

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

December 12, 2019 at 10:30 a.m.

1. **19-26406-A-7**
NLL-1

LORNE/JAMIE WILLIAMS
D. Randall Ensminger

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-6-19 [10]

PNC BANK, NATIONAL
ASSOCIATION VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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, and Office of the United States Trustee on November 11, 2019. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

The Motion for Relief from the Automatic Stay is granted, with relief effective at noon on January 15, 2020.

December 12, 2019 at 10:30 a.m.

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PNC Bank, National Association (“Movant”) seeks relief from the automatic stay with respect to Lorne Howard Williams and Jamie Lynn Williams’s (“Debtor”) real property commonly known as 22830 Oak Grove Court, Grass Valley, California (“Property”). Movant has provided the Declaration of Barb Essman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made one (1) post-petition payments, with a total of \$2,396.40 in post-petition payments past due. Declaration, Dckt. 13. Movant also provides evidence that there are seven (7) pre-petition payments in default, with a pre-petition arrearage of \$16,514.49. *Id.*

DEBTOR’S OPPOSITION

Debtor filed an Opposition on November 26, 2019. Dckt. 18. Debtor request this court deny and extend the automatic stay to allow Debtor an opportunity to work on a loan modification with Movant. Debtor presents the following reasons:

1. After a loan modification in August 2010, following the mortgage crisis, Debtors have been able to reduce the loan’s principal balance from \$740,649.42.
2. Debtor’s income through operation of their general contracting business decreased which resulted in missing payments starting April 2019.
3. On November 2019, after receiving encouraging communications from Movant, Debtor engaged counsel to pursue a new loan modification.
4. A completed loan modification application will soon be submitted.
5. The retention of the Property is necessary for an effective organization because Debtor operates their construction company from their home.
6. Once Debtor’s unsecured debt is discharged through this Chapter 7, Debtor will be able to again make monthly mortgage payments in the amount of \$2,396.40.
7. Debtor is willing to make adequate protection payments of \$1,800.00 starting this January 2020 provided the court denies this Motion for Relief and instead delays the order of entry of Debtor’s discharge and extends the automatic stay while Movant is given time to review Debtor’s soon to filed loan modification request.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$702,185.27 (Declaration, Dckt. 13), while the value of the Property is determined to be \$697,878.00, as stated in Schedules B and D filed by Debtor.

Debtor argues that the Property is necessary for reorganization because this is their business’s location. However, Debtor’s Petition lists 10490 Hubbard Rd., Auburn, CA 95602 as the address for Debtor’s LWC, Inc. Business, not the Property subject of this Motion. Dckt. 1. Furthermore, Debtor does

not describe what exactly it is that they do from the Property that constitutes “operat[ing] their construction company.” Opposition, Dckt. 18.

It is alleged in the Opposition, for which no evidence is provided and no testimony provided by that Debtors operate the business from their home in this Chapter 7 case.

The Opposition then states that “once the Debtor’s unsecured debt is discharged through their Chapter 7 proceeding they will be able to afford to again commence making regular payments on their mortgage’s monthly payment amount of \$2,396.40.” Opposition p. 2, second full paragraph; Dckt. 18.

This Chapter 7 case was filed on October 14, 2019. The Motion for Relief was filed three weeks later. The Chapter 7 Trustee has made her Report of No Distribution, indicating that there is nothing for the Trustee to administer with respect to the current property. November 15, 2019 Trustee Docket Entry Report.

Objections to Discharge must be filed by January 14, 2020 in this case. Shortly thereafter Debtor will be receiving a discharge (absent a complaint pursuant to 11 U.S.C. § 727 being filed. Thus, come the middle of January 2020 the automatic stay will terminate as to the Debtor. 11 U.S.C. § 362(c)(2)(C).

The Chapter 7 Trustee does not oppose termination of the automatic stay as to the bankruptcy estate.

While talking about an “effective reorganization,” there can be no reorganization in this Chapter 7 case. The Debtor’s income, from which it is argued that Debtor will be able to start making payments to Movant, is generated from a corporation. Since the October 2019 filing of this case, presumably Debtor’s have continued to receive their salaries from the corporation for the work being done.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

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

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Here, cause exists to terminate the stay to allow for a foreclosure on the Property. Debtor's opposition merely states that Debtor seeks to pay the obligation in the future. Debtor was seven months in default when this case was filed, and another two months have elapsed.

Further, Debtor argues, without evidence or explanation, that somehow this residential property is part of Debtor's corporation's business and necessary for a post-bankruptcy reorganization. It is not explained why Debtor's corporation cannot "operate out of where ever Debtor is living." Further, Debtor states that only after obtaining a discharge will Debtor have monies to pay the regular mortgage payment. No explanation has been made as to what Debtor has been doing with all of the post-October 14, 2019 filing income earned from operating the corporation's business.

On Schedule I Debtor states that Lorne Williams income from employment by the corporation is only \$1,248 a month. Debtor Jamie Williams income is only \$863.32 from employment other than the corporation. In addition, it is stated that Debtor Lorne Williams has \$,1570.00 a month in interest and dividend. Dckt. 1 at 32-33. This is gross income. There is nothing to show that this changes post-petition.

With the holidays, the court is presented with the opportunity to issue an order now, granting relief from the stay effective mid-January 2020. This is when the stay terminates as to the Debtor. While there is a short delay in Movant noticing a foreclosure sale, such would be delayed anyway because of the fourteen day stay of enforcement granting an order for relief. Thus, any additional delay is minimal.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Request for Waiver of Fourteen-Day Stay of Enforcement

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

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

However, the court's order granting relief will not be effective until January 15, 2020. In light of the delayed effective date, the court waives the fourteen day stay to avoid any confusion that the effectiveness of this order would be delayed further.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by PNC Bank, National Association ("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 effective at noon on January 15, 2020, the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 22830 Oak Grove Court, Grass Valley, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

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

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

Sufficient Notice **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2019. By the court's calculation, 28 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).

At the hearing, **xxxxxxxxxxxxxxxxxx**

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). The defaults of the non-responding parties and other parties in interest are entered.

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

Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") for Hank M. Scapone, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 28, 2016, through November 8, 2019. The order of the court approving employment of Applicant was entered on January 23, 2017. Dckt. 64. Applicant requests fees in the amount of \$23,120.00 and costs in the amount of \$3,132.10.

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 preparing application to employ; communicating with Trustee regarding strategy for administration of the case, researching issues related to conversion to chapter 7; preparing Adverse Proceeding documents, preparing stipulations and disbursement motions; communicating with Trustee and third parties regarding claims and disbursements; assisting Trustee in the sale of estate's interests and preparing the motion for the sale; preparing applications for compensation. The Estate has \$1,001,053.79 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 8.7 hours in this category. Applicant communicated and assisted Trustee on general matters related to hearings, status reports, and administering the estate; and closing the Chapter 11 case as it was converted to Chapter 7 case.

Fee/Employment Application: Applicant spent 21.9 hours in this category. Applicant prepared applications for special counsel, Trustee and Applicant's employment and final fee application.

Litigation and Contested Matters: Applicant spent 16.9 hours in this category. Applicant prepared Adverse Proceeding Complaint.

Claims and Disbursements: Applicant spent 16.6 hours in this category. Applicant communicated extensively with Trustee and other parties involved regarding claims and disbursements; prepared disbursement motions and prepared and appeared at the hearings on said motions; .

Asset Investigation and Disposition: Applicant spent 13.7 hours in this category. Applicant assisted Trustee in the sale of estate's interests; prepared the motions related to sale; and prepared and appeared at the hearing on the motion to sell th estate's interest.

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
J. Russell Cunningham	30.0	\$425.00	\$12,750.00
J. Luke Hendrix	0.7	\$325.00	\$227.50
Nicholas L. Kohlmeyer	8.6	\$275.00	\$2,365.00
Nicholas L. Kohlmeyer	24	\$225.00	\$5,400.00
Nicholas L. Kohlmeyer	4.7	\$200.00	\$940.00
Ryan Ivanusich	6.1	\$175.00	\$1,067.50
Anne Badasci	3.7	\$100.00	<u>\$370.00</u>
Total Fees for Period of Application			\$23,120.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$3,132.10 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	\$0.10 per page	\$1,607.50
Postage		\$1,154.60
Advances (service fees and recording fees)		\$370.00
		\$0.00
Total Costs Requested in Application		\$3,132.10

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$26,525.10 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$3,132.10 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$23,120.00
Costs and Expenses	\$3,132.10

~~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 (“Applicant”), Attorney for Hank M. Scapone, 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 is allowed the following fees and expenses as a professional of the Estate:~~

~~Desmond, Nolan, Livaich & Cunningham, Professional employed by the Chapter 7 Trustee~~

Fees in the amount of \$23,120.00
Expenses in the amount of \$3,132.10;

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

Tentative Ruling: The Motion for Compensation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Sufficient Notice **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2019. By the court's calculation, 28 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).

At the hearing, **xxxxxxxxxx**

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.

Bacheki, Crom & Co. LLP, the Accountant (“Applicant”) for Hank M. Spacone, the Chapter 7 | 11 | 13 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 28, 2016, through November 5, 2019. The order of the court approving employment of Applicant was entered on January 23, 2017. Dckt. 63. Applicant requests fees in the amount of \$8,472.00 and costs in the amount of \$131.45.

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 consulting with Trustee regarding tax filings issues; preparing three (3) federal and California tax returns, disclosures statements and requests for prompt determination of tax liability; and reviewing and assessing claims filed by the IRS. The Estate has \$1,001,053.79 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.

Income Tax Returns Administration: Applicant spent 24 hours in this category. Applicant prepared federal and California income tax returns for fiscal years 2017, 2018, and 2019; consulted with Trustee regarding tax filing issues; prepared disclosure statements to accompany the income tax returns; prepared requests for determination of tax liability to the IRS and FTB; reviewed claims filed by the IRS and assessed their tax impact on the estate; and assisted Trustee's general counsel in preparing this fee application.

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	3.8	\$525.00	\$1,995.00
Virginia Huan-Lau	1.2	\$370.00	\$444.00
Paula Law	2.1	\$370.00	\$777.00
Paula Law	5.9	\$360.00	\$2,124.00
Jason Tang	4.5	\$300.00	\$1,350.00
Jason Tang	2.7	\$280.00	\$756.00
Jason Tang	3.8	\$270.00	<u>\$1,026.00</u>
Total Fees for Period of Application			\$8,472.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$131.45 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies		\$66.40
Pacer		\$20.80
Postage		\$44.25
		\$0.00
Total Costs Requested in Application		\$131.45

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$8,472.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$131.45 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 | 11 | 12 | 13 case.

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

Fees	\$8,472.00
Costs and Expenses	\$131.45

~~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 Bacheki, Crom & Co. LLP (“Applicant”), Accountant for Hank Spacone, 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 Bacheki, Crom & Co. LLP is allowed the following fees and expenses as a professional of the Estate:~~

~~Bacheki, Crom & Co. LLP, Professional employed by the Chapter 7 Trustee~~

~~Fees in the amount of \$8,603.45~~

~~Expenses in the amount of \$131.45,~~

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

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, parties requesting special notice, and Office of the United States Trustee on November 26, 2019. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

<p>The Motion for Sanctions for Violation of the Automatic Stay is XXXXX.</p>

The present Motion for Sanctions for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Gary Farrar, the Chapter 7 Trustee in this case ("Trustee"). The claims are asserted against the Debtor, Daisy Cuaresma ("Respondent").

In the Motion, the Chapter 7 Trustee states with particularity, (Fed. R. Bankr. 9013) the following grounds and relief requested:

- A. This court entered an order on October 28, 2019, compelling Debtor to turn over certain real property on or before noon on Friday November 15, 2019.
- B. The property ordered to be turned over specified in this court's prior Order, Dckt. 62, is identified as:

1. the Funds consisting of: "Investment with Trust Investment & Crypto Company, with bit coins, through a Chung Lee A" valued at \$823,409.20, listed in the Debtor's Amended Schedule A/B (Docket 43), or the value thereof;
2. Copies of all checks, wire transfer receipts, or transfer receipts for transfers of \$2,000 or more from or to any bank or retirement account controlled by the Debtor during the 4 years pre-petition (excluding pay checks received by the Debtor, rent or mortgage payments, car payments, utilities and other ordinary household expenses, and regular retirement account contributions);
3. Account statements for all financial accounts, including bank and retirement accounts, in which the Debtor had an interest during the 4 years pre-petition;
4. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for all transfers from or to any "cryptocurrency" exchanges or platforms, including but not limited to Gemini Trust Co., Signature Bank, Silvergate Bank, and any similar platforms;
5. Account statements for any account held or previously held with the above entities;
6. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers by the Debtor to or for the benefit of any familial relative during the 4 years pre-petition;
7. All written communications of any kind with Chung Lee (or any similar spelling), or any entity in which she has an interest, and all known contact information of any kind for same;
8. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers to for the benefit of Chung Lee (or any similar spelling), or any entity in which she has an interest;
9. Account statements for any funds transferred to for the benefit of Chung Lee (or any similar spelling), or any entity in which she has an interest;
10. All written communications of any kind with any real estate agent, buyer, or seller of 16922 Rail Way, Lathrop, California;
11. Copies of any tax liens released through escrow in connection with sale of 16922 Rail Way, Lathrop, California;
12. Copies of all checks, wire transfer receipts, or transfer receipts or confirmations, for transfers between the Debtor, as seller, and any buyer or real estate agent for 16922 Rail Way, Lathrop, California;
13. Lease agreement for of 16922 Rail Way, Lathrop, California; and

14. Identification of and access information to any cryptocurrency "wallet," including public or private keys, in which the Debtor had in interest during the 4 years pre-petition, as well as the username and password for any portfolio/account related to the Funds

The Trustee alleges that Debtor has failed or refused to comply with the court's order and Subpoena issued for production.

Response Filed by Debtor

Debtor's counsel filed his own declaration in response. Dckt. 72. In it, Debtor's counsel takes it upon himself to provide purported personal knowledge testimony:

- A. Debtor invested over \$800,000 in bit coins between 2016 and 2019.
- B. Debtor has filed all tax returns since 2016.
- C. Debtor worked as a registered nurse and failed to have income taxes withheld, which resulted in over \$300,000 owed to the Internal Revenue Service and California Franchise Tax Board .
- D. Debtor began working two jobs and earning over \$300,000 a year.
- E. Debtor now works one job and earns less than \$100,000 a year.
- F. Debtor attended two 341 meetings, both of which lasted more than two hours. Debtor has provided 500 pages of documents, including four years of bank statements, tax returns, and the closing documents on his house.
- G. Trustee and Trustee's counsel conducted an informal telephonic examination of Debtor with Debtor's counsel present.
- H. Debtor lost \$200,000 from her bit coin account due to the bit coin bank manager stealing it.
- I. The Trustee could easily intercept the bit coin liquidation and obtain it for the bankruptcy estate.
- J. No further questioning of Debtor is appropriate.

Other than with respect to the 341 meetings and the telephonic questioning, it is unclear how Debtor's counsel has personal knowledge of the financial and bit coin "facts."

LEGAL STANDARD

A request for an order of contempt by a debtor, United States Trustee, or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. FED. R. BANKR. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283–85 (9th Cir. 1996).

DISCUSSION

At the hearing, XXXXXXXXXXXXXXXXXX

5. 19-26617-A-7
CLH-1

LAYLA GUTIERREZ
Pro Se

**MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-27-19 [22]**

INCOME BOOSTER #1 LLC VS.

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

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 (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on November 27, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

Income Booster #1 LLC (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 45047 Vine Cliff Street, Temecula, California (“Property”).

Movant contends that Layla Gutierrez (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property. Movant does not present evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Riverside and received a

judgment for possession, with a Writ of Possession having been issued by that court on October 25, 2019. Exhibit E, Dckt. x24.

While the Motion alleges the above and much more, no testimony is provided in the form of a declaration providing evidence of such.

Movant has also filed thirty-three pages of exhibits, none of which are authenticated as required by Federal Rules of Evidence 901 et seq. There are just filed with the court. Dckt. 24.

The court not having been presented with any testimony or authenticated evidenced to support the long and detailed set of allegations in the Motion, the court declines granting relief merely because it was requested in the Motion.

Though the court could assume that all of the alleged facts are true, it is striking that no testimony is provided. It is thunderous in its absence that none of the documents are authenticated.

The Motion is denied without prejudice.

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

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

The Motion for Relief from the Automatic Stay filed by Income Booster #1 LLC (“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 Relief from Automatic Stay is denied without prejudice.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 25, 2019. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

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

<p>The hearing on the Objection to Claimed Exemptions is continued to January 8, 2020 at 10:30 a.m.</p>
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Continuance of December 12, 2019 Hearing

Pursuant to the Motion of the Chapter 7 Trustee, the court has continued the hearings on the Motions to Approved Compromises which, if approved, then resolve this Objection. Therefore, the court continues the hearing on this Motion.

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, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on September 10, 2019. By the court's calculation, 93 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 of First Bank is overruled without prejudice.

Leslie Ann Ray, Chapter 7 Debtor, ("Objector") requests that the court disallow the claim of First Bank ("Creditor"), Proof of Claim No. 2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$282,077.31. Objector asserts that the only basis for the alleged debt is listed as "equitable indemnity" and the Creditor fails to include sufficient supporting information for the claim except for a copy of a dismissed adversary proceeding filed against Debtor. Further, Creditor does not provide evidence that a debt is owned by Debtor to Creditor.

Creditor's Opposition

On November 27, 2019, Creditor filed an Opposition to Debtor's Objection. Dckt. 74. Creditor also filed an amended proof of claim that same date.

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.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

Creditor and Movant were engaged in litigation at the beginning of this year. Case No. 18-02192. The adversary proceeding was dismissed by stipulated order on January 29, 2019 where Creditor and Movant submitted to dismiss without prejudice. The original Proof of Claim filed by Creditor was filed shortly thereafter on February 22, 2019. The original proof of claim was based on the Adversary Proceeding.

The objection is based on Creditor's proof of claim lacking supporting evidence for their "equitable indemnity" grounds stated in the proof of claim. Creditor's original proof of claim only included a copy of the now dismissed complaint.

On November 27, 2019, Creditor filed an amended proof of claim to which there are four (4) attachments, totaling 149 pages.

The Objection to the Proof of Claim is overruled without prejudice. Movant can review the amended proof of claim and attached documents, and proceed from there with an objection on the merits, if warranted.

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 Objection to Claim of First Bank ("Creditor"), filed in this case by Leslie Ann Ray, 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 of Creditor is overruled without prejudice.

Attorney's fees and costs, if any, shall be requested as provided by Federal Rule of Civil Procedure 54 and Federal Rules of Bankruptcy Procedure 7054 and 9014.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on August 12, 2019. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is XXXXXXXXXXXXXXXXXX.

This Motion requests an order avoiding the judicial lien of Tri Counties Bank ("Creditor") against property of the debtor, David Holden Wood and Harmony Ann Wood ("Debtor") commonly known as 17409 Lawrence Way, Grass Valley, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$26,488.91. Exhibit 2, Dckt. 36. An abstract of judgment was recorded with Nevada County on January 14, 2019, that encumbers the Property. *Id.*

CREDITOR'S OPPOSITION

Creditor filed an Opposition on August 29, 2019. Dckt. 44. Creditor argues the value of the Property is \$402,000.00, leaving equity for its lien. Creditor argues alternatively that an evidentiary hearing should be allowed for the purpose of determining the Property's value.

The Opposition is supported by the Declaration of Keith Scoles and Exhibits, all filed as one 13-page document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

The Declaration of Scoles presents testimony that he is a licensed residential appraiser, and that he generated a clear capital automated valuation model report on August 20, 2019, which resulted in an estimated value of \$402,000.00 for the Property.

DEBTOR'S REPLY

Debtor filed a Reply on September 12, 2019. Dckt. 45. Debtor argues that the testimony of Scoles is nothing more than he inputted data into a program, which program then generated its opinion of value. Debtor argues that Creditor misrepresents to the court that this is Scoles' opinion of value, where it is actually the opinion of a computer program. Debtor argues further that Scoles has not seen the Property.

DISCUSSION

Debtor's arguments are well-taken. Very little is offered in the Scoles Declaration to support Creditor's opinion of valuation. It appears Creditor's expert merely punched data into a program which generates estimated values based on recent comparables. However, that report appears to take in consideration almost no specifics about the actual Property other than its location, age, acreage, and square footage.

September 26, 2019 Continuance

The court continued this hearing to allow the Parties to obtain an appraisal. Nothing further has been filed.

At the December 12, 2019 hearing, the Parties reported to the court **xxxxxxxxxx**

9. <u>10-27435-E-7</u> <u>CLH-1</u>	THOMAS GASSNER Richard Chan	MOTION TO EXCUSE TURNOVER BY TRUSTEE OF THOMAS A. GASSNER TRUST DATED DECEMBER 30, 1992 11-14-19 [176]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Turnover has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be

the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Excuse Turnover is XXXXX.

Laura Strombom, Trustee of the Thomas A., Gassner Trust dated December 30, 1992, ("Movant") in the above entitled case and moving party herein, seeks to be excused from an order for turnover as to assets of the Thomas A. Gassner Trust, with a primary asset of 2,000 shares of class "B" non-voting stock in MEPCO, which represents 33 1/3 percent of the total outstanding MEPCO stock ("Property").

Trustee's Opposition

On November 26, 2019, Trustee filed an Opposition to the Motion to Excuse Turnover. Dckt. 182.

Interested Party's Opposition

On November 27, Interested Party Georgene Gassner filed an Opposition. Dckt. 185.

Movant's Reply to Oppositions

On December 5, 2019, Movant filed one Reply addressing both Oppositions. Dckt. 187.

Review of the Motion

Background

Movant is the Trustee of the Thomas A. Gassner Trust dated December 30, 1992 ("Trust"). Debtor in the current proceeding was the sole beneficiary of the Trust. The Trust provides that upon Debtor reaching the age of 50, the Trust would terminate and Debtor was to receive all the assets contained in the Trust. Debtor commenced the current bankruptcy proceeding on March 25, 2010. Debtor was granted a discharge on July 12, 2010. Debtor had failed to disclose his interest in the Trust.

On May 10, 2016, the settlors of the trust initiated probate action in San Joaquin County seeking to modify the Trust, suspend distribution of the assets of the Trust pending resolution of the modification, and requested an order approving the sale of the Trust assets, to which the Debtor objected to as the sole beneficiary of the Trust.

On July 2, 2016, Debtor turned fifty (50) but Movant never distributed any Trust assets to Debtor.

On February 1, 2017, Debtor reopened his bankruptcy case. On February 10, 2017, Debtor filed an amended Schedule B disclosing his interest in the Trust.

Debtor died on October 15, 2017. Movant never disbursed the Trust top

The Trustee in this proceeding filed an Adversary Proceeding against the settlors and Movant on January 7, 2019 seeking Movant's account for and delivery to the Trustee of the Property or the value of the Property pursuant to 11 U.S.C. § 542(a).

Movant's Argument

Movant argues that she should be excused from turning over the Property on the basis that she owes fiduciary duties to persons other than Debtor. Movant asserts that such duties extend to the settlor of the Trust (Carol Gassner and Alfred Gassner), the San Joaquin County Superior Court - Probate Division, and to Georgene Gassner, the Successor Trustee of the Thomas Gassner and George Gassner Family Trust. Further, Movant argues that due to a stipulation entered into on October 4, 2016, Debtor (in conjunction with the settlors and Movant) stipulated to an order instructing Movant to suspend distribution of the Trust and to retain the assets of the Trust Estate until the pending Petition for Modification was resolved.

Additionally, Movant argues that permitting the Trustee to continue in possession, custody, or control of the Property would be in the best interest and for the protection of such other entities.

Trustee's Opposition

Trustee makes two arguments against Movant's motion.

First, Trustee argues that Movant is not a custodian subject to the provisions of 11 U.S.C. § 543. Trustee turns this court to *In re Reilly*, 105 B.R. 59,61 (Bankr. D. Mont. 1989) where the court stated that "the term 'custodian' normally refers to entities who have been authorized to liquidate or otherwise take charge of a debtor's property for the benefit of a general body of creditors." Opposition, 3-4. In that case, the court further stated that "a custodian is primarily concerned with the pre-petition liquidation of a debtor's property or the protection of creditor's rights." *Id.* at 4.

Trustee asserts that Movant does not fit the definition of custodian in a bankruptcy proceeding as she was not appointed by a proceeding under the Bankruptcy Code but that she is merely a successor trustee under a trust agreement.

Second, Trustee argues that Movant is required to deliver to the Trustee, and account for, the Property or its value pursuant to 11 U.S.C. § 542 on the basis that Movant admitted in her Answer to Trustee's Complaint in the Adversary proceeding that Debtor's legal or equitable interests in the Trust became part of the Estate upon Debtor's commencement of the bankruptcy case. *Id.* at 4. Further, Trustee contends that the San Joaquin state court action constituted a violation of the automatic stay and thus Movant is not bound from compliance with her duties to the Bankruptcy Code. *Id.* at 5.

Trustee alleges that settlors knowingly and willfully committed an act in violation of the automatic stay when they commenced and continue the San Joaquin action. *Id.* Therefore, San Joaquin action and activities related to it were void ab initio. Because of this, Movant has no basis for arguing that her obligations are to the San Joaquin Superior Court or parties interested in that void action's outcome. *Id.*

In short, Trustee contends that the Motion should be denied because Movant does not hold the status of a custodian under either §§543(a), (b), or (c), and Movant has no basis to believe that she has duties to the San Joaquin Court or other parties in a void state action.

Interested Party's Opposition

Interested Party Georgene Gassner ("Interested Party") echoes both of Trustee's basis for denying the Motion. Opposition, 4-6. But further argues that Movant should not be allowed to escape liability for the damage she has caused through a Motion that is now more than 2 ½ years late. *Id.* at 7. Additionally, Interested Party adds that Movant did not plead her current argument as an affirmative defense in either of the adversary proceedings. *Id.*

DISCUSSION

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

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

In this case, Movant seeks to be excused from turning over Property that is the issue of Trustee's Complaint in Adversary Proceeding 2019-02206 filed on January 7, 2019. The Trustee seeks to compel Movant ("Debtor") to deliver the Property.

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor's bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

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

Pending Adversary Proceeding

The dispute over ownership of the 2,000 shares of class "B" non-voting stock in MEPCO is the subject of a pending adversary proceeding. The court will have to determine ownership of the shares, pursuant to the exclusive grant of jurisdiction pursuant to 28 U.S.C. § 1334(e) when it comes to property of the bankruptcy estate, and determining what is property of the bankruptcy estate.

Here, the 2,000 shares must be held and protected from loss or diminution in value pending that litigation. In the context of that litigation, the court will have to determine who, if not the Trustee, holds the shares, whether a bond is required, and what further restrictions or affirmative duties will be imposed.

At the December 12, 2019 hearing, **XXXXXXXXXXXXXX**

Tentative Ruling: The Motion to Abandon has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 8, 2019. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment 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.

Pursuant to the prior Order of the court (Dckt. 31), the hearing on the Motion to Compel Abandonment has been continued to January 8, 2020 at 10:30 a.m.

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 Taylor Alexis Rankins (“Debtor”) requests the court to order Sheri L. Carello (“the Chapter 7 Trustee”) to abandon property commonly known as the daycare provider under the fictitious business name of Little Me Preschool (“Property”). The Declaration of Nicholas Wajda has been filed in support of the Motion and states that the business listed in Debtor’s schedules is nothing more than a name and seeing as debtor operates as a sole-proprietor there is no actual legal entity that would be capable of owning any assets. Further, the sole-proprietorship has no value to the bankruptcy estate and Debtor wishes to resume doing business under this fictitious business name.

Unfortunately, the witness explaining the business is not the Debtor who has personal knowledge of the business, but her bankruptcy attorney. In the Declaration Mr. Wajda, Debtor’s attorney, “testifies” that Debtor’s sole proprietorship is “nothing more than a name and seeing as the debtor operates a sole-proprietorship there is no actual legal entity that would be capable of owning any assets.” Dckt. 19.

First, nothing in the Declaration shows that Mr. Wajda has any personal knowledge of the “fact” that it is a sole proprietorship and it is “nothing more than a name.” Such personal knowledge is required of a witness to testify in federal court. Fed. R. Evid. 601 *et seq.* Second, given that Mr. Wajda “testifies” that Debtor operates a sole proprietorship, there is an entity, the Debtor, who is capable of owning assets relating to the business. Being an attorney for a party does not render counsel the “super witness” to provide testimony in lieu of the person who has personal knowledge.

The Motion requests that the “business” be ordered abandoned. However, the motion is not clear as to what the “business” is. On the one hand, the Motion could be read to seek the abandonment of the business name, and nothing else. See Motion ¶ 6, Dckt. 17, stating “[t]here is no value to the bankruptcy estate as it is simply a business name.” So the court could order the abandonment of the name and nothing else. Thus, while having the “name,” if there is any other property used in the business, such as blocks, mats, towels, puzzles, toys, and the like, such would not be abandoned and could not be used by the Debtor.

But then the Motion makes the conflicting statement that Debtor “[w]ishes the business to be abandoned so that the Debtor may resume her business under this name.” *Id.*, ¶ 7. This could be read to say that there are more, unidentified assets to be abandoned, and if the court merely says “the business is abandoned,” the court has no idea what it is ordering to be abandoned.

The person who has personal knowledge, the Debtor is “missing in action,” unable or unwilling to provide the necessary testimony under penalty of perjury to grant the relief requested.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2019. By the court's calculation, 43 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, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Rewards Network Establishment Services Inc. ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Settlor's \$80,000 claim secured by Debtor's personal property, perfected by a UCC-1 financing statement filed in April 16, 2018 and Settlor's assertion of a replacement lien against proceeds of a credit card issuer refund of \$50,000.00 and an unresolved claim related to pre-petition escrow funds of \$56,000.00.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 116):

- A. Settlor shall be allowed (a) a \$37,500.00 secured claim against the Issuer Refund payable within 14 calendar days of the approval of the order becoming final and non-appealable, and (b) a \$37,500.00 Chapter 7 administrative claim subordinated to all other Chapter 7 administrative

claims, payable from available funds in accord with the provisions of 11 U.S.C. § 726.

B. The parties shall exchange mutual releases.

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.

Under the terms of the settlement, all claims of the Estate, including any pre-petition claims of Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

Trustee has been advised that Settlor properly perfected its lien and the estate does not have a strong argument for disputing the same.

Difficulties in Collection

This factor is neutral as the Trustee is the party making the payment.

Expense, Inconvenience, and Delay of Continued Litigation

As previously stated, Trustee has been advised that the estate does not have a strong argument for disputing the claim and the delay of prosecuting the claim would be a serious detriment to the estate. The Agreement avoids the expense and delay associated with any further litigation.

Paramount Interest of Creditors

It is the Trustee's opinion that the Agreement is in the best interest of the estate because it avoids any future litigation expenses associated with any potential claim objections while also relieving the remaining estate assets of Settlor's lien. As such, the Agreement is in the paramount interest of creditors.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it avoids future litigation expenses associated with Settlor's lien, relieves the remaining assets, and mutual releases will be exchanged. The Motion is granted.

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 Compromise filed by Kimberly J. Husted, 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 Rewards Network Establishment Services Inc. ("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 A in support of the Motion (Dckt. 116).

WILMINGTON SAVINGS FUND
SOCIETY FSB VS.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on November 15, 2019. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

Wilmington Savings Fund Society ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3054 Elda Ln., Santa Cruz, California ("Property"). The moving party has provided the Declaration of Trace D. Alexander to introduce evidence as a basis for Movant's contention that Holly Stair ("Debtor") does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on Date of Trustee's Sale. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Santa Cruz.

Movant has provided a copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. This Deed is "authenticated" only by Movant's attorney who was hired to seek this relief from stay. Declaration, ¶ 4. Movant's attorney then "testifies" that Movant is the owner of the Property.

The court is unsure what personal knowledge Movant's attorney has concerning the authenticity of the Deed. The attorney is not the owner of the Property. The attorney does not testify that the attorney received possession of the deed upon Movant's purchase of the Property.

Attached to the attorney's three page declaration are twenty-two pages of exhibits. These are not filed as a separate exhibit document as required under Local Bankruptcy Rule 9006-1 and 9014-1.

Movant's attorney provides testimony about unlawful detainer proceedings whereby Movant seeks to obtain possession of the Property. Movant's attorney is the attorney appearing on those pleadings seeking relief in the state court for Movant.

Though the Trustee's Deed is not authenticated by someone with personal knowledge of it (rather, it appears that Movant's attorney would only know of it based upon what the attorney was told by someone else), there is evidence of Movant seeking and asserting ownership interests and rights in the Property.

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8-9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Request for Waiver of Fourteen-Day Stay of Enforcement

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

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Wilmington Savings Fund Society FSB (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 3054 Elda Ln., Santa Cruz, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 21, 2019. 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, -----

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

Hughes Law Corporation, the Attorney ("Applicant") for Kimberly J. Husted, the Chapter 7 Trustee("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 19, 2016, through December 27, 2017. The order of the court approving employment of Applicant was entered on May 16, 2016. Dckt. 27. Applicant requests fees in the amount of \$56,473.00 and costs in the amount of \$62.30. However, multiplying the time spent by each biller and the biller's hourly rate, the calculation is for \$56,385.50 in fees, a small difference.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include general case administration and efforts to sell property of the estate as detailed below. The Estate has \$238,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 131.80 hours in this category. Applicant communicated with Debtor and counsel; prepared and reviewed discovery; reviewed and analyzed value of Debtor's assets; reviewed and analyzed agreements between Debtor and two relevant corporation; prepared Rule 2004 examination application to obtain records; served subpoenas; reviewed and analyzed financial materials as to corporations involved; communicated with financial institutions and owners regarding documents; and prepared stipulation to extend deadline to object to Debtor's discharge.

Efforts to Sell Property of the Estate: Applicant spent 60.30 hours in this category. Applicant, as it pertained to Les Baux Restaurant and Fulcrum Industries, communicated with Trustee regarding strategy for the sale of the restaurant; researched various landlord/tenant issues; communicated with Debtor and third party regarding both businesses; communicated and met with Les Baux's landlord; communicated with broker regarding potential sale of assets; and prepared agreement to sell and motion to approve sale of Fulcrum Industries.

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
Gregory Hughes	6.8	\$420.00	\$2,856.00
Christopher Hughes	179.9	\$295.00	\$53,070.50

Costs and Expenses \$62.30

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 Hughes Law Corporation (“Applicant”), Attorney for John Roberts, 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 Hughes Law Corporation is allowed the following fees and expenses as a professional of the Estate:

Hughes Law Corporation, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$56,385.50

Expenses in the amount of \$62.30,

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

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, creditors, parties requesting special notice, and Office of the United States Trustee on November 21, 2019. 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, -----

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

Crowe LLP, the Accountant ("Applicant") for Name of Client, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 19, 2017, through April 30, 2018. The order of the court approving employment of Applicant was entered on September 19, 2019. Dckt. 140. Applicant requests fees in the amount of \$32,226.00 and costs in the amount of \$20.60.

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 forensic accounting-- specifically, gathering, recording, and assessing two corporations financial information and accounting procedures to ensure the information provided to a potential buyer was accurate, assisting the Trustee in determining both of the corporations' cash flow from operations, and forensic and information technology services including the acquisition and preservation of certain electronic files. The Estate has \$238,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Evaluation and Sale of Debtor's interest in WOGT Corporation: Applicant spent 100.8 hours in this category. Applicant provided the following services: communicated with Trustee Roberts and/or his attorney regarding facts of the case, and responding to information requests regarding analysis of WOGT's and Capricorn's books and financial records including certain electronic files and responding to forensic accounting and information technology requests; communicated with counsel for Trustee Roberts regarding forensic accounting data and analysis and cash flow analysis; converted and formatted data; reviewed and analyzed of WOGT's and Capricorn's data, including case documents, tax returns, financial documents, and accounting records including bank statements; prepared and revised of analysis provided; prepared for presentations, phone conferences, and meetings; created schedules and reconciliation; created backups from Sage accounting software, including trial environment, verification, and delivery; and, preserved and backup of data.

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
Tim Bryan	5.1	\$475.00	\$2,422.50
Bernard Costich	8.5	\$500.00	\$4,250.00
Aaron Reyes	21.3	\$350.00	\$7,455.00
Brian Jordan	4.7	\$280.00	\$1,316.00
Mai Nguyen	60.7	\$275.00	\$16,692.50

Susan Szabo	0.5	\$180.00	\$90.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$32,226.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$20.60 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Pacer		\$20.60
		\$0.00
Total Costs Requested in Application		\$20.60

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$32,226.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of \$20.60 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$32,226.00
Costs and Expenses	\$20.60

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 Crowe LLP (“Applicant”), Accountant for John Roberts, 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 Crowe LLP is allowed the following fees and expenses as a professional of the Estate:

Crowe LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$32,246.60

Expenses in the amount of \$20.60,

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 21, 2019. 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, -----

-----.

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

Nossaman LLP, the Attorney("Applicant") for John Roberts and Kimerly Husted, the former and current Chapter 7 Trustees ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 3, 2017, through November 20, 2019. The order of the court approving employment of Applicant was entered on March 29, 2017. Dckt. 119. Applicant requests fees in the amount of \$77,976.00 and costs in the amount of \$131.41.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

A review of the application shows that Applicant's services for the Estate include general case administration; matters related to Les Baux Restaurant; forensic investigation of World Good Tastes, Inc., And Capricorn Coffee, Inc.; sale of world of Good Tastes, Inc.; analysis of claims and potential objections; and issues related to avoidable transfers. The Estate has \$238,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 81.70 hours in this category. Applicant Description of Major Services.

Les Baux Restaurant: Applicant spent 20.41 hours in this category. Applicant Description of Major Services.

Forensic Investigation of World Good Tastes, Inc. and Capricorn Coffee, Inc.: Applicant spent 31.4 hours in this category. Applicant Description of Major Services.

Sale of World of Good Tastes, Inc.: Applicant spent 89.60 hours in this category. Applicant Description of Major Services.

Analysis of Claims and Potential Objection: Applicant spent 3.60 hours in this category. Applicant Description of Major Services.

Avoidable Transfers in their capacity as special counsel:

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
Christopher Hughes	215.70	\$350.00	\$75,495.00
Gabriela Perez	3.80	\$195.00	\$741.00
Joel Guerra	6.40	\$195.00	\$1,248.00
Douglas Schwartz	.80	\$615.00	\$492.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$77,976.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$131.41 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Telephone Conferencing Services	N/A	\$13.65
Pacer		\$7.40
Postage		\$34.92
Court Call		\$30.00
Duplicating and printing costs of 458 copies at \$0.10 per copy		\$45.80
Total Costs Requested in Application		\$131.41

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 \$77,976.00 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 / Plan Funds] in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

Second and Final Costs in the amount of \$131.40 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$77,976.00
Costs and Expenses	\$131.40

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 Nossaman LLP (“Applicant”), Attorney for John Roberts and Kimerly Husted, the former and current Chapter 7 Trustees (“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 Nossaman LLP is allowed the following fees and expenses as a professional of the Estate:

Nossaman LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$77,976.00
Expenses in the amount of \$131.41,

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

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, creditors, and Office of the United States Trustee on November 21, 2019. By the court's calculation, 21 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, -----.

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

The Bankruptcy Code permits Michael P. Dacquist, 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 asset commonly known as a wrongful termination lawsuit against Winco ("Property").

The proposed purchaser of the Property is the Debtor, Cory Scott Madison, and the terms of the sale are:

- A. The Estate's interest is being sold "as is," where is" and "with all faults," without any warranty or representation by the Trustee or the Estate.
- B. The Purchase Price shall be \$20,000.00
- C. Trustee shall transfer the Sale Asset to the Debtor (or successful overbidder) pursuant to a Bill of Sale, without any warranties or representations and on an "AS IS" basis.

- D. In addition to making the payment of the Purchase Price to the Trustee, Debtor: (1) represents and agrees that he will not file any further amendment to his Schedule C with respect to the Sale Asset or any proceeds from the sale thereof, nor shall any such further amendment be filed on his behalf; (2) represents and agrees that he shall make no effort to assign, sell, transfer or encumber the Bankruptcy Estate's interest in the Sale Asset or any portion thereof, including proceeds therefrom, to any third party; (3) represents and agrees that he shall make no effort to obstruct or impede in any way the Trustee's right and ability to obtain payment of the Purchase Price when due pursuant to this Agreement; and (5) shall cooperate with the Trustee in effectuating the purposes of this Agreement.
- E. Trustee will not undertake any efforts to impair the Debtors' rights in and to the Sale Asset, except as may be provided for or otherwise impacted by this Agreement and any court order related thereto, and agrees to accept the Purchase Price for the Sale Asset in full satisfaction of the sale thereof.
- F. Each party shall bear their own attorneys' fees and costs as they relate to the sale and agreement.

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because Trustee has encountered a great degree in finding special counsel willing to prosecute this lawsuit and prosecuting it could potentially cause the Estate to incur greater administrative expenses, which it is unable to incur in this case.

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 Sell Property filed by Michael P. Dacquist, 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 Michael P. Dacquist, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Cory Scott Madison or nominee ("Buyer"), the Property commonly known as a wrongful termination lawsuit against Winco ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$20,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 27, and as further provided in this Order.

- B. The sale proceeds shall first be applied to closing costs, other customary and contractual costs and expenses incurred to effectuate the sale.
- D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

**NO TENTATIVES POSTED
FOR THE FOLLOWING:**

- | | | |
|--|---|---|
| 17. <u>14-21168</u> -A-7
<u>FF-2</u> | NINA GRASSLE
Gary Fraley | MOTION TO AVOID LIEN OF PATELCO
CREDIT UNION
10-29-19 <u>[25]</u> |
| 18. <u>19-25768</u> -A-7
<u>JHW-1</u> | ERYN BARRETT
Gary Fraley | MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-24-19 <u>[17]</u> |
| SANTANDER CONSUMER USA INC.
VS. | | |
| 19. <u>19-26668</u> -A-7
<u>RLC-1</u> | LINDSEY/MICHAEL FOLEY
Stephen Reynolds | MOTION TO COMPEL ABANDONMENT
10-31-19 <u>[7]</u> |
| 20. <u>12-23669</u> -E-7
<u>DNL-6</u> | CYNTHIA MARAL
Rajdep Chima | MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DESMOND, NOLAN,
LIVAICH & CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEES
ATTORNEY(S)
11-21-19 <u>[77]</u> |
| 21. <u>12-23669</u> -E-7
<u>DNL-7</u> | CYNTHIA MARAL
Rajdep Chima | MOTION FOR COMPENSATION BY THE
LAW OFFICE OF LAW OFFICES OF
GOODWIN AND ALEXANDER FOR
HARRISON L. GOODWIN, SPECIAL
COUNSEL(S)
11-21-19 <u>[83]</u> |
| 22. <u>19-25373</u> -A-7
<u>AP-1</u> | PHYLECIA SHERMAN
Nikki Farris | MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-8-19 <u>[14]</u> |
| JPMORGAN CHASE BANK, N.A.
VS. | | |
| 23. <u>18-20774</u> -A-7
<u>WF-5</u> | S360 RENTALS, LLC
W. Steven Shumway | MOTION BY W. STEVEN SHUMWAY TO
WITHDRAW AS ATTORNEY |

11-7-19 [317]

24. [19-26175](#)-E-11 [JGD](#)-2 ALMA CHAVEZ-NUNEZ
John Downing MOTION TO EMPLOY TRAVIS
THOMPSON AS ATTORNEY(S)
11-20-19 [23]
25. [19-26175](#)-E-11 ALMA CHAVEZ-NUNEZ
[JGD](#)-3 John Downing MOTION TO EMPLOY JOHN G
DOWNING AS ATTORNEY(S)
11-20-19 [27]
26. [19-26375](#)-A-7 JOSEPH/TONYA WHITWORTH
[TLA](#)-1 Thomas Amberg MOTION FOR SANCTIONS FOR
VIOLATION OF THE AUTOMATIC STAY
10-30-19 [13]
27. [19-21976](#)-E-7 CONQUIP, INC.
[DNL](#)-11 Eric Nyberg MOTION TO COMPROMISE
C O N T R O V E R S Y / A P P R O V E
SETTLEMENT AGREEMENT WITH
MCMASTER-CARR SUPPLY COMPANY
11-5-19 [112]
28. [19-21976](#)-E-7 CONQUIP, INC.
[RAL](#)-1 Eric Nyberg MOTION TO HAVE PROOF OF CLAIM
DEEMED TIMELY FILED
11-8-19 [119]
29. [19-26777](#)-A-7 MICHAEL/SAADIA MOORE
[SS](#)-1 Scott Shumaker MOTION TO VACATE DISMISSAL OF
CASE
11-27-19 [18]
- DEBTOR DISMISSED:
11/18/2019
JOINT DEBTOR DISMISSED:
11/18/2019
30. [10-29081](#)-E-7 MOHINDER SINGH AND
[GSS](#)-10 GURDEEP KAUR
Gurjit Srαι MOTION TO AVOID LIEN OF MESA
LEASING INC.
10-29-19 [72]
31. [10-29081](#)-E-7 MOHINDER SINGH AND
[GSS](#)-11 GURDEEP KAUR
Gurjit Srαι MOTION TO AVOID LIEN OF LEAF
FUNDING INC.
10-29-19 [64]

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|--|--|--|
| 32. <u>10-29081</u> -E-7
<u>GSS</u> -12 | MOHINDER SINGH AND
GURDEEP KAUR
Gurjit Srail | MOTION TO AVOID LIEN OF LYON
FINANCIAL SERVICES INC.
10-29-19 [<u>68</u>] |
| 33. <u>10-29081</u> -E-7
<u>GSS</u> -13 | MOHINDER SINGH AND
GURDEEP KAUR
Gurjit Srail | MOTION TO AVOID LIEN OF VALLEY
PACIFIC PETROLEUM SERVICES INC.
10-29-19 [<u>76</u>] |
| 34. <u>19-24886</u> -A-7
<u>BLF</u> -3 | STACIE FENDERSON
Brian Coggins | MOTION TO EXTEND TIME TO FILE A
MOTION TO DISMISS CASE UNDER
SEC. 707(B) AND/OR MOTION TO
EXTEND DEADLINE TO FILE A
COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
11-5-19 [<u>28</u>] |
| 35. <u>17-22887</u> -E-7
<u>DBJ</u> -4 | SEAN STODDARD
Michael O'Dowd | MOTION FOR CONTEMPT AND/OR
MOTION FOR SANCTIONS
10-10-19 [<u>60</u>] |
| 36. <u>17-20689</u> -A-7
<u>DNL</u> -23 | MONUMENT SECURITY, INC.
Matthew Eason | MOTION FOR AUTHORITY TO USE
ESTATE FUNDS
11-5-19 [<u>770</u>] |
| 37. <u>15-29890</u> -A-7
<u>FSL</u> -1 | GRAIL SEMICONDUCTOR
Paul Pascuzzi | MOTION TO COMPROMISE
C O N T R O V E R S Y / A P P R O V E
SETTLEMENT AGREEMENT WITH
RONALD HOFER
11-8-19 [<u>1360</u>] |
| 38. <u>18-27592</u> -E-7
<u>MOH</u> -1 | JASON/MARY KOENIG
Michael O'Dowd | MOTION TO COMPEL ABANDONMENT
11-7-19 [<u>48</u>] |
| 39. <u>19-26592</u> -A-7
<u>TRM</u> -1 | LAWANNA KINDLE-BROWN
Pro Se | MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-30-19 [<u>14</u>] |
- GARDEN VILLAGE ASSOCIATES,
LP VS.**

- | | | |
|---|---|---|
| 40. <u>17-25395</u> -A-7
<u>DNL</u> -2 | STEPHANIE/COREY SHEPHERD
Stephen Reynolds | MOTION FOR COMPENSATION FOR
BACHECKI, CROM & CO., LLP,
ACCOUNTANT(S)
10-22-19 [<u>38</u>] |
| 41. <u>17-25395</u> -A-7
<u>DNL</u> -3 | STEPHANIE/COREY SHEPHERD
Stephen Reynolds | MOTION FOR COMPENSATION FOR
SUSAN K. SMITH, CHAPTER 7
TRUSTEE(S)
10-22-19 [<u>43</u>] |
| 42. <u>19-26699</u> -E-7 | DALLAS JEPSEN
Richard Hall | ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-12-19 [<u>12</u>] |

FINAL RULINGS

43. [19-20902](#)-A-7
[DMW](#)-4

ARTHUR/MARJORIE DRUMM
David Boucher

MOTION FOR COMPENSATION FOR
GABRIELSON & COMPANY,
ACCOUNTANT(S)
10-24-19 [\[39\]](#)

Final Ruling: No appearance at the December 12, 2019 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, and Office of the United States Trustee on October 22, 2019. By the court’s calculation, 51 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.
--

Gabrielson & Company, the Accountant (“Applicant”) for Douglas M. Whatley, [the Chapter 7 Trustee (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 29, 2019, through September 16, 2019. The order of the court approving employment of Applicant was entered on September 13, 2019. Dckt. 38. Applicant requests fees in the amount of \$1,935.50 and costs in the amount of \$109.43.

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 accounting and tax matters, mainly preparing federal and California corporation income tax returns. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Income Tax Returns: Applicant spent 3.6 hours in this category. Applicant prepared first and final August 31, 2019 federal and California estate tax returns for the separate taxable estates of Arthur Drumm and Marjorie Drumm.

Administrative Functions: Applicant spent 1.3 hours in this category. Applicant prepared accountant declaration and related employment documents for trustee review and prepared first and final fee application, including detailed description of tax services.

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
Michael Gabrielson	4.9	\$395.00	\$1,935.50
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$1,935.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$109.43 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying/ \$0.20 per page	N/A	\$78.40
Postage	N/A	\$31.03
		\$0.00
Total Costs Requested in Application		\$109.43

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$1,935.50 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.

Costs & Expenses

For copy costs, Applicant is charging the bankruptcy estate \$0.20 per page. No evidence is provided that the cost of generating copies is \$0.20 per page. Absent such showing, the court allows \$0.10 per page. (As to the “administrative cost” of a clerical person putting the documents into the feeder and pushing start are presumably included in the \$395.00 hourly rate charged by the professional.) After reducing the costs by \$39.20 to allow for \$0.10 per page for copies, First and Final Costs in the amount of \$70.23 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	\$1,935.50
Costs and Expenses	\$70.23

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 Gabrielson & Associates (“Applicant”), Accountant for Douglas M. Whatley, 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 Gabrielson & Associates is allowed the following fees and expenses as a professional of the Estate:

Gabrielson & Associates, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$1,935.50

Expenses in the amount of \$109.43,

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

LAKEVIEW LOAN SERVICING, LLC
VS.

Final Ruling: No appearance at the December 12, 2019 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, and Office of the United States Trustee on October 25, 2019. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Lakeview Loan Servicing (“Movant”) seeks relief from the automatic stay with respect to Joaquin Mendoza Mora and Desiree Vinette Mora’s (“Debtor”) real property commonly known as 1706 Brodea Lane, Rocklin, California (“Property”). Movant has provided the Declaration of Ashley N. Rouse to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made three (3) post-petition payments, with a total of \$7,243.53 in post-petition payments past due. Declaration, Dckt. 29.

CHAPTER 7 TRUSTEE’S NON-OPPOSITION

Kimberly J. Husted (“the Chapter 7 Trustee”) filed a Non-Opposition on November 2, 2019. Trustee’s November 2, 2019 Docket Entry Statement.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$405,862.09 (Declaration, Dckt. 29), while the value of the Property is determined to be \$499,217.00, as stated in Schedules B and D filed by Debtor.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

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

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Here, using Debtor’s valuations, there could be equity in the Property. Debtor’s Schedule states the value of the Property to be \$499,217.00. Movant, on the other hand, submits that the value is \$485,000.00 according to the Broker’s Price Opinion obtained by Movant. Dckt. 30, Exhibit 5.

The test under 11 U.S.C. § 362(d)(2) is in the conjunctive. The statute reads:

(d)On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) [...]

(2)with respect to a stay of an act against property under subsection (a) of this section, if—

- (A)the debtor does not have an equity in such property;
and
- (B)such property is not necessary to an effective reorganization;

11 U.S.C. § 362(d)(2) (Emphasis added.).

Thus, Movant must meet both elements. There seems to be equity even if the amount is debated. However, such property is not *per se* necessary and Trustee presents non-opposition to this Motion.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Request for Waiver of Fourteen-Day Stay of Enforcement

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

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

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Lakeview Loan Servicing (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 1706 Brodea Lane, Rocklin, California,

(“Property”) to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

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

No other or additional relief is granted.

45. [19-23519-A-7](#)
[BLF-3](#)

MAIRA PINTO CHAVEZ DE GRIMA AND JOSE GRIMA
Seth Hanson

CONTINUED MOTION TO APPROVE STIPULATION REGARDING DISTRIBUTION OF NET PROCEEDS OF SALE OF REAL PROPERTY
10-9-19 [\[58\]](#)

Final Ruling: No appearance at the December 12, 2019 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No 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 9, 2019. By the court’s calculation, 36 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.

<p>Pursuant to prior Order of the Court (Dckt. 81), the hearing on the Motion for Approval of Compromise has been continued to January 8, 2020 at 10:30 a.m.</p>

Final Ruling: No appearance at the December 12, 2019 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, creditors, and Office of the United States Trustee on November 7, 2019. By the court's calculation, 35 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.

Pursuant to prior Order of the court (Dckt. 82) , the hearing on the Motion for Approval of Compromise has been continued to January 8, 2020 at 10:30 a.m.

Final Ruling: No appearance at the December 12, 2019 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, parties requesting special notice, and Office of the United States Trustee on October 28, 2019. By the court's calculation, 45 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.

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

Geoffrey Richards, the Chapter 7 Trustee, ("Applicant") for the Estate of Mortimer James Jarvis and Arlene Ruth Jarvis ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period December 26, 2017, through October 28, 2019.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

- (i) unnecessary duplication of services; or
- (ii) services that were not—

- (I) reasonably likely to benefit the debtor's estate;
- (II) necessary to the administration of the case.

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

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 general case administration; liquidation of debtor's real property; turnover of cash and deposits; achieved compromise with Debtor's son as it related to a fraudulent transfer; and filed tax return on behalf of the estate. The Estate has \$32,481.70 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 provided, which are described in the following main categories.

General Case Administration: Applicant performed the following: opening the case and entering it into the trustee's case management software system, reviewing the petition and related schedules, reviewing mail, reviewing case with the attorney, preparing and conducting the 341 examination of debtors, preparing and filing Forms 1, 2 and 3 as required by the U.S. Trustee for successive annual periods, examining proofs of claims to eliminate duplication and to identify those claims that may be in addition to or in different amounts from claims listed on the debtor's schedules, preparing monthly bank reconciliations and proper accounting of all assets and disbursements made, preparing final accounting and maintaining a proper bond.

Liquidation of Debtor's Real Property: Applicant filed an objection to a motion to abandon the property and a compromise with a lien creditor. Additionally, Trustee performed the following: employment and management of counsel, accountant and realtor; negotiated the turnover on non exempt cash and depository assets of the debtor; Opposed debtor's motion to abandon real property; negotiated compromise with Indemnity Company of California who was a lien holder on property; negotiated lien with solar panel provider to facilitate the sale of the property; paid for property preservation services with personal funds; listed and negotiated the sale of debtor's interest in real property located at 1085 Marcia Avenue, Yuba City, CA in the amount of \$379,000; and reviewed and approved all documents regarding the sale of the real property prepared by counsel, the realtor, the title company, and other parties.

Other Services: Applicant achieved a compromise with debtor's son regarding a preference payment, and turnover of non exempt cash and deposits.

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 \$950,000.00	\$9,432.40
3% of the balance of \$0.00	\$0.00
Calculated Total Compensation	\$15,182.40
Plus Adjustment	\$0.00
Total Maximum Allowable Compensation	\$15,182.40
Less Previously Paid	\$0.00
<u>Total First and Final Fees Requested</u>	\$15,182.40

The fees are computed on the total sales generated \$413,648.06 of net monies (exclusive of these requested fees and costs), with an estimated gross value of \$38,850.51 remaining in claims currently being pursued.

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 \$15,182.40 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.

In this case, the Chapter 7 Trustee currently has \$32,481.70 of unencumbered monies to be administered. The Chapter 7 Trustee services include general case administration; liquidation of debtor's real property; turnover of cash and deposits; achieved compromise with Debtor's son as it related to a fraudulent transfer; and filed tax return son behalf of the estate.. Applicant's efforts have resulted in a realized gross of \$413,648.06 recovered for the estate. Dckt. 143.

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	\$15,182.40
Costs and Expenses	\$290.00

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 Geoffrey Richards, 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 Geoffrey Richards is allowed the following fees and expenses as a professional of the Estate:

Geoffrey Richards, the Chapter 7 Trustee

Fees in the amount of \$15,182.40
Expenses in the amount of \$290.00,

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.

Final Ruling: No appearance at the December 12, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor(*pro se*), Chapter 7 Trustee, creditors, and Office of the United States Trustee on October 18, 2019. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

The Motion for Denial of Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). 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 Denial of Discharge is granted.

Tracy Hope Davis, the Chapter 7 Trustee, ("Objector") filed the instant Motion for Denial of Debtor's Discharge on October 18, 2019. Dckt. 20.

Objector argues that Ferdinand Miguel Rebultan ("Debtor") is not entitled to a discharge in the instant bankruptcy case because Debtor previously received a discharge in a Chapter 7 case.

Debtor filed a Chapter 7 bankruptcy case on November 7, 2012. Case No. 12-39631. Debtor received a discharge on March 19, 2013. Case No. 12-39631, Dckt. 37.

The instant case was filed under Chapter 7 on July 29, 2019.

11 U.S.C. § 727(a)(8) provides that a court shall not grant a discharge if a debtor has received a discharge in a case filed under chapter 7 or 11 within eight years before the filing date of the instant case. 11 U.S.C. § 727(a)(8).

Here, Debtor received a discharge under 11 U.S.C. § 727 on March 19, 2013, which is less than eight years preceding the date of the filing of the instant case. Case No. 12-39631, Dckt. 37. Therefore, pursuant to 11 U.S.C. § 727(a)(8), Debtor is not eligible for a discharge in the instant case.

Therefore, the Motion is granted. Upon successful completion of the instant case (Case No. 19-24746), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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

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

The Motion for Denial of Discharge filed by Tracy Hope Davis, 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 Motion for Denial of Discharge is granted, and upon successful completion of the instant case, Case No. 19-24746, the case shall be closed without the entry of a discharge.

Final Ruling: No appearance at the December 12, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2019. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of Cavalry SPV I, LLC ("Creditor") against property of the debtor, Sharon Yvonne Berry ("Debtor") commonly known as 656 D Street, Galt, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,325.87. Exhibit D, Dckt. 34. An abstract of judgment was recorded with Sacramento County on May 24, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$225,000.00 as of the petition date. Dckt. 11. The unavoidable consensual liens that total \$119,815.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 11. Debtor has a 50% ownership interest in said property, with her interest worth \$112,500.00. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$125,000.00 on Schedule C. Dckt. 11.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Sharon Yvonne Berry ("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 Cavalry SPV I, LLC, California Superior Court for Sacramento County Case No. 34-2018-00235855, recorded on May 24, 2019, Document No. 201905241338, with the Sacramento County Recorder, against the real property commonly known as 656 D Street, Galt, 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.

Final Ruling: No appearance at the December 12, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 6, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to 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 Michael Lee Ragsdale and Kathryn Mae Ragsdale ("Debtor") requests the court to order Nikki B. Farris ("the Chapter 7 Trustee") to abandon property commonly known as Frosty's restaurant perishable and non-perishable assets, i.e. food and paper products ("Property"). The Declaration of Michael Lee Ragsdale and Kathryn Mae Ragsdale has been filed in support of the Motion and states that there is no monetary value to the Property.

On November 18, 2019, Trustee filed a statement of non-opposition. Trustee's November 18, 2019 Docket Entry Statement.

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.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not 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 Compel Abandonment filed by Michael Lee Ragsdale and Kathryn Mae Ragsdale (“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 Property identified as Frosty’s restaurant perishable and non-perishable assets, i.e. food and paper products as listed on Schedule A / B filed by Debtor are abandoned by the Chapter 7 Trustee, Nikki B. Farris (“Trustee”) to Michael Lee Ragsdale and Kathryn Mae Ragsdale by this order, with no further act of the Trustee required.

51. 19-26753-A-7 CJC-17	LEILANI LEVINGSTON Pro Se	MOTION FOR RELIEF FROM AUTOMATIC STAY 11-14-19 [16]
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HPA US1 LLC VS.

DEBTOR DISMISSED: 11/18/19

Final Ruling: No appearance at the December 12, 2019 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion for Relief from Automatic Stay having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

HONDA LEASE TRUST VS.

Final Ruling: No appearance at the December 12, 2019 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, and Office of the United States Trustee on November 8, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief from the Automatic Stay is granted.

Honda Lease Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Honda Accord, VIN ending in 0380 ("Vehicle"). The moving party has provided the Declaration of Name of Declarant to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Anna Marie Giancola ("Debtor").

Movant provides evidence that there are 8.48 pre-petition payments in default, with a pre-petition arrearage of \$2,933.33 plus late charges and fees of \$894.55. Declaration, Dckt. 11.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$21,519.99 (Declaration, Dckt. 11), while the value of the Vehicle is determined to be \$17,125.00 based on the NADA Used Car Guide report provided by Movant.

Movant has possession of the Vehicle as it was recovered pre-petition on October 21, 2019.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

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

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

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

The Motion for Relief from the Automatic Stay filed by Honda Lease Trust (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Honda Accord, VIN ending in 0380 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.