UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

October 27, 2022 at 10:30 a.m.

---

1. 18-90029-E-11 FWP-24 | **JEFFERY ARAMBEL** Pro Se | **MOTION TO USE CASH COLLATERAL** 10-6-22 [1753]

Items 1 thru 3;
and related Item 4

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on October 6, 2022. By the court's calculation, 21 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

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

The Motion for Authority to Use Cash Collateral is granted.

Focus Management Group USA, Inc. ("Plan Administrator") moves for an order approving the use of cash collateral pursuant to stipulation with SBN V AG I LLC ("Summit"). Plan Administrator requests the use of cash collateral to operate the Reorganizing Debtor's business and pay Plan Expenses.

Plan Administrator proposes to use cash collateral for the following expenses:

> Plan Expenses in accordance with the Stipulated Budget such as insurance and professional fees for the time period of October 1, 2022, through December 31, 2022.
>
> A windup period if the estate is fully administered at that time and as may be extended by Summit's further stipulation.

The use of cash collateral is authorize for the expenses as set forth in the Budget filed as Exhibit A (Dckt. 1755), filed in support of the Motion and incorporated herein by this reference.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless–
>
> (A) such sale or such lease is consistent with such policy; or
>
> (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease–
>
> (I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
>
> (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

> (b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

The Plan Administrator has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for reorganizing Debtor's business and paying Plan expenses. The Motion is granted, and the Plan Administrator is authorized to use the cash collateral for the period October 1, 2022, through December 31, 2022, including required adequate protection payments. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by The Plan Administrator. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by the Plan Administrator.

Counsel for the Plan Administrator shall prepare and lodge with the court a proposed order consistent with this ruling. The Cash Collateral Budget; Exhibit A, Dckt. 1755; shall be attached to the proposed order as an Addendum and incorporated therein.

2. 18-90029-E-11 CAE-1 — JEFFERY ARAMBEL — Pro Se — CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION — 1-17-18 [1]

Debtor's Atty: Pro Se

Notes:
Continued from 9/8/22 to be heard in conjunction with other matters on calendar.

Notice of Plan Administrator's Post-Confirmation Monthly Compensation Report for Payment of Professional Fees for Services During the Month of August 2022 filed 9/15/22 [Dckt 1751]

Notice of Plan Administrator's Post-Confirmation Monthly Compensation Report for Payment of Professional Fees for Services During the Month of September 2022 filed 10/17/22 [Dckt 1758]

The Status Conference is continued to xxxxxxx

OCTOBER 27, 2022 STATUS CONFERENCE

On October 21, 2022, Focus Management Group, USA, the Chapter 11 Plan Administrator, filed an updated Post-Confirmation Status Report. Dckt. 1767. The Plan Administrator reports that most of the assets of the Plan Estate have been abandoned. The exceptions are described as to include:

(i) Substantial tax reserve funds and potential tax refunds,

(ii) the Westly Lot,

(iii) the 1/3 interest in the Oakdale Development Property,

(iv) the Estate's interest in the remaining property held by Filbin Land & Cattle Company,

(v) the Estate's interest in a 5 acre property on Laird Road that the Estate owns a partial interest in with the remainder owned by Mr. Arambel's sister,

(vi) certain crop retains, and

(vii) certain other assets.

In addition, the Plan Administrator continues to assert the Plan Estate's rights to property in the Filbin Land & Cattle Company Chapter 11 Plan Estate.

At the Status Conference, **xxxxxxx**

3.	**18-90029-E-11** **FWP-13**	**JEFFERY ARAMBEL** **Pro Se**	**CONTINUED MOTION TO ABANDON** **4-8-21 [1410]**

Final Ruling: No appearance at the October 27, 2022 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Abandon 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 Abandon is continued to 10:30 a.m. on December 15, 2022.

REVIEW OF MOTION

The Motion filed by Focus Management Group USA, Inc. ("the Plan Administrator") requests that the court authorize the Plan Administrator to abandon the following properties commonly known as:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property
8. the Murphy Ranch 756,
9. the Murphy 240 Rangeland,

(the "Properties").

The Declaration of Juanita Schwartzkopf has been filed in support of the Motion. Dckt. 1412. Ms. Schwartzkopf provides testimony that while the Properties have substantial market value, they are of

inconsequential value as there is no realizable equity because the debt secured by the Properties exceeds the value of the real properties. *Id.*, ¶ 24. Moreover, according to the Plan Administrator, the properties are burdensome because the Estate does not have the funds to continue paying the costs of carrying the Properties including insurance, real property taxes, and other charges or the costs of administration of such properties. *Id.*, ¶36.

Ms. Schwartzkopf testifies that the Properties have been actively marketed by the Reorganizing Debtor and by the Plan Administrator for over 16 months during the Negotiated Period (Plan provision during which Debtor was to perform certain duties regarding plan assets) and for years prior to the Plan confirmation but that unfortunately they were not sold. *Id.*, ¶18. The Plan Administrator being unable to obtain offers in an amount that was sufficient to pay the secured claims on and tax liabilities related to the Properties. *Id.* Additionally, the Plan Administrator explains that SBN V Ag I LLC ("Summit") as one of the primary sources of funds for the post-confirmation administration of the Estate has indicated they will no longer consent to further use of their cash collateral for pursuing short sales of its collateral. *Id.,* ¶ 37. Ms. Schwartzkopf also testifies that Summit has informed the Plan Administrator that it intends to proceed promptly with non-judicial foreclosure of the Properties. *Id.*, ¶35.

Creditor's Opposition

Creditor with secured claim, American AgCredit does not object in its entirety to the abandonment of the Properties, instead Creditor American AgCredit objects specifically as to the timing of the abandonment of the Murphy Ranch Property. Dckt. 14216. American AgCredit explains that for the last five months they have been engaged in the Lot Line Adjustment ("Adjustment") process with the County of Stanislaus related to the Murphy Ranch 756 and the Murphy 240 Rangeland. Thus, American AgCredit requests that the abandonment not occur until the County of Stanislaus approves the adjustment, the adjustment is fully recorded and the appropriate quitclaim deeds by and between the Plan Administrator and American AgCredit are approved by the parties' title companies and successfully recorded..

Plan Administrator's Reply

The Plan Administrator filed a Reply indicating they are amenable to deferring the effective date of the abandonment of the Murphy Ranches for a reasonable time during which the Adjustment may be and should be completed; but asks the court for the authority to effectuate the abandonment of the Murphy Ranches at such future time as the Plan Administrator determines in its business judgment that the abandonment should be effective, even if the Adjustment has not been fully completed. Dckt. 1434..

The Plan Administrator believes this a reasonable request on the basis that the Plan Administrator seeks to avoid capital gains taxes in the event that Summit proceeds with foreclosure remedies; the Plan Administrator will continue to work diligently with Creditor to get the Adjustment resolved; an d even after abandonment, the Adjustment process mat still continue after the abandonment where Debtor has pledged to continue working with Creditor to complete the Adjustment process.

SBN V Ag I LLC ("Summit") Response

Summit filed a Response in support of the Motion on May 7, 2021 stating that they support the abandonment of the Properties and the Plan Administrator's proposal of temporary deferral of the Murphy Properties to a later date to as to allow for the Adjustment process but they continue to reserve their right to commence non-judicial foreclosure proceedings and request that any order approving the abandonment

make it clear that any delay in abandonment is without prejudice to Summit's rights to provide notice of relief from stay and commence its foreclosure rights and remedies. Dckt. 1438.

DISCUSSION

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). 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 court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Plan Administrator to immediately abandon the following properties:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property

Bifurcated Abandonment of the Murphy Ranch Properties

With respect to the Murphy Ranch 756 and the Murphy 240 Rangeland, completion of the lot line adjustment to correct for the Debtor having recorded Certificates of Compliance, without Creditor's consent that negatively impact its collateral, which Creditor has now foreclosed on.

Rather than having a vague "the Plan Administrator can abandon at some point in the future, and then potentially having emergency motions to modify that authorization," the court bifurcates the orders on the relief requested and issues a final order for abandonment of seven properties above, and continues the hearing on the request to abandon the Murphy Ranch 756 and the Murphy 240 Rangeland properties to 10:30 a.m. on August 12, 2021.

In addition to helping the parties avoid "abandonment anxiety," the properties being in the Plan Estate, this federal court has jurisdiction to address the issue of the adjustments by Debtor to the property that is currently in the Plan Estate through an adversary proceeding that Creditor may believe necessary with third-parties (not the Plan Administrator) to correctly identify the property foreclosed on through these bankruptcy proceedings.

August 12, 2021 Hearing

The Plan Administrator filed an updated Status Report on August 10, 2021, Dckt. 1498, concerning this Motion. The Plan Administrator advises the court that additional time is needed and a continuance of this hearing is requested to late September 2021. A non-judicial foreclosure sale of the Murphy Ranches could be conducted in mid-October 2021, and the Plan Administrator wants to insure that the abandonment occurs before that time.

September 30, 2021 Hearing

No further documents have been filed in this Contested Matter as of the court's September 28, 2021 review of the Docket. At the hearing, counsel for the Plan Administrator reported that the lot line adjustments have not yet been completed, and the Parties agreed to a further continuance of this hearing.

October 21, 2021 Hearing

At the hearing, the Parties requested a continuance to allow for all of the preliminary steps to be taken so that the abandonment may occur.

November 16, 2021 Status Report

The Plan Administrator filed an updated Status Report on November 16, 2021, reporting that the abandonment cannot be completed at this time and a further continuance was necessary. Dckt. 1585.

December 16, 2021 Hearing

Attorneys for the Plan Administrator filed a Status Report requesting a further continuance as further negotiations were conducted.

March 10, 2022 Hearing

At the hearing counsel for the Plan Administrator reported that all documents have been received for the lot line adjustment and it may now be completed. There still remain some quit claim deeds required, but the parties are waiting on information from the County as to what, if any, quit claims will be required.

April 18, 2022 Status Report

On April 18, 2022, the Plan Administrator filed a status report requesting the Abandonment Motion be further continued to May 26, 2022. Dckt. 1672. The Plan Administrator states there are final steps needed to complete the lot line adjustment while preserving the potential abandonment prior to the foreclosure sale.

CONTINUANCE OF MAY 26, 2022 HEARING

The Plan Administrator filed a Status Report requesting that the hearing be continued to June 30, 2022. Dckt. 1692. The proposed lot line adjustment is to be presented to the Board of Supervisors on May 24, 2022, and the parties continue in their significant good faith efforts to conclude this matter.

The court continues the hearing, first as requested by the Plan Administrator and American AgCredit (Status Report, Dckt. 1690); and second, the judge to whom this case is assigned not being available (due to disrupted travel plans by Midwestern storms) to conduct a hearing on May 26, 2022.

CONTINUANCE OF JUNE 30, 2022 HEARING

Focus Management Group, the Plan Administrator, and American AgCredit have filed Updated Status Reports (Dckts. 1707, 1709) information the court that the parties are now working of the deeds for the lot line adjustments that have been approved, and a further continuance is requested.

The Hearing is continued to 10:30 a.m. on August 4, 2022.

July 29, 2022 Status Report

On July 29, 2022, American AgCredit filed a Status Report stating documents for the lot-line are currently being circulated and signed for recording but the process has not concluded. Dckt. 1723. American requests the matter be continued for 30-45 days for the process to continue.

August 4, 2022 Hearing

As of the court's review of the Docket, the Plan Administrator had not filed a concurrence in the request for a continuance, so the court posted this as a tentative ruling. Though the court could assume that the Plan Administrator concurs, there may be some administrative "tweaks" that the Parties want to address at the hearing.

At the hearing, the Parties agreed that this should be further continued in light of the advances being made on getting the issues resolved with the County.

September 8, 2022 Hearing

At the hearing, counsel for the Plan Administrator reported that the lot line adjustments were recorded on Tuesday, but recorded copies have not been received.

The other Parties appearing agreed to a continuance to confirm that everything has been correctly wrapped up.

OCTOBER 17, 2022 HEARING

On October 21, 2022, the Plan Administrator filed an updated Status Report. Dckt. 1764. The Plan Administrator reports that it has been informed that there continue to be problems with the title company, and additional time has been requested. Additionally, that the Plan Administrator has received an offer for the Murphy Ranches which is under review.

The Plan Administrator requests that the hearing be continued to 10:30 a.m. on December 15, 2022, as to the Murphy Ranches.

On October 21, 2022, American AgCredit filed its updated Status Report. Dckt. 1770. It reports that the work on addressing the title issues continue, and a continuance of 60 days is requested.

The Murphy Ranches being the remaining properties at issue, the court continues the hearing to 10:30 a.m. on December 15, 2022.

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 Abandon filed by Focus Management Group USA, Inc., the Plan Administrator, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Abandon is continued to **10:30 a.m. on December 15, 2022.**

4.	**18-90030-E-11** **FWP-2**	**FILBIN LAND & CATTLE CO., INC.** **Michael St. James**	**CONTINUED STATUS CONFERENCE RE: MOTION FOR ENTRY OF ORDER IN AID OF EXECUTION OF THE PLAN** **12-9-21 [522]**

Debtor's Atty: Michael St. James; Peter L. Fear

Notes:
Continued from 8/4/22. The Plan Administrator requested a continuance to allow for further productive steps in putting in place a global settlement.

The hearing on the Motion for Entry of Order in Aid of Execution of Plan is
xxxxxxx

OCTOBER 22, 2022 HEARING

On October 20, 2022, Focus Management Group, USA, the Plan Administrator in the Arambel Case, filed an updated Status Report. Dckt. 548. The Plan Administrator reports that while the parties have negotiated possible resolution terms, no settlement has been finalized. The reasons for being unable to finalize a settlement are stated to include:

> (1) the IRS inadvertently sent tax refund checks for the Arambel Plan Estate to Mr. Arambel, but Mr. Arambel has not turned over those monies of the Arambel Plan Estate to the Plan Administrator;
>
> (2) Summit has been focused on a sale of the Business Park property that was abandoned to the Debtor in May 2021, but that sale failed in September 2022; and
>
> (3) Summit and Mr. Arambel are continue in their negotiations which may obviate the need for a sale of the Business Park.

The Plan Administrator requests a further continuance.

At the hearing, **xxxxxxx**

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

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

The Motion for Entry of Order in Aid of Execution of Plan filed by Focus Management Group, USA, Inc., the Arambel Chapter 11 Plan Administrator having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxxxx** and xxxxxxx

5. **20-90544-E-7** **MICHELLE PIMENTEL-MONTEZ** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF DOWNEY BRAND LLP FOR JAMIE P. DREHER, PLAINTIFFS ATTORNEY(S)**
20-9012 **DB-4**

LIONUDAKIS ET AL V. PIMENTEL-MONTEZ

9-12-22 [100]

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's Attorney and Defendant's Attorney on September 9, 2022. By the court's calculation, 48 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 Prevailing Party Fees is granted, with the court not allowing a portion of the requested fees and expenses.

Phillip Lionudakis, Lionudakis Firewood, Inc., and Lionudakis Orchard Removal, Inc. ("Plaintiff") filed this Motion seeking reasonable attorney's fees and costs pursuant to Federal Rules of Civil Procedure 54(d) as incorporated in Federal Rules of Bankruptcy Procedure 7054 for fees incurred by Plaintiff in the following cases: *In re Michelle Pimentel-Montez*, Case No. 20-90544, *Lionudakis, et al., v. Michelle A. Pimentel-Montez*, Adv. No. 20-09012, and *In re Michelle A. Pimentel-Montez*, Case No. 21-90585. Plaintiff seeks attorney's fees in the amount of $111,837.75 and costs in the amount of $6,997.43.

Review of Minimum Pleading Requirements for a Motion

Federal Rule of Civil Procedure 7(b) states,

> "(b) Motions and Other Papers
>
> (1) In General. A request for a court order must be made by motion. The motion must:
>
> (A) be in writing unless made during a hearing or trial;
>
> (B) **state with particularity the grounds for seeking the order**; and
>
> (C) state the relief sought."

FED. R. CIV. P. 7(b) (emphasis added). The same "state with particularity" requirement is included in Federal Rule of Bankruptcy Procedure 9013 for all motions in the bankruptcy case itself.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." The standard for "particularity" has been determined to mean "reasonable specification."

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Grounds Stated in Motion

Movant has not provided any grounds, merely unsupported conclusions of law. The insufficient statements made by Movant are:

1. Planitiff seeks an award of prevailing party fees not only for this Adversary Proceeding, but fees relating to: (1) In re Michelle Pimentel-Montez, Case No. 90544, and In re Micelle A. Pimentel-Montez, Case No. 21-90585.

2. The award of reasonable attorney's fees as costs is appropriate pursuant to California Code of Civil Procedure sections 1032 and 1033.5, and California Welfare and Institutions Code section 15657.5(a).

3. Common Law a prevailing party may be awarded attorney's fees in accordance with applicable state law if the state law governs the substantive issues raised in the pleadings. *In re Baroff*, 105 F.3d 439, 441 (9th Cir. 1997).

4. California Welfare and Institutions Code section 15657.5(a) provides that "[w]here it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, in addition to compensatory damages and all other remedies otherwise provided by law, the court shall award to the plaintiff reasonable attorney's fees and costs."

Those "grounds" are merely a conclusion of law by Movant. Presumably, Movant believed that the court would make those conclusions, but the "grounds" cannot merely state the anticipated conclusions.

Movant is reminded that "[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions." LOCAL BANKR. R. 1001-1(g) (emphasis added).

The Motion states that grounds are found in:

A. Memorandum of Points and Authorities; and
B. Declaration of Annie R. Marcroft.

The court generally declines an opportunity to do associate attorney work and assemble motions for parties. It may be that Movant believes that the Points and Authorities is "really" the motion and should be substituted by the court for the Motion. That belief fails for multiple reasons. One is that under Local Bankruptcy Rule 9014-1(d)(4), a motion and a memorandum of points and authorities are separate documents, even though they may be filed as one document when not exceeding six pages. *See* Local Bankruptcy Rule 9014-(d)(4). The court has not waived that Local Rule for Movant.

STATUTORY BASIS FOR ATTORNEY'S FEES

The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the Unites States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on 14 days' notice; on motion served within seven days thereafter, the action of the clerk may be reviewed by the court. *Fed. R. Bank P.* 7054(b)(1)

Statutory Basis - Welfare Institutions Code § 15657.5(a)

California Welfare and Institutions Code § 15657.5(a) addresses substantive state law making reasonable attorney's fees allowable for elder financial abuse: provisions reciprocal, stating (emphasis added):

> (a) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, in addition to all other remedies otherwise provided by law, the court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

Section 15610.30 defines financial abuse of an elder or dependent when a person or entity either (**emphasis added**):

> (1) Takes, secretes, appropriates, **obtains,** or retains real or **personal property of an elder** or dependent adult for a wrongful use or **with intent to defraud**, or both.
>
> (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
>
> (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.

California Welfare and Institutions Code § 15610.30(a).

In the case at hand, Plaintiff established Defendant-Debtor violated 11 U.S.C. § § 523(a)(2), (4), and (6) when incurring a $200,000.00 debt owed to Plaintiff. All indicate Defendant-Debtor retained personal property of the elder Plaintiff for both a wrongful use and with intent to defraud. Therefore, Plaintiff has a statutory right to attorney's fees pursuant to California Welfare and Institutions Code § 15657.5(a).

Computation of Prevailing Party Attorney's Fees

In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), amended, 108 F.3d 981 (9th Cir. 1997). Additionally, California courts use the lodestar method. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1133-36 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 48-49 (1977).

"The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). An attorney's fee award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

The lodestar method may be adjusted based on factors including "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award." *Ketchem*, 24 Cal. 4th at 1132.

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

A trial court can reduce attorney's fees when a plaintiff achieves limited success. *Save Our Uniquely Rural Cmty. Env't v. Cty. of San Bernardino*, 235 Cal. App. 4th 1179, 1185 (2015). "Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee." *Hensley v. Eckerhart*, 461 U.S. at 440. Where a plaintiff achieved limited success, the district court awards fees that are reasonable to the results obtained. *Id*. The *Hensley* court adopted the following which California courts follow:

> Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised. But where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained.

Hensley v. Eckerhart, 461 U.S. 424, 440, 103 S. Ct. 1933, 1943 (1983); *See also Chavez v. City of Los Angeles*, 47 Cal. 4th 970, 989 (2010) ("If a plaintiff has prevailed on some claims but not others, fees are not awarded for time spent litigating claims unrelated to the successful claims, and the trial court 'should award only that amount of fees that is reasonable in relation to the results obtained.'" (quoting *Hensley* 461 U.S. at 440)). Therefore, if plaintiff fails on one claim that is completely distinct from any claims plaintiff prevailed on, the hours expended should be excluded from the final fees awarded. Additionally, if plaintiff achieved limited success on a claim, the district court shall award only a reasonable amount of fees for the time expended.

REVIEW OF TASK BILLING ANALYSIS

Upon review of Plaintiff's Amended Memorandum of Points and Authorities and supporting Exhibits, Plaintiff is requesting fees for the following categories:

> Fees incurred in state court litigation.....$3,563.00
>
> Fees incurred in the Defendant-Debtor's
> Chapter 7 proceedings
> (not including adversary proceedings).....$6,589.00
>
> Fees incurred in
> this Adversary Proceeding.....$91,477.25
>
> Fees incurred in connection with the
> Defendant-Debtor's Chapter 13 proceeding.....$10,208.50
>
> **Total**.....**$111,837.75**

Amended Memorandum, Dckt. 106 at p. 15.

<u>Fees Directly For this Adversary Proceeding - Allowed</u>

California Welfare and Institutions Code § 15657.5(a) providing that the prevailing party shall be reasonable awarded attorneys' fees , the court determines that the requested $91,477.25 in attorneys' fees is reasonable, and were necessary for litigation in this Adversary Proceeding. This involved very complex evidentiary issues, international transfers of money, crypto currency accounts, and the transfers of more than $2,000,000 in total (Plaintiff being the only person from whom Defendant-Debtor obtained monies to "assist Keanu Reeves in obtaining his release from the Illuminati" who chose to file a complaint for nondischargeability).

Additional Attorney's Fees Outside of the Adversary Proceeding

Approximately $20,000 the legal fees sought to be awarded as prevailing party attorney's fees in this Adversary Proceeding are for litigation outside of this Adversary Proceeding. In fact, some fees requested do not even arise from matters in this court, as evidenced by Plaintiff's request for fees arising from state court litigation.

The Motion and authorities do not state a basis for this court awarding prevailing party attorney's fees in this Adversary Proceeding for attorney's fees not for this Adversary Proceeding. Plaintiff's Motion in many respects mimics that of a trustee's counsel, who request fees for all services provided for the bankruptcy case under 11 U.S.C. § 330. Prevailing party fees are not the same. As detailed above, prevailing party fees are that of which an attorney reasonably expended on *litigation*, not the entirety of the bankruptcy case and associated matters.

California Welfare and Institutions Code § 15657.5(a) states that "in addition to compensatory damages," the court shall award the plaintiff reasonable attorney's fees and costs. For this Adversary Proceeding, the reasonable attorney's fees and costs that are not compensatory damages are those for litigating this Adversary Proceeding. The other attorney's fees and costs are in the nature of "compensatory damages" in the nature of a tort of another.

For fees as "costs," for which Plaintiff has cited the court to California Code of Civil Procedure § 1032(b), provides that:

> (b) Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

As opposed to the Tort of Another Doctrine by which a plaintiff incurs substantive damages to be stated in the compliant against a defendant, which arise from litigation against a third-party due to the tort of the defendant (See 7 Witkin Cal. Proc 6th Judgm § 154 (2022)), the present situation are attorney's fees incurred by Plaintiff in having to directly litigate due to having to litigate with Defendant-Debtor.

The Ninth Circuit Court of Appeals addressed the scope of attorney's fees included in Federal Rule of Civil Procedure 54 in *Barthologmew v. Watson*, 665 F.2d 910 (9th Cir. 1982), can include prior administrative or state court proceedings for which there was not a determination of attorney's fees. The focus is on whether such related to the prosecution of the matter before the federal court.

Fees Relating to the State Court Action - Allowed

Here, the State Court Action was commenced on December 31, 2019, asserting the claim of elder abuse. Exhibit H, Complaint, ¶ 20; Dckt. 108. Defendant-Debtor commenced the bankruptcy case on August 10, 2020, which then automatically stayed the State Court Action. *Id*., ¶ 21.

The fees relating to the State Court Action, which are stated on Exhibit A (Dckt. 108) all relate to the prosecution of the Elder Abuse claim which ultimately was litigated in this court as part of the determination of such claim and that it was nondischargeable.

The fees relating to the State Court Action totaling $3,563.00 are allowed Plaintiff.

Fees Relating to the State Court Action - Allowed, Except for $709.50

The fees relating to the Chapter 7 Bankruptcy Case, 20-90544, filed by Defendant-Debtor, total $6,589.00. Exhibit C; Dckt. 108. These billings are adequately explained, except two, and all include basic legal work necessary in prosecuting an Elder Abuse Action in light of a Chapter 7 bankruptcy case being filed.

However, the last two entries by Paul H. Tracy for December 21st and December 22nd 2020, which total $709.50 only state they were for "Pimentel-ontez, C.P.A." Exhibit C; Dckt. 108 at 15. Though small in dollar amount, the court cannot conclude that they adequately are part of the State Court Action or Adversary Proceeding elder abuse claim prosecution.

The fees relating to the Chapter 7 Bankruptcy Case filed by Defendant-Debtor totaling $5,897.50 are allowed Plaintiff, with $709.50 of the requested fees not allowed.

Fees Relating to Chapter 13 Plan Litigation - Not Allowed

From the Chapter 13 Bankruptcy Case (21-90585) filed by Defendant-Debtor, Plaintiff seeks allowance of $10,208.50 in fees incurred in Opposing the Motion to Confirm Defendant-Debtor's Amended Chapter 13 Plan.

Looking at the Opposition to Defendant-Debtor Motion to Confirm Amended Plan, Plaintiff's Opposition provides a long narrative of what Plaintiff was litigating in the Adversary Proceeding and the original State Court Action. In the Opposition, Plaintiff argues against what monies would be made available to pay claims, but Plaintiff is not litigating issues relating to or addressing the prosecution of the elder abuse claim. Confirmation of the Chapter 13 Plan would not prevent a determination of the elder abuse claim and that it was nondischargeable, haunting Defendant-Debtor well after any Chapter 13 Plan was confirmed.

In the Amended Declaration of Annie R. Marcroft, Esq., Counsel for Plaintiff, she provides the following testimony concerning Defendant-Debtor's Chapter 13 Plan:

> 3. [B]ecause this was all the available evidence and because Plaintiffs needed to prove fraud and embezzlement to succeed in the adversary complaint, I spent significant time tracing the money obtained from Plaintiffs and the other $1.5 million to determine what happened to it. The economics of the case prevented Plaintiffs from retaining a forensic accountant. Through this work I was able to show the flow of $1.7 million into the Debtor's possession, out through various fraudulent checks

> and wire transfers, and back into the Debtor's cryptocurrency accounts where the trail ends in her possession. I also uncovered the numerous falsities and inconsistencies in the Debtor's chapter 7 and chapter 13 petitions, including secret bank accounts, hidden income, and undisclosed pre and post-petition transfers. In regard to Plaintiffs' objection to the Debtor's chapter 13 plan, I was hopeful that by submitting this evidence and establishing a strong case that the Debtor filed her chapter 13 petition in bad-faith, that she would be incentivized to settle before trial on the adversary claim. Though the Debtor made no offer to settle in advance of trial, the work I did in connection with the objection to the Debtor's chapter 13 plan was essential to Plaintiff's success at trial.

Amd. Dec., ¶ 3; Dckt. 107.

While counsel for Plaintiff hoped that a confirmation fight might induce Defendant-Debtor to settle, such does not make it part of the Adversary Proceeding/Elder Abuse litigation.

In substance, Plaintiff was derailing a Chapter 13 Plan that could possibly delay enforcing the nondischargeable elder abuse judgment, but was not part of or relate to the prosecution of the elder abuse judgment.

California Welfare & Institutions Code § 15657.5 provides for attorneys' fees for litigation connected to finding that a defendant is liable for financial abuse, not for legal fees relating to offshoots relating to financial abuse.

The Opposition to the Motion to Confirm Amended Chapter 13 Plan litigation was not litigation determining liability for elder financial abuse. However, Plaintiff was able to use much of the investigation and legal work (for which Plaintiff is allowed the legal fees in this Adversary Proceeding) from the elder abuse claim litigation. Though some of the legal work was applicable to the Objection to Confirmation litigation, the court determines that such use in the Objection to Confirmation litigation was a minor byproduct use and no apportionment of the extensive legal work and research of the $91,477.25 allowed for the Adversary Proceeding is appropriate.

The court does not allow the requested $10,208.50 in legal fees relating to the Motion to Confirm Amended Chapter 13 Plan and Plaintiff's Opposition thereto.

Allowance of Fees

The court allows Plaintiff $100,937.75 in legal fees, and does not allow any amounts in excess thereof as stated above.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Prevailing Party Fees filed by Phillip Lionudakis, Lionudakis Firewood, Inc., and Lionudakis Orchard Removal, Inc. ("Plaintiff"), in this Adversary Proceeding and prevailing party on appeal having been presented to the court, to California Welfare and Institutions Code § 15657.5(a) providing a statutory basis for allowance of attorney's fees, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing.
>
> **IT IS ORDERED** that Plaintiff, is awarded prevailing party attorney's fees against Michelle A. Pimentel-Montez, the Defendant-Debtor, in the amount of $100,937.75. Costs shall be allowed pursuant to the separate costs bill filed by Plaintiff.
>
> The $100,937.75 in legal fees and any costs awarded shall be enforced as part of the Judgment granted Plaintiff against Defendant-Debtor in this Adversary Proceeding.

6. 10-90281-E-7 21-9005 LORRAINE/GARY ERWIN

MOTION FOR ENTRY OF DEFAULT JUDGMENT
10-5-22 [69]

ERWIN ET AL V. U.S. BANK, NATIONAL ASSOCIATION ET AL

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).

NOTICE AS A MOTION UNDER LBR 9014–1(f)(1) OR (f)(2) IS UNCLEAR

Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a hearing will be held on Plaintiff-Debtors' Motion for Default Judgment, and the hearing will be based upon submitted pleadings as well as argument at the hearing. Based upon no indication that written opposition is required, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

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's Attorney, and Office of the United States Trustee on October 5, 2022. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion for Entry of Default Judgment is granted.

Lorraine Dennise Erwin and Gary Richard Erwin ("Plaintiff-Debtor") filed the instant Motion for Default Judgment on October 5, 2022. Dckt. 69. Plaintiff-Debtor seeks an entry of default judgment

against U.S. Bank, N.A. and Saxon Mortgage Services, Inc. ("Defendants") in the instant Adversary Proceeding No. 21-09005.

The instant Adversary Proceeding was commenced on May 24, 2021. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on May 24, 2021. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 13.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on August 13, 2021. Dckt. 18.

NO DOCKET CONTROL NUMBER

Movant is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. The court will consider the motion, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

REVIEW OF COMPLAINT

Plaintiff-Debtor filed a complaint for injunctive relief against Defendant. Dckt. 1 The Complaint contains the following general allegations as summarized by the court:

A. Plaintiff-Debtor Lorraine Dennise Erwin and Gary Richard Erwin are joint legal owners of subject property: 1320 Oak Leaf Cir. Oakdale, CA 95361 ("The Property"). Id. at ¶ 1, 2.

B. Plaintiff-Debtor purchased the Property and obtained fee simple title by a grant dated October 27, 2004. Id. at ¶ 12.

C. One of the purchase money mortgages held by Defendants U.S. Bank, N.A. and U.S. Bancorp, serviced formerly by Defendant Saxon, is a second mortgage to Plaintiff-Debtor to secure the Property. Id. at ¶ 13.

D. The obligation is evidenced by a Note and secured by Deed of Trust. Id.

E. The Deed of Trust exists on official records of the government as a recorded lien (the Lien) and cloud of title on the Property. Id.

F. The Lien presents a current and permanent cloud of title, reducing the value and utility of the Property. Id. at ¶ 14.

G. Plaintiff-Debtor's filed a Chapter 13 bankruptcy on January 28, 2010. Id. at ¶ 16.

H. Defendant Saxon filed a Proof of Claim on behalf of Defendant U.S. Bank, N.A. as their registered agent and servicer. Id.

I. The Chapter 13 filing was converted to a Chapter 7 case and the Plaintiff-Debtor was discharged. Id.

J. Plaintiff-Debtor received a personal injury settlement to which the court re-opened the bankruptcy proceeding to disburse the new assets to creditors. Id.

K. Defendants U.S. Bank, N.A. and U.S. Bancorp cannot locate the corporate records and accounts relating to the Property and Lien. Id. at ¶ 20.

L. Defendant Saxon went out of business, so communication with them has also been unsuccessful. Id. at ¶ 19.

First Claim for Relief - Quiet Title

Plaintiff-Debtor alleges the following for the First Cause of Action:

A. Cause of Action for Quiet Title - Plaintiff-Debtors seek quiet title by adverse possession regarding the Lien on the Property as of the date of filing the complaint. Complaint, Dckt. 1 at ¶ 23.

As analyzed in the court's prior denial of Plaintiff-Debtor's first motion for default judgment, adverse possession is not the proper legal theory to a deed of trust beneficiary or mortgagee prior to that beneficiary or mortgagee having the right to be in possession of the property claiming quiet title. Civil Minutes, p. 5-8,

In the current Motion, Plaintiff-Debtor does not mention adverse possession. Additionally, at the hearing on the prior motion for default judgment, Counsel for Plaintiff-Debtor seemed unaware of this legal argument. It appears to the court that the mention of adverse possession in Plaintiff-Debtor's Complaint was an inadvertent error.

Federal Rules of Civil Procedure Rule 8(a)(2) as incorporated into Federal Rules of Bankruptcy Procedure7008 does not require plaintiffs to state in their complaint any specific legal theories justifying the relief sought. *Skinner v. Switzer*, 562 U.S. 521, 530 (2011). Thus, mere failure to indicate the exact law upon which the claim is based is not fatal to granting later relief upon that law. *Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014). Therefore, although Plaintiff-Debtor inadvertently stated their legal grounds for relief was adverse possession, this is not dispositive of Plaintiff-Debtor's Motion.

Prayer

Plaintiff-Debtor requests the following relief in the Complaint's prayer:

A. Plaintiff-Debtor's title in and to the Property be quieted, Plaintiff-Debtors are the owners in fee simple, Defendants have no interest in the property adverse to the Plaintiff-Debtors, including the Lien.

REVIEW OF MOTION

Grounds for Entry of Default Judgment

For Plaintiff-Debtor's current request fir entry of default judgment, Plaintiff-Debtor states the following grounds:

1. New evidence shows the debt at issue was cancelled:

    a. At the Status Conference on August 4, 2022, counsel for Defendant Saxon produced a 2011 Form 1099-C entitled "Cancellation of Debt." Declaration, Dckt. 71; Exhibit A, Dckt. 72.

2. Defendant Saxon should have recorded a reconveyance, pursuant to California Civil Code § 2941 however, failed to do so.

3. Quiet title under California Code of Civil Procedure § 760.020 is appropriate because the debt was cancelled.

APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *Cashco Fin. Servs. v. McGee (In re McGee)*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.*

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, because the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors that the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471–72 (citing 6 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.)); *Kubick v. FDIC (In re Kubick)*, 171 B.R. 658, 661–62 (B.A.P. 9th Cir. 1994).

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff-Debtor's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations

as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff-Debtor did not offer evidence in support of the allegations. *See id.* at 775.

DISCUSSION

Reconveyance

Here, it appears that Plaintiff-Debtor was entitled to full reconveyance of the Deed of Trust on the Property.

California Civil Code § 2941(b)(1) imposes a statutory obligation on the beneficiary under the deed of trust (Defendants in this Adversary Proceeding) to reconvey the deed of trust when the obligation secured has been satisfied. "As a matter of California law, once an obligation no longer exists to be secured by the lien, the lien is void. A trustor or mortgagor, such as the Plaintiff, who gave the lien to secure an obligation which no longer exists, is entitled to a certificate of discharge, the mortgage cancelled or satisfied as of record, and the deed of trust reconveyed." *Martin v. CitiFinancial Servs.* (*In re Martin*), 491 B.R. 122, 127 (Bankr. E.D. Cal. 2013).

Upon review of the 1099-C form, the underlying debt was cancelled on March 1, 2011. 1099-C form, Exhibit A, Dckt. 72. The underlying debt having been cancelled, the obligation secured by the Deed of Trust no longer exists to be secured by the lien. Therefore, the lien is void.

California Civil Code § 2941(b)(1) requires that within thirty days of the obligation secured by a deed of trust having been satisfied, the beneficiary shall deliver to the trustee under the deed of trust an executed request for reconveyance and supporting documents. The trustee under the deed of trust then has twenty-one days from receipt of the request for reconveyance to reconvey the deed of trust. CAL. CIV. CODE § 2941(b)(1)(A). The trustee under the deed of trust, not the beneficiary, is responsible for providing a copy of the reconveyance to the owner of the property—here, Plaintiff-Debtor. CAL. CIV. CODE § 2941(b)(1)(B)(ii).

Here, the debt was cancelled on March 1, 2011. To date, Defendant has not reconveyed the Deed of Trust as required by § 2941 within thirty days after the obligation has been satisfied (here being after the completion of the Plan).

The Motion is granted.

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 Entry of Default Judgment filed by Lorraine Dennise Erwin and Gary Richard Erwin ("Plaintiff-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 for Entry of Default Judgment is granted. The court shall enter judgment determining that the deed of trust, and any interest, lien or encumbrance pursuant thereto, held by U.S. Bank, National Association ("Defendant") against the real property commonly known as 1320 Oak Leaf Cir., Oakdale, California, APN 064-047-054-000, with the County Recorder for Stanislaus County, California, is void, unenforceable, and of no force and effect. Further, the judgment shall adjudicate and determine that Defendant has no interest in the real property pursuant to the Deed of Trust.

Counsel for Plaintiff-Debtor shall prepare and lodge with the court a proposed judgment consistent with this Order. The judgment shall provide that attorney's fees and costs allowed by the court shall be enforced as part of the judgment.

Attorney's fees and costs, if any, shall be requested as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054.

FINAL RULINGS

7. 22-90199-E-7 CLH-2 | **ERIC WILSON** | **Charles Hastings** | **MOTION TO AVOID LIEN OF OPERATING ENGINEERS' HEALTH AND WELFARE TRUST FUND, ET AL.** **9-15-22 [25]**

Final Ruling: No appearance at the October 27, 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 Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on September 15, 2022. 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 Operating Engineers Health and Welfare Trust Fund, et al. ("Creditor") against property of the debtor, Eric Norman Wilson ("Debtor") commonly known as 33 Neighbors Road, Valley Springs, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $57,575.85. Exhibit A, Dckt. 28. An abstract of judgment was recorded with Calaveras County on November 10, 2021, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $520,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $402,828.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an

exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $117,172.00 on Amended Schedule C. Dckt. 24.

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

ISSUANCE OF A COURT-DRAFTED ORDER

An order 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 Eric Norman Wilson ("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 Operating Engineers Health and Welfare Trust Fund, et al., c/o Shaamini A. Babu, Saltzman & Johnson Law Corp. for United States District Court, Northern District of California Case No. 20-cv-01500 WHO, recorded on November 10, 2021, Document No. 2021-019230, with the Calaveras County Recorder, against the real property commonly known as 33 Neighbors Road, 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.

8. 22-90128-E-12 RLC-3 — JEA2, LLC, Stephen Reynolds — MOTION FOR COMPENSATION FOR STEPHEN M. REYNOLDS, DEBTOR IN POSSESSION'S ATTORNEY(S) 9-28-22 [53]

Final Ruling: No appearance at the October 27, 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, Debtor's Attorney, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 28, 2022. By the court's calculation, 29 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.

Stephen M. Reynolds, the Attorney ("Applicant") for JEA2, LLC, the Chapter 12 Debtor in Possession ("Client"), makes a request for the Allowance of Fees and Expenses in this case.

The court notes, the Motion is for "First Interim Fees," however, the first paragraph notes Applicant seeks an order approving "final compensation of fees and expenses." Motion, Dckt. 53 p. 1:16-18. In light of the continuing proceedings in this Bankruptcy Case and Applicant at numerous times, including the Prayer, requesting interim fees, the court concludes that the reference to "final compensation" was an inadvertent typographical error.

Fees are requested for the period April 19, 2022 through September 19, 2022. The order of the court approving employment of Applicant was entered on May 13, 2022. Dckt. 22. Applicant requests fees in the amount of $14,100.00 and costs in the amount of $65.70.

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 communication with Debtor and Chapter 12 Trustee, filing Monthly Operating Reports, and reviewing 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.

Case Administration: Applicant spent 19.6 hours in this category. Applicant attended the 341 meeting, researched and drafted status conference reports, drafted monthly operating reports and reviewed documents.

Creditor Meeting: Applicant spent 2.7 hours in this category. Applicant reviewed and transmitted 341 documents along with tax returns, and prepared and attended the continued creditor meeting.

Litigation: Applicant spent 1.0 hours in this category. Applicant reviewed documents in FLCC and tentative disposition.

Plan Statement: Applicant spent 14.3 hours in this category. Applicant drafted, filed, and revised Chapter 12 Plan.

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**
Stephen M. Reynolds	37.6	$375.00	$14,100.00
Total Fees for Period of Application			$14,100.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $65.70 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Cost**
Parking and Mileage	$24.50
CourtCall Appearances	$41.20
Total Costs Requested in Application	$65.70

Attempting to Recover Inappropriate Costs - Parking, Mileage, and CourtCall

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include Parking, Mileage, and CourtCall.

With respect to Applicant requesting the recovery of Mileage and Parking, the amount requested are reasonable and relate to travel when in person appearance by Applicant are necessary and proper. The court grants the requested expenses for Parking and Mileage of $24.50.

In doing so, the court notes that Applicant has not provided a breakout of expenses separate and apart from the time billing records. This makes it difficult for the court to identify such costs and expenses. For future applications, Applicant would be well served to have costs and expenses broken out from the hourly billing records, as the court may not be able to locate costs and expenses buried in time billing records, and thereby decline such further requests.

The court does not allow the CourtCall appearance expense. As the court has noted, using CourtCall (or other audio or video appearance services) greatly expands an attorney's geographic scope of competitively do business. While from the ease of sitting at the attorney's desk in the office or home office, the attorney (or other professional) can handle cases from more remote geographic regions, billing $300, $400, $500 (or more) an hour.

While Applicant requested reimbursement for costs associated with parking, mileage, and making telephonic CourtCall Appearances, the court does not permit such reimbursements and therefore declines to award Applicant CourtCall costs. The decision to travel, pay for parking, and attend in person hearings via CourtCall is at the cost of the attorney included in the hourly rate for the services.

Looking at the CourtCall expense of $41.20, it is for a Status Conference on June 15, 2022. Exhibit 1, p. 2 of 4; Dckt. 56. For the Status Conference Counsel billed 3 hours of time at (as very reasonable) $375/hour, for $1,125.00 in fees requested to be paid. Just as paying for cell service to call over, or a desk to call from, or couch to sit on in a home office, having the CourtCall service is a necessary cost

of business built into an attorney's hourly rate. As noted above, without CourtCall, Applicant may well have not been able to afford to take the Debtor in Possession on as a client given the distance from Applicant's Office to the Modesto Courthouse. Thus, without CourtCall, counsel could never been able to seek to recover the $1,125.00 for the Status Conference, but also would never been able to bill the $14,100.00 in interim fees requested or the tens of thousands of dollars in further fees in this Chapter 12 Case.

The court allows the $24.50 for travel and parking, and denies the request for reimbursement of CourtCall expense.

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 $14,100.00 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 12 Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 12 case.

Applicant is allowed, and the Chapter 12 Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$14,100.00
Costs and Expenses	$ 24.50

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 Stephen M. Reynolds ("Applicant"), Attorney for JEA2, LLC, the Chapter 12 the Debtor in Possession, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Stephen M. Reynolds is allowed the following fees and expenses as a professional of the Estate:
>
> Stephen M. Reynolds, Professional employed by the Debtor in Possession
>
> Fees in the amount of $14,100.00
> Expenses in the amount of $25.50,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Chapter 12 Trustee is authorized to pay 100% of the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

9. 20-90115-E-7 21-9008 ALI MUTHANA WF-5 MOTION FOR ENTRY OF JUDGMENT 9-19-22 [95]

MCGRANAHAN V. SUWAID ET AL

9 thru 11

Final Ruling: No appearance at the October 27, 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 Plaintiff's Attorney, and Defendant' Attorney, on September 19, 2022. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion for Entry of Judgment is granted.

Michael D. McGranahan ("Plaintiff-Trustee") requests an entry of a separate final judgment pursuant to Federal Rule of Civil Procedure 54(b) and Federal Rule of Bankruptcy Procedure 7054 against Defendants Ali Saeed Muthana ("Defendant-Debtor") and Bader Alikassim Suwaid ("Defendant Suwaid"), collectively, "Defendants".

Plaintiff-Trustee states the following grounds with particularity for entry of a final judgment:

1. Plaintiff-Trustee prevailed on all causes of action in their First Amended Complaint against Defendant-Debtor and Defendant Suwaid, the court having granted Plaintiff-Trustee summary judgment against the Defendants.

2. Entry of a separate final judgment against the Defendants pursuant to Federal Rules of Civil Procedure 54(b) is necessary to allow Plaintiff-Trustee to bring the real property, commonly known as 2022 White Fall Court, Ceres California ("Real Property") back into the bankruptcy estate so Plaintiff-Trustee can market and sell the Real Property.

Defendants have not filed an opposition to the Motion for Entry of Judgment.

APPLICABLE LAW

Federal Rules of Civil Procedure 54(b) allows the court to enter a final judgment as to one or more, but fewer than all, claims or parties if there is no just reason for delay. Rule 54(b) is designed to permit just such an immediate appeal on an otherwise final decision in a multi-claim or multi-party action. 10 Moore's Federal Practice - Civil § 54.21 (2022). A final judgment under Rule 54(b) may be entered on at least one party, but not all parties, if the complete interest of the party is adjudicated. 10 Moore's Federal Practice - Civil § 54.22 (2022).

Here, the court has granted the Plaintiff-Trustee's Motion for Summary Judgment against Defendant-Suwaid and Defendant-Debtor on all causes of actions alleged. *See* Orders, Dckt. 82 and 90. The interest of Defendant GNN Real Estate, however, has not been adjudicated.

It is proper for the court to enter a final judgment under Rule 54(b) as to Defendant-Suwaid and Defendant-Debtor in order for Plaintiff-Trustee to proceed with the market and sale of the Real Property. As noted by Plaintiff-Trustee, the sale of the Real Property will be for the benefit of the bankruptcy estate, and allow Plaintiff-Trustee to distribute more payments to creditors, subject to Defendant GNN Real Estate and Mortgage, Inc.'s rights in dispute.

The Motion is granted, Plaintiff-Trustee to lodge a separate proposed judgment with the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Entry of Final Judgment filed by the Chapter 7 Trustee, Michael D. McGranahan ("Plaintiff-Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that, pursuant to Federal Rules of Civil Procedure 54(b) as incorporated in Federal Rules of Bankruptcy Procedure 7054(b), the Motion for Entry of Final Judgment against Ali Saeed Muthana ("Defendant-Debtor") and Bader Alikassim Suwaid ("Defendant Suwaid"), collectively, "Defendants," is granted.

IT IS FURTHER ORDERED Plaintiff-Trustee is to lodge with the court a proposed judgment against Defendant Suwaid and Defendant-Debtor only, the rights and interests of Defendant GNN Real Estate and Mortgage, Inc. not having been adjudicated yet.

IT IS FURTHER ORDERED any administration of the real property commonly known as 2022 White Fall Court, Ceres, California, is subject to the outstanding rights of Defendant GNN Real Estate and Mortgage, Inc.

10. 20-90115-E-7 WF-7 | **ALI MUTHANA** **Gurjeet Rai** | **MOTION FOR TURNOVER OF PROPERTY** **9-19-22 [83]**

Final Ruling: No appearance at the October 27, 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, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2022. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Hearing on the Motion for Turnover is continued to 10:30 a.m. on November 10, 2022.

STIPULATION TO CONTINUE HEARING

On October 21, 2022, Counsel for the Trustee, Debtor, GNN Real Estate and Mortgage, Inc., Alikassim Suwaid, and Kroloff, Behcher, Smart, Perry & Christopherson filed a Stipulation (as provided

for in L.B.R. 9014-1(j)) requesting that the court continue the hearing to allow the Movant-Trustee to address issues concerning the service of process.

The court continues the hearing as requested.

MOTION FOR TURNOVER

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant-Trustee") in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 2022 White Fall Court, Ceres, California ("Property").

DISCUSSION

In this Bankruptcy Case, Movant-Trustee has initiated this proceeding to compel Ali Saeed Muthana ("Debtor") to deliver the Property to Movant. The Property is listed on Debtor's Schedule A/B filed with Debtor's Chapter 7 Petition on February 11, 2020. Dckt. 1, p. 9.

Movant-Trustee states that on or about May 25, 2021, Debtor facilitated a post-petition transfer, without any authorization, by executing a Grant Deed transferring Debtor's interest in the Property to Bader Suwaid.

Following that transfer, Bader Suwaid executed a letter purporting to give Debtor the benefit of residing on the Property, free of rent, for 10 years, and encumbered the Property with a Deed of Trust to secure a loan of approximately $250,000.00. Decl., Dckt. 85.

The Movant-Trustee filed an Adversary Proceeding to avoid the transfer and additional relief, and the court granted Movant-Trustee's Motion for Summary Judgment on the causes of action to avoid the transfer. Adv. Proc. 21-09008; Order, Dckts. 82, 90.

Entry of Judgment Avoiding the Transfer

On October 25, 2022, in Adversary Proceeding 21-09008, the court granted Movant-Trustee's Motion for entry of a separate judgment pursuant to Federal Rule of Civil Procedure 54(b) and Federal Rule of Bankruptcy Procedure 7054 against Debtor and co-defendant and Bader Alikassim Suwaid avoiding the transfer. That Judgment is to be entered shortly.

Avoiding Transfer by Debtor

Movant-Trustee now seeks turnover of Property by the Debtor so that the Movant-Trustee may sell it for the benefit of the bankruptcy estate and asks the court to force Debtor to vacate the Property.

The Federal Rules of Bankruptcy Procedure permit a trustee to obtain turnover from Debtor without filing an adversary proceeding. Fed. R. Bankr. P. 7001(a).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all

legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

Counsel for Movant-Trustee shall lodge with the court a proposed order in the following form at the same time as lodging the proposed judgment in Adversary Proceeding 21-09008 avoiding the transfer:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Turnover of Property 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 hearing on the Motion for Turnover of Property is continued to 10:30 a.m. on November 10, 2022.

11. 20-90115-E-7 ALI MUTHANA MOTION TO PAY
WF-8 Gurjeet Rai 9-19-22 [88]

Final Ruling: No appearance at the October 27, 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, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2022. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Hearing on the Motion to Pay insurance premiums and utilities is continued to 10:30 a.m. on November 10, 2022.

STIPULATION TO CONTINUE HEARING

On October 21, 2022, Counsel for the Trustee, Debtor, GNN Real Estate and Mortgage, Inc., Alikassim Suwaid, and Kroloff, Behcher, Smart, Perry & Christopherson filed a Stipulation (as provided for in L.B.R. 9014-1(j)) requesting that the court continue the hearing to allow Movant to address issues concerning the service of process.

The court continues the hearing as requested.

MOTION TO PAY

Michael D. McGranahan ("Movant") requests payment in the amount of $7,500.00, for providing insurance premiums and utilities associated with 2022 White Fall Court, Ceres, CA 95307 (the "Real Property") to Ali Saeed Muthana ("Debtor").

DISCUSSION

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant asserts that payment of insurance premiums are necessary while Trustee markets and sells the Real Property. Payment of utilities are also necessary during the time Trustee markets and sells the Real Property to "showcase the Real Property as completely functional during the listing period, and to ensure that there are no substantial defects" which could reduce the net recovery.

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 Pay filed by Michael D. McGranahan ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Hearing on the Motion to Pay is continued to **10:30 a.m. on November 10, 2022.**