UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

September 30, 2021 at 10:30 a.m.

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1. **21-90301-E-7** **ADIS BEY** **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
BLF-2 **Gary Fraley** **8-26-21 [16]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on August 26, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

Gary R. Farrar ("the Chapter 7 Trustee") objects to Adis Bey's ("Debtor") claimed exemptions under California law because Debtor claimed 100% of fair market value, instead of claiming specific dollar amounts. California Code of Civil Procedure § 703.140(b) and § 704.730(a) do not allow claiming 100% of fair market value and requires the claimant to list actual values. A review of Debtor's Schedule C shows that real dollar amounts have not been claimed.

In Debtor's response, Dckt. 21, Debtor Attorney makes numerous objections to the position that § 704.730(a) requires a specific dollar amount. The court notes that Debtor's Response is short on any legal authority, and long on argument.

In Chapter 7 Trustee's reply in support of the objection to exemptions, Dckt. 24, Chapter 7 Trustee makes numerous arguments in support of the need for a specific dollar amount.

Although other states may allow for claiming the fair market value, and checking "100% of fair market value, up to any applicable statutory limit" on the Petition Form would be acceptable, California Code of Civil Procedure § 704.730(a) is clear:

> the amount of the homestead exemption is the greater of either (1) the county's median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars or (2) three hundred thousand dollars.

Therefore, Debtor needs to determine the specific dollar amount as to either § 704.730(a)(1) or § 704.730(a)(2). A specific dollar amount is required to be exempted.

A debtor's attorney does not need to worry about whether they have an accurate appraisal or that a debtor's belief of value is under market, resulting in a trustee selling property, paying the debtor less than the full amount of the exemption, and the bankruptcy estate pocketing part of what should have been the exemption.

The solution is simple. The debtor and debtor's counsel merely need to state the maximum dollar amount of the exemption which the debtor asserts. The court, trustee, and all parties in interest then know what the exemption is, the debtor knows what it is by clearly stating it, and there is no potential for later fights about what was meant by "100% of fair market value, up to any applicable statutory limit," referencing "C.C.P. § 704.730."

For example, there are at least possibly three different homestead exemption amounts that could exist under California Code of Civil Procedure § 704.730. First, there is a minium of $300,000. Second, there is the median sales price for a single family home in the county for up to $600,000. Third, there is a possible double $300,000 exemption for spouses in one homestead property.

The Chapter 7 Trustee's Objection is sustained, and the claimed exemption in the homestead property identified as 2416 Southridge Dr. Modesto, California is disallowed without prejudice.

The Debtor may file an Amended schedule C stating the dollar amount of exemption Debtor is asserting, with that amended Schedule C to be filed on or before November 30, 2021.

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

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

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

IT IS ORDERED that Objection is sustained, and the claimed exemptions for Debtor's Real Property commonly known as 2416 Southridge Dr. Modesto, California under California Code of Civil Procedure § 704.730(a) is disallowed without prejudice.

IT IS FURTHER ORDER that Debtor is granted leave to file an amended Schedule C stating a claimed exemption amount, with said amended Schedule C to be filed on or before November 30, 2021.

2. 20-90327-E-7 SSA-6 | **PHILIP/DALLIA ENGLE** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
Gurjeet Rai | **8-25-21 [101]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 25, 2021. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Objection to Claimed Exemptions are sustained, the court determining that the claimed exemptions are subordinated as a matter of law to the Trustee's rights and remedies on behalf of the bankruptcy estate.

The Chapter 7 Trustee, Michael D. McGranahan ("Trustee") objects to Philip S. Engle and Dallia D. Engle's ("Debtor") claimed homestead exemption under California law because of recorded tax liens on Debtor's real property.

On Schedule C, Debtor claimed a $175,000.00 homestead exemption in the real property identified as 5119 Curtis Street, Salida, California 95363 pursuant to California Code of Civil Procedure Section 704.730(a)(3)(A). The California homestead exemption pursuant to that section allows a debtor to claim an exemption of $175,000.00 where the "judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead... a person 65 years of age or older."

Trustee does not contest the amount of Debtor's claimed exemptions. Instead, Trustee contends any homestead claim and ultimate distribution rights will be subordinate to the Trustee's rights and remedies pursuant to 11 U.S.C. § 724, as well as valid tax liens.

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Pursuant to 11 U.S.C. § 522(c)(2), exempt property remains liable for debts secured by a lien that is not avoided or for which a notice of such things as a federal tax lien has been filed. The homestead exemption does not have precedence over the tax liens. 11 U.S.C. § 552(c)(2)(B). Trustee contends that the Debtor's homestead exemption claim should be allowed, but subordinated to the tax liens validly filed by the Franchise Tax Board (Claim 5-1) and Internal Revenue Service (Claim 7-2) pursuant to Trustee's rights of subordination under Bankruptcy Code Sections 724(a), 726, and 551.

11 U.S.C. § 724(a) provides that the "trustee may avoid a lien that secures a claim of a kind specified in section 726(a)(4) of this title."

In 11 U.S.C. § 726(a) Congress provides for the order of distribution in a Chapter 7 case, stating (emphasis added):

> (a) Except as provided in section 510 of this title, property of the estate shall be distributed—
>
> (1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed on or before the earlier of—
>
> (A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or
>
> (B) the date on which the trustee commences final distribution under this section;

(2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is—

(A) timely filed under section 501(a) of this title;

(B) timely filed under section 501(b) or 501(c) of this title; or

(C) tardily filed under section 501(a) of this title, if—

(I) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title [11 USCS § 501(a)]; and

(ii) proof of such claim is filed in time to permit payment of such claim;

(3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section 501(a) of this title [11 USCS § 501(a)] other than a claim of the kind specified in paragraph (2)(C) of this subsection;

(4) **fourth, in payment of any allowed claim**, whether secured or unsecured, **for any fine, penalty**, or forfeiture, or for multiple, exemplary, or punitive damages, **arising before the earlier of the order for relief or the appointment of a trustee**, to the extent that such fine, penalty, forfeiture, or damages **are not compensation for actual pecuniary loss suffered by the holder of such claim**;

(5) fifth, in payment of interest at the legal rate from the date of the filing of the petition, on any claim paid under paragraph (1), (2), (3), or (4) of this subsection; and

(6) sixth, to the debtor.

The 11 U.S.C. § 726(a)(4) distribution includes claims for fines and penalties owed to the creditor.

When read together, Sections 724(a) and 726(a)(4) "establish a statutory basis to allow the trustee to avoid tax penalty liens of the IRS and Franchise Tax Board." *In re Bolden*, 327 B.R. 657, 663-664 (Bankr. C.D. Cal. 2005).

When a lien is avoided, it does not disappear but as provided in 11 U.S.C. § 551, "any transfer avoided under section...724(a) of this title...is preserved for the benefit of the estate." Therefore, after the avoiding the tax penalty liens under Section 724(a), the lien is preserved as a matter of federal Bankruptcy Law for the benefit of the estate. Accordingly, Trustee's right to avoid the tax liens and then enforce those liens Sections 724(a) and 726(a)(4) as senior to Debtor's homestead exemption in the unencumbered value of the property.

Debtor appears to argue that they should have been allowed to sell the property, not the Trustee, and then pay the tax liens so as to have the rights of the Trustee and Bankruptcy Estate forfeited. That Debtor would prefer to have monies applied to tax penalties in their own financial interest, to the prejudice

of the bankruptcy estate and creditors, is not a surprise. However, such desire does not trump federal law as enacted by Congress.

The relief Debtor requests in the Opposition appears to actually be consistent with the law. Debtor asserts the right to a $175,000 homestead exemption. Opposition ¶ 7; Dckt. 109. Further that the recovery by the Bankruptcy Estate be limited to the amount of the subordinated tax claim. *Id*.

As a matter of California and Federal tax law, the Debtor's homestead exemption is not effective against such claims and liens.

> The homestead exemption does not have precedence over the tax liens. Generally, a debtor is not entitled to claim a homestead exemption on property that is subject to an IRS levy. Treas. Reg. on Proc. and Admin. § 301.6334-1(c); *United States v. Estes*, 450 F.2d 62, 65 (5th Cir. 1971); *Davenport v. United States*, 136 B.R. 125, 127-28 (Bankr. W.D. Ky. 1991) (a state-created homestead exemption is ineffective against a federal tax lien, but the proceeds of a sale of property are subject to a valid tax lien under § 522).

In re Bolden, 327 B.R. 657, 632-633 (Bankr. C.D. Cal. 2005).

Under California law the homestead exemption, whether automatic or recorded, does not preclude the recording of a lien against a debtor's homestead property and that lien being enforced senior in priority to the homestead exemption.

> § 7170. Attachment; Validity
>
> (a) Except as provided in subdivisions (b) and (c), **a state tax lien attaches to all property and rights to property whether real or personal**, tangible or intangible, including all after-acquired property and rights to property, belonging to the taxpayer and located in this state. A **state tax lien attaches to a dwelling notwithstanding the prior recording of a homestead declaration** (as defined in Section 704.910 of the Code of Civil Procedure).

Cal Gov Code § 7170 (emphasis added).

The Motion is granted and the court order shall provide:

A. The Debtor's homestead exemption is $175,000.

B. The homestead exemption is junior to the liens against the homestead property, including such liens as avoided by the Chapter 7 Trustee pursuant to 11 U.S.C. § 724(a) for liens securing claims for fines, penalties, or other obligation as stated in 11 U.S.C. § 726(a)(4).

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

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

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

IT IS ORDERED that the debtors Phillip and Dallia Engle ("Debtor") homestead exemption in the real property commonly known as 5119 Curtis Street, Salida, California, and the proceeds thereof, is $175,000.00

IT IS FURTHER ORDERED that the homestead exemption is subordinate to the liens and obligation amounts relating thereto for liens avoided by the Trustee pursuant to 11 U.S.C. § 724(a) for obligation included in 11 U.S.C. § 726(a)(4), which in this case consists of tax penalties, which liens are preserved for the benefit of the Bankruptcy Estate in this case as provided in 11 U.S.C. § 551.

3. 18-90029-E-11 JEFFERY ARAMBEL
3 thru 6

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

Debtor's Atty: Pro Se

Notes:
Continued from 5/20/21. Specially set time to be heard in conjunction with other matters on calendar.

The Status Conference is continued to xxxxxxx

SEPTEMBER 30, 2021 POST-CONFIRMATION STATUS CONFERENCE

At the Post-Confirmation Status Conference, **xxxxxxx**

May 20, 2021 Post-Confirmation Status Conference

Focus Management Group, USA, Inc., the Chapter 11 Plan Administrator, filed an updated Status Report on May 17, 2021. Dckt. 1446. The Plan Administrator has abandoned or is in the process of abandoning all of the real property other than that identified as the Filbin-Stadtler Ranch. Even though a substantial amount of the real property, the Plan Administrator reports the following assets being administered through the Chapter 11 Plan:

A. tax reserve funds and potential tax refunds,

B. the Filbin Ranch,

C. the Estate's membership interest in JEA2, LLC,

D. the Westly Lot,

E. the 1/3 interest in the Oakdale Development Property,

F. the Estate's potential interest in the remaining property held by Filbin Land &

Cattle Company,

G. the Estate's farm equipment, and

H. certain other (unidentified) assets.

At the Status Conference, counsel for the Plan Administrator updated the court that for the remaining assets, the Plan Administrator is working on possible liquidation options. The LBA settlement is being implemented, but the Clerk's Office is questioning whether the estate's tax I.D. number be used or the tax I.D. of the plan administrator.

4. 18-90029-E-11 FWP-13 JEFFERY ARAMBEL Michael St. James CONTINUED MOTION TO ABANDON 4-8-21 [1410]

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

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

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

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

The Motion to Abandon is xxxxx.

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

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

(the "Properties").

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

Ms. Schwartzkopf testifies that the Properties have been actively marketed by the Reorganizing Debtor and by the Plan Administrator for over 16 months during the Negotiated Period (Plan provision during which Debtor was to perform certain duties regarding plan assets) and for years prior to the Plan confirmation but that unfortunately they were not sold. *Id.*, ¶18. The Plan Administrator being unable to obtain offers in an amount that was sufficient to pay the secured claims on and tax liabilities related to the Properties. *Id.* Additionally, the Plan Administrator explains that SBN V Ag I LLC ("Summit") as one of the primary sources of funds for the post-confirmation administration of the Estate has indicated they will no longer consent to further use of their cash collateral for pursuing short sales of its collateral. *Id.,* ¶ 37. Ms. Schwartzkopf also testifies that Summit has informed the Plan Administrator that it intends to proceed promptly with non-judicial foreclosure of the Properties. *Id.*, ¶35.

Creditor's Opposition

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

Plan Administrator's Reply

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

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

SBN V Ag I LLC ("Summit") Response

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

DISCUSSION

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

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Plan Administrator to immediately abandon the following properties:

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

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

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

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

August 12, 2021 Hearing

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

September 30, 2021 Hearing

No further documents have been filed in this Contested Matter as of the court's September 28, 2021 review of the Docket. At the hearing, **xxxxxxx**

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 Abandonment filed by Focus Management Group USA, Inc. ("the Plan Administrator") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED xxxxxxx**

5. 18-90029-E-11 FWP-16 | **JEFFERY ARAMBEL** Michael St. James | **CONTINUED MOTION TO EMPLOY WEST AUCTIONS, INC. AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES AND/OR MOTION AUTHORIZING THE SALE OF ESTATE ASSETS BY AUCTION, MOTION AUTHORIZING THE ABANDONMENT OF ANY FARM EQUIPMENT NOT SOLD AT AUCTION**
8-12-21 [1500]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2021. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 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.

The Motion to Employ is granted.
The Motion to Sell Property by Auction is granted.
The Motion to Abandon Equipment is granted.

Focus Management Group USA, Inc. ("Plan Administrator") requests multiples level for relief through this one Motion.

The first being to employ an auctioneer pursuant to 11 U.S.C. § 327 so that the auctioneer may assist the Plan in liquidating the estate's interest in certain farm equipment.

The second motion is for the sale of property of the estate free and clear of liens and other interests as provided in 11 U.S.C. § 363, specifically certain farm equipment via auction.

Lastly, the third motion is for authorization to abandon any farm equipment not sold at auction pursuant to 11 U.S.C. § 554(a) on the grounds that the unsold farm equipment will be burdensome or of inconsequential value to the bankruptcy estate. The court will take each relief requested in turn below.

The court notes that Local Bankruptcy Rule 9014-1(d)(5) states that "[e]very application, motion, contested matter or other request for an order, shall be filed separately from any other request, except (1) that relief in the alternative based on the same statute or rule may be filed in a single motion; and (2) as otherwise provided by these rules." Federal Rule of Civil Procedure 18, which is incorporated into adversary proceeding practice by Federal Rule of Bankruptcy Procedure 7018, is not incorporated into Federal Rule of Bankruptcy Procedure 9014(c). No request has been made by the Plan Administrator for the court to make Rule 18/7018 applicable in this Contested Matter.

SUPPLEMENTAL DOCUMENTS FILED SEPTEMBER 30, 2021

Supplement to Plan Administrator's Motion for Order

1. Auctioneer Fees - The Plan Administrator has amended its contract with the Auctioneer to remove the Buyer's Premium and amended the Auctioneer's compensation as well as damages if the Plan Administrator breaches.

2. Sale Free and Clear of the Junior Interests - The Plan Administrator details why two potential Junior Interests are no longer valid encumbrances on the Farm Equipment.

3. Service of Process - The Plan Administrator provided proper service of process on the Junior Interests: National Funding served August 12, 2021; Ingram Creek Restaurant served August 12, 2021.

Declaration of Jeffery E. Arambel

Mr. Arambel, as the owner and operator of Ingram Creek Restaurant, confirms that the UCC-1 financing statement recorded by Ingram Creek Restaurant no longer represents a lien or security interest in the Farm Equipment in his bankruptcy estate. Ingram Creek does not object to the sale of the Farm Equipment free and clear of any liens, claims, or encumbrances by Ingram Creek or the sale to the senior lienholders.

The court notes, although this Declaration is signed, it is not dated.

Declaration of Jason E. Rios

National Funding confirmed with Mr. Rios that National Funding's judgment has been satisfied and they do not assert a claim to the proceeds of an equipment auction by the Plan Administrator.

Declaration of Juanita Schwartzkopf

Ms. Schwartzkopf confirms the Amendment to the proposed Auction Agreement with an increase in commission from 20% to 34% to address the loss of the Buyer's Premium. Additionally, Ms. Schwartzkopf confirms that if the Plan Administrator breaches their agreement, the Auctioneer shall receive $15,000.00 as liquidated damages.

Supplemental Exhibits

Exhibits provided for: (1) Amended Agreement to Sell - no buyers premium; (2) UCC Lien Search Certificate with Documents; and (3) Email Correspondence with National Funding.

Proof of Service

Supplemental documents were served to all relevant parties.

FIRST CLAIM FOR RELIEF REQUESTED
EMPLOYMENT OF AUCTIONEER

The Plan Administrator seeks to employ West Business Holdings, Inc. dba West Auctions, Inc., ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code §§ 327, 328(a) and 330. Plan Article IX authorizes the Plan Administrator to employ professionals without Bankruptcy Court approval. However, the Plan Administrator notes for the court that the Plan Administrator seeks the authorization to employ Auctioneer to since its employment is integral to the proposed auction of the Farm Equipment subject of the Plan Administrator request for authority to sell such property.

Plan Administrator argues that Auctioneer's appointment and retention is necessary to assist Plan Administrator in liquidating the estate's interest in certain farm equipment via online auction. The Plan Administrator believes it is in the best interest of the estate to employ West Auctions because West Auctions is experienced in sales of property like the Farm Equipment and is able to expose the Farm Equipment to a large number of prospective purchasers. As a result, the Plan Administrator is confident that West Auctions' efforts will enable the estate to obtain the greatest possible return for the Farm Equipment. Schwartzkopf Declaration, Dckt. 1502, ¶ 6.

As stated in the Agreement, Auctioneer agrees to advertise the Property for auction and to make an earnest and good faith effort to sell the Property as agreed upon with the Plan Administrator. The Property may be sold in bulk, piecemeal, or in such lots as Auctioneer may reasonably determine, in consultation with the Plan Administrator. Further, Plan Administrator has agreed to pay Auctioneer as follows:

a. (1) 20% of the gross sales proceeds of the Personal Property, or any portion thereof; or (2) Three Thousand Five Hundred and No/100ths Dollars ($3,500.00).

> Said fee shall be paid whether the buyer is found by Auctioneer or by the undersigned Seller or by any other person.
>
> b. At no expense to Seller, Auctioneer reserves the right to initiate a buyer's premium and it will not be considered a part of Auctioneer's brokerage fee or gross sales proceeds. Buyer's premium shall not exceed 14% and shall be reduced to 10% for Buyers who pay with certified funds.

Agreement, Dckt. 1504, at ¶ 3.

Auctioneer will disburse the fees and costs set forth in paragraph 3 above to Auctioneer from the gross sales proceeds; and within two (2) business days of receipt of funds for the entire purchase price from the purchaser of the Property, Auctioneer will provide an accounting to the Plan Administrator along with the distribution of the net proceeds. *Id.*, at ¶ 6.

The Agreement further provides that if the Plan Administrator breaches the Agreement, then Auctioneer shall received $15,000 as liquidated damages as the "reasonable estimate of the amount of such damages." *Id.*, ¶ 10. With a 20% "commission" and an additional 14% "buyers premium," the Plan Administrator and Auctioneer are projecting gross sales proceeds of $44,117 ($44,117 x 34% =$14,999.78).

Donna Bradshaw, a Owner and Operator of West Auctions, Inc., testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

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

Amount of Compensation

In reviewing the terms of employment, the compensation for the Auctioneer causes the court concern. On its face, the terms are stated to be that only a twenty percent (20%) commission will be taken by the auctioneer. However, it is further stated (subject to the certifications of the Plan Administrator and counsel pursuant to Federal Rule of Bankruptcy Procedure 9011)

> 18. With respect to the 14% buyers' premium, the Bradshaw Declaration sets forth the basis for the determination that such fees are customary in the industry and are reasonable under these circumstances (again, they are charged to the buyers, and not included in the gross proceeds to be remitted to the bankruptcy estate). Specifically, Bradshaw has represented that the buyer's premium is an industry-standard charge

> that the majority of auction firms use, and has been in practice since the 1970's. Such a premium can range anywhere from 10% - 25% and is added to the final purchase price. In Bradshaw's experience, auction bidders are familiar with this practice, and the buyer's premium is prominently disclosed in all of West Auctions' advertising. The buyer's premium in part covers the auctioneer's administrative costs, including insurance, bonds, administrative staff and other expenses that are not passed on to the seller. It also covers the fees involved with an online auction. Bradshaw Decl. ¶ 11

Motion, ¶ 18, Dckt. 1500.

In the Agreement, the Plan Administrator and Auctioneer state that "At no expense to [Plan Administrator], Auctioneer reserves the right to initiate a buyer's premium and it will not be considered a part of Auctioneer's brokerage fee or gross sales proceeds. Buyer's premium shall not exceed 14% . . . ." Agreement, ¶ 3.b; Exhibit B, Dckt. 1504.

In substance, the Plan Administrator and Auctioneer represent to the court that if the Auctioneer adds a premium of 14% to the sales price that is taken through the side door (as in not part of the compensation allowed a professional subject to review under 11 U.S.C. § 328), it has no effect on the sales price and doesn't "cost" the Plan Administrator (and creditors) anything.

With a projected sales price (based on the good faith estimate of liquidated damages) of $44,117, in addition to $8,823.40, Auctioneer will be paid an additional $6,176.38 though the side, non-11 U.S.C. § 328 side door. Almost half of what Auctioneer is to receive is structure to be beyond the statutory protections and requirements enacted by Congress.

While stating that the 14% through the non-11 U.S.C. § 328 side door isn't a cost to the Plan Administrator, such belies basic transactional economics. If the property is worth $44,117 and is being sold for its fair market value, with the commission paid by seller from the proceeds, then the buyer pays $44,117. If the buyer has to pay an additional 14% to Auctioneer, then such amount will reduce the purchase price that a commercially reasonable buyer is willing to pay, and not increase the fair market value of the property being sold.

If there are reasonable fees and expenses to be paid Auctioneer for service to be provided as a professional hired by, and owing its fiduciary duties to, the Plan Administrator, then such amounts need to be clearly stated and paid by the Plan Administrator. If there is "extra" commission being paid the professional employed by the Plan Administrator, such need to be clearly stated and paid by the Plan Administrator. Further, such fees and expenses must be allowed pursuant to 11 U.S.C. § 330 and subject to review, if appropriate, as provided in 11 U.S.C. § 328.

The court discusses these points and the statutory requirements not because it questions the ethics and good faith of the Plan Administrator, Auctioneer, or Plan Administrator's Counsel, but in recognition of persons out there in the world who do not have such ethical standards and laws have been enacted to address. These laws are not selectively applied only to the "bad guys," with the court ignoring the law for "favored" parties and counsel. The court is confident that the Parties can think of attorneys, auctioneers, and other "professionals" in the bankruptcy world that they know these laws have been enacted to address.

In the past decade this court has had fiduciaries of the bankruptcy/plan estate (as is the Plan Administrator) hire professionals who have a fiduciary duty to the bankruptcy/plan estate (as is the

Auctioneer) to provide fair compensation, payment of reasonable identified expenses, pre-approved contingency amounts, and the ability to adjust such amounts upwards for the professional in the event that the reasonably negotiated expenses turn out to be unreasonably low based upon unforseen expenses.

Amendments to the Sale Agreement

The Amendment to the Sale Agreement is provided as Exhibit C. Dckt. 1539. Under the original terms, the Auctioneer was charging the Plan Estate a 20% commission, and then would possible, if the Auctioneer thought it appropriate, collect and additional 10% to 14% from the buyer as a "buyer's premium." As addressed above, the court expressed concerns as to how the Auctioneer employed by the Plan Administrator whose fees have to approved by this court could have additional compensation for selling the property, collected from the person buying the property from the Plan Administrator.

To solve this possible additional 10% to 14% compensation, the Plan Administrator has negotiated with the Auctioneer to pay an additional flat 14%. Under the original terms, the 10% buyer's premium would be charged if the buyer paid with certified funds. Under the amended terms, the Plan Administrator has negotiated to pay an additional 14% commission even if the buyer pays with certified funds.

Under the terms of the Sale Agreement, the Auctioneer will be paid no additional amounts for any costs, fees, or other expenses in addition to the 34% commission on the gross sales price.

SECOND CLAIM FOR RELIEF
SALE OF PROPERTY BY AUCTION

The Bankruptcy Code permits the Plan Administrator in this case to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the property identified as:

Arambel
Farm Asset List (Approximate Units)
As of 3/31/21

Salable Items	Total
New Holland TC-30 Tractors	123
John Deere Tractors	20
Caterpillar Tractors	3
Plastic Irrigation Pipe	400
Steel Irrigation Pipe	75
Pickup Trucks	8
Toyota Camry	1
Aluminum Fruit Ladders	1500
Bin Trailers	40
Fruit Trailers	2
Fuel Trailers	1
Spray Trailers	3
Flatbed Trailers	120
Plow Trailers	13
Mobile Trailers	3

("Property"). Plan Administrator proposes the sale be made via online auction with West Auctions, Inc. As the Auctioneer as stated above.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the senior lien of Summit ("Creditor"). The Motion also seeks to sell free and clear of liens of Ingram Creek Restaurant and National Funding, Inc., who may hold a junior lien on one or more items of the Farm Equipment. The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> (f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established, according to the Plan Administrator's Declaration that the net proceeds of the sale will be payable to Summit. As to the potential liens of Ingram Creek Restaurant and National Funding, Inc., the Plan Administrator argues that neither the Schedules nor the Plan identified any such interest, and even if such Junior Interests exist, the amount owed to Summit secured by the Farm Equipment greatly exceeds the value of the Farm Equipment and Summit's financing statements were recorded prior to the Junior Interests. Therefore, Summit holds the senior secured interests in the Farm Equipment and there is no equity in the Farm Equipment for the Junior Interests.

While arguing that no such value exists for the junior lien creditor, the Plan Administrator does not direct the court to any order of this court valuing the Ingram Creek Restaurant and National funding, Inc. secured claim as $0.00 as provided in 11 U.S.C. § 506(a).

Much of the Plan Administrator's arguments are based on the Debtor (who was removed from this case from participating in the administration of the plan due to misconduct) as being the basis for disputing the claim. Additionally, because creditor did not file a proof of claim, such is effectively *prima facie* evidence that the claim may be disputed.

Debtor's good faith and credibility has been cratered by his conduct in this case and it is curious that the Plan Administrator now embraces him as "evidence" of a dispute. The Plan Administrator's

assertion that an absence of a proof of claim is prima facie evidence that it is in dispute flies in the face of what the United States Supreme Court requires in Federal Rule of Bankruptcy Procedure 3002(a) which provides, "A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim."

The above dispute contention is based merely because the Plan Administrator is "informed and believes." The court will not destroy property rights using 11 U.S.C. § 363(f) merely because someone is informed that if they believe they dispute the lien the lien disappears.

The Plan Administrator also seeks relief based on the junior lien interest being subject to applicable state law allowing it to be "wiped out" by a sale of the collateral by a senior lien holder. The Plan Administrator cites the court to the Ninth Circuit decision in *Pinnacle Res. At Big Sky, LLC v. CH SP Acquisitions, LLC (In re Spanish Peaks Holdings II, LLC)*, 862 F.3d. 1148, 1157 (9th Cir. 2017), for the proposition that nonbankruptcy foreclosure sale law is a basis for the sale of property free and clear of a junior interests (in *Spanish Peaks Holding II, LLC* it was a lease of real property) pursuant to 11 U.S.C. § 363(f)(1), which provides "(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; . . . ."

The Plan Administrator is correct in asserting that under the California Commercial Code a senior lien holder may sell collateral free and clear of a junior lien. Though not cited in the Points and Authorities, the legal basis for this conclusion include:

> § 9610. Disposition of collateral after default; Treatment of warranties
>
> (a) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing. . .
>
> § 9617. Rights of transferee of collateral
>
> (a) A secured party's disposition of collateral after default does all of the following:
>
> > (1) Transfers to a transferee for value all of the debtor's rights in the collateral.
> >
> > (2) Discharges the security interest under which the disposition is made.
> >
> > (3) Discharges any subordinate security interest or other subordinate lien.
>
> (b) A transferee that acts in good faith takes free of the rights and interests described in subdivision (a), even if the secured party fails to comply with this division or the requirements of any judicial proceeding.

For the remaining subordinate secured claim, Movant has stated grounds showing that under California law that the Property may be sold free and clear of the subordinate lien, with the lien attaching to the sale proceeds, if any remain after payment of the senior lien, to the same extent, validity, and priority as they existed in the Property sold pursuant to order of the court.

Unfortunately, the Plan Administrator has not provided evidence of this asserted subordinate lien of Ingram Creek Restaurant and National Funding, Inc. In Juanita Schwartzkopf's Declaration, she testifies under penalty of perjury, based on her personal knowledge (Fed. R. Evid. 601, 602) on this "fact:"

> 15. The report of Secretary of State's lien records for Mr. Arambel also identifies the following potential interests in the Farm Equipment (collectively, the "Junior Interests"):
>
> > a. A security interest asserted by Ingram Creek Restaurant in "All present and future assets of the Debtor"; This financing statement was recorded on September 13, 2016.
> >
> > b. A security interest asserted by National Funding, Inc. as a Judgment Lien. This judgment lien was recorded on November 7, 2016.
>
> 16. Each of the Junior Interests were recorded after Summit's UCC-1's. Therefore, the Plan Administrator seeks to sell the Farm Equipment free and clear of the Junior Interests with the net proceeds of the sale payable to Summit.

Dec. ¶ 15; Dckt. 1502.

In substance, the testimony by Ms. Schwartzkopf is that she "heard" the Secretary of State Report "say" when she read it, that the financing statement and judgment lien were recorded on specified dates. That based on what she heard said, the court should enter an order that liens, for which no filing information is provided, be wiped out.

The Plan Administrator has not provided the court with an authenticated copy of the Secretary of State Report (Fed. R. Evid. 901 et seq.) or authenticated copies of the financing statement and judgment lien asserted subordinate to the Summit lien.

As is discussed about application of the law and rules to everyone, not just those attorneys or parties who are subject to the court's ire, presentation of properly authenticated, non hearsay evidence is required before the court wipes out property rights. Additionally, the court needs the filing information to properly identify the lien and not merely avoid "whatever lien" is asserted to exist.

Supplemental Pleadings

The Plan Administrator has provided copies, with the filing data, identifying the two liens which the sale free and clear are requested. Exhibit D, Dckt. 1539.

A. A security interest asserted by Ingram Creek Restaurant in "All present and future assets of the Debtor"; This financing statement was recorded on September 13, 2016, as Document No. 571984440002. A copy of this financing statement is attached to the Supplemental Exhibit Document as page 96 of Exhibit D.

B. A security interest asserted by National Funding, Inc. "National Funding" as a Judgment Lien. This judgment lien was recorded on November 7, 2016 as Document

No. 16-7556071644. A correct copy of this Notice of Judgment Lien is attached to the Supplemental Exhibit Document as page 98 of Exhibit D

With respect to the National Funding lien, counsel for the Plan Administrator counsel provides his personal knowledge testimony in a supplemental Declaration. Dckt. 1537. With respect to the facts testified to in the Declaration based on counsel's personal, knowledge, counsel states that his personal knowledge is based upon:

> [i]nformation supplied to me by people who report to me, upon information supplied to me by my professionals and consultants, upon my review of relevant documents.

Declaration, ¶ 2; Dckt. 1527. This "personal knowledge" information appears to be either what someone else told counsel or counsel repeating when he has read. It appears that this testimony is hearsay, repeating what someone else told counsel.

In reality, the specific information is not based on what someone told counsel, but what he personally observed. For the National Funding claim, he recounts his conversation with National Funding's general counsel (the opposing party) and authenticates an email set to the Plan Administrator's counsel from National Funding's General Counsel stating that it has no claim to assert against the Debtor. Exhibit E, Dckt. 1539.

For the Ingram Creek Restaurant lien, the supplemental testimony of Jeffery Arambel is provided. Declaration, Dckt. 1535. Mr. Arambel testifies that Ingram Creek was closed before the property was sold in the related bankruptcy case for Filbin Land & Cattle Co., and that Ingram Creek does not assert that any money is owed by Debtor. Declaration, ¶ 4; *Id*.

It is not clear how Mr. Arambel "knows" that Ingram Creek asserts that no debt is owed by Debtor. The UCC-1 Financing Statement identified the secured party as "Ingram creek restaurant." Exhibit D; Dckt. 1539 at 97-98. The California Secretary of State website does not disclose any entity with the words Ingram Creek in its name as having registered to do business in this State as either a corporation or limited liability company. [Fn.1.] It is not clear who Ingram Creek Restaurant is and how Mr. Arambel "knows" that Ingram Creek Restaurant states that no debt is secured by the lien.

FN. 1.
https://businesssearch.sos.ca.gov/CBS/SearchResults?filing=&SearchType=LPLLC&SearchCriteria=ingram+creek&SearchSubType=Keyword

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The UCC-1 identifies a second debtor whose assets secure the debt, that second debtor being "Ingram creek restaurant." Thus, it appears that "Ingram creek restaurant" is both the debtor and the creditor stated on the UCC-1.

For Ingram creek restaurant as the creditor, its address is stated to be "P.O. Box 2576 uccsprep@cscinfo.com, Springfield, Illinois.

The court notes that on the UCC-1 Mr. Arambel's address is listed as 4502 Ingram Creek Road, Westly, California. The address for the "Ingram creek restaurant" entity is also stated to be 4502 Ingram Creek Road, Westley, California.

In his Declaration Mr. Arambel testifies, "I owned and operated Ingram Creek Restaurant . . . on the gas station and restaurant property formerly owned by Filbin Land & Cattle Co., Inc." Declaration ¶ 4; Dckt. 1535. It appears that Mr. Arambel is "Ingram creek restaurant" and that Mr. Arambel has filed documents stating that he is a debtor to himself as a creditor.

At the hearing , **xxxxxxx**

Sufficient Service

In reviewing the Certificates of Service, a question exists whether sufficient service has been made by service in compliance with Federal Rule of Civil Procedure 4, Federal Rules of Bankruptcy Procedure 7004, 9014(b) for the sale free and clear of their property rights and interests as creditors with a secured claim on Ingram Creek Restaurant and National Funding, Inc. by the service stated on the Certificate of Service, Dckt. 1507, as follows:

INGRAM CREEK RESTAURANT
4502 INGRAM CREEK ROAD
WESTLEY CA 95387

INGRAM CREEK RESTAURANT
P. O. BOX 2576
SPRINGFIELD IL 62708

NATIONAL FUNDING INC.
P. O. BOX 503450
SAN DIEGO CA 92150

NATIONAL FUNDING INC.
C/O SALISIAN LEE LLP
550 SOUTH HOPE ST. SUITE 750
LOS ANGELES CA 90071

With respect to the service made to unnamed persons at post office box addresses and care of a law firm, Federal Rule of Bankruptcy Procedure 7004(b) provides that for service by mail:

(b) Service by first class mail. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

. . .

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

The court could locate National Funding, Inc. and its agent for service of process from the California Secretary of State website. It's agent for service of process is not the Salisian Lee, LLP law firm. No information concerning Ingram Creek Restaurant was available on the Secretary of State website. However, an internet search turned up several references to a restaurant in Patterson, California and also at the same street address in Westly, California.

THIRD CLAIM FOR RELIEF
ABANDONMENT OF FARM EQUIPMENT

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

The Plan Administrator requests that the court authorize the abandonment of any farm equipment that is not sold via the online auction. The Declaration of Juanita Schwartzkopf has been filed in support of the Motion and provides testimony that the projected gross sale proceeds are approximately $150,000 to $200,000. Declaration, Dckt. 1502, ¶ 18. Further testifying that if no buyer purchases the unsold Farm Equipment at the auction, then such unsold items would not have any liquidation value either and would only be a burden on the estate. *Id.*

The court not having authorized the employment of the auctioneer, not having approved the sale of the Property, and being inexorably tied to this multi-claim for relief Motion, determination of the relief requested is continued to the further hearing date.

DISCUSSION

The Plan Administrator has supplemented the record with evidence of the liens encumbering the property and has amended the Sale Agreement so that all of the fees to be paid to the auctioneer for the employment authorized by this court are approved by this court.

The court having made Federal Rule of Civil Procedure 18, as incorporated into Federal Rule of Bankruptcy Procedure 7018 and 9014, in force for this Contested Matter and authorized the joining of multiple claims for relief in one Motion, the Motion is granted.

Counsel for the Plan Administrator shall prepare and lodge with the court a proposed order granting the motion to employ, motion to sell, and motion to abandon, all in one order.

6. 18-90029-E-11 JEFFERY ARAMBEL MOTION TO ABANDON
FWP-18 Michael St. James 8-26-21 [1513]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Abandon is granted.

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

The Motion filed by Focus Management Group USA, Inc. ("the Plan Administrator") requests that the court authorize the Plan Administrator to abandon 100% membership interest in JEA2, LLC ("Property"). The Property is encumbered by the liens of Summit, securing claims in the aggregate of $43,652,766.22. The Declaration of Juanita Schwartzkopf has been filed in support of the Motion and provides testimony that there is no realizable equity in the Property.

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Plan Administrator to abandon the Property.

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

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

The Motion to Abandon Property filed by Focus Management Group USA, Inc. ("the Plan Administrator") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted, and the Property identified as JEA2, LLC is abandoned to Jeffery E. Arambel by this order, with no further act of the Plan Administrator required.

7.	**20-90645-E-7** **BLF-5** **7 thru 8**	**MOHIT RANDHAWA** **David Johnston**	**CONTINUED OBJECTION TO HOMESTEAD EXEMPTION** **8-5-21 [112]**

The Hearing on the Objection to Homestead Exemption is continued to xxxxxxx

The court originally continued the hearing on this Objection to allow the court additional time to research and address some very novel issues arising concerning the California homestead exemption law.

On September 28, 2021, discovered through a Status Report in an unrelated adversary proceeding, the court has learned that counsel for the Debtor has been diagnosed with COVID-19 and has been hospitalized. Also, that counsel for Debtor will be unable to practice law for the period from late September 2021 through late November 2021.

Debtor not having counsel available for oral argument, the court continues the hearing.

8. **20-90645-E-7** **MOHIT RANDHAWA** **MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR BOB BRAZEAL, REALTOR(S)**
BLF-6 **David Johnston** **9-7-21 [130]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on September 7, 2021. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits Gary Farrar, the Chapter 7 Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1408 Horizon Lane, Patterson, California 95363 ("Property").

The proposed purchaser of the Property is Harmit Sandhu and Ashleen Sandhu, and the terms of the sale are:

A. Purchase Price: $580,000.00

B. Initial deposit: $12,000.00

C. First loan: $464,000.00

D. Balance of purchase price: $104,000.00 cash

E. Property sold in as-is condition

F. Buyer and seller shall pay escrow fee 50/50

G. Buyer and seller shall pay for owner's title insurance policy 50/50

H. Seller shall pay County transfer tax or fee

I. Buyer shall pay City transfer tax or fee

J. Buyer to pay HOA transfer fee if any, and HOA fees for preparing documents

K. Buyer to pay PMZ Real Estate Transaction Coordinator fee of $395.00

L. No loan contingency

M. Buyer to pay for cost not to exceed $600.00 for one-year home warranty with air conditioner option

N. Close of escrow shall occur within 15 days after the filing of the court's order approving the sale of the property

O. All built-in appliances will stay including all stoves

P. Item 22 of the Sandhu Offer is removed from the contract

DISCUSSION

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will allow Mr. Farrar to collect $283,454.73 for the estate, the proposed sale is the highest and best available price for the property, proper notice will be provided and the sale is in good faith.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately $34,800.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six percent commission.

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

IT IS ORDERED that Gary Farrar, the Chapter 7 Trustee is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(x) to Harmit Sandhu and Ashleen Sandhu or nominee ("Buyer"), the Property commonly known as 1408 Horizon Lane, Patterson, California 95363("Property"), on the following terms:

A. The Property shall be sold to Buyer for $580,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 134, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Property is sold free and clear of the lien of Wells Fargo Bank, N.A., Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(x), with the lien of such creditor attaching to the proceeds. The Chapter 7 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.

D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

E. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be distributed as the following: three percent to the Chapter 7 Trustee's broker, Bob Brazeal of Remax Executive in Modesto, California; and three percent to buyer's agent.

F. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

9.	**19-90989-E-7** **MDM-3**	**JAMIE/MELISSA BILLMAN** **Walter Dahl**	**MOTION FOR COMPENSATION FOR MICHAEL D. MCGRANAHAN, CHAPTER 7 TRUSTEE(S)** **9-3-21 [298]**

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 holding the twenty (20) largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 3, 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.

Michael D. McGranahan, the Chapter 7 Trustee, ("Applicant") for the Estate of Jamie Benjamin Billman and Melissa Marnell Billman ("Client"), makes a Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period February 19, 2020, through September 30, 2021.

STATUTORY BASIS FOR FEES

11 U.S.C. § 330(a)

> (1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 —

> (A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and
>
> (B) reimbursement for actual, necessary expenses.

In considering the allowance of fees for a professional employed by a trustee, the professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)).

In considering the compensation awarded to a bankruptcy trustee, the Bankruptcy Code further provides:

> (7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

11 U.S.C. § 330(a)(7). The fee percentages set in 11 U.S.C. § 326 expressly states that the percentages are the maximum fees that a trustee may received, and whatever compensation is allowed must be reasonable. 11 U.S.C. § 326(a).

Benefit to the Estate

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

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

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

A review of the application shows that Applicant's services for the Estate include asset analysis and recovery, asset disposition, case administration, claims administration, employment fee applications,

and tax matters. The Estate has $252,531.70 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES REQUESTED

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

1. Asset Analysis and Recover - 23.50 hours
2. Asset Disposition - 22.30 hours
3. Case Administration - 23.40 hours
4. Claims Administration - 15.70 hours
5. Employment Fee Applications - 6.30 hours
6. Tax Matters - 11.30 hours
7. Total Time - 102.50 hours

Applicant requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00
5% of the next $459,960.85	$22,998.04
3% of the balance of $0.00	$0.00
Calculated Total Compensation	**$28,748.04**
Plus Adjustment	$0.00
Total Maximum Allowable Compensation	$28,748.04
Less Previously Paid	$0.00
Total First and Final Fees Requested	$28,748.04

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $28,748.04 are approved pursuant to 11 U.S.C. § 330 are 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.

In this case, the Chapter 7 Trustee currently has $252,531.70 of unencumbered monies to be administered. The Chapter 7 Trustee asset analysis and recovery, asset disposition, case administration, claims administration, employment fee applications, and tax matters. Applicant's efforts have resulted in a realized gross of $509,960.85 recovered for the estate. Dckt. 301.

This case required significant work by the Chapter 7 Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

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

Fees	$28,748.04
Costs and Expenses	$90.17

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Michael D. McGranahan, the Chapter 7 Trustee, ("Applicant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Michael D. McGranahan is allowed the following fees and expenses as trustee of the Estate:
>
> Michael D. McGranahan, the Chapter 7 Trustee
>
> Fees in the amount of $28,748.04
> Expenses in the amount of $90.17,
>
> **IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

10. 19-90989-E-7 WF-13 | **JAMIE/MELISSA BILLMAN** | **MOTION FOR COMPENSATION FOR DANIEL L. EGAN, TRUSTEES ATTORNEY(S)**
Walter Dahl | **9-3-21 [286]**

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 holding the twenty (20) largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 3, 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.

Wilke Fleury LLP, the Attorney ("Applicant") for Michael D. McGranahan, the Chapter 7 ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 19, 2020, through August 30, 2021. The order of the court approving employment of Applicant was entered on April 14, 2020. Dckt. 152. Applicant requests fees in the amount of $40,060.50 and costs in the amount of $1,846.00. Wilke Fleury also seeks allowance of additional fees and costs in the amount of $2,000.00 for preparing this application.

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 representing the Trustee, assisting Trustee in selling property, reviewing motions, advising Trustee, and preparing applications. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 9.40 hours in this category. Applicant represented the Trustee.

Asset Analysis and Recovery: Applicant spent 26.6 hours in this category. Applicant assisted the Trustee in selling vehicles and other personal property.

Asset Disposition: Applicant spent 9.2 hours in this category. Applicant assisted and advised the Trustee with respect to abandonment of an interest in an LLC and in abandonment of real property.

Relief from Stay: Applicant spent 1.1 hours in this category. Applicant reviewed the motion and proposed order and advised Trustee accordingly.

Avoidance Action Analysis: Applicant spent 15.9 hours in this category. Applicant advised and represented Trustee in recovering the payment without the need for commencing litigation.

Fee/Employment Applications: Applicant spent 6.4 hours in this category. Applicant prepared an application for the approval of its employment.

Additional Time for Prosecution for this Application: Applicant spent 4.4 hours in this category. Applicant seeks compensation for time and expenses incurred in preparing and prosecuting this fee application.

Claims Administration and Avoidance: Applicant spent 21.4 hours in this category. Applicant advised and represented Trustee in resolving tax claims and in evaluating and objecting to other claims.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Daniel L. Egan, Attorney (2020)	67.10	$445.00	$29,859.50
Daniel L. Egan, Attorney (2021)	22.50	$450.00	$10,125.00
Sharon Brazell, Attorney	0.40	$190.00	$76.00
Total Fees for Period of Application			$40,060.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $2,049.47 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Conference Call		$9.71
CourtCall		$145.50
Postage		$937.86
Photocopies		$956.40
Total Costs Requested in Application		$2,049.47

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $42,060.50 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

First and Final Costs in the amount of $1,903.97 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 does not allow the recovery of the expense for CourtCall. That expense is for a service that allows them to appear over a larger geographic area, creating

greater economic opportunities. The court construes the CourtCall fee as part of an attorney's general overhead in taking on representation of a trustee or debtor in possession.

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

Fees	$42,060.50
Costs and Expenses	$2,049.47

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 Wilke Fleury 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 Wilke Fleury LLP is allowed the following fees and expenses as a professional of the Estate:
>
> Wilke Fleury LLP, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $42,060.50
> Expenses in the amount of $1,903.97,
>
> **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 RULINGS

11.	**20-90210-E-11 AF-10**	**JOHN YAP AND IRENE LOKE Nancy Weng**	**MOTION FOR COMPENSATION BY THE LAW OFFICE OF FARSAD LAW OFFICE FOR NANCY WENG, DEBTORS ATTORNEY(S) 8-9-21 [232]**

Final Ruling: No appearance at the September 30, 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 holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2021. By the court's calculation, 52 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.

Farsad Law Office, P.C, Attorneys ("Applicant") for Debtor, ("Client"), makes First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 17, 2020 to July 2, 2021. The order of the court approving employment of Applicant was entered on May 18, 2020. Dckt. 232. Applicant requests fees in the amount of $31,325.00 and costs in the amount of $260.00.

On September 20, 2021, Applicant filed an Amended Declaration Regarding Voluntary Reduction in Attorney Fees, where Applicant addresses several fees to be reduced after the U.S. Trustee communicated with Applicant. Dckt. 240. Each fee to be reduced is addressed below.

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)).

In this Chapter 11 Case Applicant assisted Debtor in Possession in confirming a Chapter 11 Plan allowing Debtor to retain their residence, obtain a loan modification, and address serious health issues impacting Debtor's finances and to have in place an economic structure for when one of the debtors pass due to the health issues. Applicant assisted the Debtor in Possession in reaching agreements with creditors having secured claim, avoiding the need for costly litigation.

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 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: Initial Debtor Interview and § Section 341 Meeting Preparation and Attendance, Case Administration, Claims and Asset Analysis, and other services. 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.

Client Interview and § 341 Meeting: Applicant spent 14.00 hours in this category. Applicant prepared and attended the initial debtor interview and prepared and attended the Initial Debtor Interview and § 341 Meeting of Creditors.

Case Administration: Applicant spent 3.70 hours in this category. Applicant performed numerous tasks including drafting Status Conference Statements, attending hearings, responding to U.S. Trustee's requests for information.

Claims and Asset Analysis: Applicant spent 33.60 hours in this category. Primary tasks include review, analysis, and negotiation with secured lenders and review of letters and other correspondences from creditors. Applicant has voluntarily reduced this category to 28.60 hours.

Client Communications / Correspondence: Applicant waives the amount of hours spent in this category.

Taxes, Accounting, and Monthly Operating Reports: Applicant spent 8.00 hours in this category. Primary tasks include assistance and review of Monthly Operating Reports with Debtors and financial document and tax return review.

Fee Application(s): Applicant spent 3.00 hours in this category. Time billed relates to the preparation of this Application.

Chapter 11 Plan and Disclosure Statement(s): Applicant spent 23.20 hours in this category. Primary tasks include drafting and analysis for the Debtor's Disclosure Statement and Plan of Reorganization. Applicant voluntarily agrees to reduce the fees in this category to 11.5 hours.

Employment: Applicant spent 3.00 hours in this category. Time billed includes preparation of applications to employ professionals relating to this case.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Arasto Farsad	Not Stated	$350.00	Not Computed
Nancy W. Weng	Not Stated	$350.00	Not Computed .
	0	$0.00	$0.00
Total Fees for Period of Application			$25,470.00 (adjusted amount, Amended Declaration, Dckt. 240)

Though the detailed task billing statement provides the billing time for each of the attorneys, there is not a total shown for each attorney. The court declines the opportunity to do such a computation in light of the amount of attorney's fees and the activities of Applicant in this case. In future cases Applicant should include a total of time and dollars for each of the persons billing, so as to avoid the court continuing the hearing and ordering such information to be provided.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $260.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage & Service		$260.00
		$0.00
Total Costs Requested in Application		$260.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

Reduced Rate

Applicant seeks to be paid a single sum of $25,480.00 for its fees and expenses incurred for Client. First and Final Fees and Costs in the amount of $25,480.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution in a under the confirmed Plan. The court notes that the amount requested in the Amended Declaration, 25,480.00, is a different amount than the amount provided in the Amended Exhibit A, $27,140.00.

Costs & Expenses

The court notes the costs under Paragraph 7 of Mr. Farsad's Amended Declaration are "2650.00." The court is under the assumption that the "5" was typed in error, and the correct dollar amount should be "260.00."

First and Final Costs in the amount of $260.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	$25,480.00
Costs and Expenses	$260.00

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 Farsad Law Office, P.C. ("Applicant"), Attorney for John Hst Yap and Irene Laiwah Loke, Debtor in Possession, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Farsad Law Office, P.C. is allowed the following fees and expenses as a professional of the Estate:

Farsad Law Office, P.C., Professional employed by Debtor in Possession

Fees in the amount of $25,480.00
Expenses in the amount of $260.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor in Possession.

IT IS FURTHER ORDERED that Debtor, as the Plan Administrator, is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

12. 21-90090-E-7 BLF-4 | **EDWIN/MELINA RAMANO** | **MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)**
Walter Dahl | **8-23-21 [49]**

Final Ruling: No appearance at the September 30, 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, parties requesting special notice, and Office of the United States Trustee on August 23, 2021. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Loris L. Bakken of the Bakken Law Firm, the Attorney ("Applicant") for Gary Farrar, the Chapter 7 ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 1, 2021, through September 30, 2021. The order of the court approving employment of Applicant was entered on May 21, 2021. Dckt. 30. Applicant requests fees in the amount of $2,240.00 and costs in the amount of $97.71.

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 preparing fee agreement, employment applications, pleadings and reviewing a purchase offer from the Debtors. The Estate has $10,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 3.3 hours in this category. Applicant preparing fee agreement and employment application, preparing joint ex parte motion and stipulation to extend deadline to a complaint objecting to Debtor's discharge, and preparing fee application.

Sale to Debtors of Estate's Nonexempt Equity in Property of the Estate: Applicant spent 6.4 hours in this category. Applicant reviewed an offer form the Debtors to purchase the estate's nonexmept interest in the property.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Loris L. Bakken, Attorney	6.4	$350.00	$2,240.00
Total Fees for Period of Application			$2,240.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $97.71 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		$62.01
Copying	$0.10 per page	$35.70
Total Costs Requested in Application		$97.71

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,240.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $97.71 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees	$2,240.00
Costs and Expenses	$97.71

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

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

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

The Motion for Allowance of Fees and Expenses filed by Loris L. Bakken of the Bakken Law Firm ("Applicant"), Attorney for Gary Farrar, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Loris L. Bakken of the Bakken Law Firm is allowed the following fees and expenses as a professional of the Estate:

Loris L. Bakken of the Bakken Law Firm, Professional employed by the Chapter 7 Trustee

Fees in the amount of $2,240.00
Expenses in the amount of $97.71,

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.

13. 20-90544-E-7 20-9012

MICHELLE PIMENTEL-MONTEZ
DB-3
LIONUDAKIS ET AL V. PIMENTEL-MONTEZ

MOTION TO COMPEL AND/OR MOTION TO PRODUCE DOCUMENTS
9-2-21 [31]

Final Ruling: No appearance at the September 30, 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's Attorney on September 2, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Compel and Motion to Produce Documents 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 and/or Motion to Produce Documents has been granted.

Plaintiffs Phillip Lionudakis, Lionudakis Firewood, Inc., and Lionudakis Orchard Removal, Inc. ("Plaintiffs") filed this motion to compel Defendant Michelle A. Pimentel-Montez ("Defendant") to provide written discovery responses and produce responsive documents in response to the following:

1. Plaintiff's Request for Production of Documents and Things, Set One, Nos. 1-13 ("First Document Request")

2. Plaintiffs' Special Interrogatories to Defendant Michelle A. Pimentel Montez, Set One, Nos. 1-18 ("Special Interrogatories")

3. Plaintiffs Request for Production of Documents and Things, Set Two, Nos. 14-16 ("Second Document Request")

Dckt. 31.

DISCUSSION

Rule 37 of the Federal Rules of Civil Procedure ("FRCP") is incorporated into the Federal Rules of Bankruptcy Procedure ("FRBP") 7037. Under FRCP 37 as incorporated into FRBP 7037, a party may move for an order compelling disclosure or discovery. The motion must include "a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." *Id.* FRCP 37(a)(3)(B) permits a party seeking discovery to move for an order compelling an answer, designation, production, or inspection, if a party fails to answer an interrogatory submitted under FRCP 33, or fails to produce documents as requested under FRCP 34.

The Declaration of Paul R. Gaus has been filed in support of the Motion and provides testimony that Plaintiffs' have made a good faith effort to confer with Defendant's counsel to obtain the requested documents without a court order. Dckt. 34. On February 16, 2021, Plaintiffs served the First Document Request and Special Interrogatories and served the Second Document Request on April 8, 2021. *Id*. at ¶¶ 3-4, 6. In a letter dated April 7, 2021, Plaintiffs' counsel requested Defendant's counsel to provide the written responses and production of documents by May 10, 2021, which Defendant's counsel failed to comply with. Exhibit D. Plaintiffs' counsel proceeded to meet and confer with Defendant's counsel on three occasions after May 10, 2021. Dckt. 34, ¶¶ 9-10, 12.

Plaintiff provides adequate evidence under FRCP 37 that they have made a good faith effort to meet and confer with Defendant to produce the requested documents. Plaintiff requests the court to issue an order compelling Defendant to provide written responses and produce responsive documents within ten (10) days of entry of such order. Dckt. 31. No opposition has been filed in response to Plaintiffs' Motion. Accordingly, the court grants the Motion to Compel and Motion to Produce Documents pursuant to FRCP 37 as incorporated into FRBP 7037.

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 and Motion to Produce Documents filed by Phillip Lionudakis, Lionudakis Firewood, Inc., and Lionudakis Orchard Removal, Inc. ("Plaintiffs") 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 and Motion to Produce Documents is granted, and the Defendant Michelle A. Pimentel-Montez is order to provide written responses and produce responsive documents within fifteen (15) days of the service of this order on counsel for Defendant to the following discovery:
>
> 1. Plaintiff's Request for Production of Documents and Things, Set One, Nos. 1-13 ("First Document Request")
>
> 2. Plaintiffs' Special Interrogatories to Defendant Michelle A. Pimentel Montez, Set One, Nos. 1-18 ("Special Interrogatories")

3. Plaintiffs Request for Production of Documents and Things, Set Two, Nos. 14-16 ("Second Document Request").

14. 19-90751-E-7 19-9021 KAMALDIP DHAMI GRS-1 MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL 9-1-21 [27]

WILMINGTON TRUST, NATIONAL ASSOCIATION V. DHAMI

Final Ruling: No appearance at the September 30, 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 Plaintiff-Debtor, Defendant, Chapter 7 Trustee, and Office of the United States Trustee on September 1, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE BENEFIT OF THE REGISTERED HOLDERS OF JPMBB COMMERCIAL MORTGAGE SECURITIES TRUST 2012-C25, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2014-C25 ("Plaintiff-Creditor") moves for the court to dismiss all claims against it in Kamaldip S. Dhami's ("Defendant-Debtor") Complaint according to the fulfillment of the settlement agreement between Plaintiff and Defendant in the Missouri state court action.

MOTION TO DISMISS

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that a complaint have a short, plain statement of the claim showing entitlement to

relief and a demand for the relief requested. FED. R. CIV. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.* (citing 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235–36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action")).

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to the relief. *Calhoun v. United States*, 475 F. Supp. 1 (S.D. Cal. 1977), *aff'd*, 604 F.2d 647 (9th Cir. 1979). Any doubt with respect to whether to grant a motion to dismiss should be resolved in favor of the pleader. *Pond v. Gen. Elec. Co.*, 256 F.2d 824, 826–27 (9th Cir. 1958).

REVIEW OF MOTION

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

A. Plaintiff-Creditor and third parties entered a written settlement agreement that payment to Plaintiff Creditor, timely and in-full, of the settlement amount would result in Plaintiff-Creditor filing a motion to dismiss the adversarial action—this condition has been satisfied.

DISCUSSION

Plaintiff-Creditor and UTFA Parties—KIRKSVILLE HOSPITALITY, Inc.; KIRKSBILLE HOTEL MANAGEMENT, LLC; GOLD MANAGEMENT, INC.; KAHMAR GOLD, LLC; DHAMI INVESTMENTS, LLC; K&M LATHROP ASSOCIATES LLC; HARDEV S. DHAMI; HARJOT K. DHAMI; and KARINDEEP S. DHAMI—entered a written settlement agreement in Missouri Case No. 21SL-CC02424.

One of the stipulations was that upon tendering two payments, totaling $187,500.00, from UFTA Parties to Plaintiff-Creditor, Plaintiff-Creditor would request an instant motion to request dismissal of the pending adversarial action. In the motion, the Plaintiff-Creditor has noted the UFTA Parties have paid the full settlement amount in satisfaction of the agreement, and now the Plaintiff Creditor requests to fulfill their compliance by dismissing their adversarial action in satisfaction of the settlement agreement.

The Motion to Dismiss Adversary Proceeding is warranted because the UFTA Parties tendered their stipulated payments in the settlement agreement, thus satisfying the obligation under the settlement. Additionally, no opposition was filed by the Chapter 7 Bankruptcy Trustee.

The Motion is granted.

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 Dismiss Adversary Proceeding filed by WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE BENEFIT OF THE REGISTERED HOLDERS OF JPMBB COMMERCIAL MORTGAGE

SECURITIES TRUST 2012-C25, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2014-C25 ("Plaintiff-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 Dismiss is granted.

15. 20-90779-E-11 DL-1 | **PRIMO FARMS, LLC** **David Johnston** | **MOTION FOR COMPENSATION FOR WALTER R. DAHL, CHAPTER 11 TRUSTEE(S)** **8-2-21 [80]**

Final Ruling: No appearance at the September 30, 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's attorney, creditor(s), and Office of the United States Trustee on August 2, 2021. By the court's calculation, 59 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.

Walter R. Dahl, the Subchapter V Trustee , makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 4, 2020, through September 30, 2021. The order of the court approving employment of Applicant was entered on December 7, 2020. Dckt. 6. Applicant requests fees in the amount of $5,133.00 and costs in the amount of $121.99.

APPLICABLE LAW
Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the Subchapter V Trustee'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 Subchapter V Trustee 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 Subchapter V Trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the Subchapter V Trustee must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. The Subchapter V Trustee must exercise good billing judgment with regard to the services provided because the court's authorization to employ Subchapter V Trustee to work in a bankruptcy case does not give that Subchapter V Trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According 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 communicating with parties and preparing, filing and serving pleadings. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 6.50 hours in this category. Applicant communicated with US Trustee, reviewed docket, communicated with attorneys, reviewed petition, and prepared for initial debtor interview and meeting of creditors.

Claims Administration: Applicant spent 0.10 hours in this category. Applicant e-mailed Debtor's attorney with an invoice from California FTB.

Fee/Employment Applications: Applicant spent 2.60 hours in this category. Applicant prepared, filed, and served motion and supporting pleadings for first and final compensation for Subchapter V Trustee fee application. Attended hearing on Subchapter V Trustee fee application .

Plan and Disclosure Statement: Applicant spent 2.00 hours in this category. Applicant reviewed Debtor's plan of reorganization and communicated with Attorneys regarding the plan and relief from stay. Communicated with the US Trustee and drafted, filed, and served statement in support of confirmation.

Relief from Stay #1: Applicant spent 0.60 hours in this category. Applicant reviewed Debtor's motion to approve relief from stay as to vacant building lots. Draft file, and serve non-opposition to same. Attend court hearing on motion.

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
Walter R. Dahl, Subchapter V Trustee	11.8	$435.00	$5,133.00
	0	$0.00	$0.00
Total Fees for Period of Application			$5,133.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $121.99 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Photocopies	$0.05	$1.45
CourtCall		$105.75
Postage		$14.79
		$0.00
Total Costs Requested in Application		$121.99

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $5,133.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11.

Costs & Expenses

First and Final Costs in the amount of $121.99 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 11 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 11 case.

Applicant is allowed, and the Chapter 11 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$5,133.00
Costs and Expenses	$121.99

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Walter R. Dahl, Subchapter V Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Walter R. Dahl is allowed the following fees and expenses as a professional of the Estate:
>
> Walter R. Dahl, Subchapter V Trustee:
>
> Fees in the amount of $5,133.00
> Expenses in the amount of $121.99,
>
> **IT IS FURTHER ORDERED** that the Chapter 11 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 11.

16. 19-90989-E-7 MDM-2 13 thru 16 | **JAMIE/MELISSA BILLMAN** **Walter Dahl** | **MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY, ACCOUNTANT(S) 9-3-21 [292]**

Final Ruling: No appearance at the September 30, 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's Attorney, Chapter 7 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on September 3, 2021. By the court's calculation, 27 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.

Gabrielson & Company, the Accountant ("Applicant") for Michael D. McGranahan, the Chapter 7 ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period February 21, 2020, through August 27,2021 The order of the court approving employment of Applicant was entered on March 4, 2020. Dckt. 104. Applicant requests fees in the amount of $14,607.00 and costs in the amount of $62.32.

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 analyzing tax consequences, preparing tax returns, reducing tax claims, and preparing a declaration. 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.

Analyzed Tax Consequences of Potential Property Sales: Applicant spent 7.2 hours in this category. Applicant assisted the trustee and counsel in analyzing the tax consequences of various scenarios of selling real estate properties and researched potential for income tax refunds.

Prepared Federal and California Estate Income Tax Returns: Applicant spent 5.1 hours in this category. Applicant prepared federal and state tax returns for debtors and researched unfiled 2019 tax period information.

Assist Trustee and Counsel in Reducing Estimated Priority Tax Claims: Applicant spent 20.9 hours in this category. Applicant assisted trustee and counsel in reducing substantial estimated payroll and income tax claims and prepared estimated quarterly payroll tax returns.

Administrative Functions: Applicant spent 3.2 hours in this category. Applicant prepared accountant declaration and related employment documents for trustee to review.

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**
Michael Gabrielson, Principal (2020)	13.5	$395.00	$5,332.50
Michael Gabrielson, Principal (2021)	22.9	$405.00	$9,274.50
Total Fees for Period of Application			$14,607.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $62.32 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copying	$0.10, per page (429 pages)	$42.90
Postage		$19.42
Total Costs Requested in Application		$62.32

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $14,607.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $62.32 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Fees $14,607.00
Costs and Expenses $62.32

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 Gabrielson & Company ("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 Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:

Gabrielson & Company, Professional employed by the Chapter 7 Trustee

Fees in the amount of $14,607.00
Expenses in the amount of $62.32,

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.