UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

June 21, 2018, at 10:30 a.m.

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1. **15-90811-E-7** **ASSN., GOLD STRIKE** **STATUS CONFERENCE RE:**
16-9002 **HEIGHTS HOMEOWNERS** **COMPLAINT**
1-13-16 [1]

FARRAR V. MASSELLA ET AL

Final Ruling: No appearance at the June 21, 2018 status conference is required.

Plaintiff's Atty: Clifford W. Stevens
Defendant's Atty: James L. Brunello
Adv. Filed: 1/13/16
Answer: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
2/23/16 [Johnny Massella; Mary Massella]
Counterclaim Filed: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
Answer: None
Counterclaim Dismissed 5/2/16
Counterclaim Filed: 2/23/16 [Johnny Massella; Mary Massella]
Answer: None
Counterclaim Dismissed 5/2/16
Nature of Action:
Validity, priority or extent of lien or other interest in property

The Status Conference is continued to 2:00 p.m. on August 2, 2018.

Notes:
Continued from 3/8/18 pursuant to the request of the Parties and in light of judgment having now been issued in another adversary proceeding relating to properties of the Gold Strike Heights Homeowners Association.

JUNE 21, 2018 STATUS CONFERENCE

The Status Conference was continued to June 21, 2018, in light of the pending trial in the related adversary proceeding. That litigation has been concluded at the trial court, with judgment for the Chapter

7 Trustee. That judgment is now on appeal before the United States District Court. E.D. Cal. 2:18-CV-00973-JAM.

That decision now on appeal, this Status Conference is continued to August 2, 2018, to allow the parties the opportunity to consider such matters, the appeal, and whether they desire to stipulate to staying this Adversary Proceeding pending resolution of the appeal and the entry of the final judgment in the related adversary proceeding.

NOVEMBER 30, 2017 STATUS CONFERENCE

The Plaintiff-Trustee filed an updated Status Report on November 14, 2017. Dckt. 57. The Plaintiff-Trustee believes that the need for the litigation of the Complaint in this Adversary Proceeding is impacted by the completion of the trial in *Indian Village Estate, LLC v. Gold Strike Homeowners Association*, Adv. 15-9061. The Parties to this Adversary Proceeding requested at the April 26, 2017 Status Conference to continue the Status Conference to this November 30, 2017 date, anticipating that the scheduled trial in Adv. 15-9061 would be completed by that time. Due to circumstances outside of that Adversary Proceeding, the trial was continued to February 6, 2018.

It is requested that this Status Conference be continued to early March 2018. The court's closest available hearing date is at 2:00 p.m. on March 8, 2018. That will give the Parties a month to consider the rulings of the court from the trial in Adv. 15-9061.

APRIL 25, 2017 STATUS CONFERENCE

The parties agreed to continue the Status Conference to allow the Trustee to litigate the Indian Village Estates Adversary Proceeding, the resolution of which should significantly reduce the issues in this Adversary Proceeding.

SUMMARY OF COMPLAINT

Gary Farrar, the Chapter 7 Trustee in the Gold Strike Heights Homeowners Association bankruptcy case, ("Plaintiff-Trustee") filed a complaint to avoid various liens filed by Defendants. The Plaintiff-Trustee asserts that the liens may be avoided pursuant to 11 U.S.C. § 544 (hypothetical BFP status for Plaintiff-Trustee) based on the deeds of trust not having been properly recorded.

SUMMARY OF ANSWERS

Johnny Massella and Mary Massella, Trustees, and Robinson Enterprises, Inc., Employee Profit sharing Plan ("Defendants") have filed an answer that admits and denies specific allegations in the Complaint. Dckts. 9, 11.

The Answers assert nine affirmative defenses, including:

(1) The interests of the estate were obtained through wrongful foreclosures,

(2) The Debtor had constructive notice at the time of the foreclosure sales, the deeds of trust are subject to treatment as equitable deeds of trust,

(3) Defendants may seek to have defects in the deeds of trust corrected, and

(4) The nonjudicial foreclosure sales were void because Debtor's corporate powers were suspended at the time of the sales.

COUNTERCLAIMS OF DEFENDANTS

In the Counterclaims, Defendants seek reformation of the Deeds of Trust. On May 2, 2016, the court issued its order dismissing without prejudice the counterclaim. Dckt. 44.

2. 16-90603-E-7 JES-2 | **MARK ONE CORPORATION** **Cecily Dumas** | **MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S) 5-23-18 [101]**

Final Ruling: No appearance at the June 21, 2018 hearing is required.

James Salven ("Applicant") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Application for Allowance of Professional Fees was dismissed without prejudice, and the matter is removed from the calendar.**

3. **13-91315-E-7** **APPLEGATE JOHNSTON, INC.** **MOTION FOR COMPENSATION FOR CAPITOL DIGITAL DOCUMENT SOLUTIONS, LLC, OTHER PROFESSIONAL(S)**
WFH-56 **George Hollister** **5-17-18 [893]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2018. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is xxxxxxxxxxxxxxxx.

Capitol Digital Document Solutions, LLC dba Califorensics ("Applicant"), the Electronic Data Experts for Michael McGranahan, the Chapter 7 Trustee ("Client"), makes a second and final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period September 19, 2017, through April 18, 2018. The order of the court approving employment of Applicant was entered on May 2, 2016. Dckt. 631. The order of the court approving employment for Applicant in the Chapter 7 portion of this case was entered on November 3, 2017. Dckt. 847. Applicant requests fees in the amount of $16,493.75 for the second and final period in this case. Previously, Applicant has been allowed interim fees for the period of May 27, 2016, through November 3, 2016, in the amount of $14,812.50 in fees and $425.00 in costs.

The Motion also requests final approval of all prior and current interim fees and costs, with the total fees of $31,306.25 and costs of $425.00.

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505

B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include computer forensics and evidence management. The Estate has an estimated $775,897.87 of unencumbered monies to be administered as of the filing of the application. Dckt. 899. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

In the present Motion, counsel for Client and Applicant provide the following description of the scope of services for which employment of Applicant was authorized as being in two phases. For the first phase:

> Californsics was **originally retained by Trustee to conduct a forensics examination of Debtor's server and several laptop computers** used by Debtor's employees for assistance in Trustee's preference recovery litigation. Californsics **also** evaluated the **recoverability of documents held on Debtor's devices**. To conduct its review and examination, Californsics forensically imaged the devices in a manner that ensured the integrity of the original data. This included calculating a hash checksum of the original evidence which was used to verify the data. Once the forensic images were made, Californsics was able to **create multiple copies of the information held in the server and on the laptops** for review by the Trustee and the defendants in the various preference actions brought by the Trustee.

> In addition to making the forensic images and copies for review, Californsics also **reviewed the information contained on the server and laptops to ensure that relevant documents could be accessed.** Finally, Californsics made itself available and spent time **consulting with the defendants in the Trustee's preference actions and assisting those defendants in their attempts to access specific documents contained on Debtor's devices**. A representative of Californsics provided a declaration for use in connection with a motion filed by Chester C. Lehman Co., dba Electrical Distributors, one of the preference defendants. The representative was prepared to give oral testimony, but a settlement was reached and testimony was not necessary.

Motion ¶¶ unnumbered, Dckt. 893 at 3:3–19 (emphasis added). The court notes that the Motion makes reference to Applicant "consulting" with defendants that Client was suing. As drafted, this text could appear to state that this professional for Client was also "moonlighting" to assist persons who had an adverse interest to the bankruptcy estate or that Client was providing defense services to adverse parties Client was suing. An alternative to this "consulting" representation could be that Applicant provided assistance to Client in addressing discovery (formal and informal) requests made by defendants in the adversary proceedings.

At the hearing, Counsel for Client confirmed **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**

The Motion continues, providing the court and parties in interest with the following description of the second phase of professional services rendered by Applicant for Client which are the subject of this fee request:

> During the second phase of its retention, Californsics assisted the Trustee and his professionals in **obtaining information necessary to close Debtor's pension plan**. Trustee's professionals initially believed they would need to conduct a payroll audit in connection with closing the case. Californsics obtained payroll information from the Debtor's server. Because of difficulty in obtaining information for the audit, the **audi**t was ultimately **not completed**, and **Trustee was able to close the pension plan**.

Id. at 3:20–25 (emphasis added). In this paragraph, it is stated that Client and his professionals believed that a payroll audit was necessary to close the pension plan included in the bankruptcy estate. Applicant provided services and seeks compensation for such audit. However, Applicant could not, for unstated reasons, complete the audit.

Though the audit, perceived as necessary, was not completed by Applicant, this paragraph concludes stating that notwithstanding there being no completed audit, "Trustee was able to close the pension plan."

At the hearing, Counsel for Client explained **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**

Task Billing

The Motion states that all of Applicant's services for the interim period that is the subject of this Motion related to the audit that could not be completed. *Id.* at 4:6–8. The billing for the specific services is stated to be in Exhibits B through F, and the letter attached as Exhibit B. *Id.* at 4:8–11.

Exhibits B through F are just monthly billing statements for charges covering multi-day periods. Dckt. 896. No attempt is made to identify the charges by nature of the tasks—such as "internal meetings," "correspondence to trustee," "rebuild data base," "export data and generate report," and the like. The tasks, and charges, for these services are not insignificant, totaling $14,543.75.

Exhibit G is a letter dated April 13, 2018, from Nicolas Anderson, identified as the CEO of Applicant, to Counsel for Client. In his Declaration in support of the Motion, Mr. Anderson makes reference to this letter, but he does not incorporate it as part of his testimony under penalty of perjury. Mr. Anderson also does not repeat what has been written in the letter (which could have been accomplished by a simple cut and paste of the text) into his declaration—if he wanted to make such representations to the court under penalty of perjury. Either this was a mere oversight, or Mr. Anderson refused to make such statements under penalty of perjury and Applicant and Client sought to "cut the evidence corner" and create the appearance of testimony that does not exist.

The court does not find Mr. Anderson's statements in a letter attached as an exhibit to be credible testimony for the facts stated therein. While Mr. Anderson's Declaration may suffice to establish that a letter was sent to Counsel, it does not provide testimony of such "facts."

The unaddressed hole in the Motion is why the "necessary" payroll audit was not conducted, why the Estate is paying for a "necessary" payroll audit that was not provided, and why Client, who found that the payroll audit was "necessary," could then "easily" close the pension fund without the "necessary" report.

While the court is confident that these events are not as nefarious as the omnious language above could indicates, especially in light of the highly regarded and experienced counsel and Chapter 7 Trustee, these points need to be addressed. This avoids there being an appearance that bankruptcy cases are prosecuted primarily for the purpose of generating monies for professionals, whether or not the services are "necessary," and monies are disbursed to creditors and value preserved for the debtor (if possible) as only distant secondary and tertiary purposes of this Code enacted by Congress.

At the hearing, Counsel for Client clarified these points, stating **xxxxxxxxxxxxxxxxx**

The lack of a task billing analysis provides some added challenges to the court—Applicant, Counsel, and Client choosing to "assign" such work to the court. While these three may not believe that it is worth their time in doing so, that in and of itself is not a valid reason. Possibly, they may have thought due to the limited nature of services for this interim period, Applicant's billing entries would be sufficiently limited in number and description of such would be reasonably obvious to the court and parties in interest. Unfortunately, neither is true.

First, there are twenty-three different entries. While some are simple two-line entries, some are much more complex, such as:

1/18/2018-EH 1/19/2018	Project Management Respond to BCopin emails requesting phone call, American Contractor assistance, and credentials; coordinate with CH to prepare for web meeting with access; prepare forensics laptop and American Contractor software for BCopin phone call; phone call with BCopin including demonstration of payroll system and technical support and discussion of previous productions from October and December 2017; follow up phone call to update MM; conference call with MM and BE to discuss work and data produced to date and next steps; emails to MM for instructions re: BC follow up requests and send MM spreadsheets re: 5500 Recon.

Exhibit F. This task appears to be spread over two days, encompassing: (1) responses, (2) preparation of forensics laptop, (3) preparing software, (4) phone call, (5) demonstration of payroll system, (6) technical support, (7) discussion of previous production, (8) follow-up phone call, (9) conference call with [identity of person only shown by initials], (10) emails [multiple, number not stated], (11) follow-up requests, and (12) sending spreadsheets. While such services, over two days, would appear to be a substantial amount of work, only 3.75 hours are charged.

This issue of task billing and the need to provide it is not a "new concept" or something that the court now "springs" on the unwary. Though giving Applicant the benefit of the doubt on the first interim motion for fees, with respect to the task billing requirement, the court expressly and clearly "educated" Applicant, stating:

> Included in the Motion is Applicant's statement of total fees and a description of all services provided, which have not been organized into categories. Rather than organizing the activities that are best known to Applicant, it is left for the court, U.S. Trustee, and other parties in interest to mine the records (Exhibits B–G) to construct billing analysis. **While such general reference can often be fatal** to a request for professional fees, in light of the modest amount of the bill and that this is an Interim Applicant (**with the Trustee and professional able to address it in the final application**), the court finds the information adequate for this Motion.

Civil Minutes, Dckt.768 at 5. It appears that Applicant believes that such language was merely a "suggestion" and that Applicant had the leeway to set its own rules for fee applications. It appears that Applicant has intentionally chosen not to comply with these requirements. (Presumably, even though Applicant chose to disregard the court's prior ruling after reading it, Client and Counsel admonished Applicant to provide such task billing. Notwithstanding such direction, Applicant has refused, and Counsel and Client have capitulated.)

In reviewing the billing statements, the court notes a statistical oddity. All of the billings are for quarter-hour increments. No services were ever provide for 0.3 hours, or for 0.7 hours, or 0.8 hours. Everything is billed on quarter-hour increments. This creates the appearance that there was not billing for actual time worked, but everything was rounded up (or possibly rounded down) to the next quarter hour.

At the hearing, Counsel explained, xxxxxxxxxxxxxxxxxxxxxxxxx

FEES ALLOWED

~~The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of $xxxxxxx, as adjusted by $xxxx for the quarter-hour billings and prior Interim Fees in the amount of $16,493.75, as adjusted by $xxxx for the quarter-hour billings, to $xxxxxxxxxx, are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.~~

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

~~Second Interim Fees $xxxxxxxxxxx~~

~~pursuant to this Application and prior interim fees of $xxxxxxxx as final fees pursuant to 11 U.S.C. § 330 in this case. All other requested fees are disallowed in their entirety.~~

~~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 Grimbleby Coleman CPAS, Inc. ("Applicant"), Accountant for Michael McGranahan, 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 Capitol Digital Document Solutions, LLC is allowed the following fees and expenses as a professional of the Estate:~~

~~Capitol Digital Document Solutions, LLC, a professional employed by the Chapter 7 Trustee~~

~~Second Interim Fees in the amount of $ xxxxxxxxxx~~

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

~~The fees pursuant to this Motion, and fees in the amount of $xxxxxxx approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330. All other requested fees are disallowed in their entirety.~~

~~**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.~~

4. **13-91315-E-7 WFH-57** | **APPLEGATE JOHNSTON, INC.** **George Hollister** | **MOTION FOR COMPENSATION FOR GRIMBLEBY COLEMAN CPAS, INC., ACCOUNTANT(S)** **5-17-18 [899]**

Final Ruling: No appearance at the June 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2018. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Grimbleby Coleman CPAS, Inc., the Accountant ("Applicant") for Michael McGranahan, the Chapter 7 Trustee ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 1, 2017, through April 23, 2018. The order of the court approving employment of Applicant was entered on September 17, 2013. Dckt. 139. Applicant requests fees in the amount of $3,877.00.

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;
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> (B) the rates charged for such services;
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> (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;
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> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,"

as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include the filings of 2015 and 2016 corporate tax returns and the accounting of pension and profit sharing plan. The Estate has $775,897.87 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

2015 Corporate Tax Return: Applicant spent 3.3 hours in this category. Applicant prepared, reviewed and filed 2015 1120 Corporate Tax Return.

2016 Corporate Tax Return: Applicant spent 11.6 hours in this category. Applicant prepared, reviewed and filed 2016 1120 Corporate Tax Return.

Pension and Profit Sharing Account: Applicant spent 0.4 hours in this category. Applicant gathered payroll records and reviewed emails.

Preparation of Fee Application Timesheets: Applicant spent 2.0 hours in this category. Applicant prepared time records for fee application.

Though Applicant has provided its gross time billing records, it has not provided a report identifying the hours billed for the accountants and their respective billing rates. While all of this data is included in the gross billing records, it is not the court's task to pull this data from two years of billing records, assemble the data, and then present it in support of the Motion.

While such a lack of support would be fatal (or at lease require a continued hearing) to such an application, it is not so for this Motion. The gross billing data is sufficient, For This Motion, for the court to visually scan the work done, billing rates, and professionals providing the services.

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Debbie Sanders, CPA	2.6	$180.00	$468.00
Debbie Sanders, CPA	9.9	$200.00	$1,980.00
Debbie Sanders, CPA	2	$225.00	$450.00
Donae Caravalho, CPA	0.3	$225.00	$67.50
Donae Caravalho, CPA	0.3	$250.00	$75.00
Jeff Coleman, CPA	0.3	$350.00	$105.00
Jeff Coleman, CPA	1.9	$385.00	$731.50
Total Fees for Period of Application			$3,877.00

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

Application	**Interim Approved Fees**	**Interim Fees Paid**
First Interim	$35,459.50	$26,594.62
	$0.00	
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$35,459.50	

FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of $3,877.00 and prior Interim Fees in the amount of $35,459.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $3,877.00

pursuant to this Application and prior interim fees of $35,459.50 as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Grimbleby Coleman CPAS, Inc. ("Applicant"), Accountant for Michael McGranahan, 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 Grimbleby Coleman CPAS, Inc. is allowed the following fees and expenses as a professional of the Estate:
>
> Grimbleby Coleman CPAS, Inc, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $ 3,877.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as professional for the Chapter 7 Trustee
>
> The fees pursuant to this Motion, and fees in the amount of $35,459.50 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees 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.

5. **14-91520-E-7** **JOANN TEEM** **MOTION FOR COMPENSATION FOR**
MDM-5 **Gilbert Vega** **ATHERTON AND ASSOCIATES, LLP, ACCOUNTANT(S)**
5-25-18 [119]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on May 25, 2018. By the court's calculation, 27 days' notice was provided. 14 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.

Maria Stokman of Atherton and Associates LLP, Certified Public Accountants, the Accountant ("Applicant") for Michael McGranahan, the Chapter 7 Trustee, makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 20, 2018, through April 16, 2018. The order of the court approving employment of Applicant was entered on March 22, 2018. Dckt. 118. Applicant requests fees in the amount of $950.00.

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505

B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include correspondence, tax preparation, and fee application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

Applicant provides a task billing analysis (in the Exhibits, instead of properly placing it in the Motion) and supporting evidence for the services provided, which are described in the following main categories.

Correspondence: Applicant spent 0.5 hours in this category. Applicant had email correspondence with the Chapter 7 Trustee.

Tax Preparation: Applicant spent 2.8 hours in this category. Applicant completed final tax returns for period ended March 31, 2018.

Fee Application: Applicant spent 0.5 hours in this category. Applicant prepared fee application.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Maria Stokman	3.8	$250.00	$950.00
	0	$0.00	$0.00
Total Fees for Period of Application			$950.00

FEES ALLOWED

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 $950.00 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.

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

Fees $950.00

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 Maria Stokman of Atherton and Associates LLP, Certified Public Accountants, ("Applicant"), Accountant for Michael McGranahan, 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 Maria Stokman of Atherton and Associates LLP, Certified Public Accountants, is allowed the following fees and expenses as a professional of the Estate:
>
> Maria Stokman of Atherton and Associates LLP, Certified Public Accountants, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $950.00
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as accountants 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.

6. **14-91520-E-7** **JOANN TEEM**
WFH-8 **Gilbert Vega**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE, FLEURY, HOFFELT, GOULD & BIRNEY, LLP FOR DANIEL L. EGAN, TRUSTEES ATTORNEY(S)
5-25-18 [123]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on May 25, 2018. By the court's calculation, 27 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.

Wilke, Fleury, Hoffelt, Gould & Birney, LLP, the Attorney ("Applicant") for Michael McGranahan, 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 1, 2015, through March 21, 2018. The order of the court approving employment of Applicant was entered on May 27, 2015. Dckt. 35. Applicant requests fees in the amount of $12,000.00.

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)).

A review of the application shows that Applicant's services for the Estate include asset analysis and recovery. The Estate has $23,069.60 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

Administration/Asset Analysis and Recovery: Applicant spent 115.4 hours in this category. Applicant advised and represented Client with respect to obtaining information necessary to evaluate the Varni Corporation and Varni Trust assets, and then drafting and obtaining approval of the agreements for the sale of the assets. Applicant engaged in correspondence and discussions with counsel for Varni Corporation and prepared for and conducted 2004 examinations for the Varni Corporation, Varni Trust, and Albert Pinasco. When a purchaser could not be obtained, Applicant prepared and prosecuted the motion to dismiss the case without abandoning assets and filed on behalf of Client. When Varni Corporation provided an acceptable purchase offer, Applicant drafted a redemption agreement, negotiated and drafted an agreement with Debtor, and obtained approval of both agreements. Applicant also assisted in closing the sale.

Fee/Employment Application: Applicant spent 5.0 hours in this category. Applicant prepared and filed an application for approval of its own employment. Additionally, Applicant prepared this fee application.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Daniel Egan	40.6 hours	$395.00	$16,037.00
	28.9 hours	$405.00	$11,704.50
	7.5 hours	$415.00	$3,112.50
Steven Williamson	0.4 hours	$320.00	$128.00
Kathryne Baldwin	0.3 hours	$250.00	$75.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees for Period of Application			$31,057.00

FEES ALLOWED

Applicant seeks to be paid a single sum of $12,000.00 for its fees incurred for Client. First and Final Fees in the amount of $12,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $12,000.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Wilke, Fleury, Hoffelt, Gould & Birney, LLP, the Attorney ("Applicant") , Attorney for Michael McGranahan, 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 Wilke, Fleury, Hoffelt, Gould & Birney, LLP is allowed the following fees and expenses as a professional of the Estate:

Wilke, Fleury, Hoffelt, Gould & Birney, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of $12,000.00

as the final allowance of fees 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.

7. **18-90123-E-11** **LORENA ALVARADO** **CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION**
AVN-3 **Anh Nguyen** **3-28-18 [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.

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, parties requesting special notice, and Office of the United States Trustee on March 28, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, 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 Use Cash Collateral is denied without prejudice, Debtor in Possession not having filed any supplemental pleadings to extend the use of cash collateral from the period previously ordered**.**

Lorena Alvarado ("Debtor in Possession") moved for an order approving the use of cash collateral (in the form of rental income) from real property, known as 5019 Morgan Street, Salida, California ("Property"). Debtor in Possession requests the use of cash collateral in an accrual for Property maintenance and to make adequate protection payments to Shellpoint Mortgage Servicing ("Creditor") until a Chapter 11 Plan is confirmed.

Debtor in Possession proposes to use $1,048.45 per month for the following expenses:

A. $998.45 per month paid to Creditor as interest-only adequate protection payments, and

B. $50.00 per month for maintenance expenses on the Property.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless–
>
> > (A) such sale or such lease is consistent with such policy; or
> >
> > (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease–
> >
> > > (i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
> > >
> > > (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

> (b)(2) Hearing
>
> The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

APRIL 12, 2018 HEARING

At the hearing, the court approved the use of cash collateral for the two expenses presented by Debtor in Possession and authorized those expenses to be made through June 30, 2018. Dckt. 32. The court ordered Debtor in Possession to file a supplemental pleading by June 7, 2018, for any further authorization to use cash collateral. Dckt. 33.

DISCUSSION

Debtor in Possession has not requested that the court extend the use of cash collateral for any further period. No supplemental pleading has been filed. Therefore, the court treats Debtor in Possession's silence as an indication that Debtor in Possession no longer wants approval to use cash collateral.

The court notes that no pleadings have been filed on the docket for this case since the April 12, 2018 hearing. Debtor in Possession has not presented a plan or a disclosure statement, and there is no indication that this case is proceeding. In fact, the case appears to have stalled.

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Use Cash Collateral filed by Lorena Alvarado ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

8. **17-90627-E-7** **DANIEL/JENNIFER DEIGAN** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHNEWEIS-COE & BAKKEN, LLP FOR LORIS L. BAKKEN, TRUSTEE'S ATTORNEY**
SCB-8 **Dean Feldman** **5-2-18 [62]**

Final Ruling: No appearance at the June 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 2, 2018. By the court's calculation, 50 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Schneweis-Coe & Bakken, LLP, the Attorney ("Applicant") for Gary 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 2, 2017 through June 21, 2018. The order of the court approving employment of Applicant was entered on October 9, 2017. Dckt. 19. Applicant requests fees in the amount of $6,345.00 and costs in the amount of $155.00.

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)).

A review of the application shows that Applicant's services for the Estate include employing special counsel in Debtor's wrongful termination lawsuit, negotiating a settlement and filing a motion to compromise in the lawsuit, and reviewing the Chapter 7 Trustee's objection to Debtor's exemptions. The Estate has $127,803.81 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 4.8 hours in this category. Applicant prepared the fee agreement and employment application, prepared stipulations to extend Client's deadlines to file a complaint objecting to Debtor's discharge and to object to exemptions and prepared the fee application.

Employment of Special Counsel: Applicant spent 7.1 hours in this category. Applicant contacted Debtor's counsel regarding Debtor's wrongful termination lawsuit. Applicant had numerous communications with Raquel Hatfield of Arata, Swingle, Van Egmond & Goodwin, ("Arata") a Professional Law Corporation representing Debtor in the lawsuit. Applicant communicated with Arata regarding the status and value of the lawsuit as well as the process of employment. At Client's direction, Applicant prepared and filed an application to employ Arata as special counsel. Applicant prepared and filed Arata's application for compensation.

Settlement and Motion to Compromise: Applicant spent 8.3 hours in this category. Applicant communicated with Arata regarding the terms of the settlement and the relevant arguments in the lawsuit. Applicant reviewed the proposed settlement agreement and discussed with Client. Applicant prepared and filed the motion to compromise and this court entered the order granting the motion.

Review of the Objection to Exemptions: Applicant spent 3.1 hours in this category. Applicant reviewed Debtor's schedules and the appropriateness of Debtor's claimed exemptions. Applicant discussed with Client and contacted Debtor's counsel regarding the objections to the exemptions. Applicant reviewed Debtor's amended schedules and contacted Debtor's counsel regarding the objection to the exemptions.

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, Partner	23 hours	$300.00	$6,900.00
Christina Alcantara, Paralegal	0.3 hours	$150.00	$45.00
	0	$0.00	$0.00
Total Fees for Period of Application			$6,945.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $155.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$82.45
Copying	$0.2 per page	$72.55
		$0.00
		$0.00
Total Costs Requested in Application		$155.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $6,345.00 for its fees incurred for Client. Applicant does not bill two hours spent in this matter and reduces its fees from $6,945.00. First and Final Fees in the amount of $6,345.00 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 $155.00 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.

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

Fees	$6,345.00
Costs and Expenses	$155.00

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 Schneweis-Coe & Bakken, LLP, the Attorney ("Applicant"), the Attorney ("Applicant") for Gary 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 Schneweis-Coe & Bakken, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Schneweis-Coe & Bakken, LLP, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $6,345.00
> Expenses in the amount of $155.00,
>
> 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.

9.	**14-91328-E-7** **DCJ-2**	**RICHARD/TERRY BOWERMAN** **David Johnston**	**MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC** **5-30-18 [27]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on May 30, 2018. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Portfolio Recovery Associates, LLC ("Creditor") against property of Richard Bowerman and Terry Bowerman ("Debtor") commonly known as 4600 Esmar Road, Ceres, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $1,593.32. An abstract of judgment was recorded with Stanislaus County on July 16, 2014, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $295.000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $295.000.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Schedule C. *Id.*

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 Richard Bowerman and Terry Bowerman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Portfolio Recovery Associates, LLC, California Superior Court for Stanislaus County Case No. 2005062, recorded on July 16, 2014, Document No. 2014-0045830-00, with the Stanislaus County Recorder, against the real property commonly known as 4600 Esmar Road, Ceres, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

10. **14-91328-E-7** **RICHARD/TERRY BOWERMAN** **MOTION TO AVOID LIEN OF CACH, LLC**
DCJ-3 **David Johnston**
5-30-18 [32]

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 Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on May 30, 2018. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of CACH, LLC ("Creditor") against property of Richard Bowerman and Terry Bowerman ("Debtor") commonly known as 4600 Esmar Road, Ceres, California, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,523.23. An abstract of judgment was recorded with Stanislaus County on September 18, 2014, that encumbers the Property. Exhibit 4, Dckt. 35.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $295.000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $295.000.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Schedule C. *Id.*

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 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 Richard Bowerman and Terry Bowerman ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of CACH, LLC, California Superior Court for Stanislaus County Case No. 678643, recorded on September 18, 2014, Stanislaus County Recorder, against the real property commonly known as 4600 Esmar Road, Ceres, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

11. **11-90432-E-7** **ROBERTO/DIANE ESQUIVEL** **MOTION TO AVOID LIEN OF COLLECT ACCESS LLC**
NFG-2 **Nelson Gomez** **5-23-18 [27]**

Final Ruling: No appearance at the June 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on May 23, 2018. By the court's calculation, 29 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 Collect Access LLC ("Creditor") against property of Robert Esquivel and Diane Esquivel ("Debtor") commonly known as 1420 Martha Street, Patterson, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $18,345.22. An abstract of judgment was recorded with Stanislaus County on June 29, 2010, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $88,500.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total $321,506.00 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* 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. 32.

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 Robert Esquivel and Diane Esquivel ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Collect Access LLC, California Superior Court for Stanislaus County Case No. 636092, recorded on June 29, 2010, Document No. 2010-0056757-00, with the Stanislaus County Recorder, against the real property commonly known as 1420 Martha Street, Patterson, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

12. **18-90039-E-7** **MELISSA GUERRA**
UST-1 **Brian Haddix**

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS CASE UNDER SEC. 707(B)
5-3-18 [19]

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. FN.1.

FN.1. Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that a written answer must be filed by June 7, 2018, but it also states that parties must appear at the hearing. Based upon language that the parties must appear (impliedly to oppose) at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2). Counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

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 parties requesting special notice on May 3, 2018. FN.2. By the court's calculation, 49 days' notice was provided. 14 days' notice is required.

FN.2. The Proof of Service states that service was performed on December 18, 2012. Dckt. 23 at 1. The Proof of Service is dated and filed as of May 3, 2018, however. The court treats the difference in dates as a mere scrivener's error and calculates as of May 3, 2018.

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

The Motion to Extend Deadline to File a Complaint Objecting to Discharge is granted.

Tracy Hope Davis, the United States Trustee, ("Movant") moves to extend the deadline to file a complaint objecting to Melissa Guerra's ("Debtor") discharge because Debtor has not responded to Movant's request for additional documents while reviewing this case for a presumption of abuse.

The deadline for filing a complaint objecting to discharge was May 7, 2018. Dckt.6. The Motion requests that the deadline to object to Debtor's discharge be extended to July 7, 2018.

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 May 3, 2018, before the deadline to object to the discharge of Debtor.

The court finds that in the interest of Movant to complete investigation, namely receiving and reviewing missing documents, 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 July 7, 2018.

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 Tracy Hope Davis, the United States 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 Melissa Guerra's ("Debtor") discharge is extended to July 7, 2018.

13. 12-92049-E-7 12-9032 **ROBERT/KATHERINE MATTEUCCI**

CONTINUED MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS (ROBERT A. MATTEUCCI)
4-16-18 [70]

GRANT BISHOP MOTORS, INC. V. MATTEUCCI ET AL

Final Ruling: No appearance at the June 21, 2018 hearing is required.

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 Defendant on May 2, 2018. By the court's calculation, 15 days' notice was provided. The court set the hearing for 10:30 a.m. on May 17, 2018. Dckt. 71.

The Motion for Examination and for Productions of Documents was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). No 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion for Examination and for Production of Documents is dismissed without prejudice.

Grant Bishop Motors, Inc. dba Modesto European a California Corporation ("Plaintiff") filed an application for the court to order Robert Matteucci ("Defendant") to appear at the court and present documents for Plaintiff's review as part of enforcing its money judgment against Defendant.

The court entered an order for Plaintiff to appear at 10:30 a.m. on May 17, 2018, and to present information to aid Plaintiff in enforcing its money judgment against Defendant. Dckt. 71.

The documents to be produced include:

A. Defendant's personal federal and state tax returns and all attachments for the years 2007 to 2017;

B. Federal and state tax returns and all attachments of any business Defendant owned during 2007 to 2017;

C. Deeds to all property Defendant currently owns, along with current mortgage balances, if any;

D. Defendant's driver's license and Social Security card;

E. Defendant's W-2s, 1099s, profit and loss reports, income and expense forms, commission checks, and cash deposits for 2007 to 2018;

F. Defendant's bank statements from each and every financial institution where Defendant has done business from 2007 to 2018;

G. A current list of Defendant's assets and debts;

H. A list of the vehicles owned by Defendant, along with all outstanding loan balances for any financed vehicle;

I. All shares of stock, mutual funds, or bonds owned by Defendant;

J. All documents evidencing Defendant's retirement accounts and their balances;

K. All corporate documents for any business owned by Defendant;

L. Copies of fictitious business statements for all businesses owned by Defendant;

M. All documents evidencing Defendant's current occupation(s); and

N. All documents evidencing all income Defendant has received from employment during 2007 to 2018.

MAY 17, 2018 HEARING

At the hearing, Defendant was sworn in and examined. The court continued the hearing to 10:30 a.m. on June 21, 2018, and ordered that any written opposition to documents requested or testimony proffered by filed on or before May 24, 2018, with responses filed on or before May 31, 2018. Dckt. 82.

DEFENDANT'S OBJECTION

Defendant filed an Objection on May 24, 2018. Dckt. 86. Defendant objects to requests for personal and business tax returns from 2007 through 2017, deeds to property owned currently, W-2s and other financial documents from 2007 to 2018, bank statements from 2007 to 2018, a list of current assets and debts, documents relating to retirement accounts, documents proving current occupation, and documents of income from 2007 to 2018. Defendant objects on various grounds, including the requests being unduly burdensome, the documents not existing, or the documents being privileged.

PLAINTIFF'S RESPONSE

Plaintiff filed a Response on May 31, 2018. Dckt. 89. Plaintiff states that it is satisfied by what Defendant has produced at this time, and it states that this matter may be removed from the hearing calendar.

RULING

Plaintiff having expressed satisfaction with what Defendant provided and having consented to the matter being removed from the court's calendar, the Motion is dismissed without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Examination and for Productions of Documents filed by Grant Bishop Motors, Inc. dba Modesto European a California Corporation ("Plaintiff") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice.

14. 12-92049-E-7 12-9032

ROBERT/KATHERINE MATTEUCCI

CONTINUED MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS (KATHERINE S. MATTEUCCI)
4-16-18 [69]

GRANT BISHOP MOTORS, INC. V. MATTEUCCI ET AL

Final Ruling: No appearance at the June 21, 2018 hearing is required.

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 Defendant on May 2, 2018. By the court's calculation, 15 days' notice was provided. The court set the hearing for 10:30 a.m. on May 17, 2018. Dckt. 71.

The Motion for Examination and for Productions of Documents was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). No 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion for Examination and for Production of Documents is dismissed without prejudice.

Grant Bishop Motors, Inc. dba Modesto European a California Corporation ("Plaintiff") filed an application for the court to order Katherine Matteucci ("Defendant") to appear at the court and present documents for Plaintiff's review as part of enforcing its money judgment against Defendant.

The court entered an order for Plaintiff to appear at 10:30 a.m. on May 17, 2018, and to present information to aid Plaintiff in enforcing its money judgment against Defendant. Dckt. 72.

The documents to be produced include:

A. Defendant's personal federal and state tax returns and all attachments for the years 2007 to 2017;

B. Federal and state tax returns and all attachments of any business Defendant owned during 2007 to 2017;

C. Deeds to all property Defendant currently owns, along with current mortgage balances, if any;

D. Defendant's driver's license and Social Security card;

E. Defendant's W-2s, 1099s, profit and loss reports, income and expense forms, commission checks, and cash deposits for 2007 to 2018;

F. Defendant's bank statements from each and every financial institution where Defendant has done business from 2007 to 2018;

G. A current list of Defendant's assets and debts;

H. A list of the vehicles owned by Defendant, along with all outstanding loan balances for any financed vehicle;

I. All shares of stock, mutual funds, or bonds owned by Defendant;

J. All documents evidencing Defendant's retirement accounts and their balances;

K. All corporate documents for any business owned by Defendant;

L. Copies of fictitious business statements for all businesses owned by Defendant;

M. All documents evidencing Defendant's current occupation(s); and

N. All documents evidencing all income Defendant has received from employment during 2007 to 2018.

MAY 17, 2018 HEARING

At the hearing, Defendant was sworn in and examined. The court continued the hearing to 10:30 a.m. on June 21, 2018, and ordered that any written opposition to documents requested or testimony proffered by filed on or before May 24, 2018, with responses filed on or before May 31, 2018. Dckt. 83.

DEFENDANT'S OBJECTION

Defendant filed an Objection on May 24, 2018. Dckt. 84. Defendant objects to requests for personal and business tax returns from 2007 through 2017, deeds to property owned currently, W-2s and other financial documents from 2007 to 2018, bank statements from 2007 to 2018, a list of current assets and debts, documents relating to retirement accounts, documents proving current occupation, and documents of income from 2007 to 2018. Defendant objects on various grounds, including the requests being unduly burdensome, the documents not existing, or the documents being privileged.

PLAINTIFF'S RESPONSE

Plaintiff filed a Response on May 31, 2018. Dckt. 88. Plaintiff states that it is satisfied by what Defendant has produced at this time, and it states that this matter may be removed from the hearing calendar.

RULING

Plaintiff having expressed satisfaction with what Defendant provided and having consented to the matter being removed from the court's calendar, the Motion is dismissed without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Examination and for Productions of Documents filed by Grant Bishop Motors, Inc. dba Modesto European a California Corporation ("Plaintiff") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice.

15. **15-90358-E-7** **LAWRENCE/JUDITH SOUZA** **MOTION FOR COMPENSATION FOR**
MDM-4 **David Johnston** **MICHAEL D. MCGRANAHAN, CHAPTER 7 TRUSTEE(S)**
5-30-18 [746]

Final Ruling: No appearance at the June 21, 2018 hearing is required.

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

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 May 30, 2018 . By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The hearing on the Motion for Allowance of First Interim Trustee Fees is continued to 10:30 a.m. on July 12, 2018, by prior order of the court.

Michael McGranahan, the Chapter 7 Trustee, ("Applicant") for the Estate of Lawrence Souza and Judith Souza ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period June 26, 2017, through May 25, 2018.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

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

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

A review of the application shows that Applicant's services for the Estate include case administration, asset analysis/recovery, asset disposition and business operations. The Estate has $529.718.29 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

Case Administration: Applicant managed Chapter 11 rents account, a proceeds account and Social Security account.

Asset Analysis/Recovery: Applicant employed accountants to prepare tax analysis for properties.

Asset Disposition: Applicant analyzed the rents collected during the Chapter 11 to determine who has liens against funds, in what amounts, and in what order of priority.

Business Operations: Applicant operated business of collecting rents and paying expenses on the properties.

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $47,500.00	$38,430.94
Calculated Total Compensation	**$44,180.94**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$44,180.94

Less Previously Paid	$0.00
Total First Interim Fees Requested	$20,000.00

The fees are computed on the total sales generated $818,618.88 of net monies (exclusive of these requested fees and costs), with an estimated gross value of $529,718.29 remaining in claims currently being pursued.

CONTINUANCE OF HEARING

On June 18, 2018, Applicant filed an Ex Parte Application to continue the hearing. Dckt. 753. Applicant argues that a motion for approval of a distribution to Chapter 11 administrative claims will be set for July 12, 2018, and upon suggestion of the Office of the U.S. Trustee, this matter should be continued to then (or later) as well. *Id.*

The court granted the ex parte request and continued the hearing to 10:30 a.m. on July 12, 2018. Dckt. 755.

16. **15-90358-E-7** **LAWRENCE/JUDITH SOUZA** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE, FLEURY, HOFFELT, GOULD AND BIRNEY, LLP FOR DANIEL L. EGAN, TRUSTEES ATTORNEY(S)**
WFH-12 **David Johnston** **5-30-18 [734]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2018. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Wilke, Fleury, Hoffelt, Gould & Birney, LLP, the Attorney ("Applicant") for Michael McGranahan, the Chapter 7 Trustee ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 27, 2017, through April 25, 2018. The order of the court approving employment of Applicant was entered on July 18, 2017. Dckt. 620. Applicant requests fees in the amount of $53,196.50 and costs in the amount of $2,922.99.

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 administration, asset analysis/recovery, asset disposition, and financing/cash collections. The Estate has $529,718.29 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 19.50 hours in this category. Applicant analyzed issues in the case, corresponded with Client, and evaluated pending motions. Applicant prepared and filed motions and a status conference statement.

Asset Analysis & Recovery: Applicant spent 96.10 hours in this category. Applicant advised and represented Client in negotiating agreements for the sale of two pieces of residential real property, and in obtaining court approval of the sales. Applicant had extensive discussions with a real estate broker. Applicant also provided attention to the bid by an over-bidder and closing issues, including disposal of tanks and tenants of the property.

Asset Disposition: Applicant spent 9.5 hours in this category. Applicant prepared and prosecuted a motion to abandon one piece of real estate and the estate's interest in stock in Souza Properties, Inc.

Fee/Employment Applications: Applicant spent 9.6 hours in this category. Applicant prepared and submitted its employment application. Applicant also evaluated an application for allowance of fees and costs by Debtor's prior Chapter 11 counsel, and began preparing this fee application.

Financing/Cash Collections: Applicant spent 6.6 hours in this category. Applicant advised Client with respect to cash collateral issues and obtained one creditor's consent to the use of the cash collateral.

Tax Issues: Applicant spent 25.7 hours in this category. Applicant advised Client with respect to resolution of tax liens on Debtor's real estate. Applicant negotiated a stipulation with the Internal Revenue Service that enabled Client to sell the two pieces of real property, to make payments toward the tax liens, and generate unencumbered proceeds for the estate.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Daniel Egan	74.0 hours	$405.00/415.00	$26,351.50
Anthony Eaton	2.1 hours	$340.00	$714.00
Steve Williamson	77.2 hours	$340.00/350.00	$24,974.00
Kathryne Baldwin	2.0 hours	$235.00/250.00	$500.00
N. Aaron Johnson	1.8 hours	$325.00	$585.00
Sharon Brazell, Paralegal	0.4 hours	$180.00	$72.00
	0	$0.00	$0.00
Total Fees for Period of Application			$53,196.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $2,922.99 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Photocopies	$0.10/page	$1,731.30
Postage		$739.69

Filing Fees		$362.00
FedEx		$18.35
Attorney Service		$71.65
Total Costs Requested in Application		$2,922.99

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 Interim Fees in the amount of $53,196.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by 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 Interim Costs in the amount of $2,922.99 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 7 from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$53,196.50
Costs and Expenses	$2,922.99

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 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 Wilke, Fleury, Hoffelt, Gould & Birney, LLP ("Applicant"), Attorney for Michael McGranahan, 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 Wilke, Fleury, Hoffelt, Gould & Birney, LLP, is allowed the following fees and expenses as a professional of the Estate:

Wilke, Fleury, Hoffelt, Gould & Birney, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of $53,196.50
Expenses in the amount of $2,922.99,

as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that 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.

17. 15-90358-E-7 WFH-13 | **LAWRENCE/JUDITH SOUZA** **David Johnston** | **MOTION FOR COMPENSATION FOR RYAN, CHRISTIE, QUINN AND HORN, ACCOUNTANT(S) 5-30-18 [740]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2018. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Ryan, Christie, Quinn & Horn ("Applicant"), the Accountant for Michael McGranahan, the Chapter 7 Trustee ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 28, 2017, through April 30, 2018. The order of the court approving employment of Applicant was entered on August 1, 2017. Dckt. 633. Applicant requests fees in the amount of $29,612.50 and costs in the amount of $317.70.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional] must exercise good billing judgment with regard to the services provided because the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505

B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant's services for the Estate include advising and assisting Client in evaluating tax issues and preparing tax returns. The Estate has an estimated $529,718.29 of unencumbered monies to be administered as of the filing of the application. Dckt. 740. 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 12.4 hours in this category. Applicant prepared employment application and provided Client with financial information from the Chapter 11 portion of the case, including preparation of documents supporting the interim application.

Tax Return Preparation and Determination of Tax Consequences: Applicant spent 83.3 hours in this category. Applicant reviewed relevant tax issues regarding the proposed sale of real property, analyzed errors of prior accountant, prepared analysis for distribution of sales proceeds. Applicant also prepared sixteen tax returns.

Correspondence and Investigation: Applicant spent 25.4 hours in this category. Applicant investigated tax basis for a settlement related to the Chapter 11 portion of the case and prepared an analysis and audit findings that reduced a taxable gain for the Estate.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Paul Quinn	113.90 hours	$250.00	$28,475.00
Deborah Monis	1.50 hours	$175.00	$262.50
Donna Chavez	4.90 hours	$150.00	$735.00
Kenneth Baker	0.80 hours	$175.00	$140.00
	0	$0.00	$0.00
Total Fees for Period of Application			$29,612.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $317.70 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$285.00
Copies	$0.05/page	$32.70
		$0.00
Total Costs Requested in Application		$317.70

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 Interim Fees in the amount of $29,612.50 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 Plan.

Costs & Expenses

First Interim Costs in the amount of $317.70 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by 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 80% of the fees and 100% of the costs allowed by the court.

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

Fees	$29,612.50
Costs and Expenses	$317.70

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Ryan, Christie, Quinn & Horn, the Accountant ("Applicant") for Michael McGranahan, the Chapter 7 Trustee ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Ryan, Christie, Quinn & Horn is allowed the following fees and expenses as a professional of the Estate:
>
> Ryan, Christie, Quinn & Horn, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $29,612.50
> Expenses in the amount of $317.70,
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that 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 Plan.

18. **17-90565-E-7** **RICKY/CHRISTINE LUYSTER** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF STEVEN S. ALTMAN TRUSTEES ATTORNEY(S)**
SSA-3 **David Foyil** **5-25-18 [47]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 25, 2018. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Steven Altman, the Attorney ("Applicant") for Michael McGranahan, 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 24, 2017, through May 16, 2018. The order of the court approving employment of Applicant was entered on November 7, 2017. Dckt. 33. Applicant requests fees in the amount of $2,550.00 and costs in the amount of $22.18.

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 review of case file, application for appointment, review of Debtor's statements and schedules, review of claims, and revision of Client's Motion. The Estate has $6,523.02 of unencumbered monies to be administered as of the filing of the application. Dckt. 47. 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.

Case and Claim Administration: Applicant spent 3.1 hours in this category. Applicant prepared statement of financial affairs and schedules, operating reports, list of documents and contracts, and general creditor inquiries. Applicant also reviewed specific claim inquiries and objections.

Fee Applications: Applicant spent 3.6 hours in this category. Applicant prepared employment and fee applications (for himself and others), motions to establish interim procedures, and preparation of supporting documents.

Asset Analysis and Recovery: Applicant spent 1.8 hours in this category. Applicant reviewed potential assets, analyzed schedules, reviewed communications with Client, and provided oversight of communication with Debtor.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Steven Altman	8.5 hours	$300.00	$2,550.00
	0	$0.00	$0.00
Total Fees for Period of Application			$2,550.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $22.18 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopying and Postage Fees		$22.18
		$0.00
		$0.00
		$0.00
Total Costs Requested in Application		$22.18

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 $2,550.00 are approved pursuant 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 $22.18 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$2,550.00
Costs and Expenses	$22.18

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 Steven Altman ("Applicant"), Attorney for Michael McGranahan, the Chapter 7 Trustee ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Steven Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Steven Altman, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $2,550.00
> Expenses in the amount of $22.18,
>
> 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.

19. 10-94467-E-7 **TINA BROWN** **ORDER TO SHOW CAUSE**
12-9003 **CCA-3** **5-1-18 [88]**

MCGRANAHAN V. BROWN

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)(3) Motion—Hearing Required.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant, Defendant's Attorney, Plaintiff, and Office of the United States Trustee on April 27, 2018. By the court's calculation, 55 days' notice was provided.

However, the Certificate of Service, attached as an Exhibit to the Application for the Order to Show Cause states that (1) the Application, (2) Memorandum of Points and Authorities, (3) Declaration, and Proposed Order were served on Defendant and Defendant's Counsel on April 27, 2018. Dckt. 85 at 71–73.

The Order to Show Cause issued by the court was not signed and entered on the Docket until May 1, 2018, four days after service of the above pleadings. Order to Show Cause, Dckt. 88. No Certificate of Service for the Order to Show Cause appeared on the Docket as of the court's June 18, 2018 review of the file.

At the time of the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**

The court set the hearing for June 21, 2018. Dckt. 88.

The Order to Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Defendant, creditors, Plaintiff, 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 Order to Show Cause ~~is sustained and the Order for Sale of Property Shall be Issued.~~

Michael McGranahan, the Chapter 7 Trustee, ("Plaintiff") filed an Application for the court to issue an Order to Show Cause why Timothy Brown's ("Defendant") real property commonly known as 17480 High School Road, Jamestown, California ("Property") should not be sold to satisfy Plaintiff's judgment. Dckt. 85. FN.1.

FN.1. Plaintiff filed the Application, Exhibits, and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause 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.

Plaintiff presents that if the Property is sold at its present value, then it would generate sufficient proceeds above all prior liens and a homestead exemption of $75,000.00.

ISSUANCE OF ORDER TO SHOW CAUSE

On May 1, 2018, the court issued the Order to Show Cause why the Property should not be sold at a sale by the United States Marshal, Eastern District of California, for no less than 90% of the appraised value pursuant to California Code of Civil Procedure § 704.800(a). Dckt. 88.

The court ordered Defendant to show good cause why the Property should not be sold to satisfy the balance owed to Wells Fargo Bank, N.A. ("Wells Fargo"). The court ordered Plaintiff to produce the current balance owed to Wells Fargo along with a current appraisal of the Property.

The court specified that if Defendant opposes the asserted balance or the appraisal, then he must file is own documentary support no later than five days before the hearing. Finally, the parties were ordered to meet and confer to determine whether they agree to the Property's value, the amount of the homestead exemption, and the balance due to Wells Fargo.

PLAINTIFF'S SUPPLEMENTAL DECLARATION

Plaintiff filed a Supplemental Declaration on May 16, 2018. Dckt. 89. FN.2. Plaintiff states that the amount owed to Wells Fargo as of April 16, 2018, is $132,951.90. *See* Exhibit A, *id.* Plaintiff also refers back to 2012 to demonstrate that Bank of America substituted a trustee and fully reconveyed its deed of trust. *See* Exhibit B, *id.* Plaintiff notes that Defendant was served with notice of a hearing on the right to a homestead exemption. *See* Exhibit C, *id.*

FN.2. Plaintiff filed the Supplemental Declaration, Exhibits, and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause 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.

Additionally, Plaintiff reports that Defendant returned the process served upon him, citing it as "fake news." *See* Exhibit D, *id.* Reviewing that letter in full, it states:

> Mr. Cook.
>
> Please Refrain From Sending This "Fake New" To Me. I have an Attorney, Forward it all To Him. You Repeat Yourself all The Time, and its "Fake News"
>
> Thank You
>
> PS. My Brother Is Past away.

DISCUSSION

As noted by Plaintiff, judgment was originally entered on December 13, 2012. Under the judgment, all that Defendant was required to do was to turn over two motorcycles and one Chevrolet Corvette to Plaintiff. Judgment, Dckt. 41. Alternative relief in the form of a monetary judgment was also granted in the event that Defendant failed to deliver the vehicles and Plaintiff determined that a monetary judgment was the method by which the value of the vehicles would be obtained for the bankruptcy estate.

After the judgment was entered, Defendant filed his own Chapter 13 bankruptcy case on December 4, 2014. Bankr. E.D. Cal. No. 14-91596. In that case, he was represented by the same attorney who represented him in this Adversary Proceeding. On March 3, 2015, Defendant voluntarily converted his case from Chapter 13 to one under Chapter 7. 14-91596; Application to Convert, executed by counsel for Defendant, Dckt. 63.

In his own bankruptcy case, Defendant stipulated to a waiver of a Chapter 7 discharge and an order was entered thereon. *Id.*; Order, Dckt. 118. The stipulation resolved the issues raised in the U.S. Trustee's Complaint to deny Defendant a discharge. Adv. Pro. 16-9004. Defendant was represented in the

adversary proceeding for denial of discharge and entering into the stipulation waiving the discharge by the same attorney as is representing him in this Adversary Proceeding.

California Enforcement of Judgment Law

Federal Rule of Civil Procedure 69, as incorporated by Federal Rule of Bankruptcy Procedure 7069, provides that the enforcement of a money judgment issued by the federal court is done through a writ of execution, which is then enforced by the state law supplemental enforcement of judgment proceedings. (This is true unless there is another specific federal law or rule applying to the judgment to be enforced. No such other specific federal law or rule has been presented to the court.)

California law provides that sale of all property of the judgment debtor, here Defendant, may be sold by the levying officer (subject to statutory exemptions and exceptions). CAL. CODE CIV. PRO. §§ 695.010, 699.710, 701.510.

When real property that is the judgment debtor's homestead is being sold, California law provides that the homestead property may be sold, so long as it generates sufficient sales proceeds to satisfy all liens and encumbrances against the property and pay the amount of the homestead exemption. *Id.* § 704.800(a). Further, if the bid received at the sale is not 90% or more of the fair market value of the homestead property to be sold, the property may not be sold unless, on motion of the judgment creditor: (1) the court grants permission to accept the offer that is sufficient to pay the liens, encumbrances, and homestead exemption even though it is not at least 90% of the fair market value, or (2) the court issues a new order for the sale of the homestead property. *Id.* § 704.800(b).

The 90% value is determined as provided in California Code of Civil Procedure § 704.780, which specifies that the court shall make such determination as part of the order for the sale of the homestead property.

The Plaintiff has assumed that the property for which the sale order is sought is Defendant's residence in which a homestead exemption may be claimed. On Amended Schedule C filed by Defendant in his bankruptcy case, Defendant asserted a $75,000 homestead exemption in the Property that is the subject of this Order to Show Cause. 14-91569, Dckt. 40 at 9.

Valuation of Property

Attached to the original Application is Plaintiff's appraisal from August 2017 showing a value of $341,000.00 for the Property. *See* Exhibit F, Dckt. 85. The Supplemental Declaration provides evidence that the current balance owed to Wells Fargo is $132,951.90. Taking into account a homestead exemption of $75,000.00, the court calculates that a sale at market value could yield net proceeds of $133,048.10.

Opposition of Defendant

Defendant has not shown any cause why the court should order a marshal's sale of the Property according to California Code of Civil Procedure § 704.800(a). There appears to be sufficient equity in the

Property to satisfy the balance of $80,499.34, plus interest at the federal rate and costs under and pursuant to the writ of execution.

Defendant has demonstrated that he has had notice of these proceedings and understands that Plaintiff is seeking to enforce this Judgment. A copy of Defendant's May 8, 2018 response to having been served with the Motion has been filed as an exhibit to the Supplemental Declaration filed by Plaintiff on May 16, 2018. Exhibit D, Dckt. 89. While protesting that Defendant does not want to be sent such "Fake News," he confirms that he is still represented by counsel.

The court determines that the proposed sale is appropriate to satisfy Plaintiff's judgment.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> ~~**IT IS ORDERED** that the Order to Show Cause is sustained, and the United States Marshal, Eastern District of California, is authorized to sell the real property commonly known as 17480 High School Road, Jamestown, California ("Property"), for no less than 90% of its appraised value of $341,000.00 (which 90% is $306,900.00).~~
>
> ~~**IT IS FURTHER ORDERED** that if the highest bid received for the sales price is less than $306,900.00, Plaintiff may file a Motion for a Supplemental Order granting relief pursuant to California Code of Civil Procedure § 704.800(b) and authorizing such sale for an amount less than 90% of the $341,000.00 fair market value. Such Motion for Supplemental Order shall be filed and served on or before xxxxx days after the sale pursuant to the above order for which the bid has been received and Plaintiff proposes a sale price of less than the 90% stated above.~~

20. **17-90968-E-7** **RAMIN BETH-JACOB AND NADINE JACOB** **MOTION TO AVOID LIEN OF ROY E. TURNER**
RKW-2 **Randall Walton** **4-30-18 [23]**

Final Ruling: No appearance at the June 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, Creditor's Attorney, and Office of the United States Trustee on April 30, 2018. By the court's calculation, 52 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 Roy Turner ("Creditor") against property of Ramin Beth-Jacob and Nadine Jacob ("Debtor") commonly known as 3665 Colorado Avenue, Turlock, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $12,294.17. An abstract of judgment was recorded with Stanislaus County on February 5, 2009, that encumbers the Property.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $308,000.00 as of the petition date. Dckt. 29. The unavoidable consensual liens that total $209,280.00 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 § 704.730 in the amount of $100,000.00 on Schedule C. *Id.*

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 Ramin Beth-Jacob and Nadine Jacob ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Roy Turner, California Superior Court for Stanislaus County Case No. 632384, recorded on February 5, 2009, Document No. 2009-0011024-00, with the Stanislaus County Recorder, against the real property commonly known as 3665 Colorado Drive, 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 dismissed.

21.	**17-90968-E-7** **RKW-3**	**RAMIN BETH-JACOB AND NADINE JACOB** **Randall Walton**	**MOTION TO AVOID LIEN OF ROY E. TURNER** **4-30-18 [31]**

Final Ruling: No appearance at the June 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on April 30, 2018. By the court's calculation, 52 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 Roy Turner ("Creditor") against property of Ramin Beth-Jacob and Nadine Jacob ("Debtor") commonly known as 3665 Colorado Avenue, Turlock, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $13,660.56. Dckt. 39. FN.1. An abstract of judgment was recorded with Stanislaus County on February 5, 2009, that encumbers the Property.

FN.1. The court notes that Debtor attached the incorrect exhibits to this Motion and to the related Motion to Avoid Judicial Lien of Discover Bank (RKW-4). Debtor appears to have swapped the exhibits for the corresponding motions. Fortunately for Debtor, the court was able to locate the correct exhibits for judicial liens to be avoided.

The correct judgment lien exhibit being in the court's file, the court had sufficient evidence to confirm the allegations set forth in the Motion. The Motion clearly identifying the judgment upon which the lien is based, the Property subject to the judgment lien, and the basis for the exemption, the court

determines that the error in the copy of the judgment lien exhibit is not a material defect with respect to Creditor, who obtained and has, presumably, a copy of Creditor's own judgment lien.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $308,000.00 as of the petition date. Dckt. 29. The unavoidable consensual liens that total $209,280.00 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 § 704.730 in the amount of $100,000.00 on Schedule C. *Id.*

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 Ramin Beth-Jacob and Nadine Jacob ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Roy Turner, California Superior Court for Stanislaus County Case No. 632597, recorded on February 5, 2009, Document No. 2009-0011023-00, with the Stanislaus County Recorder, against the real property commonly known as 3665 Colorado Avenue, 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 dismissed.

22. **17-90968-E-7** **RAMIN BETH-JACOB AND NADINE JACOB** **MOTION TO AVOID LIEN OF DISCOVER BANK**
RKW-4 **Randall Walton** **4-30-18 [36]**

Final Ruling: No appearance at the June 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on April 30, 2018. By the court's calculation, 52 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 Discover Bank, Issuer of The Discover Card ("Creditor") against property of Ramin Beth-Jacob and Nadine Jacob ("Debtor") commonly known as 3665 Colorado Avenue, Turlock, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,728.74. Dckt. 34. FN.1. An abstract of judgment was recorded with Stanislaus County on February 15, 2012, that encumbers the Property.

FN.1. The court notes that Debtor attached the incorrect exhibits to this Motion and to the related Motion to Avoid Judicial Lien of Roy Turner (RKW-3). Debtor appears to have swapped the exhibits for the corresponding motions. Fortunately for Debtor, the court was able to locate the correct exhibits for judicial liens to be avoided.

The correct judgment lien exhibit being in the court's file, the court had sufficient evidence to confirm the allegations set forth in the Motion. The Motion clearly identifying the judgment upon which the lien is based, the Property subject to the judgment lien, and the basis for the exemption, the court

determines that the error in the copy of the judgment lien exhibit is not a material defect with respect to Creditor, who obtained and has, presumably, a copy of Creditor's own judgment lien.

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of $308,000.00 as of the petition date. Dckt. 29. The unavoidable consensual liens that total $209,280.00 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 § 704.730 in the amount of $100,000.00 on Schedule C. *Id.*

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 Ramin Beth-Jacob and Nadine Jacob ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Discover Bank, Issuer of The Discover Card, California Superior Court for Stanislaus County Case No. 666623, recorded on February 15, 2012, Document No. 2012-0012537-00, with the Stanislaus County Recorder, against the real property commonly known as 3665 Colorado Avenue, 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 dismissed.

23.	**18-90071-E-7** **RAC-3**	**PRAVINKUMAR/MADHUKANTA GANDHI** **David Johnston**	**MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR** **5-9-18 [32]**

Final Ruling: No appearance at the June 21, 2018 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.

24. **09-90073-E-7** **TERRY/AMANNDA MONLIN** **MOTION TO SELL**
SCB-2 **Pro Se** **5-17-18 [36]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 17, 2018. By the court's calculation, 35 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 Gary Farrar, 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 personal property commonly known as the Estate's right, title, and interest in 240 monthly life contingent payments of $610.00 under Annuity Policy No. AA0536514 owned by Symetra Assigned Benefits Service Company ("Property").

The proposed purchaser of the Property is Catalina Structured Funding, Inc., a California corporation, and the terms of the sale are:

A. Purchase price of $45,000.00, and

B. Sale without any warranties or representations.

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.

Movant presents that proposals to purchase the annuity payments were solicited from three companies. Movant accepted the offer from Buyer because it was tied with the highest offer and because Buyer was responsible for notifying the prior trustee of the undisclosed annuity. 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 provide $45,000.00 to pay claims.

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 Gary Farrar, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gary Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Catalina Structured Funding, Inc., a California corporation, or nominee ("Buyer"), the Property commonly known as the Estate's right, title, and interest in 240 monthly life contingent payments of $610.00 under Annuity Policy No. AA0536514 owned by Symetra Assigned Benefits Service Company ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $45,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit D, Dckt. 41, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs and other customary and contractual costs and expenses incurred to effectuate the sale.
>
> C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

25. **09-90877-E-7** **VINCENT/VICKI MARTINEZ** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHNEWEIS-COE & BAKKEN, LLP TRUSTEE'S ATTORNEY(S)**
SCB-5 **John Kyle** **5-3-18 [62]**

Final Ruling: No appearance at the June 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 3, 2018. 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.

Schneweis-Coe & Bakken, LLP, the Attorney ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 12, 2017, through June 21, 2018. The order of the court approving employment of Applicant was entered on June 23, 2017. Dckt.32. Applicant requests fees in the amount of $9,390.00 and costs in the amount of $101.80.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

11 U.S.C. § 330(a)(4)(A). 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 An attorney 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 providing strategies for handling property of the estate, motion to reopen, employment of special ligation counsel and settlement of the claim and motion to compromise. Dckt. 62. The Estate has an estimated $60,556.27 of unencumbered monies to be administered. *Id.* 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 3.7 hours in this category. Applicant prepared fee agreement, application for compensation and employment application.

Motion to Reopen: Applicant spent 1.1 hours in this category. Applicant prepared filing and motion to reopen case.

Employment of Special counsel: Applicant spent 15.2 hours in this category. Applicant contacted special counsel regarding status and value of the Claim, communicated on terms of representation, and prepared and filed application to employ special counsel and application for compensation.

Settlement and Motion to Compromise: Applicant spent 11.4 hours in this category. Applicant, at Client's direction, communicated with Special Counsel on terms of the settlement, reviewed the proposed settlement agreement, and prepared and filed the motion to compromise.

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, Attorney	31.2 hours	$300.00	$9,360.00
Christina Alcantara, Paralegal	0.2 hours	$150.00	$30.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees for Period of Application			$9,390.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $101.80 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$56.50
Photocopying	$0.10/ page	$45.30
		$0.00
		$0.00
Total Costs Requested in Application		$101.80

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $9,390.00 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 $101.80 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$9,390.00
Costs and Expenses	$101.80

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Schneweis-Coe & Bakken, LLP ("Applicant"), Attorney for Gary 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 Schneweis-Coe & Bakken, LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Schneweis-Coe & Bakken, LLP, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $9,390.00
> Expenses in the amount of $101.80,
>
> 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.

26. **12-91791-E-7** **MICHAEL/DANIELLE DUBURG** **CONTINUED MOTION TO AVOID LIEN**
DEF-1 **David Foyil** **OF CAPITAL ONE BANK, (USA), N.A.**
3-22-18 [23]

Final Ruling: No appearance at the June 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, and Office of the United States Trustee on March 22, 2018. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank, (USA) N.A. ("Creditor") against property of Michael Duburg and Danielle Duburg ("Debtor") commonly known as 2976 McClintock Court, Valley Springs, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,735.76. An abstract of judgment was recorded with Calaveras County on June 29, 2011, that encumbers the Property.

The Motion asserts that when this case was filed the Property had a value of $156,700, based on Debtor's opinion. That is consistent with Schedule A. Dckt. 1. The Motion then alleges that the Property is encumbered by two senior liens to Chase Bank—one to secure a claim in the amount of $144,228.85 and a second to secure a claim to Chase in the amount of $6,518.29. Motion ¶ 5, Dckt. 23. In Paragraph 5 of his declaration, Debtor states that the Property is encumbered by those two senior liens. Dckt. 26. That is consistent with the information on Schedule D. Dckt. 1 at 13.

APRIL 26, 2018 HEARING

At the hearing, the court noted that there was additional equity to support the judgment lien based upon the numbers provided under penalty of perjury. Dckt. 30. Debtor stated that an Amended Schedule C would be filed to claim the full amount of the exemption available. *Id.* The court continued the matter to 10:30 a.m. on June 21, 2018. Dckt. 31.

FILING OF AMENDED SCHEDULES

On May 4, 2018, Debtor filed new Schedules A/B & C (the forms do not indicate if they are amended). Dckt. 32. The Schedule A shows a property value of $156,519.61, and Schedule C includes an exemption for the Property in the amount of $6,000.00 pursuant to California Code of Civil Procedure § 703.140(b)(5). *Id.*

DISCUSSION

The unavoidable consensual liens that total $150,747.14 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)(5) in the amount of $6,000.00 on Schedule C. Dckt. 32.

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 Michael Duburg and Danielle Duburg ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Capital One Bank, (USA) N.A., California Superior Court for Calaveras County Case No. 10CP9623, recorded on July 28, 2011, Document No. 2011 7240, with the Calaveras County Recorder, against the real property commonly known as 2976 McClintock Court, Valley Springs, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

27. 18-90376-E-12 DRJ-1 | **CARLOS/BERNADETTE ESTACIO** | **MOTION TO EMPLOY DAVID R. JENKINS AS ATTORNEY**
David Jenkins | **6-10-18 [13]**

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Office of the United States Trustee on June 7, 2018. By the court's calculation, 14 days' notice was provided. The court set the hearing for 10:30 a.m. on June 21, 2018. Dckt. 16.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Employ is xxxxx.

On May 22, 2018, Carlos Estacio, III and Bernadette Estacio, the Chapter 12 Debtor ("Debtor"), now serving as debtors in possession ("Debtor in Possession"), commenced the above-captioned voluntary Chapter 12 bankruptcy case. Debtor filed Schedules A–H with the Petition. Dckt. 1. On June 3, 2018, Debtor filed Schedules I and J, the Statement of Financial Affairs, the Summary of Assets and Liabilities, and the Attorney's Disclosure Statement. Dckt. 11. On Schedule A, Debtor lists the following properties:

> (1) 4413 South Prairie Flower, having a value of $1,400,000.00, on forty acres consisting of a single family residence, twenty acres of peach trees, eight acres of corn, a dairy farm, and a mobile home;
>
> (2) 6955 Faith Home Road, having a value of $2,000,000.00, on twenty acres consisting of a single family residence with peach and cherry trees (this disclosure includes a statement that "parents make payments on, live in house, and farm the land); and

(3) 2260 East Canal Drive, having a value of $290,000.00, consisting of a single family home.

Dckt. 1 at 10–11.

This is not Debtor's only recent case. On May 23, 2017, they commenced a prior voluntary Chapter 12 case. 17-90432. That case was dismissed on April 29, 2018. 17-90432; Civil Minutes, Dckt. 184.

On Schedule I in the current case, Debtor lists having net income of $3,474.00 per month from employment and $4,325.00 from rental/business income. Dckt. 11 at 4–5. Debtor also lists "Other Monthly Income" as "Rent for mobile home" of $850.00 per month. Debtor has not attached the required "statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income" required to go with Schedule I. *See* Schedule I Question 8a., *id.* at 4.

On Schedule J, Debtor lists $4,241.00 in monthly expenses and projects having $4,408.85 in monthly net income. *Id.* at 5–6. In addition to the two debtors, the family unit is stated to include three teenage dependants. *Id.* at 5. However, several expense items are missing or appear not to be reasonably stated.

1. Rental/Mortgage Expense.....$0.00
2. Clothing and Cleaning.....$45.00 (Averages $9/person/month)
3. Medical/Dental Expenses.....$ 0.00
4. Transportation (gas/maintenance/registration...$300 (Multiple vehicles/drivers)
5. Entertainment.....$ 0.00
6. Vehicle Insurance.....$180 (Multiple vehicles/5 drivers)
7. Income/Self-Employment Taxes (Business).....$ 0.00
8. Rental/Liability Insurance.....None

Id. at 5–6.

On the Statement of Financial Affairs, for the first four months of 2018, Debtor reports having gross income from wages of only $13,625.00 (*id.* at 8)—which averages $3,406.25 per month, less than the $4,000.00 per month shown on Schedule I. *Id.* at 3. No business income is shown for 2018 or 2017. However, for 2016 and 2015, Debtor shows $108,089.00 and $767,272.00, respective, for gross business income. *Id.* at 8.

For other income, Debtor shows having $20,825.00 in rent for the first four months of 2018, and rent of $31,800.00 in 2017, and $10,450.00 in 2016. *Id.*

MOTION TO EMPLOY COUNSEL

On June 10, 2018, a Motion was filed for the Debtor to hire general counsel for them as debtor. In the Motion, it states that Debtor also serves as debtor in possession. Motion ¶ 1, Dckt. 13. The Motion demonstrates a confusion with the representation to be provided, at times talking about representing Debtor

in Possession and other times about strategizing with Debtor personally, not in their fiduciary role as debtor in possession.

The Motion does not state a statutory basis for the court to authorize employment of counsel for Debtor. Congress provides in 11 U.S.C. § 1203 that upon the commencement of the Chapter 12 case:

> [a] debtor in possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation.

Thus, as in a Chapter 11 case, the Chapter 12 debtor takes on the fiduciary role of "debtor in possession" in the place of a trustee. Such powers of a trustee are exercised as the fiduciary "debtor in possession" and not the debtor personally. This is akin to a person agreeing to serve as the trustee of a family trust. Such person will still have their individual rights and interests, and can pursue such rights and interests, but cannot do so as the trustee of the family trust or exercise the rights and powers of such trustee of the family trust.

Congress further provides in 11 U.S.C. § 327, a trustee, may employ professionals, including counsel. Then such counsel, employed by the trustee may be compensated from the bankruptcy estate as an administrative expense. 11 U.S.C. §§ 330, 331. In 11 U.S.C. § 330(a)(4), Congress provides that in limited circumstances the court may provide in a Chapter 12 or Chapter 13 case "reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case . . . ." This further denotes the difference between representing the debtor and debtor in possession, and that representation of the "debtor" is that of different interests than the fiduciary debtor in possession who is authorized to employ counsel pursuant to 11 U.S.C. § 327, and such counsel of the fiduciary entitled to compensation pursuant to 11 U.S.C. §§ 330 and 331.

As with the present proposed counsel, Debtor in Possession was represented by first flight counsel in the prior Chapter 12 case. Notwithstanding such counsel, the prior case could not be prosecuted effectively by Debtor in Possession, and the case was dismissed. In dismissing the prior case, the court concluded:

> Debtor in Possession has been provided more than reasonable time to prosecute this case in good faith. Debtor in Possession has taken several attempts at a plan, failing to obtain confirmation. As this court has addressed previously, Debtor in Possession first chose to take a "financially impractical" (charitably stated) approach of having Debtor in Possession's elderly parents "lease" the farm property. Then, when Debtor in Possession "decided" to proceed with liquidating some of the properties, Carlos Estacio, III, as debtor in possession, did not engage the services of a real estate professional to market and facilitate the sale of the property to achieve the fair market value for the estate, but instead took it upon himself to "list" and "market" the property.

> There has now been unreasonable delay caused in this Chapter 12 case. Debtor in Possession has not been able to confirm a plan. Debtor in Possession has not presented facially colorable attempts at moving forward with a confirmable plan. **Debtor in Possession, as the fiduciary** of the bankruptcy estate, **has not managed the property of the estate in a manner consistent with that position**. **Rather, the management of this case appears to have been done for Debtor's personal benefit in delaying any action to address creditors' claims.**

17-90432; Civil Minutes, Dckt. 184 at 9 (emphasis added). The court specifically identified the "confusion" of Debtor in serving as the fiduciary debtor in possession, concluding that the case was being managed for Debtor's personal interests rather than in the interests of the bankruptcy estate by the fiduciary to the estate.

When not being a fiduciary debtor in possession, fiduciary trustee, fiduciary officer of an insolvent corporation (*Van De Pol Enterprises v. Moniz*, Adv. No. 09-9056, 2011 Bankr. Lexis 5523 (Bankr. E.D. Cal. 2011); *Berg & Berg Enterprises, LLC v. Boyle*, 178 Cal. App. 4th 1020, 1041, and the like, a person who owes money can elect to "exhaust it in the fight" to keep creditors from getting their hands on it. But the fiduciary cannot elect to "exhaust/waste" assets of the estate for not legally or financially sound/reasonable causes merely to try to beat the creditor(s) into submission or render the obligor penniless.

While proposed counsel may recognize that his duties run to the fiduciary Debtor in Possession, and such counsel having his own fiduciary duties to the bankruptcy estate (not the creditors, nor Debtor, personally), this Debtor serving as Debtor in Possession may well not. The court's concerns are increased with the review of the financial information stated under penalty of perjury by Debtor on Schedules I and J (especially no obligation to pay income and self-employment taxes from significant business activities and income).

At the hearing, **Counsel confirmed for the court that they understand that Counsel would be employed for the fiduciary debtor in possession and not Debtor personally.**

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 Employ filed by Carlos Estacio, III and Bernadette Estacio ("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 Employ is **xxxxxxxxxx**.

28. **18-90029-E-11** **JEFFERY ARAMBEL** **MOTION TO DISMISS ADVERSARY PROCEEDING**
18-9002 **MF-1** **5-15-18 [9]**

LOPEZ V. ARAMBEL

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney and Office of the United States Trustee on May 15, 2018. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss Adversary Proceeding is granted.

Jeffery Arambel ("Defendant-Debtor") moves for the court to dismiss all claims against it in Benjamin Lopez's ("Plaintiff") Complaint according to Federal Rules of Civil Procedure 9(b) & 12(b)(6).

APPLICABLE LAW

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that a complaint have a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. FED. R. CIV. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.* (citing 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235–36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action")).

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether to grant a motion to dismiss should be resolved in favor of the pleader. *Pond v. Gen. Elec. Co.*, 256 F.2d 824, 826–27 (9th Cir. 1958). For purposes of

determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *see also Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Federal Rule of Civil Procedure 9(b) states that when a party alleges "fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally."

Under the Supreme Court's formulation of Federal Rule of Civil Procedure 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal*, 556 U.S. 662, 687 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) ("[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do.").

In ruling on a motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6), the Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court "required to"accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994) (citations omitted).

A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: either a lack of a cognizable legal theory, or insufficient facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988) (citation omitted).

REVIEW OF MOTION

The Motion responds to the Complaint's claims with the following grounds:

A. Plaintiff has not pleaded the elements of a promissory fraud claim; and

B. The Complaint does not present facts that indicate fraud.

Specifically, the Motion alleges that for fraud, the complaining party must assert "who, what, when, where, and how" about the alleged misconduct. Dckt. 9 at 3 (citing *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009) (quoting *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003))). Defendant-Debtor argues that there is no claim without the word "fraud."

Defendant-Debtor also presents that the six elements for promissory fraud are:

1. A promise made by a promisor to the promisee;

2. Promisor's intent not to perform the promise at the time the promise was made;

3. Promisor's intent to deceive or induce the promisee to enter into a transaction;

4. Promisee's reasonable reliance on the promise;

5. Promisor's nonperformance; and

6. Resulting damage from promisor's nonperformance.

Id. at 4 (citing *Behnke v. State Farm Gen. Ins. Co.*, 196 Cal. App. 4th 1443, 1453 (Cal. Ct. App. 2011)). The Motion argues that the Complaint does not address three elements—namely, Defendant-Debtor's intent not to perform, Defendant-Debtor's intent to deceive or induce Plaintiff, and Plaintiff's reasonable reliance.

Defendant-Debtor stresses that "a plaintiff must point to *facts* which show that [the] defendant harbored an intention not to be bound by [the promise]" to satisfy Federal Rule of Civil Procedure 9(b). *Id.* (quoting *Hsu v. OZ Optics Ltd.*, 211 F.R.D. 615, 620 (N.D. Cal. 2002)). Additionally, the Motion cites California law for the proposition that "a defendant's failure to perform a promise, without more, is insufficient to show the defendant's intent not to perform." *Id.* (quoting *Engalla v. Permanente Med. Grp., Inc.*, 15 Cal. 4th 951 (Cal. 1997), *modified*, July 30, 1997).

Defendant-Debtor argues that the Complaint presents "a garden-variety breach of contract claim with the word 'fraud' inserted for talismanic effect." *Id.*

PLAINTIFF'S REPLY

Plaintiff filed a Reply on June 6, 2018. Dckt. 13. FN.1. Plaintiff argues that "evidence will be presented" in support of the Complaint's allegations. Plaintiff argues that the Complaint sets forth enough of a claim for Defendant-Debtor to prepare an adequate answer.

FN.1. Plaintiff filed the Reply and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause 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.

As to the portions of the Complaint about who, what, when, where, and how, Plaintiff identifies the information in the following paragraphs:

A. "Who" in Paragraphs 5 & 6 of the Complaint, identifying Defendant-Debtor and Plaintiff;

B. "What" in Paragraphs 7 & 8, involving the sale of services and promises of payment;

C. "When" as within four years at various times;

D. "Where" as locations at the ranches where services were provided; and

E. "How" as verbal promises that payment would be made upon resale of crops picked or processed.

Plaintiff argues that the Complaint describes a running account for services that was agreed to, and then, through delays, non-payment, and non-disclosure of an intent not to pay, fraud became an issue. Dckt. 13 at 4.

For the six elements of promissory fraud, Plaintiff argues that they are alleged in the Complaint and identifies them in the following paragraphs:

1. Promise made regarding a material fact without any intention of performing it (Paragraph 11);

Paragraph 11 states: "At all relevant times Debtor entered into the agreements with Plaintiff without any intent of performing, with a secret intent of receiving said services without ever paying for said services, and, indeed, such services were provided by actual fraud and deception, as well as making false promises without any intent whatsoever to perform."

2. Existence of intent not to perform at time promise was made (Paragraph 11);

3. Intent to deceive or induce the promisee to enter into a transaction (Paragraph 16);

Paragraph 16 states: "Debtor's actions were willful, malicious, and oppressive. Debtor's actions were undertaken with the intent to defraud and justify the awarding of punitive damages."

4. Reasonable reliance by promisee (Paragraph 12);

Paragraph 12 states: "Plaintiff was required to file an action in Stanislaus County Superior Court, action number 152-8774, against Debtor. Debtor filed papers with the Superior Court which denied all liability. The pleadings filed by the Defendant with the Superior Court were false and fraudulent. The Defendant debtor changed attorneys and delayed the matter as far as he could. On the eve of trial in Stanislaus County, Defendant filed his bankruptcy petition attempting to utilize the federal law to use this to avoid just and proper debts, which debts had been incurred with fraudulent intent[.]"

5. Nonperformance by the party making the promise; and

Despite raising this ground and asserting that all of the grounds for the asserted cause of action have been presented, Plaintiff does not direct the court to the portion of the Complaint that he believes satisfies this element.

6. Resulting damage (Paragraph 17).

Paragraph 17 states: "As a proximate result of damage and fraudulent conduct, Plaintiff has been damaged in the sum of $2,363,723.00."

DEFENDANT-DEBTOR'S RESPONSE

Defendant-Debtor filed a Response on June 12, 2018. Dckt. 14. Defendant-Debtor notes that Plaintiff's Reply passes on an opportunity to present facts in support of the Complaint's allegations and instead merely reiterates what is listed in the Complaint, arguing that the Complaint is already sufficient.

Defendant-Debtor focuses on one quote in particular from the Reply, in which Plaintiff states that "[t]he only issue is whether the debtor knew that there was an unacceptable risk of non-payment that the debtor failed to disclose . . . ." Defendant-Debtor argues that Plaintiff's statement is one "'respecting the debtor's . . . financial condition' within the meaning of 11 U.S.C. § 523(a)(2)(B)(ii), which must be in writing." *Id.* at 2 (citing *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. __ (2018)).

Defendant-Debtor requests that the Complaint be dismissed without leave to amend.

DISCUSSION

When fraud allegations are involved, a court looks to state law to determine whether the complaint sufficiently details the fraud charges with the particularity required by Federal Rule of Civil Procedure 9(b). *See, e.g.*, *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1104–05 (9th Cir. 2003).

The court has reviewed the Complaint itself and now adds to the analysis and counter-analysis of the Parties as to what is stated in the Complaint. As the court reads the Complaint, Plaintiff alleges (as is relevant to the present Motion):

A. Plaintiff is an individual doing business as Benjamin Lopez Farm Labor Contractor. Complaint ¶ 5; Dckt. 1.

B. Defendant-Debtor engaged the services of Plaintiff to provide farm labors to Defendant-Debtor. Complaint ¶ 6.

C. Within four years of the filing, at an unstated date, of a law suit in State Court, Defendant-Debtor was obligated in the amount of $2,363,723.12 for farm laborers provided by Plaintiff. Complaint ¶ 8.

D. Plaintiff acted in good faith and believed he would be paid for the farm laborers provided Defendant-Debtor. Complaint ¶ 10.

E. Plaintiff alleges that Defendant-Debtor:

1. "[e]ntered into the agreement with Plaintiff without any intent of performing, ..."

2. had "[a] secret intent of receiving said services without ever paying for said services. . . ."

3. "[s]uch services were provided by actual fraud and deception . . . ." [presumably, Plaintiff intended to allege that such services were "procured" by actual fraud and deception," not that Plaintiff engaged in fraud and deception when providing the laborers]

4. was "[m]aking promises without any intent whatsoever to perform."

Complaint ¶ 11.

F. Defendant-Debtor filed "papers" in the State Court Action denying all liability. Complaint ¶ 12.

G. Defendant-Debtor "delayed the [State Court] matter as far as he could." *Id.*

H. On the eve of State Court Trial, Defendant-Debtor "[f]iled his bankruptcy petition to utilize the federal law to use this [sic] to avoid just and proper debts. . . ." *Id.*

I. The "just and proper debts" were ones that "had been incurred with fraudulent intent." *Id.*

J. Defendant-Debtor "[d]efrauded Plaintiff by his actions, including knowingly, intentionally, falsely, and fraudulently promising to make payments, all the time knowing that Debtor has no intention of paying as agreed." Complaint ¶ 13.

K. Plaintiff "[w]as justified in relying upon Debtor's representations because Plaintiff was providing labor of picking fruit in which would enable [Defendant-Debtor] to pay the Plaintiff,. . . ." Complaint ¶ 15.

L. "Plaintiff was ignorant of the falsity of said representations and fraud and reasonably relied upon said false misrepresentations by continuing to provide services as will be shown according to proof." Complaint ¶ 14.

M. Defendant-Debtor's "[a]ctions were willful, malicious, and oppressive . . . undertaken with the intent to defraud and justify the awarding of punitive damages." Complaint ¶ 16.

Reading these allegations, even generously, it is asserted that unidentified representations were made at non-specific times, concerning the promise to pay made at some time, over some four-year period. The only thing said was in the nature of paying for the services provided, and any intention not to is secret, for which no allegations are made of any facts or events (other than non-payment).

Plaintiff further alleges that he continued to provide the services, apparently being paid nothing, for more than four years and multiple millions of dollars in services being provided. Though not being paid year after year, Plaintiff asserts the legal conclusion that he reasonably relied.

As drafted, the Complaint runs afoul of the Supreme Court standard stated in *Ashcroft v. Iqbal*, 556 U.S. 662, 687 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). Plaintiff "plead[s] the bare elements of his cause of action, [affixes] the label of 'general allegation[s],' and then expects to fill it all in later in the litigation. As set forth in *Ashcroft v. Iqbal*, 556 U.S. at 687, such pleading strategy does not work. Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*, 550 U.S. at 556.

Plaintiff fails to present grounds with particularity (Federal Rule of Civil Procedure 9(b), Federal Rule of Bankruptcy Procedure 7009) to support a claim for fraud. Reviewing the specific paragraphs noted by Plaintiff, the court finds several defects. First, Paragraph 11 does not address any "material fact" that relates to the alleged oral promises made by Defendant-Debtor. Instead, Paragraph 11 is replete with legal conclusions that everything Defendant-Debtor allegedly did was by deliberate intent to defraud. Plaintiff does not point the court or Defendant-Debtor to specific facts supporting its allegations such that Defendant-Debtor could respond appropriately.

Second, Paragraph 16 does not contain any allegation that Defendant-Debtor acted with an intent to deceive or to induce an action by Plaintiff. Instead, the paragraph contains legal conclusions that Defendant-Debtor's alleged acts were willful, malicious, oppressive, and done with intent. Nothing in the paragraph provides the court or Defendant-Debtor with even a hint of a fact to support the allegation.

Third, Paragraph 12 does not contain any support for the element of reasonable reliance by the promisee. In contrast, the factual allegations in Paragraph 12 come well after reliance would have happened. The allegations point to a time when Plaintiff was already trying to litigate this matter in state court against Defendant-Debtor. Plaintiff has not provided factual allegations about Defendant-Debtor's alleged

fraudulent promises were relied upon reasonably by Plaintiff such that Plaintiff provided services to Defendant-Debtor.

Fourth, Plaintiff has completely omitted referring the court to any support for the fifth element of nonperformance by the promisor. Plaintiff may think that such element is obvious, but the court notes nonetheless that Plaintiff has not felt the need to argue it or to state the facts with particularity.

Taken as a whole, the Complaint alleges that there was an oral contract for services between Plaintiff and Defendant-Debtor (for which there may have been an account stated—no exhibits are attached to the Complaint, and no allegations are made about the providing of such statements or book accounts being maintained), and at some undisclosed time in the past, Defendant-Debtor did not pay, but Plaintiff continued to work anyway due to alleged promises by Defendant-Debtor to pay. While Plaintiff may have valid grounds to pursue litigation, those grounds have not been presented adequately in the Complaint as drafted. FN.2.

FN.2. A $2,363,723.00 proof of claim has been filed by Plaintiff in Defendant-Debtor's bankruptcy case. 18-90029, Proof of Claim No. 16. The basis of the claim is stated to be for "Services Provided." Though Question 7 on Proof of Claim No. 16 states that copies of documents, "such as . . .invoices, itemized statements of running accounts, contracts . . . ." are attached to the proof of claim, Plaintiff does not attach any documents to Proof of Claim No. 16.

The court also notes that the Complaint forcefully asserts that the "fraud" and "bad conduct" is shown by Defendant-Debtor availing himself of the uniform bankruptcy law enacted by Congress pursuant to Article I, Section 8, Clause 4, of the United States Constitution. Plaintiff asserts:

> 12. Plaintiff was required to file an action in Stanislaus County Superior Court, action number 152-8774, against [Defendant-]Debtor. [Defendant-]Debtor filed papers with the Superior Court which denied all liability. The pleadings filed by the Defendant[-Debtor] with the Superior Court were false and fraudulent. The Defendant debtor changed attorneys and delayed the matter as far as he could. On the eve of trial in Stanislaus County, Defendant[-Debtor] filed his bankruptcy petition attempting to utilize the federal law to use this to avoid just and proper debts, which debts had been incurred with fraudulent intent.

Complaint ¶ 12, Dckt. 1. As above, general allegations and legal conclusions are drawn by Plaintiff. Additionally, Plaintiff asserts that it is a "fraud" for Defendant-Debtor to file bankruptcy because the obligations owed to Plaintiff are "just and proper debts." Except in rare circumstances, debtors file bankruptcy to put off payment of, restructure, or discharge "just and proper debts." A bankruptcy is not required to restructure payment of "unjust and improper debts that are not owed." Plaintiff's disgust with the filing of the bankruptcy and general affront at Defendant-Debtor filing bankruptcy is consistent with choosing to just plead legal conclusions, rather than enough factual matter to establish plausible grounds for the relief sought.

Deadline for Complaint

Defendant-Debtor's bankruptcy case was filed on January 17, 2018. Complaints for a determination of the nondischargeability of debts were required to be filed on or before April 16, 2018. 18-90029; Notice of Bankruptcy, Dckt. 11. The Complaint in this Adversary Proceeding was filed on April 16, 2018. It appears that this was filed to preserve whatever claims, if any, Plaintiff may have if Defendant-Debtor's bankruptcy case does not proceed successfully.

Surprisingly, Plaintiff's counsel and Defendant-Debtor's counsel did not engage in a constructive, good faith discussion of Defendant-Debtor consenting to an extension of the deadline for this Plaintiff to file a nondischargeability action. Such extensions facilitate the efforts of creditors and a debtor in possession in prosecuting a bankruptcy plan to pay creditors, while reducing the cost and expense to both the Creditor and the bankruptcy estate.

If such was not able to be successfully communicated pre-April 16, 2018, the court is even more surprised that the respective counsel did not meet and conclude that a stipulation to stay prosecution of this Adversary Proceeding was in all Parties' interests—allowing both to focus on the Chapter 11 Plan, getting monies paid to creditors, and Plaintiff developing the straightest track to "the money" and Defendant-Debtor not incurring costs and expenses with a side-show fight.

At the hearing, the respective counsel addressed the court on this point. **Xxxxxxxxxxxxx xxxxxxxxxxxxxxxxx**

The Motion to Dismiss Adversary Proceeding is warranted because Plaintiff has not pleaded grounds with particularity in the Complaint. 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 Adversary Proceeding filed by Jeffery Arambel ("Defendant-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 Dismiss is granted, and the Complaint is dismissed without prejudice.
>
> **IT IS FURTHER ORDERED** that Plaintiff Benjamin Lopez shall file and serve a First Amended Complaint on or before July 16, 2018.

29. **18-90029-E-11** **JEFFERY ARAMBEL** **STATUS CONFERENCE RE: COMPLAINT**
18-9002 **4-16-18 [1]**

LOPEZ V. ARAMBEL

Tentative Ruling

Plaintiff's Atty: Michael F. Babitzke
Defendant's Atty: Iain A. Macdonald

Adv. Filed: 4/16/18
Answer: none

Nature of Action:
Recovery of money/property - turnover of property
Dischargeability - false pretenses, false representation, actual fraud

The Status Conference is continued to 2:00 p.m. on September xx, 2018

Notes:
[MF-1] Motion to Dismiss for Failure to State a Claim: Memorandum of Points and Authorities in Support Thereof filed 5/15/18 [Dckt 9], set for hearing 6/21/18 at 10:30 a.m.

JUNE 21, 2018 STATUS CONFERENCE

The court granted Defendant-Debtor's Motion to Dismiss the Complaint filed in this case. The court has allowed Plaintiff through and including July 16, 2018, to file a First Amended Complaint.

30. **18-90029-E-11** **JEFFERY ARAMBEL**
Reno Ferndandez

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
1-17-18 [1]

Debtor's Atty: Reno F.R. Fernandez

The Chapter 11 Status Conference is continued to 2:00 p.m. on xxxxxx, 2018.

Notes:
Continued from 2/15/18

Operating Reports Filed: 2/26/18 [amd Jan]; 4/26/18 [amd Jan]; 5/9/18 [periodic report]; 5/29/18 [for Feb]; 5/29/18 [for Mar]; 6/7/18 [for Apr]

JUNE 21, 2018 STATUS CONFERENCE

At the Status Conference, counsel for Debtor in Possession reported xxxxxxxxxxxx

31. **18-90029-E-11** **JEFFERY ARAMBEL** **MOTION TO COMPROMISE CONTROVERSY / APPROVE SETTLEMENT AGREEMENT WITH SBN V AG I LLC (JEA2, LLC GUARANTY)**
MF-21 **Reno Fernandez** **5-30-18 [362]**

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 30, 2018. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, 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 Compromise is granted.

Jeffery Arambel, Debtor in Possession, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with SBN V Ag I LLC ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Movant's guaranty of indebtedness of JEA2, LLC, an entity wholly owned by Movant and secured by liens against Movant's real property.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 365):

A. Disbursement of $300,000.00 from sales proceeds of Home Ranch and Howard Ranch to Movant free and clear of liens, encumbrances, and other claims by Settlor.

B. Disbursement of $507,526.05 from the sales proceeds to Settlor on account of the guaranty.

C. As of May 4, 2018, a remaining principal on Settlor's claim of $5,378,229.33, with accrued interest of $261,591.10, and interest accruing in the amount of $2,539.72.

D. Settlor reserves a right to assert claims for accruing fees and costs, including attorneys' fees and costs, and Movant reserves a right to dispute any such claims.

E. Movant's claims against Settlor are released concerning a guaranty and deed of trust.

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Probability of Success

Movant argues that both Movant and Settlor are confident in their positions, but discovery has not commenced yet, and there is a risk that there will be insufficient assets to meet Settlor's claim fully, or

that the court will side with Settlor, or that the guaranty and deed of trust are not subject to equitable subordination, or that California usury law will apply.

Difficulties in Collection

Movant is unaware of any difficulty it would face in collecting on a judgment.

Expense, Inconvenience, and Delay of Continued Litigation

Without settlement, there will be additional legal proceedings, leading all the way to a possible trial in which the matters will be complex and include both risk, expense, and delay for all parties.

Paramount Interest of Creditors

Movant argues that the settlement creates immediate unencumbered cash for the Estate that can fund short-term operations while moving forward with a proposed plan.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it provides funding to the Estate while avoiding litigation that is already being viewed as complex and expensive. The Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Jeffery Arambel, Debtor in Possession, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and SBN V Ag I LLC ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 365).

32. **18-90029-E-11** **JEFFERY ARAMBEL** **MOTION FOR RELIEF FROM AUTOMATIC STAY**
NAR-1 **Reno Fernandez** **5-7-18 [279]**

IRRIGATION DESIGN & CONSTRUCTION, INC. VS.

Final Ruling: No appearance at the June 21, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on May 9, 2018. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion for Relief from the Automatic Stay is continued to 10:00 a.m. on July 12, 2018.

Irrigation Design & Construction, Inc., ("Movant") seeks relief from the automatic stay with respect to Jeffery Arambel's ("Debtor in Possession") real property located at Highway 5, Patterson, California, APNs 021-021-001 and 021-010-006 ("Property").

DEBTOR IN POSSESSION'S OPPOSITION

Debtor in Possession filed an Opposition on June 7, 2018. Dckt. 398. Debtor in Possession asserts that by Movant's own admission, there is at least $62,515.37 in equity in the Property, and the value of the Property is key to resolving this Motion. Debtor in Possession argues that he as acquired his own appraiser to value the Property and requests that the court continue this matter until the appraisal is complete, which Debtor in Possession believes will show a property value closer to $3,200,000.00.

On a procedural ground, Debtor in Possession argues that the Motion should be denied without prejudice because he was not served, in violation of Federal Rule of Bankruptcy Procedure 7004(b)(1) & (g).

ORDER CONTINUING HEARING

On June 14, 2018, Movant filed an Ex Parte Application to continue the hearing. Dckt. 416. The court granted that request and continued the hearing to 10:00 a.m. on July 12, 2018. Dckt. 418.

DISCUSSION

The hearing on the Motion for Relief from the Automatic Stay has been continued to 10:00 a.m. on July 12, 2018, by prior order of the court.

33.	**18-90029-E-11** **MF-22**	**JEFFERY ARAMBEL** **Reno Fernandez**	**MOTION TO APPROVE USE OF FUNDS PURSUANT TO BUDGET O.S.T.** **6-8-18 [404]**

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)(3) 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 June 11, 2018. By the court's calculation, 10 days' notice was provided. The court set the hearing for 10:30 a.m. on June 21, 2018. Dckt. 408.

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor in Possession, 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 Authority to Use Cash Collateral is granted, and the hearing is continued to 10:30 a.m. on September 20, 2018.

Jeffery Arambel ("Debtor in Possession") moves for an order approving the use of cash collateral. Debtor in Possession requests the use of cash collateral according to a budget for various expenses.

Debtor in Possession proposes to use cash collateral for the following expenses:

Category	Monthly Expense
Irrigation, including water, power, labor, fuel, and parts	$10,000.00
Contract labor for Debtor in Possession's office	$1,120.00
Insurance, including health insurance, homeowner's insurance, general liability insurance, and automobile insurance, together with a one-time payment of $31,338 for past-due post-petition insurance premium payments	$7,091.00 Plus one-time $31,338 Post-Petition Insurance Arrearage Payment
Pharmacy expenses	$300.00
Home maintenance and homeowner's association assessments	$400.00
Adequate protection payments to Wells Fargo Bank	$6,100.00
Utilities	$1,167.00
Food, clothing, and household expenses	$1,000.00
Transportation, including gasoline	$400.00
Office supplies	$100.00
Miscellaneous	$150.00
Total	**$27,828.00** Monthly, Plus One-Time $31,338 Insurance payment

Debtor in Possession also requests permission to pay various flat fees, retainers, or interim fees for professionals of the Estate, despite noting that those requests have already been raised in prior employment applications. If Debtor in Possession wishes to pay professionals for work that has been performed, then Debtor in Possession may file a motion under the appropriate section of the Code, but the court will not authorize payment to be made outside of the strictures of the Bankruptcy Code and Ninth Circuit fee application precedent.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless–
>
> > (A) such sale or such lease is consistent with such policy; or
> >
> > (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease–
> >
> > > (i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
> > >
> > > (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

> (b)(2) Hearing
>
> The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

DISCUSSION

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for living expenses for this individual debtor, as well as maintaining business expenses to generate income. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period June 21, 2018, through September 21, 2018, including required adequate

protection payments. The court does not pre-judge and authorize the use of any monies for "plan payments" or use of any "profit" by Debtor in Possession. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

The court continues the hearing to 10:30 a.m. on September 20, 2018, for Debtor in Possession to file a Supplement to the Motion to extend authorization. That Supplement is due by September 13, 2018, with any opposition to be presented orally at the continued hearing.

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 Use Cash Collateral filed by Jeffery Arambel ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, pursuant to this order, for the period June 21, 2018, through September 21, 2018, and the cash collateral may be used to pay the following expenses:

Category	Monthly Expense
Irrigation, including water, power, labor, fuel, and parts	$10,000.00
Contract labor for Debtor in Possession's office	$1,120.00
Insurance, including health insurance, homeowner's insurance, general liability insurance, and automobile insurance, together with a one-time payment of $31,338 for past-due post-petition insurance premium payments	$7,091.00
Pharmacy expenses	$300.00
Home maintenance and homeowner's association assessments	$400.00
Adequate protection payments to Wells Fargo Bank	$6,100.00
Utilities	$1,167.00
Food, clothing, and household expenses	$1,000.00
Transportation, including gasoline	$400.00

Office supplies	$100.00
Miscellaneous	$150.00
Total	**$27,828.00**

IT IS FURTHER ORDERED that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

IT IS FURTHER ORDERED that Debtor in Possession shall make monthly adequate protection payments of $6,100.00 to Wells Fargo Bank, as noted in the approved cash collateral budget.

IT IS FURTHER ORDERED that the hearing on the Motion is continued to 10:30 a.m. on September 20, 2018, to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before September 13, 2018, Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the September 20, 2018 hearing. Any opposition to the requested use of cash collateral may be presented orally at the hearing.