UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

December 20, 2018 at 10:30 a.m.

1.	**18-90632-E-7** **UST-1**	**ERIK/ILIANA CLAROS** **Brian Haddix**	**MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)** **11-6-18 [26]**

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, Debtor's Attorney, Chapter 7 Trustee, and parties requesting special notice, on November 6, 2018. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss Case is granted, and the case is dismissed.

The United States Trustee, Tracy Hope Davis ("Trustee"), seeks dismissal of that Erik Alfredo Claros and Iliana Claros ("Debtor") bankruptcy case the case should be dismissed for abuse pursuant to section 707(b)(2), or under the totality of the circumstances pursuant to Section 707(b)(3).

Debtor lists unsecured nonpriority claims against the estate totaling $86,959.00, priority claims of $14,343.00, and secured claims totaling $290,000.00. Schedules D-F, Dckt. 17. Debtor's Form 122A-1

states that the Debtors' Total Current Monthly Income is $7,974, which when annualized totals $95,683. Official Form 122A-1, Dckt 17. The Trustee's review of Debtor's paystubs demonstrates that income is actually $8,503.00 monthly, which totals $102,036. Dckt. 28.

The Trustee computes the applicable median family income to be $73,162.

Debtor's Form 122A-2 shows that Debtor's disposable income for 60 months totals $53,004.00, which exceeds the $12,850.00 amount specified in 11 U.S.C. § 707(b)(2)(A)(i) and results in a presumption of abuse. Official Form 122A-2, Dckt. 17. Debtor lists as special circumstances, the following additional expenses:

Vehicle older than 6 years/100,000	$200
Addt'l Commute CostsD1:142mils RT/day	$320
Pet Expenses	$144
Tool Truck-D1 (Tesla Tech) $55/ wk	$240

Id.

Trustee asserts Debtor has not provided sufficient evidence to rebut the presumption of abuse. Trustee argues that Debtor has listed expenses that are not necessary or reasonable, including repayment of a retirement loan ($221), medical/dental expenses ($260); transportation expenses ($1,500); pet expenses ($144); and contingency expenses ($83). Schedule J, Dckt. 17. After adjusting the Transportation expenses to the national standards used in the means test of $933 (Transportation $436 + $497) and eliminating the other unreasonable and/or unsupported expenses, Trustee believes the Debtor has net monthly income totaling $1,308. Dckt. 28 at ¶ 17.

As of the time the Motion was filed, Trustee asserts that Debtor had failed to respond to the requests of the Trustee for documentation to support the special circumstances and to confirm income and expense items. Dckt. 26 at ¶ 6. The Trustee's review of the testimony provided at the First Meeting of Creditors did not provide additional information in support of Debtor rebutting the presumption of abuse. *Id.*, ¶ 7.

The Trustee's review of the Current Monthly Income § 521 documents, which included Mr. Claros' July 20, 2018 paystub shows the year to date income of $59,518, which averages $8,503 per month for the six months prior to the August 30, 2018 commencement of this case, which is higher than the $7,974 reported on Form 122A-1. *Id.* ¶ 8; Exhibit 3, Dckt. 29.

The Trustee asserts in the Motion that Debtor provides no evidence to support additional expenses of $260 for medical and dental, $15,000 for transportation, $144 for pet expenses, and $83 for contingency as stated on Schedule J. Motion ¶ 10, Dckt. 26. The Trustee computes Debtor being able to fund a plan with projected disposable income of $1,308 per month, which totals $78,480 over sixty months. *Id.* ¶ 11.

Trustee also asserts the totality of circumstances of Debtor's financial situation demonstrates abuse, again based on Debtor's failure to support special expenses.

DEBTOR'S OPPOSITION

Debtor's counsel filed an Opposition on December 6, 2018. Dckt. 31. Debtor states and Amended Schedule I was filed to reflect updated pay advices, now showing a disposable income of $149. Debtor also states a Declaration was filed explaining the Debtor's claimed special expenses. No Declaration has been filed with the Opposition and provided to the court in connection with this Contested Matter. There are two declarations filed which do not bear Docket Control Number UST-1, which designates this contested matter, with each of the two debtors providing testimony about the means test. Dckts. 32, 33.

Debtor Erik Claros testifies that: (1) he works at a technician at Tesla and uses his phone at work; (2) he commutes 142 miles roundtrip for work four days a week; (3) he computes that his vehicle expenses are $1,261.67 a month; (4) he has to replace his own tools at Tesla which costs him $55 a month, (5) he has an 60 pound English Bulldog that needs breathing treatments and specialists for which Debtor is reimbursed 80 percent; (6) the two debtors want to set aside $83 a month to build up a $1,000 contingency fund (which at $83 a month would take only 12 months).

Debtor Erik Claros provides no documentation for the expenses.

Debtor Iliana Claros provides her declaration testifying of estimates for medical treatments, which have now come to an end, debtor Iliana Claros testifying that she is now pregnant.

Debtor concedes payment of the retirement loan is not necessary, but argues it was not included in Debtor's Form 122A-1/2.

Debtor's counsel argues that several financial documents were submitted tot he Trustee to resolve Trustee's concerns.

TRUSTEE'S REPLY

Trustee filed a Reply on December 13, 2018. Dckt. 38. Trustee states that while documents were provided by Debtor to demonstrate Debtor's financial situation, those documents failed to support the amount claimed as special circumstances. Dckt. 39 at ¶ 5. Trustee also notes the court was not provided any of the financial documents for consideration in this matter.

While providing the court with the Trustee's conclusion that the documents do not support the Debtor's contention, the Reply does not identify what was provided and how it is asserted to be deficient.

APPLICABLE LAW

Section 707(b)(1) provides that the court may dismiss a case filed by an individual whose debts are primarily consumer debts if the court finds that granting relief would be an abuse of the provisions of Chapter 7. 11 U.S.C. §707(b)(1). A presumption of abuse arises where debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—

(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or $6,000, whichever is greater; or

(II) $10,000

11 U.S.C. § 707(b)(2)(A)(I). In order to rebut the presumption of abuse, the Bankruptcy Code provides the following:

> (B)(I) In any proceeding brought under this subsection, **the presumption of abuse may only be rebutted by demonstrating special circumstances**, such as a serious medical condition or a call or order to active duty in the Armed Forces, **to the extent such special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative**.
>
> (ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide–
>
> > (I) documentation for such expense or adjustment to income; and
> > (II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.
>
> (iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.
>
> (iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (I) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of–
>
> > (I) 25 percent of the debtor's nonpriority unsecured claims, or $7,700, whichever is greater; or
> > (II) $12,8501.

11 U.S.C.A. § 707(b)(2)(B)(emphasis added).

Where a presumption of abuse does not arise, the court determines whether granting relief would be an abuse of the provisions of Chapter 7 by considering:

> (A) whether the debtor filed the petition in bad faith; or
>
> (B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

11 U.S.C. § 707(b)(3).

DISCUSSION

Debtor's Original and Amended Statement of Current Monthly Income and Means Test Calculation Forms, 122A-1/2, both indicate the presumption of abuse arises in this case. Dckts. 17, 35. Debtor does not dispute the presumption of abuse arises in this case.

Debtor's Declarations Explaining "Special Expenses"

Debtor filed the Declarations of Erik Claros (Dckt. 32) and Iliana Claros in support of the asserted special expenses. Dckt. 33. The Erik Declaration explains Erik is required to by his job to maintain a phone (unspecified cost); commute 142 miles roundtrip four days a week (at a cost of $1,496.67 monthly); and purchase tools on a regular basis ($55 per week). The Erik Declaration also asserts insurance is necessary for Debtor's bulldog who needs pet insurance due to her breed's medical needs and needing to see a breathing specialist (unspecified cost), and that Debtor is seeking to save $83 monthly to create a $1,000 emergency fund.

The Iliana Declaration testifies that Iliana and Erik were both receiving infertility treatment ($170 and $35 monthly, respectively). The Iliana Declaration states further the Debtor's co-pay is 50 percent ($100 monthly), and that Iliana learned a few weeks ago she is pregnant.

The Iliana Declaration states under penalty of perjury it is executed was August 29, 2018. Dckt. 33. The Erik Declaration states under penalty of perjury it is executed was October 25, 2018. Dckt. 32. No explanation is provided as to why

Review of Schedules

Debtor's Amended Schedule I was filed December 7, 2018. Amended Schedule I, Dckt. 35. Debtor reports having a gross monthly income of $8,140.00.

Debtor's Amended Schedule J did not change claimed expenses, but (reflecting the Amended Schedule I increasing income) results in a $44.00 disposable income as opposed to negative $123.00. Among the expenses listed are:

Transportation	$1,500.00.

Debtor lists on Original and Amended Schedule J an expense of $1,500 for Transportation. *See* Dckts. 17, 35. This is separate from the Vehicle insurance expense listed totaling $270.

In the Erik Declaration, the following beardown of transportation expenses is provided:

	Debtor 1	Debtor 2
Gas	$650.00	$175.00
Oil Changes	$45.00	$15.00
FastTrac	$151.67	
Car Washes	$20.00	

Repair/Maintenance	$125.00	$45.00
Insurance	$270.00	
Sub Total	$1,261.67	$235.00
TOTAL	$1,496.67	

Dckt. 32. Therefore, there seems to be an unexplained discrepancy, with the Amended Schedule J stating Transportation & Insurance costs to be $1,770, and Debtor's Declaration stating the Transportation & Insurance costs to be only $1,496.67. Furthermore, some of the expenses in the Declaration do not appear credible. If the court were to assume Debtor's vehicle got 5MPG and gas cost $5.00 per gallon, the monthly gas cost of a 142 mile commute four days a week would only be $568.

Food and Housekeeping Supplies	$500.00
Vehicle Insurance	$270.00
Car payments for Vehicle 1	$368.00

Debtor lists two Vehicles: a 2010 Toyota Camry, valued at $6,800, and a 1999 Honda Civic valued at $3,000. Schedule A/B, Dckt. 17. The expense here seems high even if the payment for both vehicles is incorporated.

Installment /lease payment for Tool Truck	$240.00

Debtor's "Tool Truck" is not explained in either Declaration provided. No such truck is listed on Debtor's Schedules as an asset.

Pet Expenses	$144.00

Debtor explains here that the expense is for medical insurance and procedures/visits. Dckt. 32. Debtor does not actually provide specific information as to what procedures have been or are currently needed. Rather, this expense appears to be in the realm of a contingency.

Gifts	$60.00

Debtor has provided no explanation for why $60 a monthly ($720 annually) for gifts is a necessary expense.

Contingency	$83.00
Telephone, Cell Phone, Internet, Satellite, Cable	$300.00

Debtor has explained a phone is necessary for work. However, no breakdown of the expense is given. The tasks requiring phone use appear to be performable with any smart phone and may not support a necessary $300 monthly expense.

Also concerning is Debtor's "recent" statement in the Iliana Declaration that Iliana is pregnant. This would seem to negate the asserted necessary expense of fertility treatment.

Failure to Provide Documentation & Detailed Explanation

As stated, Debtor does not dispute the presumption of abuse applies here. Rather, Debtor seeks to reduce his monthly estimated disposable income by $904.00 with several claimed "special expenses."

However, Debtor did not provide documentation for claimed "special expenses." While Debtor provided some documents to the Trustee, the Trustee states those documents failed to support the amount claimed as special circumstances. Dckt. 39 at ¶ 5.

Furthermore, a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable was not provided. While Debtor

A debtor seeking to rebut the presumption of abuse is required to provide documentation and a detailed explanation. 11 U.S.C.A. § 707(b)(2)(B)(ii).

Review of "Special Expenses"

Debtor lists as special circumstances, the following additional expenses:

Vehicle older than 6 years/100,000	$200
Addt'l Commute CostsD1:142mils RT/day	$320
Pet Expenses	$144
Tool Truck-D1 (Tesla Tech) $55/ wk	$240

Official Form 122A-2, Dckt. 17.

No explanation is provided for why a "vehicle older than 6 years" is a special expense here. The court could guess Debtor is arguing higher maintenance costs with an older vehicle. However, nothing of that nature has been demonstrated.

Pet costs could constitute a special circumstance, if supported. However, the court has been left to guess the reasonableness of this cost. Nothing has been provided for the court to assess what health issue, if any, Debtor's dog has.

Additional commute costs could also be reasonable special expenses, if supported. However, it is not at all clear what the expense associated with commute is. In the Erik Declaration, Erik Claros states under penalty of perjury $650 is expended for gas alone. This number is obviously false based on the number of commute miles stated under penalty of perjury.

Finally, Debtor lists a "tool truck" as a special expense. It is unclear whether this expense is for tools, as stated in the Erik Declaration, or if this expense is for a vehicle, as listed on Amended Schedule

J. Furthermore, no description is provided for what the tools actually are, or why they need to be replaced on a weekly basis.

Debtor has not carried Debtor's burden to rebut the presumption of abuse. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 7 case filed by The United States Trustee, Tracy Hope Davis ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted, and the case is dismissed.

2.	**18-90339-E-7** **ADJ-2**	**KIMBERLY SOLARIO** **Pro Se**	**MOTION FOR APPROVAL OF SETTLEMENT, SALE OF CLAIMS, AND RELATED SETTLEMENT AND SALE AGREEMENT AND RELEASE** **11-16-18 [56]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2018. By the court's calculation, 34 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

The Motion for Approval of Compromise is xxxxx.

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Craig De Jong ("Settlor"). The claims and disputes to be resolved by the proposed settlement are against Settlor for alleged secret videotaping/recording claims that are the subject of proceedings in the Superior Court of California, San Joaquin County, Case No. STK-CV-UPI-2016-3162 (the "Pending Litigation"). Dckt. 60 at ¶ 9.

Before the Pending Litigation, Settlor filed a Complaint the Superior Court of California, San Joaquin County, Case No. STK-CV-UPR-2014-0008188 ("Claims Against Debtor"). The Claims Against Debtor involved an action against Settlor against Kimberly Rose Solario ("Debtor") based on Debtor's

purchase of 484 S. Manley Road, Ripon, California (the "Property") with funds she had allegedly misappropriated from Settlor. Dckt. 60 at ¶ 4. Settlor wrote a demand letter to Debtor seeking $381,000.00. *Id*. at ¶ 5.

On February 14, 2018, the San Joaquin County Superior Court entered judgement in the Litigation against Debtor, awarding Settlor the Property, damages of $460,663.03, and punitive damages of $20,000.00. Id. at ¶¶ 10-11.

Movant and Settlor have resolved the claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 61):

A. Settlor shall pay $35,000.00 in full satisfaction of any and all claims, known or unknown the Trustee might have against Settlor, Mrs. DeJong, and their agents and successors in interest.

B. Debtor shall pay 50.87 percent of any taxes on the settlement amount, and the Trustee shall pay 49.13 percent.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

The proposed settlement permits Movant to immediately liquidate claims held by the Estate against Settlor in return for a lump sum. Because Debtor has claimed an exemption in the claims of the

Estate, the funds will be split between Debtor and the Estate, with each respective recipient paying their pro rata share of taxes on the recovery.

Probability of Success

Movant argues this factor supports settlement because Debtor's claims against Settlor are likely barred by California's compulsory cross-complaint statute, C.C.P. section 426.30. Movant argues further that the damages in an extortion or privacy claim would be highly speculative and therefore hard to prove. Debtor's attorney who had been handling the litigation will not take the case. Dckt. 60 at ¶¶ 12-13.

Difficulties in Collection

Movant does not anticipate difficulties in collection against Settlor.

Expense, Inconvenience, and Delay of Continued Litigation

Movant argues this factor supports settlement because it would take significant time and legal fees and costs to pursue the Pending Litigation through trial, all of which would be avoided through settlement. Movant argues further the Estate does not have adequate funds to finance the litigation.

Paramount Interest of Creditors

Movant argues this factor supports settlement because the certainty of some recovery is preferable to the uncertain recovery, as well as the time and expense associated with the action.

Consideration of Additional Offers

Movant's arguments are well-taken.

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the success of the Pending Litigation is speculative at best, would result in significant time and litigation cost, and is simply not feasible given the Estate's inability to finance the litigation. The Motion is granted.

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

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

The Motion to Approve Compromise filed by Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and Craig De Jong ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit 1 in support of the Motion (Dckt. 61).

3. 18-90840-E-7 GABRIELLA TAYLOR
Patrick Greenwell

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-27-18 [11]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on November 29, 2018. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on November 13, 2018.

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

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $335.00.

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

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

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

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

4. 18-90841-E-7 KATHERINE BUFFALO
Patrick Greenwell

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-27-18 [11]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on November 29, 2018. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on November 13, 2018.

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

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: $335.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

5. **18-90258-E-7** **ANDREAS ABRAMSON** **CONTINUED MOTION FOR RELIEF**
JCW-1 **Iain Macdonald** **FROM AUTOMATIC STAY**
5-29-18 [36]

SELECT PORTFOLIO SERVICING, INC. VS.

Debtor's Atty: Iain A. MacDonald - Telephone

~~**The Status Conference is continued to 10:30 a.m. on December 20, 2018.**~~

Notes:
Set by order re adequate protection payments filed 7/13/18 [Dckt 80]

[JCW-1] Debtor's Status Conference Statement re Select Portfolio Servicing, Inc.'s Motion for Relief from Stay filed 10/11/18 [Dckt 211]

OCTOBER 25, 2018 STATUS CONFERENCE

At the Status Conference counsel for Select Portfolio Servicing, Inc. reported that the adequate protection payments made are not for the full amount ordered. It is reported that the underpayment is approximately $7,000 short.

6. 18-90258-E-7 ANDREAS ABRAMSON CONTINUED MOTION TO AVOID JUDICIAL LIEN

MF-6 Iain Macdonald 10-10-18 [207]

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 and Creditor on October 10, 2018. The court set the hearing for October 25, 2018. Dckt. 213.

The Motion To Intervene 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 court shall issue its order setting a final hearing on the Motion for xxxxxxxxxxxx.

Bernadette Cattaneo ("Movant") filed this Motion to Intervene in the Contested Matter now pending in the bankruptcy case of Andreas Abramson ("Debtor") – Debtor's Motion to Avid Judicial Lien of Helen McAbee ("Creditor"). *See* Dckt. 141. On October 26, 2018, the court issued an Order granting the Motion and adding Bernadette Cattaneo as a party to this Contested Matter. Order, Dckt. 225.

The court issued a further Order For Supplemental Briefing On Issue Of Application Of 11 U.S.C. § 522(f)(2) and 11 U.S.C. § 522(i). Order, Dckt. 224. The Order provided the following briefing schedule:

> **IT IS ORDERED** that a hearing will be conducted at **10:30 a.m. on December 20, 2018**, for oral argument on this legal issue. On or before **November 16, 2019**, Debtor shall file and serve a supplemental pleading addressing this issue arising under 11 U.S.C. § 522(f), Responses from Creditor and Intervenor shall be filed and served on or before **December 7, 2018**, and Reply, if any, filed and served by Debtor on or before **December 14, 2018**.

Id. The court determined that such supplemental briefing on the issue to determine the scope of these proceedings and whether, as a matter of law, either side had an "absolute loser" given the respective asserted values of the Property subject to the judgment lien and the total liens against the Property.

DEBTOR'S SUPPLEMENTAL REPLY

Debtor filed a Supplemental Reply Brief on November 16, 2018. Dckt. 229. Debtor argues statutory formula of Section 522(f)(2) appears to treat consensual liens more favorably than judicial liens, but the fact that there is a consensual lien that is junior to a judicial lien is not a reason to ignore the statute's direction to count that lien as among the other liens on the property for purposes of calculating avoidably of the judicial lien under Section 522(f). *Id* at 1:24-27. Debtor argues the potential of a windfall to a junior lienholder is irrelevant to the interpretation of 11 U.S.C. § 522(f). *Id.* at 2:17.

Debtor argues finally that his father's Second Deed of Trust is valid, discovery having been propounded to creditors. Debtor requests the court apply the rule of *Moldo v. Charnock (In re Charnock)*, 318 B.R. at 728, 729.

INTERVENOR'S SUPPLEMENTAL BRIEF
& ADOPTION BY CREDITOR HELEN MCCABE

Intervenor filed a Supplemental Brief on December 7, 2018. Dckt. 231. Intervenor argues there is a split on whether lien priority factors into lien avoidance, with no binding authority. *Id*. at 5:18-25. Intervenor argues further that under *In re Simonson,* it appears that Congress intended that debtors be able to preservetheir exemption from the value of an avoided lien, and that junior lienholders be left in the same position they originally occupied—receiving neither windfall nor injury. *Id*. at 6:9-10. Under Creditor's analysis, Intervenor argues, the lien is avoided to the extent that it impairs the Debtor's exemption—by $75,000– and the junior lien is left in exactly the same position that it was in prior to the partial avoidance of the McAbee Lien. *Id*. at 6:16-19.

Finally, Intervenor argues the present facts present a situation warned about in *Charnock* and *Kolich*, where application of 11 U.S.C. § 522 would "give a debtor contemplating bankruptcy the ability to wipe out judicial liens by persuading a lender to take an otherwise junior consensual lien that renders the exempt property over-encumbered and therefore ripe for impairment," and that this could lead to abuses of § 522(f) resulting from "self-interest or hard-to-detect collusion." Intervenor argues Debtor and his father either colluded to manufacture the junior second deed of trust with the purpose of defeating the senior McAbee Lien, or if not, the loan was an insider transaction made with full knowledge of the judgment lien and should not be factored into the avoidance analysis.

Creditor Helen McCabe filed a Notice of Joinder on December 11, 2018, indicating an intent to join in Intervenor's response so as to avoid duplicative responses. Dckt. 232. It appears that Creditor and Creditor's counsel, have handed the destiny of Creditor's secured claim to the Intervenor who is also obligated on the obligation.

DEBTOR'S RESPONSE TO SUPPLEMENTAL BRIEF OF INTERVENOR

Debtor filed a Response to Intervenor's Brief on December 14, 2018. Dckt. 239. Debtor argues that (1) 11 U.S.C. § 522 is not void, as federal law trumps state law; (2) Intervenor has not provided evidence of any fraud or collusion; (3) the argument against a "windfall" is actually an attack on Debtor's right to a fresh start; and (4) "concern" expressed by a few courts is not reason to ignore the plain language of 11 U.S.C. § 522.

DISCUSSION

11 U.S.C. § 522(f)(1)(A) provides that a debtor may avoid the fixing of a judicial lien on exempt property "to the extent that such lien impairs an exemption to which the debtor would have been entitled." These simple words have caused decades of legal hand wringing, appeals, Supreme Court review, and intended remedial legislation. From a review of the cases, the application of these provisions in the situation where the judgment lien is sandwiched between to consensual liens continues to cause consternation.

With the 1994 amendments to 11 U.S.C. § 522(f)(2) Congress believed it was providing the parties and trial judges with a simple mathematical formula to determine impairment. While a mathematical formula, the consternation continues. See Collier on Bankruptcy, 16th Edition, ¶ 522.11[3], in which the discussion starts with, "Another pattern that had created some difficulty for the courts in applying section 522(f) was the problem of avoidable liens that are senior to unavoidable interests."

Beginning with the "Plain Language" of the mathematical formula, the court is directed to compute the impairment of the Debtor's exemption by subtracting the total of the liens against the property (excluding any already avoided liens) and the amount of the Debtor's homestead exemption from the value of the Debtor's interest in the property (here, the fair market value of the property).

Using the value of the property alleged by Debtor and the value of the property alleged by **Creditor, these "simple" computations are as follows**:

	Debtor Calculation	Creditor Calculation
1st DOT, Senior to Judgment Lien	($925,557.00)	($925,557.00)
Creditor Judgment Lien	($770,000.00)	($770,000.00)
2nd DOT, Junior to Judgment Lien (Disputed by Creditor)	($265,000.00)	($265,000.00)
Total of Liens	($1,960,557.00)	($1,960,557.00)
Exemption	($75,000.00)	($75,000.00)
Fair Market Value Asserted	$1,160,027.00	$1,725,000.00

Value Which Exists to Secure Creditor's Judgment Lien (FMV - 1st DOT - Exemption = Value for Creditor's Lien)	$159,470.00	$724,443.00

By Debtor's calculation, the liens and homestead exemption exceed the value of the Property by $875,530.00. For the Creditor, it is slightly better, there being "only" a $310,557.00 amount by which the liens and homestead exemption exceed the value of the Property.

Using the Creditor's calculation, it would appear that Debtor could avoid $310,557.00 of the judgment lien claim, reducing it to ($495,443.00).[FN.1.] The express language of 11 U.S.C. § 522(f)(1) is that the judgment lien may be avoided to the extent it impairs an exemption, with the "impairment" computed by the "simple" mathematical computation.

FN.1. This does not take into account the alleged dispute concerning the 2nd Deed of Trust asserted by Debtor's father. To the extent that the obligation on the 2nd Deed of Trust was reduced, the impairment caused by the Creditor's judgment lien is reduced and the amount of the debt secured by the judgment lien increases.

Alternatively, if the Debtor's value is used, the impairment is $875,530.00, it appears that all of the judgment lien can be "considered" voidable, the impairment exceeding the ($770,000.00) judgment lien claim. But to avoid all of the judgment lien would have the effect of not merely preserving the Debtor's $75,000.00 homestead exemption, but also hand the holder of the junior 2nd Deed of Trust, the Debtor's father in this case, a $159,470.00 windfall. That occurs because after the 1st Deed of Trust there is $234,470.00 of value. After subtracting the Debtor's $75,000.00 homestead exemption there is $159,470.00 in value securing the judgment lien claim. So, if Creditor were to conduct a judicial sale for what Debtor asserts is the fair market value of the property, then the 1st Deed of Trust obligation is paid in full, the Debtor paid the $75,000.00 homestead exemption, and then the balance to Creditor – with $0.00 to the holder of the 2nd Deed of Trust (Debtor's father).

Thus, in attempting to properly apply 11 U.S.C. § 522(f) to this type of "sandwich" judgment lien, one questions whether Congress would draft a statute that works to benefit (the vast majority of time) institutional lenders holding junior deeds of trust who choose to lend to borrowers (and take a junior lien behind) who have existing judgement liens of record. Also, whether Congress has drafted a statute which would create an incentive for an insider, such as a debtor's parent, to obtain a deed of trust behind a judgment lien creditor (a loan that potentially never would be made by an non-colluding insider based on reasonable business calculations) for the purposes of manufacturing an impairment and transfer the judgment lien creditor's collateral to the insider.

Application of 11 U.S.C. § 522(i)

Congress has provided the courts and parties with an additional insight of what is intended by an 11 U.S.C. § 522(f) avoidance of a judgment lien. In 11 U.S.C. § 522(I) [emphasis added] Congress provides:

> (I) (1) If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.
>
> (2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

In 11 U.S.C. § 550 provides that upon avoiding a transfer, the property itself may be recovered. Here, the property avoided is the lien. Congress further provides in 11 U.S.C. § 551 that a transfer avoided under 11 U.S.C. § 522 is "preserved for the benefit of the bankruptcy estate." But such avoided transfer is subject to the claim of exemption, which will cause it then to be transferred from the bankruptcy estate to the debtor. See 11 U.S.C. § 522(i)(2).

Thus, in avoiding the judgment lien pursuant to 11 U.S.C. § 522(f) in the "sandwich" lien situation, it appears that Debtor preserves the $75,000.00 (in this case) exemption of the judgment lien. This preserved portion of the judgment lien is for the for the benefit of the Debtor and continues in priority to the junior consensual 2nd Deed of Trust. While it may seem a bit strange that a debtor would have an interest in a judgment lien against himself, it is the Bankruptcy Code that creates such anomaly. The holder of the junior deed of trust is not harmed, the judgment lien otherwise coming before it. (Generally, it will not be a debtor's father holding the junior deed of trust, but some institutional lender who is benefitting from a mathematical reduction in the judgment lien senior to it.)

"Considered" to be an Impairment

In drafting 11 U.S.C. § 522(f)(2), the language used by Congress is that the mathematical formula will produce a result that is to be "considered" to impair an exemption. It does not say "shall be the impairment of an exemption." The word "considered" as defined in the Merriam-Webster Dictionary as:

transitive verb

1 : to think about carefully: such as

a : to think of especially with regard to taking some action
//is considering you for the job
//considered moving to the city

b : to take into account

//The defendant's age must be considered.

. . .

4 : to come to judge or classify

//consider thrift essential

intransitive verb

: reflect, deliberate

//paused a moment to consider

In "considering" the impairment when there is a "sandwich" judicial lien, there is no new value being obtained or created after the avoiding of the judicial lien. Other than the $75,000.00 portion of the avoided judgment lien that is preserved for Debtor, the hundreds of thousands of dollars of the 2nd Deed of Trust (by Debtor's statement of the debt owed his father).

Thus, it may be that an argument can be made that when the court "considers" the mathematical impairment, for the sandwich judgment lien claim, once the Debtor has avoided the $75,000.00 exemption and the amount of the 2nd Deed of Trust exhausts all value in the property, there is no basis for "transferring" the monies that would be subject to the judgment lien to the holder of the undersecured 2nd Deed of Trust.

Review of Case Authority

The case *Moldo v. Charnock (In re Charnock)*, 318 B.R. 720 (B.A.P. 9th Cir. 2004) addressed this "sandwich" judgment lien issue. In *Moldo*, the liens and exemption amounts totaled ($514,348.00) and the value of the property was $435,000.00. In addressing the "windfall" scenario for the junior deed of trust holder, the *Moldo* court concluded that since the debtor was the beneficiary of the preserved avoided judgment lien, the holder of the junior deed of trust did not receive a windfall, but was still subject to the same judgment lien. The *Moldo* court cited to the legislative history and the dissent in *In re Simonson*, 758 F.2d 103 (3rd Cir. 1985), which is identified as the legal theory incorporated by Congress and result sought in the 1994 legislation.

> Under my view of this case, therefore, the Simonsons should be permitted to apply to their exemption the value of the avoided liens, $14,411.33, leaving the SBA in the same priority position it occupied prior to the commencement of the case. This result not only effectuates Congress' intent to preserve the debtor's exemption and thereby provide them with a "fresh start," **but also prevents a junior encumbrancer from receiving a windfall merely because the debtor chose to avoid the superior judicial liens.** See H.R. Rep. No. 595, 95th Cong., 1st Sess. 376, reprinted in 1978 U.S. Code Cong. & Ad. News 5963, 6332 (noting that a primary purpose of § 551 as a whole is **to prevent junior creditors from benefitting at the expense of the estate when senior liens are avoided**).

In re Simonson, 758 F.2d at 110 (emphasis added).

There was no windfall because the exemption consumed the entire judgment lien sought to be avoided, not merely a fractional part thereof. *In Moldo*, the court (correctly) stated that a debtor preserving the homestead exemption was not a "windfall" for the debtor, but part of the fresh start intended by Congress. *Moldo v. Charnock,* 318 B.R. at 725.

But as to the junior deed of trust holder in *Moldo*, the Bankruptcy Appellate Panel went further to state,

> Nor are we persuaded by Creditor's argument that Consensual Lender might receive an unintended windfall from avoidance of Creditor's judicial lien. Creditor cites no authority that Consensual Lender would receive any benefit from such avoidance, and the dissent in *Simonson* (approved by the legislative history to the 1994 amendments) suggests otherwise:
>
> > . . . the debtor may recover the avoided judicial lien [under Section 522(i)(1)], and the equitable interest represented thereby merges with the legal title to the property already in the estate.

Id. [Fn.2.] *In Moldo*, the exemption for the avoided judicial lien consumed all of the value in the property:

$435,000	FMV
- $371,056	First deed of trust
- $68,300	Avoid judgment lien preserved by homestead exemption
========	

$0.00 Value remaining after avoided judicial lien

FN.2. In discussing the "sandwich" judicial lien situation, the legislative history includes the following statement:

> The amendment also overrules *In re Simonson,* 758 F2d 103 (3d Cir. 1985), in which the Third Circuit Court of Appeals held that a judicial lien could not be avoided in a case in which it was senior to a nonavoidable mortgage and **the mortgages on the property exceeded the value of the property. The position of the dissent in that case is adopted.**

1994(H.R. REP. 103-835, 52-54, 1994 U.S.C.C.A.N. 3340, 3361-63). The dissent in *Simonson* expressly raises and then resolves the potential windfall to the junior lien creditor issue concluding that there was no value after the senior lien and the avoided exemption preserved for the debtor. *See* citation to the dissent in Simonson, which is adopted into the 1994 legislation expressly stating that the junior non-consensual lien holder is not to benefit from the lien avoidance. *In re Simonson*, 758 F.2d at 110.

This is contrasted in the present facts, which as shown even by Debtor's valuation that there is at least $159,470.00 in value for the judgment lien that would be transferred to the holder of the junior 2nd

Deed of Trust (the Debtor's father), if the 11 U.S.C. § 522(f) avoidance were to destroy the judgment lien in its entirety given that the Debtor cannot avoid and preserve pursuant to § 522(i) all of the amount of the judgment lien in excess of the exemption.

The correct calculation showing the avoidance of the lien, the preservation of the avoided lien for the Debtor, and the remaining unavoidable lien appears to be computed as follows:

	Debtor Calculation	Creditor Calculation
Asserted Fair Market Value	$1,160,027.00	$1,725,000.00
1st DOT, Senior to Judgment Lien	($925,557.00)	($925,557.00)
Value for Creditor Judgment Lien of ($770,000)	$234,470.00	$799,443.00
Avoided Homestead Exemption Amount Preserved for Debtor	($75,000.00)	($75,000.00)
Value Remaining to Secure ($770,000) Creditor Judgment Lien	$159,470.00	$724,443.00
Amount of Non-Avoidable Judicial Lien	($159,470.00)	($724,443.00)
Avoided Amount of Creditor Judgment Lien	($610,530.00)	($45,557.00)

The above interpretation of the law appears to do honor both to the Bankruptcy Code and California law. As a matter of California law and Creditor were to take the property to judicial sale as part of enforcing her judicial lien, from the monies first received from the judicial sale she would have to pay Debtor the $75,000.00 homestead exemption amount. *See* Cal. C.C.P. § 704.800 and § 704.850 (emphasis added) which mandates the order of distribution of proceeds of a judicial lien sale:

§ 704.850. Distribution of proceeds of sale of homestead

(a) The levying officer **shall distribute the proceeds of sale of a homestead** in the following order:

(1) **To the discharge of all liens and encumbrances**, if any, on the property.

California Code of Civil Procedure § 704.800 requires the bid at the sale of homestead property to be in excess of the senior liens and encumbrances to the judgment lien for which the sale is being conducted on the property being sold. *See Bratcher v. Buckner*, 90 Cal. App. 4th 1177, 1189 (2001); 1189, *Rourke v. Troy*, 17 Cal. App. 4th 880, 885-886 (1983).

(2) **To the** judgment **debtor in the amount of any applicable exemption** of proceeds pursuant to Section 704.720.

(3) **To the levying officer for the reimbursement** of the levying officer's costs for which an advance has not been made.

(4) **To the judgment creditor** to satisfy the following:

(A) First, costs and interest accruing after issuance of the writ pursuant to which the sale is conducted.

(B) Second, the amount due on the judgment with costs and interest, as entered on the writ.

At this point, as provided in *Rourke*, the next monies will go to pay junior lien creditors to the judgment lien being enforced.

(5) To the judgment debtor in the amount remaining.

(b) Sections 701.820 and 701.830 apply to distribution of proceeds under this section.

Therefore, in the course of creditor asserting its rights, it can only recover the value over the senior lien(s) and homestead exemption.

In 11 U.S.C. § 522(i) Congress provides that the avoided judicial lien is recovered by the Debtor in the same way an avoided lien is recovered by of the bankruptcy estate under 11 U.S.C. § 550.

(i)
(1) If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

> (2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

11 U.S.C. § 522(i). This preservation of the avoided judgment lien is discussed on Collier on Bankruptcy, Sixteenth Edition, ¶ 522.12 [4] (emphasis added) as follows:

> [4] Effect of Section 522(i)
>
> In keeping with the notion that the debtor is exercising the powers of the trustee in these transfer avoidance actions, section 522(i)(2) adopts the rule of section 551 that avoided transfers are preserved. Under section 551, these transfers are preserved for the benefit of the estate, **while under section 522(i)(2), they are preserved for the benefit of the debtor**.18 There is, however, a difference in the language of section 522(i)(2) as compared to section 551. Section 522(i)(2) provides that the avoided transfer "may be preserved," while section 551 states that the avoided transfer "is preserved." Thus, the debtor should request that the avoided transfer be preserved in an appropriate case. **Preservation of these transfers allows the debtor to stand in the shoes of the transferee and obtain the benefit of that person's position relative to other creditors.**

Thus, it appears that there is at issue before the court a valuation determination, avoided judicial lien determination for the Debtor, the amount of the avoided lien preserved for the benefit of the Debtor, and the non-avoided portion of the Creditor's lien.

Those issues and all other issues are to be finally determined in this Contested Matter from which the court will issue its final determination and order.

> The Court set the following schedule for this Contested Matter:
>
> Xxxxxxxxxxxxxx

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid the Judicial Lien of Helen McAbee ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that XXXXXXXXXXX.

7.	**13-91566-E-7** **BSH-3**	**FELIX/REBECCA MANGUERRA** **Brian Haddix**	**MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.** **12-6-18 [33]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, on December 6, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is ~~granted~~.

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota), N.A. ("Creditor") against property of Felix B. Manguerra and Rebecca N. Manguerra ("Debtor's") commonly known as 4624 Sundowner Place, Salida, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $11,603.17. That claim now totals $14,855.24 . Motion, Dckt. 33. An abstract of judgment was recorded with Stanislaus County on February 4, 2011, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $238,818.00 as of the petition date. Dckt. 12. The unavoidable consensual liens that total $209,628.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 44. Debtor has

claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $19,741.24 on Second Amended Schedule C. Dckt. 36.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is some equity to support the judicial lien, but not enough for its entirety. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided in all amounts in excess of $13,727.89 subject to 11 U.S.C. § 349(b)(1)(B).

FAILURE TO CLAIM EXEMPTION

Debtor's most recent Amended Schedule C was filed October 6, 2013. Dckt. 12. In that Amended Schedule C, Debtor claims an exemption of $0.00 in the Property pursuant to California Code of Civil Procedure section 703.140(b)(1).

Along with Debtor's Motion, Debtor filed as Exhibit A an Amended Schedule C and D. Exhibit A, Dckt. 36. Schedules need to be filed as separate documents so that they are actually filed as amended schedules and not merely an exhibit for an isolated matter.

The court notes two Amended Schedule D were filed on December 6, 2018. Dckts. 43, 44. It appears the failure to file an Amended Schedule C was a clerical error.

At the hearing, XXXXXXXXXXXXXX.

CONFLICTING INFORMATION AS TO VALUE OF CREDITOR'S CLAIM

In the Motion and other documents filed in this case the lien of Creditor is stated to be the fourth in priority lien, securing a debt of $14,667.68. *See* Motion, Dckt. 33. However, in the Amended Schedule D filed December 6, 2018, Debtor lists Creditor having a debt totaling $23,176.65. The discrepancy appears to be a clerical error in the Amended Schedule D whereby the claim of Discover Bank was mistakenly switched with that of Creditor.

At the hearing, **XXXXXXXXXXX**.

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

~~The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Felix B. Manguerra and Rebecca N. Manguerra ("Debtor's") having been presented~~

~~to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the judgment lien of Citibank (South Dakota), N.A., California Superior Court for Stanislaus County Case No. 655017, recorded on February 4, 2011, Document No. 2011-0010316-00, with the Stanislaus County Recorder, against the real property commonly known as 4624 Sundowner Place, California, is avoided in all amounts in excess of $13,727.89 pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.~~

8. **13-91566-E-7 BSH-4** | **FELIX/REBECCA MANGUERRA** | **MOTION TO AVOID LIEN OF DISCOVER BANK**
Brian Haddix | **12-6-18 [38]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor on December 6, 2011. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is ~~granted~~.

This Motion requests an order avoiding the judicial lien of Discover Bank, Issuer of Discover Card Citibank (South Dakota) N.A. ("Creditor") against property of Felix B. Manguerra and Rebecca N. Manguerra ("Debtor") commonly known as 4624 Sundowner Place, Salida, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $18,334.37. That claim now totals $23,176.65. *See* Motion, Dckt. 38. An abstract of judgment was recorded with Stanislaus County on May 31, 2011, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $238,818.00 as of the petition date. Dckt. 12. The unavoidable consensual liens that total $209,628.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 44. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $19,741.24 on Second Amended Schedule C. Dckt. 36.

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

FAILURE TO CLAIM EXEMPTION

Debtor's most recent Amended Schedule C was filed October 6, 2013. Dckt. 12. In that Amended Schedule C, Debtor claims an exemption of $0.00 in the Property pursuant to California Code of Civil Procedure section 703.140(b)(1).

Along with Debtor's Motion, Debtor filed as Exhibit A an Amended Schedule C and D. Exhibit A, Dckt. 41. Schedules need to be filed as separate documents so that they are actually filed as amended schedules and not merely an exhibit for an isolated matter.

The court notes two Amended Schedule D were filed on December 6, 2018. Dckts. 43, 44. It appears the failure to file an Amended Schedule C was a clerical error.

At the hearing, XXXXXXXXXXXXXX.

CONFLICTING INFORMATION AS TO VALUE OF CREDITOR'S CLAIM

In the Motion and other documents filed in this case the lien of Creditor is stated to be the fourth in priority lien, securing a debt of 23,176.65. *See* Motion, Dckt. 38. However, in the Amended Schedule D filed December 6, 2018, Debtor lists Creditor having a debt totaling $14,667.68. The discrepancy appears to be a clerical error whereby the claim of Citibank (South Dakota), N.A. was mistakenly switched with that of Creditor.

At the hearing, **XXXXXXXXXXX**.

PRIOR MOTION TO AVOID LIEN OF DISCOVER BANK

In reviewing the present Motion, the court has discovered a prior clerical error.

On December 11, 2013, Debtor filed a Motion to Avoid Lien of Discover Bank (Discover Card). Dckt. 18. The court issued an Order on January 21, 2014, mistakenly avoiding the lien of Stanislaus Credit Control Service, Inc. ("SCCS") Order, Dckt. 26.

SCCS did not receive service or notice for that Motion. Proof of Service, Dckt. 22.

Orders Issued Without Notice Void

The Order here, issued as a clerical error to SCCS, was issued by the court without notice or providing the opportunity to address the lien avoidance. As addressed by the United States Supreme Court in *Mullane v. Cental Hanover Bank & Trust, Co.*, 339 U.S. 306, 314 (1950), a basic requirement for an order or judgment to be accorded finality is that interested parties be apprised of the pending proceedings and an opportunity to present their objections before a judgment or order is issued. This opportunity to be heard is a fundamental requirement of due process under the United States Constitution.

Recently, the Supreme Court addressed in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270-271 (2010) the issue of whether an order was void when issued in error or merely one in which the error must be appealed, stating,

> A void judgment is a legal nullity. See Black's Law Dictionary 1822 (3d ed. 1933); see also id., at 1709 (9th ed. 2009). Although the term "void" describes a result, rather than the conditions that render a judgment unenforceable, it suffices to say that a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final. See Restatement (Second) of Judgments 22 (1980); see generally id., § 12. The list of such infirmities is exceedingly short; otherwise, Rule 60(b)(4)'s exception to finality would swallow the rule.
>
> A judgment is not "void," for example, "simply because it is or may have been erroneous." *Hoult v. Hoult*, 57 F.3d 1, 6 (CA1 1995); 12 J. Moore et al., Moore's Federal Practice § 60.44[1][a], pp. 60-150 to 60-151 (3d ed. 2007) (hereinafter Moore's). Similarly, a motion under Rule 60(b)(4) is not a substitute for a timely appeal. *Kocher v. Dow Chemical Co.*, 132 F.3d 1225, 1229 (CA8 1997); see Moore's § 60.44[1][a], at 60-150. Instead, Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard. See *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 661 (CA1 1990); Moore's § 60.44[1][a]; 11 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2862, p. 331 (2d ed. 1995 and Supp. 2009); *cf. Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 376, 60 S. Ct. 317, 84 L. Ed. 329 (1940); *Stoll v.*

> *Gottlieb*, 305 U.S. 165, 171-172, 59 S. Ct. 134, 83 L. Ed. 104 (1938). The error *United* alleges falls in neither category.

As previously stated in *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 661 (1st Cir. 1990),

> A void judgment is from its inception a legal nullity. With this principle in mind, we must consider appellants' argument that the judgment entered was void, and that relief is proper regardless of the time elapsed, because relief from a void judgment has no time limitations. *United States v. Berenguer*, 821 F.2d at 22; *Lubben v. Selective Service System Local Board No. 27*, 453 F.2d 645, 649 (1st Cir. 1972).)

In *Winer v. Krueger (In re Krueger)*, 88 B.R. 238 (B.A.P. 9th Cir. 1988), the Bankruptcy Appellate Panel for the Ninth Circuit addressed this distinction between a void order purporting to dismiss a bankruptcy case and a valid order dismissing the bankruptcy case which was later vacated under Federal Rule of Civil Procedure 60(b) or reversed on appeal. The Panel was presented with a situation where the bankruptcy court dismissed the debtor's bankruptcy case at a hearing for which no notice was provided to the debtor. When the order dismissing the case was entered, a creditor proceeded with a non-judicial foreclosure sale. Learning of the dismissal, the debtor sought and obtained from the court (after the non-judicial had occurred) an order vacating the order dismissing the bankruptcy case. The Bankruptcy Appellate Panel first concluded that the order dismissing the case, having been issued from a hearing at which the debtor was not provided notice that the case could be dismissed, was void. The Appellate Panel concluded,

> Moreover, notice is not only a statutory requirement, but a constitutional requirement as well. See *Blumer*, 66 B.R. at 113. The due process clause of the Fifth Amendment requires that due process be provided before property can be taken. Id. See also *In re Gregory*, 705 F.2d 1118, 1122-23 (9th Cir. 1983) (acknowledging that notice of a Chapter 13 confirmation hearing must meet due process standards). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950). Here, because the Debtors were not informed that their confirmation hearing had been rescheduled, they clearly were not afforded due process.
>
> An order is void if it is issued by a court in a manner inconsistent with the due process clause of the Fifth Amendment. See, e.g., *Blumer*, 66 B.R. at 113; *In re Whitney-Forbes, Inc.*, 770 F.2d 692 (7th Cir. 1985) (citing 11 C. Wright and A. Miller, Federal Practice and Procedure, section 2862, page 200, (1973)). Accordingly, in this case Judge Elliott properly vacated the dismissal order that had been issued in violation of the Debtor's due process rights.

The order dismissing the case being void, the bankruptcy case had not been dismissed and the automatic stay continued in full force and effect.

> We disagree with this analysis [the trial court conclusion that the non-judicial foreclosure sale could not violate the automatic stay because vacating the order could not make the automatic stay retroactively effective]. In our view, because the order dismissing the case was void, the stay was continuously in effect from the date the petition was filed. Therefore, the foreclosure sale was held in violation of the stay. Acts taken in violation of the automatic stay are generally deemed void and without effect. *Kalb v. Feuerstein*, 308 U.S. 433, 443, 60 S. Ct. 343, 348, 84 L. Ed. 370, 376 (1940); *In re Sambo's Restaurants, Inc.*, 754 F.2d 811, 816 (9th Cir. 1985); *In re Albany Partners Ltd.*, 749 F.2d 670, 675 (11th Cir. 1984). Accordingly, the foreclosure sale should have been set aside on this basis.

Id. at 241-242.

As most recently re-confirmed by the United States Supreme Court in *Espinosa*, *supra*, a void order is a legal nullity. Such a nullity cannot terminate the rights of the SCCS, nor can it extinguish the lien.

Therefore, the court shall issue an order to show cause why (1) the court's Order issued January 21, 2014 (Dckt. 26), should not be vacated as a void judgement issued without notice and Due Process to SCCS, and (2) the Debtor's first Motion To Avoid Lien of Discover Bank (Dckt. 18) dismissed as moot, the present Motion To Avoid Lien (Dckt. 38) seeking the same relief.

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

~~The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Felix B. Manguerra and Rebecca N. Manguerra ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the judgment lien of Discover Bank, Issuer of Discover Card Citibank (South Dakota) N.A., California Superior Court for Stanislaus County Case No. 647830, recorded on May 31, 2011, Document No. 2011-0045661-00, with the Stanislaus County Recorder, against the real property commonly known as 4624 Sundowner Place, Salida, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.~~

~~**IT IS FURTHER ORDERED** the court shall issue an order to show cause why (1) the court's Order issued January 21, 2014 (Dckt. 26), should not be vacated as a judgement issued without notice to SCCS, and (2) the Debtor's first Motion To~~

~~Avoid Lien of Discover Bank (Dckt. 18) dismissed as moot, the present Motion To Avoid Lien (Dckt. 38) seeking the same relief.~~

9. 18-90667-E-7 JAD-1 — MARC/TINA MAGHONEY — MOTION TO COMPEL ABANDONMENT
Jessica Dorn — 11-28-18 [24]

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's, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 28, 2018. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Compel Abandonment is granted.

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

The Motion **filed by Marc and Tina Maghoney ("Debtor**") requests the court to order Michael D. McGranahan ("the Chapter 7 Trustee") to abandon property commonly known as 3613 Atwood Place, Modesto, California ("Property"). The Property is encumbered by the liens of Loan Care LLC and Solar

Mosaic, Inc., securing claims of $194,006.00 and $28,248.00, respectively. Schedule D, Dckt. 1. The Declaration of Marc Conrad Maghoney and Tina Marie Maghoney has been filed in support of the Motion and values the Property at $272,600.00. Dckt. 26.Debtor claims an exemption in the Property of $100,000 pursuant to California Code of Civil Procedure § 704.730. Amended Schedule C, Dckt. 18.

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

CHAMBERS PREPARED ORDER

The court shall issue an Order (not a minute order) substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Compel Abandonment filed by Marc and Tina Maghoney ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as 3613 Atwood Place, Modesto, California and listed on Schedule A / B by Debtor is abandoned by Micahel D. McGranahan ("the Chapter 7 Trustee") to Marc and Tina Maghoney by this order, with no further act of the Chapter 7 Trustee required.

10. 18-90679-E-7 SCB-3 | **TIMOTHY BROWN** | **David Foyil** | **MOTION TO ABANDON** | **11-26-18 [33]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 26, 2018. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon is xxxxx.

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 Motion filed by Gary R. Farrar ("the Chapter 7 Trustee") requests that the court authorize him to abandon property commonly known as:

Property Description	Value	Claimed Exemption	NonExempt Equity
2010 Chevrolet Silverado 1500	$2,374	$2,374	$0

2005 Pace Arrow Motorhome	$58,000	$676	$0 [FN.1.]
Household Furnishings & Personal Effects	$2,500	$2,500	$0
Fishing Poles and Golf Clubs	$200	$200	$0
Apparel	$250	$250	$0
4 Boxer Dogs and 1 Quarter Horse	$100	$100	$0
Horse Tack, 1 Saddle, 1 Bridle, 1 Halter, 2 Blankets, 1 Pad	$100	$100	$0
Miscellaneous Personal Property in Debtor's real property commonly known as 17480 High School Road, Jamestown, California	Approx $0		

FN.1. Debtor listed a secured claim of $133,000.00 on the motorhome, thus leaving zero equity.

As provided above, all property of the Estate Trustee seeks to abandon has inconsequential value and benefit to the Estate, either because Debtor claims all equity as exempt, there is no equity due to liens securing claims, or because the property is itself of little value.

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 Chapter 7 Trustee to abandon the Property.

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

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

The Motion to Abandon Property filed by Gary R. Farrar ("the Chapter 7 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted, and the Property identified as;

Property Description	Value	Claimed Exemption	NonExempt Equity
2010 Chevrolet Silverado 1500	$2,374	$2,374	$0
2005 Pace Arrow Motorhome	$58,000	$676	$0 FN.1.
Household Furnishings & Personal Effects	$2,500	$2,500	$0
Fishing Poles and Golf Clubs	$200	$200	$0
Apparel	$250	$250	$0
4 Boxer Dogs and 1 Quarter Horse	$100	$100	$0
Horse Tack, 1 Saddle, 1 Bridle, 1 Halter, 2 Blankets, 1 Pad	$100	$100	$0
Miscellaneous Personal Property in Debtor's real property commonly known as 17480 High School Road, Jamestown, California	Approx $0		

is abandoned to Timothy Michael Brown by this order, with no further act of the Chapter 7 Trustee required.

11.	**16-90083-E-7** **SSA-21**	**VALLEY DISTRIBUTORS, INC.** **Iain Macdonald**	**MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, TRUSTEE'S ATTORNEY** **11-28-18 [353]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 28, 2018. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Steven S. Altman, the Attorney ("Applicant") for Irma Edmonds, the Chapter 7 Trustee ("Client"), makes a Third and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 2, 2017, through September 28, 2018. The order of the court approving employment of Applicant was entered on February 18, 2016. Dckt. 30. Applicant requests fees in the amount of $9,930 and costs in the amount of $290.70.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

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

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 cab 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 Summary of Services. The Estate has $369,648.61 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 4.4 hours in this category. Applicant performed services related to coordination and compliance, including preparation of financial affairs, schedules, list of contracts, UST interim statements and operating reports, contacts with the UST, and general creditor inquiries.

Asset Analysis and Recovery: Applicant spent 5.3 hours in this category. Applicant performed services related to the identification and review of potential assets of the Estate, including review of Debtor's computer accounting programs.

Business Operation: Applicant spent 5.4 hours in this category. Applicant performed services incident to Debtor being a business in a Chapter 11, including closing financial operations, collection on accounts, and review of administrative expenses.

Claims Administration and Objection: Applicant spent 6.3 hours in this category. Applicant performed services related to claims inquires, bar date motions, and analysis/objections/allowances of claims, including payment of Debtor's employee pensions.

Fee/Employment Applications: Applicant spent 11.4 hours in this category. Applicant prepared employment and fee applications for Applicant and other professionals necessary in the bankruptcy case.

Relief From Stay Proceedings: Applicant spent 0.3 hours in this category. Applicant reviewed correspondence for a stipulation allowing relief from the Automatic Stay as to insurance proceeds.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Steven S. Altman	33.10	$300.00	$9,930.00
Dawn Darwin	0	$90.00	$0.00
Total Fees for Period of Application			$9,930.00

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

Application	Interim Approved Fees	Interim Fees Paid
First Interim	$28,050.00	$28,050.00
Second Interim	$13,200.00	$13,200.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$41,250.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $290.70 pursuant to this application. The expenses are stated to be for postage and copies, with copies provided at a rate of $0.10 per copy. Dckt. 356. Pursuant to prior interim applications, the court has allowed costs of $2,632.25.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Third Interim and Final Fees in the amount of $9,930.00 and prior Interim Fees in the amount of $41,250.00 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.

Costs & Expenses

Third Interim and Final Costs in the amount of $290.70 and prior Interim Costs in the amount of $2,632.25 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 the fees and 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	$9,930.00
Costs and Expenses	$290.70

pursuant to this Application and prior interim fees of $41,250.00 and interim costs of $2,632.25 as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Steven S. Altman ("Applicant"), Attorney for Irma Edmonds, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Steven S. Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Steven S. Altman, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $9,930.00
> Expenses in the amount of $290.70,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.
>
> The fees and costs pursuant to this Motion, and fees in the amount of $41,250.00 and costs of $2,632.25 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees and 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.

12. 08-92594-E-7 15-9054

ROBERT/STEPHANIE ACHTERBERG MDG-4

MOTION FOR ASSIGNMENT ORDER AND/OR MOTION FOR ORDER RESTRAINING JUDGMENT DEBTOR
11-15-18 [109]

ACHTERBERG, JR. ET AL V. CREDITORS TRADE ASSOCIATION,

ADVERSARY PROCEEDING CLOSED: 02/21/2017

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney, and Defendant's Attorney on November 15, 2018. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Assignment Order and Order Restraining Judgment Debtor 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 Assignment Order and Order Restraining Judgment Debtor is xxxxx.

Robert and Stephanie Achterberg ("Plaintiff") filed this Motion for Assignment Order and For Order Restraining Judgment Debtor on November 15, 2018. Dckt. 109. Plaintiff seeks to assign debts and judgements in favor of the Defendant in this Adversary Proceeding, Creditors Trade Association, Inc., dba Great Western Collection Bureau ("Defendant"), so Plaintiff can collect on its judgement. Defendant also seeks a restraining order preventing Defendant from assigning or disposing of the debts sought to be assigned to Plaintiff.

In its Motion Plaintiff states that it was a awarded a judgement in the amount of $36,361.29 against Defendant on February 3, 2017, after trial. Motion, Dckt 109 at ¶ 2. Plaintiff states further that Defendant has made no attempt to pay the judgement, and Plaintiff through a motion to compel has obtained a list of judgements and debtors of Defendant. *Id.* at ¶ 3.

Plaintiff supports the Motion with the Declaration of Malcolm Gross. Dckt. 111. The Gross Declaration testifies all accounts and judgments of Defendant were supplied either on March 4, 2018 pursuant to a motion to compel or at a continued hearing, May 17, 2018. *Id.* at ¶ 5. The Gross Declaration

testifies further that the accounts and judgements have not been included as exhibits due to their numerosity. *Id*. at ¶ 7.

DEFENDANT'S OPPOSITION

Defendant filed an Opposition to the Motion on December 5, 2018. Dckt. 114. Defendant opposes the Motion on the basis the Defendant is a collection agency; the debts and judgements held by Defendant are through contractual assignment wherein Defendant generally only receives a portion of the actual debt or judgement recovery. Defendant argues further the Plaintiff would have to substitute into each case as a judgement creditor and represent itself pro per.

Defendant argues a better solution would be seeking a lien in any case pursuant to California Code of Civil Procedure section 708.410, or assignment of rights pursuant to California Code of Civil Procedure section 708.510.

Defendant requests that if the court grant Plaintiff's Motion, that the court stay the actual assignment of debts and judgements while the parties work out an appropriate process to allocate funds collected and determine how to proceed. Defendant states it has no objection to Plaintiff simply filing liens against judgements.

PLAINTIFF'S SUPPLEMENTAL EXHIBIT 1

Plaintiff filed a supplemental "Exhibit 1" on December 12, 2018. Dckt. 117. The document appears to be a list of customer accounts. However, no explanation of the document is provided.

PLAINTIFF'S REPLY

Plaintiff filed a Reply to Defendant's Opposition on December 12, 2018. Dckt. 119. Plaintiff notes it erroneous referred to California Code of Civil Procedure section "708.15," which is actually section 708.510.

Plaintiff states it is not willing to file liens or meet special accommodations of Defendant. Plaintiff argues the assignments sought would be foreclosures on Defendant's accounts "and any monies owed to their clients remain this responsibility." Defendant argues that substituting in to each case would not be acceptable unless Defendant's counsel would be ordered to draft all of the substitution paperwork and pay incidental fees and costs.

CASE HISTORY

Plaintiff filed this Adversary Proceeding on July 23, 2015. Complaint, Dckt. 1. The Complaint alleged that after Plaintiff received a discharge under Chapter 7, Defendant sought and received a Default Judgment, subsequently reporting the judgement to various Credit reporting Agencies in an attempt to collect the judgment. *Id.* at ¶ 11.

On February 3, 2017, trial having been completed, the court issued Judgment in favor of the Defendant. Judgement, Dckt. 57. The court found Defendant had obtained a judgement in violation of the the Automatic Stay in February 2009, and the Defendant knowingly, willfully, and intentionally violated

the automatic stay and the discharge injunction by failing to vacate the void judgement. Memorandum Opinion and Decision, Dckt. 59 at 2:9-12.

The court awarded Plaintiff $36,361.29.00 in damages (consisting of $1,250.00 for escrow extension damages, $1,850.00 of emotional distress damages, $18,261.29 costs and attorneys' fees, and $15,000.00 punitive damages). Judgement, Dckt. 57. The court further ordered the judgment issued by the California Superior Court, County of San Francisco in *Creditors Trade Association, Inc. v. Aberg, Inc. ET al DBA El Oasis Mexican Res,* Case No. CGC-08-480700, filed February 6, 2009, is void as to Robert Achterberg, Jr. and Stephanie Achterberg, and each of them, as having been issued in violation of the automatic stay (11 U.S.C. § 362(a)) in the Chapter 7 bankruptcy case filed by Robert Achterberg, Jr. and Stephanie Achterberg on December 1, 2008 (Bankr. E.D. Cal. No. 08- 92594). *Id*.

DISCUSSION

Federal Rule of Civil Procedure 64 applies in an Adversary Proceeding. FED. R. BANKR. P. 64. That rule provides:

(a) REMEDIES UNDER STATE LAW—IN GENERAL. At the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs to the extent it applies.

(b) SPECIFIC KINDS OF REMEDIES. The remedies available under this rule include the following—however designated and regardless of whether state procedure requires an independent action:

- arrest;
- attachment;
- garnishment;
- replevin;
- sequestration; and
- other corresponding or equivalent remedies.

FED. R. CIV. P. 64.

California law provides for the assignment of right to payment as a means of collection as follows:

(a) Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, **the court may order the judgment debtor to assign to the judgment creditor** or to a receiver appointed pursuant to Article 7 (commencing with Section 708.610) **all or part of a right to payment due or to become due**, whether or not the right is conditioned on future developments, including but not limited to the following types of payments:

(1) Wages due from the federal government that are not subject to withholding under an earnings withholding order.
(2) Rents.
(3) Commissions.
(4) Royalties.
(5) Payments due from a patent or copyright.
(6) Insurance policy loan value.

Cal. Civ. Proc. Code § 708.510(a)(emphasis added) whether to order an assignment or the amount of an assignment, the court may take into consideration all relevant factors, including the following:

(1) The reasonable requirements of a judgment debtor who is a natural person and of persons supported in whole or in part by the judgment debtor.
(2) Payments the judgment debtor is required to make or that are deducted in satisfaction of other judgments and wage assignments, including earnings assignment orders for support.
(3) The amount remaining due on the money judgment.
(4) The amount being or to be received in satisfaction of the right to payment that may be assigned.

Cal. Civ. Proc. Code § 708.510(c).

DISCUSSION

Defendant in this case does not argue Plaintiff is not entitled to the relief sought, but rather argues the relief is not feasible or practical, given the nature of the debts. Defendant argues the debts and judgments it holds are generally through contract and do not entitle Defendant to the entire recovery amount. Defendant also argues that the relief sought would require Plaintiff to substitute into each case as a judgement creditor and represent itself pro per.

Defendant's Opposition That It Is A Collection Agency

In the Opposition Defendant argues that:

(1) It is a commercial collection agency;

(2) It has written contracts for the collection of monies with its clients;

(3) Defendant has a contractual right to only a portion of the monies it collects on the assigned debts and judgments obtained thereon.

(4) Defendant's clients have the right to "the bulk" of the judgment accounts.

Opposition, p. 2; Dckt. 114.

Other than making the above arguments, Defendant asserts no law for such proposition, no law for the relationship between a collection agency and its clients, and the rights and interests of a collection

agency in the obligations assigned to it and judgments obtained thereon. Defendant just "throws out the arguments."

Defendant then provides some evidence as part of the Opposition. The first is provided by Douglas Provencher, Esq., counsel for Defendant in this Adversary Proceeding. Dckt. 115. Mr. Provencher has chosen to make himself a witness in this Adversary Proceeding (as opposed "to merely being counsel for Defendant') as to substantive issues and the property of Defendant. Mr. Provencher testifies under penalty of perjury:

> (1) He is the attorney for Defendant in this Adversary Proceeding;
>
> (2) He is "familiar" (in some unstated way) with the collection contracts used by Defendant with its business clients;
>
> (3) He has represented Defendant in "many matters" (without identifying what such matters were - contract disputes with clients, collection litigation, collection practices defense);
>
> (4) He attaches a copy of a "standard Collection Agreement" used by Defendant.

No other declarations are provided and none of Defendant's officers or employees provide any testimony as to the contracts used, authentication of the contracts, or other facts argued in the Opposition.

A witness is competent to testify in federal court when that witness has personal knowledge of the matters for which the testimony is provided. Fed. R. Evid. 601 and 602. The court cannot identify how Mr. Provencher has any "personal knowledge" of the contract exhibit or that the contract exhibit is the one used for all of the accounts at issue. At best, it appears that Defendant's counsel has voluntary chosen to be a witness to testify as to what his client has told him, something that would otherwise be privileged.

Applicable California Law

Though Defendant chooses not to provide the court with law relating to the collection agency-client relationship, the court cannot merely cast about in such "is so - is not" environment. California law has very well established law dating back to the 1800's of the rights of a collection agency/debt collector, assignment of debt, and the collector's fiduciary duties. From prior unrelated research on this point, the debt collector creditor fiduciary relationship exists as follows:

The California Supreme Court addressed the issue in *Toby v. Oregon Pacific Railroad Company*, 98 C. 490 (1893). In that case, an action was brought to foreclose upon a personal property mortgage. The plaintiff in the action was an individual to whom had been transferred the note and underlying security instrument. The defendant objected alleging that the plaintiff was not a *bona fide* holder for valuable consideration since they had been transferred to the plaintiff solely for purposes of collection. The court held that the plaintiff was not a *bona fide* holder in his own right, or for a valuable consideration, but instead that he held the same for collection and as the trustee of the real owners, and that the action was being prosecuted by said plaintiff for the use and benefit of the real owners.

With respect to this issue, the California Supreme Court subsequently stated in *Ralph v. Anderson*, 187 C. 45 (1921)(emphasis added):

> Now a trustee to whom a chose in action had been transferred for collection is, in contemplation of law, so far the owner that he may sue on it in his own name [citations omitted]. In such a case the defendant may urge any defense which he could have interposed against the beneficiary had the suit been brought in his name. That is what the defendant sought to do in the case at bar, by avering the Florida Steamship Company to be the beneficiary in urging a defense against that company. Proving the steamship company was the beneficiary, or that other persons occupied that relation, was an element going to the defense, but not touching plaintiff's abstract right to maintain the action in his own name under the pleadings. **The legal to the notes and mortgage were admitted by the pleadings to be in plaintiff, and there is nothing in the findings or in the fact, that they were taken in trust for collection, which impairs the validity of such title, except as against it, and in plaintiff's hands defendants could, as before stated, urge any defense good against the beneficiaries.**

In *Ralph*, an individual's car was damaged in a collision. The owner of the car transferred his claim against the other person to Ralph. The defendant appealed the judgment entered against him based on the grounds that there was insufficient evidence to show that Ralph was the owner of the claim sued upon or was authorized to bring suit in his own name. The California Supreme Court concluded:

> If there is sufficient evidence to support the finding that the owner of the claim assigned the same to plaintiff, the judgment in plaintiff's favor must be affirmed, for it is the settled rule that an assignee of a chosen action may bring suit thereon in his own name. *(Wiggins v. McDonald*, 18 Cal. 126; *Gradwohl v. Harris*, 29 Cal. 150; *Rios v. Mardis*, 18 Cal.App. 276.) Upon the assignment phase of the case, Mr. Henderson, the owner of the damaged automobile, was called as a witness for the plaintiff. The record disclosed that he testified (1) that he assigned any claim that he might have against the defendant to Archibald S. Ralph, the plaintiff; (2) that the assignment was made shortly after the accident; (3) that the **assignment was oral** and consisted of a direction to Ralph to collect the damages from the defendant. There was no attempt to prove that the assignment was written, and, since there was no statutory provision requiring an assignment of such a claim to be in writing, parol evidence of the transfer was admissible. [Citations omitted.] In a suit by an assignee upon a claim so assigned, the oral testimony of the assignor himself to the effect that he transferred his claim is sufficient to bind the assignor in support of finding that an assignment has been made. [Citation omitted.] The testimony of the original owner of the claim that he assigned the same to the plaintiff in the instant case by oral assignment was, therefore, sufficient proof of an assignment.
>
> It is true that it also appears from the testimony of both the assignor Henderson and the assignee Ralph that Henderson was, at the time of the collision, insured in the Automobile Indemnity Exchange of Orange County, an insurance association organized pursuant to statutory provisions [citations omitted], of which plaintiff Ralph was the attorney in fact and manager. And it may further be gathered from the testimony that it was understood between Henderson and Ralph that the amount of any judgment collected in this action was to be turned over to said indemnity exchange. This agreement restricting the disposition of the proceeds recovered in no way detracts from plaintiff's capacity to sue, for an assignee is not deprived of his right to sue in his own name by the fact that the claim is assigned merely for collection. [*Toby v. Oregon Pacific*] **Provided the assignment, whether verbal or written, is absolute so as to vest the apparent legal title in the assignee, the latter `is entitled to sue in his own**

name, whatever collateral arrangements have been made between him and the assignor respecting the proceeds. The debtor is completely protected by the assignment, and cannot be exposed to a second brought by any of the parties, either the assignor or other, to whom the assignee is bound to account.' (Pomery's Code Remedies, 4th Ed., SEC. 70; *Grant v. Heverin*, 77 Cal. 263; *Ingham v. Weed*, 5 Cal. UNREP. 645.)

The concept of, as well as the legal rights and obligations arising from an assignment of a debt for collection is discussed in 4 Witkin Cal. Proc. Plead § 109

[§ 109] Assignment for Collection.

Even where the assignment is for collection only, the assignee takes legal title to the claim and may sue despite his lack of beneficial interest. (*National Reserve Co. v. Metropolitan Trust Co.* (1941) 17 C.2d 827, 831, 112 P.2d 598; *Cohn v. Thompson* (1932) 128 C.A. Supp. 783, 787, 16 P.2d 364; *Marc Bellaire v. Fleischman* (1960) 185 C.A.2d 591, 596, 8 C.R. 650, citing the text; *Macri v. Carson Tahoe Hosp.* (1966) 247 C.A.2d 63, 65, 55 C.R. 276, citing the text; James 4th, §10.4; C.E.B., 1 Debt Collection Practice §§1.25, 1.26; 55 Cal. L. Rev. 1475.)

This theory allows a layman to engage in the business of collecting accounts for others, by taking assignments of claims and appearing in court in pro. per., without violating the statutory prohibition against unlicensed practice of law. (See *Gresham v. Superior Court* (1941) 44 C.A.2d 664, 665, 112 P.2d 965 [resigned attorney]; 1 Cal. Proc. (4th), Attorneys, §411; on Fair Debt Collection Act, see 8 Cal. Proc. (4th), Enforcement of Judgment, §--.) But an assignee for collection cannot maintain an equitable action to set off the assigned claim against a debt that he owes personally. (Harrison v. Adams (1942) 20 C.2d 646, 650, 128 P.2d 9, 8 Cal. Proc. (4th), Enforcement of Judgment, §--.)

Here, Defendant owes the obligation in its personal capacity, which the claims assigned to it and judgments on assigned claims are held as a fiduciary of its clients. As the money is collector, Defendant's "cut" is subject to levy and payment of the Judgment, but the assigning creditor's share is not.

Based on the arguments presented by Defendant and the Motion of Plaintiff, it appears that it is proper to assign to Plaintiffs all of Defendant's right to payment from the monies collected on assigned accounts and judgments. However, those amounts cannot be determined until Defendant, as the fiduciary of its clients, collects the gross payments from the debtors for the assigned obligations.

In addition to assigning those monies to Plaintiffs, and issuing an order compelling Defendant and its officers, employees, and agents, as well as Defendant's clients, to facilitate the proper division of the monies collected, with Defendant's full portion going to Plaintiffs and Defendant's clients receiving their portion of the monies, the court can issue an order restraining the disposition of the monies. Such an order will require Defendant to place the gross monies collected on all obligations assigned for collection into a blocked account, which can serve the same function as a collection agencies client trust account into which all collected monies are first directly deposited, from which no disbursements may be made except upon further order of the court. When it is time for Defendant to disburse the monies from the blocked account, Defendant can file a motion for authorization to disburse the proceeds, which will be supported by an accounting and documentation of the monies collected, computation of Defendant's portion of the monies that have been assigned to Plaintiffs, and Defendant's clients portion of the monies which cannot be assigned

to pay Defendant's obligation to Plaintiffs. Such motion can be heard on an expedited basis or upon joint ex parte motion filed by Defendant and Plaintiffs.

At the hearing, **xxxxxxxxxxxxxxxxxx**

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 Assignment Order and Order Restraining Judgment Debtor filed by Robert and Stephanie Achterberg ("Plaintiff") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that **XXXXXXXXXXXX**.

13. 17-90494-E-7 SSA-4 | **DALJEET MANN** | **MOTION TO ABANDON**
Pro Se | **11-28-18 [86]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 28, 2018. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Abandon is granted.

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 Motion filed by Irma Edmonds ("the Chapter 7 Trustee") requests that the court authorize her to abandon the Estate's 33 1/3 percent interest in an LLC commonly known as GAJ Hospitality ("Property"), located in Louisiana. The Property is encumbered by the liens of numerous creditors (*See* Declaration, Dckt. 89 at ¶ 7 for a full list), securing claims totaling $3,004,880.07. Unsecured claims of the Property total $348,567.54. Dckt. 86 at ¶ 8. The Debtor and managing member of GAJ Hospitality, Daljeet Singh Mann ("Debtor"), received an offer for the sale of the Property totaling $3.3 million. Dckt. 86 at ¶ 6; *See Also* Exhibit 1, Dckt. 90.

Trustee argues that considering the costs of sale, continuing per diem charges and late fees on multiple claims, and tax consequences, there will be no residual monies to benefit the bankruptcy Estate.

Trustee's arguments are well-taken. 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 Chapter 7 Trustee to abandon the Property.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Abandon Property filed by Irma Edmonds ("the Chapter 7 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the Property identified as the Estate's 33 1/3 percent interest in an LLC commonly known as GAJ Hospitality ("Property"), is abandoned to Daljeet Singh Mann by this order, with no further act of the Chapter 7 Trustee required.

14. 17-90494-E-7 DALJEET MANN
18-9012 SSA-3

EDMONDS V. MANN ET AL

MOTION FOR ENTRY OF DEFAULT JUDGMENT, MOTION FOR PERMANENT RESTRAINING ORDER AND OTHER RELIEF INCLUDING JUDGMENT FOR DAMAGES, IMPOSITION OF EQUITABLE LIEN ON REAL PROPERTY AND/OR MOTION TO SELL
11-9-18 [42]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant's (*pro se*), and Plaintiff - Chapter 7 Trustee, on November 9, 2018. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Default Judgment 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 Entry of Default Judgment is xxxxx.

On July 27, 2018, Irma Edmonds, the Chapter 7 Trustee ("Plaintiff-Trustee") in the Daljeet Singh Mann ("Debtor") bankruptcy case (17-90494), filed a complaint seeking injunctive relief, equitable liens on real and personal property, declaratory relief, accounting, recovery of fraudulent conveyances, turnover of property, and the sale of real property. Dckt. 1. Ninder Mann and Jasleen Mann, identified as the spouse and daughter, respectively, of the Debtor, (Collectively "Defendants").

REVIEW OF COMPLAINT

The allegations in the Complaint include that Debtor owned, controlled, or managed interest in hospitality properties in California and other states. Complaint, Dckt. 1 at ¶ 5. It is asserted that the interests were held in limited liability companies, and other related entities. *Id.*

The Plaintiff-Trustee cites to Debtor's schedules stating that Debtor transferred Debtor's 33% interest in the RJ Lodging, LLC to former spouse Ninder Mann and his daughter, Jasleen Mann, in March 2016 for $0 in consideration. *Id.* at ¶ 6. Debtor's bankruptcy case was file don June 13, 2017.

In a January 29, 2017 email to Umesh D. Naik, the sole managing member of R.J. Lodging, LLC at the time, Debtor directed a portion of his 40 percent share be allocated with to Ninder Mann (10 percent) and Jasleen Mann (10 percent). *Id.* at 9.

On February 28, 2017, R.J. Lodging LLC transferred a 20 percent equity interest valued at $782,026.12 to Purewal Investments, Inc. *Id.* at 11. Purewal then transferred that interest to Bryson Hospitality, LLC for $1,160,000.00. *Id.*. On March 10, 2017, Bryson Hospitality, LLC was transferred the remaining 80 percent interest in R.J. Lodging, LLC (valued at $4,640,000.00), giving Bryson an 100 percent interest. *Id.* at 13.

The Complaint alleges Defendant Ninder Mann and Defendant Jasleen Mann each received $300,000.00 for the interests that Debtor transferred to them in 2017. *Id.* at ¶ 14. The Complaint further alleges that Ninder Mann and Jasleen Mann have used the monies for the personal expenses, as well as for purchasing a home in Modesto in the name of Ninder Mann, commonly known as 2520 Piazza Ct., Modesto, California 95356, APN 078-053-074 (the "Property"). *Id.* at ¶ 16.

The requests in the Complaint include:

1. An injunction to prevent Defendant Ninder Mann and Defendant Jasleen Mann, and each of them, from further transferring or encumbering the real property and any of the other monies or proceeds of the monies derived from the interest transferred to them in RJ Lodging, LLC. *Id.* at ¶¶ 18-20.

2. An equitable lien be placed on the Property to safeguard the bankruptcy Estate's interest. *Id.* at ¶ 23.

3. A written accounting by Defendants Ninder Mann and Jasleen Mann of all proceeds received from the sale of Debtor's interest in R.J. Lodging, LLC conveyed to them, and accounting of each expenditure made with monies received, itemized date, amount, nature of expenditure or disposition of monies. *Id.* at ¶ 25.

4. Avoidance of the fraudulent transfer of Debtor's interest (valued at $600,000) in R.J Lodging, LLC to Defendants on the basis of (1) actual intent to hinder, delay, or defraud creditors; (2) the transfer being for less than reasonably equivalent value; (3) pursuant to California Civil Code section 3439.04; (4) pursuant to California Civil Code section 3439.05;. *Id.* at ¶¶ 27-32; 34-36; 38-40; 42-44.

5. A determination by the court that the Property is property of the Estate, on which Defendants and Debtor cannot claim State or Federal exemptions. *Id.* at ¶ 47.

6. Any property of the Estate is authorized to be sold by the Trustee. *Id.* at ¶ 52.

7. The court award attorney's fees to Plaintiff-Trustee on the doctrine of "tort of another." *Id.* at 55.

TEMPORARY RESTRAINING ORDER

On August 2, 2018, Plaintiff-Trustee filed a Motion for Issuance of a Temporary Restraining Order and Preliminary Injunction. Dckt. 10. On August 14, 2018, the court issued an Order granting the preliminary injunction, and enjoining Defendants from and ordering that they not:

> Take or the taking of any action to otherwise transfer, encumber, hypothecate or convey the real property commonly known as 2520 Piazza Ct., Modesto, California 95356, APN 078-053-074, the legal description being:
>
> > Lot 30, in Block 14203 of Tuscany Unit 2, as per map
> > Recorded April 14, 1999, in Volume 38 of Maps, Page 47,
> > Stanislaus County Records.
>
> B. Take or the taking of any action to otherwise transfer, encumber, hypothecate or convey or dispose of any and all funds or monies on account with Farmers & Merchants Bank, for any saving, checking, money market account, CD or other instrument in favor of Ninder Mann or jointly owned or controlled by Ninder Mann and any third party.
>
> C. Take or the taking of any action to otherwise transfer, encumber, hypothecate, convey or dispose of any and all funds or monies on account with Farmers & Merchants Bank, for any saving, checking, money market account, CD or other instrument in favor of Jasleen Mann or jointly owned or controlled by Jasleen Mann and any third party.
>
> D. Take or the taking of any action to otherwise transfer, encumber, hypothecate, convey or dispose of any and all funds or monies on account with Wells Fargo Bank, for any saving, checking, money market account, CD or other instrument in favor of Jasleen Mann or jointly owned or controlled by Jasleen Mann and any third party.

Order, Dckt. 23.

DEFAULT

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendants Ninder Mann and Jasleen Mann pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on September 7, 2018. Dckts. 32, 33.

The Entry of Default specified that Plaintiff shall apply for a default judgement within 30 days of the date of that order, and that a "prove up" hearing shall be scheduled on the court's regular law and motion calendar on notice to Defendants. *Id.*

On September 24, 2018, Plaintiff applied for an extension of the time to file a motion for default judgement. Dckt. 36. The court issued an Order granting the application and extending the time for filing to November 15, 2018. Order, Dckt. 39.

APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *Cashco Fin. Servs. v. McGee (In re McGee)*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.*

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, because the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors that the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471–72 (citing 6 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.)); *Kubick v. FDIC (In re Kubick)*, 171 B.R. 658, 661–62 (B.A.P. 9th Cir. 1994).

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff-Debtor's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff-Debtor did not offer evidence in support of the allegations. *See id.* at 775.

DISCUSSION

At the hearing **XXXXXXXXXXX.**

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

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

The Motion for Entry of Default Judgment filed by Irma Edmonds, the Chapter 7 Trustee ("Plaintiff-Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Entry of Default Judgment is **XXXXXXXXXXXXXXXX**.

FINAL RULINGS

15.	**18-90431-E-7** **SCB-5**	**WILKINS PUMP KNICKERBOCKER ELECTRIC,** **Steven Altman**	**MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE** **11-14-18 [51]**

Final Ruling: No appearance at the December 20, 2018 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, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2018. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Administrative Expenses 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 Administrative Expenses is granted.

Gary Farrar, the Chapter 7 Trustee ("Movant") requests authorization to pay administrative expenses in the amount of $800, which is the estimated corporate tax liability of Wilkins Pump Knickerbocker Electric, Inc. ("Debtor") for the fiscal year ending October 31, 2018.

The court authorized the employment of Paul E. Quinn as an accountant professional for the Estate on July 1, 2018. Dckt. 19. Quinn has prepared the Estate's tax returns for the fiscal year ending October 31, 2018, along with prompt determination letters pursuant to 11 U.S.C. § 505.

DISCUSSION

The Bankruptcy Code accords administrative expense status to any tax incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title. 11 U.S.C. § 503(b)(1)(B)(I).

Movant, having hired a professional to assess the Debtor's tax liability, has demonstrated the expenses here to be taxes incurred by the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay the Franchise Tax Board its administrative expenses in the amount of $800.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Administrative Expense filed by Gary Farrar, the Chapter 7 Trustee ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Chapter 7 Trustee is authorized to pay the Franchise Tax Board $800.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

16. 18-90772-E-7 WLG-1 | **LUIS/RAMONA LOPEZ** Nicholas Wajda | **MOTION TO CONVERT CASE TO CHAPTER 13** 11-15-18 [16]

Final Ruling: No appearance at the December 20, 2018 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's, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 15, 2018. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

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

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is granted, and the case is converted to one under Chapter 13.

Luis Lopez Lopez Sr. and Ramona Rosa Lopez ("Debtor's") seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor asserts that the case should be converted because the present case has been filed in good faith and Debtor has not previously converted under 11 U.S.C. §§ 1112, 1208, or 1307.

Here, Debtor's case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties.

No opposition has been filed to the conversion of this case to one under Chapter 13.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert filed by Luis Lopez Lopez Sr and Ramona Rosa Lopez ("Debtor's") 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 Convert is granted, and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code.

17.	**18-90431-E-7** **SCB-6**	**WILKINS PUMP** **KNICKERBOCKER ELECTRIC,** **Steven Altman**	**MOTION FOR COMPENSATION FOR CHRISTIE, QUINN & HORN, ACCOUNTANT** **11-14-18 [55]**

Final Ruling: No appearance at the December 20, 2018 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, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2018. 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 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.

Christie, Quinn & Horn, the Accountant ("Applicant") for Gary R. Farrar, 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 June 26, 2018, through October 27, 2018. The order of the court approving employment of Applicant was entered on July 1, 2018. Dckt. 19. Applicant requests fees in the amount of $1,400.00 and costs in the amount of $16.80.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(i) unnecessary duplication of services; or
(ii) services that were not—
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

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

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 cab 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 case administration, tax return preparation, and correspondence. 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 1.5 hours in this category. Applicant communicated with the Trustee regarding the case, preliminary tax considerations, review of the listed creditors, and review of the applications to employ and for compensation.

Tax Matters: Applicant spent 3.6 hours in this category. Applicant reviewed transactional activity of the Debtor, 2017 tax filings, and compiled data for Debtor's 2018 returns.

Correspondence: Applicant spent 0.5 hours in this category. Applicant corresponded with federal and state tax authorities' insolvency groups related to preparing 2018 returns.

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**
Paul Quinn	5.6	$250.00	$1,400.00
Total Fees for Period of Application			$1,400.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $16.80 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage	$	$12.10
Copies	$0.10	$4.70
Total Costs Requested in Application		$16.80

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $1,400.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $16.80 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay the fees and 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	$1,400.00
Costs and Expenses	$16.80

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Ryan, Christie, Quinn & Horn ("Applicant"), Accountant for Gary R. Farrar, 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 Ryan, Christie, Quinn & Horn is allowed the following fees and expenses as a professional of the Estate:
>
> Ryan, Christie, Quinn & Horn , Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $1,400.00
> Expenses in the amount of $16.80,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as a professional for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay the fees and 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.

18. 18-90431-E-7 SCB-7 | **WILKINS PUMP KNICKERBOCKER ELECTRIC, Steven Altman** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHNEWEIS-COE & BAKKEN, LLP FOR LORIS L. BAKKEN, TRUSTEE'S ATTORNEY(S) 11-14-18 [61]**

Final Ruling: No appearance at the December 20, 2018 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, creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2018. 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 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.

Schneweis-Coe & Bakken, LLP, the Attorney ("Applicant") for Gary R. Farrar, 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 January 5, 2017, through August 21, 2018. The order of the court approving employment of Applicant was entered on June 14, 2018. Dckt. 13. Applicant requests fees in the amount of $5,430.00 and costs in the amount of $320.58.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

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

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 cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

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

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that Applicant's services for the Estate include general case administration, sale of several vehicles of the Estate, and these fee applications. The Estate has $13,976.60 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 6.6 hours in this category. Applicant prepared the fee agreement and employment application for Applicant and an accountant for the Estate, as well as the fees applications for Applicant and the accountant professional. However, Applicant has not billed for time on general case administration. Dckt. 63 at ¶ 4.

Sale of Vehicles: Applicant spent 17.6 hours in this category. Applicant reviewed an offer for the sale of the Estate's numerous vehicles; communicated regarding the sale and prepared a sale agreement and motion for court approval of the sale; reviewed an offer to buy from Nationwide Fleet and prepared a respective sale agreement and motion to sell; Prepared an additional sale agreement after an error was noticed; and reviewed the motions and agreements and tentative ruling of the court for discussion with creditor's counsel and the Chapter 7 Trustee.

Adversary Proceedings: Applicant spent 1.5 hours in this category. Applicant prepared a motion to pay tax obligations of the Estate.

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**
Loris Bakken	17.1	$300.00	$5,130.00

Loris Bakken	2	$150.00	$300.00
Loris Bakken	5.9	$0.00	$0.00
Total Fees for Period of Application			$5,430.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $320.58 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage	$	$198.18
Copies	$0.10	$122.40
Total Costs Requested in Application		$320.58

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $5,430.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $320.58 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 the fees and 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 $5,430.00
Costs and Expenses $320.58

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 Schneweis-Coe & Bakken, LLP ("Applicant"), Attorney for Steven S. Altman, 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 Schneweis-Coe & Bakken, LLP is allowed the following fees and expenses as a professional of the Estate:

Schneweis-Coe & Bakken, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of $5,430.00
Expenses in the amount of $320.58,

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 the fees and 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.

19. 18-90839-E-7 **TRAVIS SCHLAFMANN**
Patrick Greenwell

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-27-18 [11]

Final Ruling: No appearance at the December 20, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on November 29, 2018. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on November 13, 2018.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

20. 18-90855-E-7 **NICOLA DAVOODIAN**
Patrick Greenwell

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-30-18 [11]

Final Ruling: No appearance at the December 20, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on December 2, 2018. The court computes that 18 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $335.00 due on November 16, 2018.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.