UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

December 15, 2022 at 10:30 a.m.

1.	**02-00901-E-0** **HMW-1**	**WORLD VISION ENTERTAINMENT, INC.**	**MOTION TO DETERMINE THE VALIDITY OF THE THIRD-PARTY CLAIM AND FOR THE PROPER DISPOSITION OF THE SUBJECT PROPERTY** **11-29-22 [28]**
	CLOSED: 02/22/2002		

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 Defendant, Defendant's Attorney, and Third Party Claimant on November 28, 2022. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

The Motion to Determine the Validity of the Third-Party Claim and for the Proper Disposition of the Subject Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Respondent and 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 Application for determination of claim of homestead exemption is
xxxxxxx

This Miscellaneous Proceeding arises from the domestication of a foreign judgment, from the U.S. Bankruptcy Court for the Middle District of Florida, in the amount of $3,597,557.00, against Lloyd Wilson d/b/a/ Lloyd's Financial Services. Dckt.1. The judgment is just for the monetary amount of $3,597,557.00. It is entered in the bankruptcy case for World Vision Entertainment, Inc., M.D. Fla. Case No. 99-7440.

The present pleading is a "Petition for Hearing on Third Party Claim," has been filed by Cadlerock Joint Venture II, LLP. A hearing is requested to be set for the court to determine the validity of a third party claim of exemption asserted by Karen Wilson in an unidentified asset. Dckt. 28.

A pleading docketed as a Support Document (Dckt. 30) is titled as a "Statement by Judgment Creditor Cadlerock Joint Venture ("Cadlerock" or "Judgment Creditor") in Opposition to Third Party Claim of Karen Wilson. This document is a declaration of Holly Walker, Esq., attorney for Cadlerock. Attorney Walker states that this "Statement"/Declaration is filed with the court pursuant to California Code of Civil Procedure § 720.280.

A second Support Document is filed, which is titled "Undertaking of Judgment Creditor re: Third Party Claim." Dckt. 31. Attorney Walker provides this to document that a $10,000.00 undertaking has been obtained for the benefit of Karen Wilson.

A third Support Document is filed, which is an Affidavit of Service re Undertaking. Dckt. 32.

Review of Statement by Judgement Creditor

The Statement by Judgment Creditor (Dckt 30), states that it has been filed pursuant to California Code of Civil Procedure § 728.280. Other than referencing this California Code of Civil Procedure, Cadlerock provides this federal court with no legal authorities, analysis, or explanation of the California exemption procedure process that it seeks to prosecuted in the Miscellaneous Proceeding.

Beginning with California Code of Civil Procedure § 728.280 stated as the basis for seeking relief in this court, that California Code of Civil Procedure section states:

> § 720.280. Statement concerning security interest
>
> At the time the creditor files an undertaking with the levying officer in response to a third-party claim by a secured party, the creditor shall do all of the following:
>
> (a) File with the levying officer a statement executed under oath that the security interest is invalid, that the security interest is not entitled to priority over the creditor's lien, or that the amount demanded in the claim exceeds the amount to which the secured party is entitled, for the reasons specified therein.
>
> (b) Serve a copy of the statement on the secured party. Service shall be made personally or by mail.
>
> (c) Serve a copy of the statement on the debtor. Service shall be made personally or by mail.

This does not appear to state a basis for seeking relief from this court. Reviewing California Code of Civil Procedure §§ 720.210 - 720.290, they relate to third-party claim of exemptions. Beginning with California Code of Civil Procedure § 720.210, it states that when personal property is subject to a judicial lien,

> [a] third party claiming a security interest in or lien on the personal property may make a third-party claim under this chapter if the security interest or lien is claimed superior to the creditor's lien on the property.

Moving to California Code of Civil Procedure § 720.310, California does provide for the filing of an Application for Hearing to be filed when a third-party claim is filed with the levying officer. It further states the hearing shall be held within 20 days, unless the court extends the time for cause.

IDENTIFICATION OF PARTIES
AND INTERESTS IN DISPUTE

Using the Statement by Judgment Creditor (Declaration of Attorney Walker) the court assembles the following basic facts at issue (emphasis added):

a. Cadlerock is the Judgment Creditor.

b. Judgement Creditor is seeking to enforce its Judgment by seeking to conduct a sale of the real property commonly known as 2001 E. Orangeburg Avenue, Modesto California ("Execution Property").

c. Karen Wilson, the "Third Party" claims to be the sole owner of the Execution Property and claims a homestead exemption therein.

d. Judgment Creditor disputes that Third Party's claim of sole ownership of the Execution Property, asserting that Third Party's interest was a community property interest when the Execution Property was levied on.

e. There is no divorce decree or other order granting Third Party exclusive "possession" of the Execution Property.

f. Third Party claims sole ownership of the Execution Property as part of a purported marital dissolution proceeding filed in February 2004.

g. No orders have been entered in the dissolution proceeding withy respect to the Execution Property.

h. Judgment Creditor's Judgment was entered on January 21, 2001 in the Middle District of Florida against Lloyd Wilson. The Judgment was registered with the Eastern District of California on February 21, 2002.

i. An abstract of judgment was recorded on January 4, 2015.

j. The Judgment was renewed on September 29, 2011, and again on April 21, 2021.

k. A Notice of Levy was recorded on October 26, 2022.

l. On November 14, 2022, Third Party filed a Third Party Claim with the U.S. Marshal (the levying officer).

m. Third Party claims a homestead exemption in the Execution Property.

n. Title to the Execution Property is current titled in the L. Wilson and K. Wilson, husband and wife, as joint tenants. A copy of the grant deed is provided as Exhibit F (Dckt. 33). The deed has a April 30, 1999 recording date.

o. Exhibit G is a Homestead Declaration dated April 20, 1999, which was recorded on April 21, 1999, signed by Karen Wilson (Third Party) and Lloyd Wilson. The description of the property in the Homestead Declaration is:

> Lot 65 in Block 1337 of Eastridge Plaza N.2, as per map thereof,
> Filed February 16, 1989, in volume 33 of maps, Page 65,
> Stanislaus County Records. Subject to a certificate of correction
> Recorded March 3, 1989 as Instrument No. 014819.

p. The Grant Deed for the Execution Property provides the following property description:

> Lot 66 in Block 1337 of Eastridge Plaza No. 2, as Per Map thereof,
> Filed. February 16, 1989 in Volume 33 of Maps, Page 65,
> Stanislaus County Records. Subject to a Certificate of Correction
> Recorded March 3, 1989 as Instrument No. 014819.

The property descriptions in the Grant Deed and the Homestead Declaration are identical, except one states "Lot 66" (the Grant Deed) and the other "Lot 65" (Homestead Declaration). The Grant Deed was recorded on April 30, 1998, and the Homestead Declaration was recorded on April 21, 1999, one year later.

q. There is no documentation that Third Party can show that she owns the Property as her separate property.

r. Third Party and Lloyd Wilson were still married when the levy was filed on October 26, 2022. (Judgment Creditor does not address what the effect is of the Abstract of Judgment on January 4, 2015.

s. There is no order granting Third Party the Property in the dissolution proceeding.

t. With respect to the homestead exemption being asserted, Judgement Creditor cites and quotes the following California Code of Civil Procedure sections:

> Cal. C.C.P. § 704.710(c) - Definition of Homestead
>
> (c) "Homestead" means the **principal dwelling** (1) in which the judgment **debtor or the judgment debtor's spouse resided** on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment

debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead . . . .

Cal. C.C.P. § 704.710(d) - Definition of Spouse

(d) "**Spouse" does not** include a married person **following entry of a judgment decreeing legal separation of the parties**, unless such married persons reside together in the same dwelling.

u. Third Party claims her exemption pursuant to California Code of Civil Procedure § 704.740, which provides in pertinent part:

§ 704.740. Court order for sale; Exemption claim where court order for sale not required

(a) Except as provided in subdivision (b), the interest of a natural person in a dwelling may not be sold under this division to enforce a money judgment except pursuant to a court order for sale obtained under this article and the dwelling exemption shall be determined under this article.

v. Judgment Creditor states that the Declaration of Homestead is prima facie evidence that Third Party and Lloyd Wilson (the Judgment Debtor) have a homestead exemption in the Execution Property.

Thus, we have the Judgment Creditor having a judgment lien against the 2001 E. Orangeburg Avenue, Modesto California property and is taking it to a judgment execution sale.

Karen Wilson, the Third-Party (not the Judgment Debtor) is stated by Judgment Creditor to be a co-owner of the Property. Third Party asserts a homestead exemption in the Property.

California Code of Civil Procedure provides for a non-judgment debtor to claim a homestead exemption in property that is the subject of an execution sale. The California Homestead Exemption law in effect when the Abstract of Judgment was recorded, California Code of Civil Procedure § 704.730(b), provided (emphasis added):

(b) Notwithstanding any other provision of this section, the combined homestead exemptions of spouses on the same judgment shall not exceed the amount specified in paragraph (2) or (3), whichever is applicable, of subdivision (a), regardless of whether the spouses are jointly obligated on the judgment and regardless of whether the homestead consists of community or separate property or both. **Notwithstanding any other provision of this article, if both spouses are entitled to a homestead exemption, the exemption of proceeds of the homestead shall be apportioned between the spouses on the basis of their proportionate interests in the homestead.**

Current California Code of Civil Procedure § 703.020 provides (emphasis added):

§ 703.020. Persons entitled to exemptions

(a) The exemptions provided by this chapter apply only to property of a natural person.

(b) The **exemptions provided in this chapter may be claimed by any of the following persons**:

(1) In all cases, by the judgment debtor or a person acting on behalf of the judgment debtor.

(**2) In the case of community property, by the spouse of the judgment debtor**, whether or not the spouse is also a judgment debtor under the judgment.

(3) In the case of community property, by the domestic partner of the judgment debtor, as defined in Section 297 of the Family Code, whether or not the domestic partner is also a judgment debtor under the judgment.

This is provided for further in California Code of Civil Procedure § 703.110(a), providing that the exemptions provided in Chapter 4 (which includes the homestead exemption "apply to all property that is subject to enforcement of a money judgment, including the interest of the spouse of the judgment debtor in community property. "

Thus, Judgment Creditor presents the court with evidence that Third Party is a co-owner of the Property, which is titled as "joint tenants," but it is community property for Third Party and the Judgment Debtor. California Family Code § 760 provides that all property obtained during the marriage is community property, unless otherwise provided by statute.

The Grant Deed provided by Judgment Creditor as Exhibit F expressly states that Lloyd Wilson (the Judgment Debtor) and Karen Wilson (the Third Party) took title to the Property April 30, 1998 as "Husband and Wife". Dckt. 33 at 22. By this Exhibit, Judgment Creditor establishes that Third Party is on title to the Property.

Judgment Creditor has an Exhibit E the U.S. Marshal Notice of the Claim of Exemption by Third. Dckt. 33 at 20. Judgment Creditor has not provided the court with a copy of the Claim of Exemption which is stated to be attached to the Notice.

On its face, it appearing that Judgment Creditor has established that Third Party as spouse can claim a homestead exemption in the community property. No evidence is presented that Third Party lives elsewhere.

Additionally, no evidence is provided concerning the two property descriptions.

At the December 15, 2022 hearing, **xxxxxxx**

2. **18-90029-E-11** **JEFFERY ARAMBEL** **MOTION TO COMPEL ABANDONMENT**
BJ-2 **Pro Se** **11-28-22 [1794]**

2 thru 3

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*), creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 28, 2022. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

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

The Motion to Compel Abandonment is granted.

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

The Motion filed by American AgCredit, FLCA ("Movant") requests the court to order Jeffery Arambel ("Debtor") to abandon any and all property commonly known as 6,187 acres of agricultural real property located in Stanislaus County ("Property"). Movant acquired title to the Property during February 2019 through a non-judicial foreclosure sale. Trustee's Deed Upon Sale, Exhibit 4, Dckt. 1797. Movant now desires to sell the Property.

Movant offered to Debtor / Debtor in Possession the Right of First Refusal on October 7, 2022. Exhibit 5, Dckt. 1797. Debtor submitted an offer on the Right of First Refusal on November 4, 2022.

Exhibit 6, Dckt. 1797. Debtor withdrew this offer by email on November 21, 2022. Strecker Declaration, Dckt. 1796 at ¶ 11. Movant has not submitted this email as an exhibit.

Under the confirmed Plan, Movant believes the Property has not revested to Debtor. Therefore, Movant seeks to abandon the Property to Debtor.

The court finds that the Property, title being held by Movant, is of inconsequential value and benefit to the Estate and orders the Plan Administrator, Focus Management Group USA, Inc., to abandon the property.

Counsel for Movant shall prepare and lodge with the court a proposed order consistent with the above Ruling.

3. 18-90029-E-11 FWP-13 — JEFFERY ARAMBEL, Pro Se — CONTINUED MOTION TO ABANDON 4-8-21 [1410]

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 Continued.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Abandon 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 Abandon is xxxxxxxxxxxx

PLAN ADMINISTRATOR STATUS REPORT
FOR THE DECEMBER 15, 2022 HEARING

On December 13, 2022, Focus Management Group USA, Inc., the Chapter 11 Plan Administrator filed in updated Status Report. Dckt. 1805. The Plan Administrator reports that American AgCredit has confirmed that the issues relating to the Lot Line Adjustment have resolved and the adjustment has been completed.

The Plan Administrator reports that with that completed, the Parties can proceed with a global settlement. The Plan Administrator requests that the hearing on this Motion be continued to the court's January 25, 2023 Calendar so that the Plan Administrator and the other parties can continue with the global negotiations.

At the hearing, December 15, 2022 hearing, **xxxxxxx**

REVIEW OF MOTION

The Motion filed by Focus Management Group USA, Inc. ("the Plan Administrator") requests that the court authorize the Plan Administrator to abandon the following properties commonly known as:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property
8. the Murphy Ranch 756,
9. the Murphy 240 Rangeland,

(the "Properties").

The Declaration of Juanita Schwartzkopf has been filed in support of the Motion. Dckt. 1412. Ms. Schwartzkopf provides testimony that while the Properties have substantial market value, they are of inconsequential value as there is no realizable equity because the debt secured by the Properties exceeds the value of the real properties. *Id.*, ¶ 24. Moreover, according to the Plan Administrator, the properties are burdensome because the Estate does not have the funds to continue paying the costs of carrying the Properties including insurance, real property taxes, and other charges or the costs of administration of such properties. *Id.*, ¶36.

Ms. Schwartzkopf testifies that the Properties have been actively marketed by the Reorganizing Debtor and by the Plan Administrator for over 16 months during the Negotiated Period (Plan provision during which Debtor was to perform certain duties regarding plan assets) and for years prior to the Plan confirmation but that unfortunately they were not sold. *Id.*, ¶18. The Plan Administrator being unable to obtain offers in an amount that was sufficient to pay the secured claims on and tax liabilities related to the Properties. *Id.* Additionally, the Plan Administrator explains that SBN V Ag I LLC ("Summit") as one of

the primary sources of funds for the post-confirmation administration of the Estate has indicated they will no longer consent to further use of their cash collateral for pursuing short sales of its collateral. *Id.,* ¶ 37. Ms. Schwartzkopf also testifies that Summit has informed the Plan Administrator that it intends to proceed promptly with non-judicial foreclosure of the Properties. *Id.*, ¶35.

Creditor's Opposition

Creditor with secured claim, American AgCredit does not object in its entirety to the abandonment of the Properties, instead Creditor American AgCredit objects specifically as to the timing of the abandonment of the Murphy Ranch Property. Dckt. 14216. American AgCredit explains that for the last five months they have been engaged in the Lot Line Adjustment ("Adjustment") process with the County of Stanislaus related to the Murphy Ranch 756 and the Murphy 240 Rangeland. Thus, American AgCredit requests that the abandonment not occur until the County of Stanislaus approves the adjustment, the adjustment is fully recorded and the appropriate quitclaim deeds by and between the Plan Administrator and American AgCredit are approved by the parties' title companies and successfully recorded..

Plan Administrator's Reply

The Plan Administrator filed a Reply indicating they are amenable to deferring the effective date of the abandonment of the Murphy Ranches for a reasonable time during which the Adjustment may be and should be completed; but asks the court for the authority to effectuate the abandonment of the Murphy Ranches at such future time as the Plan Administrator determines in its business judgment that the abandonment should be effective, even if the Adjustment has not been fully completed. Dckt. 1434..

The Plan Administrator believes this a reasonable request on the basis that the Plan Administrator seeks to avoid capital gains taxes in the event that Summit proceeds with foreclosure remedies; the Plan Administrator will continue to work diligently with Creditor to get the Adjustment resolved; an d even after abandonment, the Adjustment process mat still continue after the abandonment where Debtor has pledged to continue working with Creditor to complete the Adjustment process.

SBN V Ag I LLC ("Summit") Response

Summit filed a Response in support of the Motion on May 7, 2021 stating that they support the abandonment of the Properties and the Plan Administrator's proposal of temporary deferral of the Murphy Properties to a later date to as to allow for the Adjustment process but they continue to reserve their right to commence non-judicial foreclosure proceedings and request that any order approving the abandonment make it clear that any delay in abandonment is without prejudice to Summit's rights to provide notice of relief from stay and commence its foreclosure rights and remedies. Dckt. 1438.

DISCUSSION

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). 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 court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the

Property is of inconsequential value and benefit to the Estate and authorizes the Plan Administrator to immediately abandon the following properties:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property

Bifurcated Abandonment of the Murphy Ranch Properties

With respect to the Murphy Ranch 756 and the Murphy 240 Rangeland, completion of the lot line adjustment to correct for the Debtor having recorded Certificates of Compliance, without Creditor's consent that negatively impact its collateral, which Creditor has now foreclosed on.

Rather than having a vague "the Plan Administrator can abandon at some point in the future, and then potentially having emergency motions to modify that authorization," the court bifurcates the orders on the relief requested and issues a final order for abandonment of seven properties above, and continues the hearing on the request to abandon the Murphy Ranch 756 and the Murphy 240 Rangeland properties to 10:30 a.m. on August 12, 2021.

In addition to helping the parties avoid "abandonment anxiety," the properties being in the Plan Estate, this federal court has jurisdiction to address the issue of the adjustments by Debtor to the property that is currently in the Plan Estate through an adversary proceeding that Creditor may believe necessary with third-parties (not the Plan Administrator) to correctly identify the property foreclosed on through these bankruptcy proceedings.

August 12, 2021 Hearing

The Plan Administrator filed an updated Status Report on August 10, 2021, Dckt. 1498, concerning this Motion. The Plan Administrator advises the court that additional time is needed and a continuance of this hearing is requested to late September 2021. A non-judicial foreclosure sale of the Murphy Ranches could be conducted in mid-October 2021, and the Plan Administrator wants to insure that the abandonment occurs before that time.

September 30, 2021 Hearing

No further documents have been filed in this Contested Matter as of the court's September 28, 2021 review of the Docket. At the hearing, counsel for the Plan Administrator reported that the lot line adjustments have not yet been completed, and the Parties agreed to a further continuance of this hearing.

October 21, 2021 Hearing

At the hearing, the Parties requested a continuance to allow for all of the preliminary steps to be taken so that the abandonment may occur.

November 16, 2021 Status Report

The Plan Administrator filed an updated Status Report on November 16, 2021, reporting that the abandonment cannot be completed at this time and a further continuance was necessary. Dckt. 1585.

December 16, 2021 Hearing

Attorneys for the Plan Administrator filed a Status Report requesting a further continuance as further negotiations were conducted.

March 10, 2022 Hearing

At the hearing counsel for the Plan Administrator reported that all documents have been received for the lot line adjustment and it may now be completed. There still remain some quit claim deeds required, but the parties are waiting on information from the County as to what, if any, quit claims will be required.

April 18, 2022 Status Report

On April 18, 2022, the Plan Administrator filed a status report requesting the Abandonment Motion be further continued to May 26, 2022. Dckt. 1672. The Plan Administrator states there are final steps needed to complete the lot line adjustment while preserving the potential abandonment prior to the foreclosure sale.

CONTINUANCE OF MAY 26, 2022 HEARING

The Plan Administrator filed a Status Report requesting that the hearing be continued to June 30, 2022. Dckt. 1692. The proposed lot line adjustment is to be presented to the Board of Supervisors on May 24, 2022, and the parties continue in their significant good faith efforts to conclude this matter.

The court continues the hearing, first as requested by the Plan Administrator and American AgCredit (Status Report, Dckt. 1690); and second, the judge to whom this case is assigned not being available (due to disrupted travel plans by Midwestern storms) to conduct a hearing on May 26, 2022.

CONTINUANCE OF JUNE 30, 2022 HEARING

Focus Management Group, the Plan Administrator, and American AgCredit have filed Updated Status Reports (Dckts. 1707, 1709) information the court that the parties are now working of the deeds for the lot line adjustments that have been approved, and a further continuance is requested.

The Hearing is continued to 10:30 a.m. on August 4, 2022.

July 29, 2022 Status Report

On July 29, 2022, American AgCredit filed a Status Report stating documents for the lot-line are currently being circulated and signed for recording but the process has not concluded. Dckt. 1723. American requests the matter be continued for 30-45 days for the process to continue.

August 4, 2022 Hearing

As of the court's review of the Docket, the Plan Administrator had not filed a concurrence in the request for a continuance, so the court posted this as a tentative ruling. Though the court could assume that the Plan Administrator concurs, there may be some administrative "tweaks" that the Parties want to address at the hearing.

At the hearing, the Parties agreed that this should be further continued in light of the advances being made on getting the issues resolved with the County.

September 8, 2022 Hearing

At the hearing, counsel for the Plan Administrator reported that the lot line adjustments were recorded on Tuesday, but recorded copies have not been received.

The other Parties appearing agreed to a continuance to confirm that everything has been correctly wrapped up.

OCTOBER 17, 2022 HEARING

On October 21, 2022, the Plan Administrator filed an updated Status Report. Dckt. 1764. The Plan Administrator reports that it has been informed that there continue to be problems with the title company, and additional time has been requested. Additionally, that the Plan Administrator has received an offer for the Murphy Ranches which is under review.

The Plan Administrator requests that the hearing be continued to 10:30 a.m. on December 15, 2022, as to the Murphy Ranches.

On October 21, 2022, American AgCredit filed its updated Status Report. Dckt. 1770. It reports that the work on addressing the title issues continue, and a continuance of 60 days is requested.

The Murphy Ranches being the remaining properties at issue, the court continues the hearing to 10:30 a.m. on December 15, 2022.

DECEMBER 15, 2022 HEARING

At the hearing, XXXXXXXXXX

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

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

The Motion to Abandon filed by Focus Management Group USA, Inc., the Plan Administrator, 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 Abandon is xxxxxxxxxxxx

4. **10-90281-E-7** **LORRAINE/GARY ERWIN** **CONTINUED STATUS CONFERENCE RE: COMPLAINT**
21-9005 **CAE-1** **5-24-21 [1]**

ERWIN ET AL V. U.S. BANK, NATIONAL ASSOCIATION ET AL

4 thru 5

Plaintiff's Atty: Darren Marcus Salvin; Laine T. Wagenseller
Defendant's Atty: unknown

Adv. Filed: 5/24/21
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property

Notes:
Continued from 11/10/22 to be conducted in conjunction with the Motion for Attorney's Fees and Costs for the Prevailing Plaintiff-Debtor.

Judgment Against U.S. Bank, National Association filed 11/29/22 [Dckt 89]

5. **10-90281-E-7** **LORRAINE/GARY ERWIN** **MOTION FOR COMPENSATION FOR**
21-9005 **WLF-6** **LAINE T. WAGENSELLER,**
PLAINTIFFS ATTORNEY(S)
ERWIN ET AL V. U.S. BANK, **11-9-22 [81]**
NATIONAL ASSOCIATION ET AL

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, and Office of the United States Trustee on November 9, 2022. By the court's calculation, 36 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 Prevailing Party 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 Prevailing Party Fees is granted and Plaintiff-Debtors are awarded $ 25,845.33 in attorney's fees and $476.86 costs, which will be enforced as part of the Judgment.

Plaintiffs-Debtors Lorraine Erwin and Gary Erwin ("Movant") filed this Motion seeking prevailing party fees in the amount of $61,415.00 in fees and $661.06 in costs pursuant to California Code of Civil Procedure § 1021.

Movant states with particularity (FED. R. BANKR. P. 9011) the following grounds in support of the Motion:

1. The court entered an Order granting Movant's Motion for Entry of Default Judgment. Motion, Dckt. 81 at 2:10.

2. California Code of Civil Procedure § 1021 allow for an award of attorney's fees under an enforceable contract. *Id.* at 3:20-26.

3. The underlying Deed of Trust provides that Defendant-Creditor shall be entitled to recover reasonable attorney's fees. *Id.* at 3:2-6; Exhibit A, Dckt. 1 at 45 ¶ 17.

4. California Code of Civil Procedure § 1717 makes these unilateral attorney's fees clauses reciprocal. Motion, Dckt. 81 at 5-6.

5. Since Movant was the prevailing party, Movant is entitled to attorney's fees. *Id.* at 5.

BASIS FOR ATTORNEY'S FEES

The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the Unites States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on 14 days' notice; on motion served within seven days thereafter, the action of the clerk may be reviewed by the court. *Fed. R. Bank P.* 7054(b)(1)

Contract

California Civil Code § 1717 addresses substantive state law making contractual attorney's fees provisions reciprocal, stating:

> (a) In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then **the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees** in addition to other costs.
> . . .
> (b)
> (1) **The court**, upon notice and motion by a party, **shall determine** who is **the party prevailing** on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2) [dismissals], the **party prevailing** on the contract **shall be the party who recovered a greater relief in the action** on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section.

Movant is the party who recovered the greater relief in the adversary proceeding for Quiet Title.

Computation of Prevailing Party Attorney's Fees

Unless authorized by statute or provided by contract, attorney's fees ordinarily are not recoverable as costs. Cal. Code Civ. Proc. § 1021; *International Industries, Inc. v. Olen*, 21 Cal. 3d 218, 221 (Cal. 1978). The prevailing party must establish that a contractual provision exists for attorney's fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). In the Ninth Circuit, the customary method for determining the reasonableness of a professional's

fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), amended, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). An attorney's fee award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). Having this discretion is appropriate "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

DISCUSSION

This Adversary Proceeding was filed on May 24, 2021. Dckt. 1. No answer was filed and Plaintiff requested the entry of a default on June 25, 2021. Dckt. 10.

Entry of Default

The Clerk of the court rejected the request for entry of default on the following grounds:

> 1. No Request for Entry of Default on the required EDC 3-726 Form was filed.
>
> 2. No Entry of Default and Order RE: Default Judgment Procedures, form EDC 3-727, was submitted.
>
> 4. The declaration/affidavit does not set forth the following required facts:
>
> > A statement that the court has fixed a deadline for the filing of the answer or motion, or that the 30 or 35 day time limit applies;
> >
> > declaration/affidavit is incorrect.
>
> 10. Other. 1. Service address does not appear to be proper.
> 2. Pursuant to Affidavit, incorrect summons was served.

Dckt. 12 (paragraph numbering from Memorandum Re: Default Papers used above).

On August 9, 2021 and on August 10, 2021, a second and then a corrected third Request for Entry of Default were filed. Dckts. 16, 17. On August 13, 2021, the Clerk of the Court entered the default of U.S. Bank, N.A. Dckt. 18.

Motion for Entry of Default Judgment

Initial Hearing on Motion for Entry of Default Judgment

Plaintiff's Motion for Entry of Default Judgment was filed on September 9, 2021. Dckt. 31. As the Civil Minutes for the October 21, 2021 hearing on the Motion for Entry of Default Judgment reflect, there were substantial defects and shortcomings with respect to the Motion and the legal theories advanced by Plaintiff-Debtors. This discussion includes the following:

> The Motion/Points and Authorities/Affidavit running 13 pages in length [Fn.1.] provides extensive discussion on the law relating to entry of default judgments but little on adverse possession as it applies to a lien or the legal right of a person to have a deed of trust for a lien they obtained stripped from the property because they cannot identify the current owner of the obligation.
>
> ---
>
> FN. 1. In addition to the substantive law concerns, Plaintiff does not comply with the Local Bankruptcy Rules requiring that the motion, points and authorities, declaration, exhibits must be filed as separate documents. L.B.R. 9004-2, 9014-1(d).
>
> ---

Possible Deficient Service of Subpoena

Attached to the Complaint is a Summons issued by Jeffrey P. Allsteadt, Clerk of the Bankruptcy Court. Mr. Allsteadt is the Clerk of the Bankruptcy Court for the Northern District of Illinois. https://www.ilnb.uscourts.gov/. The Certificates of Service, Dckts. 6-7, state that "service of this summons" was made by the person signing the Certificate. No copy is attached and it is not clear which Summons, the Norther District of Illinois or the Eastern District of California was served.

The court having determined that Movant is the prevailing party and that California Civil Code § 1717 provides that the prevailing party shall be awarded attorneys' fees, the court determines that the requested $61,415.00 in attorneys' fees is reasonable in this Contested Matter/Adversary Proceeding for services provided in litigating the quiet title action.

Applying the normal lodestar analysis, the court begins with the billing rates for the attorneys for which the attorneys' fees are requested. The hourly rates for the work done by attorneys at $650.00 and $550.00 an hour are reasonable.

. . .

Adverse Possession Claim for Relief

The first, and only, cause of action is to seek quiet title through adverse possession. Dckt. 1 at ¶ 23. Both the complaint and the motion, however, fail to present any law on adverse possession.

In 12 Witkin Summary 11th Real Property § 233, the elements that must be met in order for a Plaintiff to obtain title through adverse possession are reviewed, which discussion includes occupying the property in an averse and hostile manner to other persons who may assert right to possession of the property. The lien interests

at issue are not possessory interest that conflict with Plaintiff-Debtor, the undisputed owner of the Property, being in possession.

[long discussion and citation to well established California law that adverse possession is not a valid legal theory to try and void a lien of a purported creditor]

Though not presented [no legal authority why the naked claim asserted for adverse possession was a valid legal theory] by Plaintiff-Debtor, it appears that well established California law provides that adverse possession is not a Doctrine that can be applied to a deed of trust beneficiary or mortgagee prior to that beneficiary or mortgagee having the right to be in possession of the property. [Fn.1.]

FN. 1. As required by the principles enunciated in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, FN. 15 (2010), while a federal judge is dependent on the parties to present the evidence from which factual determinations are to be made, the federal judge should correctly state and apply the law, even if such law is not presented or the requested relief is not opposed:

> In other contexts, we have held that courts have the discretion, but not the obligation, to raise on their own initiative certain nonjurisdictional barriers to suit. *See Day v. McDonough*, 547 U.S. 198, 202, 209, 126 S. Ct. 1675, 164 L. Ed. 2d 376 (2006) (statute of limitations); *Granberry v. Greer*, 481 U.S. 129, 134, 107 S. Ct. 1671, 95 L. Ed. 2d 119 (1987) (*habeas corpus* petitioner's exhaustion of state remedies). Section 1325(a) does more than codify this principle; it requires bankruptcy courts to address and correct a defect in a debtor's proposed plan even if no creditor raises the issue.

Civil Minutes; Dckt. 28 at 6-8.

Because counsel for Plaintiff-Debtors could not obtain a copy of the court's pre-hearing posted tentative decision addressing these California law issues and a legal basis for quieting title, the court continued the hearing.

Continued Hearing on Motion for Entry of Default Judgment

The continued hearing on the Motion for Entry of Default Judgment was conduced on November 18, 2021. The Motion was denied without prejudice. Civil Minutes, Dckt. 43; Order, Dckt. 44. As stated in the Civil Minutes, counsel for Debtor accepted the denial of the Motion without prejudice. Civ. Min.; Dckt. 43 at 10.

While accepting the shortcomings and denial without prejudice, and then striving forward to get a proper motion and legal basis before the court, that does not change the fact that the entire first Motion for Entry of Default and all of the legal time billed thereto was of no value to the Plaintiff-Debtors or the judicial process. As noted in the Supplemental Brief, Plaintiff-Debtors' counsel would be going forward to "investigate the law" to determine the avenue of remedy for Plaintiff-Debtors. Additionally, after this

process, Plaintiff-Debtors' counsel posited that the Complaint might have to be amended to state additional facts or causes of action to obtain the relief requested. Dckt. 41:9-20. Plaintiff-Debtors' counsel notes that the subpoenas served were not signed by the Clerk of this Court, but the name of another Clerk, Jeffery P. Allstead, was inserted therein.

In many respects, this Complaint and request for entry of default judgment appear to be in the nature of practice not seen in federal court. Where a party files a complaint asking for relief in a non-federal court, no answer is filed, and the clerk of the court (or a judge) issues a judgment for whatever was asked for – irrespective of the law.

Second Motion for Entry of Default Judgment

On May 3, 2022, Plaintiff-Debtors filed their Second Motion for Entry of Default Judgment. Dckt. 51. The court denied without prejudice Plaintiff-Debtors' Second Motion for Entry of Default Judgment. Civil Minutes, Dckt. 61; Order, Dckt. 62. The Civil Minutes stating the court's ruling in denying the Second Motion for Entry of Default Judgment includes the following:

> (2) Substantive Merits and (3) Sufficiency of Claim
>
> *Grounds Stated in Complaint*
>
> When reviewing pleaded and substantive claims in Plaintiff-Debtor's Complaint, the court looks to whether Plaintiff-Debtor has stated any legal grounds or authority. Plaintiff-Debtor states the following in their Cause of Action for Quiet Title:
>
> > 22. The Court has inherent plenary powers to grant equitable relief concerning the matters set forth above.
> >
> > 23. Plaintiffs seek to quiet title by adverse possession [sic] regarding the Subject Lien on the Subject Property as of the date of filing of this complaint. Plaintiffs claim superior claim over and above USBNA and/or USB and its/their Subject Lien.
> >
> > Complaint, Dckt. 1 at 7.
>
> Plaintiff-Debtor states no legal grounds or authority, rather, simply states the court has equitable powers to grant relief. Plaintiff-Debtor does not include why or how the court can waive its "equitable wand" and grant relief.
>
> Federal Rules of Civil Procedure Rule 8(a)(2) as incorporated into Federal Rules of Bankruptcy Procedure7008 does not require plaintiffs to state in their complaint any specific legal theories justifying the relief sought. *Skinner v. Switzer*, 562 U.S. 521, 530 (2011). Thus, mere failure to indicate the exact law upon which the claim is based is not fatal to granting later relief upon that law. *Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014).

Grounds Stated in Motion

Federal Rules of Civil Procedure 7(a), as incorporated in Federal Rules of Bankruptcy Procedure 7007, requires that the motion itself state the grounds with particularity upon which the relief, which must be stated with particularity in the motion as well, is based. The court looks to the current Motion for grounds that would entitle them to relief. Plaintiff-Debtor states the following grounds for supporting the substantive merits and sufficiency of their claim:

> [W]hat is "lost" is not the actual note or lien, but the lienholder, itself.

Motion, Dckt. 51 at 5:18.

> There must be some form of relief available to the Plaintiffs under these facts. There are others similarly situated to be sure. Yet, existing California state law does not seem to specifically embrace the unique facts of this case and the relief sought.

Id. at 5:21-23.

> The present Complaint is one for Quiet Title – an equitable remedy based on the plenary powers of the Court, and the Court's express powers under the Bankruptcy Code, to remove claims and liens which are unsupported and/or cannot be prove-upon by the claimholder, here, USBNA as respects its Unsecured Claim.

Id. at 15:1-4.

> The Debtors' Verified Complaint, incorporated herein by this reference, does the following: (1) pleads with particularity the present issue complained of with respect to the Subject Property and the Subject Lien; (2) properly identified the correct parties who have and/or may have an interest in the Subject Property; (3) as respects U.S. BANCORP and USBNA, secured valid service under both FRCP Rule 4(h) and FRBP Rule 7004, so as to give this Court personal jurisdiction over these Parties, including USBNA; and (4) pleads with particularity all necessary claims and elements to support the Causes of Action contained within the Verified Complaint and request to judicially quiet title to the Subject Property.

Id. at 15:17-24.

> Debtors state and plead substantive claims in their Verified Complaint, and those claims are meritorious. The Complaint is sufficient to support a judgment.

Id. at 16:1-3.

> As stated in the court's review of the Complaint, Plaintiff-Debtor does not plead any proper legal grounds in their Complaint. Therefore, the court does not find, as Plaintiff-Debtor suggests, that their Complaint "pleads with particularity all necessary claims and elements to support the Causes of Actions . . . ." No legal grounds for granting Plaintiff-Debtor relief have been provided.
>
> The court, therefore, will look to state law to determine whether there is a basis for quiet title when a debtor cannot locate their creditor.

Id., at 8-10.

The court then reviews various legal bases under California law, citing to specific statutes , including law relating to a "missing" creditor. The court also quotes from the Miller and Starr California Real Property Law Treatise about alternative to the court identified statutory provisions. *Id*. at 10-12.

The court then states, for a second time, that Plaintiff-Debtors' motion will be denied without prejudice for some very fundamental and basic faults:

> **RULING**
>
> Again, Plaintiff-Debtor's state what is lost is not the actual note or lien, but the lienholder itself. Motion, Dckt. 51 at 5:18. "[T]here must be some form of relief available to the Plaintiffs under these facts" and that California state law "does not seem to specifically embrace the unique facts of this case and the relief sought." *Id.* Plaintiff-Debtor believes this court has the power to grant the relief requested, canceling the Deed of Trust. *Id.*
>
> From the court's review of applicable California law, there is adequate state law to guide Plaintiff-Debtor and their Counsel through the situation at hand. Plaintiff-Debtor may be able to use the provisions under California Civil Code § 2947.7 to have the deed of trust reconveyed now (posting the bond that will then escheat to the State of California if the "creditor" does not make demand thereon) or they can wait nine (9) years until the statute of limitations runs and the lien expires, and then bring an action in State Court to clear title. Both of these options appear to give Plaintiff-Debtor what they seek, transferring title back to Plaintiff-Debtor from the lost lienholder and terminating the Deed of Trust. *Id.* at 5:18.
>
> As Plaintiff-Debtor has failed to provide legal grounds for why this court can cancel a Deed of Trust due to a lost lienholder through a quiet title action, and there are adequate state law grounds for reconveying title back to Plaintiff-Debtor, the court denies Plaintiff-Debtor's Motion.

Id., at 13. A reading of the two rulings denying the motions for entry of default judgment read in the nature of a tutorial or educational treatise for a law student or attorney not experienced in litigation or California real property and secured transaction law.

THIRD MOTION FOR ENTRY OF DEFAULT JUDGMENT

On October 5, 2022, (a year after the first Motion for Entry of Default Judgment had been filed) Plaintiff-Debtors filed their Third Motion for Entry of Default Judgment. Dckt. 69.

The hearing on the Motion was conducted on October 27, 2022, and the Motion was granted. Civil Minutes, Dckt. 78; Order, Dckt. 79. As set forth in the Civil Minutes, through discovery Plaintiff-Debtors had established that the underlying debt had been cancelled, and therefore pursuant to California Civil Code § 2941 the Defendant had a statutory obligation to reconvey the deed of trust and not cloud Plaintiff-Debtors' title. Civil Minutes, Dckt. 78; Order, Dckt. 79.

DISCUSSION

Plaintiff-Debtors have provided the court with the Declaration of Laine T. Wagenseller in support of the Motion for Fees. Attached to the Declaration (and not filed as a separate exhibit document as required by the Local Bankruptcy Rules) are 71 pages of exhibits. Also attached to the Declaration (and not filed as a separate pleading as required by the Local Bankruptcy Rules is a Certificate of Service (using a Central District of California form and not the Certificate of Service form required in the Eastern District of California).

The testimony of Laine Wagenseller provided in the Declaration, Dckt. 83, in support of the Motion for Attorneys' Fees and Costs provides the following evidence to the court (identified by paragraph number in the Declaration), :

2. Exhibit A is a billing summary showing the invoices sent to Plaintiff-Debtors.

No testimony is provided about the information in Exhibit A is given or why a chart of invoices is being provided to the court. Looking at Exhibit A, it just shows lump sum amounts for the invoice.

3. Then there are a series of monthly invoices attached as Exhibits B through V, for the periods May 3, 2021 through November 8, 2022. There is no testimony about the services provided.

Neither as an exhibit or in the Declaration or Motion is any task billing analysis provided. This is routinely done in Region 17 as established by the U.S. Trustee and the federal courts as part of conducting a load star analysis. Such task area for which the billings and billers are identified include: Drafting of Complaint; Discovery; Drafting and Prosecution of Specific Motions; Administrative Matters; and Status Conference. Here, the court is provided with 75 pages of billing data, with all of the task areas and billing all commingled.

24-26 state when the two billings attorneys became lawyers (1993 and 1999) and their billing rates of $650 and $55. Additionally, the statement is made that one has handled numerous quiet title lawsuits in California State Courts and the other has practiced as a litigation attorney and also served as a corporate general counsel for an unidentified corporation.

In the Motion, though not testified to in the Declaration, reference is made to the discovery challenges Plaintiff-Debtors faced in getting the Defendant and the loan service companies involved to respond to inquiries and discovery concerning the Deed of Trust clouding title.

Plaintiff-Debtors counsel has struggled in this case with the filing of basic motions and requests – Request for Entry of Default and two Motions for Entry of Default Judgment. Candidly, the litigation skills manifested by the two attorneys for Plaintiff-Debtor are not consistent with a $650 and a $500 an hour billing rate for Los Angles area counsel in 2021-2022. For attorneys with that billing rate and commensurate level of skill, the Defendant in this Adversary Proceeding would have been "sliced and diced" the first time thought.

As shown in the court's prior rulings, the attorneys for Plaintiff-Debtor could not and did not advance valid legal theories for the relief requested. As an example, they tried to argue that they could claim that Plaintiff-Debtor could adversely possess property they owned as against a lien holder. That clearly is not a valid legal theory under well established law, which could quickly be ascertained by going to the Miller and Starr or Witkin Treatises.

Time Records and Fees Relating to the First and Second Motion for Entry of Default Judgment That Were Denied

The First Motion for Entry of Default Judgment was filed on September 9, 2021. Looking at the August, September, October, and November 2021 billing statement (Exhibits F, G, H, and I; Dckt. 83), the billings directly related to the First Motion for Entry of Default Judgment total:

August 2021 Billing Statement, Exhibit F.....8.1 Hours.....$4,150

September 2021 Billing Statement, Exhibit G....6.2 Hours.....$3,540

October 2021 Billing Statement, Exhibit H.....5.4 Hours.....$2,700

November 2021 Billing Statement, Exhibit I.....9.8 Hours.....$4,900

Total.....$15,290

In the current Motion for prevailing party attorney's fees, Plaintiff-Debtors are requesting being awarded $15,290 in legal fees for the First Motion for Entry of Default that was denied (without prejudice) for very basic and fundamental deficiencies.

The Plaintiff-Debtors did not prevail on the First Motion for Entry of Default Judgment.

The Second Motion for Entry of Default Judgment was filed on May 3, 2022 (Dckt. 51). Looking at the March, April, May, and June 2022 billing statement (Exhibits M, N, O, and PI; Dckt. 83), the billings directly related to the First Motion for Entry of Default Judgment total:

March 2022 Billing Statement, Exhibit M.....2.5 Hours.....$2,500

April 2022 Billing Statement, Exhibit N.....9.0 Hours.....$4,950

May 2022 Billing Statement, Exhibit O.....3.7 Hours.....$1,960

June 2022 Billing Statement, Exhibit P.....2.3 Hours.....$1,265

Total.....$10,675

In the current Motion for prevailing party attorney's fees, Plaintiff-Debtors are requesting being awarded $15,290 in legal fees for the First Motion for Entry of Default that was denied (without prejudice) for very basic and fundamental deficiencies

The Plaintiff-Debtors did not prevail on the Second Motion for Entry of Default Judgment.

Time Records and Fees Relating to the Third Motion for Entry of Default Judgment That Was Granted

The Third Motion for Entry of Default Judgment was filed on October 5, 2021. Looking at the September and October 2021 billing statement (Exhibits R, S, and T; Dckt. 83), the billings directly related to the Third Motion for Entry of Default Judgment total:

September 2022 Billing Statement, Exhibit S....5.5 Hours.....$3,575

October 2022 Billing Statement, Exhibit T.....5.4 Hours.....$2,700

Total.....$6,275

In the current Motion for prevailing party attorney's fees, Plaintiff-Debtors are requesting being awarded $6,275 in legal fees for the Third Motion for Entry of Default that was granted.

Plaintiff-Debtors were the prevailing par6ty on the Third Motion for Entry of Default Judgment.

Reduction for Interest Charged By Attorneys

In reviewing the individual monthly statements, the court noted that Plaintiff-Debtors' attorney are charging interest - choosing to be the financing company for their client. The interest is charged at the rate of 1.5% per months, which computes to be a finance charge of 18% Per Annum Compounded Interest. That Plaintiff-Debtors' Attorneys want to provide financing for Plaintiff-Debtors, and Plaintiff-Debtors are knowingly contracting to pay 18% Per Annum Compounded Interest, that is not part of the reasonable attorney's fees to be awarded Plaintiff-Debtors.

The 18% Per Annum Compounded Interest Not allowed as prevailing party attorney's fees is:

Monthly Statement	Amount of 18% Per Annum Compounded Interest	
July 2021 Statement	$207.93	
August 2021 Statement	$233.88	
September 2021 Statement	$307.14	
October 2021 Statement	$361.10	

November 2021 Statement	$412.88	
December 2021 Statement	$511.47	
January 2022 Statement	$543.27	
February 2022 Statement	$571.07	
March 2022 Statement	$602.92	
April 2022 Statement	$0.00	
May 2022 Statement	$0.00	
June 2022 Statement	$0.00	
July 2022 Statement	$0.00	
August 2022 Statement	$0.00	
September 2022 Statement	$0.00	
October 2022 Statement	$0.00	
November 2022 Statement	$0.00	
	==========	
Amount of pay 18% Per Annum Compounded Interest Not Awarded as Attorney's Fees	$3,543.73	

Adjustment Increase for Benefit of Work on the First and Second Motions for Entry of Default Judgment That Were Denied

The fees relating to the Third Motion for Entry of Default Judgment are $6,275.00. Considering the issues presented and the legal research required, the court believes that some of the research and work done on the Second Motion for Entry of Default Judgment, that while denied, was used in the Third Motion for Entry of Default Judgment which was granted. The court adds back $2,500.00 of the fees from the Second Motion and includes it with the fees for the Third Motion.

Therefore, with the adjustment of $2,500.00 added to the $31,450.00 in fees computed above, the total fees being presented to the court at the full billing rates for the attorneys is $33,950.00

15% Adjustment to Hourly Rates

As the billings for the two Motions for Entry of Default Judgment show, the two attorneys' working on this billed lots of time, but that much of it was not productive. Because there is no task billing analysis, the Plaintiff-Debtors have handicapped the court a bit, and in effect have assigned to the court the

work of figuring out what was billing in what areas. The court declines the opportunity to do legal work for the Plaintiff-Debtors.

As the court reviewed the various prior rulings, it is reminded of drawing the conclusion that this Adversary Proceeding was being prosecuted by attorneys with limited experience and were on the learning curve of being a lawyer – like a third year attorney in practice.

The $650 and $550 hourly billing rates are not reasonable for the legal ability, knowledge, and actions taken in prosecuting this Adversary Proceeding. The court recognizes that Plaintiff-Debtors' lawyers are in the Los Angeles Region and that billing rates there would commonly be higher than in some of the Divisions in the Eastern District of California. The court does not make an adjustment to the hourly rates based on some parochial, "here's what a local attorney would charge" basis.

The court recognizes that the issues and some of the challenges in this Adversary Proceeding required more experienced attorneys, there were not routine matters, and a level of practice that warranted and would interest attorneys from Los Angeles, San Francisco, and Sacramento. The court works to insure that attorneys are fairly compensated for the services they provided, and takes into account where they are located (and that the corresponding overhead can be much greater in Los Angeles or San Francisco than Sacramento or Modesto). However, being from a higher overhead area does not allow for a billing rate to exceed the skill level of the attorney for the services provided.

In looking at the still level demonstrated, claims and arguments advanced without supporting law, claims and arguments advanced based on clearly incorrect law, and the seeming inability to prosecute this Adversary Proceeding, the court reduces the hourly rates, and the corresponding fees by 15%. That results in each of the attorneys having an effective billing rate of 552.50 and 450.00 an hour.

PREVAILING PARTY FEES AWARDED PLAINTIFF-DEBTORS

The court computes the amount of the prevailing party attorneys' fees, from the $61,415.00 requested, making the above adjustments, as follows:

Amount Requested in Motion	$61,415.00
Reduction for Fees Relating to First and Second Motions for Entry of Default Judgment For Which Plaintiff-Debtors did not prevail	($29,965.00)
Reduction for 18% Per Annum Compounded Interest Not Awarded as Attorney's Fees	($3,543.73)
Add Back for Value from Denied Motions Used in Third Motion for Entry of Default Judgment	$2,500.00

Initial Computation Before Hourly Rate Adjustment	$30,406.27

15% reduction in hourly rates	($4,560.94)
	==========
Total Allowed Prevailing Party Fees	**$25,845.33**

For obtaining the default judgment in this Adversary Proceeding, taking into account some of the complexities and challenges, the $24,845.33 in fees is a proper and fair award for the legal services provided.

While this amount may seem grossly high for a default judgment, as noted above, the Plaintiff-Debtor faced communication, information, and discovery challenges with the Defendant. While flopping over for the default, Defendant did itself no favors holing up and refusing to clear title to Plaintiff-Debtor's Property as required by California law and the contract (deeds of trust commonly having a contractual reconveyance obligation).

Award of Costs

Plaintiff-Debtors have provided Exhibit U to show the costs for each month. In looking at those costs, the following are not allowed by the court:

May 2021 Statement	CourtCall Fee	($22.50)
	Parking Fee for Attorney To Park at the Office	($20.00)
July 2021 Statement	CourtCall Fee	($22.50)
October 2021 Statement	CourtCall Fee	($41.20)
February 9, 2022	CourtCall Fee	($22.50)
October 2022	CourtCall Fee	($55.50)
		==========
	Total Costs Not Allowed	($184.20)

The court disallows the CourtCall Fees for two reasons. First, the use of CourtCall allows attorneys to be economically competitive over a much larger geographic area, and billing their $500, $600, and $700 an hour rates on a wider range of cases. The cost of CourtCall, like having an administrative assistant, having a phone, having a computer and the internet. Second, several of these calls relate to Motions that Plaintiff-Debtors were not the prevailing parties.

For the Parking fee, it is unclear why there is a fee for an attorney parking at his or her own office.

Therefore, deducting the ($184.20) from the requests costs of $661.06, the court computes the recoverable costs awarded to Plaintiff-Debtors is $476.86.

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 Prevailing Party Fees filed by Plaintiffs-Debtors Lorraine Erwin and Gary Erwin ("Movant"), in this Adversary Proceeding having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing.
>
> **IT IS ORDERED** that Movant, is awarded prevailing party attorney's fees against U.S. Bank, National Association in the amount of $25,845.33 and $476.86 costs, which shall be enforced as part of the Judgment in this Adversary Proceeding (Dckt. 89)

6. 21-90484-E-11 BSH-7 | **TWISTED OAK WINERY, LLC** **Brian Haddix** | **CONTINUED AMENDED MOTION FOR COMPENSATION FOR JAMES D. BIELENBERG, ACCOUNTANT(S) 10-10-22 [160]**

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 (Dckt. 154), Amended Motion (Dckt. 160), and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 10, 2022. By the court's calculation, 31 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).

Under the facts and circumstances of this Motion, the court shortens the time required for notice to the 31 days given.

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 xxxxxxxxxxx

James D. Bielenberg, the Accountant ("Applicant") for Twisted Oak Winery, LLC, the Debtor / Debtor in Possession ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. The court notes that Applicant's motion is titled "First Amended First and Final Formal Application of James D. Bielenberg's as CPA & Consultant to Debtor-In-Possession," and cites Chapter 11 of the United States Code, including Sections 330 *and* 331. Dckt. 154. Therefore, the court treats this is a First Interim Request for fees pursuant to Section 331. 11 U.S.C. § 331.

Fees are requested for the period October 4, 2021, through July 31, 2022. The order of the court approving employment of Applicant was entered on October 20, 2021. Dckt. 33. Applicant requests fees in the amount of $49,968.75 and costs in the amount of $33.00.

UNITED STATES TRUSTEE'S OBJECTION

Tracy Hope Davis, the United States Trustee, filed an Opposition to this Motion, via counsel, on October 27, 2022. Dckt. 171. The Opposition states that nearly all of Applicant's time records lump multiple tasks into single billing entries, and therefore, the fees associated with these "lump entries" should be reduced by 20%, or $8,953.75.

U.S. Trustee Davis states Applicant has not adequately specified specific dates of performance of services and all but three of Applicant's time records combine multiple tasks into single billing entries.

REPLY FILED BY APPLICANT

On November 8, 2022, Applicant filed a Reply to the U.S. Trustee' Opposition. Dckt. 176. Applicant states that is conceded that the current fee applicant is deficient and requests that the court either deny the Applicant without prejudice or allow for the filing of supplemental pleadings to the current Application.

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 ten general categories consisting of (1) administrative, (2) asset sales, (3) bankruptcy work and activities related to petitions and filings, (4) lending group work, (5) assistance related to day-to-day operations, (6) real estate issues, (7) reorganization plan formulation and assistance with confirmation, (8) reporting and monitoring, (9) strategic planning, and (10) coordination with attorneys.

Time and Billing Records

This court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged, in addition to the actual billing records. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District.

What Applicant chose to do instead was limit the information provided to the court. The Motion itself simply states the activities Applicant assisted with, with no breakdown of how many hours were performed in each category. The exhibits provided feature mere lump sum attorney's fee figures for several task areas, including monthly summary amounts for services rendered, Exhibits B and C, Dckt. 162, totaling $49,968.75 in aggregate fees.

The six separately labeled records Applicant has provided as Exhibits A through E (dckt. 162), do not adequately disclose or specify the scope of services performed and when such services were rendered. Applicant purports to have included Daily Time logs as Exhibit B (dckt. 162, p. 4), yet there are no specific dates or time entries connected with any of the descriptions contained therein.

Exhibit C purports to separate time spent by Applicant in each service category. However, it appears Applicant has only billed for five (5) of the ten (10) categories mentioned in the Motion. Exhibit C does not reflect any hours being spent on (b) asset sales, (e) operations, (f) real estate, (g) reorganization plan, and (I) strategic planning, even though Applicant's motion asserts services performed in the aforementioned categories. Exhibit C, Dckt. 162, p. 15. Therefore, either the Motion does not accurately state the tasks Applicant assisted on, or the exhibits are inaccurate.

Further, Exhibit C lists "working with attorneys" as one of the categories. It is unclear what work was performed by Applicant and what tasks they were assisting.

Attempting to Recover Inappropriate Costs for CourtCall

In addition, Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include $33.00 for "CourtCall."

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

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

Therefore, since the only costs and expenses requested by Applicant are for CourtCall, Applicant is not entitled to received any amount for costs.

Continuance of Hearing

The court continues the hearing, rather than denying the Application without prejudice, to afford Applicant the opportunity to provide the court, U.S. Trustee, and other parties in interest requesting the information with the necessary raw billing records and task billing analysis.

SUPPLEMENTAL PLEADINGS

November 11, 2022 Supplemental to Application

Applicant filed a Supplement to First and Final Formal Application for Professional Fees ("Supplement") stating that Applicant removes his request for reimbursement of expenses. Dckt. 183.

November 11, 2022 Supplemental Exhibits

Applicant filed Supplemental Exhibits on November 11, 2022. Dckt. 182. The exhibits provide a Daily Time Log (Exhibit F) and Task Billing Summary (Exhibit G). From review of the exhibits, the court has adequate evidence to make an informed and intelligent decision as a request for professional fees.

U.S. Trustee's Supplemental Objection

The U.S. Trustee filed a supplemental objection on November 22, 2022. Dckt. 187. The U.S. Trustee indicates the following concerns:

1. The U.S. Trustee continues to assert that there are $8,953.75 in fees which are in the form of block billings for which the services are not sufficiently detailed. This is incorporated from the initial Objection (Dckt. 171), which is stated as follows:

> 11. The fees associated with the "lumped" time entries total $44,768.75 ($49,968.75 in total fees minus $5,200 for the time entries on the July 18, 2022 invoice that are not "lumped"). See note 1, supra.
>
> > 1 The three entries are set forth on the invoice for July 18, 2022. See ECF No. 162, at p. 13 of 18. The associated fees are $5,200. *Id.*
>
> 12. "Lumping" multiple services into a single billing entry is "universally disapproved" by bankruptcy courts. *See In re Thomas*, 2009 WL 7751299, at *5 (B.A.P. 9th Cir. July 6, 2009); *In re Duarte*, 2020 WL 6821723, at *3 (Bankr. D. Ariz. Aug. 4, 2020); *In re Prior*, 2015 WL 5299459, at *2 (Bankr. E.D. Cal. Sept. 9, 2015).
>
> 16. Accordingly, the fees associated with the Applicant's "lumped" time entries should be reduced by 20% or $8,953.75. *Cf. In re Stewart*, 2008 WL 8462960, at *6 (B.A.P. 9th Cir. Mar. 14, 2008) (bankruptcy court's reduction of time entries by 20% for lumping was not an abuse of discretion).

2. It is not clear whether the Daily Time Log supplied as Exhibit F, Dckt. 182, is contemporaneous, or whether Applicant reconstructed the time records.

3. The Debtor / Debtor in Possession only prepared eight monthly operating reports. Therefore, the 101.5 hours of fees for this category may be excessive.

The U.S. Trustee raises valid points for the court to consider and Applicant to address. Applicant has not provided his declaration to explain, or authenticate, the billing exhibits provided to document the time for which the fees are requested.

Though the court could require Applicant the opportunity to provide his declaration authenticating the exhibits, given that this case has been successfully prosecuted to a confirmed plan, which process has been a bit bumpy at times, such further documentation will not be required. These documents have been provided by Applicant subject to the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011, from which there can be "mere" corrective sanctions issued by the bankruptcy judge, as well as corrective and punitive sanctions issued by the Chief District Court Judge (or other District Court Judge whom such a matter may be assigned).

Here, the information provided subject to the Rule 9011 Certifications provide the court with sufficient information IN THIS CASE. It is clear that time and effort has been expended to provide the court with the detailed information.

Lump Billings, Records,
and Monthly Operating Reports

As stated by the U.S. Trustee, the original support documents consisted of gross lump sum billing. The Supplemental Documents provide detailed billings, identifying by task area and specific charge. Clearly a lot of time and effort went into generating the Supplemental Documents, which on their face appear to be credible.

As noted above, the court is accepting these Supplemental Records, IT THIS CASE.

With respect to the 101.5 hours of professional accountant time spent for the eight Monthly Operating Reports, that clearly appears excessive. The court notes that there are several adjustments made to "multiple client financial iterations."

The court surmises that 101.5 hours have been billed for accounting services for two main reasons. First, "challenges" created by the Debtor and how the management of Debtor operates the business. Second, that the Applicant ended up doing bookkeeping or other data entry clerical work (there being no charges by any clerical person to input data into the Monthly Operating Form.

In going through the line item billing, the court identifies 83.5 net hours (after allowing for a 5.00 hour downward adjustment made by Applicant). At $325 an hour, that totals $27,137.50.

The court notes that Applicant has chosen to bill for his services in quarter hour increments (.25) rather than the one-tenth hour (.10) increments used for professionals in bankruptcy cases. Quarter hour minimum billing increments can lead to excessive billings. For example, if the professional does the actual work and bills in quarter hour increments, a billing abnormality as show below could exist:

Actual time	Tenth Hour Increment	Quarter Hour Increment
.4	.4	.5
.6	.6	.75
.1	.1	.25
.8	.8	1

1.3	1.3	1.5
.2	.2	.25
.5	.5	.5
2.1	2.1	2.25
.3	.3	.5
.6	.6	.75
.4	.4	.5
==========	==========	==========
7.3	7.3	8.75

Thus, in the example above, for one day of billings, there would be a 20% enhancement by using quarter hour billings. With Applicant having billed for 153.75 hours, that could represent 25 hours of quarterly "rounded up" hours in excess of actual time. Those 25 hours represent $8,125.

FEES REQUESTED AND AWARDED

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

Administrative: Applicant spent 22.00 hours in this category. Applicant provide basic administrative tasks and correspondence for the Debtor

Bankruptcy: Applicant spent 18.25 hours in this category. Applicant developed a plan and financial projections for Debtor, communicated with Debtor's attorney, and discussed various bankruptcy related issues with professionals and the court.

Reporting / Monitoring: Applicant spent 101.50 hours in this category. Applicant produced Monthly Operating Reports and corresponded with professionals and Debtor's attorney.

Working with Attorneys: Applicant spent 12.00 hours in this category. Applicant corresponded and assisted attorneys regarding various matters.

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
James D. Bielenberg, Accountant	153.75	$325.00	$49,968.75
Total Fees for Period of Application			$49,968.75

The court continues the matter to 10:30 a.m. on December 15, 2022.

The court notes, though the court could reduce the requested fees by the 20% as requested by the U.S. Trustee, under the totality of the circumstances, a ($4,000) reduction would be appropriate for an award of reasonable fees for the professional services provided. With a ($4,000) reduction, the court would approve First and Final Fees in the amount of $45,968.75 pursuant to 11 U.S.C. § 330 to be paid by Debtor / Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan. No costs would be allowed (the request for costs having been withdrawn by Applicant)

The court will make the determination whether the hourly rates are reasonable and whether Applicant mostly effectively used appropriate rates for the services provided at the continued hearing date.

December 15, 2022 Hearing

At the hearing, XXXXXXXXXX

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 Professional Fees filed by James D. Bielenberg ("Applicant"), Accountant for the Chapter 11 Debtor / Debtor in Possession, having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion for Allowance of Professional Fees is xxxxxxxxxxxx

7. **21-90584-E-7** **MARIA CUEVAS LEMUS** **CONTINUED STATUS CONFERENCE RE:**
22-9004 **CAE-1** **COMPLAINT**

CUEVAS LEMUS V. MARTINEZ, **10-6-22 [1]**

Plaintiff's Atty: Marc Voisenat
Defendant's Atty: Arnold L. Graff

Adv. Filed: 10/6/22
Answer: 11/28/22

Nature of Action:
Validity, priority or extent of lien or other interest in property
Injunctive relief - imposition of stay
Declaratory judgment

Notes:
Continued from 12/1/22 by Order filed 11/16/22 [Dckt 10]

SUMMARY OF COMPLAINT

The Complaint filed by Maria Dolores Cuevas Lemus ("Plaintiff-Debtor"), Dckt. 1 , asserts claims for alleged violation of the automatic stay (post-petition foreclosure), a determination that the alleged foreclosure is void, and injunctive relief to prevent Defendant from taking any other action to control or dispose of the property which is the subject of the alleged void foreclosure.

SUMMARY OF ANSWER

Arturo Martinez ("Defendant") have filed an Answer, Dckt. 11 , admitting and denying specific allegations. Twenty-One Affirmative Defenses are stated.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff **xxxxxxx** alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ xx, 2, Dckt. **xx**. In the Answer, Defendant xx admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ xx, xx, xx; Dckt. Xx. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy

court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

a. Plaintiff-Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b), the claims arising under the Bankruptcy Code. Complaint ¶ 3, Dckt. **1**. In the Answer, Defendant 3 admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 3; Dckt. 11. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

b. Initial Disclosures shall be made on or before **xxxxxxx, 2022**.

c. Expert Witnesses shall be disclosed on or before **xxxxxxx , 2023**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **xxxxxxx, 2023**.

d. Discovery closes, including the hearing of all discovery motions, on **xxxxxxx, 2023**.

e. Dispositive Motions shall be heard before **xxxxxxx, 2023**.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on xxxxxxx , 2023.**

FINAL RULINGS

8.	**19-90110-E-7** **ADJ-7**	**CAMPBELL WINGS, INC.** **Reno Fernandez**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES MACKO JOHNSTON, INC. FOR ANTHONY D. JOHNSTON, TRUSTEES ATTORNEY(S)** **11-2-22 [157]**

Final Ruling: No appearance at the December 15, 2022 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, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 2, 2022. By the court's calculation, 43 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.

Anthony D. Johnston, the Attorney ("Applicant") for Irma C. Edmonds, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 12, 2019 through October 31 , 2022. The order of the court approving employment of Applicant was entered on February 15, 2019. Dckt. 14. Applicant requests fees in the amount of $24,480.00 and costs in the amount of $4,513.02.

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 providing legal services to the Trustee to assist with numerous matters in the administration of the case. The Estate has $22,025.32 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 5.90 hours in this category. Applicant provided various services regarding the administration of the bankruptcy case.

Asset Analysis and Recovery: Applicant spent 3.80 hours in this category. Applicant investigated numerous claims and potential sale of personal property.

Asset Dispositions: Applicant spent 12.30 hours in this category. Applicant assisted with Trustee's sale of liquor license, negotiated with the State regarding a lien, and provided services for the Trustee to reject a commercial lease.

Claims Administration and Objections: Applicant spent 47.10 hours in this category. Applicant opposed a Motion and requested administrative expenses.

Litigation: Applicant spent 6.80 hours in this category. Applicant assisted with litigation in *Campbell Wings v. Keesling, et al.*.

Fee/Employment Applications: Applicant spent 5.70 hours in this category. Applicant prepared applications for employment and allowance of compensation.

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
Anthony D. Johnston, Attorney	81.60	$300.00	$24,480.00
Total Fees for Period of Application			$24,480.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $4,513.02 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage	n/a	$1,159.56
Photocopies	$0.10	$3,172.60
Court Document Copies Fees	n/a	$47.50
Filing Fees	$5.72	$17.16
Telephonic Appearance Fees	n/a	$116.20
Total Costs Requested in Application		$4,513.02

Attempting to Recover Costs for CourtCall

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include $116.20 for telephonic appearance fees, which the court presumes to be "CourtCall."

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

Here, Applicant could have appeared in person, but probably recognized how even with the associated costs it is more economically efficient to attend remotely. CourtCall is a very effective tool

allowing attorneys and trustees to market their legal skills (and generate fees from a much larger client base) over a much larger geographic area than was historically possible.

Therefore, Applicant is only allowed costs for non-telephonic appearance fees in this application, $4,396.82.

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 $24,480.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case. The court notes that the Trustee has already paid substantial secured claims, from which carveouts were obtained for the Estate. Substantial litigation was required over administrative expense litigation, which if not addressed would have wiped out the Bankruptcy Estate. The Trustee substantially prevailed in that litigation ($379,863.02 in requested administrative expenses reduced to $77,878.77; Memorandum Opinion and Decision, Dckt. 151).

Costs & Expenses

First and Final Costs in the amount of $4,396.82 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	$24,480.00
Costs and Expenses	$4,396.82

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 Anthony D. Johnston ("Applicant"), Attorney for Irma C. Edmonds, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Anthony D. Johnston is allowed the following fees and expenses as a professional of the Estate:

Anthony D. Johnston, Professional employed by the Chapter 7 Trustee

Fees in the amount of $24,480.00
Expenses in the amount of $4,396.82,

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

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

9.	**22-90160-E-11** **DDM-18**	**EAGLE LEDGE FOUNDATION, INC.** **Dennis Miller**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF LUBIN OLSON & NIEWIADOMSKI LLP FOR DENNIS D. MILLER, DEBTORS ATTORNEY(S)** **11-10-22 [170]**

Final Ruling: No appearance at the December 15, 2022 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 in Possession's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on November 10, 2022. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Dennis D. Miller, the Attorney ("Applicant") for Eagle Ledge Foundation, Inc., the Debtor in Possession ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 18, 2022 to September 30,2022. The order of the court approving employment of Applicant was entered on June 9, 2022. Dckt. 54. Applicant requests fees in the amount of $19,500.00 and costs in the amount of $943.37.

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, "reviewed and prepared first day motions, assisted in preparing and finalizing the Debtor's schedules and statement of financial affairs, provided information and documents to the United States Trustee for the initial debtor examination by the United States Trustee, assisted in the general administration of the estate for the Debtor, addressed legal issues for the employment of Bush Ross and Debtor's loan servicing agent and manager TMI Trust company ("TMI"), who is responsible as a custodian for IRA investors who are largely creditors in Debtor's business, and participated in the preparation of the Debtor's disclosure statement and plan." Motion at ¶ 2, Dckt. 170. 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.

Employment Application: Applicant spent 2.2 hours in this category. Applicant prepared an employment application and appeared at the hearing on the employment.

First Day Actions and Filings: Applicant spent 6.9 hours in this category. Applicant coordinated with Debtor's second attorney to prepare and file first day motions, and litigated the motions.

Bush Ross Employment: Applicant spent 4.5 hours in this category. Applicant assisted Ms. DiSanto's pro hac admission before the court.

TMI Notice and Retention Issues: Applicant spent 5.8 hours in this category. Applicant researched whether TMI was registered to do business in the state of California.

Case Administration: Applicant spent 7.1 hours in this category. Applicant provided services for numerous issues that arose throughout the case.

Chicago Property Actions: Applicant spent 1.3 hours in this category. Applicant worked to hire a property manager and local counsel to proceed with an unlawful detainer action in a Chicago property.

Disclosure Statement and Plan Issues: Applicant spent 4.7 hours in this category. Applicant assisted in review of the disclosure statement and plan.

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
Dennis D. Miller, Attorney	32.5	$600.00	$19,500.00
Total Fees for Period of Application			$19,500.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $943.37 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Cost
Filing Fees	$321.50
Postage Expenses	$552.92
CourtCall	$68.95
Total Costs Requested in Application	$943.37

Attempting to Recover Costs for CourtCall

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include $68.95 for telephonic appearance fees.

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

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

Therefore, Applicant is only allowed costs for non-telephonic appearance fees in this application, $874.42.

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 Interim Fees in the amount of $19,500.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Costs & Expenses

First Interim Costs in the amount of $874.42 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by Debtor in Possession from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

The court authorizes Debtor in Possession to pay 100% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$19,500.00
Costs and Expenses	$874.42

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 33 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 Dennis D. Miller ("Applicant"), Attorney for Eagle Ledge Foundation, Inc., the Debtor in Possession, ("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 Dennis D. Miller is allowed the following fees and expenses as a professional of the Estate:
>
> Dennis D. Miller, Professional employed by the Debtor in Possession
>
> | | |
> |---|---|
> | Fees | $19,500.00 |
> | Costs and Expenses | $874.42, |
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that Debtor in Possession is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 11 case.

10.	**16-90083-E-7** **ICE-1** **10 thru 13**	**VALLEY DISTRIBUTORS, INC.** **Iain Macdonald**	**OBJECTION TO CLAIM OF DANNY L. VIERRA AND DONNA J. VIERRA, CLAIM NUMBER 43** **11-9-22 [404]**

Final Ruling: No appearance at the December 15, 2022 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 9, 2022. By the court's calculation, 36 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 43-1 of Danny L. Vierra and Donna J. Vierra is sustained, and the claim is disallowed in its entirety.

Irma Edmonds, the Chapter 7 Trustee, ("Objector") requests that the court disallow the claim of Danny L. Vierra and Donna J. Vierra ("Creditor"), Proof of Claim No. 43-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,633,500.00. Objector asserts that Creditor has failed to provide any documentation or foundation substantiating the claim.

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.

For a claim based on writing, Federal Rules of Bankruptcy Procedure 3001 requires a copy of the writing to be filed with the proof of claim. Here, the claim is based on a Note for money loaned to Debtor. Proof of Claim 43-1. No writing evidencing the Note was attached.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Danny L. Vierra and Donna J. Vierra ("Creditor"), filed in this case by Irma Edmonds, the Chapter 7 Trustee, ("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 43-1 of Creditor is sustained

11. 16-90083-E-7 ICE-2

VALLEY DISTRIBUTORS, INC.
Iain Macdonald

OBJECTION TO CLAIM OF DANNY VIERRA, CLAIM NUMBER 42
11-9-22 [409]

Final Ruling: No appearance at the December 15, 2022 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 9, 2022. By the court's calculation, 36 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 42-1 of Danny Vierra is sustained, and the claim is disallowed in its entirety.

Irma Edmonds, the Chapter 7 Trustee, ("Objector") requests that the court disallow the claim of Danny Vierra ("Creditor"), Proof of Claim No. 42-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $75,000.00. Objector asserts that Creditor has failed to provide any documentation evidencing the claim.

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.

For a claim based on writing, Federal Rules of Bankruptcy Procedure 3001 requires a copy of the writing to be filed with the proof of claim. Here, the claim is based on a Note for money loaned to Debtor. Proof of Claim 42-1. No writing evidencing the Note was attached.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Danny Vierra ("Creditor"), filed in this case by Irma Edmons, the Chapter 7 Trustee, ("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 42-1 of Creditor is sustained, and the claim is disallowed in its entirety.

12. 16-90083-E-7 ICE-3

VALLEY DISTRIBUTORS, INC.
Iain Macdonald

OBJECTION TO CLAIM OF BRANDI ALVES, CLAIM NUMBER 44
11-9-22 [414]

Final Ruling: No appearance at the December 15, 2022 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 9, 2022. By the court's calculation, 36 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 44-1 of Brandi Alves is sustained, and the claim is disallowed in its entirety.

Irma Edmonds, the Chapter 7 Trustee, ("Objector") requests that the court disallow the claim of Brandi Alves ("Creditor"), Proof of Claim No. 44-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $37,500.00. Objector asserts that Creditor has failed to provide any documentation evidencing the claim.

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.

For a claim based on writing, Federal Rules of Bankruptcy Procedure 3001 requires a copy of the writing to be filed with the proof of claim. Here, the claim is based on a Note for money loaned to Debtor. Proof of Claim 44-1. No writing evidencing the Note was attached.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Brandi Alves ("Creditor"), filed in this case by Irma Edmons, the Chapter 7 Trustee, ("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 44-1 of Creditor is sustained, and the claim is disallowed in its entirety.

13.	**16-90083-E-7 ICE-4**	**VALLEY DISTRIBUTORS, INC. Iain Macdonald**	**OBJECTION TO CLAIM OF GREG VIERRA, CLAIM NUMBER 45 11-9-22 [419]**

Final Ruling: No appearance at the December 15, 2022 hearing is required.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 9, 2022. By the court's calculation, 36 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

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

The Objection to Proof of Claim Number 45-1 of Greg Vierra is sustained, and the claim is disallowed in its entirety.

Irma Edmonds, the Chapter 7 Trustee, ("Objector") requests that the court disallow the claim of Greg Vierra ("Creditor"), Proof of Claim No. 45-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $37,500.00. Objector asserts that Creditor has failed to provide any documentation evidencing the claim.

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.

For a claim based on writing, Federal Rules of Bankruptcy Procedure 3001 requires a copy of the writing to be filed with the proof of claim. Here, the claim is based on a Note for money loaned to Debtor. Proof of Claim 45-1. No writing evidencing the Note was attached.

Based on the evidence before the court, Creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Greg Vierra ("Creditor"), filed in this case by Irma Edmons, the Chapter 7 Trustee, ("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 45-1 of Creditor is sustained, and the claim is disallowed in its entirety.