

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

December 8, 2022 at 10:30 a.m.

1. <u>22-21000-E-7</u> <u>RLL-2</u>	ROBYN JOHNSON Douglas Jacobs	MOTION TO SELL 11-8-22 [<u>83</u>]
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Items 1 thru 2

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 8, 2022. By the court's calculation, 30 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property 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.

<p>The Motion to Sell Property is granted.</p>

The Bankruptcy Code permits Geoffrey Richards, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell Debtor's interest in certain motor vehicles, collectively, "Property."

The proposed purchaser of the Property is the debtor, Robyn Johnson (“Debtor”). Trustee argues selling the motor vehicles back to Debtor are proper because Debtor will be using their Homestead Exemption proceeds from selling their residence, and the net proceeds at an auction would be no more than selling directly to Debtor. The terms of the sale are:

1. Purchase Price of Vehicles: \$28,500.00;
 - a. 2013 Ram Truck 2500, VIN ending in 7120
 - i. Schedule Value - \$3,297.00
 - ii. Condition - Poor
 - iii. Price Allocation - \$2,000.00
 - b. 2017 Cadillac XT5, VIN ending in 7354
 - i. Schedule Value - \$16,700.00
 - ii. Condition - Fair
 - iii. Price Allocation - \$15,000.00
 - c. 2019 Dodge Ram 3500, VIN ending in 7714
 - i. Schedule Value - \$42,633.00
 - ii. Condition - Fair
 - iii. Price Allocation - \$5,000.00
 - d. Dump Trailer PJDL 142, VIN ending in 3431
 - i. Schedule Value - \$8,000.00
 - ii. Condition - Fair
 - iii. Price Allocation - \$1,500.00
 - e. 2020 Carson Vehicle Trailer B8162, VIN ending in 2394
 - i. Schedule Value - \$3,500.00
 - ii. Condition - Fair
 - iii. Price Allocation - 1,500.00

- f. 2007 Haulmark Enclosed Car Trailer, VIN ending in 3641
 - i. Schedule Value - \$3,500.00
 - ii. Condition - Fair
 - iii. Price Allocation - \$1,500.00
- g. 2003 Ford F350, VIN ending in 9406
 - i. Schedule Value - \$3,814.00
 - ii. Condition - Poor
 - iii. Price Allocation - \$2,500.00
- 2. Condition of Vehicles: “As-is,” subject to all claims, liens, and encumbrances against the vehicles;
- 3. Lien in favor of Randall Arnett against the 2003 Ford F350 pursuant to agreement;
- 4. If Trustee fails to sell Debtor’s residence, Debtor shall purchase the Property for amounts set forth in the Purchase Agreement;
- 5. Debtor shall maintain insurance on the Property.

Sale Free and Clear of Liens

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

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

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

(2) such entity consents;

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

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

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

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established the 2003 Ford F350 shall be sold free and clear of Creditor's lien as provided in 11 U.S.C. § 363(f)(2) because Trustee has agreed to pay Creditor \$1,800.00 from the sale of the Vehicle and Creditor has stipulated to release the lien once receiving the \$1,800.00. Stipulation for Sale Free and Clear of Lien, Exhibit A; Dckt. 87.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it provides net funds of approximately \$26,700.00 to be paid to allowed claims.

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 Sell Property filed by Geoffrey Richards, 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 Geoffrey Richards, the Chapter 7 Trustee, ("Movant"), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Robyn Johnson ("Debtor"), the following motor vehicles:

1. 2013 Ram Truck 2500, VIN ending in 7120
2. 2017 Cadillac XT5, VIN ending in 7354
3. 2019 Dodge Ram 3500, VIN ending in 7714
4. Dump Trailer PJDL 142, VIN ending in 3431
5. 2020 Carson Vehicle Trailer B8162, VIN ending in 2394
6. 2007 Haulmark Enclosed Car Trailer, VIN ending in 3641
7. 2003 Ford F350, VIN ending in 9406, VIN ending in 9406

("Property"), on the following terms:

- A. The Property shall be sold to Debtor for a total price of \$28,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit C, Dckt. 87, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Property is sold free and clear of the lien of Randall Arnett, Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), with the lien of such creditor attaching to the proceeds. The Chapter 7 Trustee shall disburse proceeds from the sale to Randall Arnett as provided in the Stipulation for Sale Free and Clear (Exhibit A; Dckt. 87).
- D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 8, 2022. By the court's calculation, 30 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Approval of Compromise is granted.

Geoffrey Richards, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Robyn Johnson, the Debtor, ("Settlor"). The claims and disputes to be resolved by the proposed settlement are whether Trustee can recover a 2013 Dodge Ram 2500 truck, VIN ending in 8023, ("Truck") as an avoidable transfer under 11 U.S.C. §§ 548 and 549. Trustee claims it is unclear whether Settlor's adult son had authority to transfer the Truck to a third party, as there is no clear evidence that the Truck was properly transferred to the adult son from Settlor.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit D in support of the Motion, Dckt. 92):

- A. Settlor is to pay Movant \$9,122.00, which has already deposited into the Estate's trust bank account; and

- B. Movant and Settlor release the other from all claims, damages, and the like relating to the Trust.

DISCUSSION

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

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Probability of Success

Movant argues this factor is in favor of the compromise because, at this point, the probability of success in litigation is unclear. Movant argues significant discovery would be required to determine whether the transfer could be avoided.

Difficulties in Collection

Movant states this factor is neutral. Movant claims the adult son and third party's financial status is unclear. Therefore, the Trustee is not certain whether it would be possible to collect on a judgment.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues this factor weighs in favor of the compromise because there is a modest amount in controversy and the expense and delay of litigation would be great.

Paramount Interest of Creditors

Movant argues this factor weighs in favor of the compromise because Movant will likely recover more for the estate from the compromise than what Movant would recover from auction.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it allows a significant return on the Truck without significant delays, risks, and costs that come from litigation or auction. Additionally, the proceeds will benefit the Estate and creditors. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Geoffrey Richards, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Robyn Johnson (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit D in support of the Motion (Dckt. 92).

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 14, 2022. By the court's calculation, 24 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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<p>The Motion for Allowance of Professional Fees is granted.</p>

Howard S. Nevins, Esq., of Hefner, Stark & Marois, LLP, ("Applicant") the Attorney for Kimberly J. Husted, the Chapter 7 Trustee ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case. Allowance and Final Approval of the following fees is requested:

1. Final Approval of First Interim Fees Allowed in the amount of \$42,696.00, (Order, Dckt. 116); and
2. Allowance and Final Approval of Second Interim Fees of \$19,531.00 and Costs of \$56.80;

for total allowed fees of \$62,227.00 and costs of \$56.80 for services provided as counsel for the Chapter 7 Trustee. Application, ¶¶ 3-6.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include general case administration, asset disposition, and litigation surround claim disputes and ongoing state court litigation. The Estate has \$26,155.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration:

Applicant spent 20.90 hours in this category. Applicant performed general tasks surrounding the bankruptcy case including prosecuting motions, reviewing issues regarding litigation, communicating with Trustee regarding litigation-related assets.

Asset Disposition:

Applicant spent 0.80 hours in this category. Applicant provided services relating to exemption disputes.

Adversary Proceedings:

Applicant spent 24.60 hours in this category. Applicant provided services to settle claims against Defendant Derek Taggard. Additionally, Applicant spent significant time assisting with the state court litigation against Defendant Ivy Taggard.

Professionals' Billing Information

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. Applicant provides a task billing analysis, however, Applicant does not provide in the Application a breakdown each professional, their hourly rate, and how many hours in total they spent working on the case.

Applicant's raw billing, Exhibit A, Dckt. 126, identifies "AAA" and "HSN" as the timekeepers billing for legal services provided. were the "Tmkr"s. In Attorney Howard S. Nevins' Declaration, Dckt. 129, Mr. Nevins provides a brief biography of himself and an "Aaron A. Avery." The Application and time records do not specifically identify who "AAA" and "HSN" are, likely because these two long time practitioners are well known in the bankruptcy community and assumed that the judge would readily recognize the initials. Even when well known, the better practice is to clearly identify the person for whom an abbreviation is being used.

While providing the gross task billing amounts there is no breakdown of the time spent by AAA and HSN in these areas. Exhibit A are the detailed billing records for AAA and HSN for the legal services provided. These are properly detailed and broken out into discrete items of billed work. This is not a situation where there was "bulk billing" with a single entry being entered for multiple hours for various legal services provided.

In looking at the individual billing entries, the court notes that the vast majority are by HSN. By the court's (not the law clerk's or extern's) rough calculation, there are 107 billing entries, of which only 13 are by AAA. Additionally, these are earlier in the representation and of are very small billing amounts.

Second Interim Period Fees Approved

For the Second Interim Period of May 1, 2019 through December 8, 2022, Fees of \$19,587.80 are requested. This 43 month period, there were 46.30 total hours billed (some billed at HSN's \$440 hourly rate and some, after January 1, 2022, at HSN's \$460 hourly rate). There are also 3.20 hours billed at "no-charge" on the Billing Statement (Exhibit A, Dckt. 126). The court determines that for this three and one-half year period, the \$19,587.80 are reasonable, allowable Fees.

Second and Final Application	Second Period Approved Fees	
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	<u>\$19,587.80</u>	

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

First Interim Application	First Interim Period Approved Fees	First Interim Fees Paid
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	<u>\$42,692.00</u>	\$15,000.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$56.80 pursuant to this application. Applicant did not seek reimbursement of expenses in their prior interim application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	\$0.25	\$15.60
CourtCall	N/A	\$41.20
Total Costs Requested in Application		\$56.80

Attempting to Recover Costs for CourtCall

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include \$41.20 for “CourtCall.”

While Applicant requested reimbursement for costs associated with making telephonic CourtCall Appearances, the court does not permit such reimbursements and therefore declines to award Applicant CourtCall costs. The decision to attend hearings via CourtCall is at the cost of the Applicant, or attorney appearing on Applicant’s behalf, included in the attorney’s hourly rate for the services.

Here, Applicant could have appeared in person, but probably recognized how even with the associated costs it is more economically efficient to attend remotely. CourtCall is a very effective tool allowing attorneys and trustees to market their legal skills (and generate fees from a much larger client base) over a much larger geographic area than was historically possible.

Therefore, Applicant is only allowed costs for postage in this application, \$15.60.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$19,531.00 and prior Interim Fees in the amount of \$42,692.00 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.

The total of \$62,223.00 in Fees are approved for Applicant.

Costs & Expenses

Second Interim and Final Costs in the amount of \$15.60 and prior Interim Costs in the amount of \$0.00 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.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

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

Fees	\$19,531.00
Costs and Expenses	\$15.60

pursuant to this Application and prior interim fees of \$42,692.00 and interim costs of \$0.00 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 Hefner, Stark & Marois, LLP, the Attorney (“Applicant”) for Kimberly J. Husted, 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 Hefner, Stark & Marois, LLP is allowed the following fees and expenses as a professional of the Estate:

Hefner, Stark & Marois, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$62,223.00
Expenses in the amount of \$15.60,

(which include the Fees allowed pursuant to the First Interim Application and the Second and Final Application for Fees and Expenses) as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee in this case.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order and unpaid, after credit for any interim payments made by the Trustee, from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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 15, 2022. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

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

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The Motion to Sell Property is granted.
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J. Michael Hopper, the Chapter 7 Trustee, ("Movant"), moves for an order requesting:

1. To sell the real property located in the Commonwealth of Puerto Rico commonly known as, (described in the Spanish language):
 - a. RUSTICA: predio de terreno sito en el Barrio Emajagua de Maunabo, con una cabida de 19,957.432 metros cuadrados, o sea 5.08 cuerdas. En lindes por el NORTE con la Sucesión de María Vega, Eugenio Vega y Mariano Vega; por el SUR, con Manuel Camacho y Zacarías Camacho; por el ESTE, Eustaquia Dávila y Eugenio Vega; y por el OESTE con Domingo Ramos. Recorded at

(“Property”).

2. Approval of compensation to the estate’s real estate broker, BC Properties (“Broker”) in the amount of \$4,200.00 (6% of the gross sale price), or the appropriate commission resulting from a successful overbid.
3. Approval of compensation to the estate’s special counsel in the amount of \$2,250.00 for legal services and \$4,397.50 for notarial services.
4. Waiver of the fourteen-day stay pursuant to Federal Rules of Bankruptcy Procedure 6004(h).
5. The sale be free and clear of any liens, encumbrances, or claims of interest, that have been or could be asserted by creditors Mark J. Rice and Western Insurance Company and Debtor’s former spouse Elizabeth Camacho Arroyo a/k/a Elizabeth Quiles (“Former Spouse”).
6. The sale be free and clear of all liens and encumbrances against the Property.
7. The Trustee carry out the estate’s obligations in the Property.
8. The Former Spouse’s interest in the Property shall attach to sale proceeds which Movant shall hold in a segregated account.

Multiple Requests for Relief

Local Bankruptcy Rule 9014-1(d)(5)(B)

The court notes, although typically multiple claims for relief are required to be brought by separate motion, Local Bankruptcy Rule 9014-1(d)(5)(B)(ii) allows for “authorization for sale of real property and allowance of fees and expenses for a professional authorized by prior order to be employed for the sale of such property” to be joined in a single motion.

The court approved Broker’s employment to assist with the sale of the Property on April 24, 2017. Dckt. 118. The court approved Noemi Landrau’s (“Special Counsel”) employment to aid as special counsel in the sale of the Property on November 4, 2021. Dckt. 183. Therefore, the fees and expenses of Broker and Special Counsel may be joined in this Motion pursuant to Local Bankruptcy Rule 9014-1(d)(5)(B)(ii).

Terms of Sale

The proposed purchaser of the Property is Pro Structural Solutions, LLC (“Buyer”), and the terms of the sale are:

1. Purchase Price: \$70,000.00;

- a. Deposit: \$3,500.00 due upon signing;
 - b. Balance: \$66,500.00 due within thirty (30) calendar days;
2. Condition: “As-is,” Buyer assumes all risks to any defects of the Property;
3. The sale is free of all liens and encumbrances specifically identified prior to closing; and
4. The sale is subject to overbidding at the hearing on the Motion.

Requested Fees for Broker and Special Counsel

For fees to Broker and Special Counsel, Movant requests a broker’s commission of \$4,200.00, or six percent the overbidding price and special counsel fees of \$4,397.50 for notarial service fees and \$2,250.00 for legal service fees.

The court notes, special counsel notarial fees were approved “not to exceed” \$4,062.50. Order, Dckt. 183. Movant states the increase in notarial services fees is the result of the Property being marketed for a second time and an increase in the proposed sale price. Pursuant to 11 U.S.C. § 328(a),

the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

Here, under the facts and circumstances, the court finds the increased notarial service fees for \$4,397.50 are proper. The Property had to be marketed a second time and the increase in value caused notarial fees to increase. Movant’s Declaration, Dckt. 212 at ¶¶ 16-19; Breakdown of Notarial Costs, Exhibit C, Dckt. 211 at 23. These factors warrant an increase in notarial fees.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of creditors Mark J. Rice and Western Insurance Company and Debtor’s former spouse Elizabeth Camacho Arroyo a/k/a Elizabeth Quiles (“Former Spouse”), collectively, “Creditors.” The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

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

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

(2) such entity consents;

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

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

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

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established all Creditors have consented to such a sale free and clear of their interests as provided in 11 U.S.C. § 363(f)(2). Agreements, Exhibits A and B, Dckt. 211.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will provide net proceeds of approximately \$57,752.50 and will maximize the net return to the estate.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$4,200.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six percent commission.

Additionally, Movant has provided adequate evidence to support an award of compensation to their Special Counsel. Special Counsel is permitted to receive notarial service fees for not more than \$4,397.50 and legal service fees for not more than \$2,250.00.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because they do not anticipate any opposition and wish the sale moves forward immediately upon entry of the order approving.

Movant has 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 6004(h), and this part of the requested relief is granted.

The court shall issue an order substantially in the following form holding that **[Unless Counsel for the Trustee requests to prepare the Order consistent with this ruling so as to have the draft reviewed in**

advance by the title company or other persons involved in completing the sale in the Commonwealth of Puerto Rico]:

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

The Motion to Sell Property filed by J. Michael Hopper, 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 J. Michael Hopper, the Chapter 7 Trustee, (“Movant”), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Pro Structural Solutions, LLC (“Buyer”), the Property commonly known as, (described in the Spanish language):

RUSTICA: predio de terreno sito en el Barrio Emajagua de Maunabo, con una cabida de 19,957.432 metros cuadrados, o sea 5.08 cuerdas. En lindes por el NORTE con la Sucesión de María Vega, Eugenio Vega y Mariano Vega; por el SUR, con Manuel Camacho y Zacarías Camacho; por el ESTE, Eustaquia Dávila y Eugenio Vega; y por el OESTE con Domingo Ramos. Recorded at Page 9 of Volume 110, Lot number 6,487 of Maunabo, Property Registry of Guayama

(“Property”) on the following terms:

- A. The Property shall be sold to Buyer for \$70,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit D, Dckt. 211, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Property is sold free and clear of the liens of Mark J. Rice and Western Insurance Company and Debtor’s former spouse Elizabeth Camacho Arroyo a/k/a Elizabeth Quiles (“Former Spouse”), collectively, “Creditors,” asserting secured claims, pursuant to 11 U.S.C. § 363(f)(2). The Chapter 7 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.
- D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

- E. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than 6 percent of the actual purchase price upon consummation of the sale. The 6 percent commission shall be paid to the Chapter 7 Trustee's broker, BC Properties.
- F. The Chapter 7 Trustee is authorized to pay their special counsel, Noemi Landrau ("Special Counsel"), compensation not to exceed \$2,250.00 for legal services and \$4,397.50 for notarial service fees for a total of \$6,647.50, as adjusted pursuant to 11 U.S.C. § 328(a).

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

FINAL RULINGS

1. [21-20225](#)-E-13 DONALD JOHNSON
[MOH-2](#) Michael Hays

CONTINUED OBJECTION TO CLAIM OF
CARALY JOHNSON, CLAIM NUMBER 2
9-2-21 [\[65\]](#)

WITHDRAWN BY MP

Final Ruling: No appearance at the December 8, 2022 hearing is required.

The Objection to Claim is dismissed without prejudice.

Donald Johnson (“Debtor”) having filed a “Withdrawal of Objection,” which the court construes to be an Ex Parte Motion to Dismiss the pending Objection on November 10, 2022, Dckt. 145. Filed concurrently with the Dismissal, Debtor and Caraly Johnson (“Creditor”) filed a Stipulation and Agreement to withdrawal Debtor’s Objection, Dckt 146. The parties having the right to stipulate to dismissal of the Objection pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rules of Bankruptcy Procedure 9014 and 7041, the Ex Parte Motion is granted, Debtor’s Objection is dismissed without prejudice, and the court removes this Objection from the calendar.

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 Objection to Claim filed by Donald Johnson (Debtor”) having been presented to the court, Debtor and Caraly Johnson (“Creditor”) stipulating that the Objection itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 146, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Claim is dismissed without prejudice.

Items 12 thru 13

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, May 18, 2022. By the court's calculation, 71 days' notice was provided. 28 days' notice is required. An amended notice of hearing was served on Debtor, Debtor's Counsel, Chapter 7 Trustee, and Office of the United States Trustee on May 23, 2022. By the court's calculation, 66 days' notice was provided.

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

The hearing on the Objection to Claimed Exemptions has been continued to 10:30 a.m. on December 15, 2022 (specially set to the court's Modesto Division Courtroom Calendar), with Telephonic Appearances Permitted, by prior Order of this court (Dckt. 64).

BMO Harris Bank N.A. ("Creditor" or "BMO") objects to Jiwan Kaur's ("Debtor") claimed exemptions under California law because there is serious question as to whether the exempted property is actually Debtor's homestead. California Code of Civil Procedure § 704.730 provides an "automatic" homestead exemption for debtors, because the filing of a bankruptcy petition is the equivalent to a forced sale of a homestead. *E.g., In re Diaz*, 547 B.R. 329, 334 (B.A.P. 9th Cir. 2016).

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Although California homestead exemption legislation should be construed liberally and in favor of the debtor (*E.g., In re Gilman*, 887 F.3d 956, 964 (9th Cir. 2018)), to qualify as a homestead a property must still be the principal dwelling of either the debtor or their spouse. California Code of Civil Procedure § 704.710(c). Debtor has claimed a \$248,110.00 exemption in the property commonly known as 5918 Meeks Way, Sacramento, CA 95835 (“Property”) on their Schedule C. Dckt. 1.

However, Debtor also stated at the meeting of creditors held March 1, 2022, that they hold bare legal title for the benefit of senior citizens who reside at the Property. Declaration, Dckt. 35. Debtor has further stated on their Schedule I that they are a caregiver for “In Home Supportive Services,” implying that the Property may, in fact, be Debtor’s place of employment rather than their homestead. Dckt. 1. Therefore, there is serious doubt as to whether the claimed homestead is, in fact, Debtor’s principal dwelling.

Status Report

On July 14, 2022, Creditor and Debtor filed a Joint Status Report (Dckt. 45) stating:

1. Creditor has subpoenaed documents and received a response from AmerHome Mortgage, Bank of America, JP Morgan Chase, and TriCounties Bank.
2. Creditor subpoenaed documents from Debtor’s employer IHSS Public Authority and is waiting for the employer to respond.
3. Creditor has provided Rule 26 disclosures to Debtor.
4. Debtor responded to written discovery.
5. Debtor’s deposition is set for July 29, 2022.
6. Debtor’s Counsel is out of state August 3-12, 2022.
7. Parties request a continuance for 30-60 days.

The Parties reporting that they are actively working on this matter and having identified scheduling conflicts, the court continues the hearing on this Objection to Claim of Exemptions to 10:30 a.m. on September 22, 2022.

September 13, 2022 Status Report

On September 13, 2022, Creditor and Debtor filed a joint status report indicating all discovery has been completed. Dckt. 50. Parties indicate new facts have been discovered which may affect Debtor’s homestead exemption. The court sets the following briefing schedule and final hearing as follows:

- A. Creditor shall file and serve the Opening Supplemental Brief on or before November 3, 2022.**
- B. Debtor shall file and serve the Response on or before November 21, 2022**

C. Creditor shall file and serve a Reply, if any, on or before November 30, 2022

D. The Continued Hearing on the Objection to Claim shall be conducted at 10:30 a.m. on December 8, 2022.

Overview of Objection to Exemption and Debtor's Response

BMO has filed an Objection to Debtor's claim of a homestead exemption in the Meeks Way Property. Dckt. 33. The grounds for this Objection include: (1) Debtor commenced this Bankruptcy Case on December 30, 2021; (2) the Debtor states that the Meeks Way Property is held in a revocable trust for the benefit of Debtor; (3) Debtor has also executed a deed of trust against the Coroval Drive Property; (4) Debtor testified at the First Meeting of Creditors that she holds bare legal title for the benefit of senior citizens who reside at the Meeks Way Property; and (5) that Debtor states that she provides caregiver services (in addition to living with her son at) to elders at the Meeks Way Property.

BMO questions where Debtor resided as of December 30, 2021 (the commencement of this case) and whether Debtor can claim the homestead exemption.

Further, BMO advances the argument that Debtor has merely legal title, at best, and that "The Debtor claims a homestead exemption in real property that she undeniably acquired as a straw purchaser." Objection, p. 2:2-3; Dckt. 55. Further, "The Debtor has been adamant that she is not the owner of the Property, and that she has always intended that her son and the elderly people would be the beneficiaries of the Property." *Id.*; p. 2:12-14.

BMO advances its arguments stating "While the Debtor's Schedule C claims a homestead exemption in the Property, the evidence shows that the Debtor has only bare legal title and is not the actual or intended beneficiary of the Trust. Accordingly, the Debtor is not entitled to a homestead Exemption in the Property." *Id.*; p. 2:15-18.

In driving home the point that Debtor has no interest in the Meeks Way Property and therefore cannot claim it as a homestead, BMO shuts the exemption door with the following:

But in the present case, the Debtor as a straw purchaser, admits that she holds bare legal title to the property and admits that she holds no beneficial interest, and therefore, the Debtor cannot successfully assert a homestead exemption in the Property. Thus, the ruling in Nolan also does not provide the Debtor with a homestead exemption under these facts.

Id., p. 7:15-18.

BMO then concludes its arguments that Debtor cannot claim a homestead exemption because Debtor had, and has, no interest (beyond mere legal title for the benefit of others) in the Meeks Way Property, stating:

All of the cases which held that debtors could claim a homestead exemption despite placing their homes in a trust, involved debtors who always intended to retain

rights to their property, which was never the Debtor's intent. Here, the Debtor indisputably acquired the Property as a straw purchaser but now that she is faced with a judgment lien by a creditor, she seeks this court's approval for a homestead exemption in property in which she admits she only holds bare legal title and admits she does not own. The burden is on the Debtor to prove otherwise and she cannot, given her many admissions. Debtor's claim of exemption should be denied.

Id., p. 9:21-26, 10:1-2.

Debtor filed a Reply on November 23, 2022, (which is not supported by a declaration), asserting Debtor is entitled to a homestead exemption under California law. The allegations in the Reply include:

- ◆ Debtor holds legal interest in the Meeks Way Property, with such Property being in a self-settled trust.
- ◆ Debtor intends to reside in the Meeks Way Property and that she did so reside there prior to the commencement of this Bankruptcy Case.
- ◆ If the court concludes that Debtor does not have an interest in the Meeks Way Property (i.e., holding title for the benefit of others), then there is nothing for the BMO judgment lien to attach to for the Meeks Way Property.

Curious and Concerning Matters Presented to the Court

The court begins with the curious. If BMO's basis for disallowing the claimed homestead exemption prevails, it necessitates that the court determines in BMO's favor that Debtor has no interest in the Meeks Way Property. That Debtor has no interests in the Meeks Way Property which could be the subject of a creditor enforcing judgment rights against.

As provided in California Code of Civil Procedure § 697.340, a judgment lien attaches to interests in real property that are subject to the enforcement of a money judgment against the judgment debtor. California Code of Civil Procedure § 695.010(a) provides that it is the property of the judgment debtor that is subject to the enforcement of a money judgment. Under BMO's theory, it appears that there is no interest of Debtor to which the judgment lien could attach.

Moving on to the concerning, the various transcripts provided and copies of trust documents demonstrate that Debtor has some challenges in making truthful statements. These include, without limitation:

- A. The Eakm Living Trust, Declaration of Trust ("Dec of Trust"); Exhibit 4; Dckt. 57.
 - 1. Debtor is the grantor and trustee of the Eakm Living Trust, into which she transferred all of her interest in the Meeks Way Property. Dec of Trust, § II, A.
 - 2. As long as Debtor is alive, she retains all rights to the income, profits, and control of the Meeks Way Property. *Id.*; II, (C).

3. Debtor may revoke the Trust. *Id.*; II, (E).
4. Successor Trustees are:
 - a. Harpal Kaur, Debtor's Sister,
 - b. Sukhwinder Singh Kang, Debtor's Husband. *Id.*; III; (E).
5. Upon Debtor's death, the beneficiary is Eakmjot [last name blocked out], and that Debtor wishes her father, mother, brother, and sister to reside in the Meeks Way Property for as long as they are alive. *Id.*; § IV, (A)1.

However, in her Deposition, Debtor's statements under penalty of perjury include the following:

B. Deposition of Debtor, July 29, 2022, Transcript; Exhibit 3, Dckt. 57.

1. Sukhwinder Singh Kang handles all of Debtor's business and financial affairs (including taxes and the bankruptcy schedules). Transcript, p. 12:13-17.
2. The real owners of the Meeks Way Property are the "handicapped people" who live in that Property. *Id.*; p. 20:4-12.
3. Debtor's uncle with dementia gave her \$60,000.00. *Id.*; p. 20:23-21:1; 22:7-9.
4. Sukhwinder Kang provided a gift of \$22,000.00, and identifies himself as Debtor's brother in law, but the gift was actually made by a Surjeet Kuner. *Id.*; p. 22:10-22. Neither Sukhwinder Kang nor Surjeet Kuner are Debtor's brother in law. *Id.*; p. 22:21-25, 23:1-7.
5. Debtor states that the Meeks Way Property belongs to the four "patients" (Debtor's family members) who live there. *Id.*; 23:22-25.
6. Debtor makes the mortgage payment on the Meeks Way Property as her payment of rent for the actual owners letting her live there. *Id.*; p. 24:1-10.
7. The Meeks Way Property was the four handicapped peoples' home and by the trust Debtor "gave it back to them." *Id.*; p. 25:3-5.
8. The purpose of the trust is to benefit the handicapped people who live there. *Id.*; p. 26:9-12.
9. Debtor tried, but could not testify as to why Sukhwinder Singh Kang is identified as Debtor's husband in the trust documents. *Id.*; p. 26:25, 27:1-14.
10. Debtor shares a bank account with Sukhwinder Singh Kang at Tri Counties Bank, and:
 - a. Sukhwinder Singh Kang gives Debtor money (*Id.*; p. 35:1-3);

- b. Debtor does not have any separate bank accounts, only that with Sukhwinder Singh Kang (*Id.*; 35:4-1); and
- c. Sukhwinder Singh Kang also lives at the Meeks Way Property (*Id.*; p. 40:15-18).

Taken as truthful, Debtor makes inaccurate, untruthful statements.

Continuance of December 8, 2022 Hearing

It appears clear that at worst, an evidentiary hearing will be required. However, one has to question why an evidentiary hearing would be required for BMO to prove that Debtor held only merely legal title for the benefit of others, that Debtor has and had no interest in the Meeks Way Property, that Debtor has no interest in the Meeks Way Property in which to claim a homestead exemption, and that Debtor has no interest in the Meeks Way Property against which BMO may try and enforce its judgment lien. Taking the allegations by BMO as true, it wins in proving that Debtor has no interest in the Meeks Way Property, and it loses any judgment lien against the Meeks Way Property.

Debtor has obtained her discharge in this Bankruptcy Case. However, Debtor's twisting tales may indicate that elderly, handicapped persons are at risk, with their assets being diverted to Debtor (and possible others who are living with Debtor).

The judge to whom this case is assigned is unable to hear it on December 8, 2022, so it is continued to December 15, 2022.

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, Creditor, parties requesting special notice, and Office of the United States Trustee on February 3, 2022. 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). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion to Avoid Judicial Lien has been continued to 10:30 a.m. on December 15, 2022 (specially set to the court's Modesto Division Courtroom Calendar), with Telephonic Appearances Permitted, by prior Order of this court (Dckt. 63).

This Motion requests an order avoiding the judicial lien of BMO Harris Bank (“Creditor” or “BMO”) against property of the debtor, Jiwan Kaur (“Debtor”) commonly known as 5918 Meeks Way, Sacramento, California (“Property”).

A judgment was entered against SSSP Trucking Inc., in favor of Creditor in the amount of \$787,091.84. Exhibit 2, Dckt. 15. An abstract of judgment was recorded with Sacramento County on July 27, 2021, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$560,500.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$312,390.00 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$248,110.00 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).

CREDITOR'S OPPOSITION

On February 17, 2022, BMO Harris Bank, Creditor, filed an Opposition to Debtor's Motion to Avoid Judicial Lien. Dckt. 21. The Opposition states the court should not adjudicate the Motion without holding an evidentiary hearing after an adequate opportunity for discovery. Creditor has serious questions on whether or not the Debtor is entitled to a homestead exemption on the Property. Creditor would like an evidentiary hearing to take place to determine:

- (a) whether the Property is an investment property for use in Debtor's home health care business;
- (b) whether Debtor actually resides in the Property; and
- (c) if Debtor currently resides in the Property, and whether Debtor has resided in the Property for the period required to give rise to a homestead exemption.

Creditor requests the court to treat the Motion as a "long cause" matter; use the March 3, 2022, hearing date as a scheduling conference; establish deadlines for discovery and the presentation of evidence; and set a date for an evidentiary hearing.

CREDITOR'S SEPARATE STATEMENT

Creditor filed a Separate Statement along with their Opposition. Dckt. 22. The Statement provides for Creditor's arguments for their allegation that the real property of 5918 Meeks Way, Sacramento, California, is actually an investment property. Creditor points to Debtor's Declaration, Dckt. 14, that Debtor states the Property is her real property and has claimed an exemption. Further, Debtor is being served with pleadings at 2248 Coroval Drive, Sacramento, California. Additionally, the Deed of Trust for the Property, Debtor indicates her residence is the Coroval Property. Lastly, Debtor's boyfriend/partner, Sukhwinder Singh Kang, has advised Creditor on at least two occasions that Debtor acquired the Property for the purpose of running an in-home elder care business for friends and relatives.

Counsel for Creditor reported that based on the information provided at the First Meeting of Creditors, there are other issues for which discovery is required. The Parties agreed to continue the hearing so that they may proceed with orderly discovery on these issues.

Creditor's Objection to Debtor's Claim of Exemptions

On May 18, 2022, Creditor filed an Objection to Debtor's Claim of Exemptions. Dckt. 33. Creditor's objections consist of essentially the same arguments as Creditor's opposition in this motion. Creditor requests that both contested matters be heard and litigated together.

Status Report

On July 14, 2022, Creditor and Debtor filed a Joint Status Report (Dckt. 45) stating:

1. Creditor has subpoenaed documents and received a response from AmerHome Mortgage, Bank of America, JP Morgan Chase, and TriCounties Bank.
2. Creditor subpoenaed documents from Debtor's employer IHSS Public Authority and is waiting for the employer to respond.
3. Creditor has provided Rule 26 disclosures to Debtor.
4. Debtor responded to written discovery.
5. Debtor's deposition is set for July 29, 2022.
6. Debtor's Counsel is out of state August 3-12, 2022.
7. Parties request a continuance for 30-60 days.

The Parties reporting that they are actively working on this matter and having identified scheduling conflicts, the court continues the hearing on this Motion to Avoid Judicial Lien to 10:30 a.m. on September 22, 2022.

September 13, 2022 Status Report

On September 13, 2022, Creditor and Debtor filed a joint status report indicating all discovery has been completed. Dckt. 50. Parties indicate new facts have been discovered which may affect Debtor's homestead exemption. The parties propose the court set a briefing schedule and a final hearing date for oral argument.

The court continues the hearing to allow the Parties to litigate the underlying substantive issues on the Objection to Claim of Exemption.

Overview of Objection to Exemption and Debtor's Response (which issues relate directly to this Motion to Avoid Judicial Lien)

BMO has filed an Objection to Debtor's claim of a homestead exemption in the Meeks Way Property. Dckt. 33. The grounds for this Objection include: (1) Debtor commenced this Bankruptcy Case on December 30, 2021; (2) the Debtor states that the Meeks Way Property is held in a revocable trust for the benefit of Debtor; (3) Debtor has also executed a deed of trust against the Coroval Drive Property; (4) Debtor testified at the First Meeting of Creditors that she holds bare legal title for the benefit of senior citizens who reside at the Meeks Way Property; and (5) that Debtor states that she provides caregiver services (in addition to living with her son at) to elders at the Meeks Way Property.

BMO questions where Debtor resided as of December 30, 2021 (the commencement of this case) and whether Debtor can claim the homestead exemption.

Further, BMO advances the argument that Debtor has merely legal title, at best, and that "The Debtor claims a homestead exemption in real property that she undeniably acquired as a straw purchaser."

Objection, p. 2:2-3; Dckt. 55. Further, “The Debtor has been adamant that she is not the owner of the Property, and that she has always intended that her son and the elderly people would be the beneficiaries of the Property.” *Id.*; p. 2:12-14.

BMO advances its arguments stating “While the Debtor’s Schedule C claims a homestead exemption in the Property, the evidence shows that the Debtor has only bare legal title and is not the actual or intended beneficiary of the Trust. Accordingly, the Debtor is not entitled to a homestead Exemption in the Property.” *Id.*; p. 2:15-18.

In driving home the point that Debtor has no interest in the Meeks Way Property and therefore cannot claim it as a homestead, BMO shuts the exemption door with the following:

But in the present case, the Debtor as a straw purchaser, admits that she holds bare legal title to the property and admits that she holds no beneficial interest, and therefore, the Debtor cannot successfully assert a homestead exemption in the Property. Thus, the ruling in Nolan also does not provide the Debtor with a homestead exemption under these facts.

Id., p. 7:15-18.

BMO then concludes its arguments that Debtor cannot claim a homestead exemption because Debtor had, and has, no interest (beyond mere legal title for the benefit of others) in the Meeks Way Property, stating:

All of the cases which held that debtors could claim a homestead exemption despite placing their homes in a trust, involved debtors who always intended to retain rights to their property, which was never the Debtor’s intent. Here, the Debtor indisputably acquired the Property as a straw purchaser but now that she is faced with a judgment lien by a creditor, she seeks this court’s approval for a homestead exemption in property in which she admits she only holds bare legal title and admits she does not own. The burden is on the Debtor to prove otherwise and she cannot, given her many admissions. Debtor’s claim of exemption should be denied.

Id., p. 9:21-26, 10:1-2.

Debtor filed a Reply on November 23, 2022, (which is not supported by a declaration), asserting Debtor is entitled to a homestead exemption under California law. The allegations in the Reply include:

- ◆ Debtor holds legal interest in the Meeks Way Property, with such Property being in a self-settled trust.
- ◆ Debtor intends to reside in the Meeks Way Property and that she did so reside there prior to the commencement of this Bankruptcy Case.
- ◆ If the court concludes that Debtor does not have an interest in the Meeks Way Property (i.e., holding title for the benefit of others), then there is nothing for the BMO judgment lien to attach to for the Meeks Way Property.

Curious and Concerning Matters Presented to the Court

The court begins with the curious. If BMO's basis for disallowing the claimed homestead exemption prevails, it necessitates that the court determines in BMO's favor that Debtor has no interest in the Meeks Way Property. That Debtor has no interests in the Meeks Way Property which could be the subject of a creditor enforcing judgment rights against.

As provided in California Code of Civil Procedure § 697.340, a judgment lien attaches to interests in real property that are subject to the enforcement of a money judgment against the judgment debtor. California Code of Civil Procedure § 695.010(a) provides that it is the property of the judgment debtor that is subject to the enforcement of a money judgment. Under BMO's theory, it appears that there is no interest of Debtor to which the judgment lien could attach.

Moving on to the concerning, the various transcripts provided and copies of trust documents demonstrate that Debtor has some challenges in making truthful statements. These include, without limitation:

- A. The Eakm Living Trust, Declaration of Trust ("Dec of Trust"); Exhibit 4; Dckt. 57.
 - 1. Debtor is the grantor and trustee of the Eakm Living Trust, into which she transferred all of her interest in the Meeks Way Property. Dec of Trust, § II, A.
 - 2. As long as Debtor is alive, she retains all rights to the income, profits, and control of the Meeks Way Property. *Id.*; II, (C).
 - 3. Debtor may revoke the Trust. *Id.*; II, (E).
 - 4. Successor Trustees are:
 - a. Harpal Kaur, Debtor's Sister,
 - b. Sukhwinder Singh Kang, Debtor's Husband. *Id.*; III; (E).
 - 5. Upon Debtor's death, the beneficiary is Eakmjot [last name blocked out], and that Debtor wishes her father, mother, brother, and sister to reside in the Meeks Way Property for as long as they are alive. *Id.*; § IV, (A)1.

However, in her Deposition, Debtor's statements under penalty of perjury include the following:

- B. Deposition of Debtor, July 29, 2022, Transcript; Exhibit 3, Dckt. 57.
 - 1. Sukhwinder Singh Kang handles all of Debtor's business and financial affairs (including taxes and the bankruptcy schedules). Transcript, p. 12:13-17.
 - 2. The real owners of the Meeks Way Property are the "handicapped people" who live in that Property. *Id.*; p. 20:4-12.

3. Debtor's uncle with dementia gave her \$60,000.00. *Id.*; p. 20:23-21:1; 22:7-9.
4. Sukhwinder Kang provided a gift of \$22,000.00, and identifies himself as Debtor's brother in law, but the gift was actually made by a Surjeet Kuner. *Id.*; p. 22:10-22. Neither Sukhwinder Kang nor Surjeet Kuner are Debtor's brother in law. *Id.*; p. 22:21-25, 23:1-7.
5. Debtor states that the Meeks Way Property belongs to the four "patients" (Debtor's family members) who live there. *Id.*; 23:22-25.
6. Debtor makes the mortgage payment on the Meeks Way Property as her payment of rent for the actual owners letting her live there. *Id.*; p. 24:1-10.
7. The Meeks Way Property was the four handicapped peoples' home and by the trust Debtor "gave it back to them." *Id.*; p. 25:3-5.
8. The purpose of the trust is to benefit the handicapped people who live there. *Id.*; p. 26:9-12.
9. Debtor tried, but could not testify as to why Sukhwinder Singh Kang is identified as Debtor's husband in the trust documents. *Id.*; p. 26:25, 27:1-14.
10. Debtor shares a bank account with Sukhwinder Singh Kang at Tri Counties Bank, and:
 - a. Sukhwinder Singh Kang gives Debtor money (*Id.*; p. 35:1-3);
 - b. Debtor does not have any separate bank accounts, only that with Sukhwinder Singh Kang (*Id.*; 35:4-1); and
 - c. Sukhwinder Singh Kang also lives at the Meeks Way Property (*Id.*; p. 40:15-18).

Taken as truthful, Debtor makes inaccurate, untruthful statements.

Continuance of December 8, 2022 Hearing

It appears clear that at worst, an evidentiary hearing will be required. However, one has to question why an evidentiary hearing would be required for BMO to prove that Debtor held only merely legal title for the benefit of others, that Debtor has and had no interest in the Meeks Way Property, that Debtor has no interest in the Meeks Way Property in which to claim a homestead exemption, and that Debtor has no interest in the Meeks Way Property against which BMO may try and enforce its judgment lien. Taking the allegations by BMO as true, it wins in proving that Debtor has no interest in the Meeks Way Property, and it loses any judgment lien against the Meeks Way Property.

Debtor has obtained her discharge in this Bankruptcy Case. However, Debtor's twisting tales may indicate that elderly, handicapped persons are at risk, with their assets being diverted to Debtor (and possible others who are living with Debtor).

The judge to whom this case is assigned is unable to hear it on December 8, 2022, so it is continued to December 15, 2022.