2004 Transcript, p. 33: 1-8.; Dckt. 68.

Debtor filed a Second Amended Schedule C on October 15, 2020. Dckt. 76. On it Debtor adds the following property and claimed exemption:

Description of Property	Current Value of Portion You Own	Amount of Exemption	Specific Laws That Allow Exemption
PARTNERSHIP INTEREST, DEBTOR RESIDES ON THE PROPERTY, IN OUTBUILDING, FOR MANY YEARS, PARTNERSHIP OWNERS OF REAL PROPERTY OF 278.02 ACRES AT $500K AT 75% IS $375, LESS 8% COST OF SALE -$36K = $339K 23.2558%	$81,360	$30,825	C.C.P. 703.140(b)(5)

Creditors Jane Wright, Rob Skrbina, Christina Tripp, and Gaylord Skrbina ("Creditors") have filed an objection to claim of the above exemption. Dckt. 77. It may be that this objection was filed to the First Amended Schedule C, Dckt. 74, which did state that the exemption was being claimed in the parcel of land that was owned by the Partnership. Second Amended Schedule C claims an exemption in the partnership interest that was owned by the Debtor and is now property of the bankruptcy estate.

It appears that the Debtor has now disclosed a significant asset for the Trustee to administer - the partnership interest in the general partnership known as the Estate of Walter F. Swartz. The way this "general partnership" is identified, it sounds almost like the estate of a decedent and not a partnership. The property owned by the "partnership" is not clearly identified.

The Objection to the Trustee's Report of No Distribution; August 12, 2020 Docket Entry Report; Notice of Filing of No Distribution, Dckt. 41; is sustained.

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 Objection to Trustee's Report of No Distribution filed by Jane M. Wright, Ron R. Skrbina, Christina A. Tripp, and Gaylord W. Skrbina ("Objector") 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 Objection to the Trustee's Report of No Distribution; August 12, 2020 Docket Entry Report; Notice of Filing of No Distribution, Dckt. 41; is sustained; and that the Trustee shall continue in the investigation for and administration of property of the bankruptcy estate.

8. **18-90029-E-11** **JEFFERY ARAMBEL**
20-9008 **MRP-1**
ARAMBEL V. LBA RV-COMPANY XX.VII, LP ET AL

CONTINUED MOTION TO DISMISS CAUSE(S) OF ACTION FROM COMPLAINT
8-20-20 [11]

NO APPEARANCE REQUIRED.
POSTED AS TENTATIVE SO THAT COUNSEL MAY ADDRESS ANY ISSUES WITH THE COURT'S INTERPRETATION OF THE PLEADINGS FILED REGARDING AGREEMENT TO FILE AN AMENDED COMPLAINT

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff/Debtor in Possession's Attorney on August 20, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss Complaint for Relief Relating to Holdback Agreement is denied without prejudice, having been rendered moot by the Parties agreeing to Plaintiff filing a first amended complaint.

Plaintiff shall file and serve a first amended complaint on or before noon on Monday, November 9, 2020.

Responses to the first amended complaint shall be made as provided in Federal Rule of Civil Procedure 15 and Federal Rule of Bankruptcy Procedure 7015.

LBA RV-COMPANY XXVII, LP, a Delaware limited partnership ("Defendant") moves for the court to dismiss all claims against it in Jeffery Arambel's ("Plaintiff-Debtor," who is the reorganized debtor under the confirmed Chapter 11 Plan) Complaint according to Federal Rule of Civil Procedure 12(b)(6).

The court reviewed the Motion, Complaint, and arguments as stated in the Minutes from the October 1, 2020 hearing on this Motion, and does not repeat them here. The court reviews the supplemental pleadings filed by the Parties.

Plaintiff's October 17, 2020 Supplement to the Opposition

On October 17, 2020, Plaintiff filed a Supplemental Pleading and a draft of the Amended Complaint as an Exhibit to the Supplement. Dckt. 36, 37. According to the Plaintiff, Defendant has stipulated to the filing of an Amended Complaint.

Defendant's October 19, 2020 Letter to the Court

On October 19, 2020 counsel for Defendant filed a letter pleading in response to Plaintiff's Supplemental pleadings. Dckt. 39. Counsel informs the court that his firm was the victim of a malware attack which has caused the firm's system to be offline while it is restored and analyzed.

Defendant's counsel states that although Defendant stipulated to Plaintiff receiving leave to file an amended complaint, Defendant did not agree to the filing of Plaintiff's Supplement filed on October 17, 2020. Defendant argues that the court should not consider the arguments presented by Plaintiff, given that several of the arguments now presented were originally ignored in Plaintiff's Opposition.

Defendant requests that the court grant leave to Plaintiff to file an amended complaint and deny Defendant's Motion as moot and without prejudice in light of the amended filing. Adding that the court should not decide the motion on the merits since it will be soon become an inoperative complaint, and especially without allowing Defendant the opportunity to address the amended pleading and Plaintiff's belated arguments in the Supplement.

October 20, 2020 Hearing

Given that Defendant has stipulated to Plaintiff filing an Amended Complaint, Plaintiff has prepared the Amended Complaint and provided as a copy as an exhibit, the court:

a. Denies without prejudice the Motion to Dismiss, it having been rendered moot by the Parties agreeing to Plaintiff filing a first amended complaint;

b. Authorizes Plaintiff to file and serve a first amended complaint, a draft of such having been filed as an unnumbered Exhibit on October 17, 2020, Dckt. 37, on or before noon on Monday, November 9, 2020.

c. Responses to the first amended complaint shall be made as provided in Federal Rule of Civil Procedure 15 and Federal Rule of Bankruptcy Procedure 7015.

In light of the extraordinary events that are impacting Defendant's counsel's office, if the response times provided in Federal Rule of Civil Procedure 15 present any problems, the court is confident the parties can meet and confer, addressing such adjustments as are reasonable by stipulation or request relief from the court by joint *ex parte* motion if an order is required.

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 Adversary Proceeding filed by LBA RV-COMPANY XXVII, LP, a Delaware limited partnership ("Defendant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is denied without prejudice, having been rendered moot by the Parties agreeing to Plaintiff filing a first amended complaint.
>
> **IT IS FURTHER ORDERED** that Plaintiff shall file and serve a first amended complaint on or before noon on Monday, November 9, 2020.
>
> Responses to the first amended complaint shall be made as provided in Federal Rule of Civil Procedure 15 and Federal Rule of Bankruptcy Procedure 7015.

FINAL RULINGS

9.	**12-92479-E-12** **NFG-6**	**DAVID/ESPERANZA AGUILAR** **Nelson Gomez**	**CONTINUED MOTION TO ENFORCE TERMS OF CONFIRMED AMENDED CHAPTER 12 PLAN AND FOR ADDITIONAL RELIEF** **6-1-20 [150]**

Final Ruling: No appearance at the October 22, 2020 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's, Chapter 12 Trustee, Creditor, and Office of the United States Trustee on June 1, 2020. By the court's calculation, 66 days' notice was provided. 28 days' notice is required.

The Motion to Enforce Terms of Confirmed Amended Chapter 12 Plan 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 Enforce Terms of Confirmed Amended Chapter 12 plan is continued to 10:30 a.m. on November 5, 2020.

OCTOBER 15, 2020 JOINT STATUS REPORT (Dckt. 170)

The Parties have provided a Joint Status Report informing the court that the settlement agreement is being circulated and was received by counsel for LoanCare as of October 12, 2020 for LoanCare's review and approval. Due to the COVID-19 impact on counsel for Debtor's family, the settlement agreement was not able to be submitted to counsel for LoanCare earlier. The parties request the court continue the October 22, 2020 hearing to November 5, 2020 at 10:30 a.m. to afford additional time for finalizing and signing the settlement agreement.

The court continues the hearing.

SEPTEMBER 23, 2020 JOINT STATUS REPORT (Dckt. 167)

The Parties have provided a Joint Status Report informing the court that counsel for Debtors and for LoanCare continue to work on the settlement terms. There has been a delay in finalizing the agreement due to Counsel for Debtor having to deal with family matters related to COVID-19. The parties request the court continue the October 1, 2020 hearing to October 22, 2020 at 10:30 a.m. to afford additional time for finalizing the agreement and submitting it to counsel for Creditor.

The court continues the hearing.

SEPTEMBER 4, 2020 JOINT STATUS REPORT (Dckt. 162)

The Parties have provided a Joint Status Report informing the court that counsel for Debtors and for LoanCare have finalized the settlement terms and requesting the court continue the hearing to October 1, 2020 at 10:30 a.m. to afford additional time for review and signature of the settlement.

The court continues the hearing.

REVIEW OF JOINT STATUS REPORT (Dckt. 158)

The Parties have provided the court with a Joint Status Report in advance of the continued hearing. The Parties report that they are continuing in their good faith settlement discussions and request that the court continue the hearing to September 10, 2020 to afford them additional time in their efforts.

The court so continues the hearing.

REVIEW OF THE MOTION

The present Motion to Enforce Terms of the Confirmed Amended Chapter 12 Plan was filed by the debtors, David Tafolla Aguilar and Esperanza Aguilar ("Debtors"), against creditor OneWest Bank ("Creditor"), asserting that Creditor has violated the terms of the Confirmed Amended Chapter 12 Plan ("Plan") by, through its current service, proceeding with a pending foreclosure of Debtors' business property.

In asserting these claims, Debtors state with particularity (Federal Rule of Bankruptcy Procedure 9013) the following grounds for relief:

A. The August 21, 2014 confirmed Amended Plan called for monthly payments of $994.00.

B. The Amended Plan provided for Debtors to make payments on their Business Property, located at 5001 E. Monte Vista Avenue, Denair, California, through the Plan.

C. Creditor did not object to the confirmation of the Plan.

D. Creditor through its current servicer, LoanCare, LLC ("LoanCare"), has continued to ignore and disregard the order of this court regarding the

confirmation of the Amended Plan, to the detriment of Debtor, including the pending foreclosure on Debtors' Business Property by Creditor.

Motion, Dckt. 150.

Prayer for Relief

Debtor requests the following relief:

1. For an evidentiary hearing to determine the amount owed by Debtors under terms of the confirmed Amended Chapter 12 Plan;

2. For an order dismissing the amounts claimed by LoanCare as owing which were part of the unsecured portion of Debtors' Amended Chapter 12 Plan;

3. For damages for emotional distress incurred by Debtors as a result of LoanCare's unlawful foreclosure action, according to proof;

4. For attorney's fees incurred by Debtors in defending them against LoanCare's unlawful foreclosure action, according to proof; and

5. For any additional relief which the court may deem appropriate.

Review of Evidence

Debtors have provided the Declaration of Nelson F. Gomez in support of the Motion. Dckt. 152. Declarant is Debtors' Counsel who testifies to the following:

A. No opposition to the entry of discharge was filed and an order granting Debtors' discharge was entered on February 22, 2018.

B. Once the thirty six payments were made to the Chapter 12 Trustee, Counsel communicated with the servicer of the loan, CIT Bank, to inquire as to where Debtors should make the remaining 204 payments called for by the Amended Chapter 12 Plan. He was informed that the Bankruptcy Department of CIT Bank would provide a response. See Exhibit A.

C. Counsel's attempt to communicate with Creditor was unsuccessful and the communication was returned as undeliverable. See Exhibit B.

D. CIT Bank informed Counsel that the servicing of the loan was being transferred to LoanCare. See Exhibit C.

E. On March 12, 2018, Counsel received a Debt Validation Letter ("Debt Letter") from LoanCare, which stated that the loan was in delinquency and that the arrears amount for Principal and Interest was $18,121.97. See Exhibit D.

F. On March 26, 2018, Counsel responded to the Debt Letter, challenging it as inaccurate on the grounds that the amount owed by Debtors was $5,450.76, which amounted to six payments of $908.46. Counsel never received a response to his letter.

G. On May 31, 2018, Counsel forwarded to LoanCare all the relevant documents from the Bankruptcy showing that this borrower only owed payments from October, 2017 to May, 2018. See Exhibit F.

H. Debtors sent payments to LoanCare beginning in March of 2018, until November of 2018. The payments were not accepted by the servicer, but later claimed that they did not receive them. Debtors have since received the funds from Bank of America. See Exhibit G.

I. On December 17, 2018, LoanCare informed Debtors that the loan was in default and that a foreclosure proceeding had commenced. The Notice of Default included sums which were part of the unsecured claim of Creditor, which had been dismissed when the Discharge of Debtors was entered. See Exhibit H.

J. Multiple attempts to communicate with LoanCare's individual in charge were unsuccessful. The foreclosure action resulted in a Notice of Trustee Sale issued by Trustee Corps, the company hired by LoanCare to conduct the foreclosure on June 24, 2019. See Exhibit I.

K. On May 22, 2019, after Creditor and LoanCare failed to respond to Debtor, through their attorney, Counsel asked this court to reopen the Bankruptcy Case for the purpose of filing the instant Motion.

L. Since the reopening of the case, LoanCare has continued to maintain the Trustee Sale of Debtors' property, only postponing it for terms of 30 days.

M. Counsel adds that Creditor and LoanCare are attempting to recover an unsecured component through the foreclosure action against the terms of the confirmed Plan, and Debtor requests the court to enforce the terms of the plan by issuing a ruling for Creditor and LoanCare to comply with the order so the foreclosure action is based solely on the amount legally owed by Debtor as outline in the Plan.

The following Exhibits are provided as part of the Declaration:

- Exhibit A: copy of October 9, 2017 Debtor's Counsel Letter to CIT Bank, NA and a copy of undeliverable envelope as Exhibit B.

- Exhibit C: copy of Notice of Servicing Transfer dated February 8, 2018

- Exhibit D: copy of March 6, 2018 LoanCare Debt Validation Letter

- Exhibit E: copy of March 26, 2018 Debtor's Counsel Letter to LoanCare

- Exhibit F: copy of Fax Transmission Cover Sheet and May 30, 2018 Letter to LoanCare with accompanying bankruptcy related documents

- Exhibit G: copies of nine (9) Bank of America Cashier's Checks in the amount of $908.46 dated March 2018 through November 2018.

- Exhibit H: copy of December 17, 2018 LoanCare Letter to Debtor regarding default and foreclosure proceedings

- Exhibit I: copy of Notice of Trustee's Sale

Dckt. 152.

RESPONDENT'S OPPOSITION

Respondent filed an Opposition on July 23, 2020. Dckt. 154. Respondent opposes the Motion on the following grounds:

A. Debtors do not allege that their loan is current and fail to explain how, specifically, the March 2018 Debt letter is inaccurate.

B. Debtors have not, and are unable to, produce proof of payments from October 2017 until now. LoanCare has no record of receiving the cashier's checks in question that Debtors contend were sent between March 2018 and November 2018 prior to the commencement of the foreclosure.

C. Debtors have failed to asserts how LoanCare violated the terms of the confirmed plan on the basis that the delinquent amount stated in the Debt Letter in the amount of $18,413.79 is not a portion of the unsecured claim that was to be wiped out upon discharge.

D. Instead, the delinquent amount included in the Debt Letter contains payments that were to be paid subject to the Amended Stipulation Resolving Debtors' Motion to Value Collateral on Subject Business Property and Setting Forth Chapter 12 Plan Treatment, but were, instead, paid at the lower amount of $779.19 (instead of the stipulated monthly plan payment of $908.46) coupled with the Debtors' lack of payments between October 2017 and March 2018 after the closing of the case.

E. Debtors failed to show that LoanCare violated the terms of the Plan and that they suffered any emotional distress damages.

F. The Motion fails to provide evidence or a calculation of the alleged attorney's fees and costs associated with the alleged violation of plan terms, hourly rate paid, or any other details that would allow a court to award fees

and costs. Thus, Debtors are not entitled to an award of attorney's fees and costs.

DISCUSSION

The court begins with the Confirmed Amended Chapter 12 Plan, the modified contract between the parties. With respect to the secured claim at issue, the Confirmed Amended Plan provides:

> Class 3: Secured claim of One West Bank.
>
> This class consists of the claim of One West Bank which is secured by a Deed of Trust on the Real Property located at 5001 E. Monte Vista Avenue, Denair, California.
>
> (The Bank filed a claim in the sum of $179,923.80. The Debtors and the Bank reached a Stipulation regarding the secured and unsecured portions of The Bank's claim, and the Court accepted this Stipulation.)

Confirmed Amended Plan, p. 2:22-25, 3:1-3, attached to Confirmation Order; Dckt. 79.

> Class 3: Secured claim of One West Bank.
>
> The holder of the claim in this class will receive $115,630.00, together with interest at the rate of 5% per annum, from September 1, 2014, in 240 fully amortized monthly payments of $779.17.
>
> Prior to confirmation of the Amended Plan, the Debtor will make adequate protection payments of $779.17 to the holder of the claim in this class commencing November 1, 2013. Debtor has made these payments from November 1, 2013 to July 10, 2014.
>
> The Trustee will make a total of 36 payments to the holder of the claim in this class from the funds paid to him, and the Debtors will make the remaining 204 payments. The holder of the claim in this class will retain its Deed of Trust against the Real Property.

Id., p. 3:13-24.

Thus, the confirmed plan provides that Creditor's secured claim is $115,630.00, with fully amortized payments of $779.17 a month until paid in full at the end of 20 years.

There does not appear that there can be many complex issues over whether the required payments under the Note, as modified by the confirmed Amended Plan, have been made - $779.17 per month commencing September 1, 2014.

The court notes that the Stipulation filed on August 20, 2014, a month before the Amended Plan is confirmed. The Stipulation provides for a 5.25% interest rate and for the pre-confirmation adequate protection payments to be $908.46, of which $129.29 to be applied to "escrow."

Using the Microsoft Excel Loan Calculator Program, the court computes the monthly payment for a fully amortized repayment of $115,630.00 over 240 months at 5.25% interest to be $779.17. So, while it appears that the interest rate stated in the plan, 5%, the monthly payment amount was computed consistent with the Stipulation at $779.17. No reference is made in the Plan to amounts for "escrow" (but presumably the portion of the loan documents not modified provide for such amounts if that is the asserted default).

August 27, 2020 Hearing

At the hearing, the court addressed with the Parties identifying the real financial issues that exist and how to clearly and accurately identify the payments required and the payments made.

At the hearing, Counsel for the Debtors reported that Creditor now agrees that the payments from the Debtor began the month after the hearing.

The Parties requested a continuance to 10:30 a.m. August 27, 2020, to further address resolution of this matter.

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 Enforce the Terms of Confirmed Chapter 12 Plan filed by Debtor having been presented to the court, the Parties having filed a Joint Status Report (Dckt. 170) advising the court of the settlement of this matter and a written settlement agreement being circulated, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Enforce Terms of Confirmed Amended Chapter 12 plan is continued to 10:30 a.m. on November 5, 2020.

10. 20-90481-E-7 **ROCIO MARTINEZ**
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-24-20 [21]

Final Ruling: No appearance at the October 22, 2020 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 7 Trustee as stated on the Certificate of Service on September 26, 2020. The court computes that 26 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on July 10, 2020.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

11. 19-90783-E-11 UST-1

BRYAN CABINET INSTALLATION, INC.
David Johnston

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7, MOTION TO DISMISS CASE
9-9-20 [58]

CASE DISMISSED: 9/14/20

Final Ruling: No appearance at the October 22, 2020 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert the Case from Chapter 11 to Chapter 7 or Motion to Dismiss the Case having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

12. 19-91004-E-7 BLF-3

GEORGETTE DAGIO
Pro Se

MOTION FOR COMPENSATION FOR LORIS L BAKKEN, TRUSTEES ATTORNEY(S)
9-15-20 [44]

Final Ruling: No appearance at the October 22, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 15, 2020. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Loris L. Bakken, the Attorney ("Applicant") for Michael D. 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 March 24, 2020, through October 22, 2020. The order of the court approving employment of Applicant was entered on March 26, 2020. Dckt. 30. Applicant requests fees in the amount of $2,490.00 and costs in the amount of $45.80.

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 general case administration and sale to Debtor of estate's nonexempt equity in real property. The Estate has $16,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 3.1 hours in this category. Applicant prepared her fee agreement, employment application, and fee application and anticipates attending the hearing on the fee application.

Sale to Debtor of Estate's Nonexempt Equity in Real Property: Applicant spent 5.2 hours in this category. Applicant reviewed Debtor's proposal to purchase the estate's nonexempt interest in real property and discussed it with Trustee; prepared the sale agreement; and prepared and filed the motion to approve the sale. Trustee recovered $16,000.00 in net sale proceeds.

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**
Loris L. Bakken	8.3	$300.00	$2,490.00
	0	$0.00	$0.00
Total Fees for Period of Application			$2,490.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $45.80 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$27.00
Copying	$0.10	$18.80
		$0.00
Total Costs Requested in Application		$45.80

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,490.00 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.

Costs & Expenses

First and Final Costs in the amount of $45.80 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.

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

Fees	$2,490.00
Costs and Expenses	$45.80

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 Loris L. Bakken ("Applicant"), Attorney for Michael D. McGranahan, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Loris L. Bakken is allowed the following fees and expenses as a professional of the Estate:

Loris L. Bakken, Professional employed by the Chapter 7 Trustee

Fees in the amount of $2,490.00
Expenses in the amount of $45.80,

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

13. 19-90224-E-7 **JESUS PANTOJA AND MARIA DE PANTOJA**
Mark Hannon

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-16-20 [51]

Final Ruling: No appearance at the October 22, 2020 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor's, Debtors Attorney, and Chapter 7 Trustee, creditors, and parties requesting special notice as stated on the Certificate of Service on September 18, 2020. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $25.00 due on September 1, 2020.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

14. 20-90439-E-7 **MARIA LOPEZ**
Pro Se

CONTINUED MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
6-22-20 [6]

Final Ruling: No appearance at the October 22, 2020 hearing is required.

Continued from 9/10/20. If the case has not been previously dismissed, to be conducted in conjunction with the hearing, if any, on the Chapter 7 Trustee's Motion to Dismiss this case [Dckt. 29]

Notice of Intent to Close Chapter 7 Case Without Entry of Discharge Due to Failure to File Certification About a Financial Management Course filed 10/6/20 [Dckt 38] [due on or before 10/20/20]

The Bankruptcy Case having been dismissed on October 16, 2020, the Motion for Waiver of the Filing Fee is denied without prejudice.

15. 19-90151-E-11 HSM-2

Y&M RENTAL PROPERTY MANAGEMENT, LLC
David Johnston

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK AND MAROIS, LLP FOR AARON A. AVERY, TRUSTEES ATTORNEY(S)
9-16-20 [110]

Final Ruling: No appearance at the October 22, 2020 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 holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 16, 2020. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

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

Fees are requested for the period August 21, 2019, through August 31, 2020. The order of the court approving employment of Applicant was entered on August 21, 2019. Dckt. 53. Applicant requests fees in the amount of $27,668.00 and costs in the amount of $692.26.

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 general case administration, asset investigation and disposition, litigation, and addressing claims. 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 44.90 hours in this category. Applicant reviewed pleadings and documents on the docket, advised Trustee on the new case, reviewed Trustee's reports, and appeared at Chapter 11 status conferences with Trustee. Applicant also recorded certified copy of bankruptcy petition with county recorder, prepared for and attended hearing on UST's motion to disgorge Debtor's counsel's fees and communicated with Debtor's counsel. Applicant engaged in activities related to monthly operating reports and advised Trustee in connection with seeking fair rental value for Debtor's managing member's occupancy of estate property.

Asset Investigation: Applicant spent 2.0 hours in this category. Applicant reviewed documents; analyzed issues and strategy in connection with disputed lien; and researched Debtor's assets and liabilities.

Asset Disposition: Applicant spent 1.1 hours in this category. Applicant communicated with Trustee and Debtor's counsel in connection with seeking fair rental value for Debtor's managing member's occupancy of estate property.

Litigation: Applicant spent 25.50 hours in this category. Applicant drafted adversary complaint against Wells Fargo, NA; advised and represented Trustee in connection with litigation; communicated with opposing counsel; drafted discovery plan and status report; and appeared at status conference.

Claims: Applicant spent 6.40 hours in this category. Applicant reviewed chain of title documents pertaining to the disputed Wells Fargo claim/lien; reviewed pleadings from pre-petition state court litigation; engaged with long-running communications with Wells Fargo representatives; and advised Trustee on related issues.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
A. Avery	74.9	$340 - $380	$25,516.00
H. Nevins	5.0	$420 - $440	$2,152.00
	0	$0.00	$0.00
Total Fees for Period of Application			$27,668.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $692.26 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.10	$117.40
Certified Copy Fee		$110.00
Travel		$84.00
Delivery Services		$17.86
Court Fees		$363.00
		$0.00
Total Costs Requested in Application		$692.26

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $27,668.00 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

First Interim Costs in the amount of $692.26 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.

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

Fees	$27,668.00
Costs and Expenses	$692.26

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 and Marois, LLP ("Applicant"), Attorney for Irma Edmonds, the Chapter 11 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Hefner, Stark and Marois, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Hefner, Stark and Marois, LLP, Professional employed by the Chapter 11 Trustee
>
> Fees in the amount of $27,668.00
> Expenses in the amount of $692.26,
>
> 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.

16. 13-90664-E-7 GSJ-2 | **THOMAS/SHARON STRAUGHN** **Grace Johnson** | **MOTION TO AVOID LIEN OF WELLS FARGO BANK, NATIONAL ASSOCIATION** **9-10-20 [29]**

Final Ruling: No appearance at the October 22, 2020 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 Chapter 7 Trustee, Creditor, and Office of the United States Trustee on September 10, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Wells Fargo Bank, National Association ("Creditor") against property of the debtor, Thomas Edward Straughn Sr. and Sharon Lane Straughn ("Debtors") commonly known as 317 Gold Creek Drive, Valley Springs, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $437,643.56. Exhibit A, Dckt. 32. An abstract of judgment was recorded with Calaveras County on April 02, 2013, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $175,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $256,524.91 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $5,000.00 on Amended Schedule C. Dckt. 28.

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

ISSUANCE OF A COURT-DRAFTED ORDER

An order (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 Thomas Edward Straughn Sr. and Sharon Lane Straughn ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Wells Fargo Bank, National Association, California Superior Court for Alameda County Case No. RG09464830, recorded on April 2, 2013, Document No. 2013-4937, with the Calaveras County Recorder, against the real property commonly known as 317 Gold Creek Drive, Valley Springs, 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.