

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

July 8, 2021 at 10:30 a.m.

1. [20-90711-E-7](#) **AHDIAMBO MALAH AND GIA** **MOTION TO AVOID LIEN OF RAYMOND**
[CRG-2](#) **SMITH** **B. GREER/D'ETTE F. GREER, LLC**
 Carl Gustafson **5-25-21 [31]**

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 Debtors, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on June 1, 2021. By the court's calculation, 37 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 Raymond B. Greer/D'Ette F. Greer, LLC, a California limited liability ("Creditor") against property of the debtor, Ahdiambo Mso Malah and Gia Samantha Smith ("Debtors") commonly known as 2290 McCaffrey Lane, Riverbank, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$19,487.08. Exhibit 1, Dckt. 33. An abstract of judgment was recorded with Stanislaus County on February 4, 2020, that encumbers the Property. *Id.*

Pursuant to Debtor’s Original Schedule A and Amended Schedule A, the subject real property has an approximate value of \$380,000.00 as of the petition date. Dckts. 1, 18. (On Original and Amended Schedule A/B debtor then discounts this by 10% for “costs of sale and administration.” The value stated on Schedule A/B is the value of the property, the fair market value, and not a discounted value for possible costs of sale or administration by a trustee. The secured claims always come ahead of such expenses when there is a sale for the fair market value.)

The Debtor then identifies on Schedule D and in the Exhibits 3 and 4 (Dckt. 33) filed in support of the Motion the following obligations secured by senior liens against the Property:

- Nationwide/Mr. Cooper Deed of Trust Securing Claim of.....(\$304,832)
- Internal Revenue Service Tax Lien Recorded 10/23/2018
for Claim of.....(\$151,307.39)
- Internal Revenue Service Tax Lien Recorded 12/20/2019
for Claim of.....(\$ 72,891.29).

Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140 (b)(1) in the amount of \$27,000 on Amended Schedule C. Dckt. 20

The Property having a value of \$380,000 and there being the unavoidable consensual liens and the two senior tax liens totaling (\$529,030) and the Debtor asserting a \$27,000 exemption, there is no value in the Property to support Creditor’s lien.

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 in its entirety, subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Ahdiambo Mso Malah and Gia Samantha Smith (“Debtors”) 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 Raymond B. Greer/D’Ette F. Greer, LLC a California limited liability, California Superior Court for Stanislaus

County Case No. UD-19-000958, recorded on October 4, 2019, Document No. 2020-0008154-00 with the Stanislaus County Recorder, against the real property commonly known as 2290 McCaffrey Lane, Riverbank, 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.

2. [21-90055-E-7](#)
[DCJ-1](#)

MOHAMMAD SHAFIQ
David Johnston

**MOTION TO AVOID LIEN OF ABDUL
GHALEB AND KIMBERLY GHALEB**
6-13-21 [24]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on June 13, 2021. By the court’s calculation, 25 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 Abdul Ghaleb and Kimberly Ghaleb (“Creditor”) against property of the debtor, Mohammad Shafiq (“Debtor”) commonly known as 2008 Dermond Road, Modesto, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,070.00. Exhibit 4, Dckt. 27. An abstract of judgment was recorded with Stanislaus County on October 6, 2016, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$443,868.00 as of the petition date. Dckt. 17. The unavoidable consensual liens that total \$132,547.00 as

of the commencement of this case are stated on Debtor's Schedule D. Dckt. 17. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$369,000.00 on Amended Schedule C. Dckt. 17. No objection has been filed to the exemption claimed.

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 in its entirety subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Mohammad Shafiq ("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 Abdul Ghaleb and Kimberly Ghaleb, California Superior Court for Stanislaus County Case No. 2102917, recorded on October 6, 2016, Document No. 2016-0077905-00, with the Stanislaus County Recorder, against the real property commonly known as 2008 Dermond Road, Modesto, 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.

3. [21-90181-E-7](#)
[LRR-2](#)
3 thru 6

HARRY BOURASSA
Len ReidReynoso

MOTION TO AVOID LIEN OF
INTERNAL REVENUE SERVICE
6-2-21 [21]

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 Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on June 2, 2021. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Certificate of Service (Dckt. 25) documents service of the Motion and supporting pleadings for the creditor whose lien is being avoided, the Internal Revenue Service as follows:

IRS
P.O. Box 7346
Philadelphia (sic) PA 19101-7346

On the Roster of Governmental Agencies for addresses for service which they have specified with the court as provided in Federal Rules of Bankruptcy Procedure 2002(j), 5003(e), and Local Bankruptcy Rule 2002-1, service for the Internal Revenue Service must include:

Internal Revenue Service

Notices and Service in Bankruptcy Cases, Adversary Proceedings, and Contested Matters Shall be Sent to:

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

*Notices and Service in Adversary Proceedings and Contested Matters Shall **Additionally** be Sent to:*

United States Department of Justice
Tax Division
Civil Trial Section Western Region
Box 683 Ben Franklin Station
Washington, DC 20044

AND

If Filed in the Sacramento Division to:

United States Attorney
(For Internal Revenue Service)
501 I St Ste 10-100
Sacramento, CA 95814

If Filed in the Modesto or Fresno Division to:

United States Attorney
(For Internal Revenue Service)
2500 Tulare St Ste 4401
Fresno, CA 93721

July 8, 2021 at 10:30 a.m.
- Page 5 of 44 -

For the service documented by the Certificate of Service, service has not been made on the Department of Justice Tax Division in Washington, DC and the U.S. Attorney for the Eastern District of California.

Sufficient Notice was not provided by Movant to the Internal Revenue Service as prescribed by the local rules. At the hearing, **xxxxxxx**

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 **xxxxxxx .**

This Motion requests an order avoiding the judicial lien of Internal Revenue Service ("Creditor") against property of the debtor, Harry J. Bourassa, Jr. ("Debtor") commonly known as 11 Barton Park, Oakdale, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$244,576.77. Exhibit B, Dckt. 24. An abstract of judgment was recorded with Stanislaus County on February 27, 2020, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$438,818.00 as of the petition date. Dckt. 20. The unavoidable consensual liens that total \$344,254.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 20. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$94,564.00 on Schedule C. Dckt. 1.

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 in its entirety subject to 11 U.S.C. § 349(b)(1)(B).

However, due to the defect in service, **xxxxxxx**

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Harry J. Bourassa, Jr. (“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 Internal Revenue Service, Notice of Federal Tax Lien, recorded on February 27, 2020, Document No. 2020-0013602-00, with the Stanislaus County Recorder, against the real property commonly known as 11 Barton Park, Oakdale, California, is avoided in its entirety for all amounts in excess of \$0 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.~~

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 Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on June 2, 2021. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Certificate of Service (Dckt. 30) documents service of the Motion and supporting pleadings for the creditor whose lien is being avoided, the Internal Revenue Service as follows:

IRS
P.O. Box 7346
Philadelphia (sic) PA 19101-7346

On the Roster of Governmental Agencies for addresses for service which they have specified with the court as provided in Federal Rules of Bankruptcy Procedure 2002(j), 5003(e), and Local Bankruptcy Rule 2002-1, service for the Internal Revenue Service must also be served on the U.S. Attorney for the Eastern District of California and the United States Department of Justice Tax Division, Civil Trial Section Western Region, Box 683 Ben Franklin Station, Washington, DC 20044. <http://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.002-785.pdf>.

For the service documented by the Certificate of Service, service has not been made on the Department of Justice Tax Division in Washington, DC and the U.S. Attorney for the Eastern District of California.

Sufficient Notice was not provided by Movant to the Internal Revenue Service as prescribed by the local rules. At the hearing, **xxxxxxx**

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 ~~XXXXXXX~~.

Possible Duplicate Motion

Debtor has filed a prior motion (DCN:LRR-2; Dckt. 21) that is pending before this court that appears to seek to avoid the same Internal Revenue Service lien as this motion.

At the hearing, ~~XXXXXXX~~

REVIEW OF MOTION

This Motion requests an order avoiding the judicial lien of Internal Revenue Service ("Creditor") against property of the debtor, Harry J. Bourassa, Jr. ("Debtor") commonly known as 11 Barton Park, Oakdale, California ("Property"). Specifically, it seeks to avoid the IRS lien in the amount of \$244,576.77. Exhibit B, Dckt. 29.

Debtor sought to avoid this same lien in the Motion under the docket control number LRR-2. This lien having already been avoided pursuant to that Motion the court cannot avoid it twice. There seems to have been a clerical error. In looking at the exhibits filed in support of all the five motions to avoid liens filed by Debtor, and set to be heard the same day, it may be that Debtor sought to avoid the Internal Revenue Service lien in the amount of \$62,354.03 filed as Exhibit C. Dckt. 29. However, this not being the request in front of the court, the court is unable to provide such relief without the Motion specifically stating so.

~~XXXXXXX~~

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Harry J. Bourassa, Jr. ("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 is ~~XXXXXXX~~ .

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on June 2, 2021. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Certificate of Service states that service on the Franchise Tax Board was made as follows:

Franchise Tax Board
Special Procedures Section
P.O. Box 2952
Sacramento, CA 95812-2952

The California Franchise Tax Board has specified that service, other than for adversary proceedings must be made as follows:

Franchise Tax Board
Bankruptcy Section MS A-340
PO Box 2952
Sacramento, CA 95812-2952

Roster of Governmental Agencies;
<http://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.002-785.pdf>.

While sent to the correct post office box, it is not addressed to the "Bankruptcy Section MS A-340." At the hearing, **XXXXXXX**

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 Franchise Tax Board (“Creditor”) against property of the debtor, Harry J. Bourassa, Jr. (“Debtor”) commonly known as 11 Barton Park, Oakdale, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$85,777.24. Exhibit D, Dckt. 34. An abstract of judgment was recorded with Stanislaus County on February 27, 2020, that encumbers the Property. *Id.*

Pursuant to Debtor’s Amended Schedule A, the subject real property has an approximate value of \$438,818.00 as of the petition date. Dckt. 20. The unavoidable consensual liens that total \$344,254.00 as of the commencement of this case are stated on Debtor’s Amended Schedule D. Dckt. 20. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$94,564.00 on Schedule C. Dckt. 1.

~~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 in its entirety subject to 11 U.S.C. § 349(b)(1)(B).~~

~~**ISSUANCE OF A COURT DRAFTED ORDER**~~

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

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

~~The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Harry J. Bourassa, Jr. (“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 franchise Tax Board, Notice of State Tax Lien, recorded on February 27, 2020, Document No. 2019-0057729-00, with the Stanislaus County Recorder, against the real property commonly known as 11 Barton Park, Oakdale, 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.~~

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 **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, parties requesting special notice, and Office of the United States Trustee on June 2, 2021. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Certificate of Service states that service on the Franchise Tax Board was made as follows:

Franchise Tax Board
Special Procedures Section
P.O. Box 2952
Sacramento, CA 95812-2952

The California Franchise Tax Board has specified that service, other than for adversary proceedings must be made as follows:

Franchise Tax Board
Bankruptcy Section MS A-340
PO Box 2952
Sacramento, CA 95812-2952

Roster of Governmental Agencies;
<http://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.002-785.pdf>.

While sent to the correct post office box, it is not addressed to the "Bankruptcy Section MS A-340." At the hearing, **XXXXXXX**

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 Franchise Tax Board ("Creditor") against property of the debtor, Harry J. Bourassa, Jr. ("Debtor") commonly known as 11 Barton Park, Oakdale, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$6,888.04. Exhibit E, Dckt. 39. An abstract of judgment was recorded with Stanislaus County on February 27, 2020, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$438,818.00 as of the petition date. Dckt. 20. The unavoidable consensual liens that total \$344,254.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 20. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$94,564.00 on Schedule C. Dckt. 1.

~~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 in its entirety subject to 11 U.S.C. § 349(b)(1)(B).~~

~~**ISSUANCE OF A COURT DRAFTED ORDER**~~

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

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

~~The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Harry J. Bourassa, Jr. ("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 Franchise Tax Board, Notice of State Tax Lien, recorded on February 27, 2020, Document No. DOC-2020-0011804-00, with the Stanislaus County Recorder, against the real property commonly known as 11 Barton Park, Oakdale, California, is avoided in its entirety for all amounts in excess of \$0 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.~~

7. [16-90083-E-7](#)
[SSA-24](#)

VALLEY DISTRIBUTORS,
INC.
Iain Macdonald

MOTION FOR COMPENSATION FOR
STEVEN S. ALTMAN, TRUSTEES
ATTORNEY(S)
6-11-21 [\[385\]](#)

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 June 11, 2021. 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 S. Altman, the Attorney ("Applicant") for Irma Edmonds, the Chapter 7 Trustee ("Client"), makes a Supplemental (Fourth) and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 1, 2018, through July 8, 2021. The order of the court approving employment of Applicant was entered on February 18, 2016. Dckt. 30. Applicant requests fees in the amount of \$7,017.00 and costs in the amount of \$158.08.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant’s services for the Estate include general case and claims administration, asset analysis and recovery, asset disposition, business operations, and employment applications. The Estate has \$405,589.48 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.

Asset Analysis and Recovery: Applicant spent 11.30 hours in this category. Applicant identified and reviewed potential assets including cause of action and non litigation recoveries. Applicant’s work in this category resulted in the recovery of the additional sum of \$56,242.34 on behalf of the bankruptcy estate. Dckt. 385.

Asset Disposition: Applicant spent 2.5 hours in this category. Applicant conducted work related to sales, leases pursuant to 11 U.S.C. § 365, abandonment, and related transactions.

Business Operations: Applicant spent 0.4 hours in this category. Applicant worked on issues related to debtor-in-possession operating in Chapter 11, such as employee, vendor, and tenant issues.

Case Administration: Applicant spent 0.5 hours in this category. Applicant prepared statement of financial affairs, schedules, list of contracts, United States interim statements and operating reports, contacts with the United States Trustee, and general creditor inquiries.

Claims Administration and Objection: Applicant spent 4.2 hours in this category. Applicant prepared specific claim inquiries, bar date motions, analysis, objections and allowances of claims.

Fee/Employment Applications: Applicant spent 3.2 hours in this category. Applicant prepared employment and fee applications for self or others, and motions to establish interim procedures.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Steven S. Altman	21.8	\$300.00	\$6,540.00
Dawn Darwin	1.3	\$90.00	\$117.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$6,657.00

Applicant totals services at 23 hours in the provided billing summary. Exhibit 1, Dckt. 389. However, hours as presented in the Motion total 21.8. The court applies those as listed in the motion in order to calculate the fees to be allowed.

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

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$28,050.00	\$28,050.00
Second Interim	\$13,200.00	\$13,200.00
Third Interim	\$9,930.00	\$9,930.00
	<u>\$0.00</u>	
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$51,180.00	

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$158.08 pursuant to this application. Pursuant to prior interim applications, the court has allowed costs of \$2,992.25.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	\$0.10	\$0.10
Postage (supplemental final fee application)	\$1.83	\$10.98
Postage (supplemental final fee application)	\$0.50	\$147.00
		\$0.00
Total Costs Requested in Application		\$158.08

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. Supplemental and Final Fees in the amount of \$6,657.00 and prior Interim Fees in the amount of \$51,180.00 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

Supplemental and Final Costs in the amount of \$158.08 and prior Interim Costs in the amount of \$2,922.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case .

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

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

Fees	\$6,657.00
Costs and Expenses	\$158.08

pursuant to this Application and prior interim fees of \$51,180.00 and interim costs of \$2,992.25 as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Steven S. Altman (“Applicant”), Attorney for Irma Edmonds, the Chapter 7 Trustee, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Steven S. Altman is allowed the following fees and expenses as a professional of the Estate:

Steven S. Altman, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$6,657.00

Expenses in the amount of \$158.08,

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 fees of \$6,657.00 and costs of \$158.08 are not allowed by the court.

The fees and costs pursuant to this Motion, and fees in the amount of \$51,180.00 and costs of \$2,992.25 approved pursuant to prior Interim Application, are approved as final fees and costs pursuant to 11 U.S.C. § 330.

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

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 Defendant, Plaintiff’s Attorney, and Office of the United States Trustee on June 9, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Withdraw as Attorney 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 Withdraw as Attorney is ~~XXXXX~~.

Diana J. Cavanaugh (“Movant”), counsel of record for Clifford Lee Barbera (“Defendant-Debtor”), filed a Motion to Withdraw as Attorney as Defendant’s counsel in the adversary case. Movant states the following:

- A. Counsel has billed debtor for costs incurred in this Adversary Proceeding. Debtor did not pay the costs.

Motion, Dckt. 39.

In his Bankruptcy Case Plaintiff-Debtor was granted his discharge on March 19, 2020.

This Adversary Proceeding has been stayed and relief from the stay granted to allow the completion of an arbitration and state court litigation. Plaintiff seeks a determination that the debt owed by Defendant-Debtor is nondischargeable as provided in 11 U.S.C. § 523(a)(6).

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(b) The client

(5) breaches a material term of an agreement with, or obligation, to the lawyer relating to the representation, and the lawyer has given the client

reasonable* warning after the breach that the lawyer will withdraw unless the client fulfills the agreement or performs the obligation.

CAL. R. PROF'L. CONDUCT 1.16(b)(5).

DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that Defendant-Debtor has not paid Counsel costs billed by counsel. Movant states in their declaration:

“I billed defendant for costs incurred in the case. Defendant did not pay the costs. Accordingly, Counsel requests an order permitting her to withdraw from representation of the defendant.”

Declaration, Dckt. 41.

Movant does not point the court to any relevant provision regarding withdrawal. Although the court has found the applicable rule, Movant does not present evidence that she has provided the warning necessary to the client regarding her withdrawal.

Movant does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice. Neither the Chapter 7 Trustee, Debtor, nor any other relevant party has filed an opposition to this Motion, however, which was filed according to Local Bankruptcy Rule 9014-1(f)(1).

Furthermore, under California Rule of Professional Conduct 3-700(C)(1)(f), Debtor's conduct, such as making payments for counsel's services breaches the agreement or obligation to counsel as to expenses or fees. Those are sufficient reasons for permissive withdrawal.

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

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

~~_____ The Motion to Withdraw as Attorney filed by Diana J. Cavanaugh (“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 to Withdraw as Attorney is granted, and Movant is permitted to withdraw as counsel for Clifford Lee Barbera (“Defendant”).~~

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 Defendant, Plaintiff's Attorney, and Office of the United States Trustee on June 9, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Withdraw as Attorney 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 Withdraw as Attorney is ~~XXXXX~~.

Diana J. Cavanaugh ("Movant"), counsel of record for Clifford Lee Barbera ("Defendant"), filed a Motion to Withdraw as Attorney as Defendant's counsel in the bankruptcy case. Movant states the following:

- A. Counsel billed debtor for costs incurred in the case. Debtor did not pay the costs.

Motion, Dckt. 146.

In this Bankruptcy Case Debtor was granted his discharge on March 19, 2020. It does not appear that there are any matters pending in this Case. (The court separately addresses the pending adversary proceeding in which Counsel represents the Debtor.)

APPLICABLE LAW

Eastern District of California District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(b) The client

(5) breaches a material term of an agreement with, or obligation, to the lawyer relating to the representation, and the lawyer has given the client

reasonable* warning after the breach that the lawyer will withdraw unless the client fulfills the agreement or performs the obligation.

CAL. R. PROF'L. CONDUCT 1.16(b)(5).

DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that Defendant-Debtor has not paid Counsel costs billed by counsel. Movant states in their declaration:

“I billed debtor for costs incurred in the case. Debtor did not pay the costs. Accordingly, Counsel requests an order permitting her to withdraw from representation of the debtor.”

Declaration, Dckt. 148.

Movant does not point the court to any relevant provision regarding withdrawal. Although the court has found the applicable rule, Movant does not present evidence that she has provided the warning necessary to the client regarding her withdrawal.

Movant does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice. Neither the Chapter 7 Trustee, Debtor, nor any other relevant party has filed an opposition to this Motion, however, which was filed according to Local Bankruptcy Rule 9014-1(f)(1).

Furthermore, under California Rule of Professional Conduct 3-700(C)(1)(f), Debtor's conduct, such as making payments for counsel's services breaches the agreement or obligation to counsel as to expenses or fees. Those are sufficient reasons for permissive withdrawal.

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

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

~~The Motion to Withdraw as Attorney filed by Diana J. Cavanaugh (“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 to Withdraw as Attorney is granted, and Movant is permitted to withdraw as counsel for Clifford Lee Barbera (“Defendant”).~~

FINAL RULINGS

10. [18-90600-E-7](#)
[MF-6](#)
10 thru 12

CORAZON HERNANDEZ
Brian Haddix

MOTION FOR COMPENSATION BY
THE LAW OFFICE OF MACDONALD
FERNANDEZ LLP FOR RENO F.R.
FERNANDEZ III, TRUSTEES
ATTORNEY(S)
5-20-21 [[142](#)]

Final Ruling: No appearance at the July 8, 2021 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, and Office of the United States Trustee on May 20, 2021. 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.

Macdonald Fernandez LLP, the Attorney (“Applicant”) for Michael D. 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 August 16, 2018, through February 11, 2021. The order of the court approving employment of Applicant was entered on October 11, 2018. Dckt. 20. Applicant requests fees in the amount of \$32,000.00 and costs in the amount of \$1,064.81.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant’s services for the Estate include assisting the Trustee in identifying the Estate’s assets, the use, sale, or lease of assets, other adversary proceedings and contested matters, and case administration. The Estate has \$57,832.28 of unencumbered monies to be administered as of the filing of the application. In this case, commencement of an adversary proceeding was necessary to asserts the rights of the estate in real property. Ultimately, the Trustee with the assistance of his employed professionals were able to strike a mutually beneficial economic resolution of the dispute rather than merely pounding forward with litigation. This helped in keeping the fees of professionals working on the economic, rather than “merely” the litigation, issues. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

In reviewing the Application and supporting documents, the court notes that Applicant has been very detailed in explaining the fees and costs, the services provided, and how this benefitted the bankruptcy estate. This is very important in light of the transparency in bankruptcy proceedings of professionals and trustees who have a fiduciary duty to the bankruptcy estate.

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 14.3 hours in this category. Applicant evaluated the status of the estate and its assets, reviewed court documents filed by other parties, and performed other tasks necessary to support the endeavors described elsewhere herein, including work on abandonment, settlement agreement, and compromise-related work.

Efforts to Assess and Recover Property of the Estate: Applicant spent 9.5 hours in this category. Applicant assisted the Trustee in evaluating the estate's rights in and claims to that certain real property located at 2721 E. Orangeburg Avenue in Modesto, California. Proceeds from the sale are the chief source of recovery for the estate.

Adversary Proceedings: Applicant spent 50.1 hours in this category. Applicant assisted the Trustee with bringing an adversary proceeding against the Debtor's mother to challenge her alleged equitable interest in the property. Such efforts successfully culminated in a settlement agreement that provided for the estate to obtain a lien against the property such that the estate would be paid upon sale.

Significant Motions and Other Contested Matters: Applicant spent 60.5 hours in this category. Applicant analyzed and challenged the Debtor's contentions regarding equitable ownership by her mother, opposed attempts to exempt and compel abandonment of the property, and aided in preparation of legal materials for settlement and other matters.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Reno Fernandez	18.1	\$375.00	\$6,787.50
Daniel Vaknin	101.2	\$275.00	\$27,830.00
Samantha Brown	15.8	\$90.00	\$1,422.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$36,039.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,064.81 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$12.16
Photocopies	\$0.20	\$5.00
PACER		\$53.50
Service Fee		\$80.11
Facsimile		\$0.80
Attorney Services - POS		\$42.00

Witness Fees and Service Fees		\$185.00
Deposition Corazon Maria Hernandez		\$278.74
Debtor's Exam		\$250.00
Telephonic Court Appear		\$157.50
Total Costs Requested in Application		\$1,064.81

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of \$32,000.00 for its fees incurred for Client. First and Final Fees in the amount of \$32,000.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 7 Trustee under the confirmed plan 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 \$1,064.81 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 100% of the fees and 100% of the costs allowed by the court.

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

Fees	\$32,000.00
Costs and Expenses	\$1,064.81

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 Macdonald Fernandez LLP (“Applicant”), Attorney for Michael D. 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 Macdonald Fernandez LLP is allowed the following fees and expenses as a professional of the Estate:

Macdonald Fernandez LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$32,000.00

Expenses in the amount of \$1,064.81,

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

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

Final Ruling: No appearance at the July 8, 2021 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, and Office of the United States Trustee on May 24, 2021. By the court’s calculation, 45 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Atherton and Associates, LLP, the Accountant (“Applicant”) for Michael D. 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 September 10, 2020, through March 16, 2021. The order of the court approving employment of Applicant was entered on October 29, 2020. Dckt. 128. Applicant requests fees in the amount of \$1,450.00 and costs in the amount of \$0.00.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?

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

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

A review of the application shows that Applicant’s services for the Estate include correspondence, tax planning and preparation, and preparing the fee application. The Estate has \$57,832.28 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.

Correspondence: Applicant spent 1 hours in this category. Applicant reviewed and corresponded with Trustee regarding settlement; and sent emails and pending list regarding tax consequences to Trustee.

Tax Planning: Applicant spent 1.70 hours in this category. Applicant prepared income tax projection on the sale of the Orangeburg property.

Tax Preparation: Applicant spent 2.70 hours in this category. Applicant worked on and completed the tax returns for the estate.

Fee Application: Applicant spent 0.40 hours in this category. Applicant prepared the 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	5.80	\$250.00	\$1,450.00
	0	\$0.00	<u>\$0.00</u>
Total Fees for Period of Application			\$1,450.00

Costs & Expenses

Applicant does not seek the allowance of costs and expenses through this application.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$1,450.00 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

Applicant does not seek the allowance of costs and expenses through this application.

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

Fees	\$1,450.00
Costs and Expenses	\$0.00

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 Atherton and Associates, LLP (“Applicant”), Accountant for Michael D. 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 Atherton and Associates, LLP is allowed the following fees and expenses as a professional of the Estate:

Atherton and Associates, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$1,450.00
Expenses in the amount of \$0.00,

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

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

12. [18-90600-E-7](#)
[MF-8](#)

CORAZON HERNANDEZ
Brian Haddix

**MOTION FOR COMPENSATION FOR
REMAX EXECUTIVE, BROKER(S)**
5-24-21 [154]

Final Ruling: No appearance at the July 8, 2021 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, and Office of the United States Trustee on May 24, 2021. By the court’s calculation, 45 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Remax Executive, the Real Estate Broker (“Applicant”) for Michael D. 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 August 6, 2019, through May 8, 2020. The order of the court approving employment of Applicant was entered on May 8, 2020. Dckt. 94. Applicant requests fees and expenses in the amount of \$522.50.

APPLICABLE LAW

Reasonable Fees

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

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

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

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

A review of the application shows that Applicant’s services for the Estate include researching public records, ordering preliminary title report, preparing purchase contract, and corresponded with attorneys, lender, and Trustee. The Estate has \$57,832.28 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.

Real Property Sale: Applicant spent 4.75 hours in this category. Applicant ordered a preliminary title report from the First American Title, obtained Trustee’s approval to edit contract, and corresponded with the lender and Trustee; prepared a purchase contract to coordinate with Trustee’s negotiation with Debtor, edited/approved contract and delivered a copy to the attorney; contacted attorney to check on signing status of purchase contract; and researched public records, reviewed comparable sales, and established valuation and possible equity for 2721 E. Orangeburg Ave., Modesto, California.

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
Robert Brazeal	4.75	\$110.00	\$522.50
	0	\$0.00	<u>\$0.00</u>

Total Fees for Period of Application

\$522.50

Costs & Expenses

Applicant does not seek the allowance of costs and expenses through this application.

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 \$522.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

Applicant does not seek the allowance of costs and expenses through this application.

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

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

Fees	\$522.50
Costs and Expenses	\$0.00

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 Remax Executive (“Applicant”), Real Estate Broker for Michael D. 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 Remax Executive is allowed the following fees and expenses as a professional of the Estate:

Robert Brazeal, of Remax Executive, Professional, employed by the Chapter 7 Trustee

Fees in the amount of \$522.50

Expenses in the amount of \$0.00,

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 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

13. [20-90107-E-7](#)
[AP-1](#)

PAUL DASILVA
Jessica Dorn

MOTION TO COMPEL
ABANDONMENT
5-26-21 [[57](#)]

Final Ruling: No appearance at the July 8, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, Trustee’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on May 26, 2021. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Compel Abandonment is granted.

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

The Motion filed by Wells Fargo Bank, N.A. (“Creditor”) requests the court to order Michael D. McGranahan (“the Chapter 7 Trustee”) to abandon property commonly known as 2506 Country Manor Drive, Riverbank, California (“Property”). The Property is encumbered by the lien of Wells Fargo Bank, N.A., securing a claim of \$237,096.02. The Declaration of Rachel Marcella Cathcart Love has been filed in support of the Motion. Debtor has valued the Property at \$340,750.00. Dckt. 16.

The Chapter 7 Trustee filed a Statement of Non-Opposition on June 24, 2021. Dckt. 63.

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

CHAMBERS PREPARED ORDER

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

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

The Motion to Compel Abandonment filed by Wells Fargo Bank, N.A. (“Creditor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted, and the Property identified as 2506 Country Manor Drive, Riverbank, California and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Michael D. McGranahan (“Trustee”) to Paul DaSliva by this order, with no further act of the Trustee required.

Final Ruling: No appearance at the July 8, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 4, 2021. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Final Decree and Order Closing Case has been filed by Alexandrino Vasconcelos and Durvalina Vasconcelos, the debtors in possession ("Debtor"). Debtor makes this request pursuant to

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

- A. On December 19, 2013, the court issued an order confirming the Debtor's Plan of Reorganization (Dckt.198).
- B. On April 22, 2019 there was an order granting a discharge. (Dckt. 236).
- C. On May 7, 2019 there was an order entered closing the case. (Dckt. 239).
- D. On November 23, 2020 the Plan Administrators requested reopening of the case for the purpose of forcing creditors to accept a tender of full payment of a mortgage (Dckt. 241). This issue being resolved, the case is now ready to again close.

- E. Under the Plan, the Debtor are responsible for making monthly distributions to creditors, as outlined in the Plan, with the first round of payments due July 1, 2013. The Debtor have made the required payments in timely fashion and are current. The Debtor are not currently in default under the terms of the Plan and while the Debtor reserve the right to seek to reopen the case should judicial intervention become necessary in the future; the Debtor do not anticipate a need for the court's further involvement in the distribution process at this time. Due to these facts, it is necessary and appropriate that the court close the case.

Motion, Dckt. 292, at p. 2.

APPLICABLE LAW

Final Decree and Closing of Case

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. 11 U.S.C. § 350(a) states additionally that the court is required to close a case after an estate is “fully administered and the court has discharged the trustee.” The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk*, 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been “fully administered,” factors the court considers include whether:

- A. the plan confirmation order is final;
- B. deposits required by the plan have been distributed;
- C. property to be transferred under the plan has been transferred;
- D. the debtor (or the debtor's successor under the plan) has taken control of the business or of the property dealt with by the plan;
- E. plan payments have commenced; and
- F. all motions, contested matters, and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. *See id.*; *In re John G. Berg Assocs., Inc.*, 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

DISCUSSION

Movant argues the following factors support approval of the Motion:

1. The court entered a confirmation order on December 19, 2013.
2. There are no outstanding deposits that require distribution under the plan and no outstanding property transfers.
3. Upon confirmation of the plan the relevant property became fully vested in the Debtors who are currently managing the estate.
4. The Debtor have made monthly mortgage payments in compliance with the confirmed plan.
5. Therefore, the Debtor are not currently in default under any provision of the plan.
6. Finally, all contested matters have been resolved.

There being no objection, Debtor is entitled to the closing of the case.

In consideration of the factors indicating full administration, the court finds the Estate has been fully administered. The Motion is granted, and the court shall enter an order closing the Chapter 11 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 Final Decree and Order Closing Case filed by Alexandrino Vasconcelos and Durvalina Vasconcelos, the debtors in possession (“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 is granted, the Chapter 11 case is closed, and the Clerk of the Court is authorized to close this case.