

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

November 30, 2017, at 10:30 a.m.

1. **14-91201-E-7** **JESTEEN HEBERLE**
 Anna Evans

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
10-13-17 [23]

**Appearance of Anne Evans, Counsel for Movant
Required for Hearing**

No Telephonic Appearance Permitted

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.

FN.1. 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 is scheduled for November 30, 2017. Based upon the bare assertion that there will be a hearing, 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)(1).

The Motion to Avoid Judicial Lien was not 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

November 30, 2017, at 10:30 a.m.

is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. (“Creditor”) against property of Jestead Heberle (“Debtor”) commonly known as 6233 Shaefer Court, Riverbank, California (“Property”).

The Motion and supporting pleadings are deficient. First, the Notice of Hearing does not disclose whether the Motion is set for hearing according to Local Bankruptcy 9014-1(f)(1) or (2). No Proof of Service has been filed to document that proper service has been accomplished by Movant.

The Motion asserts that a lien exists against Debtor’s property that can be avoided, but there is no support for Debtor’s assertion. No supporting evidence has been filed. The court has not been presented with the judicial lien to be avoided.

Additionally, the Motion does not conform with this district’s rules for formatting under Local Bankruptcy Rule 9004-2. Debtor’s counsel has not even placed her identifying information in the upper left hand corner of the Motion.

Instead of providing the legal services to prepare the necessary motion, present a points and authorities, provide evidence in support of the motion, and give proper notice for the exercise of the federal judicial power, counsel for Debtor has merely used a fill-in form, treating the pleading as little more than a shopping list, with the order bag to be filled by the federal court checker.

The form one-page pleading goes further, appending to it an order at the bottom of the page, the “order” to be issued by the court. The court refers to this type of pleading as a Mo-Order, a document purporting to be both a movant’s motion and an order. The Mo-Order does not purport to grant relief as provided by Congress in 11 U.S.C. § 522(f), the avoiding of a lien, but creates a new form of relief, stating that the court orders the lien “canceled.” It is unclear as to the legal effect of such a “cancellation.” Mo-Order, Dckt. 23.

The Mo-Order then goes even further, purporting to be a mandatory injunction requiring the judgment creditor to “to release the judicial lien and remove it from the local judgment index.” *Id.* If signed by the court, the representatives of creditor would be subject to this court’s corrective sanction power and to the district court judge’s punitive sanction power—including incarceration—if they fail to “remove” the lien from the “judgment index.” Such injunctive relief, to the extent proper, must be sought through an adversary proceeding (Federal Rule of Bankruptcy Procedure 7001) and not this Mo-Order (or even a properly drafted motion).

At the hearing, counsel for Movant addressed the above identified substantive and procedural issues, advising the court **XXXXXXXXXXXXXXXXXXXXXX**.

The Motion is denied without prejudice.

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Jesteen Heberle (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

2. <u>17-90718</u> -E-7	VICTORIA MAYERS Pro Se	TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 10-16-17 <u>13</u>
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Final Ruling: No appearance at the November 30, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors and Office of the United States Trustee on October 18, 2017. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

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

<p>The hearing on the Motion to Dismiss is continued to 10:30 a.m. on December 14, 2017.</p>

Michael McGranahan (“the Chapter 7 Trustee”) filed a Motion to Dismiss this bankruptcy case due to Victoria Mayer’s (“Debtor”) failure to attend the First Meeting of Creditors pursuant to 11 U.S.C. § 341. Dckt. 14. Attendance at this meeting is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

Debtor appeared at the hearing on Debtor's Motion to Waive Chapter 7 filing fee and explained to the court the circumstances relating to the failure to appear and intention to attend the continued First Meeting of Creditors.

On October 23, 2017, the court entered an order continuing this Motion to 10:30 a.m. on December 14, 2017. By prior order, the hearing on this matter is continued.

3. [16-90328-E-7](#) **JOHN/NICOLE GUENTHER** **MOTION TO AVOID LIEN OF**
SSA-3 **Steven Altman** **COLLECTIBLES MANAGEMENT**
 RESOURCES
 10-25-17 [32]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on October 25, 2017. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.
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This Motion requests an order avoiding the judicial lien of Collectibles Management Resources, a general partnership ("Creditor") against property of John Guenther and Nicole Guenther ("Debtor") commonly known as 2805 Hummingbird Drive, Ceres, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$13,306.25. An abstract of judgment was recorded with Stanislaus County on September 17, 2013, and renewed on February 5, 2016, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$219,194.00 as of the petition date. The unavoidable consensual liens that total \$134,495.23 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000.00 on Schedule C.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by John Guenther and Nicole Guenther ("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 Collectibles Management Resources, a general partnership, California Superior Court for Stanislaus County Case No. 2014718, renewed on February 5, 2016, Document No. 2016-009548-00, with the Stanislaus County Recorder, against the real property commonly known as 2805 Hummingbird Drive, Ceres, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

4.

[16-90328-E-7](#)
SSA-4

JOHN/NICOLE GUENTHER
Steven Altman

MOTION TO AVOID LIEN OF
BASELINE FINANCIAL SERVICES, INC.
10-25-17 [\[38\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on October 25, 2017. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.
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This Motion requests an order avoiding the judicial lien of Baseline Financial Services, Inc. ("Creditor") against property of John Guenther and Nicole Guenther ("Debtor") commonly known as 2805 Hummingbird Drive, Ceres, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$101,880.06. An abstract of judgment was recorded with Stanislaus County on September 17, 2013, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$219,194.00 as of the petition date. The unavoidable consensual liens that total \$134,495.23 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000.00 on Schedule C.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by John Guenther and Nicole Guenther ("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 Baseline Financial Services, Inc., California Superior Court for Stanislaus County Case No. 680269, recorded on September 17, 2013, Document No. 2013-0078834-00, with the Stanislaus County Recorder, against the real property commonly known as 2805 Hummingbird Drive, Ceres, 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.

5. [17-90432](#)-E-12 CARLOS/BERNADETTE ESTACIO
FW-6 Peter Fear

CONTINUED MOTION TO APPROVE
LEASE AGREEMENT FOR RANCH
FACILITIES
9-7-17 [\[56\]](#)

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 7, 2017. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Approve Lease Agreement was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
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<p>The Motion to Approve Lease Agreement is denied without prejudice.</p>

Carlos Estacio and Bernadette Estacio ("Debtor in Possession") move for authority to lease property commonly known as 6955 Faith Home Road, Ceres, California ("Property"). Debtor in Possession states that they own the Property, which consists of twenty acres of orchard trees, a house, and two shops.

Debtor in Possession reports that they have received an offer from Arturo Romero and Ramona Romero (Bernadette Estacio's parents) to rent the Property for \$9,000.00 per month for a term of five years. Debtor in Possession moves for authority to rent the Property under 11 U.S.C. § 363(b)(1). That section provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate"

Debtor in Possession contends that the funds from leasing the Property are necessary to satisfy the proposed Chapter 12 plan and that no creditor constituency will be benefitted by rejecting the proposed lease. Debtor in Possession has provided a copy of the lease agreement. Exhibit A, Dckt. 59.

WELLS FARGO'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION

Wells Fargo Bank, N.A. ("Wells Fargo") filed a Memorandum of Points and Authorities in Opposition on September 11, 2017. Dckt. 64. FN.1. Wells Fargo complains that the proposed lease is an "inside deal" that could not have been negotiated at arm's length because the parties are Bernadette Estacio and her parents.

FN.1. Wells Fargo filed the Opposition, Memorandum of Points and Authorities, and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Wells Fargo complains that the proposed lease agreement was not provided to creditors for two weeks after it was signed; that it does not contain an indemnity provision for environmental contamination; that it does not require the lessee to pay real property taxes or utilities; and that if lessee dies, then Debtor in Possession inherits the lease and can terminate it early, which would cut off the probate estate's obligation to pay rent.

Wells Fargo argues that this lease is illusory because Debtor in Possession's parents have been able to live at the Property for years rent-free. Additionally, Wells Fargo argues that Debtor in Possession's income projection will be negative for the first twenty-one months of the proposed Chapter 12 plan, even if Debtor in Possession's parents are able to pay \$9,000.00 per month.

Wells Fargo argues that Debtor in Possession's business judgment for the Motion is not reasonable, with a sound business rationale and supporting evidence not being provided.

KHATRI BROTHERS' OPPOSITION

Khatri Brothers, LP, ("Khatri") filed an Opposition on September 13, 2017. Dckt. 67. FN.2. Khatri argues that the lease is unconscionable on its face because it calls for rent payments of \$9,000.00 when Debtor in Possession listed monthly farm income from the Property of only \$7,692.39.

FN.2. Khatri filed the Opposition and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court’s expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Additionally, Khatri argues that the proposed lease amounts to elder abuse under the California Welfare and Institutions Code. Khatri argues that Debtor in Possession’s parents have not demonstrated an understanding of the unlikelihood that the Property will generate sufficient net farm income to pay for rent, irrigation, taxes, and crop insurance. Even if the parents have sufficient funds to pay those expenses, Khatri argues that the lease would be voidable as abusive under elder law.

SEPTEMBER 28, 2017 HEARING

At the hearing, the objecting creditors and Debtor in Possession identified significant factual issues relating to the Motion. Dckt. 74. Federal Rule of Bankruptcy Procedure 9014(b) provides that the rules of discovery for adversary proceedings apply in contested matters. The court continued the hearing to 10:30 a.m. on November 30, 2017, for a scheduling conference if the matter has not been resolved. Dckt. 78.

RULING

Wells Fargo and Khatri have raised significant concerns about the amount of rent that Debtor in Possession’s parents will be paying (or attempting to pay) for a period of five years. Debtor in Possession’s parents have not provided any testimony that they are willing and able to undertake monthly rent payments of \$9,000.00, and the creditors have noted that the lease agreement is not filled out entirely, omitting such details as the month and day that the lease will begin and end and not specifying whether funds from any particular crops will remain with Debtor in Possession.

The Oppositions raise several points. **No Reply has been filed by Debtor in Possession or Supplemental Pleadings by the opposing creditors.**

Only the Declaration of Debtor Bernadette Estacio has been filed in support of the Motion. No testimony is provided by the purposed Lessees, her parents. Generally, a lessee or purchaser of property of the estate does not provide a declaration. In light of the assertion by Khatri Brothers (which is subject to

Federal Rule of Bankruptcy Procedure 9011 certifications), though, a question may exist why the parents would be leasing the property, and if so, whether the \$9,000.00 represents fair rental value.

Khatri Brothers complain that it made a two-year interest-only loan, which Debtor in Possession now seeks to reamortize over thirty years at five percent interest. The plan is to be funded by these lease payments. However, Debtor in Possession states that their total monthly income is \$4,632.46, including only “farming income” of \$1,307.61 per month. No explanation is provided for why Debtor in Possession’s parents are paying \$9,000.00 per month for a farm that generates only \$1,307.61 per month in income.

Khatri Brothers speculate that the parents are unlikely to be able to farm the property, projecting that they are in their mid-to-late seventies (based on Debtor Bernadette Estacio, their daughter, being fifty-five years old) and have not shown how they can farm the property and pay the lease for the term of the loan (or five-year term of the plan). Khatri Brothers is concerned that Debtor’s parents may be the subject of elder abuse at the hand of Debtor in Possession.

Wells Fargo Bank, N.A. echoes the concerns over the age of the parents and their ability to farm the property. The Bank also addresses the shortcoming in Debtor in Possession’s budget projections, noting that the livestock lease is for \$500.00 per month less than the income amount used in the proposed budget, which causes the budget to be negative.

On Schedule I, Debtor in Possession Carlos Estacio, III states that he employed as a fabricator at Santos Fabrication, earning monthly gross income of \$3,000.00. Dckt. 12 at 47. On Schedule I he states that he has been so employed for seven months. In addition, he states having net income of \$1,307.61 per month from rental property, operation of a business, or farming on Schedule I. There is no statement of gross income and expenses demonstrating how this \$1,307.61 net income figure is computed. Schedule I states that Debtor in Possession Bernadette Estacio is not employed and generates no income.

While stating this limited farming income, the Statement of Financial Affairs indicates that there was a much greater business operation in the past. For 2015, Debtor in Possession states having gross business income of \$767,272.00. Statement of Financial Affairs Question 4, Dckt. 12 at 53. This tapered down to \$108,089.00 in 2016. *Id.*

~~Based upon the evidence before the court, the court determines that the proposed use of property is not in the best interest of the Estate because it is implausible that Debtor’s parents will be able to afford \$9,000.00 per month rent when Debtor has informed the court that net monthly income from the farm is less than that amount.~~

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

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

~~The Motion to Approve Lease Agreement filed by Carlos Estacio and Bernadette Estacio (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~IT IS ORDERED that the Motion is denied without prejudice.~~

6. 17-90432-E-12 CARLOS/BERNADETTE ESTACIO CONTINUED MOTION TO CONFIRM
FW-5 Peter Fear CHAPTER 12 PLAN
8-23-17 [32]

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, creditors, and Office of the United States Trustee on August 23, 2017. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(8) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1) (requiring fourteen days' notice for opposition).

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

The Motion to Confirm the Plan is ~~XXXXXXXXXXXX~~.

Carlos Estacio and Bernadette Estacio ("Debtor") seek confirmation of a Chapter 12 Plan filed on August 21, 2017. *See* Dckt. 31.

WELLS FARGO'S OBJECTION

Wells Fargo Bank, N.A., ("Wells Fargo") opposed confirmation on September 5, 2017. Dckt. 52. FN.1. Wells Fargo argues that the Plan cannot be confirmed because it was not filed in good faith, because Debtor will not be able to make all of the plan payments, and because the Plan does not provide present value for Wells Fargo's claim.

FN.1. Wells Fargo filed the "Opposition" and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents,

proofs of service, and related pleadings shall be filed as separate documents.” Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court’s expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Specifically, Wells Fargo argues that the Plan was not filed in good faith because it extends payments out for thirty years. Wells Fargo argues that Debtor will not be able to generate the required income from the farm for thirty years because they are in their fifties right now. Second, Wells Fargo argues that Debtor’s proposed income is unreliable because Carlos Estacio intends to rely on \$2,000.00 monthly commissions from real estate agent work, but he has not been an agent for several years, and the proposed \$9,000.00 monthly payments from Debtor’s parents is unreliable because they must be older than Debtor, but the Plan calls for them to make the monthly payments for thirty years, despite seeking approval of only a five-year lease.

Finally, Wells Fargo objects to the confirmation of the Plan on the basis that the Plan calls for adjusting the interest rate on its loan with Debtor to 5.00%. Wells Fargo’s claim is secured by real property commonly known as 4413 S. Prairie Flower, Turlock, California. Wells Fargo argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the “formula approach” for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. However, such computation must be made taking into account the risk to be managed. Proof of Claim No. 4 filed by Wells Fargo Bank, N.A. states that the amount of its claim is \$359,002.27, for which there is a \$12,806.66 pre-petition arrearage. Additionally, the proof states that the claim is secured by real property worth \$1,200,000.00. The promissory note upon which the claim is based is attached to Proof of Claim No. 4 (p. 5), which is dated October 7, 2008. The Note further provides that the obligation comes due in full October 2018.

While there is a large equity cushion securing this claim, the two Debtors, as the borrowers, sought and committed to repaying the obligation in ten years. Here, while seeking turning the ten-year loan into a forty-year obligation (the original ten years expiring in 2018 and an additional thirty years), Debtor in Possession is having to lease out the property to elderly parents to fund the Plan.

At the hearing, Debtor in Possession addressed extending this loan to a total of forty years, stating
XXXXXXXXXXXXXXXXXXXXXXX.

KHATRI'S OBJECTION

Khatri Brothers, LP, ("Khatri") opposed the Motion on September 7, 2017. Dckt. 63. FN.2. First, Khatri argues that this case should be dismissed because Debtor's aggregate debt exceeds the limits established by Congress in 11 U.S.C. § 101(18). As to the actual Motion, though, Khatri argues that the Plan is too speculative to be feasible, that the proposed payments on Khatri's claim do equal the value of the collateral, that the plan term grossly exceeds the original loan term, and that the Plan was proposed in bad faith.

FN.2. Khatri filed the "Opposition," Exhibits, and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

As the court has addressed multiple times recently (and will address again below), there has been no legal authority presented for the proposition that a party can combine a request for dismissal with a responsive pleading to another motion—typically, a motion to confirm a plan. Nevertheless, Khatri argues that Debtor is not eligible for Chapter 12 relief because the aggregate debts of \$1,804,056.91 listed on Form 106 exceed the limit of \$1,500,000.00 from 11 U.S.C. § 101(18).

Khatri argues that the Plan is too speculative because it calls for \$9,000.00 per month rent payments from Debtor's parents (who currently live on the property rent-free) without any information about the farming income that can be gained from the property and without any information about the parents' ages and farming experience.

Khatri argues that an assignee of deferred payments on a \$1,200,000.00 debt amortized at 5% interest over 360 months would never pay \$3,400,000.00 (the alleged value of collateral securing the debt). For that reason, Khatri argues that the Plan does not provide for the present value of Khatri's claim.

Khatri notes that its original loan was for two years, but the Plan now calls for thirty years of payments. Khatri argues that such a deferral deprives it of the benefit it bargained for with Debtor.

Finally, Khatri claims that the Plan was filed in bad faith because Debtor wanted to prevent Khatri from foreclosing, even though Debtor's debts exceed the statutory limit.

COLLINS'S OBJECTION

B. Brent Bohlender, as Successor Trustee, Irene B. Collins 2007 Trust, and as named Executor under the Last Will and Testament of Irene B. Collins ("Collins") opposed confirmation on September 13, 2017. Dckt. 65. FN.3. Collins echoes the prior oppositions and argues that the Plan was not filed in good faith and that Debtor's income is too speculative to support a feasible plan.

FN.3. Collins filed the "Opposition," Exhibits, and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Collins argues that a thirty-year plan for its original six-year loan is excessive and that the 5% interest rate does not cover the present value of its claim. Additionally, Collins questions Debtor's ability to re-enter the real estate agency market after being away for two years, and Collins doubts that Debtor's parents will be able to afford monthly rent payments because no evidence has been provided.

Finally, Collins argues that the Plan was not proposed in good faith because its sole purpose was to impose "a heavily discounted interest rate and grossly lengthened loan terms" on Collins's secured claim. Dckt. 65 at 7:23.5–24.5.

SEPTEMBER 28, 2017 HEARING

At the hearing, the objecting creditors and Debtor in Possession identified significant factual issues relating to this Motion. Dckt. 69 Federal Rule of Bankruptcy Procedure 9014(b) provides that the rules of discovery for adversary proceedings apply in contested matters. The court continued the hearing to 10:30 a.m. on November 30, 2017, for a scheduling conference if the matter has not been resolved. Dckt. 73.

APPLICABLE LAW

If the Trustee or the holder of an allowed unsecured claim objects to confirmation of the Plan, then the court may not approve the Plan unless, as of the effective date of the Plan—

(A) the value of the property to be distributed under the Plan on account of such claim is not less than the amount of such claim;

(B) the Plan provides that all of Debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the Plan will be applied to make payments under the Plan; or

(C) the value of the property to be distributed under the Plan in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the Plan is not less than Debtor's projected disposable income for such period.

(2) For purposes of this subsection, "disposable income" means income that is received by Debtor and that is not reasonably necessary to be expended—

(A) for the maintenance or support of Debtor or a dependent of Debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of Debtor's business.

IMPROPER REQUEST FOR DISMISSAL

In Khatri's Objection, Khatri requests in the prayer that the Chapter 12 case be dismissed. Dckt. 63 at 6:4–5. On page 3 of the Objection, Khatri advances the argument that the court should dismiss this bankruptcy case because Debtor's aggregate debt exceeds the limit imposed by Congress. *Id.* at 3:7–20.

Khatri does not provide the court with any argument or legal authority for including such a direction to the Court in the Objection. The Objection before the court is to confirmation of a Chapter 12 Plan, not a motion to dismiss. This request for relief by order of the court fails on several grounds. Relief in the form of an order must be sought by motion (or "application" when specially authorized) from the court. FED. R. BANKR. P. 9013. Federal Rule of Bankruptcy Procedure 1017(f) requires that a request for dismissal of a Chapter 12 case "shall be on motion filed and served as required by Rule 9013."

Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 allowing for the joining of multiple claims for relief are not incorporated into the Contested Matter practice pursuant to Federal Rule of Bankruptcy Procedure 9014.

In this case, there has not been any pleading on the docket indicating that Debtor's case could be dismissed for cause. The court has not specified any grounds upon which the case would be dismissed, and Debtor has not been afforded the opportunity to respond to any grounds advanced by the court. Instead, Khatri has merely argued the legal conclusion that the court can dismiss a case, with no notice or grounds stated by the court, and no opportunity for Debtor to respond to grounds stated by the court. As advanced by Khatri, Debtor need not be afforded Due Process in having grounds stated by the court and being afforded

the opportunity to respond to the grounds stated by the court. Rather, Khatri's procedure is one in which Khatri states the grounds and Debtor is not afforded the opportunity to respond.

RULING

The court begins with a review of the proposed Chapter 12 Plan. Dckt. 31. Some of the significant provisions and points taken from the Plan include:

A. The Class 3 secured claim of American Equity Service (2nd Deed of Trust on the 6955 Faith Home Road Property) will be amortized over thirty years, with interest of 5% per annum. No interest will accrue on interest or other charges that are allowed pursuant to 11 U.S.C. § 506(b). The claim is stated in the Plan to be \$104,805.40.

1. No creditor is provided for the Plan holding a "First Deed of Trust."

B. The Class 6 secured claim of Irene B. Collins, Trustee (1st Deed of Trust on the 2260 East Canal Drive Property) will be amortized over thirty years, with interest of 5% per annum. No interest will accrue on interest or other charges that are allowed pursuant to 11 U.S.C. § 506(b). The claim is stated in the Plan to be \$168,595.00.

C. The secured claims for which the 4413 South Prairie Flower Road Property is the collateral are provided for as follows:

1. Class 7 Claim of Khatri Brothers, LP (1st Deed of Trust) will be amortized over thirty years, with interest of 5% per annum. No interest will accrue on interest or other charges that are allowed pursuant to 11 U.S.C. § 506(b). The claim is stated in the Plan to be \$1,200,000.00.

2. Class 8 Claim of Wells Fargo Bank, N.A. (1st Deed of Trust—conflicts with designation of the Khatri Brothers, LP stated priority) will be amortized over thirty years, with interest of 5% per annum. No interest will accrue on interest or other charges that are allowed pursuant to 11 U.S.C. § 506(b). The claim is stated in the Plan to be \$359,000.27.

D. The Class 4 secured claim of the Internal Revenue Service secured by all of Debtor's real and personal property (priority of IRS lien not identified)) will be amortized over five years, with interest of 5% per annum. The claim is stated in the Plan to be \$26,277.62.

E. The Class 5 secured claim of Stanislaus County for real property taxes will be amortized over five years, with interest of 18% per annum. The claim is stated in the Plan to be \$32,962.23.

F. Class 10 Priority Unsecured claims will be paid in full through the Plan, to be paid after all Class 1 Claims (administrative expenses). The Priority Unsecured Claims are stated in the Plan to be \$6,957.92.

G. Class 11 General Unsecured Claims will be paid *pro rata*, by the Chapter 12 Trustee after payment of the Class 10 Priority Unsecured Claims and the Class 1 Administrative Expenses. The General Unsecured Claims are stated in the Plan to be \$73,940.76.

H. The Plan will be funded from Debtor's farming of peaches and leasing out parts of the farm and residential properties.

Attached to the Proposed Plan as Exhibit 1 are Budget/Cash Flow Projections through March 2022. In reviewing these Budget and Cash Flow Projections, the court notes:

A. The income projections include \$5,500 per month from "Debtor's Wages" and "Debtor's Real Estate Commissions." The Plan provides only for the farm operations and rental income to be used to fund the Plan.

B. The gross income projections from the rental and farm income operations are stated to be:

1.	Livestock Lease.....	\$2,500
2.	Canal Property Lease.....	\$1,300
3.	Mobile Home Rent.....	\$ 850
4.	Faith Home Road Ranch Rent.....	\$9,000

The rental and lease income to fund the Plan totals \$13,650.00 per month. It does not appear that there is any income from "farm operations," other than operations of others on the property for which Debtor is paid rent. These income projections stay constant for the time period of the projection.

C. The total expenses to be paid by Debtor for being the lessor under the Livestock Lease, the Canal Property Lease, the Mobile Home Rent Lease, and the Faith Home Road Ranch Lease is only \$150 per month. Some items for which no expense is shown include:

1. Property Taxes;
2. Repair and Maintenance;
3. Insurance for Fixtures and Improvements;
4. Lessor Liability Insurance;
5. Tax Professionals; and
6. Legal Services.

In reviewing the proposed five-year lease of the 6955 Faith Home Road Property (Exhibit A, Dckt. 59), the terms include: (1) the tenants are responsible to maintain the land and property in as good a condition as it exists at the start of the lease, excluding "normal wear and depreciation and damages from causes beyond tenant's control;" and (2) tenant will pay the property taxes. While providing for the property taxes for this property, the two-page lease appears to leave all other expenses and risks on the lessor Debtor.

For the month-to-month residential lease for the 2260 E. Canal Drive Property (Exhibit A, Dckt. 48), the tenant is prohibited from making any repairs to the Property. Other than paying the \$1,300 per month rent, no provision is made for the tenant to pay for maintenance, repairs, insurance, or property taxes.

For the 4413 S. Prairie Flower Road Livestock Facility Lease (Exhibit A, Dckt. 40), it first requires that Debtor repair the back fences and water troughs within thirty days of signing the lease. The Declaration of Carlos Estacio (Dckt. 39), a Debtor in Possession does not state how much these repairs will cost and how they will be funded. The lease is for only one year. No provision is made for the tenant to pay for any insurance to cover Debtor or Debtor's property. The lease imposes an affirmative insurance obligation on Debtor "to fully insure the property against, theft, or other loss, and against personal liability." Lease ¶ B.1., Dckt. 40. As discussed above, no provision is made for such expense in Debtor's budget. No provision is made for the tenant to pay any property taxes (real or personal).

D. The amount required to fund the Plan as proposed, with the 30 year amortization of the secured claims, requires monthly payments of \$14,412.69 (including the Chapter 12 Trustee's compensation).

Using the income and expense figures presented in this projection, it appears that if everything goes as planned and there are only \$150 in expenses, the dedicated income falls short of funding the Plan:

Rental and Farm Lease Income.....	\$13,650
Lease Expenses.....	(\$ 150)
Minimum Plan Payment.....	(\$14,412.60)
Over/(Under) Funding.....	(\$ 912.60)

In the Declaration in Support of the Motion (Dckt. 34), Carlos Estacio, a Debtor in Possession, provides his testimony. He testifies that both he and the co-Debtor in Possession "are active in farming operations, such as planting, cultivating, and harvesting." Declaration ¶ 3, Dckt. 34. He explains in the Declaration that the Plan provides for Debtor to lease the cherry orchard to Co-Debtor's parents, for which Debtor will receive rental income but no farming income. *Id.*, ¶ 6.a.

He continues to testify that the Plan does not provide for any "peach income" to be received by Debtor. Ten acres of peaches were planted on in March 2016, and another ten acres was planted in March 2017. It is anticipated that the first ten acres will begin production in 2018 (in an unstated amount) and ultimately will result in there being an eighteen-ton harvest by 2021. Debtor states under penalty of perjury that he is "informed and believes" (but apparently does not have any actual knowledge) that the current price of \$455 per ton for peaches is a valid projection into the future. *Id.*, ¶ 6.b.

Debtor in Possession Carlos Estacio further testifies that he will grow nine acres of corn and oats (alternating the plantings by the seasons), for which he projects generating an additional \$10,000.00 in income. *Id.* He testifies that this income projection will not fluctuate year to year. *Id.* He continues to testify that he anticipates that the peach crop will gross \$81,900, with only (\$21,960) in farming expenses. He further projects that by 2021, the peach crop gross income will be \$136,500, with only (\$33,190) in farming expenses. *Id.*

While expressing his opinion on the unfailing income and small expenses for the farming of peaches, corn, and oats, Mr. Estacio provides no historical data supporting such opinion. He also does not provide any historical data or basis for his conclusion that crop prices never fluctuate from year to year.

Additionally, Mr. Estacio does not provide any information as to how Debtor will fund the costs and expenses of the peaches, corn, and oats that must be incurred before the crop is harvested.

Each objecting creditor to this Motion complains both about the length of the proposed plan as opposed to the lengths of their original loans and about the questionable ability of Debtor and Debtor's parents to provide sufficient income to fund a plan for thirty years.

The court agrees with the creditors that Debtor in Possession has not provided evidence that the Plan is feasible, and cannot be confirmed as proposed. While not providing for it to fund the Plan, Debtor has not provided any evidence to the court that income from real estate commissions will be regular and sufficient to aid funding the Plan by creating income for Debtor to pay their day-to-day expenses. Additionally, while the court is encouraged to see that Debtor has sought approval of lease agreements that can generate income for the Plan, the court is concerned that the lengths of the three proposed leases are month-to-month, one year, and five years. Debtor has not provided evidence that plan payments will be forthcoming freely if and when the leases end. Debtor has not provided any information for Debtor's parents' ability to pay \$9,000.00 per month in rent. As proposed, the Plan is infeasible, and it is not confirmed.

Additionally, while not dismissing the case, the issue has been presented to the court whether Debtor is eligible to seek relief under Chapter 12 of the Bankruptcy Code. The term "family farmer," the person entitled to file a Chapter 12 bankruptcy case, as defined in 11 U.S.C. § 101(18), includes the following:

(18) The term "family farmer" means—(A) individual or individual and spouse engaged in a farming operation whose **aggregate debts do not exceed \$ 4,153,150 and not less than 50 percent of whose aggregate noncontingent, liquidated debts** (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, **arise out of a farming operation** owned or operated by such individual or such individual and spouse, and **such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for—**

(i) **the taxable year preceding;** or

(ii) each of the 2d and 3d taxable years preceding;

the taxable year in which the case concerning such individual or such individual and spouse was filed;

The court is uncertain as to what in 11 U.S.C. § 101(18) Khatri Brothers is referencing in asserting that the debt limit is \$1,500,000. Opposition, p. 3:8–12; Dckt. 63. Thus, it does not appear that there is an eligibility issue based on the amount of the debt.

However, there is the requirement that the Debtor received at least 50% of Debtor's gross income from the farming operation in the first tax year preceding the commencement of the case, or for both the second and third tax years prior to the commencement of the bankruptcy case.

As shown on the Statement of Financial Affairs, in 2016, the first year preceding the commencement of this case, Debtor had \$108,089 income from farming and \$4,000 income from wages. Statement of Financial Affairs Question 4, Dckt. 12 at 53. \$108,809.00 is more than fifty percent of the \$112,809.00 total income reported for the first year preceding the commencement of this bankruptcy case.

When a debtor proposes to extend a short-term loan over a substantially longer term, a court looks at the relevant plan provisions with close scrutiny. *CRE/ADC Venture 2013, LLC v. Rocky Mountain Land Co., LLC (In re Rocky Mountain Land Co. LLC)*, No. 12-21643 HRT, 2014 Bankr. LEXIS 1370, at *41 (Bankr. D. Colo. Apr. 3, 2014) (citing *Imperial Bank, Inc. v. Tri-Growth Centre City, Ltd. (In re Tri-Growth Centre City, Ltd.)*, 136 B.R. 848, 852 (Bankr. S.D. Cal. 1992); *F.H. Partners, L.P. v. Inv. Co. of the Southwest, Inc. (In re Inv. Co. of the Southwest, Inc.)*, 341 B.R. 298, 311 (B.A.P. 10th Cir. 2006)).

When analyzing a Chapter 12 plan that modifies the rights of a secured claim, a court looks to 11 U.S.C. § 1225(a)(5)(B)(ii), which “indicates that a plan is confirmable over the objections of secured claimants if proposed deferred payments will compensate the objectors for the resulting loss of use of their collateral and its present value.” *In re Hochmuth Farms, Inc.*, 79 B.R. 266, 269 (Bankr. D. Md. 1987) (citing *In re Huges*, 54 B.R. 676, 678 (Bankr. D.S.C. 1985)). A court considers several factors, including “(a) the amounts of proposed payments; (b) anticipated payment dates; (c) the effective date of the plan; and (d) the appropriate interest or “discount rate” for deferred and unpaid debts under the plan. *Id.* (citation omitted).

There is no set formula to “determine whether deferred payments are equivalent to the present value of an allowed secured claim,” however. *Id.* Some factors include the current market rate as determined by the prime lending rate, federal funds reserve and average rate of interest on commercial paper, and certificates of deposit and United States treasury bills. *Id.* (citing 5 COLLIER ON BANKRUPTCY ¶ 1129.03 n.45 (15th ed. 1987); *In re Monnier Bros.*, 755 F.2d 1336, 1339 (8th Cir. 1985)). In *Hochmuth Farms*, the court found that the proposed Chapter 12 plan drastically altered a secured claim without satisfying the Code. *Id.* at 269–70.

At the hearing **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

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

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

The Motion to Confirm the Chapter 12 Plan filed by Carlos Estacio and Bernadette Estacio (“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 Motion to Confirm is **XXXXXXXXXXXX**.

7. [17-90432](#)-E-12 CARLOS/BERNADETTE ESTACIO CONTINUED STATUS CONFERENCE RE:
Peter Fear VOLUNTARY PETITION
5-23-17 [1](#)

Debtors' Atty: Peter L. Fear

Notes:

Continued from 9/28/17 to be conducted in conjunction with the Motion to Approve Lease for Ranch Facilities [6955 Faith Home Road, Ceres, CA] and Motion to Confirm the Chapter 12 Plan.

[FW-3] Order granting Motion to Approve Lease Agreement [4413 S. Prairie Flower Road, Turlock, CA] filed 10/3/17 [Dckt 76]

[FW-4] Order granting Motion to Approve Lease Agreement [2260 East Canal Drive, Turlock, CA] filed 10/3/17 [Dckt 77]

8. [17-90533](#)-E-7 RUTH JOHNSON CONTINUED TRUSTEE'S MOTION TO
MDM-1 Pro Se DISMISS FOR FAILURE TO APPEAR AT
SEC. 341(A) MEETING OF CREDITORS
9-5-17 [14](#)

Final Ruling: No appearance at the November 30, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and creditors on September 7, 2017. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied.

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

OCTOBER 19, 2017 HEARING

At the hearing, Debtor explained intervening medical issues that caused her to miss the First Meeting of Creditors. Dckt. 26. The court continued the hearing to 10:30 a.m. on November 30, 2017, to give Debtor time to appear at the Meeting of Creditors. Dckt. 28.

RULING

The Chapter 7 Trustee filed a Report of No Distribution on November 9, 2017. In that report, he notes that Debtor appeared at the continued meeting of creditors. By appearing, Debtor has cured the Chapter 7 Trustee's ground for dismissing this case. The Motion is denied.

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

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

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

IT IS ORDERED that the Motion denied.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties requesting special notice, and Office of the United States Trustee on February 21, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Use Cash Collateral is granted, and the hearing is continued to 10:30 a.m. on January 11, 2018.

Ronald Sundburg and Susan Sundburg ("Debtor in Possession") filed the instant Motion for Authority to Use Cash Collateral on February 21, 2017. Dckt. 70.

REVIEW OF ORIGINAL MOTION (TBG-5)

Debtor in Possession and Bank of America, N.A. ("BANA") entered into a number of agreements (described in Amended Stipulation at Dckt. 72), including:

- A. December 19, 2007: Loan of \$324,817.44 to Susan Sundburg evidenced by a Finance Agreement;
- B. December 21, 2007: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 5132 Yosemite Boulevard, Empire, California (recorded on January 14, 2008);

- C. December 21, 2007: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 11 South Abbie, Empire, California (recorded on January 14, 2008);
- D. December 31, 2007: Increase of Susan Sundburg's loan to \$385,228.62 evidenced by a Final Disbursement, Change and Repayment Schedule;
- E. June 20, 2012: Susan Sundburg executed a Finance Agreement, confirming terms of a restated loan and reduction of principal in a proposed amendment;
- F. June 20, 2012: Ronald Sundburg executed a Guaranty whereby he unconditionally agreed to pay all of Susan Sundburg's obligations to BANA, including any and all interest, fees, and costs, and attorneys' fees and legal expenses incurred for the enforcement of the obligations of a restated loan, in the even Susan Sundburg failed to pay;
- G. June 25, 2012: BANA and Susan Sundburg executed a Final Disbursement, Change and Repayment Schedule, finalizing and ratifying terms to a restated loan;
- H. June 27, 2012: Debtor in Possession executed a deed of trust in favor of BANA for real property commonly known as 7634 Adams Avenue, Valley Springs, California (recorded on July 17, 2012);
- I. June 28, 2012: BANA and Debtor in Possession executed an Amendment to Loan Agreement to consolidate, renew, replace, and refinance Susan Sundburg's loan and reduce the principal balance to \$324,817.44;
- J. Unspecified date: Susan Sundburg executed a Finance agreement that pledged certain personal property as collateral for the restated loan;
- K. October 22, 2015: BANA and Debtor in Possession executed a Loan Modification Agreement that extended the maturity date of the restated loan from July 1, 2015, to March 1, 2016;
- L. October 22, 2015: BANA and Debtor in Possession executed a Modification of Deed of Trust for the Yosemite Boulevard property (recorded on December 28, 2015); and
- M. October 22, 2015: BANA and Debtor in Possession executed a Modification of Deed of Trust for the South Abbie property (recorded on December 28, 2015).

BANA asserts that the above properties securing its claims are generating monthly net profit of approximately \$500.16 from rents and lease income. BANA asserts that the monthly net profit is its cash collateral pursuant to 11 U.S.C. §§ 552(b) and 363(a). Debtor in Possession seeks to use those funds to maintain the ongoing business of the rental properties at Yosemite Boulevard and South Abbie.

The parties report that the cash collateral will be used as follows:

- A. Cash collateral will be used to pay reasonable, ordinary, and necessary expenses of operating and maintaining the Yosemite Boulevard and South Abbie properties;
- B. Debtor in Possession shall make adequate protection payments to BANA by the tenth day of each month in the amount of \$200.00, with the first payment due on or before February 28, 2017;
- C. The collected cash collateral shall be deposited into accounts designated with the Office of the U.S. Trustee;
- D. Debtor in Possession may not use the cash collateral for any purpose other than as specified between the parties, and Debtor in Possession may not withdraw monies without BANA's express consent or Bankruptcy Court authorization;
- E. Cash collateral may not be used to make any capital investment or improvement of business without BANA's prior written authorization;
- F. The right to use cash collateral expires upon default or upon BANA providing fifteen day's written notice of termination;
- G. Debtor in Possession may exceed the budgeted amount for any particular line item expense by not more than \$50.00, provided that Debtor in Possession may not exceed the total budget on a monthly basis by more than 10%.

The parties' stipulation grants BANA a replacement lien in all post-petition collateral income securing Debtor's lien to BANA and a replacement lien on the Debtor in Possession's account opened for the use of cash collateral. To the extent that any replacement lien and security interest is insufficient to compensate BANA, BANA shall have an administrative claim under 11 U.S.C. §§ 503(b) and 507(a)(2).

The parties submitted an Amended Stipulation on February 21, 2017. Dckt. 72. The Amended Stipulation is the same as what Debtor in Possession has proposed in a new motion, discussed subsequently.

DISCUSSION AT MARCH 23, 2017 HEARING

In the instant case, Debtor in Possession is seeking authorization of the court to use cash collateral to pay reasonable, ordinary, and necessary expenses to operate and maintain the Yosemite Boulevard and South Abbie properties.

While the Motion seeks authorization for the use of cash collateral, the Debtor in Possession did not provide specific expenses that are necessary to avoid immediate and irreparable harm to the estate.

The budget provides a list of income and expenses, but it does not specify which of these expenses are necessary to be paid using cash collateral. Additionally, the attached budget differs from Debtor in Possession's claim regarding how much money is available in total monthly net income. Debtor in Possession states that \$500.16 is available, but the budget shows that \$300.16 is actually available.

The court may authorize use of cash collateral so long as the creditor is adequately protected. 11 U.S.C. § 363(e). Debtor in Possession has the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p)(1). Adequate protection includes providing periodic cash payments to cover the loss in value of the creditor's interest. 11 U.S.C. § 361(1). Additionally, a substantial equity cushion in property provides adequate protection. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

Previously, Debtor in Possession and Creditor filed a stipulation in which the Creditor consented to Debtor in Possession's use of cash collateral. The adequate protection payment proposed was \$200.00, beginning February 28, 2017, and continuing thereafter on the tenth day of each month through July 11, 2017. Here, Debtor in Possession asserts that it will continue making adequate protection payments of \$200.00 to Creditor. The court found that the adequate protection payment was sufficient given the facts of the instant case.

Review of Schedules

Debtor in Possession lists personal property assets having a value of \$66,086.60 on Schedule B (of which \$571.10 are stated to be accounts receivable). Dckt. 1. Stanislaus County Tax Collector is listed on Schedule D as a creditor having a secured claim. Dckt. 24.

The unsecured claims listed on Schedule F total \$8,361.11. Dckt. 24. The Yosemite Boulevard, South Abbie, and Adams Road real properties are listed on Schedule A, and two leases are listed on Schedule G. Dckts. 1 & 24.

RULING AT MARCH 23, 2017 HEARING

The Motion was granted, and Debtor in Possession was authorized to use the cash collateral for the period April 1, 2017, through July 31, 2017, including the required adequate protection payments. The court did not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by Debtor in Possession. All surplus Cash Collateral from the Property was to be held in a cash collateral account and separately accounted for by Debtor in Possession.

The court continued the hearing to 10:30 a.m. on July 13, 2017, for Debtor in Possession to file a Supplement to the Motion to extend authorization. Dckt. 79. That Supplement was due by June 29, 2017.

RULING AT JULY 13, 2017 HEARING

At the July 13, 2017 hearing, Debtor in Possession's counsel admitted that he missed the deadline but that he and counsel for BANA were close to finalizing a stipulation. Dckt. 96. Counsel for BANA appeared telephonically and confirmed that the parties were at "the two-yard line" and should have a final stipulation ready for the court's review soon.

Debtor in Possession requested that cash collateral be authorized for an additional two months—through September 2017. Debtor in Possession proposed using the same budget that the court has approved previously. Counsel for BANA agreed that such authorization was acceptable to BANA.

The court granted the Motion for the period August 1, 2017, through September 30, 2017, and ordered Debtor in Possession to file any Supplement to the Motion to extend authorization by September 21, 2017, with any opposition to be presented at the continued hearing at 10:30 a.m. on September 28, 2017. Dckt. 98.

RULING AT SEPTEMBER 28, 2017 HEARING

Instead of filing a Supplement to the Motion, Debtor in Possession filed a new motion, with a new Docket Control Number, on September 19, 2017. Dckt. 117. In the new pleading, Debtor in Possession requested approval of the same budget that the court approved previously through November 30, 2017. The court granted the Motion and extend Debtor in Possession's authority to use cash collateral through November 30, 2017. Dckt. 131. The court continued the hearing to 10:30 a.m. on November 30, 2017, to address any supplemental request for authority to use cash collateral. Dckt. 133.

SUPPLEMENTAL PLEADING

Debtor in Possession filed a Supplemental Pleading on November 16, 2017, requesting that the same budget approved by the court be extended through January 31, 2018. The budget is presented here as:

Commercial Property 5132 Yosemite Blvd/ 11 S. Abbie, Empire, California 95319			
	Real Property Rent	\$2,750.00	
	First Mortgage (Jenison)		(\$1,188.67)
	Bank of America AP Payment		(\$200.00)
	Property Taxes		(\$623.88)
	Utilities (Water, Sewer, Garbage)		(\$113.14)
	Repair/Maintenance		(\$500.00)
	NET INCOME	\$124.31	
Personal Property Collateral			
	Lease Income	\$450.00	

	Stearns Leasing (Laser Lease)		(\$244.15)
	Repairs/Maintenance		(\$30.00)
	NET INCOME	\$175.85	
	TOTAL NET INCOME	\$300.16	

Debtor in Possession also requests that approval of the use of cash collateral include a 10% variance for each category of expense, with the exception of property taxes, to be paid biannually when due, with any cash remaining after tax payments to be retained in Debtor in Possession's cash collateral account. Debtor in Possession also requests that net rent amounts remain in the cash collateral account.

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 sell 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 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.

RULING

The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period December 1, 2017, through January 31, 2018, including the required adequate protection payments. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Debtor in Possession. All surplus Cash Collateral from the Property is to be held in a cash collateral account and separately accounted for by Debtor in Possession.

The court continues the hearing to 10:30 a.m. on January 11, 2018, for Debtor in Possession to file a Supplement to the Motion to extend authorization. That Supplement is due by January 4, 2018, with any opposition to be presented orally at the continued hearing.

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

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

The Motion for Authority to Use Cash Collateral filed by Ronald Sundburg and Susan Sundburg (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, pursuant to this order, for the period December 1, 2017, through January 31, 2017, and the cash collateral may be used to pay the following expenses, granting Debtor in Possession a variance of 10% in any individual line item expense as long as the total amount used does not exceed five percent of the monthly total budget:

Commercial Property 5132 Yosemite Blvd/ 11 S. Abbie, Empire, California 95319			
	Real Property Rent	\$2,750.00	
	First Mortgage (Jenison)		(\$1,188.67)

	Bank of America AP Payment		(\$200.00)
	Property Taxes		(\$623.88)
	Utilities (Water, Sewer, Garbage)		(\$113.14)
	Repair/Maintenance		(\$500.00)
	NET INCOME	\$124.31	
Personal Property Collateral			
	Lease Income	\$450.00	
	Stearns Leasing (Laser Lease)		(\$244.15)
	Repairs/Maintenance		(\$30.00)
	NET INCOME	\$175.85	
	TOTAL NET INCOME	\$300.16	

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

IT IS FURTHER ORDERED that Debtor in Possession shall continue to make the monthly adequate protection payment of \$200.00 to Bank of American, N.A.

IT IS FURTHER ORDERED that the hearing on the Motion is continued to **10:30 a.m. on January 11, 2018**, to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before, January 4, 2018, Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the January 11, 2018 hearing. Any opposition to the requested use of cash collateral may be presented orally at the hearing.

10. [17-90347](#)-E-7 **MARJORIE SHAMGOCHIAN**
Pro Se

**ORDER FOR INITIAL HEARING FOR
DETERMINATION OF LEGAL
COMPETENCY OF AND APPOINTMENT,
IF NECESSARY, OF A LEGAL
REPRESENTATIVE FOR MARJORIE
SHAMGOCHIAN. ET AL.**
10-5-17 [58]

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, interested parties, and Office of the United States Trustee on October 6, 2017. By the court's calculation, 55 days' notice was provided. The court set the hearing for 10:30 a.m. on November 30, 2017. Dckt. 58.

The Initial Hearing for Determination of Legal Competency was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 Initial Hearing for Determination of Legal Competency is XXXXX.

This Chapter 7 bankruptcy case was commenced in the name of Marjorie Eleanor Shamgochian on April 27, 2017. The Petition and subsequent documents filed in this case are signed by Steve Shamgochian, Power of Attorney for Marjorie Shamgochian.

This is Marjorie Shamgochian's second Chapter 7 bankruptcy case filed in 2017. The first case, 17-90198, was filed on March 14, 2017, and dismissed on April 3, 2017. The first case was dismissed due to the failure of Debtor to file the minimum required documents (including schedules and statement of financial affairs). The petition in the first bankruptcy case is signed "Steve Shamgochian - Power of

Attorney for Marjorie Shamgochian.” 17-90198, Dckt. 1. The Verification of Master Address List states there being only one party in interest to receive notice:

Nationstar Mortgage, LLC
c/o NBS Default Services, LLC
301 E. Ocean Blvd. Suite 17200
Long Beach, CA 90802

Id., Dckt. 4.

In this current, second Chapter 7 bankruptcy case, the Verification of Master Address List states only two parties in interest to receive notice:

Nationstar Mortgage LLC
8950 Cypress Waters Blvd.
Coppell, TX 75019

Nationstar Mortgage, LLC
c/o NBS Default Services, LLC
301 E. Ocean Blvd. Suite 17200
Long Beach, CA 90802

Dckt. 4.

On May 11, 2017, a Motion for Extension of Time to File Missing Documents was filed in this second Chapter 7 case. Dckt. 12. The motion is “made for” Marjorie Shamgochian, in *pro se*, with the motion executed by “Steve Shamgochian, Power of Attorney for Marjorie Eleanor Shamgochian.” It states that “the Debtor” (Marjorie Shamgochian) is elderly and currently having a difficult time locating and compiling the information for the missing documents. *Id.*, p. 2:5.5–6.5. Further, it states that Marjorie Shamgochian has not been able to retain counsel to “assist” with the preparation of documents. *Id.*, p.2:3.5–4.5.¹

It is not clear to the court why Marjorie Shamgochian, herself, has not filed these bankruptcy cases and why Marjorie Shamgochian, herself, is not signing the pleadings.

IMPROPER USE OF POWER OF ATTORNEY

It also appears that Steve Shamgochian is not merely acting as the agent of Marjorie Shamgochian as authorized by a power of attorney, but is using the power of attorney to “practice law” and represent Marjorie Shamgochian in this case. A power of attorney does not allow a person to appear in court as the legal representative of another.

¹ As discussed below, this may be a completely inaccurate statement, with Marjorie Shamgochian having no involvement in the filing and prosecution of this bankruptcy case.

As stated in Federal Rule of Bankruptcy Procedure 9010(a), a nonlawyer may act on a debtor's behalf as his or her attorney-in-fact, but only to the extent that his or her actions do not constitute the practice of law. To this end, an attorney-in-fact may authorize the commencement of a bankruptcy case pursuant to a clearly stated power of attorney. *In re Curtis*, 262 B.R. 619, 622 (Bankr. D. Vt. 2001). However, the power of attorney cannot be used to authorize a nonlawyer to litigate a matter on behalf of a *pro se* debtor. *In re O'Connor*, No. 08-16434, 2009 Bankr. LEXIS 1376 at *8 (Bankr. N.D. Ohio Feb. 27, 2009) (citing *Cavanaugh v. Cardinal Local Sch. Dist.*, 409 F.3d 753, 756 (6th Cir. 2005) (abrogated on other grounds by *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007))).

States may prohibit unauthorized law practice, pursuant to their police power, to ensure that those performing legal services do so competently. *Birbrower, Montalbano, Condon & Frank v. Superior Court*, 17 Cal. 4th 119, 126 (Cal. 1998). Pursuant to this power, California prohibits all persons from practicing law who are not active members of the State Bar. Cal. Bus. & Prof. Code § 6125. The practice of law is defined in California as “doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure.” *Birbrower*, 17 Cal. 4th at 128 (citing *People v. Merchants Protective Corp.*, 189 Cal. 531, 535 (Cal. 1922)). This includes preparing legal instruments. *Id.*

A power of attorney does not permit an agent to act as an attorney at law. If the rule were otherwise, the State Bar Act could be relegated to contempt by any layman who secured from his principal an ordinary power of attorney, for the purpose of representing him in pending litigation.

An attorney at law is different from an attorney in fact [agent under power of attorney] by definition and by general customary treatment; [attorney in fact] had no right whatsoever to act as attorney for his [principal]. This fact alone requires us to say that we cannot uphold the judgment as to [principal]. The short sentence appearing in *Campbell v. Jewish Committee for Personal Service*, 125 Cal.App.2d 771, at page 772 is appropriate: “Not being a lawyer, Campbell cannot appear as attorney for his brother.”

People ex rel. Department of Public Works v. Malone, 232 Cal. App. 2d 531, 536–37 (1995).

To the extent that the Power of Attorney includes executing a bankruptcy petition or being the basis of appointment as a personal representative pursuant to Federal Rule of Civil Procedure 25 for Marjorie Shamgochian, it does not empower Steve Shamgochian to appear as Marjorie Shamgochian, file the Bankruptcy Petition for Marjorie Shamgochian, file motions in the name of Marjorie Shamgochian, or litigate for Marjorie Shamgochian. If he may exercise rights pursuant to a power of attorney, then Mark Shamgochian must be represented by an attorney at law when Mr. Shamgochian is acting in his fiduciary capacity for another under the power of attorney.

FEDERAL COURT PROCEEDINGS

Required Competency of the Parties

It appears that Marjorie Shamgochian has been placed in this bankruptcy case and is now on the verge of losing her home. This is the second Chapter 7 case filed for her by Steve Shamgochian using the

power of attorney—neither of which cases he, the holder of the power of attorney and fiduciary to Marjorie Shamgochian, has attempted to prosecute beyond the mere filing of the petitions. With this second case, Steve Shamgochian may be forfeiting Marjorie Shamgochian's rights to the automatic stay if she needs to actually prosecute such a case in good faith. *See* 11 U.S.C. § 362(c)(4).

As discussed by the Ninth Circuit Court of Appeal in *Dacannay v. Mendoza*, 573 F.2d 1075, 1079 (9th Cir. 1978):

It is an ancient precept of Anglo-American jurisprudence that infant and other incompetent parties are wards of any court called upon to measure and weigh their interests. The guardian ad litem is but an officer of the court. *Cole v. Superior Court*, 63 Cal. 86, 89 (1883); *Serway v. Galentine*, 75 Cal. App. 2d 86, 170 P.2d 32 (1940). While the infant sues or is defended by a guardian ad litem or next friend, every step in the proceeding occurs under the aegis of the court. See generally Solender, *Guardian Ad Litem: A Valuable Representative or an Illusory Safeguard*, 7 Tex.Tech.L.Rev. 619 (1976); Note, *Guardians Ad Litem*, 45 Iowa L. Rev. 376 (1960).

As a basic requirement for a person to have his or her rights determined in federal court, that person must meet the basic requirements for legal competency. Moore's Federal Practice, Civil § 17.21, provides a good survey of the federal competency requirement. These include: (1) competency determined based on the law of the litigant's domicile, not a separate federal standard; (2) a person lacking competency must have adequate representation, (3) such a representative may be appointed pursuant to Federal Rules of Civil Procedure 17 and 25 and Federal Rule of Bankruptcy Procedure 25; and (4) the federal court may issue such orders as are necessary for the protection of the interests of the person lacking legal capacity.

In California, statutory provisions dealing with legal capacity include California Probate Code §§ 810, 811, and 812. In California, a party is incompetent if he or she lacks the capacity to understand the nature or consequences of the proceeding, or is unable to assist counsel in the preparation of the case. *See* Cal. Prob. Code § 1801; *In re Jessica G.*, 93 Cal. App. 4th 1180, 1186 (2001); *Elder-Evins v. Casey*, 2012 U.S. Dist. LEXIS 92467 (N.D. Cal. July 3, 2012).

JUNE 29, 2017 STATUS CONFERENCE

The court ordered that Marjorie Shamgochian, the Putative Debtor, and Steve Shamgochian, and each of them appear at the June 29, 2017 Status Conference. Order, Dckt. 17. Neither appeared as ordered. Civil Minutes, Dckt. 19.

AUGUST 24, 2017 STATUS CONFERENCE ORDER TO APPEAR

Given the court's concerns about the apparent unlicensed practice of law, the apparent wasting of Marjorie Shamgochian's rights, and the potential for Marjorie Shamgochian (due to her age of approximately ninety-six years and possible physical condition) to being the subject of improper judicial proceedings, the court issued a second order to appear.

The court notes that the Chapter 7 Trustee's report of the continued First Meeting of Creditors conducted on August 17, 2017, notwithstanding the court having demonstrated a prior concern over Ms. Shamgochian and the wasting of her rights, states that neither Ms. Shamgochian nor Steve Shamgochian appeared at the August 17, 2017 continued meeting of Creditors. August 18, 2017, Trustee's Docket Entry Report.

At the August 24, 2017 Status Conference, Mr. Shamgochian reported that "they" are trying to save his grandmother's house from foreclosure by getting the creditor to agree to a short-sale with a "friendly buyer." The friendly buyer will allow the grandmother to continue live in the property.

PENDING MOTION FOR RELIEF FROM THE AUTOMATIC STAY

On September 14, 2017, MTGLQ Investor, L.P. filed a Motion for Relief From the Automatic Stay. Dckt. 39. In reviewing the Relief From Stay Summary Sheet (which is not evidence), it appears that MTGLQ Investor, L.P. is asserting that there have been thirty-five pre-petition defaults. Thus, it appears that those responsible for making Marjorie Shamgochian's monthly mortgage payment have failed to do so for now more than three years. In the Declaration of Carrie Dockter, a Bankruptcy Case Manager with Shellpoint Mortgage Servicing, she testifies to there are now forty monthly payments in default. Declaration, p. 3:6-13; Dckt. 41.

SEPTEMBER 28, 2017 STATUS CONFERENCE

Steve Shamgochian, holder of the power of attorney for Marjorie Shamgochian; Gary Farrar, the Chapter 7 Trustee; and Jason Blumberg, Esq., Office of the U.S. Trustee appeared at the September 28, 2017 Status Conference. Mr. Blumberg directed the court to three declarations filed on September 27, 2017. Mr. Blumberg further stated that based on the investigation of his office, the U.S. Trustee has significant concerns relating to Marjorie Shamgochian's involvement (or lack of knowledge or involvement) in this and the prior bankruptcy cases and the purported exercise of Marjorie Shamgochian's rights pursuant to the power of attorney.

The first Declaration is that of Jason Blumberg. Dckt. 46. In it he testifies having spoken with Steve Shamgochian and advising him that the U.S. Trustee would authorize Marjorie Shamgochian, his grandmother for who he is exercising a power of attorney, to appear at the required First Meeting of Creditors by phone. Mr. Blumberg testifies that Steve Shamgochian has taken advantage of this accommodation for his grandmother.

The second Declaration is by Tina Spyksma, a Paralegal Specialist in the Office of the U.S. Trustee. Dckt. 47. In it, Ms. Spyksma testifies that Steve Shamgochian told her:

- A. His grandmother, Marjorie Shamgochian, is alive.
- B His grandmother, Marjorie Shamgochian, has a "hard time reading and being mobile."
- C. His grandmother, Marjorie Shamgochian, was aware that the bankruptcy case had been filed in her name.

- D. Mr. Shamgochian's brother and his brother's family live with Marjorie Shamgochian at the house that is at issue in this bankruptcy case.
- E. Marjorie Shamgochian cannot attend the status conference in this matter on September 28, 2017, because she is on vacation with Mr. Shamgochian's father in Mexico.
- F. It was "open" as to when Marjorie Shamgochian would return.

Declaration, p. 2:3–11; Dckt. 47.

Ms. Spyksma further testifies that Mr. Blumberg requested that a phone call to Marjorie Shamgochian be arranged. The testimony provided was that Steve Shamgochian would call his father and try, and when it was last left Steve Shamgochian was waiting for a return phone call from his father.

The third Declaration is provided by Gary Farrar, the Chapter 13 Trustee. Dckt. 49. His testimony runs contrary to what has been stated by Steve Shamgochian at the Status Conferences and under penalty of perjury in the documents filed with this court. The Trustee testifies that he went to the 2360 Mira Flores Drive, Turlock, California, address which Steve Shamgochian states in the Petition (Dckt. 1) is Marjorie Shamgochian's address. At the 2360 Mira Flores Drive home, the Trustee was met by a man named Kalem, who identified himself as Steve Shamgochian's brother. The Trustee testifies that Kalem told the Trustee that he, Kalem, was aware of the bankruptcy case being filed for Marjorie Shamgochian, his grandmother.

However, the Trustee further testified that Kalem told him that:

- A. Marjorie Shamgochian, his grandmother, had no knowledge of the bankruptcy case;
- B. Marjorie Shamgochian, his grandmother, had no knowledge of the defaults in the payments due on her home;
- C. Marjorie Shamgochian, his grandmother, lives in Puerto Vallarta, Mexico with Kalem's father; and
- D. Marjorie Shamgochian, his grandmother, is ninety-one (91) years old and not really capable of dealing with any issues.

Declaration, p. 2:3–7; Dckt. 49.

This runs contrary to Steve Shamgochian's contentions that his grandmother lives at the Turlock address and is in communication with him concerning these bankruptcy cases.

At the hearing Steve Shamgochian advised the court that it is his brother and his brother's family that lives at the 2360 Mira Flores Drive, Turlock, California property, still intimating that it was with his grandmother. This is now at least partially consistent with the statements attributed to Kalem, Steve Shamgochian's brother.

At the Status Conference, the court addressed with the U.S. Trustee and Steve Shamgochian whether this case had devolved to the point that adult protective services should be notified and the court request the designation of a person who can be appointed as a personal representative for Marjorie Shamgochian in this case to assert her rights and the rights of the estate.

At the Status Conference, the U.S. Trustee directed the court to three declarations filed on September 27, 2017. They indicate that Marjorie Shamgochian does not live in California, but lives in Mexico with Steve Shamgochian's father. It appears to be questionable whether Marjorie Shamgochian is aware that these bankruptcy cases are being filed in her name.

Steve Shamgochian then stated at the hearing that he attempted to talk with Marjorie Shamgochian, his grandmother, in Mexico over the phone, but Marjorie Shamgochian could not hear or understand him.

ADULT PROTECTIVE SERVICES

On the Stanislaus County website it is identified that the County Office of Adult Protective Services:

The Stanislaus County APS program investigates reports of abuse, neglect and exploitation of elders* and dependent adults**. Social workers provide services that are focused on stopping the abuse and then helping the individual to develop a plan to remain in a safe environment. All services are voluntary and confidential. Types of abuse include: physical, sexual, abandonment, abduction, isolation, financial and neglect, by self or others.

http://www.csa-stanislaus.com/adult-services/#_aps.

It is this Office which has been identified as having the lead to which a concern about the welfare of an elder (adults 65 years of age and older) is directed. Here, Marjorie Shamgochian is stated by her grandchildren to be ninety-one (91) years old.

The court has concerns that Marjorie Shamgochian is being used, and her rights being wasted, through the power of attorney. Because Marjorie Shamgochian is unable, has refused, or is being prevented from participating in the First Meeting of Creditors or communicating with the Office of the U.S. Trustee, the U.S. Trustee and Chapter 7 Trustee cannot provide the court with information sufficient for the court to continue in the adjudication of Marjorie Shamgochian's rights.

ORDER OF OCTOBER 5, 2017

The court ordered that an initial hearing to determine Marjorie Shamgochian's legal competency would be held at 10:30 a.m. on November 30, 2017. Dckt. 58. As part of the order, the court referred the question of Marjorie Shamgochian's federal legal competency to the Stanislaus County Department of Adult Protective Services for investigation, review, report, and recommendation. *Id.*

NOVEMBER 30, 2017 HEARING

Response of Stanislaus County Department of Adult Protective Services

In this court's Order setting an Initial Hearing on the legal competency of Marjorie Shamgochian, the court requested that the Stanislaus County Adult Protective Services investigate and advise the Court whether, in its opinion, Marjorie Shamgochian was legally competent and whether Adult Protective Services believed that a personal representative be appointed for Ms. Shamgochian in these federal court proceedings.

In the Order, the court's observations and findings included the following:

- A. This was the second bankruptcy case filed in the name of Marjorie Shamgochian by her grandson. The first case was dismissed for lack of prosecution. Order, p. 1:26–28; Dckt. 58.
- B. It appears that the grandson was using the power of attorney to practice law, without license, and was purporting to represent Marjorie Shamgochian. *Id.*, p. 2:24–28, 4:6.
- C. Marjorie Shamgochian had failed to appear at any court hearing or the required meeting with the Chapter 7 Trustee in either of the two bankruptcy cases. *Id.*, p. 5:18–22.
- D. Another grandson was living in Marjorie Shamgochian's house, without paying the monthly mortgage payments, which led to a pending foreclosure. The bankruptcy cases were filed to delay the creditor from foreclosing on the home in which the other grandson was living. *Id.*, p. 5:23–24, improperly stating that the bankruptcies were being filed to accomplish a short-sale, with the buyer allowing Marjorie Shamgochian to continue to live in the house. This is inaccurate in that she was not living in the house, but the other grandson and his family have been during this period while nobody has been making the mortgage payment, and Ms. Shamgochian is "living" in Mexico with her son.
- E. Marjorie Shamgochian is out of the country (originally stated as an open-ended vacation and then as her living with her son, the grandsons' father, in Mexico) and is unable to participate in the federal court proceedings. *Id.*, p. 7:1–3, 7:22–23.
- F. The grandson with the power of attorney failed to arrange for at least a telephonic participation by Marjorie Shamgochian at the required meeting with the Chapter 7 Trustee. *Id.*, p. 7:6–9.
- G. The second grandson, who is living in the house to be foreclosed, told the Chapter 7 Trustee that Marjorie Shamgochian has no knowledge of the bankruptcy cases being filed by the grandson with the power of attorney. *Id.*, p. 7:19.
- H. The second grandson is reported by the Chapter 7 Trustee as telling the Trustee that Marjorie Shamgochian is 91 years old and not capable of dealing with these issues. *Id.*, p. 7:24–25.

No responsive pleading was filed with the court by Stanislaus County. However, Stanislaus County Counsel sent a personal, *ex parte* communication, letter to the judge in this bankruptcy case. In the letter, Stanislaus County Adult Protective Services explains to the court the County's responsibility is to investigate "reports of abuse, neglect and exploitation of elders and dependent adults." The County has a duty to "investigate all reports of know or suspected abuse or neglect of elder or dependent adults." Letter, page 1. If upon investigation Adult Protective Services determines that such abuse or neglect exists, it will then act to protect such elders.

The County continues, stating that because the court requested that the Stanislaus County Department of Adult Protective Services investigate and provide a recommendation to the court whether this unrepresented 91 year old woman for which bankruptcy cases are being filed, her home is being lived in by a grandson without the mortgage being paid, facing the imminent foreclosure and loss of her home, and being (in the reported words of one grandson) incapable of understanding these bankruptcy cases being filed for her (of which that same grandson is reported to have said Marjorie Shamgochian is unaware), there is no basis for Stanislaus County Adult Protective Services to investigate whether Marjorie Shamgochian is the victim of elder abuse.

The County goes further, stating that if the federal judge will make an *ex parte* communication and call the County and report that elder abuse is "suspected," the County could then conduct such an investigation. The County appears not to appreciate that judges do not engage in *ex parte* communications or conduct secret conferences concerning persons appearing before the court.

The County's letter concludes that based on the information in the Order, "From what I (Deputy County Counsel) have received (the court's Order), it is difficult to discern whether you or someone else believes Ms. Shamgochian is a victim of elder abuse or neglect." The court is uncertain as to why or how, given the information of the multiple federal court proceedings commenced by the grandson with the power of attorney, the wasting of Marjorie Shamgochian's legal rights, another grandson living in the house without paying the mortgage, the loss of the house being imminent, and the apparent admission reported by one grandson that Marjorie Shamgochian is not competent to understand these bankruptcy cases being filed in her name (to forestall foreclosure of property that the other grandson is living in), the County has not been provided with sufficient notice of possible elder abuse.

However, the County has chosen not to act, apparently because the information communicated in the court's order was not communicated in an *ex parte* phone call with the County. The court did not order the County to act to fulfill its obligations to Ms. Shamgochian, so the inaction by the County is by choice.

That leaves the court with limited options, which include referral of this matter to the U.S. Attorney for consideration of the conduct of the parties in this federal court proceeding. Additionally, the court may refer this matter to the Chief Judge of the United States District Court for consideration of whether an Order to Show Cause should be issued concerning the conduct of the parties in these federal court proceedings, and whether such warrants the exercise of the corrective and punitive sanction power of that court.

Steve Shamgochian Status Report

Though an attorney appeared for Steve Shamgochian at the prior hearing, on November 16, 2017, Steve Shamgochian personally filed a status report as the “Power of Attorney Holder for Debtor Marjorie Shamgochian. Dckt. 65. In the Report, Steve Shamgochian represents the following:

- A. The “hope” in filing the bankruptcy cases was to complete a “short-sale” of the property to a relative or friendly buyer. Report, p. 2:4–6; Dckt. 65. This is partially consistent with prior reports from Steve Shamgochian, however, it is no longer contended that the sale was to be conducted to “allow Marjorie Shamgochian to continue to live in the house.”
- B. Marjorie Shamgochian actually lives in Mexico with her adult son. This conflicts with the statements under penalty of perjury on the Petition by Steve Shamgochian that Marjorie Shamgochian lives in the Turlock, California property that is the subject of the foreclosure sale. *Id.*, p. 2:10.5–11.5.
- C. Marjorie Shamgochian is stated to have been the victim of two internet scams, having lost a substantial amount to such schemes. *Id.*, 2:13.5–16.
- D. It now is purported that Marjorie Shamgochian’s intention was to allow her grandson Kalem Shamgochian to occupy and ultimately own the Property in Turlock, California. *Id.*, p. 2:20–21.
- E. Due to a job loss, Kalem Shamgochian has been unable to service the mortgage debt for several years. *Id.*, p. 2:22–24.5, 3:1.5–2.5.

On this point, the Declaration in support of the Motion for Relief From the Automatic Stay to foreclose on the Property identifies forty missed payments since June of 2014 on the mortgage. Declaration ¶ 10, Dckt. 41. Taking the report that Kalem Shamgochian has occupied the Property for five years, which dates back to November 2012, payments were made for approximately twenty months, and the defaults in payments have been ongoing for the past three and one half years (forty-two months).

- F. Steve Shamgochian urges the court to grant the U.S. Trustee’s Motion to Dismiss this second bankruptcy case filed in the name of Marjorie Shamgochian. Report, p. 3:24.5–25.5, 4:1.5.

Filed as Exhibit 1, Dckt. 66, is an unauthenticated (Federal Rule of Evidence 901) document purporting to be the Revocable Trust Agreement of Marjorie Shamgochian. This is provided to purportedly show Marjorie Shamgochian’s intention to give the Turlock, California Property to Kalem Shamgochian. However, this document raises the question as to what Steve Shamgochian can be doing with a power of attorney from Marjorie Shamgochian if all of her property is in a trust. Theron Shamgochian, identified as Marjorie Shamgochian’s son, is named as the successor trustee to Marjorie Shamgochian.

Additional Information Provided at November 30, 2017 Hearing

At the hearing, xxxxxxxxx.

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 Initial Hearing for Determination of Legal Competency for Marjorie Shamgochian (“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 **xxxxxxxxxxxx**.

11. [17-90347](#)-E-7 **MARJORIE SHAMGOCHIAN** **CONTINUED MOTION FOR RELIEF**
MEL-1 Pro Se **FROM AUTOMATIC STAY**
9-14-17 [\[39\]](#)
MTGLQ INVESTORS, LP VS.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on September 14, 2017. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

The Motion for Relief from the Automatic Stay 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 Relief from the Automatic Stay is granted.
--

MTGLQ Investors, L.P. (“Movant”) seeks relief from the automatic stay with respect to Marjorie Shamgochian’s (“Debtor”) real property commonly known as 2360 Mira Flores Drive, Turlock, California

("Property"). FN.1. Movant has provided the Declarations of Terrance Blakemore and Carrie Dockter to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

FN.1. Movant combined the Motion and Memorandum of Points and Authorities for this matter. Local Bankruptcy Rule 9014-1(d)(4) states that a motion and memorandum of points and authorities may be filed as a single document if the filing does not exceed six pages. Movant exceeded the page-limit.

The Dockter Declaration states that there are five post-petition defaults in the payments on the obligation secured by the Property, with a total of \$11,437.14 in post-petition payments past due. The Declaration also provides evidence that there are thirty-five pre-petition payments in default, with a pre-petition arrearage of \$74,528.33.

ISSUE OF SERVICE AND COMPETENCY OF DEBTOR

This court has conducted several hearings and has now issued an Order to Show Cause and to Conduct a Competency Hearing concerning the named Debtor, Marjorie Shamgochian. Order, Dckt. 58. That Order discusses in detail the questionable conduct of Debtor's grandson in filing repeated bankruptcy cases in the Debtor's, his grandmother's, name. There arises the question of whether Debtor is competent, is aware of the bankruptcy case, and is able to act to protect her rights and interests. It was disclosed to the court that Debtor's other grandson is living in the Property that is the subject of the motion, and nobody is making the required mortgage payments. It was also disclosed that Debtor is living in Mexico with her son and is apparently unable to communicate with her grandson, who filed this case, the Chapter 7 Trustee, or the U.S. Trustee by phone.

The court further addressed with Creditor and Steve Shamgochian, Debtor's grandson who has used a power of attorney to file these bankruptcy cases, the issues concerning Federal Rule of Bankruptcy Procedure 9011 in connection with the statements made in the Petition, Schedules, and other documents filed by Steven Shamgochian in this case.

Though requested, the County of Stanislaus has declined to investigate whether Ms. Shamgochian is not competent and is the victim of elder abuse in these proceedings. Based on the inaction of the County Agency responsible for protecting Ms. Shamgochian, it appears that the County believes there is no issue of competency.

OCTOBER 19, 2017 HEARING

At the hearing, Counsel for Movant reported that she and her client were unaware of the potential elder abuse issues and would consent to the court continuing the hearing. Dckt. 61.

Steve Altman appeared as recently hired counsel for Steve Shamgochian (within the last twenty-four hours) and reported that he is immediately undertaking contacting Steve Shamgochian's brother (who is living in Debtor's house), Debtor's son (reported to be living or vacationing with Debtor in Mexico), and Debtor.

The court continued the hearing to 10:30 a.m. on November 30, 2017, conditioned upon Steve Shamgochian and/or Kalem Shamgochian, and each of them, paying \$2,375.24 by October 30, 2017, and \$2,375.24 by November 15, 2017, for the continued use of the property during the delays imposed on Movant obtained by filing this case and continuing to use the Estate's property (i.e., the house in which Kalem Shamgochian is living). Dckt. 62.

MOVANT'S STATUS REPORT

Movant filed a Status Report on November 21, 2017. Dckt. 68. Movant reports that it was contacted by Steven Altman requesting a delay in the two payments until November 4, 2017, and December 4, 2017. Movant responded that it could not modify the court's order.

Movant reports that it has not received either of the payments that court ordered to be paid.

DISCUSSION OF MOTION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by secured by Movant's deed of trust is determined to be \$342,475.91, as stated in the Dockler Declaration. Debtor has not filed a Schedule A for the court to evaluate the Property's value, and Movant has only provided the Declaration of Terrance Blakemore, a real estate agent, who testifies that he performed a sales comp of the analysis and concluded that it is worth \$340,000.00. Dckt. 42.

In the Carrie Dockter Declaration, a bankruptcy case manager at Shellpoint Mortgage Servicing, she testifies that the payments on this obligation went into default with the June 1, 2014 payment, with additional defaults for each month thereafter through September 2017, the time of her declaration. Declaration, ¶ 10; Dckt. 41. These total forty consecutive months of payments.

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Further, based on the Brokers Price Opinion, there is not a realizable equity in the property, and it is not necessary for an effective reorganization in this Chapter 7 case. Relief is also proper pursuant to 11 U.S.C. § 362(d)(2).

No opposition has been made to this Motion. In his Status Report filed on November 16, 2017, Steve Shamgochian, the holder of a purported power of attorney who has filed this case (and a prior case) in the name of Marjorie Shamgochian, assumes that this relief will be granted. Report, p. 4:3–7; Dckt. 65.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the

proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by MTGLQ Investors, L.P. and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted MTGLQ Investors, L.P. and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

No other or additional relief is granted by the court.

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 Relief from the Automatic Stay filed by MTGLQ Investors, L.P. (“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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated for cause pursuant to 11 U.S.C. § 362(d)(1) to allow MTGLQ Investors, L.P., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the Property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the real property commonly known as 2360 Mira Flores Drive, Turlock, California (“Property”).

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on October 3, 2017. By the court's calculation, 37 days' notice was provided. 14 days' notice is required.

The Motion for Turnover 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 Turnover is granted.
--

Michael McGranahan, the Chapter 7 Trustee, ("Movant") in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 1037 Westmont Terrace, Modesto, California ("Property") and for turnover of a demand note in favor of Luann Selecky ("Debtor") executed by her former husband Stephen Goudreau in the principal amount of \$500,000.00 ("Note").

The grounds for relief as stated with particularity in the Motion (Federal Rule of Bankruptcy Procedure 9013) include the following:

- A. Based upon information provided to Movant and working with the Office of the United States Trustee, Movant has requested this bankruptcy case be reopened so that he may pursue the recovery of assets of the estate that are alleged not to have been previously disclosed by Debtor.

- B. Based upon the information provided by Debtor in the Schedules, the First Meeting of Creditors, and in the bankruptcy case, there appeared to be no assets to be administered by Movant, and the case was noticed as a “No Asset” case. Motion, FN. 1; Dckt. 20.
- C. It is alleged that the Debtor owned real property commonly known as 1037 Westmont Terrace, Modesto, California, when this bankruptcy case was commenced, but such “Real Property” was not disclosed in Debtor’s bankruptcy case. *Id.*, ¶ 3, Dckt. 20.
- D. It is alleged that Debtor held a demand note, with Debtor as payee, in the principal amount of \$500,000.00 that was executed by her former husband. *Id.*, ¶ 4.
- E. Debtor has not turned over the Property and the Note to Movant.

In his Declaration, Movant provides a discussion of the investigation undertaken and what he and his agents have discovered. Movant testifies that he is asserting an interest of the bankruptcy estate in the Property pursuant to an Interfamily Transfer and Dissolution on or about September 6, 2001. Declaration ¶ 4, Dckt. 22. (It is not clear whether that is referencing a court order, contract, marital settlement agreement, or other type of document transferring legal, equitable, or other rights in the Property to Debtor. However, this appears to be language used in connection with a deed issued by one spouse to the other in connection with the dissolution of a marriage.) Movant reports that the deed for the Property was not recorded until July 6, 2015. *Id.*

Copies of the deed or other documents are not provided. Movant has filed a copy of a LexisNexis Property Deed/Mortgage Report as Exhibit 1 in support of the Motion. Dckt. 24. That third-party information does not constitute personal knowledge testimony by Movant, nor does it appear to be a certified county real property record. While the information in Exhibit 1 may be several steps removed from personal knowledge testimony or an authenticated document (Federal Rule of Evidence 601, 602, 901 et seq.), it does provide some general information, which if true, can be easily and properly documented for the court.

The LexisNexis Property Deed/Mortgage Report includes the following information relating to the Property and to Debtor:

- A. Debtor acquired the Property by a “Contract” dated September 6, 2001. Exhibit 1, p. 2 of 4; Dckt. 24.
- B. The “Contract” was recorded on July 6, 2015. *Id.*
- C. The “Seller” of the Real Property was Stephen Goudreau, whom Movant identifies as Debtor’s ex-husband. *Id.*
- D. There is a non-purchase money mortgage for a \$45,000.00 obligation of Debtor as “Borrower” based on a “Contract” dated February 21, 2016, and recorded on April 5, 2017, naming “Stephen Goudreau,” for which Debtor is listed as the owner of the Property. *Id.*, p. 1 of 4.

Movant notes in his Declaration that in the Original Chapter 7 Schedules filed, Debtor lists her residence as the Property, but on Schedule A she states under penalty of perjury that she has no interests in any real property. Declaration ¶ 6, Dckt. 22.

The court's review of the Petition discloses that Debtor stated her address to be the Property. Dckt. 1 at 1. On Schedule A, Debtor stated under penalty of perjury in response to the required disclosure of any interests in real property that she had "None." *Id.* at 5.

On Schedule I, Debtor stated that she is single and has income of \$750.00 per month. *Id.* at 14. On Schedule J, Debtor stated that she had no rent or mortgage expense, no utilities expense, and no home maintenance expense. *Id.* at 15. Debtor did state that for her income of \$750.00 per month, she had an expense of \$150.00 per month identified as "Set aside for taxes." *Id.*

On the Statement of Financial Affairs, Debtor affirmatively stated that she has not been a party of any suits or proceedings in the one year prior to the November 26, 2002 commencement of her bankruptcy case. *Id.* at 17. In response to Question 15 on the Statement of Financial Affairs, Debtor stated that she has not lived at any address other than the Property during the two years prior to the commencement of the bankruptcy case. *Id.* at 19.

On Schedule B, Debtor did not list any interest in any promissory notes (\$500,000.00 or other amount) or any right to payment of monies (\$500,000.00 or other amount) from any other person. *Id.* at 6–7.

NOVEMBER 9, 2017 HEARING

At the hearing, the court stated that it did not believe that Movant would knowingly present inaccurate information but would have to present clear evidence if the court is to issue an order from which contempt sanctions could be issued. Dckt. 35.

The court issued a scheduling order (Dckt. 43) setting deadlines for additional pleadings and for a further hearing.

SUPPLEMENTAL PLEADINGS

Movant filed supplemental pleadings on November 9, 2017. Dckts. 36–39. In the Supplemental Declaration of Michael McGranahan, he states that he contacted Pam Shaw, an escrow officer for Chicago Title, in October 2017 and requested a preliminary title report for the Property. Dckt. 36. He received the title report and also procured certified records from the Stanislaus County Records Office showing that an Interspousal Transfer Deed was executed from Stephen Goudreau to Debtor for the Property on September 6, 2001, but it was not recorded until July 6, 2015. *See* Exhibits 2 & 5, Dckt. 39.

Movant has also described and attached a Case Index for a divorce proceeding between Debtor and Stephen Goudreau that appears final as of July 13, 2001. Exhibit 4, Dckt. 39. Movant has provided the Declaration of Pam Shaw, who confirms that she prepared and delivered a title report for the Property. Dckt. 37.

The Declaration of Steven Altman reaffirms the above statements relating to how the evidence was gathered. Dckt. 38.

DISCUSSION

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Debtor to deliver undisclosed property to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

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 Movant.

Though this case was previously closed, undisclosed assets have not been “administered” by Movant and are not abandoned back to Debtor as provided in 11 U.S.C. §§ 350, 554(c) & (d). *First Nat’l Bank v. Lasater*, 196 U.S. 115, 117 (1905); *Pace v. Battley (In re Pace)*, No. 92-36787, 1994 U.S. App. LEXIS 3891 (9th Cir. Feb. 24, 1994); *Vreugdenhill v. Navistar Int’l Transp. Corp.*, 950 F.2d 524 (8th Cir. 1991); *Stein v. United Artists Corp.*, 691 F.2d 885, 888 (9th Cir. 1982); *In re Dunning Bros. Co.*, 410 B.R. 877, 879 (Bankr. E.D. Cal. 2009). *See also* 5 COLLIER ON BANKRUPTCY ¶ 554.03 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.), discussing this point of law:

Abandonment presupposes knowledge. There can, as a rule, therefore be no abandonment by mere operation of law of property that was not listed in the debtor’s schedules or otherwise disclosed to the creditors. This principle is recognized in section 554(c) which provides that, unless the court orders otherwise, property of the estate that is neither abandoned nor administered in the case remains property of the

estate. Likewise, property that is improperly or ineffectively abandoned remains property of the estate pursuant to section 554(d).

Thus, if property was not properly scheduled by the debtor, it is not automatically abandoned at the end of the case. Section 554(c) provides for automatic abandonment only for property that was “scheduled under section 521(1).” Even after the case is closed, the estate continues to retain its interest in unscheduled property. However, if the case is dismissed, all estate property, whether disclosed or not disclosed by the debtor, reverts in the debtor.

While remaining property of the bankruptcy estate, the property remains protected by the automatic stay (in addition to the debtor not having legal or equitable title to the undisclosed real or personal property after the closing of the bankruptcy case) as provided by 11 U.S.C. § 362(a)(2)–(4) for property of the bankruptcy estate. The termination of stay provisions of 11 U.S.C. § 362(c)(1) upon the closing of a case only applies once the real or personal property is no longer property of the bankruptcy estate.

Here, Movant argues that the Property and the Note were not disclosed during Debtor’s case, even though they should have been, and they have not been administered for the benefit of creditors. Movant argues that the Property is owned by Debtor and was owned by her when she filed this case on November 26, 2002. After she did not disclose the Property, though, the case was closed as being a “no asset” case. Additionally, Movant argues that the Note is owned and controlled by Debtor and owned by her when the case was filed without being disclosed.

No opposition has been filed to this Motion by Debtor or any other party in interest.

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 Turnover of Property filed by Michael McGranahan, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Turnover of Property is granted.

IT IS FURTHER ORDERED that Luann Selecky (“Debtor”), and each of them, shall deliver on or before noon on December 15, 2017, possession of the real property commonly known as 1037 Westmont Terrace, Modesto, California (“Property”) and possession of a demand note in favor of Debtor executed by her former husband Stephen Goudreau in the principal amount of \$500,000.00 (“Note”).

The setting of the December 15, 2017 deadline is without prejudice to Movant, in his discretion, allowing Debtor additional time for the turnover of the Property. However, any such allowance shall be documented in writing, executed

by Debtor, Movant, and their respective counsel (if any), and filed with the court prior to the expiration of the noon December 15, 2017 deadline.

IT IS FURTHER ORDERED that Debtor will remove all of her personal property, personal property of any other persons that Debtor has allowed access to the Property, from the Property when the Property is turned over to Movant.

IT IS FURTHER ORDERED that the hearing on this Motion is continued to 10:30 a.m. on January 11, 2018, for a status report on the compliance with this Order and the consideration of the ordering of corrective sanctions for the enforcement of this Order as requested in the Motion.

13.	<u>17-90156-E-7</u> SSA-7	LUZ ACOSTA Patrick Greenwell	MOTION TO UNBLOCK ACCOUNT PROCEEDS FOR ADMINISTRATION 10-31-17 [63]
-----	--	---------------------------------	--

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 31, 2017. By the court's calculation, 30 days' notice was provided. 14 days' notice is required.

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

The Motion to Unblock Funds is granted.
--

Michael McGranahan (“the Chapter 7 Trustee”) filed this Motion to Unblock Funds received by the Estate pursuant to the sale of a 2013 Chevrolet Silverado 2500 (“Vehicle”). The court approved the sale of the Vehicle on August 16, 2017, and included in its order that net proceeds from the sale should not be disbursed except upon further order of the court. Dekt. 52.

The Chapter 7 Trustee reports that the Vehicle has been sold and that the claim secured by the Vehicle has been paid in full. Now, there are net proceeds of \$19,002.00 that have been paid to the Estate. The Chapter 7 Trustee states that there are no more liens subject to the net proceeds, and he requests permission to distribute the funds.

The court previously ordered the Vehicle to be sold free and clear of all liens, with the liens attaching to the net proceeds of the sale. Each party holding a lien, however, has released any interest in the lien such that the proceeds may now be distributed by the Chapter 7 Trustee according to the Bankruptcy Code.

Accordingly, the Motion is granted, and the Chapter 7 Trustee is authorized to disburse the monies not subject to any lien or other interest as provided under Chapter 7 of the Bankruptcy Code.

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 Unblock Funds filed by Michael McGranahan (“the Chapter 7 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the Chapter 7 Trustee is authorized to release such monies, the net proceeds from the sales of the 2013 Chevrolet Silverado, and disburse the monies as not being subject to any lien or other interest as provided under Chapter 7 of the Bankruptcy Code.

14. [14-91565-E-7](#) RICHARD SINCLAIR
Pro Se

CONTINUED ORDER TO SHOW CAUSE:
FAILURE TO PAY FEES
2-8-16 [[382](#)]

Final Ruling: No appearance at the November 30, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Richard Carroll Sinclair (“Debtor”), Trustee, and other parties in interest on February 8, 2016. The court computes that 38 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case (\$30.00 due on January 25, 2016).

The Order to Show Cause is discharged.

NOVEMBER 30, 2017 STATUS CONFERENCE

A review of the docket shows that the fee has not been paid. The Chapter 7 Trustee filed a Final Report on September 12, 2017. Dckt. 683. That Report shows that there is a total of \$53,252.13 in Estate funds.

Additionally, there is one adversary proceeding (No. 15-09008) open.

JUNE 29, 2017 STATUS CONFERENCE

The court’s files reflected that this fee had not been paid by Debtor. However, the court noted that there are sufficient monies in the estate, and possibly exempt assets, with which to pay the fees. Alternatively, the court stated that it may strike the document for which the fee has not been paid. Dckt. 645.

The court continued the hearing to 10:30 a.m. on November 30, 2017. Dckt. 648.

JANUARY 26, 2017 HEARING

At the hearing, the court continued the matter to June 29, 2017, for a status conference. Dckt. 543.

MARCH 17, 2016 HEARING

At the hearing, the court continued the matter to January 26, 2017, for a status conference.

DISCUSSION

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$30.00.

Gary Farrar, the Chapter 7 Trustee, filed a response to the instant Order to Show Cause on March 3, 2016. Dckt. 403. The Trustee states that, since the conversion to one under Chapter 7, the Trustee has worked diligently to evaluate Debtor's business affairs, assets, and other property interests. The Trustee states that due to the complex state of Debtor's affairs, the Trustee requests the case not be dismissed.

It appears that there are substantial assets that are to be administered by the Chapter 7 Trustee, from which the fee can be paid from Debtor's possible surplus estate, if one exists, or from Debtor if he desires to obtain a discharge if there is not a surplus estate.

The court further notes that this is a mere \$30.00 fee in this case that was to be paid by Debtor. He, for whatever unfortunate reasons, appears to be unable or unwilling to pay the small required fee. The court waives this minor, small dollar amount fee in light of the substantial prosecution of this case by Debtor, the Chapter 7 Trustee, and other parties in interest. FN. 1.

FN.1. Failure to discharge this minor, small dollar amount fee would create the misimpression that a party could manufacture a dismissal of a bankruptcy case, bypassing all of the protections afforded under 11 U.S.C. § 707, by incurring and then refusing to pay a small dollar fee. While not the situation in this case, the court recognizes such a possibility.

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

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

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, and the court waives the \$30.00 filing fee owed by Richard Sinclair, the Debtor, for the filing of Amended Schedule E/F so that Debtor could accurately list his creditors with unsecured claims in this case for the Chapter 7 Trustee to properly compute the distribution in this case.

15. [17-90565](#)-E-7 **RICKY/CHRISTINE LUYSTER** **MOTION TO EXTEND DEADLINE TO**
SSA-2 **David Foyil** **FILE A COMPLAINT OBJECTING TO**
 DISCHARGE OF THE DEBTOR
 10-30-17 [20]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2017. By the court's calculation, 31 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend Deadline is granted.

Michael McGranahan ("the Chapter 7 Trustee") filed a motion to extend time to file a complaint objecting to Ricky Luyster's and Christine Luyster's ("Debtor") discharge on October 30, 2017. Dckt. 20.

The Chapter 7 Trustee states that Debtor has failed to cooperate fully with the Chapter 7 Trustee regarding providing information about three vehicles. The Chapter 7 Trustee states that he needs additional time to investigate Debtor's personal affairs.

The deadline for filing a complaint objecting to discharge was November 6, 2017. The Motion requests that the deadline to object to the Debtor's discharge be extended to December 31, 2017.

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

The instant Motion was filed on October 30, 2017, before the deadline to object to the discharge of Debtor.

The court finds that in the interest of the Chapter 7 Trustee to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets, is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for the Chapter 7 Trustee to object to Debtor's discharge is extended to December 31, 2017.

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

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

The Motion to Extend Deadline filed by Michael McGranahan ("the Chapter 7 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the deadline for the Chapter 7 Trustee to object to Ricky Luyster's and Christine Luyster's ("Debtor") discharge is extended to December 31, 2017.

Final Ruling: No appearance at the November 30, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on September 25, 2017. By the court's calculation, 45 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 Midland Funding LLC ("Creditor") against property of Richard Gonzales and Sandra Gonzales ("Debtor") commonly known as 1309 Lillian Drive, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,831.35. An abstract of judgment was recorded with Stanislaus County on June 14, 2011, that encumbers the Property.

NOVEMBER 9, 2017 HEARING

At the hearing, the court noted that Debtor did not allege what senior liens exist on the Property. On Original Schedule D, Debtor stated that Bank of America, N.A. held a claim \$212,079.00 secured by a first deed of trust against the Property. Dckt. 1 at 17. On Amended Schedule D, Debtor restates the bank's deed of trust and adds Creditor's judgment lien. Dckt. 27 at 4. Applying the numbers provided by Debtor, there would have been sufficient equity to support the judicial lien.

The court continued the hearing to 10:30 a.m. on November 30, 2017, and required Debtor to file supplemental pleadings by November 17, 2017. Dckt. 32.

SUPPLEMENT TO THE MOTION

Debtor filed a Supplement to the Motion on November 17, 2017. Dckt. 36. Debtor discloses that at the time of filing this case, Debtor owned a 50.00% interest in the Property, which had a fair market value of \$259,885.00. Debtor states that the Schedules have been amended to reflect the half interest.

DISCUSSION

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$259,885.00 as of the petition date, and Debtor's interest in the Property is valued at \$129,942.50. Dckt. 40. The unavoidable consensual liens that total \$212,079.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 40. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$23,903.00 on Amended Schedule C. Dckt. 40.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Richard Gonzales and Sandra Gonzales ("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 Midland Funding LLC, California Superior Court for Stanislaus County Case No. 653727, recorded on June 14, 2011, Document No. 2011-0049390-00, with the Stanislaus County Recorder, against the real property commonly known as 1309 Lillian Drive, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 16, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.
--

This Motion requests an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against property of Timothy Riner ("Debtor") commonly known as 4104 Family Lane, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,023.38. An abstract of judgment was recorded with Stanislaus County on January 12, 2011, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$319,000.00 as of the petition date. The unavoidable consensual liens that total \$241,651.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000.00 on Schedule C.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Timothy Riner ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Capital One Bank (USA), N.A., California Superior Court for Stanislaus County Case No. 649123, recorded on January 12, 2011, Document No. 2011-0003095-00, with the Stanislaus County Recorder, against the real property commonly known as 4104 Family Lane, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

18. [14-90385-E-7](#)
DCJ-5

TIMOTHY RINER
David Johnston

MOTION TO AVOID LIEN OF
CITIBANK (SOUTH DAKOTA) N.A.
11-16-17 [\[55\]](#)

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 16, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is XXXXXXXXXXXXXXXXXX.
--

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota) N.A. ("Creditor") against property of Timothy Riner ("Debtor") commonly known as 4104 Family Lane, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$6,420.63. An abstract of judgment was recorded with Stanislaus County on December 24, 2009, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$319,000.00 as of the petition date. The unavoidable consensual liens that total \$241,651.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there would be no equity to support the judicial lien.

Real Party in Interest Requirement

For the exercise of federal judicial power, the court must have in front of it the real parties in interest. FED. R. CIV. P. 17(b); FED. R. BANKR. P. 7017, 9014. Here, the named “creditor” against whom the avoiding power issue arising under 11 U.S.C. § 533(f) is to be litigated is stated to be “Citibank (South Dakota), N.A.” Motion, Dckt. 55. Citibank(South Dakota), N.A. was served by certified mail, which was sent to the attention to the Chief Executive Officer of Citibank, National Association, as the successor to Citibank (South Dakota), N.A., at 701 East 60th Street North Sioux Falls, South Dakota 57104. Cert. of Serv., Dckt. 60.

This identification of the successor is consistent with the information provided by the FDIC at its official website, stating, “Citibank (South Dakota), N.A. is no longer doing business under that name because it has been merged or acquired without government assistance. See the successor institution, Citibank, National Association (FDIC #: 7213).” FN.1.

FN.1. [https://research.fdic.gov/bankfind/detail.html?bank=23360&name=Citibank \(South Dakota\), N.A.&searchName=CITIBANK \(SOUTH DAKOTA\), N.A.&searchFdic=&city=&state=&zip=&address=&searchWithin=&activeFlag=&searchByTradename=false&tabId=2](https://research.fdic.gov/bankfind/detail.html?bank=23360&name=Citibank%20(South%20Dakota),%20N.A.&searchName=CITIBANK%20(SOUTH%20DAKOTA),%20N.A.&searchFdic=&city=&state=&zip=&address=&searchWithin=&activeFlag=&searchByTradename=false&tabId=2)

While recognizing that there is a successor to Citibank (South Dakota), N.A., the Motion does not request any relief against Citibank, N.A., as the successor in interest. The relief is requested only against Citibank (South Dakota), N.A., stating,

“WHEREFORE, Timothy Allan Riner, the Debtor, prays for an order of this Court avoiding the judicial lien of Citibank (South Dakota) N.A. insofar as it affects the real property commonly known as 4104 Family Lane, Modesto, California.”

Motion, p. 3:19–21.

Based on the information provided by Debtor, it appears that the requested relief would be of no effect in light of there being no “judicial lien of Citibank (South Dakota), N.A.,” but it is the entity Citibank, N.A. that now holds the judgment and the judgment lien.

At the hearing, counsel for Debtor **XXXXXXXXXXXXXXXXXXXXX**.

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Timothy Riner (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to avoid the judgment lien of Citibank (South Dakota), N.A., California Superior Court for Stanislaus County Case No. 640557, recorded on December 24, 2009, Document No. 2009-0123128-00, with the Stanislaus County Recorder, against the real property commonly known as 4104 Family Lane, Modesto, California, is **XXXXXXXXXXXXXX**.

19.	<u>14-90385</u> -E-7 DCJ-6	TIMOTHY RINER David Johnston	MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY LLC 11-16-17 <u>[63]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 16, 2017. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

The Motion to Avoid Judicial Lien is granted.
--

This Motion requests an order avoiding the judicial lien of Ford Motor Credit Company LLC (“Creditor”) against property of Timothy Riner (“Debtor”) commonly known as 4104 Family Lane, Modesto, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$12,039.90. An abstract of judgment was recorded with Stanislaus County on October 14, 2010, that encumbers the Property.

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$319,000.00 as of the petition date. The unavoidable consensual liens that total \$241,651.00 as of the commencement of this case are stated on Debtor’s Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000.00 on Schedule C.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Timothy Riner (“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 Ford Motor Company, LLC, California Superior Court for San Joaquin County Case No. 39-2010-00234631-CL-CL-STK, recorded on October 14, 2010, Document No. 2010-0092493-00, with the Stanislaus County Recorder, against the real property commonly known as 4104 Family Lane, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

20.

[14-90385](#)-E-7
DCJ-7

TIMOTHY RINER
David Johnston

MOTION TO AVOID LIEN OF
N O R T H E R N C A L I F O R N I A
C O L L E C T I O N S E R V I C E , I N C . , O F
S A C R A M E N T O
11-16-17 [\[68\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 16, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Northern California Collection Service, Inc. of Sacramento ("Creditor") against property of Timothy Riner ("Debtor") commonly known as 4104 Family Lane, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$16,814.00. An abstract of judgment was recorded with Stanislaus County on May 19, 2008, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$319,000.00 as of the petition date. The unavoidable consensual liens that total \$241,651.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$100,000.00 on Schedule C.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Timothy Riner ("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 Northern California Collection Service, Inc. of Sacramento, California Superior Court for Sacramento County Case No. 34-2008-00001194--STANISLAUS CO recorded on May 19, 2008, Document No. 2008-0053562-00, with the Stanislaus County Recorder, against the real property commonly known as 4104 Family Lane, Modesto, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2017. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

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The Motion for Allowance of Administrative Expenses for post-petition taxes is granted.

Michael McGranahan, the Chapter 7 Trustee, ("Movant") requests payment of administrative expenses in the amount of \$6,711.00, incurred during the period of May 7, 2013, to November 30, 2017, for the Estate's federal and state taxes incurred.

Movant asserts that he employed a certified public accountant to prepare income tax returns for the Estate. Movant reports that the Estate's tax liability for the course of his administration was \$5,203.00 for federal taxes and \$1,508.00 for state taxes.

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 has shown that the Estate has incurred tax liabilities that must be paid to preserve the Estate.

Movant has demonstrated that the expenses were necessary, and the court finds that Movant paying federal and state taxes is necessary for Debtor and provided benefit to the Estate. The Motion is granted, and Movant is authorized to pay administrative expenses in the amount of \$6,711.00.

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

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

The Motion for Allowance of Administrative Expense filed by Michael 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 Motion is granted, the court allows pursuant to 11 U.S.C. § 503(b)(1), and the Chapter 7 Trustee is authorized to pay, \$5,203.00 to the United States Treasury and \$1,508.00 to the State of California as an administrative expense of the Chapter 7 Estate in this case.

22.

[13-90893](#)-E-7
SSA-6

LYNN MORGAN
Martha Passalacqua

MOTION FOR COMPENSATION FOR
STEVEN S. ALTMAN, TRUSTEE'S
ATTORNEY(S)
11-8-17 [\[66\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2017. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

Fees are requested for the period May 24, 2016, through November 8, 2017. The order of the court approving employment of Applicant was entered on June 6, 2016. Dckt. 33. Applicant requests fees in the amount of \$11,160.00 and costs in the amount of \$106.84.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that Applicant's services for the Estate include asset disposition, case administration, claims administration and objections, preparing compensation motions, and engaging in litigation. The legal services related to generating \$91,250 in gross proceeds for the bankruptcy estate. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Disposition: Applicant spent 0.5 hours in this category. Applicant performed work relating to sales, leases, abandonment and other related transaction matters. Applicant met with Client to review settlement documents involving Lynn Morgan's ("Debtor") wrongful discharge/termination claims and distribution of monies.

Case Administration: Applicant spent 3.2 hours in this category. Applicant coordinated and prepared the statement of financial affairs, schedules, list of contracts, United States Trustee interim statements and operating reports, contracts with the United States Trustee, and handled general creditor inquiries.

Claims Administration & Objection: Applicant spent 2.8 hours in this category. Applicant prepared specific claim inquiries, bar date motions, analysis, and objections and allowances of claims. Applicant prepared application for motion to approve payment of taxes as an administrative expense.

Compensation Motion: Applicant spent 16.30 hours in this category. Applicant prepared employment and compensation motions for himself and others. Applicant also prepared motions to establish interim procedures. These included obtaining the employment of and authorizations for special counsel for prosecution of a theretofore undisclosed asset.

Litigation: Applicant spent 14.40 hours in this category. Applicant prepared for litigation concerning *Morgan v. Healthcare Cost United Association, Inc.*, which pertained to the wrongful discharge, wage claim and other relief violations involving Debtor.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Steven Altman, Attorney	37.2	\$300.00	\$11,160.00
Total Fees for Period of Application			\$11,160.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$106.84 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$0.10	\$47.40
Postage		\$59.44
Total Costs Requested in Application		\$106.84

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$11,160.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$106.84 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$11,160.00
Costs and Expenses	\$106.84

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Steven Altman (“Applicant”), Attorney for Michael McGranahan, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Steven Altman is allowed the following fees and expenses as a professional of the Estate:

Steven Altman, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$11,160.00

Expenses in the amount of \$106.84,

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

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

23.

[13-90893](#)-E-7
SSA-7

LYNN MORGAN
Martha Passalacqua

MOTION FOR COMPENSATION FOR
ATHERTON AND ASSOCIATES, LLP,
ACCOUNTANT(S)
11-8-17 [\[72\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2017. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

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

Maria Stokman, the Accountant ("Applicant") for Michael McGranahan, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 1, 2016, through November 8, 2017. The order of the court approving employment of Applicant was entered on January 16, 2017. Dckt. 47. Applicant requests fees in the amount of \$2,019.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or

(ii) services that were not—

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). A professional must “demonstrate only that the services were reasonably likely to benefit the estate at the time rendered,” not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are “actual,” meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a professional to work in a bankruptcy case does not give that professional “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that Applicant's services for the Estate include tax analysis and preparation of tax returns. 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.

Tax Analysis & Preparation of Tax Returns: Applicant spent 6.3 hours in this category. Applicant prepared final tax returns and has a work-in-progress file set up.

Compensation/Employment Motion: Applicant spent 0.5 hours in this category. Applicant reviewed the bankruptcy application, performed conflict checks, and prepared time records for the compensation motion.

Case Administration: Applicant spent 1.9 hours in this category. Applicant reviewed the settlement agreement and tax matters related to the case. Applicant conducted subsequent related correspondence with the Chapter 7 Trustee.

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
Maria Stokman, CPA Partner	7.5	\$250.00	\$1,875.00
Linnet Sheikhali, Associate	1.20	\$120.00	\$144.00
Total Fees for Period of Application			\$2,019.00

FN.1. Applicant made a typographical error on the Motion, listing their hourly billing rate as \$230.00 per hour instead of \$250.00 per hour as set out in the task billing. Dckt. 76. Any creditor would look at the

total aggregate amount for the services rendered and see that it remained the same for both the Motion and the task billing. The difference between the values of requested fees due to the typographical error is \$150.00.

FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$2,019.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$2,019.00
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pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Maria Stokman (“Applicant”), Accountant for Michael McGranahan, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Maria Stokman is allowed the following fees and expenses as a professional of the Estate:

Maria Stokman, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$2,019.00,

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

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