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

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

**May 23, 2019 at 10:30 a.m.**

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| **1.** | **19-90062-E-7**<br>**RDW-1** | **UNITED RESORTS, LLC**<br>**Michael Yi** | **MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS**<br>**5-3-19 [58]** |

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on May 3, 2019. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion for Examination and for Production of Documents 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 Examination and for Production of Documents is granted.**

Creditor, the City of Modesto ("Movant"), filed this Motion seeking an order compelling the examination of the most knowledgeable person and custodian of records of the debtor, United Charter, LLC dba Budgetel Inn & Suites ("Debtor").

The Motion states Debtor collected transient occupancy taxes and retained those funds for Debtor's benefit rather than remitting them to Movant. While Movant questioned Debtor at the Meeting of Creditors on March 5, 2019, Movant has remaining questions and therefore requests the court grant this Motion.

Movant states it needs information concerning the financial condition of the Debtor, the LLC members of the Debtor, the responsibilities of the members of the Debtor, the operation of the Debtor, and how the transient occupancy taxes were collected and applied.

Movant filed the Declaration of Jessica Nunes, its employee, in support of the Motion. Declaration, Dckt. 60. The Nunes Declaration provides testimony Debtor has collected transient occupancy taxes and retained those funds for Debtor's benefit, but does not explain how Nunes has personal knowledge of this fact. *See* FED. R. EVID. 601, 602.

**DISCUSSION**

On motion of any party in interest, the court may order the examination of any entity. FED. R. BANKR. P. 2004(a). The examination of an entity under this rule or of the debtor under §343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. FED. R. BANKR. P. 2004(b).

Here, Movant seeks examination of the most knowledgeable person and custodian of records of the Debtor in order to determine possible tax claims against the Estate. Therefore, 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 for Examination and for Production of Documents filed by Creditor, the city of Modesto ("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 City of Modesto is authorized to conduct an examination of United Charter, LLC dba Budgetel Inn & Suites ("Debtor") as provided in Federal Rule of Bankruptcy Procedure 2004.

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| **2.** | **19-90024-E-7**<br>**UST-1** | **FELIPE PIMENTEL**<br>**Jessica Dorn** | **MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)**<br>**4-22-19 [13]** |

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, amd creditors, and on April 22, 2019. By the court's calculation, 31 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.**

Tracy Hope Davis, the United States Trustee for Region 17 ("US Trustee") filed this Motion seeking dismissal of the case on two grounds:

1. The debtor, Felipe Pimentel ("Debtor"), has monthly disposable income of $2,194 resulting in a 100 percent distribution to nonpriority unsecured creditors in Chapter 13 in less than 17 months.

2. Debtor has monthly disposable income of at least $1,947 resulting in 100 percent repayment to general unsecured creditors in Chapter 13 in less than 19 months based upon the totality of the circumstances of the Debtor's financial situation.

**DEBTOR'S RESPONSE**

Debtor filed a Response on May 9, 2019 consenting to conversion of the case to one under Chapter 13, and stating Debtor will file the required documents and amendments within 7 days from the date the order if conversion is ordered. Dckt. 18.

**DISCUSSION**

Under Chapter 7 of the Bankruptcy Code the court may dismiss the case or, with the debtor's consent, convert it into a Chapter 13 proceeding if it finds that the granting of relief would be an abuse of the provisions of Chapter 7. 11 U.S.C. § 707(b)(1). A presumption of abuse arises where a debtor's monthly disposable income multiplied by 60 is greater than (1) the greater of 25 percent of the debtor's debts or $6,000.00; or $10,000.00. 11 U.S.C. § 707(b)(2)(A).

US Trustee has presented evidence, including the Declaration of Teresa Field and a Comparative Means Test calculation filed as Exhibit 2, to show that Debtor triggers the presumption of abuse because he has sufficient disposable income to pay all unsecured claims in only 17 months. Dckts. 15-16.

Debtor does not dispute the US Trustee's Motion, but instead consents to conversion of the case to one under Chapter 13. Debtor states in his Response he will file the required documents and amendments for a Chapter 13 within 7 days from the date the order if conversion is ordered. However, no declaration is provided testifying to this under penalty of perjury.

Furthermore, no explanation is included for why Debtor has not already converted the case. US Trustee has presented evidence that Debtor knew as of February 2019 that this case was presumed an abuse of Chapter 7. Declaration ¶ 8, Dckt. 15.

A review of the docket shows that Debtor and Debtor's attorney did not appear at the Continued Meeting of Creditors on March 20, 2019. While Debtor's counsel appeared at the next Continued Meeting April 24, 2019, Debtor did not.

In the response by Debtor's counsel, it appears to be a "conditional, in the future, convert to a Chapter 13, but then it can be dismissed if I don't . . . ." While Debtor could have elected to immediately convert this case to one under Chapter 13, he has not. This effectively is Debtor's election to have the case dismissed, work with his counsel to file a new case under Chapter 13, and then prosecute that case diligently from the time filed.

Debtor not having rebutted the presumption of abuse under 11 U.S.C. § 707(b)(2), and not having demonstrated that he intends to prosecute a case under Chapter 13, 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 filed by Tracy Hope Davis, the United States Trustee for Region 17 ("US Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** that the Motion is granted and the case is dismissed.

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| **3.** | **17-90768-E-7**<br>**HSM-3** | **PRO SOCCER, INC.**<br>**Steve Altman** | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK, AND MAROIS, LLP FOR HOWARD S. NEVINS, TRUSTEE'S ATTORNEY(S)**<br>**4-29-19 [43]** |

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2019. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

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

Hefner, Stark & Marois, LLP, the Attorney ("Applicant") for Irma C. Edmonds, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 18, 2017, through May 23, 2019. The order of the court approving employment of Applicant was entered on October 27, 2017. Dckt. 22. Applicant requests fees in the amount of $15,342.00 (Applicant is not seeking $123.45 in expenses stated to have been incurred).

**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, asset investigation and disposition, and negotiation of settlement for state court litigation. Applicant states its efforts helped the client realize $27,500.00 in monies for the Estate. 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 9.5 hours in this category. Applicant performed tasks related to the general case administration, including work in the initial employment of Applicant, regular communication with the Client, review of filing documents in this case, and prosecution of this fee application.

Efforts to Assess Property of the Estate: Applicant spent 11.00 hours in this category. Applicant reviewed documents related to Debtor's prepetition business and personal transactions, including documents relating to Debtor's marital dissolution and state court litigation.

Disposition of Property of the Estate: Applicant spent 14.10 hours in this category. Applicant successfully negotiated a settlement to state court litigation, communicating with all involved parties , drafting settlement documents, and prosecuting motions for approval of compromise and sale.

Litigation: Applicant spent 2.0 hours in this category. Applicant communicated with state court litigation counsel.

Claims: Applicant spent 0.6 hours in this category. Applicant reviewed claims filed in the case.

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** |
|---|---|---|---|
| H. Nevins | 37.10 | $412.00 [FN.1] | $15,285.20 |
| A. Avery | 0.10 | $412.00 | $34.00 |
| **Total Fees for Period of Application** | | | $15,342.00 |

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FN.1. The hourly fee stated in the Application is approximated to be $412.00.

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**FEES 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 $15,342.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay the fees 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 $15,342.00

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

**IT IS ORDERED** that Hefner, Stark & Marois, LLP is allowed the following fees and expenses as a professional of the Estate:

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

Fees in the amount of $15,342.00,

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 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.

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| **4.** | **11-91728-E-7**<br>**SDM-2** | **GREGORY/MELISSA WALLEN**<br>**Scott Mitchell** | **MOTION TO AVOID LIEN OF CACH, LLC**<br>**4-10-19 [23]** |

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on April 10, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid Judicial Lien is denied without prejudice.**

This Motion requests an order avoiding the judicial lien of CACH, LLC ("Creditor") against property of Gregory Allen Wallen and Melissa Lynn Fitzgerald Wallen ("Debtor's") commonly known as 4424 Glimmer Lane, Turlock, California ("Property").

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $158,000.00 as of the petition date. Dckt. 22. The unavoidable consensual liens that total $213,906.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Amended Schedule C. Dckt. 22.

Debtor provides testimony that Creditor obtained a judgement, and that a judgement lien was recorded against the Property. Declaration ¶ 1, Dckt. 25. However, Exhibit 4 (Dckt. 26) is a copy of the

abstract of judgement, which while having a blank page at the back with a certification (in black, not colored font) that it is as a "TRUE CERTIFIED COPY OF THE RECORD IN THIS OFFICE" by the county recorder, the abstract of judgment does not have any recording information in the upper right hand corner showing that it is from the records of the County Recorder's Office. Possibly there was a cover page with the recording information, but such is not included with the exhibit.

The court makes reference to the certification being in black font because in connection with another such motion Debtor has provided the court with an abstract of judgment, with the recording information, that has a certification, with the certification being in blue colored font.

Nothing has been provided to show the existence of a recorded judgement lien except for Debtor's testimony. In addition to proving the existence of a recorded judgment lien, providing copy of the recorded judgement allows the court to include the recording information in its order avoiding the lien.

Based on the foregoing, the Motion is denied without prejudice.

**ISSUANCE OF A COURT-DRAFTED ORDER**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Gregory Allen Wallen and Melissa Lynn Fitzgerald Wallen ("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 is denied without prejudice.

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| **5.** | **11-91728-E-7**<br>**SDM-3** | **GREGORY/MELISSA WALLEN**<br>**Scott Mitchell** | **MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.**<br>**4-10-19 [28]** |

**Final Ruling:** No appearance at the May 23, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on April 10, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

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

This Motion requests an order avoiding the judicial lien of Citibank, N.A. fka Citibank (South Dakota). N.A. ("Creditor") against property of Gregory Allen Wallen and Melissa Lynn Fitzgerald Wallen ("Debtor's") commonly known as 4424 Glimmer Lane, Turlock, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,115.15. Exhibit 4, Dckt. 31. An abstract of judgment was recorded with Stanislaus County on January 14, 2010, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $158,000.00 as of the petition date. Dckt. 22. The unavoidable consensual liens that total $213,906.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Amended Schedule C. Dckt. 22.

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

**ISSUANCE OF A COURT-DRAFTED ORDER**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Gregory Allen Wallen and Melissa Lynn Fitzgerald Wallen ("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, N.A. fka Citibank (South Dakota), N.A., California Superior Court for Stanislaus County Case No. 638390, recorded on January 14, 2010, Document No. 2010-0003525-00, with the Stanislaus County Recorder, against the real property commonly known as 4424 Glimmer Lane, Turlock, 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

**6.** **18-90149-E-11** **SOUZA PROPERTIES, INC.** **MOTION TO DISMISS CASE**
**DCJ-4** **David Johnston** **5-2-19 [139]**

**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 in possession, Debtor in possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on May 2, 2019. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

**The Motion to Dismiss Case is Granted.**

The debtor in possession, Souza Properties, Inc., a California corporation ("ΔIP") filed this Motion seeking dismissal of the Chapter 11 case pursuant to 11 U.S.C. §§ 305(a)(1) and 1112(b)(1).

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. The case was filed on March 8, 2018.

2. No trustee has been appointed.

3. ΔIP owned two contiguous parcels of real property at the northeast corner of North Golden State Boulevard and West Canal Drive, Turlock, California, containing one two-story retail building, one two-story shop, one warehouse, five houses, and five storage sheds/garages (collectively the "Property")

4. The Property, subject to two deeds of trust, was foreclosed on November 1, 2018.

5. ΔIP's sole remaining assets in this case are claims against (1) New Hope Community Church for its breach of a contract for the purchase of a portion of the Property, and (2) Aasim Propane and Gas Corporation ("Aasim") and guarantors for breach of real property leases involving the Property, rent, and damages caused by that tenant's abandonment.

6. ΔIP is not likely to see cash value from the aforementioned claims.

7. ΔIP's bankruptcy case was used in a scheme to delay foreclosure proceedings against property owners with absolutely no connection to this case.

8. Kamps Propane, Inc. filed a Proof of Claim, No. 4 for $37,280 for possible "defense and indemnity." That Proof of Claim was precautionary in nature.

9. The assets and claims in this case are nominal. ΔIP is not likely to reorganize, and incurs significant expenses in continuing this case. a Chapter 11 Trustee would be difficult to appoint because of the assets in the case, and a Chapter 7 would likely result in no distribution,

10. Dismissal of the case is in the best interest of the creditors because they will be able to enforce their rights.

11. Cause exists to dismissed the case in order to avoid further loss or diminution to the Estate.

Motion, Dckt. 139.

ΔIP filed the Declaration of David Johnston, ΔIP's attorney of record, to provide testimony attesting to the facts asserted in the Motion. Declaration, Dckt. 141.

**DISCUSSION**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

Here ΔIP asserts that after its Property was foreclosed on, the case ceased to make financial sense. ΔIP's assets are nominal and would not likely see value if liquidated. Further, the claims remaining against ΔIP are not substantial and can be pursued outside of bankruptcy.

ΔIP argues there is cause to dismiss the case because continuing in bankruptcy would deplete property of the Estate without any greater recovery to creditors.

ΔIP's arguments are well taken. The requested dismissal allows ΔIP to resolve claims and move on to a "fresh start"outside of bankruptcy. No party in interest has opposed the Motion. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1112(b). 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 filed by Souza Properties, Inc., a California corporation ("ΔIP") 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 case is dismissed.

**7. 18-90959-E-7 MICHAEL/JOANNE LAFRANCE MOTION TO SELL**
**BLF-3 Michael Germain 4-8-19 [35]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2019. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

The Bankruptcy Code permits Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the property commonly known as a 1992 Chevrolet P30 Motorhome, VIN ending in 9461 ("Motorhome"), and a 2001 Mercedes-Benz, M-Class VIN ending in 2577 ("Mercedes") (collectively "Property").

The Property is proposed to be sold at auction. The motion states the following with particularity (FED. R. BANKR. P. 9013):

1. The debtors, Michael E LaFrance and Joanne Veronica LaFrance ("Debtor"), valued the Motorhome at $4,300.00 and claimed no exemption.

2. Debtor valued the Mercedes at $2,800.00 and claimed no exemption.

3. Debtor did not schedule and Movant is not aware of any liens on the Property.

4. Movant believes he can achieve the best possible price for the Property by selling it at auction through Huisman Auctions, Inc. ("Auctioneer").

5. The Property is to be sold "as is." The opening bid shall be $100.00 for the Motorhome and $100.00 for the Mercedes.

6. Auctioneer estimates a sale price of $7,500.00.

7. If no reasonable bids are received on the Property Movant may sell the Property without subsequent notice.

8. Auctioneer will retain its compensation from the gross sale proceeds after auction.

9. Movant requests waiver of the 14 day stay to b able to sell the Property at a May 28, 2019 auction.

**DISCUSSION**

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will allow Movant to achieve the best sale price for the Property. The Property is being sold "as is," subject to any liens or competing interests (though Movant does not believe there to be any). Movant estimates a sale price of $7,500.00 for the Property.

The auction agreement (Exhibit A, Dckt. 39) identifies a third vehicle for sale identified as a 2012 Kia Sportage Vin ending in 4071 for which authority to sell is not requested. Movant not having requested authority to sell that vehicle, no authority shall be granted.

**Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because the next auction date is May 28, 2019, less than one week after the date of the hearing on the Motion.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

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

The Motion to Sell Property filed by Michael 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 is granted, and Movant, through Huisman Auctions, Inc. as auctioneer, is authorized to sell at public auction pursuant to 11 U.S.C. § 363(b) the property of the Estate identified as identified as a 1992 Chevrolet P30 Motorhome, VIN ending in 9461 ("Motorhome"), and a 2001 Mercedes-Benz, M-Class VIN ending in 2577 ("Mercedes") (collectively "Property").

**IT IS FURTHER ORDERED** that Movant is not authorized to sell property of the Estate identified as a 2012 Kia Sportage Vin ending in 4071 except on further order from the court.

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

**8.** **18-90959-E-7** **MICHAEL/JOANNE LAFRANCE** **MOTION FOR COMPENSATION FOR**
**BLF-4** **Michael Germain** **HUISMAN AUCTIONS, INC., AUCTIONEER(S)**
**4-8-19 [41]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2019. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

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

Michael D. McGranahan, the Chapter 7 Trustee ("Movant"), filed this Motion seeking preapproval of commission fees for Huisman Auctions, Inc., the Auctioneer ("Auctioneer") in relation to the sale of property of the Estate.

Movant filed a Motion To Sell (Dckt. 54) set for hearing the same day as the hearing n this motion seeking authority to sell at auction a 1992 Chevrolet P30 Motorhome, VIN ending in 9461 ("Motorhome"), and a 2001 Mercedes-Benz, M-Class VIN ending in 2577 ("Mercedes") (collectively "Property").

Movant previously filed a Motion to employ the Aucitoneer (Dckt. 30) which the court issued an Order granting on April 9, 2019. Order, Dckt. 47.

Movant is requesting approval of the following fees and expenses as set out fully in the Auction Agrement (Exhibit B, Dckt. 45):

1. Commission of 15 percent of gross sale price.

2. Reimbursement of expenses incurred in preparation of selling the vehicles not to exceed $130.00.

3. A 10 percent buyer's premium.

**Requested Fees**

Section 328(a) authorizes, with court approval, a trustee to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Here, Movant is seeking approval of a commission for the Auctioneer. The Auctioneer estimates the sale price of the Property will be $7,500.00. Declaration, Dckt. 43.

Thus, using the estimated sale price, Movant is seeking approval of the following fees:

1. $1,125.00 (15 percent commission).

2. $130 for expenses.

3. $750 (10 percent buyer's premium).

for which the total fees requested is $2,005.00.

In the Motion, Movant states the following as to the "buyer's premium:"

> [Auctioneer] will also charge and retain a buyer's premium of 10% of the gross sales price of each item sold (the "Buyer's Premium"). The Buyer's Premium is assessed directly to the buyers. The Buyer's Premium in part covers the auctioneer's administrative costs, including insurance, bonds, administrative staff and other expenses that are not passed on to the seller.

Motion ¶ 6, Dckt. 43. Movant actually borrows this language from the Auction Agreement. Exhibit B, Dckt. 45.

Here, the value of the vehicles sold are very modest, projected to be only $7,100.00. A higher commission, whether expressly stated or split into an express commission and a "buyer's premium," which necessarily reduces the bids on the property is appropriate. The court allows the Auctioneer to keep the buyer's premium on the aggregate sales proceeds from the two vehicles in excess of $15,000.00, and that the 10% buyer's premium on the amounts in excess of the aggregate gross sales proceeds of $15,000.00, which portion of the buyer's premium the Auctioneer shall disburse to the Trustee.

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 Michael D. McGranahan, the Chapter 7 Trustee ("Movant"), seeking preapproval of commission fees for Huisman Auctions, Inc., the Auctioneer ("Auctioneer") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Auctioneer is allowed, and Movant is authorized to pay, a 15 percent commission of the gross sale proceeds of property of the Estate identified as a 1992 Chevrolet P30 Motorhome, VIN ending in 946 and a 2001 Mercedes-Benz, M-Class VIN ending in 2577 ("Property"), and a 10% buyer's premium, from which the Auctioneer will be paid the premium on the first $15,000.00 of aggregate sales proceeds from the two vehicles and all amounts of the 10% buyer's premium paid to the Trustee for the bankruptcy estate. No further compensation for fees or expenses is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

**9.** **18-90847-E-7** **IMELDA PADILLA** **MOTION TO CONVERT CASE TO CHAPTER 13**
**TOG-1** **Thomas Gillis** **3-27-19 [44]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on March 27, 2019. By the court's calculation, 57 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is denied.**

Imelda Padilla ("Debtor") 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).

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. Debtor is seeking conversion in good faith because the Chapter 7 Trustee, Michael D. McGranahan ("Trustee"), has threatened to sell Debtor's residence.

2. Debtor is eligible for Chapter 13 because there is no bad faith and they had regular income on the date of filing.

3. Debtor is requesting conversion to Chapter 13 because she will be able to pay her unsecured creditors through a plan.

4. Debtor has proposed a plan payment of $595.00 which in a Chapter 13 would pay 24 percent of unsecured claims.

5. Debtor has filed proposed update schedules to reflect current income information and tightened expenses.

Motion, Dckt. 44.

**TRUSTEE'S OPPOSITION**

Trustee filed an Opposition on May 9, 2019. Dckt. 55. Trustee argues Debtor has forfeited [FN. 1] her right to conversion by acting in bad faith, demonstrated by the following:

1. Debtor does not attempt to explain why she falsely claimed the entire value of her real property and vehicle to be exempt.

2. The Debtor's express reason for requesting to convert the case is to avoid a sale of her home.

3. The Debtor submits certain "proposed" amendments to Schedules I and J, but they are not signed and they have not been filed.

4. Debtor's declaration (Docket No. 46) does not attempt to explain why the schedules on file are inaccurate or how she has turned a deficit of $1,635.97 into net income of $595 per month, a difference of $2,230.97 per month.

5. Debtor's declaration does not explain the change in her husband's income from $6,965.43 to $6,574.00.

6. Debtor states she will "tighten her belt" and cease charitable contributions, but the latter was only $50 monthly.

Trustee also argues the Debtor has no income and is therefore not eligible to be a chapter 13 debtor and cannot fund a plan. Trustee asserts Debtor has not evidenced her husband is committed to a Chapter 13 Plan, and Debtor's husband's income does not appear stable.

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FN. 1. The Trustee does not use the word "forfeit" lightly or as hyperbole. In *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 371 (2007), the Supreme Court used that dreaded "F" word, which is highly disfavored in discussing bad faith conduct of a debtor and the right to convert. This demonstrates how serious it is for a debtor to act honestly, truthfully, and in good faith when seeking the tremendously relief and benefits under the Bankruptcy Code through the federal court.

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**DEBTOR'S REPLY**

Debtor filed a Reply on May 20, 2019 [FN.2.] . Dckt. 61. Debtor explains that this case was initially filed by Debtor as a *pro per* litigant with limited legal understanding, which is why she did not claim the correct exemption amounts.

**---**

FN.2. In his own Declaration, Debtor's counsel explains the Reply was untimely because counsel was outside the country until May 16, 2019. Debtor filed an *Ex Parte* Application for an Order Shortening Time for the Reply on May 20, 2019. Dckt. 58. The court issued an Order granting the Application on May 21, 2019. Dckt. 69.

**---**

Debtor argues further that her husband's income is community income and therefore also Debtor's income, and Debtor has not demonstrated "bad faith."

In support of the Reply, Debtor filed her Declaration. Declaration, Dckt. 64. Debtor testifies to the following:

> 1. I am the Debtor in the above-entitled petition.
>
> 2. I am poorly educated and do not speak English.
>
> 3. When I filed my case, I didn't understand about how to exempt property.
>
> 4. On May 20, 2019, my attorney filed the necessary amendments and exempted my home.
>
> 5. I apologize for error. The omission in the schedules was not a deliberate attempt to mislead the court.

*Id.*

**DISCUSSION**

**Debtor's Statements Made Under Penalty of Perjury**

One of the statements allegedly made by Debtor under penalty of perjury stood out to the court. In Debtor's Declaration submitted along with her Reply, Debtor states:

> I am poorly educated and do not speak English.

Declaration ¶ 2, Dckt. 64.

Interestingly, Debtor has now signed two declarations, in English, under penalty of perjury, for which there is no reference to any translator being used or person attesting to have made sure that what is said in English is actually the Debtor's testimony. Dckts. 46, 64.

Going to Debtor's first declaration prepared with the assistance of counsel, the Debtor testifies under penalty of perjury her personal opinion, based on her known knowledge, that she complies with the provisions of 11 U.S.C. § 109(e). Dec. ¶ 3, Dckt. 46. Debtor then provides her personal knowledge testimony that based upon her personal knowledge of the United Supreme Court decision *"Marrama v. Citizens Bank of Massachusetts*, 127 S.Ct. 2205 (2007)," that Debtor meets the standards enunciated by the Supreme Court. *Id.*

Debtor's personal knowledge testimony continues, providing a financial analysis and detailed application of 11 U.S.C. § 109(e). *Id.* Debtor then concludes with her personal finding of fact and conclusions of law:

> "In addition, on the date of filing, I owed non-contingent liquidated unsecured debt of only $108,422.83 (see Schedule F) which is significantly less than the $383,175.00 upper limitation for Chapter 13 eligibility as spelled out in 11 U.S.C. Section 109(e). I had non-contingent liquidated secured debt of only $105,000.00 (see Schedule D) which is significantly less than the $1,149,525.00 upper limitation for Chapter 13 eligibility as spelled out in 11 U.S.C. Section 109(e)."

*Id.*

No evidence is presented to the court showing the Debtor having such legal skills, ability, and knowledge to understand federal law, analyze the provision of 11 U.S.C. § 109, and read, analyze, and apply the Supreme Court decision in *Marrama* (which is written in English).

The Debtor's declaration demonstrate a debtor who will sign anything that is written for her, so long as whomever is writing it tells her, "sign this and you will win." This further demonstrates Debtor lack of good faith, and even shows bad faith, even after obtaining the assistance of counsel.

**Review of Schedules &**
**Allegation of Bad Faith**

One of the Trustee's grounds for opposing the Motion is Debtor filed "proposed schedules." Debtor has now filed Amended Schedules which are identical as the "proposed schedules." Dckt. 62.

However, Trustee still argues that the updated Schedules reflect many unexplained changes in income and expenses.

In the Original Schedule I, Debtor listed her husband as having $6,965.43 in income from his work with Royal Countertops, with $4,099.05 in wages and $2,866.38 in overtime pay. Schedule I, Dckt. 21. The Amended Schedule I consolidates the income from wages and overtime to state one monthly gross wage of $6,574.00. Dckt. 62.

The difference between these two stated incomes is roughly $400.00 monthly.

In reviewing the Original Schedule J, Debtor stated a monthly expense of $6,379.00. Dckt. 21. This was reduced significantly in the Amended Schedule J to $4,470.00. Dckt. 62. Some of the changes include:

| | Original Schedule J | Amended Schedule J |
|---|---|---|
| Rental/Home | $399.15 | $769.00 |
| Property Tax | $142.00 | $0 |
| Home Maintenance | $0 | $75.00 |
| Electric/heat/gas | $400.00 | $255.00 |
| Water/sewer/garage | $160.00 | $126.00 |
| Phone/cable/internet | $380.00 | $295.00 |
| Food | $650.00 | $750.00 |
| Life Insurance | $80.00 | $0 |
| Health Insurance | $526.00 | $0 |
| Vehicle Insurance | $517.00 | $185.00 |
| Support Payments | $100.00 | $0 |
| Other: Credit Cards | $1,500.00 | $0 |

In the above, there are clearly drastic changes to Debtor's expenses. Where the original Schedules were stated under penalty of perjury, it is important that such changes are explained. Though assisted by counsel, Debtor fails to provide any reasonable explanation as to why she made such statements under penalty of perjury (except possibly she does not understand English and had no idea what was on the papers she was signing under penalty of perjury).

**Assistance in Filing Petition and Original Schedules**

In filing this bankruptcy case Debtor was not on her own. On page 7 of the Voluntary Petition, she says under penalty of perjury that she has paid a "Jose Rivera" to help her fill out the bankruptcy forms. Dckt. 1 at 8. On the original Schedules and Statement of Financial Affairs it is again stated under penalty of perjury that a "Jose Rivera" was paid to help Debtor complete the bankruptcy forms. Dckt. 21 at 45. Though the signature line for "Mr. Rivera" expressly states that the Bankruptcy Petition Prepare's Notice, Declaration, and Signature are to be attached, none is attached by the Debtor and Mr. Rivera.

Though saying that she has paid "Mr. Rivera" for the assistance in preparing the documents and in filing this case, on the Statement of Financial Affairs, in response to Question 16 Debtor states under penalty of perjury that she has not paid anyone anything for such assistance. Dckt. 21 at 40. Debtor provides conflicting statements under penalty of perjury on this point.

No address or identification is given for "Mr. Rivera."

On May 5, 2019, Debtor filed Amended Schedules with the assistance of her current counsel. On Schedule H Debtor lists "Jose Amezquita" as being a co-debtor on obligations with her for the claims secured by the 2016 Toyota Highlander and the Pheasant Lane Property. Dckt. 62 at 12-15. No amended Statement of Financial Affairs has been filed.

A Jose Amezquita has filed one prior Chapter 7 bankruptcy cases in this District. This cases is summarized as follows:

Chapter 7 Case 10-94499, Counsel for Mr. Amezquita - Thomas Gillis, Esq.

A. Filed.....November 16, 2010
   a. Discharge Entered.....March 7, 2011

B. Address for Mr. Amezquita is the Pheasant Lane Property. 10-94499, Dckt. 1 at 1.

On original Schedule A/B in the current case Debtor checked the box stating that the Pheasant Lane Property was owned only by "Debtor 2." Dckt. 21 at 3. There is no "Debtor 2" in this bankruptcy case.

On Amended Schedule A/B in the current case, prepared with the assistance of counsel, Debtor now states under penalty of perjury that the Pheasant Lane property is owned by "At least one of the debtors and another," with the community property box checked. Dckt. 62.

In Jose Amezquita's 2010 Chapter 7 case, Mr. Amezquita stated that he owned the Pheasant Lane Property in fee simple, with no other owners. 10-94499, Dckt. 1 at 8. He further stated on Schedule H that there were no co-debtors on any obligations. *Id.* at 20.

On Schedule D in his 2010 Chapter 7 case, Mr. Amezquita stated that Bank of America held a $50,000.00 claim and a $100,200.00 claim, both secured by the Pheasant Lane Property. *Id.* at 13.

On Schedule I Mr. Amezquita stated that he had no spouse and only three sons, with income information for the spouse as being "N.A." (the abbreviation for "non-applicable," meaning there is no spouse). *Id.* at 21.

In response to Statement of Financial Affairs Question 16, Mr. Amezquita stated that he had no spouse. *Id.* at 32.

On Amended Schedule D in the current Case Debtor states that there are one claim secured by the Pheasant Lane Property, that being an obligation of $108,000 with the creditor identified as CMC Funding/Specialized Loan Servicing. Dckt. 62 at 13.

At the end of the day, the court remains unconvinced that Debtor is accurately stating her assets and providing the information required under penalty of perjury. Though an excuse is given that,

> "2. I am poorly educated and do not speak English.
> 3. When I filed my case, I didn't understand about how to exempt property;"

Declaration, Dckt. 64, she purports to provide testimony giving complex legal analyses and conclusions. No interpreter is required and Debtor is signing various documents under penalty of perjury - which if her testimony is believe, she has no ability to understand.

Debtor has demonstrated that, even with the assistance of counsel, she will sign whatever is put in front of her. She is not prosecuting this case in good faith.

Additionally, it may well be that the estate has substantial claims and rights against "Mr. Rivera" for assisting Debtor, for undisclosed amounts of money for filing clearly defective and deficient Schedules and Statement of Financial Affairs. The court believes that the Debtor is incapable of asserting such rights and claims.

The court refers this conduct of Mr. Rivera to the U.S. Trustee for investigation and action, as appropriate, by that office.

**Eligibility For Relief Under Chapter 13**

Trustee also argues Debtor is not entitled to Chapter 13 relief because she does not have regular income.

11 U.S.C. § 109(e) provides that only an individual with regular income may be a debtor under Chapter 13. Colliers provides an overview of the requirement for "regular income" as follows:

> The section 101 definition of "individual with regular income" is a much more encompassing concept than was the "wage earner" entitled to chapter 13-type relief under pre-1978 bankruptcy laws. Chapter 13 relief is not limited to those whose regular income comes from employment, but encompasses "individuals on welfare, social security, fixed pension incomes, or who live on investment incomes." In Bibb County Department of Family & Children Services v. Hope (In re Hammonds), the Court of Appeals for the Eleventh Circuit held that public assistance benefits were regular income and that a recipient of those benefits could be a chapter 13 debtor. The standard is based not on the source of the income but, rather, on its regularity and sufficiency to meet plan payments. Although the debtor must demonstrate an ability to meet plan payments, eligibility under chapter 13 does not require that the debtor receive regular income at the time of the petition or that the exact amount of future income be ascertainable at that time. It also does not require that the regular income be weekly or monthly, as long it is reasonably predictable and sufficient to make the proposed plan payments. However, an extremely irregular income pattern, or an income that is too low to allow for plan payments, will fail to meet the eligibility requirements of section 109(e). Often issues of this nature are dealt with as part of the feasibility test for chapter 13 plan confirmation.
>
> Another issue that sometimes arises concerning the source of the debtor's income is whether a nonworking spouse may assert that the support he or she receives from the other spouse is "regular income." It is clear that alimony or support received by a separated spouse or parent was meant to be encompassed within the term "regular income," and also that the spouse of an individual with regular income need not have his or her own separate source of income if the spouse is a joint debtor with that individual. Based on the obvious intent of Congress that the term be construed broadly, most courts have permitted the spouse of an individual with regular income to file without the necessity of that individual filing jointly, at least if there is a commitment of the nonfiling spouse to provide the income. They have even permitted a debtor to file based on the commitment of friends and relatives to provide the necessary income.

2 COLLIER ON BANKRUPTCY P 109.06 [1] (16th 2019).

Under California law, all property acquired by a married person during marriage while domiciled in California is community property. Cal. Fam. Code § 760. Either spouse has management and control of community personal property. Cal. Fam. Code § 1100. Thus, while the income is stated on Debtor's

schedules to be her husband's, it is actually income of the community which Debtor has the power to commit to a Chapter 13 case.

Though having income to possibly fund a plan, mere money to try and buy one's way out of bad faith does not carry the day.

The Motion is denied.

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 Imelda Padilla ("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 Convert is denied.

**10. 19-90122-E-11 MF-22**

**MIKE TAMANA FREIGHT LINES, LLC**
**Matt Olson**

**MOTION FOR APPROVAL OF STIPULATION**
**5-7-19 [269]**

**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 creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on May 7, 2019. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

**The Motion for Approval of Adequate Protection Stipulation with Transportation Alliance Bank, Inc. is granted.**

The debtor in possession, Mike Tamana Freight Lines, LLC (" ΔIP") filed this Motion seeking approval of a stipulation seeking to set adequate protection payments to creditor Transportation Alliance Bank, Inc. ("Creditor"), holding a claim secured by several of ΔIP's vehicles described as trailers and tractors (listed fully in the Motion (Dckt. 269)).

The Motion is supported by the Declaration of Amanjot Tamana, a managing member of the ΔIP. Dckt. 271. The Tamana Declaration states Creditor's collateral here is essential to the operation of ΔIP's business. *Id.*, ¶ 4. The Tamana Declaration also states Creditor prepetition was receiving monthly payments of $16,141.40. *Id.,* ¶ 6.

The Stipulation (summarized by the court, and set out fully in Dckt. 272) proposes the following terms:

1. Commencing on February 2019, ΔIP shall pay adequate protection payments in the amount of $16,141.40 per month to Creditor to adequately protect Creditor's interest in the collateral.

2. There remains, prepetition, ($220,305.62) in interest and ($35,000) in fees owed to Creditor for account management and financing services performed. Creditor currently holds $248,828.24 in funds secured by Creditor's prepetition claim. Creditor shall pay itself on its prepetition claim of ($255,305.62) from the $248,828.24 it currently holds, with the balance to be paid from the pre-petition accounts upon receipt.

3. ΔIP may cure a default within ten days of receipt written notice of that default. If ΔIP fails to cure default, the Creditor may apply for *ex parte* relief from stay.

**DISCUSSION**

At the hearing, xxxxxxxxxxxxxx.

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 Approval of Adequate Protection Stipulation filed by the debtor in possession, Mike Tamana Freight Lines, LLC (" ΔIP") 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 Adequate Protection Stipulation (Dckt. 272) is approved..

**11. 19-90122-E-11 MF-3**

**MIKE TAMANA FREIGHT LINES, LLC**
**Matt Olson**

**FINAL HEARING RE: MOTION FOR AUTHORITY TO OBTAIN FINANCING**
**2-12-19 [15]**

**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).**

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on February 12, 2019. By the court's calculation, 2 days' notice was provided. The court set the hearing for February 14, 2019. Dckt. 28.

The Motion For Authority To Obtain Financing was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

**The Motion For Authority To Obtain Financing is XXXXXXXX.**

Debtor in Possession Mike Tamana Freight Lines, LLC filed this First Day Motion to Obtain Debtor in Possession Financing from Transportation Alliance Bank, Inc. which is styled as a Accounts Receivable Purchase and Sale Agreement so that the Debtor in Possession can continue to operate the estate's business. The terms of the financing are stated in the document titled "Debtor in Possession Accounts Receivable Purchase and Security Agreement." Exhibit C, Dckt. 17.

Counsel for the Debtor in Possession reports that an agreement has been reached for Crestmark to provide post-petition financing and to buy out TAB's post-petition financing.

**FEBRUARY 14, 2019 HEARING**

At the February 14, 2019 hearing the court granted the Motion and authorized the requested financing on an interim basis through April 5, 2019 (making no determination if there is a sale of accounts receivable or secured financing). Civil Minutes, Dckt. 44.

The court further held Amajot Tamana, identified as the President and Manager of Mike Tamana Freight Lines, LLC, is the Responsible Representative to act for the Debtor in Possession and the person authorized to execute all documents for this authorized financing.

The court issued an Order providing the foregoing, continuing the hearing to March 28, 2019, and also requiring any opposition to the Motion be filed and served on or before March 14, 2019, and replies, if any, filed and served on or before March 21, 2019. Order, Dckt. 46.

**CREDITOR'S OPPOSITION**

Creditor Wells Fargo Equipment Finance, Inc. holding a secured claim ("WFEF") filed a Limited Opposition on March 13, 2019. Dckt. 93.

WFEF asserts it has a secured interest in equipment of the Debtor, including trucks and trailers, and their proceeds. WFEF opposes the Security Agreement to the extent it seeks to grant a security interest in already encumbered assets of the Debtor in Possession.

**DEBTOR IN POSSESSION'S REPLY**

Debtor in Possession filed an Omnibus Reply on March 21, 2019. Dckt. 108. Debtor in Possession states it does not oppose limiting the lien granted under the order approving agreement with TAB to the unencumbered assets of the estate, consistent with the request made in the Motion.

**FINANCING TERMS**

As WFEF comments, the financing to be provided seeks to encumber all of the personal property assets of the bankruptcy estate. The terms of the financing (see discussion below about the selling/financing issue) include:

A. The contract is between Transportation

1. Alliance Bank, Inc., dba TAB

and

2. Debtor Mike Tamana Freight Lines, LLC

The contract is clear that it is between the Debtor LLC and TAB, not the fiduciary Debtor in Possession and TAB. The signature block at the end of the agreement is equally clear that it is being signed by the Debtor individually and not in its fiduciary capacity as the Debtor in Possession.

Presumably a sophisticated lender has intentionally drafted this agreement to do business with the LLC shell entity and not the fiduciary Debtor in Possession.

B. The Debtor LLC is "required" to submit all of the Debtor, LLC's "Accounts" to TAB. Agreement ¶ 2; Exhibit C, Dckt. 17.

1. "Accounts" is a defined term to as defined in the Uniform Commercial Code (the agreement does not specify whether it is the Commercial Code as enacted by the State of California or the academic Uniform Commercial as developed by the National Conference of Commissioners on Uniform State Laws and the American Law Institute). Agreement *Id.* ¶ 1. Paragraph 19 of the agreement states that the agreement and transaction are to be governed by "internal laws of the State of Utah," so it is possible that the reference could be to that State's Commercial Code, or the specific reference is intended to be the academic Uniform Commercial Code.

a. This section goes further to state: "any and all amounts owing to Seller under any rental agreement or lease, payments on construction contracts, promissory notes or on any other indebtedness, any rights to payment customarily or for accounting purposes classified as accounts receivable, and all rights to payment, proceeds or distributions under any contract of Seller, presently existing or hereafter created, and all proceeds thereof."

C. TAB will consider (indicating no obligation to perform on TAB's part) purchasing only "Accounts" that meet a set of terms stated in a long paragraph that is 48 lines long and contains three periods and four hundred and fifty-six (456) words (excluding the two periods and two words used in the title). One sentence consists of fourteen (14 words) and a second sentence consists of thirty-five (35) words. That leave the third sentence of this one paragraph consisting of four hundred and seven (407) words. The paragraph is one large block, with no organization of subparagraphs, listed items, or other devices to make such a long string of words more easily readable. *Id.* ¶ 3.

D. The Debtor LLC will offer to sell "Accounts" to TAB, with TAB as the absolute owner. *Id.* ¶ 4. TAB's purchase of any "Accounts" is in its sole discretion. *Id.* TAB has no obligation to purchase any "Accounts."

E. During the term of this agreement in which TAB has no obligation to purchase any accounts, the Debtor LLC "shall not sell, factor or otherwise finance its accounts receivable except with Purchaser." *Id.*

Thus, it appears that TAB has drafted this agreement and the Debtor LLC seeks to enter into an agreement by which TAB controls the finances of the Debtor LLC, freezing the use of its "Accounts" (which is very broadly defined).

F. The purchase price is denied to be "the Face Amount of the Purchased Account." *Id.* ¶ 1. The term "Face Amount" is defined to be "the total amount due specified on an Account's invoice, at the time of Purchase, less any finance charges included therein." *Id.*

G. The Debtor LLC is obligated to pay various fees and expenses as stated in Paragraph 7 of the agreement. These are stated (in one long run on paragraph) to be

> (I) discount fees, at the Discount Fee Rate, on the Balance Subject to Discount Fee, from the date upon which an Account is purchased hereunder, with said discount fee being due and payable monthly on the last Business Day of the calendar month in which it accrues;
>
> (ii) the Administration Fee on each Purchased Account at the time each said Purchased Account is Closed;
>
> (iii) any Misdirected Payment Fee immediately upon its accrual;
>
> (iv) any Missing Notation Fee on any Invoice that is sent by Seller to an Account Debtor that does not contain the notice as required by Section 12 hereof;
>
> (v) any amount by which the sum of the fees and charges earned in any month (prorated for partial months) is less than the Minimum Monthly Fee, to be paid on the last Business Day of the calendar month in which it accrues;
>
> (vi) the Early Termination Fee if Seller terminates this Agreement or prepays the Obligations (whether by acceleration or otherwise) prior to the termination date set forth herein, computed from the date of termination to the date on which termination is requested by Seller pursuant to Section 18 hereof;
>
> (vii) the Late Charge on all past due amounts due from Seller to Purchaser hereunder, and on the amount of any Reserve Shortfall;
>
> (viii) any and all other fees and charges referred to herein, at the earlier of the time required by the terms hereof or when billed by Purchaser; and
>
> (ix) any expenses directly incurred by Purchaser in the administration of this Agreement such as wire transfer fees, postage, extra-ordinary collection

costs, periodic UCC or tax lien searches, and audit fees, calculated at Purchaser's standard fee schedule, a copy of which will be provided to Seller upon request;

(x) in the event any applicable law, statute, rule or regulation shall subject Purchaser or any of its affiliates to any tax levy (other than taxes imposed on or measured by the overall net income of Purchaser), duty, impost, duty, charge, fee, deduction or withholding, or increase the cost to Purchaser of purchasing Accounts due to the application or use of the LIBOR Rate, then upon written demand therefor, Seller shall reimburse Purchaser for all such costs and expenses. Any amounts owed by Seller to Purchaser shall be paid by Seller, at Purchaser's option, by:

(a) charging said amounts to the Reserve Account;

(b) deducting said amounts from the Purchase Price otherwise directed by Seller to be deposited into Seller's Account;

(c) debiting said amounts from Seller's Account; or

(d) Seller's paying said amounts, in cash or other good funds acceptable to Purchaser, immediately upon demand made by Purchaser.

H. While structured as a "purchase" of accounts, TAB has the power to "require," on TAB's Demand, Debtor LLC to "repurchase" the purportedly "sold" "Accounts." *Id.* ¶ 8.

I. Debtor LLC grants a security interest in "Collateral" described as:

"Collateral" – any collateral now or hereafter described in any financing statement, continuation statement, financing change statement, or any other UCC-1 filing, or any other amendment, or similar security filing or registration statement filed against or executed by Seller naming Purchaser as the secured party, and all of Seller's right, title and interest in, to and under the following property, now owned or hereafter acquired:

(I) All Accounts (including any Exclusions and any Accounts purchased by Purchaser hereunder and repurchased by Seller), chattel paper, general intangibles, including, but not limited to, tax refunds, registered and unregistered patents, trademarks, service marks, copyrights, trade names, trade secrets, customer lists, licenses, documents, instruments, deposit accounts, certificates of deposit, and all rights of Seller as a seller of goods, including rights of reclamation, replevin and stoppage in transit;

(ii) All Inventory as defined in the Uniform Commercial Code, wherever located, all goods, merchandise or other personal property held for sale or lease, names or marks affixed thereto for purposes of selling or identifying the same or the seller or manufacturer thereof and all related rights, title and interest, all raw materials, work or goods in process or materials or supplies of every nature used, consumed or to be used in Seller's business, all packaging and shipping materials, and all other goods customarily or for accounting purposes classified as inventory of Seller, now owned or hereafter acquired or created, all proceeds and products of the foregoing and all additions and accessions to, replacements of, insurance or condemnation proceeds of, and documents covering any of the foregoing, all property received wholly or partially in trade or exchange for any of the foregoing, all leases of any of the foregoing, and all rents, revenues, issues, profits and proceeds arising from the sale, lease, license, encumbrance, collection, or any other temporary or permanent disposition of any of the foregoing or any interest therein;

(iii) All Equipment and fixtures and goods, wherever located, and all additions, substitutions, replacements (including spare parts), and accessions thereof and thereto;

(iv) All books and records relating to all of the foregoing property and interests in property, including, without limitation, all computer programs, printed output and computer readable data in the possession or control of the Seller, any computer service bureau or other third party;

(v) All investment property; and

(vi) All proceeds of the foregoing, including but not limited to, all insurance proceeds, all claims against third parties for loss or destruction of or damage to any of the foregoing, and all income from the lease or rental of any of the foregoing. *Id.* ¶ 1.

J. The Exhibit A to the agreement contains the interest rate and other fee and expense terms, *Id.*, Dckt. 17 at 42,which include:

1. A "Discount Fee Rate" calculated at the LIBOR Rate plus 8.37%. Based on the current stated LIBOR Rate, the agreement identifies the interest rate to start at 11.46% on all "Obligations" of Debtor LLC under the agreement. However, the Agreement also provides that notwithstanding the stated "Discount Fee Rate" calculation, at no time shall the LIBOR Rate used in the calculation be less than 8.73%.

This appears to be a drafting error. Likely the Agreement sought to make the minimum Discount Fee Rate 8.73% (the amount of the "plus" interest above the LIBOR Rate). Instead, the language seems to fix the LIBOR Rate at a minimum of 8.73%, which would make the minimum Discount Fee Rate 17.46%.

2. Origination Fee of $15,000.

3. Attorney Documentation Fee (for agreement between TAB and the Debtor LLC) of $7,500.

4. Administration fee of 0.10% per diem (.10% per day x 365 days = 36.5% per annum). This 36.5% fee is computed on:

   a. "the cumulative uncollected balance of the Purchase Price of all outstanding Purchased Accounts (which are not Closed) minus the balance in the Reserve Account" *Id.* ¶ 1.

5. Minimum Monthly Fee 0.40% (0.40% per month x 12 months = 4.8% per annum). This is a fee computed on the "Maximum Amount," $3,000,000, without regard to the account's purchased, which equals $144,000 a year to be paid for TAB having the discretion to "purchase" accounts.

**MARCH 28, 2019 HEARING**

At the March 28, 2019 hearing on the Motion, the court noted (as discussed above) a number of issues that have arisen in connection with the financing, the parties involved, and the terms. Civil Minutes, Dckt. 143. Counsel for the Debtor in Possession reported that alternative financing sources are being considered. Counsel for the lender confirmed with the court that she would address with her client the issues discussed; including the actual terms (including whether the lender would be recovering interest, whether designated interest, maintenance fees, or minimum monthly fee -in addition to origination and drafting fees); and whether the annual interest and maintenance fees are in excess of 40% of the outstanding accounts "purchased" on which interest and fees must be paid.

The court issued an Order on April 1, 2019, extending its Interim Order (Order, Dckt. 46) through and including April 19, 2019, and continuing the hearing on the Motion to April 4, 2019. Order, Dckt. 148.

**APRIL 9, 2019 HEARING**

At the hearing April 9, 2019 hearing, the court further continued the hearing on the Motion to April 24, 2019 at the request of the parties. Civil Minutes, Dckt. 186.

**APRIL 24, 2019 HEARING**

At the April 24, 2019 hearing counsel for the Debtor in Possession and Counsel for TAB advised the court that the Parties were pursuing the alternative financing to be provided by Crestmark, which would buy out TAB's position and provide interim financing pending a final hearing. Civil Minutes, Dckt. 242.

The court issued an Interim Order allowing interim financing and setting the final hearing for at 10:30 a.m. on May 23, 2019. Order, Dckt. 238.

**DEBTOR IN POSSESSION'S SUPPLEMENTAL BRIEF**

Debtor in Possession filed a Supplemental Brief in Support of the Motion on May 9, 2019. Dckt. 276. Debtor in Possession summarizes (and the court summarizes more briefly) the Accounts Receivable Purchase Agreement provided by Crestmark as follows:

1. The agreement between Crestmark and Debtor in Possession does not set a maximum amount of financing, but approximately $1.6 million will be used on a revolving basis.

2. The effective APR is approximately 11 percent.

3. Crestmark will purchase receivables for 90 percent of their face value, with the remaining reserve amount remitted after payment by the account debtor less any fees. Crestmark is authorized to retain reserve amounts in a reserve account to, protect against changes in Debtor in Possession's ability to pay or the collectability of the invoices purchased by Crestmark.

4. Crestmark will be granted a lien against the invoices sold to Crestmark, any funds in the reserve account, all Debtor in Possession's other personal property.

5. Debtor in Possession shall pay Crestmark's expenses related to out-of-pocket costs for negotiating, administering, or enforcing the Agreement; protecting or enforcing its liens; participating in any insolvency proceeding; filing fees or other expenses connected to the purchase of the invoices, including attorneys' fees, lock-box fees, and similar charges.

6. There are numerous events of default, upon which Crestmark may assess a 1.5 percent per month default fee on the total amount outstanding, equaling 18percent per annum, among other relief.

7. The Agreement provides for an intimal term of one year with automatic renewal for successive one-year periods unless a notice of termination is provided not alter than 60 days before the anniversary date and the obligations outstanding under the facility are paid by the termination date

Debtor in Possession seeks to make the following changes in the order authorizing the financing:

1. The form of order did not grant Crestmark relief from the automatic stay to enforce any remedies against Debtor in Possession that may be afforded

under the Agreement. Debtor in Possession and Crestmark request that any order on the Motion include such a modification of the automatic stay.

This request is problematic in a Chapter 11 case. The Debtor in Possession, having a fiduciary duty to the estate also has the "burden" of being the Debtor. Giving a blanket, "nobody will know that there is a default and the lender is seizing the assets of the bankruptcy estate" is inconsistent with the need for transparency in the functioning of the fiduciary to the bankruptcy estate.

While approving financing can include streamlined relief from the stay on shortened time to ensure that a decision by a desperate fiduciary is not being done under the stress for "debtor reasons" is appropriate, throwing the bankruptcy baby out with the defaulting bath water is not.

2. Debtor in Possession no longer seeks to limit 11 U.S.C. § 506(c) in the order authorizing financing.

3. Debtor in Possession no longer seeks to include a finding of good faith in the order authorizing financing.

Finally, Debtor in Possession summarizes the buy-out agreement between TAB and Crestmark as follows:

1. The Buy-Out Agreement provides for Crestmark to purchase from TAB all unpaid invoices it purchased from MTFL for the amount currently owed to TAB. The Buy-Out was completed on or about May 1, 2019, for the total price of $1,320,398.93, representing a loan balance of $1,290,182.33 (net of cash reserves) and accrued fees of $30,216.60. The Buy-Out Agreement also provided a release of claims held by Debtor in Possession in favor of TAB and that Debtor in Possession indemnify TAB for any payments that it received from account debtors that are later dishonored or returned. The one-time fee charged by Crestmark for the buyout was equal to 0.35% of the face amount of the buyout, or $4,621.97.

**RULING**

At the hearing, 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 for Authority to Obtain Post-Petition Financing filed by Mike Tamana Freight Lines, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Obtain Post-Petition Financing is **xxxxxxxx**.

**12. 18-90029-E-11 MF-9** | **JEFFERY ARAMBEL** **Matt Olson** | **AMENDED MOTION FOR ADMINISTRATIVE EXPENSES** **4-30-19 [784]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, and Office of the United States Trustee on April 30, 2019. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

**The Motion for Allowance of Administrative Expenses is Denied.**

Morada Farming Company, LLC, a California limited liability company ("Movant") requests payment of administrative expenses in the amount of $41,048.06, incurred during the period of June 18, 2018, to June 25, 2018. Movant states real property of the debtor in possession, Jeffrey Arambel ("Debtor In Possession"), identified as the Howard and Home Ranches ("Ranch Properties")which were approved for sale April 19, 2018 (with the Order granting the motion to sell issued April 23, 2018). Civil Minutes, Dckt. 241; Order, Dckt. 244. Movant states the expenses were incurred removing extensive farming-related personal property from the Ranches.

Movant filed the Declarations of Henry Foppiano and Darin Judd in support of the Motion. Dckts. 786-787.

The Judd Declaration identifies Judd as Movant's counsel. Judd testifies he received authorization from Reno Fernandez, bankruptcy counsel for Debtor in Possession, to remove the personal property from the Ranch Properties. Declaration ¶ 3, Dckt. 786. Judd testifies further Mr. Fernandez advised him via email to file this Motion seeking an administrative expense claim. *Id.*, ¶ 5.

In an email string attached as Exhibit "C" along with the Judd Declaration, an email from Mr. Fernandez states as follows:

> Received, thanks. Buyer will want to file a request for allowance of administrative expense with the court when it comes time to confirm a plan. That is still in the future, but getting closer. I can provide you with a blank form of request when we get closer.

Exhibit C, Dckt. 786 at p. 1.

The Foppiano Declaration provides testimony that Foppiano is the manager of Movant, and general partner of Ashley Lane, L.P., the purchaser of the Ranch Properties. Declaration ¶¶ 1-2, Dckt. 787. Foppiano further testifies that he requested the personal property of Debtor in Possession be removed prior to close of escrow, and that Foppiano engaged his company (Movant herein) at the instruction of Mr. Fernandez to remove Debtor in Possession's personal property. *Id.*, ¶¶ 3-4. Foppiano states the cost of the services rendered was $41,048.06. *Id.*

Attached as Exhibit "A" to the Foppiano Declaration is a copy of an invoice for the removal services performed by Movant. Exhibit A, Dckt. 787.

**DISCUSSION**

**Failure to File Separate Pleadings**

Several of Movant's pleadings are filed together as joint documents, including the declarations and exhibits. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

**Reuse of DCN**

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

**Movant's Right to Exercise Dominion and Control Over Property of the Bankruptcy Estate and the Debtor in Possession's Fiduciary Duties**

Movant argues it was authorized by "Debtor" to perform the service of removing personal property of the bankruptcy estate from the Ranch Properties. Such reference may be due to a misunderstanding of bankruptcy law and the fiduciary role of a "debtor in possession," or it may be the "deal was made with the Debtor personally" and the obligation is not one to be paid as an administrative expense by the bankruptcy estate.

Movant then states it provided services to Debtor to move "a large quantity of farming related equipment," for a cost of $41,048.06, which is property of the Debtor, Mr. Arambel.

In his declaration, Mr. Judd states that Reno Fernandez, the attorney for the Debtor in Possession, approved the removal of "all abandoned personal property of debtor Jeffrey Arambel from the property purchased" by his client. Dec. ¶ 3, Dckt. 786. In wading through the 812 docket entries in this eighteen month old case, the court cannot find any motion authorizing the abandonment of any property of the bankruptcy estate. See 11 U.S.C. § 554 for when a trustee or debtor in possession may obtain authority from the court to abandon property of the bankruptcy estate.

The Declaration continues to state that copies of invoices were sent by Mr. Judd to Mr. Fernandez. *Id.*, ¶ 4.

As referenced above, when a Chapter 11 case is filed, in lieu of a trustee being appointed the debtor will serve as the debtor in possession, with the authority to exercise the powers, and having the responsibilities and fiduciary obligations, of a trustee. 11 U.S.C. § 1107. These include being responsible for all personal and real property of the bankruptcy estate, which includes all property of the debtor as of the commencement of the bankruptcy case (with some minor exceptions). 11 U.S.C. § 541.

Here, taken at face value, the Debtor in Possession failed to fulfill these duties, failed to protect property of the bankruptcy estate, and abdicated his responsibilities. Instead, acting as the Debtor personally, he purported to authorize through the attorney for the Debtor in Possession for Movant to fulfill the obligations of a trustee.

In so choosing to do, Mr. Arambel and Mr. Fernandez elected to turn over what is now being presented as a $41,048.06 expense, without any effort to control or manage the expense, for the bankruptcy

estate to pay. This is not consistent with the fiduciary duties of the Debtor in Possession or counsel for the Debtor in Possession.

Rather, it appears based on what has been presented, that this was Mr. Arambel acting personally, not in his fiduciary capacity, assisted by Mr. Fernandez acting for Mr. Arambel personally, to incur this $41,048.06 obligation. It is not an obligation incurred by the Debtor in Possession and is not an administrative expense to be paid by the bankruptcy estate. Rather, it appears an obligation for Mr. Arambel and Mr. Fernandez to address personally.

At the hearing, xxxxxxxxxxxxxx.

The Motion is denied.

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 Morada Farming Company, LLC, a California limited liability company ("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 denied.

# FINAL RULINGS

| | | | |
|---|---|---|---|
| **13.** | **18-90197-E-7**<br>**BLF-2** | **FREDRICK/JILL HUCKABY**<br>**Patrick Greenwell** | **MOTION FOR COMPENSATION FOR LORIS L BAKKEN, TRUSTEE'S ATTORNEY**<br>**4-4-19 [47]** |

**Final Ruling:** No appearance at the May 23, 2019 hearing is required.

---

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2019. By the court's calculation, 49 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.**

Loris L. Bakken, 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 May 18, 2018, through May 23, 2019. The order of the court approving employment of Applicant was entered on May 24, 2018. Dckt. 19. Applicant requests fees in the amount of $5,370.00 and costs in the amount of $537.37.

**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 debtor's real property, and debtor's purchase of the Estate's interest in debtor's vehicle. The court finds the services were beneficial to Client and the Estate and were reasonable.

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

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

General Case Administration: Applicant spent 3.8 hours in this category. Applicant performed services related to the general administration of the case, including prosecuting of the employment and fee applications.

Sale of Property: Applicant spent 12.8 hours in this category. Applicant performed services related to the sale of debtor's real property, including prosecution of motions to employ a professional and a motion to sell.

Sale To Debtor of Estate's Nonexempt Interests: Applicant spent 1.3 hours in this category. Applicant negotiated and prosecuted a motion in order to allow debtors to purchase the Estate's interest in debtor's vehicle.

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 | 17.9 | $300.00 | $5,370.00 |
| **Total Fees for Period of Application** | | | $5,370.00 |

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $537.37 pursuant to this application.

The costs requested in this Application are,

| **Description of Cost** | **Cost** |
|---|---|
| Postage | $88.87 |
| Copying | $74.00 |
| Certified Copies | $43.50 |
| Recording | $331.00 |
| **Total Costs Requested in Application** | $537.37 |

**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 $5,370.00 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 $537.37 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 the costs allowed by the court.

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

Fees $5,370.00

Costs and Expenses $537.37

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 Loris L. Bakken ("Applicant"), Attorney 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 Loris L. Bakken is allowed the following fees and expenses as a professional of the Estate:
>
> Loris L. Bakken, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $5,370.00
> Expenses in the amount of $537.37,
>
> 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.

**14. 18-90679-E-7 BLF-8**

**TIMOTHY BROWN**
**David Foyil**

**MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEE'S ATTORNEY**
**4-15-19 [76]**

**Final Ruling:** No appearance at the May 23, 2019 hearing is required.
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 15, 2019. By the court's calculation, 38 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.**

Loris L. Bakken, 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 October 31, 2018, through May 23, 2019. The order of the court approving employment of Applicant was entered on November 9, 2018. Dckt. 29. Applicant requests fees in the amount of $6,900.00 and costs in the amount of $598.00.

**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)).

The Trustee testified in his supporting declaration that he has $20,000.00 of unencumbered monies in this case for disbursement. Dckt. 79. The Application shows that Applicant's services for the Estate include Summary of Services and puts them in context of the funds to be disbursed. The court finds the services were beneficial to Client and the Estate and were reasonable.

**FEES AND COSTS & EXPENSES REQUESTED**

**Fees**

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

General Case Administration: Applicant spent 5 hours in this category. Applicant performed services related to the general case administration, including prosecution of the employment application and this fee application.

Sale of Property: Applicant spent 19 hours in this category. Applicant prosecuted motions to employ a broker and sell property of the estate in order to sell debtor's real property.

Stipulation Regarding Sale Proceeds: Applicant spent 2.9 hours in this category. Applicant negotiated a carevout for the Estate in connection with the sale of debtor's real property.

Motion For Relief From Stay: Applicant spent 1.7 hours in this category. Applicant reviewed a motion for relief filed by Wells Fargo Bank, N.A. in the case of debtor's ex-wife.

Stipulation For Turnover: Applicant spent 4.8 hours in this category. Applicant communicated regarding a stipulation for the turnover of property to be sold.

Motion To Abandon: Applicant spent 2.2 hours in this category. Applicant prosecuted a motion to abandon seeking to abandon several items of personal property of the debtor.

Avoidance of Preference: Applicant spent 2.9 hours in this category. Applicant facilitated a stipulation for the avoidance of a lien recorded within 90 days of filing of the case.

Motion To Abandon: Applicant spent 5.2 hours in this category. Applicant prosecuted a motion to abandon a solar power system attached to debtor's real property proposed to be sold.

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 | 22.1 | $300.00 | $6,630.00 |
| Loris Bakken | 1.8 | $150.00 | $270.00 |
| **Total Fees for Period of Application** | | | $6,900.00 |

**Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $598.99 pursuant to this application.

The costs requested in this Application are,

| **Description of Cost** | **Cost** |
|---|---|
| Postage | $178.09 |
| Copies | $240.90 |
| Filing fees | $180.00 |
| **Total Costs Requested in Application** | $589.99 |

**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 $6,900.00 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 $598.99 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 the costs allowed by the court.

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

| | |
|---|---|
| Fees | $6,900.00 |
| Costs and Expenses | $598.99 |

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 Loris L. Bakken ("Applicant"), Attorney 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 Loris L. Bakken is allowed the following fees and expenses as a professional of the Estate:
>
> Loris L. Bakken, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $6,900.00
> Expenses in the amount of $598.99,
>
> 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.

**15.** **19-90022-E-7** **ASHLEY MILLER** **MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR**
**MDM-1** **Pro Se** **4-22-19 [44]**

**Final Ruling:** No appearance at the May 23, 2019 hearing is required.
---

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend Deadline to File a Complaint Objecting to Discharge having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

**16. 19-90027-E-7 MDM-1**

**JORGE NEGRETE AND VERONICA AYARD**
**Thomas Gillis**

**MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR**
**4-19-19 [18]**

**Final Ruling:** No appearance at the May 23, 2019 hearing is required.
---

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 19, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge 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 Extend Deadline to File a Complaint Objecting to Discharge is granted, and the deadline for Movant to object to Debtor's discharge is extended to June 21, 2019.**

Michael D. McGranahan, Chapter 7 Trustee, ("Movant") moves to extend the deadline to file a complaint objecting to Jorge Negrete and Veronica Ayard's ("Debtor") discharge because Debtor failed to appear at the March 19 and April 2, 2019 Meetings of Creditors. Declaration ¶ 1, Dckt. 20.

The deadline for filing a complaint objecting to discharge was April 22, 2019. Dckt. 7. The Motion requests that the deadline to object to Debtor's discharge be extended to June 21, 2019.

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline as long as the request for the extension of time was filed prior to the expiration of the deadline. *Id.*

The instant Motion was filed on April 19, 2019, [before the deadline to object to the discharge of Debtor.

The court finds that in the interest of Movant to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge is extended to June 21, 2019.

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 Extend Deadline to File a Complaint Objecting to Discharge filed by Michael D. McGranahan, 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 deadline for Movant to object to Jorge Negrete and Veronica Ayard's ("Debtor") discharge is extended to June 21, 2019.