**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

**Honorable Ronald H. Sargis**
**Chief Bankruptcy Judge**
**Sacramento, California**

**December 9, 2021 at 10:30 a.m.**

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|---|---|---|---|
| **1.** | **09-37016-E-7**<br>**BLF-6** | **EDWARD/KARIN WESTJOHN**<br>**David Foyil** | **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH EDWARD WILLIAM WESTJOHN AND KARIN EDITH WESTJOHN**<br>**10-22-21 [202]** |

**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.

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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, creditors, and Office of the United States Trustee on October 22, 2021. By the court's calculation, 48 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.**

Kimberly J. Husted, the Chapter 7 Trustee, ("Trustee-Movant") requests that the court approve a compromise and settle competing claims and defenses with Debtors Edward William Westjohn and Karin Edith Westjohn ("Debtor-Settlor"). The claims and disputes to be resolved by the proposed settlement are the distribution of settlement proceeds from the settlement of a multi-district

product liability lawsuit that is property of the bankruptcy estate.

Trustee-Movant and Debtor-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 C in support of the Motion, Dckt. 205):

A. Debtor-Settlor was provided a net settlement award to the bankruptcy estate of $54,688.23 from a products liability case in Texas.

B. Debtor-Settlors did not disclose these potential claims on their schedules nor did they amend their schedules to disclose the claims or the lawsuit.

C. On August 31, 2021, Debtor-Settlor amended schedules to include this claim and tried to list it as an exemption.

D. Trustee-Movant claims this property is property of the bankruptcy estate and not exemptions because they failed to disclose the claims at issue before the case was closed.

E. Debtor-Settlors claim the failure to amend was not intention.

F. To resolve the dispute, both parties will split the settlement amount 50/50.

G. Trustee-Movant will send a check to the Debtor-Settlor for 50% of the settlement amount after all of the following has occurred:

(1) Bankruptcy Court entered an order approving the compromise;

(2) the time to appeal has expired and no party has filed an appeal; and

(3) Trustee-Movant has received the settlement proceeds from Defense Counsel.

**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).

Trustee-Movant argues that the four factors have been met.

**Probability of Success**

Trustee-Movant claims Debtor-Settlor is not entitled to amend their schedules to exempt the property because they were aware Debtor Karin Edith Westjohn knew of the injuries and failed to disclose the potential claims before the case closed. Debtor-Settlor contends their failure to amend their schedules was not intentional. There is no certainty as to who the prevailing party would be on dispute.

**Difficulties in Collection**

Trustee-Movant will collect the settlement amount from defendants in the lawsuit and hold the funds until resolution of the Dispute. There are no known difficulties in the collection.

**Expense, Inconvenience, and Delay of Continued Litigation**

Probability of success in litigation is uncertain. Administrative expenses could be large to litigate the dispute. Expenses would consume a significant portion of any benefit to the estate where here the estate would collect $27,344.12. Litigation would be expensive, inconvenient, and would delay the benefits to the estate.

**Paramount Interest of Creditors**

The settlement approaches a fair resolution of the case without any attendant certainty. It results in significant savings in time and administrative expense by avoiding litigation.

At the hearing, ~~no other offers were presented in open court to purchase the Estate's interest in the matter being settled.~~

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 Trustee-Movant to recover half of the settlement proceeds from the underlying products liability suit while avoiding litigation. 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 Kimberly J. Husted, the Chapter 7 Trustee, ("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 Trustee-Movant and Edward William Westjohn and Karin Edith Westjohn ("Debtor-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 C in support of the Motion, Dckt. 205).

**2.** **20-24123-E-11 FWP-35** **RUSSELL LESTER** **Thomas Willoughby** **MOTION FOR FINAL DECREE AND ORDER CLOSING CASE** **11-10-21 [781]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on November 10, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Final Decree and Order Closing Case 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 Final Decree and Order Closing Case is granted.**

The Motion for Final Decree and Order Closing Case has been filed by Russell Wayne Lester ("Debtor in Possession"). Dckt. 781. Debtor in Possession makes this request pursuant to 28 U.S.C. §§ 157(b)(2)(A), (O) AND 11 U.S.C. § 350.

Debtor in Possession filed for bankruptcy relief under Chapter 11. Debtor in Possession's Plan was confirmed on May 27, 2021 and modified on July 1, 2021. The order confirming the Plan is now final and Debtor in Possession claims their case has been fully administered.

**APPLICABLE LAW**

**Final Decree and Closing of Case**

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) states additionally that the court is required to close a case after an estate is "fully administered and the court has discharged the trustee." The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk,* 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been "fully administered," factors the court considers include whether:

A. the plan confirmation order is final;

B. deposits required by the plan have been distributed;

C. property to be transferred under the plan has been transferred;

D. the debtor (or the debtor's successor under the plan) has taken control of the business or of the property dealt with by the plan;

E. plan payments have commenced; and

F. all motions, contested matters, and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. *See id.*; *In re John G. Berg Assocs., Inc.*, 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

**DISCUSSION**

Movant argues the following factors support approval of the Motion:

A. The estate has been fully administered for purposes of 11 U.S.C. § 350(a).

B. The order confirming the Plan was entered four months ago and is now final.

C. All documents needed to implement the Plan have been signed, the SPE has been formed with all property transferred to the SPE as required

under the Plan.

D. The Reorganized Debtor has operated his business post-confirmation pursuant to the Plan.

E. The Reorganized Debtor has made post-confirmation payments to the holders of allowed claims as authorized under the Plan.

F. Two of the three Ranch properties to be sold pursuant to the Plan have closed, and the third is scheduled to close prior to the hearing date on this Motion. Other than the Gordon Ranch, whose sale was approved by the Court, these sales do not require Court approval under the Plan.

G. There are no pending matters in the Reorganized Debtor's case.

Motion, Dckt. 781, at p. 4-5.

There being no objection, Debtor is entitled to the closing of the case.

In consideration of the factors indicating full administration, the court finds the Estate has been fully administered. The Motion is granted, and the court shall enter an order closing the Chapter 11 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 Final Decree and Order Closing Case filed by Russell Wayne Lester ("Debtor in Possession"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, the Chapter 11 case is closed, and the Clerk of the Court is authorized to close this case.
>
> The court has continuing jurisdiction for this bankruptcy case, including, without limitation, the confirmed Chapter 11 Plan, and performance, breaches, and enforcement of said Confirmed Plan.

**3.** **19-24134-E-7** **FELIX/DEBORAH KIARSIS** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH TROY CARUSO, RADIUM2 CAPITAL, LLC, BORIS YANKOVICH, AND WELLS FARGO BANK, N.A.**
**DNL-2** **Bruce Dwiggins** **11-18-21 [77]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 18, 2021. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

**The Motion for Approval of Compromise is granted.**

Nikki Farris, the Chapter 7 Trustee ("Movant") requests that the court approve a compromise and settle competing claims and defenses with TROY CARUSO ("Caruso"), RADIUM2 CAPITAL, LLC f/k/a RADIUM2 CAPITAL, INC. ("Radium"), and BORIS YANKOVICH ("Yankovich"), and WELLS FARGO BANK, N.A. ("Wells Fargo"), altogether "Settlors". Caruso, Radium, and Yankovich are referred to as the "Radium Parties".

The claims and disputes to be resolved by the proposed settlement are turnover, stay violation, and sanctions against Radium Parties and Wells Fargo. Radium's prepetition and postpetition enforcement activities against Debtor account for approximately $34,000.00 held in Debtor's deposit accounts at Wells Fargo. Before the bankruptcy case closed, Radium received $32,215.87 from the Wells Fargo accounts through a levying officer, whose office retained fees, expenses, and poundage

charges. The Trustee was given no notice and no relief from stay was requested.

Movant and Settlors have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 80):

A. The estate shall receive $40,000.00 - $13,750.00 from Wells Fargo and $27,250.00 from Radium Parties.

B. The Adversary Proceeding shall be dismissed with prejudice, each party bearing their own attorney's costs and fees.

C. Wells Fargo's Proof of Claim shall be reduced to $45,000.00.

D. The settling parties shall exchange mutual releases excepting only the Agreement and Wells Fargo Claim, and any claims by Wells Fargo against the Trustee for acts unrelated to her representation of Debtor's bankruptcy estate.

**DISCUSSION**

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

**Probability of Success**

The probability of success is unknown. It is unclear how strong Settlors' defenses will be. The Agreement reflects the relative strength in the parties' claims and defenses and provides certainty as to the outcome, eliminating an adverse result in litigation.

**Difficulties in Collection**

This factor is neutral as the Trustee is not aware of any potential difficulties as to collection.

**Expense, Inconvenience, and Delay of Continued Litigation**

While the claims are similar, each defendant have separate issues. This settlement cuts off the expenses of the litigation by entering one settlement with all defendants and, by extension, eliminating possible appeals and further delay in the outcome of the litigation.

**Paramount Interest of Creditors**

It is the Trustee's opinion that the Agreement is in the best interest of the estate. The Agreement yields a fair and equitable result. By reducing Wells Fargo's Proof of claim, other holders of general unsecured claims will benefit.

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 avoids the taxing costs of litigation and is in the best interest of the estate. 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 Nikki Farris, 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 TROY CARUSO ("Caruso"), RADIUM2 CAPITAL, LLC f/k/a RADIUM2 CAPITAL, INC. ("Radium"), and BORIS YANKOVICH ("Yankovich"), and WELLS FARGO BANK, N.A. ("Wells Fargo"), altogether "Settlors" is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 80):

**4.** **21-23235-E-7 KC-1** | **JASON TAAD AND TAWYNA HARRIS-TAAD** Kathleen Crist | **AMENDED MOTION TO COMPEL AN ABANDONMENT** 11-23-21 [28]

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on November 23, 2021. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

**The Motion to Compel Abandonment is granted.**

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

The Motion filed by Jason Earl Taad ("Debtor") requests the court to order Sheri L. Carello ("the Chapter 7 Trustee") to abandon property commonly known as the business name, "Taad Transport", and the business checking account with F&M Bank ending in 4501 ("Property"). The Declaration of Jacob Earl Taad has been filed in support of the Motion and values the Property at $82.58.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

The Motion states that the property is exempted pursuant to California Code of Civil Procedure §§ 704.730 and 704.010, which are the homestead exemption and motor vehicle exemption, respectfully. The Property Debtor is attempting to compel abandonment is neither real property nor a motor vehicle. Accordingly, the Code sections that Debtor uses as grounds for abandonment do not apply to the Property. Movant also makes reference to "the Transport company" but does not assert what assets would be abandoned in regards to "the Transport company."

Debtor's Declaration states that "The Transport Business listed herein and operated by myself, including the F&M Checking account, which is fully exempt under various sections of the California Code of Civil Procedure." Dckt. 20. Debtor then provides a different Code section than provided in the Motion by listing California Code of Civil Procedure §§ 704.010, 704.070.

Debtor's Schedule C lists "Business Checking: F&M Banking ending in 4501" as property the Debtor claims as exempt in the amount of $82.58 pursuant to California Code of Civil Procedure § 704.070. Under § 704.070:

> "Paid earnings that can be traced into deposit accounts or in the form of cash or its equivalent as provided in § 703.080 are exempt in the following amounts: (1) All of the paid earnings are exempt if prior to payment to the employee they were subject to an earnings withholding order or an earnings assignment order for support; or (2) Disposable earnings that would otherwise not be subject to levy under § 706.050 that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or an earnings assignment order for support."

In accordance with § 703.080, the exemption claimant has the burden of tracing an exempt fund. Furthermore, the deadline for filing objections to exemptions does not expire until thirty (30) days after the conclusion of the Meeting of Creditors. Notice of Bankruptcy, Section 9; Dckt. 5. The Meeting of Creditors was held on November 8, 2021, making the deadline to file an objection to exemptions December 8, 2021.

However, Debtor does not need to have an exemption to have the asset abandoned. The Code only requires that it be burdensome or of inconsequential value to the estate. 11 U.S.C. 554(a). Debtor's Motion and Declaration state that the business has no marketable value outside of Debtor's own efforts. Debtor does not provide any more evidence to prove to the court that such assets he wants abandoned are burdensome or of inconsequential value to the estate.

At the November 18, 2021 hearing, counsel for Debtor requested a short continuance so that an amended Notice specifically identifying all of the property to be abandoned.

**Supplemental Motion to Compel**

On November 23, 2021, Debtor filed a Supplemental Motion to Compel Chapter 7 Trustee to Abandon Property. Dckt. 28. Debtor clarifies the above issues and identifies the following to be abandoned:

1. The Business Name "Taad Transport"

2. The 2016 Dodge Ram 3500 Crew Cab Truck

3. The 2010 Delco Gooseneck Flatbed Trailer

4. F&M Bank Business Checking Account with a balance of $82.58.

Debtor claims the equity in Property is exempted pursuant to California Code of Civil Procedure §§ 704.730; 704.010.

| **PROPERTY INTEREST** | **VALUE Schedule A/B** | **LIEN / ENCUMBRANCE Schedule D** | **EXEMPTION** |
|---|---|---|---|
| 1. Business Name "Taad Transport" | No Value Stated on Schedules | None Identified | No Exemption Claims on Schedule C; Dckt. 1 at 19-21/ |
| 2. 2016 Dodge Ram | $32,509.00 | ($34,110.82) | $0.00 (CCP § 704.010) |
| 3. 2010/2020 Delco Gooseneck* | $6,000.00 | ($6,079.00) | $0.00 (CCP § 704.010) |
| 4. F&M Business Checking Account | $82.58 | $0.00 | $82.58 (CCP § 704.070) |
| | | | |

*The court notes the Amended Motion states the Delco Gooseneck is a 2020 model. However, Debtor's Schedule C states it is a 2010. At the hearing, XXXXXXXXXX

It is unclear whether there is value in the Business Name.

The two vehicles list $0.00 as exempt. However, the 2016 Dodge Ram has a $34,110.82 claim with $1,601.82 unsecured. Additionally, the 2010/2020 Delco Gooseneck has a $6,079.00 claim and $79.00 unsecured. The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

The court finds that the debt secured and exemption claimed by F&M Business Checking Account creates no net value to the Estate. As such, the Court orders the Chapter 7 Trustee abandons such property.

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 Compel Abandonment filed by Jason Earl Taad ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the following Property is abandoned by Sheri L. Carello ("the Chapter 7 Trustee") to Jason Earl Taad ("Debtor") by this order, with no further act of the Trustee required:

1. The Business Name "Taad Transport"

2. The 2016 Dodge Ram 3500 Crew Cab Truck

3. The 2010 Delco Gooseneck Flatbed Trailer

4. F&M Bank Business Checking Account with a balance of $82.58.

**5. 21-21153-E-11 RHS-1** **REHANA HARBORTH** **Marc Voisenat** **ORDER TO SHOW CAUSE** **11-12-21 [110]**

**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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, Chapter 11 Trustee, Trustee's Attorney, and Office of U.S. Trustee, as stated on the Certificate of Service on November 12, 2021. The court computes that 27 days' notice has been provided.

The Order to Show Cause was issued due to Debtor's failure to file the following: Monthly Operating Reports; A Plan; Motion to Employ Real Estate Broker; and Motion to Sell Real Property.

**The Order to Show Cause is sustained, and the case is dismissed.**

The court's docket reflects that the default has not been cured. The following documents have not been filed by Rehana Harborth ("Debtor"): Monthly Operating Reports; A Plan; Motion to Employ Real Estate Broker; and Motion to Sell Real Property. Responsive Pleadings to the Order to Show Cause are required to be filed on or before December 2, 2021, and if not, then the case would be dismissed without further hearing. Order to Show Cause, p. 2:10-17; Dckt. 110. No responsive pleadings have been filed by the Debtor in Possession.

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

**IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

**6.** **20-25057-E-7** **DAVID FLETCHER**
**DNL-10** **Douglas Jacobs**

**MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES ATTORNEY(S)**
**11-18-21 [318]**

**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

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 18, 2021. By the court's calculation, 21 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, **----------**.

**The Motion for Allowance of Professional Fees is granted.**

Desmond, Nolan, Livaich & Cunningham ("DNLC"), the Attorney ("Applicant") 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.

Fees are requested for the period of May 24, 2021 through November 17, 2021. The order of the court approving employment of Applicant was entered on December 1, 2020. Dckt. 25. Applicant requests fees in the amount of $23,167.50 and costs in the amount of $1,044.50.

**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: (1) General Counsel Employment; (2) Broker Employment; (3) Motion to Approve Sale of Real Property and Broker Fee Application; (4) Motion for Authority to Operate Business; 4) General Fee Application; (6) General Counsel First Fee Application; (7) General Counsel Employment; (8) Motion for Approval of Stipulation between the Trustee and EDD; Authorization to Trustee to Pay EDD Claim for the Sale Proceeds; (9) General Counsel Second and Final Fee Application; (10) Trustee Final Fee Application. The court finds the services were beneficial to Client and the Estate and were reasonable.

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

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

General Case Administration: Applicant spent 3.00 hours in this category. Applicant does not provide a description of services they provided in the motion.

Litigation and Contested Matters: Applicant spent 20.20 hours in this category. Applicant does not provide a description of services they provided in the motion.

Asset Analysis and Recovery and Asset Disposition: Applicant spent 7.90 hours in this category. Applicant does not provide a description of the services they provided in the motion.

Relief from Stay/Adequate Protection Proceedings: Applicant spent 0.10 hours in this category. Applicant does not provide a description of the services they provided in the motion.

Fee/Employment Applications: Applicant spent 17.90 hours in this category. Applicant does not provide a description of the services they provided in the motion.

Claims Administration and Objections: Applicant spent 8.50 hours in this category. Applicant does not provide a description of the services provided in the motion.

Settlement/Non-binding ADR: Applicant spent 7.20 hours in this category. Applicant does not provide a description of the services they provided in the motion.

Pleadings and Discovery: Applicant spent 5.60 hours in this category. Applicant does not

provide a description of the services provided in the motion.

Other: Applicant spent 0.10 hours in this category. Applicant does not provide a description of the services provided in the motion.

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** | **Average Hourly Rate** | **Total Fees Computed Based on Time and Hourly Rate** |
|---|---|---|---|
| J. Russell Cunningham, Partner<br>Benjamin C. Tagert, Associate<br>Nicholas L. Kohlmeyer, Associate<br>Mikayala E. Kutsuris, Law Clerk | 76.30 | $303.64 | $23,167.73 |
| **Total Fees for Period of Application** | | | $23,167.73 |

DNLC provided seven pages worth of exhibits that illustrate the breakdown of each of the above professionals and their services. Exhibit A, Dckt. 320. However, there is no clear summary of how many hours each professional worked on these matters. In the future, it would be helpful to the court if the Motion contained a short breakdown of each professional, their hourly rate, and how many hours they billed for the given period.

The court notes, the table given for the "Task Billing Breakdown for Hourly Services" lists the total hours billed as 76.30 hours. However, upon a quick calculation of the court, the "Hours Billed" column totals 70.50 hours. If the total hours are 70.50, the fees allowed would be $21,406.62, rather than $23,167.73.

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $1,044.50 pursuant to this application.

The costs requested in this Application are,

| **Description of Cost** | **Cost** |
|---|---|
| Copying | $32.00 |
| Postage | $67.38 |

| | |
|---|---|
| Delivery | $3.52 |
| Secretary of State | $624.60 |
| Filing Fees | $317.00 |
| **Total Costs Requested in Application** | $1,044.50 |

**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 $21,406.62 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**

Second and Final Costs in the amount of $1,044.50 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 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 $21,406.62
Costs and Expenses $1,044.50

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 Desmond, Nolan, Livaich & Cunningham ("DNLC") ("Applicant"), Attorney 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 Desmond, Nolan, Livaich & Cunningham

("DNLC") is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Livaich & Cunningham ("DNLC"), Professional employed by the Chapter 7 Trustee

Fees in the amount of $21,406.62
Expenses in the amount of $1,044.50

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

**IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution Chapter 7 case.

**7.** **20-25057-E-7** **DAVID FLETCHER** **MOTION FOR COMPENSATION FOR**
**DNL-11** **Douglas Jacobs** **KIMBERLY J. HUSTED, CHAPTER 7 TRUSTEE(S)**
**11-18-21 [324]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 18, 2021. By the court's calculation, 21 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, **----------**.

**The Motion for Allowance of Professional Fees is granted.**

Kimberly J. Husted, the Chapter 7 Trustee, ("Applicant") for the Estate of David S. Fletcher ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period of December 1, 2020, through November 16, 2020.

**STATUTORY BASIS FOR FEES**

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

> (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
>
> (B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a professional employed by a trustee, the professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

> (7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

**Benefit to the Estate**

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "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 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 (1) General Case Administration; (2) Efforts to Assess and Recover Property of the Estate; and (3) Significant Motions and Other Contested Matters. The court finds the services were beneficial to Client and the Estate and were reasonable.

**FEES REQUESTED**

Applicant provides a task billing analysis and supporting evidence for the services. However, Trustee does not provide a breakdown of hours spent in each category.

**Applicant requests the following fees:**

| | |
|---|---|
| 25% of the first $5,000.00 | $1,250.00 |
| 10% of the next $45,000.00 | $4,500.00 |
| 5% of the next $297,777.36 | $14,888.87 |
| 3% of the balance of $0.00 | $0.00 |
| **Calculated Total Compensation** | **$**20,638.87 |
| Plus Adjustment | $0.00 |
| Total Maximum Allowable Compensation | $20,638.87 |
| Less Previously Paid | $0.00 |
| **Total First and Final Fees Requested** | $20,638.87 |

**FEES ALLOWED**

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $20,638.87 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.

**EXPENSES**

The Trustee is seeking a reimbursement of $209.03 in actual and necessary expenses.

In this case, the Chapter 7 Trustee currently has $347,777.36 of unencumbered monies to be administered. The Chapter 7 Trustee's services for the Estate include (1) General Case Administration; (2) Efforts to Assess and Recover Property of the Estate; and (3) Significant Motions and Other Contested Matters. Applicant's efforts have resulted in a realized gross of $347,777.36 recovered for the estate. Dckt. 324.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted

under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

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

| | |
|---|---|
| Fees | $20,638.87 |
| Costs and Expenses | $209.03 |

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 Kimberly J. Husted, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Kimberly J. Husted is allowed the following fees and expenses as trustee of the Estate:
>
> Kimberly J. Husted, the Chapter 7 Trustee
>
> Fees in the amount of $20,638.87
> Expenses in the amount of $209.03
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**8.** **19-26574-E-7** **SEAN ALMEIDA** **MOTION TO SELL**
**DNL-9** **Timothy Walsh** **11-10-21 [78]**

**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.

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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 10, 2021. By the court's calculation, 29 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).

Under the facts and circumstances of this Motion, the court shortens the time to the 29 days given.

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.

**The Motion to Sell Property is granted.**

The Bankruptcy Code permits J. Michael Hopper, 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 the real property commonly known as 22 Solano Drive, Dixon, California ("Property").

The proposed purchaser of the Property is James Modar and Joseph Evans Jr., ("Buyer"), and the terms of the sale are:

A. Purchase Price: $505,000.00

- $10,000.00 initial deposit;
- $116,250.00 cash down payment; and
- the balance of $378,750.00 to be financed and due prior to the close of escrow.

B. Transfer of subject property as is.

C. Waiver of appraisal and loan contingencies.

D. Buyer pays for escrow fees and owner's title insurance.

E. Estate shall pay county transfer taxes.

F. Close of escrow shall occur within 15 days of the Bankruptcy Court entering an order approving the sale agreement.

G. Sale is subject to overbidding through conclusion of the sale hearing.

**Sale Free and Clear of Liens**

The Motion seeks to sell the Property free and clear of the lien of Post-Dissolution Balance of the Judgment Asserted by Naval Federal Credit Union ("Creditor"). Trustee states all other clams have been resolved. The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> (f) The trustee 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).

By separate Adversary Proceeding, 21-2041, the Trustee and Naval Federal Credit Union are litigating the issue of whether the Credit Union's post-separation judgment lien encumbers the property (which is community property) for the full amount of the judgment, which was for Becky Almeida's (ex-spouse of Debtor) pre-separation and post-separation credit charges, or just for those incurred prior to the separation. The Trustee asserts that $41,854.05 is the full amount of the judgment asserted, but only $8,086.49 is for pre-separation creditor obtained by Becky Almeida.

The parties are litigating this dispute in Adversary Proceeding 21-2041 and a *bona fide* dispute exists whether community property is liable for post-separation, pre-division of property, credit obligations of a separated spouse. See Cal. Family Code § 910.

Additionally, the Trustee computes the sales proceeds from the sale being distributed as follows:

| **22 Solano Drive Estimates** | **Amount** |
|---|---|
| Estimated Sale Price | $505,000.00 |
| (Selling Costs @ 8%) | ($40,000.00) |
| (Cleaning Costs) | ($1,200.00) |
| (Property Taxes) | ($3,000.00) |
| (CITI) | ($212,000.00) |
| (Homestead Reserve) | ($100,000.00) |
| | ---------- |
| **Net Sale Proceeds** | **$148,800.00** |
| | |
| (Patelco Settlement) | ($7,950.00) |
| (Approx. Undisputed Portion of NFCU Judgment) | ($14,813.70) |
| | ========== |
| **Remaining Sales Proceeds** | **$126,036.30** |

After paying of the liens and expenses, including a payment of ($14,813.70) to Navy Federal Credit Union, they remains $126,036.30 in sales proceeds from the sale of the community property, which has not yet been distributed to Debtor and Becky Almeida as parts of their respective property.

Based on the State Court Judgment against Becky Almeida asserted by Navy Federal Credit Union (no proof of claim has been filed in this bankruptcy case by Navy Federal Credit Union) of $41,854.05, plus simple post-judgment interest at 10% per annum, for 47 months since the January 23, 2018 State Court Judgment (21-2041; Exhibit, Dckt. 50), which would be approximately an additional $16,393, the current balance owed by Becky Almeida on the State Court Judgment totals as of December 2021 approximately $58,247.05. After payment of $14,813.70, the State Court Judgment balance would be reduced to approximately $43,855. To the extent that Navy Federal Credit Union has a lien on the community property or any separate property interest of Becky Almeida, it can attach to the $126,036.30 in sales proceeds and be adequately protected thereby until the court determines what portion, if any, of those monies should be paid to Navy Federal Credit Union.

This adequate protection and surplus funds is grounds for approving the sale free and clear pursuant to 11 U.S.C. § 363(f)(5) - that Navy Federal Credit Union can be compelled to take a money payment in satisfaction of any obligation secured by the abstract of judgment lien against the Property.

**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: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will generate net proceeds to the estate totaling $148,800.00. Approximately $126,036.30 will remain for the benefit of creditors.

Movant has estimated that a 6.00 percent broker's commission from the sale of the Property will equal approximately $30,300.00. 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 6.00 percent commission.

**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 to the motion and they want the sale to move forward immediately upon entry of Bankruptcy Court.

Movant has plead 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:

> 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) and § 363(f)(4) and (5) to James Modar and Joseph Evans Jr., ("Buyer"), the Property commonly known as 22 Solano Drive, Dixon ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $505,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit I, Dckt. 82, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> C. The Property is sold free and clear of the lien of Naval

Federal Credit Union, Creditor asserting a State Court Judgment lien for a Judgement obtained against Becky R. Almeida, Debtor's Separated Spouse, in California Superior Court, for the County of Yolo, Case No. CV-2017-1565, pursuant to the Abstract of Judgment issued for such State Court Judgement recorded with the County Recorder for Yolo County, California, Document # 201700060748.

The Abstract of Judgment lien, to the extent it exists and in the same amount and priority as against the Property sold, shall attach to the net sales proceeds from the sale of the Property, after costs of sale, payment of other liens, and the disbursement of $14,813.70 from escrow to be applied to the State Court Judgment against Becky Almeida identified above. 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 6.00 percent of the actual purchase price upon consummation of the sale. The 6.00 percent commission shall be paid to the Chapter 7 Trustee's broker, COLDWELL BANKER KAPPEL GATEWAY REALTY.

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

**9.** **14-29391-E-7** **ENRIQUE QUILES** **MOTION TO SELL FREE AND CLEAR**
**DNL-14** **Eric Schwab** **OF LIENS**
**11-10-21 [184]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 10, 2021. By the court's calculation, 29 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, ----------.

**The Motion to Sell Property is granted.**

On May 3, 2019, the court entered an order approving J. Michael Hopper's ("Trustee") sale of approximately 19,957.452 square meters of land in Manuabo, Puerto Rico ("Property") to Maxie Santiago and Michael J. Young for the purchase price of $40,500.00. Dckt. 140.

**Sale Free and Clear of Liens**

Now, comes forth Trustee to move for an order authorizing the sale of the interest to be completed free and clear of all the liens, encumbrances, and claims of interests that have been asserted or could be asserted by the following parties:

1. Mark J. Rice - Interest: Promissory Note and Consensual Mortgage Lien Dated March 15, 2014

2. Western Insurance Co. - Interest: Note Dated January 8, 2011

3. Elizabeth Camacho Arroyo - Interest: Co-Owner

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).

Movant has established all three affected parties have consented to the relief, pursuant to 11 U.S.C. § 363(f)(2). Movant attached as exhibits stipulations signed by all three parties consenting to the sale to be free and clear of all liens. Exhibit A, C, Dckt. 187.

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 Free and Clear of Liens filed by Chapter 7 Trustee J. Michael Hopper's ("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 ("Chapter 7 Trustee") is authorized to sell pursuant to 11 U.S.C. § 363(f) to Maxie Santiago and Michael J. Young ("Buyer"), the Property commonly known as 19,957.452 square meters of land in Manuabo, Puerto Rico ("Property"), free and clear of the following liens:
>
> 1. Mark J. Rice - Interest: Promissory Note and Consensual Mortgage Lien Dated March 15, 2014

2. Western Insurance Co. - Interest: Note Dated January 8, 2011

3. Elizabeth Camacho Arroyo - Interest: Co-Owner

**10. 20-25398-E-11 EVW-4 — ALEJANDRO ALEJANDRO/ GRISELDA GONZALEZ — Eric Wood — MOTION APPROVE STIPULATION ON PLAN TREATMENT — 11-17-21 [97]**

**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.

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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, creditors, and Office of the United States Trustee on November 17, 2021. By the court's calculation, 22 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).

Under the facts and circumstances of this Motion, the court shortens the time to the 22 days given.

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 Stipulation Between Alejandro C. Alejandro and Griselda Gonzalez, the Debtor in Possession, and Bosco Credit LLC, creditor with a secured claim is DENIED without prejudice.**

The Chapter 11 Debtors, Alejandro C. Alejandro and Griselda Gonzalez, jointly the Debtor in Possession, request that the court approve a stipulation with Bosco Credit LLC, a creditor with a secured claim, ("Creditor") that provides for adequate protection payments and other relief (some of which violate the Bankruptcy Code).

**STIPULATION**

Debtors individually, and not as the as the fiduciary Debtors in Possession to the bankruptcy estate, and Creditor have entered into a stipulation that includes Chapter 11 plan treatment for Creditor's lien on the Subject Property which is subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Dckt. 99):

A. Creditor holds a fully secured second lien on the Subject Property.

B. The parties hereto agree that Debtors individually (and not from property of the bankruptcy estate) shall pay a Secured Claim in the amount of $171,576.84 and that the Secured Claim shall be paid at a fixed 5.0% interest amortized over 30 years (360 months) with monthly payments of $900.64.

C. Debtors personally will give a payment of $2,500 on or before November 1, 2021 and will commence monthly payments to Secured Creditor on November 1, 2021 in the amount of $900.64 (principal and interest).

D. All other terms of the Deed of Trust and Note not directly altered by this agreement will remain in full force and effect.

E. Pre-Confirmation Default: In the event that Debtors (not the bankruptcy estate) defaults on any of the above-described provisions, Creditor shall provide written notice via first class mail to Debtors (not the Debtors in Possession) and to Debtors' Attorney (who is not compensated for representing the Debtors personally in the case, and not representing the Debtors in Possession) indicating the nature of the default. If the debtor fails to pay 15 days after the written notice, then the Automatic Stay shall terminate and Creditor may proceed to foreclose its security interest and obtain complete possession of the Subject Property.

In so stipulating with the Debtors, then the stay would only terminate as to the Debtors personally and not as to the bankruptcy estate.

F. Post-Confirmation Default: Upon confirmation of the Debtors' Chapter 11 Plan, the automatic stay shall terminate and the above-described remedies shall have no effect. In the event that Debtor defaults on any of the above-described provisions after the Plan has been confirmed, Creditor shall proceed with foreclosure remedies.

G. In the event Debtors' case is dismissed or converted to another Chapter, the Secured Creditor shall retain its lien in the full unmodified amount due and the Automatic Stay shall be terminated.

It is unclear how the post-petition Debtors can bind the bankruptcy estate and possible successor Chapter 7 trustee.

H. If the Creditor is granted relief from the automatic stay, then the 14-day

stay provided by Bankruptcy Rule 4001(a)(3) is waived.

I. In the event Debtor defaults and Creditor provides 15-day notice pursuant to Paragraph 5 of the Stipulation, Debtors shall be responsible for attorney's fees and costs caused by the 15-day letter.

Debtors personally, and not the bankruptcy estate or property of the bankruptcy estate would be liable for any such attorney's fees and costs.

J. The terms of the Stipulation may not be modified, altered, or changed by the Plan, any confirmation order thereon, any subsequently filed Amended Chapter 11 Plan of Reorganization the Creditor and confirmation order thereon without the express consent of the Creditor. If any conflict arises between the terms set in the Stipulation and the Chapter 11 Plan, the terms of the stipulation shall control.

As is clear on its face, the Stipulation seeks to have this court "confirm" terms of a Chapter 11 Plan, binding the world thereto, outside of the confirmation of Plan process required by Congress in 11 U.S.C. §§ 1120, 1128, 1126, 1125, 1123, and 1122.

**DISCUSSION**

The Motion to Approve the Stipulation was filed and was set for hearing. A total of 30 days notice was provided with no oppositions and responses to be heard at the hearing. The Motion's Certificate of Service provides for all who received notice of this Stipulation.

Here, Debtors (personally) agreed to pay a Secured Claim in the amount of $171,576.84 and that the Secured Claim shall be paid at a fixed 5.0% interest amortized over 30 years (360 months) with monthly payments of $900.64 to Bosco Credit LLC. The stipulation provides adequate protection payments to Secured Creditor. The Stipulation constitutes a ballot voting in favor of the Debtors Plan of Reorganization that incorporates the terms of the Stipulation. Counsel, Debtor, and Trustee have responsibly addressed these issues, allowed Counsel to participate in the solution, and have presented a Stipulation that allows Secured Creditor to receive adequate protection payments.

However, the Stipulation mandates that it also include the court setting binding terms for the Chapter 11 Plan that will apply to the world. Debtors, acting personally; not as the Debtor in Possession, the fiduciary to the bankruptcy estate, who could bind the bankruptcy estate; and Creditor in this Stipulation are acting within the existing law (the Bankruptcy Code) or a good faith argument for a change or extension of existing law. Debtor and Creditor seek to have this court violate the plan language of the Bankruptcy Code and grant relief not allowed by Congress.

The Motion is denied without prejudice.

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

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

The Motion to Approve Stipulation filed by Alejandro C. Alejandro and Griselda Gonzalez, Chapter 11 Debtor ("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 Stipulation between Movant and Bosco Credit LLC ("Secured Creditor") is denied without prejudice.

| | | | |
|---|---|---|---|
| **11.** | **19-22653-E-7**<br>**PGM-1** | **REECE/RODINA VENTURA**<br>**Peter Macaluso** | **CONTINUED OBJECTION TO CLAIM OF ADELA BON GAUNIA, CLAIM NUMBER 2** |
| | **11 thru 12** | | **8-2-21 [375]** |

**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 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Creditor's Attorney(s), Chapter 7 Trustee, Chapter 7 Trustee's Attorney and Office of the United States Trustee on August 2, 2021. By the court's calculation, 52 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 2-2 of Adela Bon Gaunia is overruled.**

Reece Ventura and Rodina Cordero Ventura, the Chapter 7 Debtor, ("Objector") requests that the court disallow the claim of Adela Bon Gaunia ("Creditor"), Proof of Claim No. 2-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $175,196.52. Objector asserts that the subject of the claim, which are unpaid wages, penalties, and interest, are the subject of a pending trial, and the presumption of validity of the claim is therefore challenged as it is subject to ongoing legal dispute.

Debtor also objects to the added post-petition attorney fees where the Proof of Claim was

amended without the court's approval, or relief from the automatic stay.

Dismissal of Adversary Proceeding

This Objection was filed when Creditor's adversary proceeding to have this obligation determined nondischargeable was pending. That adversary proceeding was voluntarily dismissed by Creditor on August 5, 2021, (19-2156; Order, Dckt. 41), which was only 20 days before the August 25, 2021, scheduled trial. Creditor requested on July 27, 2021, that her adversary proceeding be dismissed. 19-2156; Request for Dismissal, Dckt. 32. This was 14 days after the deadline for Creditor to lodge with the court and serve her direct testimony statements and exhibits, and the same day that Debtor was required to lodge with the court and serve their direct testimony statements and exhibits. *Id*.; Trial Setting Order, Dckt. 30.

In light of the eve of trial dismissal and it being requested after Debtor had to prepare for trial, the court ordered (and Creditor agreed) that Creditor pay Debtor's:

> [a]ttorney's fees, costs, and expenses incurred during the period of **July 1, 2021 and August 4, 2021**, in preparing for the trial in this Adversary Proceeding which the Plaintiff requested be dismissed after the deadline for Plaintiff lodging with the court her Direct Testimony Statements and Exhibits had expired, with no such Direct Testimony Statements and Exhibits lodged with the court, plus the reasonable costs and attorney's fees for preparing and prosecuting the Motion for Allowance of such costs, fees, and expenses.

*Id*., Dismissal Order, p. 2:10-15, Dckt. 41 (emphasis added).

The court has also ordered that if Creditor fails to pay the fees awarded within 21 days of such order, then the dismissal is with prejudice to each and every right to payment of a debt by Creditor, which includes such rights asserted in the proof of claim.

Debtor filed a Motion for Fees and Expenses as provided in the Order of Dismissal. *Id*., Dckt. 44. That Motion requests fees in the amount of $5,425.00. The court issues its order thereon awarding $5,425.00 in fees to be paid by Creditor. *Id*.; Order, Dckt. 55. The Adversary Proceeding has been closed.

**DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion

is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

**Debtor's Objection**

Debtor proposes that, while a creditor's proof of claim is assumed *prima facie* valid, the burden of evidence shifts back to the Creditor when the Debtor offers evidence of equally probative value to overcome the presumption of *prima facie* validity. Debtor points the court to the proofs of claim filed by Creditor as evidence. Then argues that by Debtor disputing the claim in its entirety and such claim being the subject of the pending trial, the Debtor has provided sufficient evidence to shift the burden to Creditor to prove the validity of the claim.

As evidence, Debtor provides the court with two exhibits: Exhibit A, Creditor's Proof of Claim 2-1 and Exhibit B, Creditor's Amended Proof of Claim 2-2. In Exhibit A, the Proof of Claim states that the claim is based on "unpaid wages, penalties, interest and attorneys [sic] fees." Proof of Claim 2-1, at 2. Proof of Claim 2-1 includes an attachment titled "DAMAGE CALCLUATIONS [sic]: DEMAND FOR PAYMENT FOR SETTLEMENT ONLY" which details the alleged total unpaid wages due to Creditor and related penalties. *Id.*, at 6-8.

Exhibit B, the Amended Proof of Claim 2-2, has been amended to, first, edit Question 8, which now states "Unpaid wages, penalties, interest (Attorney fees TBD by state court motion)." *Id.*, at 11. It has been further amended to replace the original attachment and now includes a document titled: DAMAGE CALCULATIONS: DEMAND FOR PAYMENT, which was updated, March 16, 2021, and provides a breakdown of the hours and days worked and the wages earned by Creditor for years 2014 and 2015. *Id.*, at 13-16. The document also provides a breakdown of penalties and liquidated damages. *Id.*, at 16-17. On page 17, there is a heading for attorney's fees which states "(TBD by state court motion). *Id.*, at 17. The last page includes a table with the "Interest: Non-compounded on Unpaid Wages Until 3/31/2021." *Id.*, at 18.

**Creditor's Response**

Creditor filed an Opposition stating several grounds, including that California wage and hour law applies which favor workers to be treated fairly and paid and further that the Debtor grossly mistreated the Creditor during her tenure as a child care provider. Dckt. 379 at 2. Additionally, Creditor opposes the objection because Creditor had both legal and mathematical support for their damages as stated in the Proof of Claim, and lastly, Debtor may not have standing to object to the claim of the claims exceed the amounts of funds available when taking into account that the profits from the sale of Cebu properties is uncertain. *Id.*

In support to their Opposition, Creditor provides the Declarations of: Michael Harrington (Creditor's state court action counsel), Creditor Adela Bon Gaunia, and Dr. Lianju Sun. Dckts. 380, 381, and 382. Mr. Harrington's declaration includes "the *Reyes* decision from the Labor Commissioner," while the facts may be similar, Mr. Harrington, simply attaches a copy and claims they are similar without providing any analysis as to why they are similar and how such similarity has ANY relation to the bankruptcy proceedings at hand. While the case does lend credence to the calculations discussed below, its inclusion without additional explanation is puzzling.

For the mathematical support to Creditor's claim, Dr. Lianju Sun, a PhD in applied mathematics with experience as a financial management, provides a declaration explaining the

calculation process for Creditor's Proof of Claim. Dckt. 382. Dr. Sun provides reasoning for each category of wages, including wages earned for regular hours, overtime Hours, double overtime hours, and interest for unpaid wages, alongside citations to the relevant labor code provisions to support her calculations. This also included calculations for violations for missed breaks, missed meals, waiting time penalty, and penalty to produce records.

Creditor also fails to provide a legal basis for the attorney's fees requested as part of Proof of Claim 2-2, which Debtor specifically objects to. Creditor does not file any additional declaration or task billing summary with hourly breakdowns of the requested legal fees. The court understands that as there is ongoing litigation, it may be that the legal fees are pending. However, Creditor's counsel could provide an estimate of the hours spent and the related fees.

**September 23, 2021 Hearing**

It appears that two points have converged relating to the proper adjudication of this Objection and the allowance of Creditor's claim. First, Creditor's claim may be disallowed in its entirety if Creditor fails to pay the fees and expenses ordered by the court within the 21 days as provided in the now final order of dismissal of Creditor's adversary proceeding. 19-2156; Order of Dismissal, Dckt. 41.

Second, the court also notes that the Objection to Claim was filed on August 2, 2021, which was before this court granted the Motion to Dismiss Creditor's Adversary Proceeding, which Motion Debtor vigorously opposed stating that through that the disputes with Creditor's claim would be resolved.

Amended Proof of Claim 2-2 states that the claim is for $190,348.77, which is for unpaid wages, penalties, interest. Additionally, it is stated that "Attorney fees TBD by state court motion." Amd. POC 2-2, §§ 7, 8. It does not appear that there is a state court judgment for which post-judgment attorney's fees would be awarded. The court denied Creditor's motion for relief from the stay to proceed with her state court litigation. Order, Dckt. 61.

With the voluntary dismissal of the Adversary Proceeding by Plaintiff, the anticipated adjudication of the disputes in the adversary proceeding and then the doctrines of *res judicata* and *collateral estoppel* applied to this Contested Matter are no longer available, and the litigation must be conducted in this Contested Matter.

Therefore, the court sets the schedule for the filing of evidence and points and authorities in this Contested Matter.

**November 12, 2021 Supplemental Response**

On November 12, 2021, Creditor filed a supplemental response brief to Debtor's Objection to Claim. Dckt. 410. Creditor states the evidence provided by Debtor is grossly insufficient to provide a basis for denying the claim. Creditor also states objections to Creditor's evidence is based on hearsay and authentication issues. Additionally, Creditor states lack of materiality and relevance objections. Creditor also provided the court with relevant California Wage and Hour Laws and how to calculate damages for violation of the wage laws.

<u>Exhibits in Support of Response</u>

Creditor filed exhibits for supplemental support for claim of Creditor. Dckt. 411. Of these exhibits, Creditor provides: (1) Personnel Report of RML Manteca Group Home; (2) Creditor's end of shift report in October 2013; (3) IWC Order No. 5-2001; (4) RFP No. 1 to Defendants; (5) Defendants written response to RFP; (6) Defendants verifications for written responses; (7) Defendants document response; (8) Evid Preserve Letter-Employment Records Request; (9) Alta Emergency Termination Letter; (10) Creditor's damages.

Declarations in Support of Response

Creditor, Creditor's Attorney and Dr. Lianju Sun filed Declarations in support of the above response and exhibits. Dckts. 413, 414, and 415. Additionally, Creditor filed a supplemental declaration in which she addressed some of the statements made by Debtor Rodina Ventura. Dckt 416.

**REVIEW OF LEGAL AUTHORITIES AND EVIDENCE FILED BY DEBTOR AND CREDITOR**

In filing the Objection to Claim, Debtor recycled a Docket Control Number from an earlier motion, which creates some confusion on the Docket. However, given that the prior motion was concluded before the filing of the Objection, the court has been able to filter out the non-applicable documents.

Debtor Authorities and Evidence

In the Objection, Debtor admits that the Proof of Claim has *prima facie* evidentiary value and the burden is on Debtor to present evidence of equal probative value to defeat the *prima facie* evidentiary value and make Creditor prove her claim.

As this court has discussed in other cases, it is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the *prima facie* validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018).

The Objection to Claim states the following grounds (which the court recognizes was filed while Creditor's Adversary Proceeding was pending in which the alleged obligation was going to be litigated) upon which the Objection is based:

A. "Here, the Debtors dispute the validity of the claim in it's entirety." Objection, p. 1:22; Dckt. 375.

B. "Here, the debtor has provided sufficient evidence to shift the burden to creditor to prove-up the claim, with no declaration has been evidence, nor have the Debtors

had the opportunity to cross-examine the Creditor personally." *Id*., p 2:23-26.

C. "Additionally, as this bankruptcy case was filed on April 28, 2019, Claims #2-1 & 2-2, have been increased without an order of this court." *Id*., p. 3:1-3.

D. "[i]t appears that Creditor has added post-petition attorney fees without this Court's approval, or relief form the automatic stay ot obtain such permission of the Court." *Id*., 3:5-7.

E. "Given the factual issues to be determined at the pending trial, and the Creditor refusing to appear after setting this trial, the lack of evidence in support of the claim should be noted by the Court." *Id*., p. 3:8-11.

No points and authorities were filed and no legal authorities are given for why or how permission of the court or relief from the stay is required to amend a proof of claim filed in the bankruptcy case to which the proof of claim relates.

While making the statement that "Debtors dispute the validity of the claim," no evidence is filed to rebut the *prima facie* evidentiary value of the Proof of Claim.

Debtors then filed an Reply to Creditor's Opposition, which only states that Debtors "dispute" the evidence presented by Creditor. (Creditor's evidence is discussed below.) However, Debtors provided no evidence in support of the Reply. Reply, Dckt. 390. No legal points or authorities are provided in the Reply. The disputed facts are repeated in a separate Statement of Disputed Facts, Dckt. 391. While stating that facts are disputed, no evidence was presented by Debtors, other than copies of Proof of Claim 2-1 and Amended Proof of Claim 2-2. Exhibits, Dckt. 377.

Creditor's Authorities
and Evidence

Creditor's Opposition states that the claim has been made, summarizes some evidentiary facts, and does not provide any legal points and authorities. Dckt. 379. Creditor has provided evidence in the form of three Declarations. These Declarations and the testimony under penalty of perjury therein, is summarized by the court as follows:

A. Declaration of Michael Harrington, Esq., Attorney for Creditor, with seventy-three (73) pages of exhibits improperly attached and buried behind the Declaration in violation of Local Bankruptcy Rules 9004-2(c) and 9014(d). Dckt. 380.

1. Mr. Harrington authenticates pleadings and documents relating to the claim in State Court.

2. Mr. Harrington summarizes testimony made by other witnesses (rather than having this in the Opposition to the Objection).

3. Mr. Harrington then makes factual testimony as to the "scores" of cases that Dr. Sun has been an expert and provided testimony, but does not provide a basis for having personal knowledge of Dr. Sun's expert

witness proclivity. Fed. R. Evid. 601, 602. Declaration, ¶ 13.

B. Declaration of Creditor Adela Bon Gaunia. Dckt. 381.

1. Creditor provides personal knowledge testimony of facts concerning her claim, the services provided as a "live-in caregiver," and the basis for her claim against Debtors. She too has had exhibits improperly attached and buried behind her declaration.

2. Creditor's testimony is personal knowledge factual testimony (Fed. R. Evid. 601, 602), and she does not purport to provide the court with her legal opinions as to the law.

C. Declaration of Dr. Lianju Sun, PhD. Dckt. 382.

1. Dr. Sun provides personal knowledge testimony as to how damages are properly computed for Creditor. This includes providing a detailed discussion of the methodology of how the Dr. computed the various damages claimed.

2. Dr. Sun also provides the following as to qualifications to provide such expert testimony and the Dr.'s full time employment:

a. Declaration, ¶ 1; Dckt. 382.

> I am over the age of 18 years and I am familiar with the facts and documents in this matter. I hold a PhD in Applied Mathematics and taught that subject for a number of years for a major university. Since 2018, I have served as legal assistant and then financial manager for Michael J. Harrington's law offices and commercial properties. I was trained in 2018 and 2019 by his prior long-time legal assistant who prepared similar spreadsheets as Exh. X.

b. *Id.*, ¶ 2.

> In this case, I was assigned by Michael J. Harrington, Esq. to prepare Exhibit X to his Declaration. He assisted me, and personally reviewed the details and conclusions to ensure the numbers and analysis follow the law and conform to the way a wage and hour firm would present these claims in a court of law

With respect to the Dr. Declaration, the court notes that it is a bit skimpy on the Dr.'s expert qualifications and it appears that the Dr. may well have a financial interest in the outcome of the litigation being an employee of the attorney who will collect a fee (and pays the Dr.'s salary and bonuses), as contrasted to a "normal" expert who is paid a fee without regard to the outcome of the litigation and has no direct or indirect interest in the outcome of the litigation. However, the testimony

provided by Dr. Sun provides clear computational testimony and not "merely" expert conclusions, and does not venture off into stating legal conclusions to the court.

Creditor filed Supplemental Pleadings as authorized by order of this court (Dckt. 402), which included Exhibits, Requests for Judicial Notice, and Declarations. Dckts. 411-416. These were not in response to evidence filed by Debtors, but Debtor's unsupported Statement of Disputed Facts (Dckt. 391).

**DECISION**

As recognized by Debtors, Amended Proof of Claim 2-2 is *prima facie* evidence of the claim. The burden is on Debtors to submit evidence to counter that *prima facie* evidence. Debtors have not provided any such evidence. No having presented evidence, the *prima facie* evidence carries the day, for Creditor having a general unsecured claim of $190,348.77. There is no amount for attorney's fees and Amended Proof of Claim 2-2 is not *prima facie* evidence of any such asserted claim for attorney's fees.

Debtors have not provided the court with any legal authority for a creditor amending a proof of claim to be a violation of the automatic stay. Debtors have not provided the court with any legal authority that a creditor must get leave of the court to amend a proof of claim.

A reading of the plain language of 11 U.S.C. § 362(a) shows that filing or amending a proof of claim is not stayed by the automatic stay.

The Objection to Claim is overruled as it applies to the claim stated. There is no dollar claim for attorney's fees stated in Amended Proof of Claim 2-2 and there is no issue thereon before the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Adela Bon Gaunia ("Creditor"), filed in this case by Reece Ventura and Rodina Cordero Ventura, the Chapter 7 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 2-2 of Adela Bon Gaunia is overruled as to the $190,348.77 general unsecured states. With respect to the "(Attorney fees TBD by state court motion)," no claim is asserted for any attorney's fees and no actual claim or controversy is before the court with respect to such possible, speculative additional claim that may be asserted by Creditor.

**12.** **19-22653-E-7** **REECE/RODINA VENTURA** **OBJECTION TO CLAIM OF BENJAMIN ZAMORA VILLANUEVA, CLAIM NUMBER 3-5 AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY**
**PGM-7** **Peter Macaluso**
**11-9-21 [406]**

**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.

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Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 7 Trustee, Trustee's Attorney, and Office of the United States Trustee on November 9, 2021. By the court's calculation, 30 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

Under the facts and circumstances of this Motion, and the extensive responsible pleadings by Creditor, the court shortens the notice period to the 30 days given.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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 Objection to Proof of Claim Number 3-5 of Benjamin Zamora Villanueva is overruled.**

Reece Ventura and Rodina Cordero Ventura, Chapter 7 Debtor, ("Objector") requests that the court disallow the claim of Benjamin Zamora Villanueva ("Creditor"), Proof of Claim No. 3-5 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $399,766.30. Objector asserts that the Second Amended Judgment is void, and therefore cannot be a part of the claim total. This reduces the amount of the proof of claim to $154,075.34.

**DEBTOR'S OBJECTION**

Debtor claims the Creditor "has avoided compliance with the Court's warning, and merely amended the Proof of Claim to avoid doing what the Court stated: get a Amended Order that is not Void." Motion, Dckt. 406. Debtor states the Creditor filed an Amended Proof of Claim in violation of the court's orders and recorded a lien against the Debtor's home in violation of 11 U.S.C. § 362(a).

**CREDITOR'S REPLY**

On November 24, 2021, Creditor responded to Debtor's objection by claiming they complied with the court orders and as such there was retroactive relief of the stay. Dckt. 422.

**DEBTOR'S REPLY**

On December 3, 2021, Debtor filed a reply stating the following material facts are disputed:

1. That Debtors' Counsel never received proper notice of:

   a. The July 27, 2019 State Court hearing,
   b. The February 3, 2020 State Court hearing,
   c. The April 30, 2019 Notice of Lien filing,
   d. The July 3, 2019 Notice of Lien Release.

**CREDITOR'S MOTION FOR DETERMINATION OF THE APPLICABILITY OF THE AUTOMATIC STAY AND/OR RELIEF FROM THE AUTOMATIC STAY, DCN CLH-3**

On June 6, 2019, Creditor set for hearing a motion for either confirmation no stay existed, or in the alternative, that relief from stay be granted with respect to state court litigation. Dckt. 61. Creditor wanted the stay terminated so they could proceed with state court litigation. Creditor argued it was Debtor's second filing within a year and the court denied Debtor's Motion to extend the stay on May 29, 2019, therefore, Creditor argued, the stay was terminated as to Debtor after 30 days. Creditor asserted the stay termination with respect to the Debtor would apply to the Motion for Fees and other litigation to establish claims against the debtor, as the actions were not an attempt to collect from or lien property of the estate.

**JUNE 25, 2019 CIVIL MINUTES**

In the Civil Minutes for the June 25, 2019 hearing on Creditor's Motion for Relief, the court determined that the automatic stay was in effect as to the bankruptcy estate and actions taken in violation of the automatic stay were void. Dckt. 112.

The court, however, stated they would order relief modifying the automatic stay, but limited relief to the determination of attorney's fees and costs included in the "Villanueva Judgment" in *Villanueva v. RML Children's Home, Inc., et. al.*, California Superior Court for the County of Sacramento Case No. 34-2015-00187237.

The above relief would be made retroactive to the filing of the Motion for Attorney's Fees and Costs, subject to and conditioned on Creditor giving notice and rescheduling a hearing on the full notice period. If notice were not re-noticed and set for a new hearing, retroactive authorization would be ineffective and the Motion for Attorney's Fees and Costs and all supporting pleadings filed in violation of the automatic stay would be void as a matter of federal law. 11 U.S.C. § 362(a); *Far Out Productions, Inc. v. Oskar et al.*, 247 F.3d 986, 995 (9th Cir. 2001).

**JUNE 28, 2019 RE-NOTICED MOTION**

Evidenced in Creditor's Request for Judicial Notice, Dckt. 424, the state court hearing on the Motion for Attorney's Fees and Costs was originally scheduled for June 27, 2019. RJN 6, Dckt. 424. Creditor re-noticed and re-served the state court Motion for Attorney's Fees and Costs and all supporting pleadings on June 28, 2019. *Id.* The hearing was continued to July 26, 2019. *Id.* Therefore, notice was given 29 days before the continued hearing. Sufficient notice was provided on the full notice period pursuant to California Code Civil Code § 1005(a)(13).

**JUNE 30, 2019 COURT ORDER**

On June 30, 2019, the court issued an order consistent with the June 25, 2019 civil minutes. Dckt. 112.

**AUGUST 5, 2019 STATE COURT ORDER**

On August 5, 2019, the State Court granted the Creditor's unopposed Motion for Attorney's Fees and Costs. RJN 8, Dckt. 424.

**AUGUST 5, 2019 SECOND AMENDED JUDGMENT**

On August 5, 2019, the state court entered a second amended judgment awarding attorneys fee and costs, bringing the total judgment amount to $333,446.20. Creditor's Proof of Claim, 3-5.

**DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the *prima facie* validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Here, Creditor has met their burden of persuasion by providing evidence that they complied with the court's order from June 30, 2019 by re-noticing and re-serving their Motion for Attorney's Fees and Costs and all supporting pleadings on June 28, 2019. As such, pursuant to the court's order, there was retroactive relief from the stay as to the determination of attorney's fees and costs. The Proof of Claim 3-5 of $399,766.30 based on the Second Amended Judgment of $333,446.20 and interest of $66,320.10 is valid, not void.

Debtors' Objection is that obtaining the State Court Amended Judgment violated the automatic stay because the court denied Creditor's Motion regarding the automatic stay. The court did not absolutely deny the Motion, but annulled the stay to allow the filing of the Motion for Attorney's Fees in the State Court Action to not be void, and modified the stay so that such Motion could be adjudicated in the State Court after new notice and opportunity to file a opposition was given Debtors.

Order, Dckt. 112.

In a Reply, Debtors' counsel argues (no declaration or other evidence provided) that "Here, Debtor's counsel asserts that he did not receive service of documents pertaining to the State Court actions." Reply, p. 2:24-25; Dckt. 433. Additionally, Debtors' counsel does not state why he should be served with pleadings in the State Court Action, for which Debtors bankruptcy counsel is not their State Court counsel.

Debtors have not provided the court with evidence to counter the *prima facie* evidence of Amended Proof of Claim 3-5. The evidence, this court's Order (Dckt. 112) establishes to the contrary that there was not a violation of the stay to render Amended Proof of Claim 3-5 void.

The Objection to Claim is overruled.

**Denial of Motion for Sanctions**
**For Violation of the Automatic Stay**

Debtors have joined a claim for relief for damages for the alleged violation of the automatic stay. The alleged violation is unrelated to the Objection to Claim, but asserts that a recording of a judgment lien (for the State Court Judgment) violated the automatic stay. Debtors offer no testimony or authenticated documentary evidence in support of this unrelated alleged violation of the automatic stay.

No evidence is presented other than the argument that the stay was violated based on this court's Order annulling and modifying the stay. Order, Dckt. 112. As discussed above, the court's order did modify the stay and annul it to allow for the State Court proceedings to go forward to determine the claim for attorney's fees.

In the Motion Debtors allege (no evidence being provided) the lien was recorded and never released. The lien being referred to in the Motion is identified as "On May 5, 2019, this Creditor recorded a 'Involuntary Lien' in Book 20190430, Page 1544, of Official Records of Sacramento County. Refer to Exhibit "B" filed herewith." Motion, ¶ 10; Dckt. 406.

Exhibit B filed by Debtors is not a copy of an Abstract of Judgment, but a letter from the County of Sacramento dated May 2, 2019, which provides notice that a document which may be an involuntary lien has been recorded against Ventura Reece. The claimant/creditor identified as "Villanueva Benjamin Z." The recoding information in the Notice from the County is the same as on Abstract of Judgment (RJN, Dckt. 424) provided by Creditor in response to this Motion.

No evidence of this Judgment Lien remaining recorded is provided. There is no title report. There is no testimony provided by someone who has searched the County Recorder's Office records.

Creditor has filed response pleadings and exhibits for Creditor's assertion that the Abstract of Judgment recorded on April 30, 2019, was Released on July 3, 2019. Exhibits 2, 3; Dckt. 424. Michael Harrington, Esq., counsel for Creditor, who is alleged to have violated the Stay has provided his Declaration in response to the Motion. The testimony of Mr. Harrington under penalty of perjury includes the following:

A. "3. After the dismissal of the chapter 13 [Debtors' prior Chapter 13 case], my office

prepared and filed a motion for fees are requested an order shortening time in the Superior Court case, the hearing for which was set for April 30, 2019. At that same time, I had my office send an abstract of the judgment entered in case number 34-2015-00187237-GU-OE-GDS by mail to record and create a lien on the Debtors' real property. A copy of the recorded abstract is attached as RJN 2." Declaration, ¶ 3; Dckt. 423.

B. "4. In June, 2019, my office was notified that the recording of the abstract took place after the filing of Debtors' second petition, and I had a release prepared and filed. A copy of the recorded release is attached as RJN 3. *Id*., ¶ 4.

Debtors offer no evidence other then a copy of the Notice of the Involuntary Lien. Debtors provide no points and authorities relating to alleged violations of the stay. Once the creditor learns or has notice of a bankruptcy case having been filed, any actions that it intentionally undertakes are deemed willful. [Fn.1.] As the Ninth Circuit Court of Appeals explained in *Goichman v. Bloom*, 875 F.3d 224, 227 (9th Cir. 1989):

> A "willful violation" does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was "willful" or whether compensation must be awarded.

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FN. 1. *See Thompson v. GMAC, LLC*, 566 F.3d 699, 702-3 (7th Cir. 2009); *Eskanos and Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002); *Emp't. Dev. Dept. v. Taxel (In re Del Mission Ltd.)*, 98 F.3d 1147, 1151 (9th Cir. 1996) (holding that the knowing retention of estate property violates the automatic stay); and *In re Risner*, 317 B.R. 830, 835 (Bankr. D. Idaho 2004);

---

The Ninth Circuit Court of Appeals discussed the automatic stay and the obligations of a party violating the stay in *Sternberg v. Johnston*, 595 F.3d 937 (9th Cir. 2009). In short, there is the affirmative duty on the person violating the stay to correct the violation, not on the bankruptcy debtor to force the person to correct the violation. In the plain language of the Ninth Circuit Court of Appeals:

> To comply with his "affirmative duty" under the automatic stay, Sternberg needed to do what he could to relieve the violation. He could not simply rely on the normal adversarial process. *See Johnston Envt'l Corp. v. Knight (In re Goodman)*, 991 F.2d 613, 615-16 (9th Cir. 1993) (holding that parties who attempted to exempt a debtor from their unlawful detainer action with a unilateral stipulation still violated the automatic stay because "the stipulation might not [have] accomplish[ed] its intended purpose" and thus the parties "could have, and should have, pursued the orthodox remedy: relief from the automatic stay"). At a minimum, he had an obligation to alert the state appellate court to the conflicts between the order and the automatic stay. As we have explained before, "[t]he automatic stay is intended to give the debtor a breathing spell from his creditors." *Goichman v. Bloom (In re Bloom)*, 875 F.2d 224, 226 (9th Cir. 1989) (internal quotation marks omitted). The state court order intruded upon Johnston's

"breathing spell." Sternberg did not act to try to fix that problem.

. . .

Johnston [the debtor] was not required to ask Sternberg[the creditor] to modify the order for Sternberg's violation to be willful. *See In re Del Mission Ltd.*, 98 F.3d at 1151-52 (concluding that the retention of taxes was a violation of the stay even though the debtor never requested their return). Likewise, Sternberg needed neither to make some collection effort nor to know that his actions were unlawful for his violation to be willful. *See Eskanos*, 309 F.3d at 1214-15 (rejecting the law firm's assertion that something more than maintaining an active collection action was needed to violate the stay); *In re Goodman*, 991 F.2d at 618 ("Whether the [defendant] believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' . . . ." (internal quotation marks omitted)). All that is required is that Sternberg "knew of the automatic stay, and [his] actions in violation of the stay were intentional." *Eskanos*, 309 F.3d at 1215. Both of these elements were satisfied here.

*Sternberg v. Johnson, Id*. at 944-945.

The U.S. Supreme Court recently addressed the violation of the discharge injunction, which is akin to the automatic stay, protecting a debtor after the automatic say has expired. In discussing such violations and sanctions issued for violation thereof, the U.S. Supreme Court in *Taggart v. Lorenzen*, 578 U.S. ___, 139 S. Ct. 1795 (2019), states:

> Under traditional principles of equity practice, courts have long imposed civil contempt sanctions to "coerce the defendant into compliance" with an injunction or "compensate the complainant for losses" stemming from the defendant's noncompliance with an injunction. *United States v. Mine Workers*, 330 U. S. 258, 303-304, 67 S. Ct. 677, 91 L. Ed. 884 (1947); see D. Dobbs & C. Roberts, Law of Remedies §2.8, p. 132 (3d ed. 2018); J. High, Law of Injunctions §1449, p. 940 (2d ed. 1880).
>
> **The bankruptcy statutes, however, do not grant courts unlimited authority to hold creditors in civil contempt.** Instead, as part of the "old soil" they bring with them, the **bankruptcy statutes incorporate the traditional standards in equity practice for determining when a party may be held in civil contempt for violating an injunction**.
>
> In cases outside the bankruptcy context, we have said that civil contempt "should not be resorted to where there is [a] fair ground of doubt as to the wrongfulness of the defendant's conduct." *California Artificial Stone Paving Co. v. Molitor*, 113 U. S. 609, 618, 5 S. Ct. 618, 28 L. Ed. 1106, 1885 Dec. Comm'r Pat. 295 (1885) (emphasis added). This standard reflects the fact that civil contempt is a "severe remedy," *ibid.*, and that principles of "basic fairness requir[e] that those enjoined receive explicit notice" of "what conduct is outlawed" before being held in civil contempt, *Schmidt v. Lessard*, 414 U. S. 473, 476, 94 S. Ct. 713, 38 L. Ed. 2d 661 (1974) (*per curiam*). *See Longshoremen,*

*supra*, at 76, 88 S. Ct. 201, 19 L. Ed. 2d 236 (noting that civil contempt usually is not appropriate unless "those who must obey" an order "will know what the court intends to require and what it means to forbid"); 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §2960, pp. 430-431 (2013) (suggesting that civil contempt may be improper if a party's attempt at compliance was "reasonable").

**This standard is generally an objective one**. We have explained before that **a party's subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable**. As we said in *McComb v. Jacksonville Paper Co.*, 336 U. S. 187, 69 S. Ct. 497, 93 L. Ed. 599 (1949), "[t]he absence of wilfulness does not relieve from civil contempt." *Id.*, at 191, 69 S. Ct. 497, 93 L. Ed. 599.

We have not held, however, that subjective intent is always irrelevant. Our cases suggest, for example, that civil contempt sanctions may be warranted when a party acts in bad faith. *See Chambers v. NASCO, Inc.*, 501 U. S. 32, 50, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991). Thus, in *McComb*, we explained that a party's "record of continuing and persistent violations" and "persistent contumacy" justified placing "the burden of any uncertainty in the decree . . . on [the] shoulders" of the party who violated the court order. 336 U. S., at 192-193, 69 S. Ct. 497, 93 L. Ed. 599. On the flip side of the coin, **a party's good faith, even where it does not bar civil contempt, may help to determine an appropriate sanction**. *Cf. Young v. United States ex rel. Vuitton et Fils S. A.*, 481 U. S. 787, 801, 107 S. Ct. 2124, 95 L. Ed. 2d 740 (1987) ("[O]nly the least possible power adequate to the end proposed should be used in contempt cases" (quotation altered)).

These traditional civil contempt principles apply straightforwardly to the bankruptcy discharge context. The typical discharge order entered by a bankruptcy court is not detailed. *See supra*, at 2-3. **Congress, however, has carefully delineated which debts are exempt from discharge**. See §§523(a)(1)-(19). **Under the fair ground of doubt standard, civil contempt therefore may be appropriate when the creditor violates a discharge order based on an objectively unreasonable understanding of the discharge order or the statutes that govern its scope**.

*Taggart v. Lorenzen*, 139 S. Ct. at 1801 - 1802.

Here, the Abstract of Judgment was recorded on April 30, 2019. Request of Judicial Notice ("RJN") 2, filed by Creditor, Dckt. 424. Debtors' current bankruptcy case was filed on April 28, 2019, at 2:07 p.m. Petition, Dckt. 1. On May 6, 2019, Creditor filed a Motion for Examination and Production of Documents (2004 Examination). Dckt. 10.

The Release of Abstract of Judgment was not recorded until July 3, 2019, a little more than two months after it was recorded a day and one-half after this bankruptcy case was filed.

Proof of Claim 3-1 was filed by Creditor on May 3, 2019. This was three days after the

Abstract was recorded. Proof of Claim 3-1 states that it is an unsecured claim, with no liens on any property.

Debtor offers no evidence of any damages or harm caused by the Abstract of Judgment recorded on April 30, 2019. Debtor presents no evidence of fees and expenses incurred in "educating" or "helping" Creditor correct the violation of the Stay. The evidence presented and Proof of Claim 3-1 demonstrate that no lien was being claimed, no lien was being enforced, and within a couple months of the frenetic filings at the start of this case, Creditor and Creditor's counsel corrected the violation.

Even without consideration of *Taggart*, creditor identified the violation and corrected the violation. Creditor did not assert having a lien, Creditor did not try to enforce a lien, and Debtors can point to no damages caused by the violation before it was corrected by Creditor.

To the extent that the automatic stay was violated by the recording of the Abstract of Judgment on April 30, 2019, which was released on July 5, 2019, the court determines that no sanctions are proper. Creditor corrected the violation and Debtor offers no evidence that such conduct needs to be corrected through the issuance of sanctions.

The request for sanctions for violation of the automatic stay is denied.

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 of Benjamin Zamora Villanueva ("Creditor"), filed in this case by Reece Ventura and Rodina Cordero Ventura, Chapter 7 Debtor, ("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 3-5 of Creditor is Overruled and the general unsecured claim stated in the amount of $399,766.30 is allowed. The court does not make a determination as to any amount, or the right to include in Proof of Claim any additional attorney's fees as allowed by the State Court.
>
> **IT IS FURTHER ORDERED** that the Motion For Sanctions For Violation of the Automatic Stay which has been joined with this Objection is Denied.

**13.** **20-23267-E-7 DNL-12** | **SHON/JILL TREANOR** **Pro Se** | **MOTION FOR DETERMINATION OF THE REASONABLE VALUE OF SERVICES RENDERED BY DEBTORS' FORMER COUNSEL** **11-23-21 [394]**

**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—Opposition Filed – Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor *pro se*, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 23, 2021. By the court's calculation, 16 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).

Under the facts and circumstances of this Motion, the court shortens the time to the 16 days given.

The Motion for Determination of Reasonable Value 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, **----------**.

**The Motion for Determination of Reasonable Value of Professional Fees is granted.**

Hank M. Spacone, the Chapter 7 Trustee, moves for an order pursuant to 11 U.S.C. § 329 (b)(1)(A) and Federal Rules of Bankruptcy Procedure Rule 2017(a) determining:

(a) the pre-petition transfer by the Debtors of their trailer to FRALEY & FRALEY, PC, and GARY FRALEY (collectively "Fraley Parties") was excessive;

(b) the reasonable value of the services provided to the Debtors by the Fraley Parties was no more than $8,000.00; and

(c) as part of the Fraley Parties' turnover of the trailer ordered on November 19, 2021, any claim the Fraley Parties may assert for their services will be in an amount not to exceed $8,000.00 or such other amount as may be determined.

Services were provided to the Debtors over a seventeen day period. The Fraley Parties asserted hourly fees totaling $10,475.00 earlier in this case.

**FRALEY'S DECLARATION**

On December 2, 2021, Gary Fraley filed a declaration in support of attorney's fees and costs. Dckt. 398. Mr. Fraley states the trailer has been turned over to West Auction Group on November 26, 2021. Mr. Fraley accepts the limitation of attorney's fees to $8,000.00. Mr. Fraley provides the following evidence of fees and costs associated with the trailer:

(1) $1,200.00 Daughter Storage Fees - Mr. Fraley states the storage fees of the trailer to his daughter, Camille Annice Fraley, were $1,200.00, evidenced in her declaration. Dckt. 399. Mr. Fraley also provides as an exhibit an email exchange between his daughter and wife, evidencing storage fees were arranged in January of 2021. Exhibit A, Dckt. 400.

(2) $869.50 DMV Fees - Paid to a licensed company to transfer and register the trailer in Fraley's name. Exhibit C, Dckt. 400.

(3) $310.00 Renewed Registration. Exhibit D, Dckt. 400.

(4) $350.00 A-1 Storage Fees - July, September, October, and November storage fees at A-1 Storage on Q Street, in Rio Linda, California. Exhibits D-G, Dckt. 400.

Therefore, the total out of pocket expenses with respect to the trailer total $2,729.50.

**TRUSTEE'S REPLY**

On December 3, 2021, Chapter 7 Trustee filed a reply to Mr. Fraley's response. Dckt. 402. Chapter 7 Trustee states the Fraley Parties did not provide any evidence or authority supporting the reasonableness of their fees in any amount and instead simply accept the $8,000.00 attorney fees limit. Dckt. 402.

Additionally, the Fraley Parties do not state what legal or factual basis entitles them to the $2,729.50 out of pocket expenses of the Trailer. Trustee states, "[t]hough the Fraley Parties later attempted to dictate new and changed terms to the LSA, this post hoc attempt was not only after the Trailer was transferred into the Fraley Parties possession as compensation, but after they had withdrawn as counsel to the Debtors." Dckt. 367 at 24.

**APPLICABLE LAW**

Congress provides in 11 U.S.C. § 329 for the bankruptcy court to make a determination of

whether fees paid or to be paid to a debtor's counsel are reasonable.

> § 329. Debtor's transactions with attorneys
>
> (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.
>
> (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to--
>
> (1) the estate, if the property transferred--
>
> (A) would have been property of the estate; or
>
> (B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or
>
> (2) the entity that made such payment.

11 U.S.C. § 329. This provision is discussed in Collier on Bankruptcy (Sixteenth Edition), ¶ 329.04, which includes (footnotes omitted):

> [1] "Reasonableness" of Compensation
>
> Under section 329(b), it is the "reasonableness" of the particular transaction which is subject to examination. Thus, any payment or agreement examined under section 329(a) is valid only to the extent of a reasonable amount as determined by the court. This is consistent with the requirement under section 330 that professionals receive only "reasonable compensation" for their services.
>
> What constitutes reasonableness is a question of fact to be determined by the particular circumstances of each case. The requested compensation may be reduced if the court finds that the work done was excessive or of poor quality. Similarly, compensation may be reduced if the court determines that the attorney took advantage of the debtor or a third party paying fees on the debtor's behalf. The reasonableness of a prepetition fee agreement between a debtor and the debtor's attorney is an inquiry within the sound discretion of the bankruptcy court. The court, however, must make explicit findings when determining the reasonableness of the subject compensation.

**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)).

Although the Fraley Parties have not provided a breakdown of their services, the court looks to previous filings as evidence of the work provided.

**Debtor-Attorney Contracts**

A review of the contracts between Debtors and the Fraley Parties indicate that each of the two debtors were to pay $9,999.00 in return for the following services:

4. Services Provided Under the Base Attorneys' Fees:

The services of the attorney included in the base fee are those normally contemplated for a Chapter 7 Bankruptcy case. They include the services listed below:

(a) All services reasonably necessary to fully inform the Client of their rights and
responsibilities under the Bankruptcy Code, and to make an informed decision about filing a Chapter 7 Bankruptcy case.

(b) Advising the Client of all available exemptions under the law, and assisting the Client in claiming the exemptions that best serve the Client's needs and desires.

(c) Assisting the Client in complying with all of the requirements imposed by the Bankruptcy Code, the Local Rules, and the Bankruptcy Rules.

(d) Preparation and electronic filing of the Bankruptcy Petition, Schedules, and Statements required under the law.

(e) Drafting and mailing to the Client a letter regarding attendance at the Meeting of Creditors, and advising the Client of the documents required at and in advance of that hearing.

(f) Attending the First Meeting of Creditors (required Section 341 Meeting) with the Client, and assisting the Client in answering questions posed by the Trustee or any Creditor attending that hearing. Note: All questions will have to be answered by the Client at this meeting. Client

agrees to appear at the Meeting of Creditors and bring with them an original Driver's license or California Identity card and an original Social Security card.

(g) Assisting the Client in performing the Client's Statement of Intentions, provided that the Client pays the Non-Base Fee for any Redemptions ($700.00) each if requested by Client prior to the Chapter 7 case being filed.

(h) Assisting the Client in complying with all proper and timely requests for information and/or documents by the Bankruptcy Trustee, the Office of the US Trustee, the Court, or any other parties involved in the case.

(I) Communicating with the creditors and other parties to the extent necessary to facilitate in the administration of the case.

Contracts, ¶ 4, Exhibit 1, p. 2 of 8; Exhibit 2, p. 2 of 8; Gary Fraley prior Declaration in Support of Motion to Approve Settlement, Dckt. 367. These services consist of preparing the Schedules, using a computer to electronically file the bankruptcy documents, send Debtors a letter telling them when to appear at the First Meeting of Creditors, and appearing at the First Meeting of Creditors with the two debtors.

The expressly listed services not included above are stated in the two contracts as follows:

5. Non-Base Fee Legal Services

In some Chapter 7 Bankruptcy cases, the Attorney may be required to provide services beyond those contemplated in the Base Fee, or the Client may request the performance of Non-Base Fee Legal Services. Those required by the Court or the Trustee will be provided and client shall pay the reasonable value of these services at Attorney's standard legal fees.

(a) Representing the Client in any adversary proceeding. Attorney is not required to represent Client in any adversary proceeding unless Attorney chooses to do so.

(b) Representing the Client in any contested motion to avoid any type of lien or judgment unless
previously agreed to before filing of the case.

(c) Representing the Client in a motion to continue, impose, or extend the Automatic Stay.

(d) Representing the Client in any action to enforce the Automatic Stay or the Discharge Injunction.

(e) Representing the Client in any contested motions for Relief from the Automatic Stay.

(f) Representing the Client in any motions to Redeem Personal Property.

(g) Filing any amendments to the Schedules, Statements, or Petition, unless such amendments are
required due to a mistake or oversight by the attorney.

(h) Attending any Continued Meeting of Creditors beyond the first Meeting of Creditors, if such are required.

(I) Representing the Client in any Motions to Compel Abandonment of an asset, including, but not limited to, a business, a vehicle, business assets, or any real property owned by Client.

Q) Representing the Client in a Motion to Reopen a case where the case has been discharged, or closed without a discharge.

(k) Representing the Client in an audit by the Office of the US Trustee. However, there will be no charge if the audit is random.

(l) Representing the Client in any complaints to determine the dischargeability of tax debts, or letter requests for tax abatement

(m) Representing the Client in any other matters not specifically designated under Section 4 of this Agreement.

Contracts, ¶¶ 4, Exhibit 1, p. 3 of 8; Exhibit 2, p. 3 of 8; Gary Fraley Declaration in Support of Motion to Approve Settlement, Dckt. 367.

Thus, the almost $20,000 in legal fees is to fund the preparation of the individual debtor Chapter 7 bankruptcy documents, electronically file them, and attend the first First Meeting of Creditors, and nothing more.

Gary Fraley filed a prior Declaration concerning the attorney's fees in support of the motion to approve settlement in which legal services were stated in and summarized as follows:

9. March 18, 2020, First Consultation with Shon Treanor.....2.0 Hours

13. March 21, 2020, Second Consultation with Shon Treanor.....1.5 Hours

15. March 23, 2020, Consultation with Jill and Shon Treanor.....4.0 Hours

16. March 27, 2020, Consultation with Shon Treanor.....1.0 Hours

27. Time spent researching exemption of house in trust issues..... Time not

Stated

28. April 1, 2020, Talked with Treanors about State Court and transferring Trailer ... ..... Time not Stated

31. April 2, 2020, Office began processing information for filing.....Time not Stated

48. Met with Treanors to explain why separate cases should be filed.....1.5 Hours

52. April 7, 2020, Treanors fired Gary Fraley.

Dckt. 365.

Exhibit 12, 368, filed by the Fraley Parties in support of the prior Motion to Approve Settlement is a billing statement for the time spent by Mr. Fraley for the fees sought from the Trailer proceeds. The persons billing are Gary Fraley, at $450 an hour; Nedra Fraley, at $350 an hour, and BEG, a paralegal, at $120 an hour. Gary Fraley billed 17.5 hours, totaling $7,875; Nedra Fraley billed 2 hours at $350, totaling $700; and BEG billed 16.5 hours, totaling $1,980. There are additional charges of $860 for the costs of transfer and $400 for storage.

The Billing Statement shows services for the Estate include consultation with the Debtors, speaking with state court attorneys regarding the probate case, bringing the trailer in, importing information into BestCase, reviewing means test issues, and working on the petitions. The court finds the services were somewhat beneficial to Debtors and the Estate. However, the court rejects to find that billing two hours for Mrs. Fraley, a disabled and retired attorney, waiting for the trailer was proper.

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

The Fraley Parties provided a task billing analysis and supporting evidence for the services provided in connection with the prior Motion to Approve Settlement, which are described in the following main categories.

General Case Administration: The Fraley Parties spent 26.1 hours in this category. Fraley Parties spoke with debtors, signed contracts, discussed liens, and reviewed means test issues.

Speaking with State Court Attorney Regarding Probate Case: Fraley Parties spent 0.9 hours in this category. Mr. Fraley spoke with Attorney Benjamin Eagleton to convince him to stay in the probate case so he could enter into State Court the filing of bankruptcy documents.

Waiting for the Trailer: Fraley Parties spent 4.0 hours in this category. However, Fraley Parties only wish to charge 2.0 hours for this category. Mrs. Fraley waited for Mr. Treanor to drop off the Trailer. Mrs. Fraley's fees are $350.00 per hour, even though she is a disabled and retired attorney.

Preparing Petitions: Fraley Parties spent 7.0 hours in this category.

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** |
|---|---|---|---|
| Gary Fraley, Attorney | 17.5 | $450.00 | $7,875.00 |
| Nedra Fraley, Disabled and Retired Attorney | 4 | $350.00 | $1,400.00 |
| BEG, Paralegal | 16.5 | $120.00 | $1,980.00 |
| **Total Fees for Period of Application** | | | $11,255.00 |

The court notes, Fraley Parties are requesting Mrs. Fraley's hours be reduced to 2 and BEG's hours be reduced to 15.5. This would reduce their total fees to $700.00 and $1,860.00, respectively. As such, the total fees requested would be $10,435.00.

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $2,729.50 for costs of storing the trailer. However, the Fraley Parties have not provided legal or factual bases for why they are entitled to costs relating to the trailer.

**FEES AND COSTS & EXPENSES ALLOWED**

Pursuant to 11 U.S.C. § 329 (b)(1)(A), if compensation exceeds a reasonable value, the court may cancel any such agreement to the extent excessive to the estate if the property transferred was to be property of the bankruptcy estate.

The court agrees that $10,435.00 is excessive in fees as all representation was pre-petition, and the representation only lasted seventeen days. Additionally, the court finds the fees, costs, and expenses for storing the trailer have no legal bearing.

The Trustee's Motion to Determine the reasonableness states that the Trustee could not object to any amount of fees determined by the court, so long as they do not exceed $8,000.00. Gary Fraley, Esq., responded with his Declaration (but no response pleading) stating that he accepts the Trustee's maximum limitation of $8,000.00. Declaration, ¶ 7; Dckt. 398.

In his Declaration, Mr. Fraley testifies that when he received the Trailer as payment for the legal services to be provided (the two contracts totaling just under $20,000.00 to file one two separate Chapter 7 cases for the two Debtors), he paid the title transfer fee to put title in his name. That is stated to be $869.50. Declaration, ¶ 12; Dckt. 398.

At that point in time and into the bankruptcy case, Mr. Fraley and the Fraley Parties asserted that they owned the Trailer outright. As stated by Mr. Fraley and the Fraley Parties in objecting to Debtors claiming an exemption in the Trailer (subject to the certifications made by them as provided in

Federal Rule of Bankruptcy Procedure 9011) that:

> 2. Schedules were filed in this case on June 30, 2020. On Schedule "A/B", there is no trailer was scheduled as an asset in this bankruptcy case. A copy of Debtor's A/B schedule is attached as Exhibit "2" and incorporated as though fully set forth herein.
>
> . . .
>
> 4. Debtors voluntarily transferred said trailer to Movant on April 2, 2020, in payment of attorneys' fees pursuant to a contract signed on March 31. 2020. Said trailer title was transferred on the same date with DMV. A copy of the title to said trailer reflecting this transfer is attached as Exhibit " 1 " to th is motion.
>
> 5. Because of this voluntary transfer, said trailer did not belong to Debtors at the time of the filing of their bankruptcy on June 30, 2020.

Objection to Claim of Exemption, ¶¶ 2, 4, 5; Dckt. 58.

In support of the Objection to Claim of Exemption and asserting ownership of the Trailer by virtue of the pre-petition transfer of title that Mr. Fraley and the Fraley Parties obtained from the Debtors, Mr. Farley testified under penalty of perjury:

> 3. Debtors hired Gary Ray Fraley of Fraley & Fraley PC hereinafter "attorney" for his skills, advice and guidance in options on how to get the most benefits from the exemptions in the filing of a Chapter 7 Bankruptcy Petition. Additionally, attorney was hired to prepare and file a Chapter 7 Bankruptcy case.
>
> 4. These services were requested on an urgent basis to stop a Solano Superior Court hearing scheduled for the morning of April 7. 2020. Debtors required that the case be filed by Monday afternoon, April 6. 2020.
>
> 5. Debtor's did not have the funds to hire attorney. Debtors owned a 2019 Keystone Outback trailer, vin #4YDT2402XKB45 l l 20 hereinafter referred to as "trailer." While I suggested that they sell the trailer, they stated that they could not sell the trailer in time for attorney to be able to do the work needed for the Chapter 7 case to be filed. They offered the trailer for attorney's fees.
>
> 6. On April 2, 2020, Debtors voluntarily transferred ownership of said trailer to Movant in payment of attorneys· fees under a contract signed on March 31. 2020. That left two business days to complete all work and file a Chapter 7 Bankruptcy case by April 6, 2020.
>
> 7. Title to said trailer was transferred to Movant with DMV on April 2. 2020. A copy of the registration to said trailer reflecting the April 2. 2020 transfer of title. A copy of said registration is attached as Exhibit "I" and incorporated as though fully set forth herein.
>
> 8. As a result of the COVID-19 pandemic. Monday April 6, 2020 the Solano Superior Court ceased hearings on all pending matters. With all the work

> completed, Movant was ready to file the matter either as two separate cases or one combined case. Debtors left the office without signing the Chapter 7 bankruptcy so the case could be filed. Debtors, according to their testimony at a §341 meeting, subsequently terminated movant's employment.
>
> 12. At the initial §341 meeting with Trustee Alan Fukushima , the Chapter 7 Trustee's attorney Barry Spitzer, told Debtor' s attorney, Gabriel Liberman, that the transfer was voluntary, therefore the trailer was not an asset of the estate. As such, it could not be exempted. He told Debtor's attorney that he needed to remove the trailer from the Schedule "C."
>
> 13. Because of this voluntary transfer, said trailer did not belong to Debtors at the time of the filing of their bankruptcy on June 30, 2020.

Declaration, paragraphs identified by number used in Declaration; Dckt. 59.

As clearly demonstrated by the Declaration and Objection to Claim of Exemption, Gary Fraley and the Fraley Parties asserted their ownership of the Trailer, and it not merely being collateral provided by Debtors. Gary Fraley and the Fraley Parties continued in possession and control of the Trailer until recently, when the court first noted the provisions of 11 U.S.C. § 329 and the possible disgorgement of what was paid to Gary Fraley and the Fraley Parties for the asserted $20,000 in reasonable attorney's fees and expenses to file two Chapter 7 liquidation bankruptcy cases.

Mr. Fraley then seeks recover of a $1,200.00 storage fee to pay his Daughter, Camille Fraley, for letting Mr. Fraley and the Fraley Parties put the Trailer that they asserted they owned outright on the Daughter's Property. No evidence is provided on Camille Fraley having a permit to operate a commercial storage facility on her property, whether such property is zoned for such use, that Camille Fraley has insurance for commercial storage, or that she actually demanded payment of a storage fee for the Trailer that her parents asserted they owned as payment for the $20,000.00 in fees for preparing to file two Chapter 7 bankruptcy cases.

Annice Fraley provides her Declaration in support of Mr. Fraley's and the Fraley Parties' demand for payment of $1,200.00 for storage fees paid to their Daughter, Annice Fraley. In the Declaration, Annice Fraley's testimony under penalty of perjury includes:

> 2. I am aware my parents took a Keystone Outback trailer for fees from the Treanors, although I wasn't aware of their names at that time. The trailer was stored in my brother's driveway.

Annice Fraley clearly states that Mr. Fraley and the Fraley Parties "took" the Trailer for fees owed by Debtors.

> 3. About the second week of April 2020, my parents called me and asked me if they could pay me to store the trailer in my enclosed backyard for a few months. I was told that Mr. Treanor had threatened to come to take the trailer back by force, and my parents wanted to put it in a private place, where it could not be seen from the street or in a storage facility where other people might have access to it. I agreed to store the trailer for $80 per month.

Annice Fraley testifies that her parents asked to store their Trailer in her back yard. She then states that she "agreed" to store it for $80 a month. Her testimony is not clear as whether Annice Fraley demanded payment of $80 a month as part of her commercial storage business, or whether her parents volunteer to gift her $80 a month.

> 4. I live in Elk Grove. My backyard is completely enclosed by a high wooden fence. It has a patio/driveway that goes back the length of the property. I agreed to the temporary storage of the trailer. My Father assured me that as soon as the Treanors filed bankruptcy, a Trustee would be taking custody of the trailer and it would be out of my way.

Annice Fraley's testimony at this point contradicts the testimony under penalty of perjury given by her Father, Gary Fraley, Esq. As reviewed above, Mr. Fraley clearly stated in the Objection to Claim of Exemption and his Declaration under penalty of perjury (which were filed after this bankruptcy case was filed by Debtors assisted by another attorney) that Mr. Fraley and the Fraley Parties owned the Trailer and neither the Debtors or the Bankruptcy Estate had any interest in it. Someone's testimony is not accurate.

> . . .
> 7. On January 30, 2021, when the trailer still had not been removed from my property as agreed, I sent my parents an email that included a table in which my husband did a spreadsheet of local storage areas and what they charged so we could come up with a more appropriate fee. A copy of my email to my parents, including the spreadsheet prepared at that time, reflected that the costs to store the trailer in our region ran from $95.00 to $270.00 per month. That email and the storage information is Exhibit "A" to the documents and is what I sent to my parents. However, after discussing the situation with them, I agreed to continue to store the trailer at the previously agreed $80 per month.

Annice Fraley's testimony is that she belated decided to demand payment of storage fees from her parents.

> 8. The trailer was stored on the property for a total of 15 months at $80 per month. That is a total of$1,200. Today, I received Check #1366 from Fraley & Fraley PC for my rent. It will be deposited today or tomorrow. There are no agreements concerning my $1,200 other than the above. Had I known that I would be stuck with the trailer on my property for 15 months, I would never have allowed it to be here to begin with.

The court draws from this testimony and Annice Fraley had decided to help her parents out and store "her parents'" Trailer on her property. Then, when her parents did not do anything with the Trailer they asserted they owned, and expressly asserted that the Debtor and the Bankruptcy Estate did not have any interest, did she decide ten months later to demand that her parents pay her storage fees. Interestingly, in January 2021, this court entered a Ruling on the Fraley Parties' Objection to Claim of Exemption, which included the Trustee's position that the Trailer was not property of the bankruptcy estate, but had been Transferred to Gary Fraley and the Fraley Parties, and it was the right to avoid that transfer which was property of the Bankruptcy Estate. Dckt. 77, p. 2.

> In addressing the recent attempt by the Trustee to approve a settlement by which the Gary

Fraley and the Fraley Parties would keep the Trailer for a payment of $10,000.00 to the Bankruptcy Estate, the court's Ruling makes a number of pointed findings and conclusions concerning the Fraley Parties, which includes:

> Movant and Settlor seek to resolve these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 352):
>
> A. The **Fraley Parties shall pay the Trustee $10,000.00** as follows: (a) $5,000.00 deposit upon of execution of this Agreement and (b) $5,000.00 within seven (7) calendar days of entry of the approval order.
>
> B. The Trustee and Fraley Parties shall execute broad mutual releases and waive the provision of California Civil Code Section 1542.
>
> On September 23, 2021 the Court held a Status Conference on a Motion for Court to Investigate Fees Charged For Failure to Provide Services by several counsel Debtor had hired. In connection with that Status Conference the Trustee filed a Status Report indicating that the itemized billing statement provided by Mr. Fraley for $10,475.00 of fees in preparation for the filing of the Chapter 7 bankruptcy case. **As discussed by the court in the Civil Minutes from that hearing, such fees in excess of $10,000.00 in fees is well outside the norm for filing a Chapter 7 case in this District.** Civil Minutes, Dckt. 354. In those Civil Minutes and at the hearing the court discussed the provisions of 11 U.S.C. § 329 and that no party in interest had sought a determination of the reasonableness of fees.
>
> For the present **Motion to Approve Compromise does not provide the court with evidence or analysis why the court should conclude that allowing $10,475.00 for preparation to file a Chapter 7 case (which was never filed or prosecuted by Mr. Fraley) is proper or reasonable**. Additionally, when filing the Motion to Approve Compromised, the **Trustee relied on valuation of the Trailer that was provided by Mr. Fraley, not one obtained by the Trustee**. The court noted at the Status Conference that the **valuation relied upon by the Trustee was not for the fair market value of the Trailer**, nor an orderly marketing and sale value of the Trailer.
>
> Rather, **the Trustee based the proposed Settlement on a Forced Liquidation Value of the Property**, as if the Trustee and bankruptcy estate did not have the protections afforded by Congress in under the Bankruptcy Code to conduct an orderly, commercially reasonable sale of the Trailer. Additionally, the valuation was made without the appraiser inspecting the Trailer. Status Report, Dckt. 346.
>
> . . .

> The **Trustee's Appraisal Report states the Toy Hauler has a Current Orderly Liquidation Value of $29,100.00.** What stands in sharp contrast with the current valuation and the prior forced liquidation is that the Forced Liquidation Value was stated to be $21,000.00, based upon second hand information from the Fraley Parties, but the Orderly Liquidation Value is stated to be $29,100.00 – an increase of almost 40%. Motion, ¶ 5, Dckt. 348; Trustee's Declaration, ¶ 7; Dckt. 351.
>
> . . .
>
> With respect to the 2019 Trailer, Mr. Fraley testifies that his former client told him the Trailer was purchased for $27,000. Id., ¶ 10. Additionally, Mr. Fraley testifies there should only be an auctioneer's costs of sale of 10%, resulting in a value of $26,190 for the Trustee. Based on Mr. Fraley's testimony, there is at least $16,000 of value in excess of the fees claimed by Mr. Fraley.

[Thus, in the "Settlement" advanced by the Fraley Parties and the Trustee, the Fraley Parties would get the Trailer with a value of $29,000, to pay fees in an agreed amount of $11,000 (rounded up), for a payment of $10,000 from the Fraley Parties. Assuming a 10% cost of sale, that would have given the Fraley Parties a bonus of $5,100.]

> Mr. Fraley discusses the meeting with Debtors and the representation he sought to provide for them. This includes turning the Trailer over to the Trustee, with Mr. Fraley asserting a lien on it for his fees. The Trustee then could (presumably promptly) sell the Trailer, pay Mr. Fraley's claim secured by the lien, and have the remaining proceeds for the bankruptcy estate. *Id.*, ¶ 5. In paragraph 15 of the Declaration, Mr. Fraley repeats that he told Debtors he would turn the Trailer over to the Trustee, referencing this in an April 9, 2020, email. Mr. Fraley testifies that he obtained possession of the Trailer on March 31, 2020, and transferred title to he and his wife's names on April 2, 2020. Id., ¶ 13.
>
> At this juncture, the court notes that **Debtors' Chapter 7 bankruptcy case was filed on June 30, 2020, just ninety-one (91) days after Mr. Fraley testifies that he obtained possession of the Trailer**, but eighty-nine (89) days after Mr. Fraley testifies that he put title of the Trailer into his and his wife's name.
>
> **It is now four hundred and eighty-five (485) days after the bankruptcy case has been filed and Mr. Fraley remains in possession of the Trailer worth $29,000** for which Mr. Fraley asserts the right to be paid $10,000 +/- in legal fees. **During these four hundred and eighty-five days, the bankruptcy Trustee has been unable to sell the Trailer, recover the proceeds, and pay**, if it is not disputed, the $10,000 +/- in **fees Mr. Fraley** asserts to be **owed** or to have been owed when title to the $29,000 Trailer was put in his and his wife's names.
>
> **Mr. Fraley also testifies that "last spring and summer" he attempted to sell the Trailer on eBay.** *Id.*, ¶ 34. It is not clear whether this was the spring and summer of 2021 or 2020 (in the depth of the COVID pandemic). Either way the **efforts to sell were occurring after the June 2020 commencement of this bankruptcy case and u Fraley that he would turn over the Trailer to the bankruptcy Trustee** and

assert his lien rights therein.

. . .

Under the settlement, Movant shall recover $10,000.00 in satisfaction of the Estate's claim for recovery of the property. Settlor provided Movant with an appraisal value of the Toy Hauler from West Auction. Exhibit C, Dckt. 352. As of June, 2021, the Toy Hauler has a forced liquidation value of $21,000.00. *Id.*

However, **when the Trustee contacted the Auctioneer and had an appraisal done not for a forced liquidation, but an orderly liquidation, the value increased to more than $29,000.00.** Based on Mr. Fraley's analysis, after what he determines to be reasonable costs of sale, there should be $16,000 of net value for the estate if the settlement amount is paid to Mr. Fraley.

. . .

It appears that there are **several potential "holes" in the Fraley Parties reasonable attorney's fee determination.** First, **$9,999 for filing one Chapter 7 voluntary bankruptcy case is well outside the norm**. Filing **$19,998 for two related Chapter 7 voluntary bankruptcy cases for these two debtors appears to be well outside the universe of reasonable attorney's fees**.

With respect to the $10,475 in legal fees provided for in the Settlement Agreement, the court notes the following.

First, on Exhibit 12 (Dckt. 367) the Fraley Parties provide a billing statement and computation of amounts due ("Billing Statement"). First for legal services provided by Gary Fraley, Esq., Nedra Fraley, Esq., and BEG, a paralegal, the bill for legal services total $10,555. Then there is $400 for storing the trailer and $860.50 for transferring title to the Trailer that the Fraley Parties chose to accept as payment.

With respect to attorney **Nedra Fraley**, at the time of the billing statement it is stated that she is "Disabled/Retired." Notwithstanding being retired there is **$700 in billings attributed to her**. Of this, **$600 is for her meeting with Shon Treanor to take possession of the Trailer that the** Fraley Parties chose to accept for payment of the fees. See 4/02/2020 entry on Billing Statement. It is unclear what $600 in legal services were provided in accepting the payment that the Fraley Parties chose.

Additionally, while listed as $600 on the 4/02/2020 entry, on page two of the Billing Statement it is stated to be $700.00 for "Legal Services" in accepting the tender of payment. It **does not appear this $700 is reasonable nor an obligation that would be permitted under 11 U.S.C. § 329.**

For Gary Fraley, the total amounts owing on page 2 of the Billing Statement are stated to be $7,875. This matches up to the billing entries on the Billing Statement for the period March 18 through April 6, 2021.

. . .

**The billings also include significant time spent by both Mr. Fraley and the paralegal in attempting to find ways to circumvent the means test**.

. . .

With respect to the $8,875.00 in legal fee billings by Gary Fraley and Nedra Fraley, they should first be **reduced for the $700.00 for "legal services" provided by Nedra Fraley for sitting around waiting for Shon Treanor** to accept receipt of the Trailer.

Next, it appears that if this matter were presented to the court, whether *sua sponte* or on motion, under 11 U.S.C. § 329, they should also be reduced. **Five hours is billed by the paralegal relating to the means test "work around," preparing a separate petition for Jill Treanor, and getting information entered into Best Case** (bankruptcy software). But then the paralegal spent 7 hours "completing preparation" of the Jill Treanor petitions, and then working "all day" to "change" the two petitions so they would "pass the means test." **It appears there was excessive "creative planning" time expended attempting to circumvent the Bankruptcy Code and not in doing the reasonable and necessary work. The court would likely cut five hours of the paralegal billings, which reduction would total 5 x $120 an hour, which equals a $600** reduction. [Fn.2.]

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FN. 2. The court also notes that the time and charges by the paralegal do not "math out." For the **April 3, 2020 five hours billed, the dollar amount is stated to be $720. That equals $144 an hour. However, it is stated that the paralegal is to bill at $120 an hour.**

---

With respect to the Gary Fraley billings, while the court might question some portion of the four hours billed on March 31, 2020 relating to the conclusion that property of the Trust was not property of the Debtor, but only the Debtor's beneficial interest would be property of the bankruptcy estate as not being something of significant legal ability, such may be warranted in light of the unique client the Debtor presents.

Thus, the $8,875.00 in legal services billing would be reduced by ($700), the Nedra Fraley waiting to accept the Trailer time, and ($600) for the paralegal working to circumvent the Bankruptcy Code. This would result in there being $7,575.00 in legal fees allowable under 11 U.S.C. § 329.

With respect to storage fees and expenses for "protecting" the trailer since April 2020, the court notes that the **Fraley Parties could, as they represented they would, have turned the Trailer over to the Trustee in June 2020, the Trustee could have then promptly moved to sell the Trailer in a commercially reasonable manner** (and not a forced, or possibly even an orderly, LIQUIDATION sale), and all of those costs would have been avoided. Rather, **the Fraley Parties retained possession of the Trailer for their own benefit, even attempting to sell it and retain the proceeds rather than turn it over to the Trustee**. The evidence presented, including **Mr. Fraley's Declarations, demonstrate that the Fraley Parties retained possession of the Trailer for their own economic advantage and to keep it away from the Trustee**. Having so acted, they cannot now seek to have the Trustee and Bankruptcy Estate fund

that conduct of the Fraley Parties.

Civil Minutes, Dckt. 375.

Thought the Trustee and the Fraley Parties modified the proposed settlement at the October 28, 2021, to recover the fair value for the Bankruptcy Estate (and not use the Forced Liquidation Sale discounted value advocated for by the Fraley Parties), to which the Debtors did not oppose, Order, Dckt. 376, the Fraley Parties blew up the Settlement and had the order approving it vacated. Civil Minutes, Dckts. 390, and Order, Dckts. 391, 392.

As the Trustee notes, Gary Fraley, Esq., and the Fraley Parties did not introduce any evidence in support of their contention that the court award them $8,000.00 in legal fees. Rather, they just seek to agree to the maximum amount they would not oppose when the actual amount is determined by the court.

As the court has addressed in prior hearings, the Debtor present a somewhat unique situation. They are convinced that every attorney that has represented them (except one) and all the attorneys, professionals, county employees, trustee in state court, and state court judges are allied against them. However, that does not grant Gary Fraley, Esq., and Fraley & Fraley, his law firm, the right to "bonus fees."

The court concludes that the charging Debtors $9,999.00 for filing one joint Chapter 7 bankruptcy case and charging Debtors $19,998.00 for two Chapter 7 bankruptcy cases, with all of the excluded matters in the Fee Agreements is unreasonable. It may indicate a "scheme" that these attorneys and Debtors thought that they could slide a $29,000 Trailer around the bankruptcy case and keep it out of the "clutches" of the Chapter 7 Trustee so they could divided the asset later.

Gary Fraley, Esq. and the Fraley Parties provide no evidence or basis that $9,999 is reasonable for one Chapter 7 case filing or almost $20,000 is reasonable to two related Chapter 7 cases under the facts and circumstances of these Debtors.

Gary Fraley, Esq., and the Fraley Parties have provided their actual billing statement of charges which relate to the $20,000.00 in fees for which they asserted they were paid by the transfer of ownership of the Trailer. The billed fees for "legal work" total $10,555. The court does not find that to be reasonable, necessary, and proper fees billed for actual legal services provided. The court has also reviewed the Supplemental Declaration of Gary Fraley concerning the fees. Dckt. 365. The court makes the following adjustments/corrections to determine a reasonable amount:

Total Fees on Billing Statement.....$10,575.00

Adjustment to Billing Statement Amounts

3/23/2020 GRF Billing at $450 an hour
x 4 hours for $1,800

Fees relating to "Follow up Sean & Jill Treanor.

This appears to be a "block billing" for an afternoon follow up identified as relating to Debtors. For a "follow up" with no other information, the court reduces the amount of these fees by $900.....($ 900.00) Reduction

3/31/2020 GRF Billing at $450 an hour
x 4 hours for $1,800

Fees relating to create an argument that property in the Trust to which Debtors had the right to receive it immediately was not property of the bankruptcy estate.

Presuming that some basic review of the rights of Debtors was necessary and a review of fundamental State and Bankruptcy Law necessary, the court reduces the amount of these fees by $900.....($ 900.00) Reduction

4/02/2020 NAF Billing at $300 an hour
x 2 hours for $600

This was billed by Nedra Fraley, who is identified on the Fraley & Fraley Letterhead as "Disabled/Retired" to wait to received the payment of the $29,000 Trailer for the $19,998.00 in fees being charged for filing the two related Chapter 7 Cases for Debtor.

No good faith, bona fide legal services are show for NAF sitting around wanting to get paid by Debtors. The court reduced these fees by the full $600.....($ 600.00) Reduction

4/2/2020 BEG Billing $120 an hour
x 4.5 hours for $540

This was billed by the paralegal to import the Debtors' information into Best Case. It also includes the paralegal determining that the Debtors failed the means test.

The paralegal billing 4.5 hours to input for these Debtors is excessive. The court reduces these fees by $120.....($ 120.00) Reduction

4/3/2020 BEG Billing $144 an hour
x 5 hours for $730

This was billed by the paralegal to communicate with the Debtors to get more information, communicate with Mr. Fraley about the means test "problem," and discuss with the Debtors the strategy of filing two separate cases to address the Means test problem. It is stated that the actual time spent was four hours, but only five hours were charged.

It appears that the paralegal made a computational error and increased the paralegal's hourly rate from $120 an hour to $144 an hour. Spending an additional five hours working on "fixing" the "means test problem" and getting information for two separate filings, rather than using the information already in place for when Debtors were going to file jointly, is excessive. The court reduces this additional charge by $240.00.....($ 240.00) Reduction

4/3/2020 BEG Billing $120 an hour
x 7 hours for $840

This was billed by the paralegal to complete the petition for Jill Treanor, meeting with Debtors, change the joint petition information into two petitions.

With this additional 7 hours, the paralegal is being billed for 17.5 hours (with a voluntary reduction of one hour. Nothing presented why it would take a paralegal 17.5 hours to put together these two petitions. This is excessive billing and the court reduces this additional charge by $360.00.....($ 360.00) Reduction

Amount of Adjusted Fees
Based on Billing Statement.....$7,455.00.

The court now considers whether such billed amounts are credible. The court has seen shifting "facts" being asserted by the Fraley Parties. In the billing records, disabled and retired Nedra Fraley is " billed" at $350 an hour for sitting around, not doing legal work, waiting to "get the bucks" from the Debtors. How such can be billed, and then presented to the court, in good faith by an attorney admitted to the Eastern District of California is a mystery. As discussed above with the "storage fees" and the Fraley Parties wanting to recover storage for a Trailer they were trying to sell, the credibility of what is being presented to the court is low.

However, the court also considers the Debtors. While fervent in their belief that they have been wronged by many attorneys and county officials and employees, the Debtor clearly present some

extraordinary challenges to an attorney attempting to represent them. Not challenges with respect to be honest, but in the long, long history of claims, asserted rights, and asserted wrongs that would have to be disclosed and considered. The $7,455.00 is reasonable under these circumstances. [Fn.1.]

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FN. 1. The court does recognize that for an average Chapter 7 case the filing fee may be in the $2,000 range. Doubling that gets one to the $4,000 to $5,000. Given the information and detail for the lawyer (but not necessarily additional work for a paralegal inputting information), pushing the fees up to $7,455.00 is not unreasonable.

---

Mr. Fraley and the Fraley Parties seeking $1,200.00 for "storing" the Trailer at their Daughter's home. The court does not find credible that such an expense actually exists. There is nothing to show that the Daughter runs a commercial storage facility. More significantly, Mr. Fraley and the Fraley Parties kept the Trailer as their property, having title in their name. If they want to pay storage fees, Mr. Fraley and the Fraley Parties can pay their Daughter personally. No such "storage fees" were incurred by Mr. Fraley and the Fraley Parties.

Mr. Fraley and the Fraley Parties vigorously argued that they owned the Trailer and neither the Estate or the Debtors had any interest therein. They asserted they accepted payment of the $29,000 Trailer for the asserted $19,998.00 in legal fees they sought to bill for filing two Chapter 7 cases for Debtors. They also tried to sell the Trailer after the bankruptcy case was filed, clearly demonstrated that it was "their Trailer."

The Trustee did not dispute their title or ownership, but asserted the right to avoid the transfer or recover the overpayment from Mr. Fraley and the Fraley Parties. Mr. Fraley and the Fraley Parties were not "storing" the Trailer for the Trustee, but were maintaining possession of and trying to sell the Trailer not involving the Trustee. That Mr. Fraley and the Fraley Parties seek to pay the obligation owed relating to an avoidance of the transfer or the amount of the reasonable fees allowed pursuant to 11 U.S.C. § 329 does not obligate the Trustee to pay Mr. Fraley and the Fraley Parties for the Trailer that Mr. Fraley and the Fraley Parties owned, exerted dominion and control over, and tried to sell.

The court does not allow any "storage fees" for Mr. Fraley and the Fraley parties for maintaining possession of the Trailer they owned and actively tried to sell.

Mr. Fraley and the Fraley Parties also seek to recover $869.50 in Department of Motor Vehicle fees that they incurred for transferring ownership with the DMV to Gary and Nedra Fraley. They needed to obtain title so they could sell the $29,000 Trailer they took as payment for the asserted $19,998.00 in fees for filing two related Chapter 7 cases. That Gary Fraley and the Fraley Parties took title to the Trailer to sell it for their own benefit, and then chose to use it to pay the Trustee for obligations that relate to avoidance of the transfer and overpayment of legal fees does not obligate the Trustee or Bankruptcy Estate to pay for Gary and Nedra Fraley obtaining the title to document their ownership of the Trailer.

Then, when Gary Fraley and the Fraley Parties used the Trailer to pay their obligations relating to avoidance of the transfer and overpayment of reasonable legal fees, they had to renew the registration so they could "make the payment" – transport the Trailer to the Trustee. What it cost them to "make the payment" is akin to if they sold stock and had to pay their stock broker fees and

commissions. The Trustee and Bankruptcy Estate do not pay the costs and expenses of Mr. Fraley and the Fraley Parties in paying their obligations.

Finally, Mr. Fraley and the Fraley Parties seek to recover $350.00 in storage fees to A-1 Storage for the cost of them storing the Trailer that they owned. The Trailer was moved to this site in July 2021. Declaration, ¶ 14; Dckt. 398. At that time Gary and Nedra Fraley owned the Trailer and stored it for their benefit. As Mr. Fraley testified in his Declaration filed on October 1, 2021, he and the Fraley Parties were actively trying to sell the Trailer they owned in the Summer of 2021. Declaration, ¶ 34; Dckt. 366. That they later chose to use it to pay their obligations relating to avoidance of the transfer and excessive, not reasonable payments from the Debtors for bankruptcy legal services does not obligate the Trustee or the Bankruptcy Estate to pay this expense.

No fees for storage (to the extent that such were actually incurred), transfer of title, and renewal of title for the Trailer, then owned by Gary Fraley and the Fraley Parties, are allowed and recoverable against the Bankruptcy Estate. Such are expenses incurred by Gary Fraley and the Fraley Parties to protect the Trailer they owned, and vigorously argued (convincing the Trustee) that they owned. That they now use that asset to pay any obligation relating to avoidance of transfers and disgorgement of unreasonable fee payments obtained the Debtors (11 U.S.C. § 329) does not obligate the Trustee or Bankruptcy Estate to pay Mr. Fraley and the Fraley Parties for costs and expenses in maintaining dominion and control over the Trailer they owned, and which Trailer they were actively trying to sell during this bankruptcy case.

The court allows Gary Farley, Esq., former pre-bankruptcy counsel for Shon and Jill Treanor, individually and separately, for all legal services and costs the sum of $7,455.00, and disallows all fees and expenses, including registration and storage expenses (to the extent actually incurred) relating to the Trailer that Gary Fraley and the Fraley Parties owned, exercised dominion and control over, and actually worked to sell during this bankruptcy case, in excess thereof.

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 Determination of Reasonable Value of Professional Fees filed by Hank M. Spacone, the Chapter 7 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gary Fraley is allowed the following fees and expenses as a professional of the Estate:
>
> to FRALEY & FRALEY, PC, and GARY FRALEY (collectively "Fraley Parties")
>
> Fees totaling the amount of $7,455.00
>
> as the final allowance of fees and expenses pursuant to 329 (b)(1)(A) as prior counsel for Shon Treanor and Jill Treanor, jointly and individually, the

Debtors in this Chapter 7 case.

**IT IS FURTHER ORDERED** that the court does not allow and the Trustee is not authorized to pay all fees and expenses, including registration and storage expenses (to the extent actually incurred) relating to the Trailer that Gary Fraley and the Fraley Parties received pre-petition from Shon Treanor and Jill Treanor as payment for legal services to be rendered in connection with the filing of a bankruptcy case, in excess thereof the $7,455.00 allowed above.

**IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay 100% of the $7,455.00 in fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter case.

# FINAL RULINGS

| | | | |
|---|---|---|---|
| **14.** | **21-20225-E-7**<br>**MOH-2** | **DONALD JOHNSON**<br>**Micheal Hays** | **CONTINUED OBJECTION TO CLAIM OF CARALY JOHNSON, CLAIM NUMBER 2**<br>**9-2-21 [65]** |

**Final Ruling:** No appearance at the December 9, 2021 hearing is required.
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Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 7 Trustee, and Office of the United States Trustee on September 2, 2021. By the court's calculation, 60 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The hearing on the Objection to Proof of Claim Number 2-1 of Creditor is continued to February 10, 2022 at 10:30 a.m. in Courtroom 33.**

Donald B. Johnson, Debtor, ("Objector") requests that the court disallow the claim of Caraly Johnson ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $228,125.72. Objector asserts that:

Item A: Debtor contests he should not be required to pay rent to live on a property that he has a legal interest in.

Item B: Creditor has not provided copies of any documents supporting the claim of hazardous material and trash removal from Paradise property and it is Debtor's understanding that FEMA paid for the cleanup.

Item C: The $30,000.00 for Creditor's prepayment of expected insurance proceeds to be reimbursed by Debtor will be distributed in the divorce proceeding, not this bankruptcy case.

Item D: A judgment in California Superior Court was entered against Creditor for fraudulent transfer of Debtor's home into her name. Debtor contends Creditor should have cross complained him if she did not believe she was responsible.

Item E: Creditor has not provided proof of the destruction of the trailer. Additionally, it was Debtor's belief that she gave him the trailer as a portion of his share of their community property because she signed the title releasing her interest in the property.

**DISCUSSION**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

**PARTIES STIPULATION**

On December 1, 2021, Debtor filed a Stipulation to continue the hearing. Dckt. 87. The Stipulation was signed by all parties and states the hearing shall be continued again to February 10, 2022 at 10:30 a.m. Parties state a settlement is still contemplated with regard to the Proof of Claim and Objection. If the matter is not settled creditor shall have until January 27, 2022 to file any responsive pleading.

**ORDER GRANTING STIPULATION**

On December 3, 2021, the court entered an order pursuant to the Stipulation and Joint Motion to continue the hearing. Dckt. 88. Pursuant to the order, the hearing on the Objection to Proof of Claim Number 2-1 of Creditor is continued to February 10, 2022 at 10:30 a.m. in Courtroom 33.

**15. 21-21438-E-7 MOT-2 — PHILIP OUELLETTE, Mark O'Toole — CONTINUED MOTION TO AVOID LIEN OF INVESTMENT RETRIEVERS, INC. 9-22-21 [34]**

**Final Ruling:** No appearance at the December 9, 2021 hearing is required.
---

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2021 By the court's calculation, 36 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 Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Investment Retrievers, Inc. ("Creditor") against property of the debtor, Philip Joseph Ouellette ("Debtor") commonly known as 3123 Erle Road, Marysville, California ("Property").

The Motion states a judgment was entered against Debtor in favor of Creditor from a lawsuit in the Superior Court of California captioned INVESTMENT RETRIEVERS, INC.,vs. Philip Joseph Ouellette, Case No. CVCV18-01827. Motion at ¶ 1, Dckt. 34. In addition, the Motion states an Abstract of Judgment was filed with Yuba County Recorder's Office on August 13,2019 and recorded on December 30, 2020. *Id.* The recorders document number is DOC-2020-022127. *Id.*; Dckt. 37.

Although Movant has provided the court with an Exhibit of the Abstract of Judgment's cover page, Movant has failed to provide the court with a copy of the complete Abstract of Judgment. Instead, Movant has provided the court with an exhibit for the Memorandum of Costs After Judgment which establishes a judgment principal remaining due of $87,863.49. Exhibit A, Dckt. 37. This document is not sufficient to act in place of a copy of the Abstract of Judgment. Absent a copy of the complete Abstract of Judgment, the court is not provided proper information as to what the judgment is nor against whom the judgment has been obtained.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $276,266.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $107,211.07 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 $300,000.00 on

Amended Schedule C. Dckt. 24.

The court needs clear evidence prior to granting a motion that impairs one's property rights. Evidence of the complete Abstract of Judgment must be provided. Once provided, the court can apply the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A) to determine whether Debtor is entitled to void the lien.

**Supplemental Exhibit Filed**

On November 15, 2021, Debtor provided with the court a supplemental exhibit evidencing an Abstract of Judgment. Dckt. 43. The Abstract shows a total judgment amount of $97,480.28.

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

An order substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Philip Joseph Ouellette ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Investment Retrievers, Inc, California Superior Court for Yuba County Case No. CVCV18-01827, recorded on December 30, 2020 with the Yuba County Recorder, against the real property commonly known as 3123 Erle Road, Marysville, 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.

**16.** **19-21976-E-7** **CONQUIP, INC.** **MOTION FOR COMPENSATION FOR**
**DNL-16** **Eric Nyberg** **BACHECKI, CROM & CO., LLP,**
**16 thru 18** **ACCOUNTANT(S)**
**11-4-21 [191]**

**Final Ruling:** No appearance at the December 9, 2021 hearing is required.
---

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 4, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**The Motion for Allowance of Professional Fees is granted.**

J. Michael Hopper, the Chapter 7 Trustee ("Applicant") for ConQuip, Inc., the Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses for compensation of the bankruptcy estate's accountant, Bachecki, Crom & Co., LLP ("Accountant"), in this case.

Fees are requested for the period April 18, 2019, through September 23, 2021. The order of the court approving employment of Applicant was entered on May 3, 2019. Dckt. 39. Applicant requests fees in the amount of $58,000.00 and costs in the amount of $419.84.

**APPLICABLE LAW**

**Reasonable Fees**

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

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the professional exercise reasonable billing judgment?

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

**Lodestar Analysis**

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

**Reasonable Billing Judgment**

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

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

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

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

A review of the application shows that Applicant's services for the Estate include obtaining, reviewing, and investigating Debtor's financial records and preparing detailed analyses regarding Debtor's financial situation. The Estate has $250,390.80 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. Dckt. 195.

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** |
|---|---|---|---|
| Jay D. Crom | 3.5 | $545.00 | $1,907.50 |
| Jay D. Crom | 5.2 | $535.00 | $2,782.00 |
| Jay D. Crom | 36.8 | $525.00 | $19,320.00 |
| Kimberly Lam | 1.0 | $490.00 | $490.00 |
| Kimberly Lam | 0.5 | $480.00 | $240.00 |
| Kimberly Lam | 2.8 | $470.00 | $1,316.00 |
| Austin Wade | 1.6 | $425.00 | $680.00 |
| Austin Wade | 18.8 | $400.00 | $7,520.00 |
| Austin Wade | 18.9 | $390.00 | $7,371.00 |
| Virginia Huan-Lau | 5.8 | $390.00 | $2,262.00 |
| Virginia Huan-Lau | 8.5 | $380.00 | $3,230.00 |
| Virginia Huan-Lau | 21.1 | $370.00 | $7,807.00 |
| Paula Law | 5.1 | $390.00 | $1,989.00 |

| | | | |
|---|---|---|---|
| Paula Law | 9.8 | $380.00 | $3,724.00 |
| Paula Law | 1.8 | $370.00 | $666.00 |
| Jason Tang | 13.1 | $300.00 | $3,930.00 |
| **Total Fees for Period of Application** | | | $65,234.50 |

Although total fees for the period of application equal $65,234.50, Applicant is requesting a capped amount of $58,000.00.

**Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $419.84 pursuant to this application.

The costs requested in this Application are,

| **Description of Cost** | **Cost** |
|---|---|
| PACER & Accurint | $16.82 |
| Postage & Shipping | $117.04 |
| Mileage | $149.06 |
| Data & Records Storage | $366.67 |
| **Total Costs Requested in Application** | $649.59 |

Although total costs equal $649.59, Applicant is only requesting $419.84 to be paid to the Accountant.

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

**Reduced Rate**

Applicant seeks to pay the Accountant a single sum of $58,000.00 for its fees incurred for Client. First and Final Fees and Costs in the amount of $58,000.00 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 under the confirmed Plan.

**Costs & Expenses**

First and Final Costs in the amount of $419.84 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

| | |
|---|---|
| Fees | $58,000.00 |
| Costs and Expenses | $419.84 |

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 for Accountant filed by J. Michael Hopper, the Chapter 7 Trustee ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Bachecki, Crom & Co., LLP ("Accountant") is allowed the following fees and expenses as a professional of the Estate:
>
> Bachecki, Crom & Co., LLP, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $58,000.00
> Expenses in the amount of $419.84,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as Accountant for the Chapter 7 Trustee.
>
> **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 from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**17.** **19-21976-E-7** **CONQUIP, INC.** **MOTION FOR COMPENSATION FOR J MICHAEL HOPPER, CHAPTER 7 TRUSTEE(S)**
**DNL-17** **Eric Nyberg** **11-4-21 [197]**

**Final Ruling:** No appearance at the December 9, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on November 4, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

**The Motion for Allowance of Professional Fees is granted.**

J Michael Hopper, the Chapter 7 Trustee, ("Applicant") for the Estate of ConQuip, Inc. ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period March 29, 2019, through October 29, 2021.

**STATUTORY BASIS FOR FEES**

11 U.S.C. § 330(a)

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

(A) reasonable compensation for actual, necessary services rendered by

> the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
>
> (B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a professional employed by a trustee, the professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

> (7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

**Benefit to the Estate**

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "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 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: (1) General Case Administration; (2) Efforts to Assess and Recover Property of the Estate; and (3) Significant Motions and Other Contested Matters. The Estate has $250,390.80 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 REQUESTED**

Applicant provides a task billing analysis and supporting evidence for the services. Trustee provides ten pages worth of exhibits that illustrate his time records and describes in detail the activities conducted in administering the Debtor's case. Exhibit A, Dckt. 200. However, Trustee does not provide a simplified breakdown of each category and the hours spent in each category.

Additionally, Applicant testifies they presently have on hand funds in the approximate amount of $250,390.80. Declaration, Dckt. 199. Yet, the proposed compensable disbursements total $311,782.42. Applicant's compensation is based on the $311,782.42 value. Applicant has not provided grounds in their motion for why the amount should be calculated on the $311,782.42 value.

Applicant provided their Form 2 filed as Exhibit B. Dckt. 200. In Applicant's Form 2, Applicant notes that $24,864.37 Net Disbursements have been paid to Creditors. When deducting $24,864.37 from the $311,782.42 value, there is still a $36,527.25 difference between the total compensable disbursements and the value presently in the Trustee's hands.

On page nine (9) of Applicant's Form 2, there is a value of $36,527.25 that is labeled "Plus Gross Adjustments". It is unclear to the court what these "gross adjustments" are for. After digging through the 210 docket entries on file, the court found "Trustee's Report of Sale," for Trustee's sale of various personal property assets of the Estate located at the nonresidential property leased by Debtor. Dckt. 81. Within this report, Trustee notes the total gross proceeds from sale was $131,796.50. After commissions and expenses, the estate received a net sale proceeds of $95,324.25. The difference between the total gross proceeds and net sale proceeds is $36,472.25. Although there is still a $55.00 discrepancy from the $36,527.25 "Plus Gross Adjustments," absent the trustee correcting otherwise, it is of the court's belief that the gross proceeds after commission and expenses from Trustee's estate sale is the ambiguously labeled "Plus Gross Adjustments." The $55.00 discrepancy being a minimal difference in value, the court allows Trustee's compensation based on the $311,782.42 amount.

**Applicant requests the following fees:**

| | |
|---|---|
| 25% of the first $5,000.00 | $1,250.00 |
| 10% of the next $45,000.00 | $4,500.00 |
| 5% of the next $61,782.42 | $13,089.12 |
| 3% of the balance of $0.00 balance | $0.00 |
| **Calculated Total Compensation** | **$18,839.12** |
| Plus Adjustment | $0.00 |
| Total Maximum Allowable Compensation | $18,839.12 |

| | |
|---|---|
| Less Previously Paid | $0.00 |
| **Total First and Final Fees Requested** | $18,839.12 |

**FEES ALLOWED**

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $18,839.12 are approved pursuant to 11 U.S.C. § 330, are 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's efforts have resulted in a realized gross of $311,782.42 recovered for the estate. Dckt. 197.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

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

Fees $18,839.12
Costs and Expenses $0.00

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 J. Michael Hopper, the Chapter 7 Trustee, ("Applicant") 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 is allowed the following fees and expenses as trustee of the Estate:
>
> J. Michael Hopper, the Chapter 7 Trustee
>
> Fees in the amount of $18,839.12
> Expenses in the amount of $0.00
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**18.** **19-21976-E-7** **CONQUIP, INC.** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM TRUSTEES ATTORNEY(S) 11-4-21 [202]**
**DNL-18** **Eric Nyberg**

**Final Ruling:** No appearance at the December 9, 2021 hearing is required.
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

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

**The Motion for Allowance of Professional Fees is granted.**

J. Michael Hopper, the Chapter 7 Trustee ("Applicant") for Conquip, Inc. ("Debtor") makes a First and Final Request for the Allowance of Fees and Expenses for Trustee's Counsel, Desmond, Nolan, Livaich & Cunningham ("DNLC") in this case.

Fees are requested for the period April 1, 2019 through and including October 29, 2021. The order of the court approving employment of Applicant was entered on April 4, 2019. Dckt. 11. Applicant requests fees in the amount of $75,212.50 and costs in the amount of $1,879.69.

**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 Case Administration, Litigation and Contested Matters, Asset Analysis, Recovery, and Disposition, Discovery, and other Chapter 7 Services. The Estate has $250,390.80 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: Attorney spent 8.70 hours in this category. Applicant attached a twenty-one page exhibit that details the major services in this category.

Asset Marketing, Sales, Analysis, Recovery, and Disposition: Attorney spent 68.30 hours in this category. Applicant attached a twenty-one page exhibit that details the major services in this category.

Litigation and Contested Matters: Attorney spent 68.60 hours in this category. Applicant attached a twenty-one page exhibit that details the major services in this category.

Fee/Employment Applications: Attorney spent 20.80 hours in this category. Applicant attached a twenty-one page exhibit that details the major services in this category.

Settlement/Non-Binding ADR: Attorney spent 22.10 hours in this category. Applicant attached a twenty-one page exhibit that details the major services in this category.

Discovery: Attorney spent 50.90 hours in this category. Applicant attached a twenty-one page exhibit that details the major services in this category.

Other Matters: Attorney spent 25.9 hours in this category. Applicant attached a twenty-one page exhibit that details the major services in this category.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. Attorney's totaled 265.30 billable hours. Applicant did not provide a breakdown of each attorney, their time spent, and their hourly rate. However, they did provide a lengthy exhibit that broke down which attorney, what matter, description of services, their rate, and hours billed. Dckt. 206. In the future it would be helpful to the court if the Motion contained a short breakdown of each professional, their hourly rate, and how many hours they billed for the given period.

Applicant provided Attorney's blended hourly rate of $283.50. Therefore, the total fees requested are $75,212.55.

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $1,879.69 pursuant to this application.

The costs requested in this Application are,

| **Description of Cost** | **Cost** |
|---|---|
| Copying | $286.70 |
| Postage | $664.88 |
| Miscellaneous | $457.58 |
| Court Costs | $25.50 |
| Travel | $445.03 |
| **Total Costs Requested in Application** | $1,879.69 |

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

**Hourly Fees**

The court finds that the hourly rates are reasonable and that Attorney effectively used appropriate rates for the services provided. First and Final Fees in the amount of $75,212.50 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.

First and Final Costs in the amount of $1,879.69 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 under the confirmed plan to pay 100% of the fees and 100% of the costs allowed by the court.

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

Fees $75,212.50
Costs and Expenses $1,879.69

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

Fees are requested for the period April 1, 2019 through and including October 29, 2021. The order of the court approving employment of Applicant was entered on April 4, 2019. Dckt. 11. Applicant requests fees in the amount of $75,212.50 and costs in the amount of $1,879.69.

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 for Trustee's Counsel, Desmond, Nolan, Livaich & Cunningham ("DNLC") filed by J. Michael Hopper, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Desmond, Nolan, Livaich & Cunningham ("DNLC") is allowed the following fees and expenses as a professional of the Estate:
>
> Desmond, Nolan, Livaich & Cunningham ("DNLC"), Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $75,212.50
> Expenses in the amount of $1,879.69
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.