

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 1, 2024 at 10:30 a.m.

1. <u>23-24610</u>-E-11 <u>PGM-1</u>	LAFLEUR WAY, LLC Peter Macaluso	MOTION TO EMPLOY PETER G. MACALUSO AS ATTORNEY(S) 1-12-24 <u>[12]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Subchapter V Trustee, creditors and parties in interest, and Office of the United States Trustee on January 12, 2024. By the court’s calculation, 20 days’ notice was provided. 14 days’ notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Subchapter V Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Employ is granted.

Lafleur Way, LLC (“Debtor in Possession”) seeks to employ Peter Macaluso (“Counsel”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in

Possession seeks the employment of Counsel to represent Debtor in Possession during this bankruptcy case, including by advising, preparing documents, and negotiating on behalf of Debtor in Possession.

Debtor in Possession argues that Counsel's appointment and retention is necessary to prosecute the bankruptcy case, and "because debtor is a corporation," legal representation is required by law. Docket 12 ¶ 6. Counsel will charge rates of \$450 an hour and has been paid the sum of \$5,000 already. *Id.* at ¶¶ 6 & 7.

Peter Macaluso, an attorney, testifies he does not represent or hold any interest adverse to Debtor or to the Estate and that he has no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. Decl., Docket 14 ¶¶ 3 & 4.

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.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Peter Macaluso as Counsel for the Chapter 11 Estate. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 Employ filed by Lafleur Way, LLC ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted, and Debtor in Possession is authorized to employ Peter Macaluso as Counsel for Debtor in Possession.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by Counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds of \$5,000 paid on December 22, 2023, are deemed to constitute an advance payment of fees and shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

2. [20-24790-E-7](#)

ANTON AXELSSON

[MOH-1](#)

Michael Hays

**CONTINUED MOTION FOR RELEASE
OF FUNDS FROM THE FIRE VICTIM
TRUST
12-14-23 [[120](#)]**

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 Chapter 7 Trustee, attorneys of record who have appeared in the bankruptcy case, other parties in interest, parties requesting special notice, and Office of the United States Trustee on December 14, 2023. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Release of Funds from the Fire Victim Trust is XXXXXXX.
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Anton Mar Axelsson (“Debtor”) filed this Motion on December 15, 2023, seeking court approval to release from the bankruptcy estate funds derived from the Paradise Camp Fire in Butte County that occurred in 2018. Debtor has a claim against Pacific Gas & Electric Company (“PG&E”) in the amount of \$260,000 for damages related to the fire. Exhibit 1, Determination Notice, Docket 123 p. 2. The Fire Victim Trust is currently distributing 60% to claimants, meaning the bankruptcy estate will be receiving \$156,000. Decl., Docket 122 p. 1:10-14.

Debtor stated in the Motion and Debtor’s Declaration (Dckts. 120 and 122) that in Debtor’s Amended Schedule C (no citation to the Docket provided) now states that he has claimed amended exemptions of \$18,548.65 as exempt pursuant to Cal. Code Civ. P. § 703.140(b)(5) and \$29,275 exempt pursuant to Cal. Code Civ. P. § 703.140(b)(11)(D) for a total of \$47,823.65 in this distribution. These California Exemption for persons in bankruptcy are:

California Code of Civil Procedure § 703.140(b)(1) and (b)(5):

(1) The debtor’s aggregate interest, not to exceed twenty-nine thousand two hundred seventy-five dollars (\$29,275) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence.

...

(5) The debtor’s aggregate interest, not to exceed one thousand five hundred fifty dollars (\$1,550) in value, plus any unused amount of the exemption provided under paragraph (1), in any property.

California Code of Civil Procedure § 703.140(b)(11)(D):

D) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a spouse or dependent on the date of that individual’s death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

These are the exemptions claimed on Amended Schedule C. Dckt. 71 at 7-8.

CHAPTER 7 TRUSTEE’S OPPOSITION

Kimberly J. Husted, the Chapter 7 Trustee (“Trustee”), filed an Opposition on January 18, 2024. Docket 127. In her Opposition, Trustee states:

1. Debtor has only provided the court with the cover sheet of the Determination Notice dated March 3, 2022. The more recent Reconsideration Determination Notice dated June 24, 2022 shows Debtor and his non-filing spouse (“NF-Spouse”) are entitled to only a portion of the \$260,000 award. Their portion is \$110,000. The children were awarded the remaining \$150,000. *Id.* at ¶ 2.
2. The exact breakdown of the award is as follows:

- a. \$10,000 for Anton Axelsson d/b/a Old Barn Kitchen;
 - b. \$50,000 for Debtor for emotional distress;
 - c. \$50,000 for [non-filing Spouse, “NF-Spouse] for emotional distress;
and
 - d. \$150,000 to Debtor’s children. *Id.* at ¶ 3.
3. NF-Spouse’s interest is property of the bankruptcy estate as community property pursuant to Cal. Family Code § 760. *Id.* at ¶ 2.
 4. Debtor and NF-Spouse have already received distributions in the amount of \$24,150. *Id.* at ¶ 4.
 5. Trustee does not object to Debtor’s claimed exemption of \$18,548.65 pursuant to Cal. Code Civ. P. § 703.140(b)(5), and debtor has already been disbursed an amount greater than this exemption. *Id.* at ¶ 5.
 6. Trustee does object to the claimed exemption of \$29,275 pursuant to Cal. Code Civ. P. § 703.140(b)(11)(D) because the damages result from emotional distress, not personal injury. *Id.* at ¶ 6.

The personal injury exemption to be claimed in a bankruptcy case is found in California Code of Civil Procedure § 703.140(b)(11)(E), which states:

(F) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a spouse or dependent, to the extent reasonably necessary for the support of the debtor and the debtor’s spouse or a dependent of the debtor.

Trustee submits her own Declaration to authenticate the facts alleged in the Opposition and the accompanying Exhibits (Docket 129). Decl., Docket 128.

In the Trustee’s Opposition no discussion is provided as to the applicable cases or treatises (such as Witkin Summary of California Law) to support the assertion that emotional distress is not included in personal injury as used in the California Statute, except for a bankruptcy court decision, *In re Ciotta*, 222 B.R.626,631 (Bankr. C.D. Cal. 1988). No California Court of Appeal or Supreme Court decisions are provided.

DEBTOR’S REPLY

On January 26, 2024, Debtor filed his Reply to Trustee’s Opposition. Docket 131. In his Reply, Debtor states:

1. Trustee’s objection to Debtor’s claimed exemption is untimely and should be overruled. Trustee had 30 days to object to claimed exemptions, and so Trustee’s objection now comes too late.

2. Neither Debtor nor his NF-Spouse have received any funds from the Fire Victim Trust, stating “neither received a cent.” Decl., Docket 132 p. 2:14-15.

Debtor does not provide the court with the statutory basis for the deadline for objecting to a claim of exemption and computation of the expiration of such deadline.

Applicable Law

With respect to what constitutes property of the Bankruptcy Estate in this Case, the Bankruptcy Code provides:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor’s spouse **in community property** as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor’s spouse, to the extent that such interest is so liable.

11 U.S.C. § 541(a) (emphasis added).

In defining community property, California Family Code § 760 states:

Except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property.

11 U.S.C. § 522 provides for a debtor claiming exemptions in a bankruptcy case, including state law exemptions if a state, as California has done, elects to opt out of the Federal Bankruptcy Law exemptions. The United States Supreme Court provides in Federal Rule of Bankruptcy Procedure 4003 which provides for the debtor to claim the exemption in his/her Schedules, and with respect to filing such objection to an exemption states:

(b) Objecting to a claim of exemptions.

(1) Except as provided in paragraphs (2) and (3), a **party in interest may file an objection** to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or **within 30 days after any amendment to the list or supplemental schedules is filed**, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

(2) The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption. The trustee shall deliver or mail the objection to the debtor and the debtor's attorney, and to any person filing the list of exempt property and that person's attorney.

(3) An objection to a claim of exemption based on § 522(q) shall be filed before the closing of the case. If an exemption is first claimed after a case is reopened, an objection shall be filed before the reopened case is closed.

(4) A copy of any objection shall be delivered or mailed to the trustee, the debtor and the debtor's attorney, and the person filing the list and that person's attorney.

DISCUSSION

In this case, the bankruptcy was originally filed on October 15, 2020 as a Chapter 13 case. It was voluntarily converted to a case under Chapter 7 on December 30, 2020. Docket 36. The injuries from the fire in Butte County occurred in 2018, two years before filing, meaning the Debtor's interest in that lawsuit was automatically part of the bankruptcy estate upon filing pursuant to 11 U.S.C. § 541(a). Moreover, Debtor's NF-Spouse's interest in that lawsuit is also part of the bankruptcy estate under the definition of community property, which it appears the Debtor does not contest.

Debtor argues that Trustee had 30 days to object to any claimed exemption, and so the Opposition should be overruled. Though not stated by the Debtor, the Amended Schedule C was filed on April 26, 2021.

While misstating the California Code of Civil Procedure Section in the Amended Schedule C, the Trustee has addressed the requirements of California Code of Civil Procedure § 703.140(b)(11)(E), the personal injury exemption. At the heart of this issue is whether any monies have been disbursed to date, and whether the monies from the Fire Victim Trust may be claimed as exempt pursuant to Cal. Code Civ. P. § 703.140(b)(11)(E). Trustee cites to *In re Ciotta*, 222 B.R. 626 (Bankr. C.D. Cal. 1998) in support of her position that emotional distress damages cannot be claimed under this exemption as emotional distress damages are not within the meaning of "personal bodily injury."

However, upon the court's reading of *Ciotta*, it is not so clear this opinion by a bankruptcy judge supports Trustee's contention. The version of California Code of Civil Procedure § 703.140(b)(11)(E) in 1998 stated in *Ciotta* is:

The Debtors claim the Lawsuit as exempt under California Civil Procedure Code § 703.140(b)(11)(D). California has opted out of the federal exemption scheme, and thus under California law, a debtor can only claim exemptions pursuant to California law and any applicable non-federal Bankruptcy Law. Civ. Proc Code § 703.130.

Section 703.140(b)(11)(D) provides that a party may exempt "[a] payment, not to exceed fifteen thousand dollars (\$ 15,000), on account of personal bodily injury, **not including pain and suffering** or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent."

In re Ciotta, 222 B.R. at 629. The court in *Ciotta* then discussed the ambiguities in the statute. *In Ciotta*, footnote 3, the court further states:

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In fact, the legislature did so. California Code Civil Procedure § 704.140 provides for an exemption based upon an award of damages or a settlement arising out of "personal injury." "Personal injury" can include emotional distress. *See Sylvester v. Hafif (In re Sylvester)*, 220 B.R. 89 (B.A.P. 9th Cir. 1998). Of course, this section is inapplicable to *Ciotta*, who did not select this set of exemptions and who has not received a settlement or award based on the Lawsuit.

Id. at 634. As show in the Legislative History included with the LEXIS+ service for California Code of Civil Procedure § 703.140(b)(11)(D), the statute was amended in 2012 to delete "deleted ' , not including pain and suffering or compensation for actual pecuniary loss,' after 'personal bodily injury' in subd (b)(11)(D)." Additionally, in a 2022 Amendment subparagraph (b)(11)(D) was renumbered (b)(11)(E), which we see in the current version of the statue.

The court has not waded into reviewing all of the Legislative Reports on the 2012 Amendment that deleted the exception for "including pain and suffering or compensation for actual pecuniary loss" from the statute. One conclusion that can be drawn is that previously the Legislature knew that paid and suffering was part of a personal injury claim, so it was excluded. Then, in 2012 the Legislature deleted the exclusion and "pain and suffering damages" are included as part of a personal injury claim.

A 1998 decision the Bankruptcy Appellate Panel for the Ninth Circuit addressed this issue in *In re Sylvester*, 220 B.R. 89, 93 (B.A.P. 9th Cir. 1998), which supports the proposition that emotional distress damages can be claimed exempt as a payment on account of personal bodily injury. The Bankruptcy Appellate Panel stated, even before the 2012 amendment:

The bankruptcy court erred in rejecting the Debtor's claimed exemption in his suit to recover funds allegedly misappropriated by his former attorney. The funds sought to be recovered were spawned from a settlement of certain claims, including the Debtor's claim for emotional distress. That portion of the settlement which is properly attributable to the Debtor's claim of emotional distress is deemed a settlement for personal injury. Therefore, the Debtor's recovery in the malpractice action is likewise a recovery for personal injury in like proportion. As such, that amount of the Debtor's \$ 125,476 which is properly attributable to misappropriated funds for personal injury is exempt if the Debtor can show they are necessary for his support.

Id. at 93.

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 Release of Funds from the Fire Victim Trust filed by Anton Mar Axelsson (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX**.

FINAL RULINGS

3. [22-20913-E-7](#)
[NBF-2](#)

ZACHARIAH DORSETT
George Burke

MOTION FOR COMPENSATION FOR
GABRIELSON & COMPANY,
ACCOUNTANT(S)
12-18-23 [[139](#)]

Final Ruling: No appearance at the February 1, 2024 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, all creditors and parties in interest, and Office of the United States Trustee on December 18, 2023. By the court's calculation, 45 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

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

The Motion for Allowance of Professional Fees is granted.

Gabrielson & Company, the Accountant ("Applicant") for the bankruptcy estate of Zachariah Dorsett and Nikki Farris, the Chapter 7 Trustee ("Trustee"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 2, 2023, through December 18, 2023. Mtn, Docket 139 p. 1:20-22. The order of the court approving employment of Applicant was entered on September 25, 2023. Dckt. 114. Applicant requests fees in the amount of \$2,314 and costs in the amount of \$67.25. Mtn, Docket 139 p. 3:3-18.

Trustee submitted statement of approval, informing the court that she has no objections to the full amount of fees and costs requested in this Application. Docket 141.

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 958A 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 preparing and filing first and final federal and California estate income tax returns for the calendar year that ended December 31, 2023, including review of historical tax records, and communication with debtor and counsel regarding tax basis of unimproved land asset, and preparation of Form 593 to avoid California income tax withholding on sale of real property. Mtn., Docket 130 ¶ 3(A). 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.

Preparing Federal and California Estate Income Tax Returns: Applicant spent 4.2 hours in this category. Applicant prepared first and final federal and California estate income tax returns for the calendar year that ended December 31, 2023, including review of historical tax records, and communication with debtor and counsel regarding tax basis of unimproved land asset, and preparation of Form 593 to avoid California income tax withholding on sale of real property.

Administrative Functions: Applicant spent 1 hour in this category. Applicant prepared first and final fee application, including detailed description of tax return preparation services.

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 Accountant	5.2	\$445.00	\$2,314.00

Total Fees for Period of Application	\$2,314.00
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Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$67.25 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copying Charges	\$0.10 per page	\$29.30
Postage		\$37.95
Total Costs Requested in Application		\$67.25

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 \$2,314 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 \$67.25 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by 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	\$2,314
Costs and Expenses	\$67.25

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 the bankruptcy estate of Zachariah Dorsett and Nikki Farris, the Chapter 7 Trustee (“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 Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:

Michael Gabrielson, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$2,314

Expenses in the amount of \$67.25,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as Accountant for the bankruptcy estate of Zachariah Dorsett and Nikki Farris, the Chapter 7 Trustee.

Final Ruling: No appearance at the February 1, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, attorneys of record who have appeared in the case, other parties in interest, and Office of the United States Trustee on December 27, 2023. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of Western State Capital Corp. (“Creditor”) against property of the debtor, Maria Manriquez (“Debtor”) commonly known as 1503 Swezy Street, Marysville, California 95901 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$12,688.31 Exhibit A, Docket 19. An abstract of judgment was originally recorded with Yuba County on July 22, 2013. Exhibit A, Docket 19. The Debtor acquired the Property in December of 2020, and Creditor renewed the judgment on or around September 28, 2022. The judgment was renewed in the amount of \$24,997.46 to account for interest and other fees. Exhibit B, Dckt. 19. Then, on October 17, 2022, Creditor recorded a judgment lien against the Debtor in the Recorded Official Record, County of Yuba, as Document Number 2022-015390. Exhibit C, Docket 19. The Debtor filed her petition on November 14, 2023.

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$315,500 as of the petition date. Dckt. 1 p. 11. The unavoidable consensual liens that total \$218,927.79 as of the commencement of this case are stated on Debtor’s Schedule D. *Id.* at p. 19. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$96,572.21 on Schedule C. *Id.* at p. 17.

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

ISSUANCE OF A COURT-DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Western State Capital Corp., California Superior Court for Yuba County Case No. CVG12-0000486, recorded on October 17, 2022, Document No. 2022-015390, with the Yuba County Recorder, against the real property commonly known as 1503 Swezy Street, Marysville, California 95901, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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[BSH-2](#)

WENDY DEULUS
Brian Haddix

MOTION TO COMPEL ABANDONMENT
1-22-24 [\[14\]](#)

Final Ruling: No appearance at the February 1, 2024 Hearing is required.

The Motion to Compel Abandonment is granted by this court's order issued on January 29, 2024 at Docket 30.

This Matter is Removed from the Calendar.