

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

December 3, 2020 at 10:30 a.m.

1. [20-90327-E-7](#)
[SSA-3](#)

PHILIP/DALLIA ENGLE
Gurjeet Rai

**MOTION FOR TURNOVER OF
PROPERTY
10-23-20 [54]**

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's, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2020. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion for Turnover is granted.
--

Michael D. 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 5119 Curtis Street, Salida, California ("Property").

In the Motion, Movant states that Debtor have been unable to achieve a refinance of the Property rather than the Trustee selling the Property. Motion, ¶ 9; Dckt. 54; Declaration, ¶ 6, Dckt. 58; Exhibit 3, Dckt. 59.

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 Philip Scott Engle and Dallia Desamito Engle (“Debtors”) to deliver 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 the Chapter 7 Trustee.

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

Enforcement of Turnover Orders

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge’s power to issue corrective sanctions, including incarceration, to obtain a person’s compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at *2–5.

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 D. McGranahan, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

IT IS FURTHER ORDERED that Philip Scott Engle and Dallia Desamito Engle (“Debtors”), and each of them, shall deliver on or before ~~xxxx, 202x~~, possession of the real property commonly known as 5119 Curtis Street, Salida, California (“Property”), with all of their personal property, personal property of any other persons that Debtor, and each of them, allowed access to the Property; and any other person or persons that Debtor, and each of them, allowed access to the Property removed from the Property.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2020. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 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 Dismiss Case is granted.

The debtor in possession, Sun-One LLC, ("ΔIP") filed this Motion seeking dismissal of the Chapter 11 case pursuant to 11 U.S.C. §§ 305(a)(1) and 1112(b)(1).

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

1. The case was filed on January 21, 2020 and no trustee has been appointed. Debtor is serving as Debtor in Possession.
2. ΔIP owned 141 acres of unimproved real property at Sims Road, in an area described as Chinese Camp in Tuolumne County, California (collectively the "Property").
3. On October 16, 2020 the Court entered an order modifying the automatic stay to permit the holders of the deed of trust on the Property to foreclose.

4. ΔIP's sole remaining asset in this case is a bank account with less than \$100.00.
5. The court has determined that there is no equity in the Property. ΔIP is not likely to reorganize, and incurs significant expenses in continuing this case. Conversion to a case under Chapter 7 is not likely to result in any dividend on general unsecured claims due to the fully encumbered asset and priority tax claims. ΔIP asserts that there would be no assets available for payment of the Chapter 7 expenses of administration.
6. Dismissal of the case is in the best interest of the creditors because they will be able to enforce their rights and participants, including Debtor, will no longer incur additional legal fees and related expenses in this case.
7. Cause exists to dismiss the case because there is no reasonable likelihood of rehabilitation given the modification of the automatic stay and lack of any other resources.

Motion, Dckt. 83.

ΔIP filed the Declaration of Kathryn C. Machado, the ΔIP, to provide testimony attesting to the facts asserted in the Motion. Declaration, Dckt. 85.

DISCUSSION

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

Here, ΔIP asserts that after the primary creditor was granted relief from the automatic stay, the case ceased to make financial sense. ΔIP's assets are nominal and would not likely see value if liquidated. Further, the property taxes are a senior claim against the Property and the state franchise tax claims can be pursued outside of bankruptcy.

ΔIP argues there is cause to dismiss the case because there is no reasonable likelihood of rehabilitation given the modification of the automatic stay and the lack of any other resources.

ΔIP's arguments are well taken. The requested dismissal allows ΔIP to resolve claims and move on to a "fresh start" outside of bankruptcy. No party in interest has opposed the Motion. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). The Motion is granted, and the case is dismissed.

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

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

The Motion To Dismiss filed by Sun-One LLC ("ΔIP") 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 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 Debtors, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2020. By the court's calculation, 34 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, -----

-----.

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

Steven S. Altman, the Attorney ("Applicant") for Irma Edmonds, 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 August 22, 2019, through October 28, 2020. The order of the court approving employment of Applicant was entered on September 11, 2019. Dckt. 50. Applicant requests fees and costs in the total amount of \$8,236.43.

The court is unable to determine how the Applicant reached this requested amount. Upon review of the total fees and costs, the total fees and expenses as detailed on Exhibit 1 provides fees to be paid in the amount of \$6,945.00 and costs in the amount of \$25.80.

However, in the Motion the combined fees and expenses are stated to be \$8,236.43 (Motion, p. 1:20-21; Dckt. 81), and in the Declaration the fees are stated to be \$7,380.00 in fees and costs of \$91.43 (which the Declaration state totals \$8,236.43) (Declaration, ¶ 8; Dckt. 84).

At the hearing, **xxxxx**

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 preparation of employment and fee applications and litigation between Debtors and Mesh Product Liability Claimants. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 7.10 hours in this category. Applicant communicated with mesh product liability coordinator concerning the status of the mesh case involving the Debtors, discussed the potential award in favor of the Debtor in said case, and had continued communications with Trustee regarding the status of the case.

Claims Administration and Objection: Applicant spent 1.2 hours in this category. Applicant reviewed the claims filed in the case, reviewed the exemption claims filed by the Debtors in the 2006 bankruptcy case, and communicated with the Trustee regarding research performed.

Fee/Employment Applications: Applicant spent 7.9 hours in this category. Applicant prepared special counsel applications, attended a hearing on the approval of employment of special counsel, and transmitted the orders appointing the special counsel to Trustee and Michele Mata.

Additionally, Applicant prepared the first and final application of the firm in support of fees and costs as general counsel to Trustee.

Significant Motions and Other Contested Matters: Applicant spent 8.4 hours in this category. Applicant reviewed the underlying litigation matters, engaged with the special mesh case coordinator Michele Mata, reviewed the ledger sheets to analyze the gross award for the estate, and reviewed factors

going in to “rating” the claimant for the award: based upon medical, social, employment history and nature and extent of mesh related product insertions, surgeries, and post operation medical history.

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 S. Altman, Attorney	20.60 per Exhibits (24.60 per the Motion)	\$300.00	\$6,180.00
Dawn Darwin, Paralegal	8.50	\$90.00	\$765.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$6,945.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$25.80 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying	\$0.10 per page	\$6.80
Postage		\$19.00
		\$0.00
Total Costs Requested in Application		\$25.80

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 ~~\$6,945.00~~ 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 \$25.80 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 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	\$6,945.00
Costs and Expenses	\$25.80

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

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

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

~~The Motion for Allowance of Fees and Expenses filed by Steven S. Altman (“Applicant”), Attorney for Irma Edmonds, 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 S. Altman is allowed the following fees and expenses as a professional of the Estate:~~

~~Steven S. Altman, Professional employed by the Chapter 7 Trustee~~

~~Fees in the amount of \$6,945.00~~

~~Expenses in the amount of \$25.80;~~

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

FINAL RULINGS

4. [20-90682-E-7](#) **ROMAN FLORES AND NORA DE** **MOTION TO AVOID LIEN OF DAVID**
[MOT-1](#) **BECERRA** **MARTIN AND DIANA MARTIN**
Mark O'Toole **11-5-20 [14]**

Final Ruling: No appearance at the December 3, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on November 5, 2020. By the court's calculation, 28 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 David Martin and Diana Martin ("Creditor") against property of the debtor, Roman Becerra Flores and Nora Elizabeth De Becerra ("Debtors") commonly known as 5009 Inland Avenue, Modesto, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$180,691.52. Exhibit A, Dckt. 17. An abstract of judgment was recorded with Stanislaus County on August 18, 2020, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$243,608.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$158,553.90 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$175,000.00 on Schedule C. Dckt. 1.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Roman Becerra Flores and Nora Elizabeth De Becerra ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of David Martin and Diana Martin, California Superior Court for Stanislaus County Case No. 640517, recorded on August 18, 2020, Document No. 2020-0061378-00, with the Stanislaus County Recorder, against the real property commonly known as 5009 Inland Avenue, 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.