UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

February 17, 2022 at 10:30 a.m.

1.	**22-90007-E-7** **RHS-1**	**NOBLE CORAN** **Pro Se**	**ORDER TO SHOW CAUSE** **1-10-22 [13]**

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) as stated on the Certificate of Service on January 12, 2022. The Order to Show Cause was served on Chapter 7 Trustee and Office of the United States Trustee as stated on the Certificate of Service on January 11, 2022. The court computes that 36 and 37 days' notice has been provided respectively.

The Order to Show Cause is xxxxxxxxx.

This order to show cause was set to order Debtor to appear to show why this case should not be transferred to the United States Bankruptcy Court, Central District of California.

As stated under penalty of perjury in Debtor's Petition (Dckt. 1), Debtor lives at 3407 Spruce Street in Riverside, California. This address is in Riverside County within the jurisdictional boundaries of the Central District of California.

Debtor also listed a mailing address of 1763 West Alpine Avenue, Stockton, California. This address is in San Joaquin County under the jurisdiction of the Eastern District of California. Using the online Google Maps application, it computes the distance between Debtor's residence and the mailing address to be 390 miles, with a drive time of 6.5 hours. [Fn.1.]

FN. 1.
www.google.com/maps/dir/1763+W+Alpine+Ave,+Stockton,+CA+95204/3407+Spruce+St,+Riverside,+CA+92501/@35.962946,-121.5694354,7z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x80900dbb9a737273:0x834520bdceb27e40!2m2!1d-121.3234303!2d37.9742102!1m5!1m1!1s0x80dcb1fe2e3a9d75:0xc7002773f72f781!2m2!1d-117.3623591!2d33.992763!3e0

On Schedule A/B, Debtor states under penalty of perjury not owning any real property. Dckt. 1 at 13. On Schedule D, Debtor states under penalty of perjury that Debtor has no creditors with secured claims. *Id*. at 25. On Schedule E, Debtor states under penalty of perjury of having a priority tax debt of ($831.24). *Id*. at 26. For general unsecured claims, Debtor states having ($41,392.21) in debt, with ($38,000) of it being owed to two creditors, one that has a judgment and the other relating to an automobile.

On Schedule I, Debtor states having employment as a "Self-Employed Dispatcher, with $500.00 in net monthly income. *Id*. at 34-35. No statement of gross monthly income and monthly expenses, to generate the monthly net income figure, as required by Schedule I, ¶ 8, is provided.

On the Statement of Financial Affairs, Debtor states having lived in Jurupa Valley, California from 2018 to 2021 (no month information is provided). *Id*. at 40.

In response to Question 27 on the Statement of Financial Affairs, Debtor states being a member of Tiny Footprints Farm (not identifying whether it is an LLC of LLP) from 2019 to as of the filing of this bankruptcy case.. *Id*. at 50. Debtor does not disclose the interest in Tiny Footprints Farm or its value on Schedule A/B. *Id*. at 17. The address listed for Tiny Footprint Farm is the same as Debtor's address.

The Petition used by Debtor states that it is for a case to be filed in the Central District of California. Dckt. 1 at 1. Attached to the Petition is a letter from Upsolve, identifying itself as an organization that provides assistance to *pro se* parties in generating bankruptcy forms. *Id*. at 61. The letter is addressed to the Clerk of the Bankruptcy Court for the Southern District of California.

The proper venue for the commencement of a case under title 11 is set forth in 28 U.S.C. § 1408. That section states that a case, other than a case ancillary to a foreign proceeding (which is governed by section 1410 of title 28), may be commenced in the district

> [i]n which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the 180 days immediately preceding such commencement, or for a longer portion of such 180-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district;

9 Collier on Bankruptcy P 1014.02 (16th 2021).

Federal Rule of Bankruptcy Procedure 1014(a) authorizes a court in which a petition has been properly filed to transfer the case to another district "if the court determines that the transfer is in the interest of justice or for the convenience of the parties." Fed. R. Bankr. P. 1014(a).

Where a case has been filed in an improper district, the Federal Rules of Bankruptcy Procedure 1014(a)(2) provides that "the court … may dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or the convenience of the parties." Fed. R. Bankr. P. 1014(a)(2).

As analyzed in *Collier on Bankruptcy*,

> The standard to be applied in deciding whether to transfer an improperly filed case is whether the transfer would be "in the interest of justice or for the convenience of the parties." If not, the case probably must be dismissed. Since the standard is the same as the standard applied to the transfer of a properly filed case, presumably similar considerations will come into play in determining when a transfer is appropriate. Since retention of the improperly filed case is probably no longer an option, however, a court will also have to consider whether the burdens imposed by dismissal will outweigh any inconvenience of a transferred venue. For example, if the case is dismissed and must be refiled, potential preference or fraudulent conveyance recoveries may be lost. Moreover, certain benefits of the automatic stay may be lost as well.

9 Collier on Bankruptcy P 1014.03 (16th 2021).

> The criteria traditionally employed in determining whether to transfer a case are:
>
> •the proximity of creditors of every kind to the court;
> •the proximity of the debtor to the court;
> •the proximity of the witnesses necessary to the administration of the estate;
> •the location of the assets;
> •the economic administration of the estate; and
> •the necessity for ancillary administration if liquidation should result.

In re Commonwealth Oil Refining Co., 596 F.2d 1239 (5th Cir. 1979), cert. denied, 444 U.S. 1045 (1980). Accord *In re Dodart Props., LLC*, 2009 U.S. Dist. LEXIS 92522 (D. Utah Sept. 30, 2009) (assets, most creditors and witnesses in district to which case transferred); *In re Enron Corp.*, 274 B.R. 327 (Bankr. S.D.N.Y. 2002); *In re MacDonald*, 73 B.R. 254 (Bankr. N.D. Ohio 1987); *In re Baltimore Food Sys., Inc.*, 16 C.B.C.2d 578, 71 B.R. 795 (Bankr. D.S.C. 1986); *In re Walter*, 47 B.R. 240 (Bankr. N.D. Fla. 1985); *In re Almeida*, 37 B.R. 186 (Bankr. E.D. Pa. 1984).

Here, Debtor states on the Statement of Financial Affairs, ¶ 2, living in Jurupa Valley, California, which is in Riverside County, California, from 2018 to 2021. Dckt. 1 at 40. This bankruptcy case was filed on January 5, 2022. The 180 day period for determining the proper jurisdiction for filing a bankruptcy petition runs from January 5, 2022 back to approximately July 5, 2021. From the information provided, it appears that for the longer portion of that period, and Debtor states that such residence continues to the date of filing, is in the Central District of California. Petition, ¶ 2; Dckt. 1.

At the hearing, XXXXXXXXXX

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is xxxxxxxxxxxxxx.

2.	**21-90510-E-7** **BLF-3**	**SEAN/MELISSA CHILDRESS** **Simran Singh Hundal**	**MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEE'S ATTORNEY(S)** **1-23-22 [31]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 23, 2022. By the court's calculation, 25 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.

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

Fees are requested for the period November 22, 2021, through February 17, 2022. The order of the court approving employment of Applicant was entered on December 8, 2021. Dckt. 17. Applicant requests fees in the amount of $2,940.00 and costs in the amount of $61.39.

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 providing legal advice and rendering legal services to Trustee regarding general case administration; providing strategies on how to handle property of the estate; and assisting Trustee in the sale to Debtors of the Estate's nonexempt equity in personal property. The Estate has $4,138.75 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 2.8 hours in this category. Applicant prepared their fee agreement, employment application, and fee application.

Sale to Debtor of Estate's Nonexempt Equity in Property of the Estate:: Applicant spent 5.6 hours in this category. Applicant reviewed valuations of Debtor's personal property as well as Debtor's offer to purchase the estate's nonexempt interest in the personal property, and assisted Trustee in the sale negotiations. Applicant also prepared the sale agreement, the motion for court approval of the sale, and filed the 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**
Loris L. Bakken	8.4 hours	$350.00	$2,940.00
Total Fees for Period of Application			$2,940.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $61.39 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage	N/A	$40.49
Copying	$0.10	$20.90
Total Costs Requested in Application		$61.39

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 $2,940.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $61.39 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

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

Fees	$2,940.00
Costs and Expenses	$61.39

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Loris L. Bakken ("Applicant"), Attorney for Gary R. Farrar, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

Fees in the amount of $2,940.00
Expenses in the amount of $61.39,

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.

3.	**22-90026-E-7**	**FRANK QUIROGA**	**MOTION TO COMPEL ABANDONMENT**
	BSH-1	**Brian Haddix**	**2-1-22 [13]**

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

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 parties requesting special notice on February 1, 2022. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment 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 Compel Abandonment is granted.

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

The Motion filed by Frank Anthony Quiroga ("Debtor") requests the court to order Gary Farrar ("the Chapter 7 Trustee") to abandon property commonly known as ASSETS ("Property"). The Property appears to have no encumbrances. The Declaration of Frank Anthony Quiroga has been filed in support of the Motion and values the Property at $38,119.79. Dckt. 15. The court notes a discrepancy in total value of Property between Debtor's Motion to Compel Abandonment and Debtor's Declaration in support. The values detailed in Debtor's Motion total to $35,119.79 which is consistent with the total value produced by Schedule C in Debtor's Petition (see Dckt. 1). The discrepancy appears to be based

on the aggregate value of Debtor's Bank Accounts. Debtor's Declaration indicates that Debtor claimed an exemption in his two Bank Accounts "in the amount of $14,474.79." Dckt. 15 at 3:10-11. Debtor's Motion, however, indicates that the aggregate value of Debtor's Bank Accounts is actually $11,474.79 which is consistent with the aggregate value of Debtor's Bank Accounts as it appears on Schedule C in Debtor's Petition. Dckt. 13 at 2:21-23. The court considers the aggregate value provided in Debtor's Declaration as a typographical error, and will proceed based on the aggregate value as it appears on Debtor's Motion and Petition, $35,119.79.

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

PROPERTY INTEREST	**VALUE**	**EXEMPTION**
1. 2010 Ford Ranger	$3,000.00	$3,000.00 (CCP § 703.140(b)(2))
2. 2012 Mazda 2	$800.00	$800.00 (CCP § 703.140(b)(2))
3. Personal Household Goods & Furnishings*	$3,000.00	$3,000.00 (CCP § 703.140(b)(3))
4. Personal Consumer Electronics*	$1,200.00	$1,200.00 (CCP § 703.140(b)(3))
5. Sports and Exercise Equipment: Bicycles, Golf Clubs, Poker Table	$275.00	$275.00 (CCP § 703.140(b)(5))
6. Gun Safe	$20.00	$20.00 (CCP § 703.140(b)(5))
7. Personal Clothing & Attire	$350.00	$350.00 (CCP § 703.140(b)(3))
8. Jewelry: Watches	$500.00	$500.00 (CCP § 703.140(b)(4))
9. Business Checking: Bank of America (8438)	$6,179.79	$6,179.79 (CCP § 703.140(b)(5))
10. Checking: Way2Go Card Comerica Bank	$5,295.00	$5,295.00 (CCP § 703.140(b)(10)(B))
11. Child Support: Back Child Support Owed to Debtor estimated to be between $6,000.00 to $9,000.00	$9,000.00	$9,000.00 (CCP § 703.140(b)(10)(D))

12. Amounts Someone Owes Debtor: Trade Accounts Receivables	$5,000.00	$5,000.00 (CCP § 703.140(b)(5))
13. Supplies Used in Business; A/C & HVAC	$500.00	$500.00 (CCP § 703.140(b)(6))
14. Pets: 2 dogs, 3 birds, 2 tortoises	$1.00	Not stated, however, pets are exempt under CCP §703.140(b)(3).

*The court notes that Debtor's interest in Personal Household Goods & Furnishings and Personal Consumer Electronics are (emphasis added) "not to exceed seven hundred twenty-five dollars ($725) in value *in any particular item*, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor[.]" CCP § 703.140(b)(3) (emphasis added). Debtor's Motion and Schedule A/B fails to provide the break down of values for each individual household good/furnishing and consumer electronics. See Dckt. 13, 1. A break down of each item under these categories is necessary for the court to determine whether any individual item exceeds $725.00, as the aggregate values of all Personal Household Goods & Furnishing and all Personal Consumer Electronics are well above $725.00.

Without such information, the court cannot conclusively determine whether Debtor's claimed exemptions for Personal Household Goods & Furnishings and Personal Consumer Electronics are permissible under CCP § 703.140. At the hearing, XXXXXXXXXX

The court finds that the debt secured and exemptions claimed by all Property creates no net value to the Estate. As such, all exemptions have inconsequential value and benefit to the Estate. The court orders the Chapter 7 Trustee abandons such 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 Compel Abandonment filed by Frank Anthony Quiroga ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Compel Abandonment is granted, and the following Property is abandoned by this order, with no further act of the Trustee required:
>
> 1. 2010 Ford Ranger
>
> 2. 2012 Mazda 2

3. ~~Personal Household Goods & Furnishings not to exceed $3,000 in aggregate value~~

4. ~~Personal Consumer Electronics not to exceed $1,200 in aggregate value~~

5. Sports and Exercise Equipment: Bicycles, Golf Clubs, Poker Table

6. Gun Safe

7. Personal Clothing & Attire

8. Jewelry: Watches

9. Business Checking: Bank of America (8438)

10. Checking: Way2Go Card Comerica Bank

11. Child Support: Back Child Support Owed to Debtor estimated to be between $6,000.00 to $9,000.00

12. Amounts Someone Owes Debtor: Trade Accounts Receivables

13. Supplies Used in Business: A/C & HVAC

14. Pets: 2 dogs, 3 birds, 2 tortoises

4. **20-90327-E-7** **PHILIP/DALLIA ENGLE** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH UNITED STATES OF AMERICA, ON BEHALF OF THE INTERNAL REVENUE SERVICE**
SSA-1 **Gurjeet Rai**
1-24-22 [125]

Items 4 thru 5

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 24, 2022. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with the United States of America, on behalf of the Internal Revenue Service ("Settlor"). The claims and disputes to be resolved by the proposed settlement are the nature, extent, and validity of liens and interests following the sale of Philip Scott Engle and Dallia Desamito Engle's ("Debtor") residence. Dckt. 92. Specifically, the claims and disputes are as follows:

1. Movant contends that a portion of the tax liens were avoidable and preserved in favor of the bankruptcy estate. Dckt. 129.

2. Movant contends that Trustee's administrative fees and expenses were required to be paid after adjudication and prior to disbursement of any residual proceeds to either the taxing authorities or Debtor. Dckt. 129.

3. Settlor contends that it is entitled to have the tax and interest portion of its secured claim paid in full prior to payment of any avoided penalties and interest on penalties. Dckt. 129.

4. Settlor contends that it is entitled to be paid in full on any non-avoided portion of it secured claim prior to Debtor's exemption because Settlor's liens attach to Debtor's exemption under 11 U.S.C. § 522(c)(2)(B). Dckt. 129.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 128):

A. Settlor shall be paid the tax and accrued interest portion of its secured claim from the net proceeds of the sale of Debtor's residence.

B. Movant and the bankruptcy estate shall be entitled to avoid the full penalty and interest on penalty portions of Settlor's secured claim from the net proceeds of the sale of Debtor's residence.

C. Movant shall be entitled to subordinate Settlor's secured claim to pay reasonable expenses under 11 U.S.C. § 724(b)(2), provided the tax and interest portion of Settlor's secured claim are paid in full from the net proceeds of the sale of Debtor's residence.

D. Movant shall not seek to charge Settlor's secured claim any attorney's fees, costs, and expenses related to the sale of Debtor's residence, nor shall Trustee seek any other relief against Settlor.

E. Settlor shall update its secured claim set forth in Table 1, Exhibit 1 (Dckt. 128) to account for interest and other statutory assessments.

F. Settlor and Movant have the ability to enforce the terms of the Settlement.

G. Except as provided in paragraph C herein, Movant and Trustee shall bear their own costs and attorney's fees with regards to this matter.

At the hearing, counsel for the Movant quantified the dollar and cents amounts that the estate would benefit and the amounts of Creditor's claims in this case:

1. xxxxxxx

2. xxxxxxx

3. xxxxxxx

4. xxxxxxx

5. xxxxxxx

DISCUSSION

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

1 The probability of success in the litigation;

2 Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Probability of Success

Although Movant contends that statutory and existing case law supports Movant's position in the present litigation, the outcome of any trial is not guaranteed, particularly when Settlor is currently appealing a decision referenced in Movant's points and authorities in the present litigation. Movant argues that continued litigation on the claims and disputes regarding the nature, extent, and validity of liens and interests following the sale of Debtor's residence would expend time, energy, fees, and costs. Movant contends that resolution of this claim assures a reduction in one of the principal party defendants to the litigation, namely the Settlor. Movant further asserts that the Settlement helps avoid further litigation costs between the estate and Settlor, potentially saving between $17,500 to $27,500. Movant additionally asserts that the losing party would have likely appealed the ruling, which would have added further costs and time delay to the administration and final closing of the bankruptcy estate. These

considerations, while relevant, may be more applicable to other *Woodson* factors such as "Expense, Inconvenience, and Delay of Continued Litigation" as discussed below.

Difficulties in Collection

Movant references many of the same arguments under this factor as those under Probability of Success and highlights how the time delay involved with litigating the claims and disputes would delay further administration of the bankruptcy case.

Expense, Inconvenience, and Delay of Continued Litigation

Movant asserts that the present litigation presents mixed questions of law and facts, and raises multiple legal and factual questions at issue as an example to demonstrate the complexity of the litigation. The court notes that many of the arguments Movant made under the "Probability of Success" factor are more applicable to this factor and more sufficiently demonstrate the expense of continued litigation (between $17,500 to $27,500 "if not more"), the inconvenience of continued litigation (losing party would have likely appealed the ruling), and delay of continued litigation (litigation would delay the administration and final closing of the bankruptcy estate).

Paramount Interest of Creditors

Movant states that creditors have neither seen the present Motion nor the terms of the Settlement. Movant states that a similar agreement can be achieved with the Franchise Tax Board ("FTB"), another party defendant to the present litigation. This belief is based on substantive discussions between Movant's counsel and the FTB's counsel. Movant argues that resolution of Settlor's claim under the Settlement reduces the bankruptcy estate's claim resolution process, which not only contributes to case administration but also reduces the overall expenses from avoiding litigation. Movant lastly contends the Settlement may also assist in the resolution of the remaining claims with party defendants FTB and Debtor.

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the Settlement would reduce overall expenses associated with resolving the claims and disputes at issue, promote judicial efficiency, and encourage other party defendants to reach a fair and equitable settlement agreement. 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 Approve Compromise filed by Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and the United States of America, on behalf of the Internal Revenue Service ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit 1 in support of the Motion (Dckt. 128).

5. **20-90327-E-7** **PHILIP/DALLIA ENGLE** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH FRANCHISE TAX BOARD, STATE OF CALIFORNIA**
SSA-2 **Gurjeet Rai**
1-24-22 [132]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 24, 2022. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

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

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with the Franchise Tax Board ("Settlor"). The claims and disputes to be resolved by the proposed settlement are the nature, extent, and validity of liens and interests following the sale of Philip Scott Engle and Dallia Desamito Engle's ("Debtor") residence. Dckt. 132. Specifically, the claims and disputes are as follows:

1. Movant contends that a portion of the tax liens were avoidable and preserved in favor of the bankruptcy estate. Dckt. 137.

2. Movant contends that Trustee's administrative fees and expenses were required to be paid after adjudication and prior to disbursement of any residual proceeds to either the taxing authorities or Debtor. Dckt. 137.

3. Settlor contends that it is entitled to have the tax and interest portion of its secured claim paid in full prior to payment of any avoided penalties and interest on penalties. Dckt. 137.

4. Settlor contends that it is entitled to be paid in full on any non-avoided portion of it secured claim prior to Debtor's exemption because Settlor's liens attach to Debtor's exemption under 11 U.S.C. § 522(c)(2)(B). Dckt. 137.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 136):

A. Settlor shall be paid the tax and accrued interest portion of its secured claim from the net proceeds of the sale of Debtor's residence.

B. Movant and the bankruptcy estate shall be entitled to avoid the full penalty and interest on penalty portions of Settlor's secured claim from the net proceeds of the sale of Debtor's residence.

C. Movant shall be entitled to subordinate Settlor's secured claim to pay reasonable expenses under 11 U.S.C. § 724(b)(2), provided the tax and interest portion of Settlor's secured claim are paid in full from the net proceeds of the sale of Debtor's residence.

D. Movant shall not seek to charge Settlor's secured claim any attorney's fees, costs, and expenses related to the sale of Debtor's residence, nor shall Trustee seek any other relief against Settlor.

E. Settlor shall update its secured claim set forth in Table 1, Exhibit 1 (Dckt. 136) to account for interest and other statutory assessments.

F. Settlor and Movant have the ability to enforce the terms of the Settlement.

G. Except as provided in paragraph C herein, Movant and Trustee shall bear their own costs and attorney's fees with regards to this matter.

At the hearing, counsel for the Movant quantified the dollar and cents amounts that the estate would benefit and the amounts of Creditor's claims in this case:

1. **xxxxxxx**

2. **xxxxxxx**

3. xxxxxxx

4. xxxxxxx

5. xxxxxxx

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Probability of Success

Although Movant contends that statutory and existing case law supports Movant's position in the present litigation, the outcome of any trial is not guaranteed, particularly when the United States of America on behalf of the Internal Revenue Service (other defendant in the present litigation) is currently appealing a decision referenced in Movant's points and authorities in the present litigation. Movant argues that continued litigation on the claims and disputes regarding the nature, extent, and validity of liens and interests following the sale of Debtor's residence would expend time, energy, fees, and costs. Movant contends that resolution of this claim assures a reduction in one of the principal party defendants to the litigation, namely the Settlor. Movant further asserts that the Settlement helps avoid further litigation costs between the estate and Settlor, potentially saving between $17,500 to $27,500. Movant additionally asserts that the losing party would have likely appealed the ruling, which would have added further costs and time delay to the administration and final closing of the bankruptcy estate. These considerations, while relevant, may be more applicable to other *Woodson* factors such as "Expense, Inconvenience, and Delay of Continued Litigation" as discussed below.

Difficulties in Collection

Movant references many of the same arguments under this factor as those under Probability of Success and highlights how the time delay involved with litigating the claims and disputes would delay further administration of the bankruptcy case.

Expense, Inconvenience, and Delay of Continued Litigation

Movant asserts that the present litigation presents mixed questions of law and facts, and raises multiple legal and factual questions at issue as an example to demonstrate the complexity of the litigation. The court notes that many of the arguments Movant made under the "Probability of Success" factor are more applicable to this factor and more sufficiently demonstrate the expense of continued litigation (betwen $17,500 to $27,500 "if not more"), the inconvenience of continued litigation (losing party would have likely appealed the ruling), and delay of continued litigation (litigation would delay the administration and final closing of the bankruptcy estate).

Paramount Interest of Creditors

Movant states that creditors have neither seen the present Motion nor the terms of the Settlement. Movant states that a similar agreement has already been reached with the United States of America on behalf of the Internal Revenue Service. (See Exhibit 1, Dckt. 128) Movant argues that resolution of Settlor's claim under the Settlement reduces the bankruptcy estate's claim resolution process, which not only contributes to case administration but also reduces the overall expenses from avoiding litigation. Movant lastly contends the Settlement may also assist in the resolution of the remaining claims with Debtor, the third defendant in the present litigation..

Consideration of Additional Offers

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

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the Settlement would reduce overall expenses associated with resolving the claims and disputes at issue, promote judicial efficiency, and encourage other party defendants to reach a fair and equitable settlement agreement. 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 Approve Compromise filed by Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and the Franchise Tax Board ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit 1 in support of the Motion (Dckt. 136).

6.	**17-90494-E-7** **SSA-13**	**DALJEET MANN** **Pro Se**	**MOTION FOR COMPENSATION FOR TATIANA ALTMAN, SPECIAL COUNSEL(S)** **1-24-22 [152]**

Items 6 thru 7

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*), Chapter 7 Trustee, creditors, and Office of the United States Trustee on January 24, 2022. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

The Motion for Allowance of Professional Fees is granted.

Tatiana Altman, the Attorney ("Applicant") for Irma Edmonds, the Chapter 7 Trustee ("Client"), makes a first and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period January 30, 2020, through April 26, 2020. The order of the court approving employment of Applicant was entered on March 17, 2020. Dckt. 102. Applicant requests fees in the amount of $675.00.

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 researching the forced sale of a business entity to debtor's ex-wife and daughter. The Estate has $144,749.52 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 0.25 hours in this category. Applicant met with SSA regarding case assignment.

Research: Applicant spent 2.50 hours in this category. Applicant researched rules around equitable lien on property can force sale on said property and forced sale of property with equitable lien deemed primary to homestead exemption.

Drafting Memorandum: Applicant spent 4.0 hours in this category. Applicant drafted memo regarding procedure for forced sale of property subject to judgment lien, reviewed final memo and sent to SSA.

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
Tatiana Altman, Special Counsel	6.75	$100.00	$675.00
Total Fees for Period of Application			$675.00

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 $675.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees.

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

Fees $675.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Tatiana Altman ("Applicant"), Attorney for Irma Edmonds, the Chapter 7 Trustee, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Tatiana Altman is allowed the following fees and expenses as a professional of the Estate:
>
> Tatiana Altman, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $675.00,
>
> as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

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

7.	**17-90494-E-7** **SSA-14**	**DALJEET MANN** **Pro Se**	**MOTION FOR COMPENSATION FOR STEVEN S. ALTMAN, CHAPTER 7 TRUSTEE(S)** **1-24-22 [159]**

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*), Chapter 7 Trustee, creditors, and Office of the United States Trustee on January 24, 2022. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

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

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

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

Fees are requested for the period October 9, 2017, through January 10, 2022. The order of the court approving employment of Applicant was entered on November 17, 2017. Dckt. 45. Applicant

requests fees in the amount of $69,930.00 and costs in the amount of $5,892.52, however is discounting $5,000.00 from the total sum.

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 reviewing case file and debtor's Schedules, consulted with Trustee and Real Estate Broker, litigated adversary proceeding, reviewed proof of claims, monitored and informed Trustee of case status, appeared in Status Conferences for adversary proceeding, and prepared first and final fee application. The Estate has $144,749.52 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Asset Analysis and Recovery: Applicant spent 58.50 hours in this category. Applicant communicated with Trustee, debtor's counsel, Farmers & Merchant's bank operations, and Citizens Bank counsel, reviewed Schedules, discovery responses, depositions, escrow documents, Stanislaus County procedural rules, U.S. Marshal's procedural rules, and final settlement agreement, and prepared settlement agreement, discovery responses, and questions for 2004 examinations.

Asset Disposition: Applicant spent 20.20 hours in this category. Applicant reviewed mortgage statements, emails from appraiser of real property, and prior adversary case and judgment, prepared motion to abandon and supporting order, motion to sell, and motion for approval of administrative expenses, communicated with outside counsel for GAJ Hospitality-Quality Inns & Suites and Sean Buckley, holder of 2nd deed of trust in real property, and underwent case research.

General Case Administration: Applicant spent 15.30 hours in this category. Applicant corresponded with Trustee, debtor's counsel, bank's counsel, and debtor and family, attended phone conferences with debtor, claimant, and bank counsel, ran a conflicts check, prepared 2004 examinations, motion for preliminary restraining order, and ex parte applications, and reviewed court website.

Claims Administration and Objection: Applicant spent 0.80 hours in this category. Applicant reviewed estate claims, corresponded with Debtor's counsel and Trustee, Phone conference with creditor, discussed with Trustee compromise motion, and phone conference with bank counsel relative to discovery and 2004 examinations in case.

Fee/Employment Applications: Applicant spent 4.50 hours in this category. Applicant telephoned Trustee regarding nature of case, reviewed debtor's Schedules, prepared and transmitted fee and employment applications for Tatiana Altman and Bob Brazeal, prepared orders for applications, and prepared for hearings.

Adversary Proceedings: Applicant spent 133.80 hours in this category. Applicant researched for pleadings, reviewed depositions, extended points and authorities of resulting judgment, attempted to file formal writs of execution post judgment, settlement discussions, continued informal discovery, prepared a Satisfaction of Judgment with Stanislaus County, and communicated with counsel Johnston for family to pick up or allow remittance by mail of Satisfaction of Judgment.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Steven Altman, Attorney	233.1	$300.00	$69,930.00
Total Fees for Period of Application			$69,930.00

The grounds stated with particularity in the Application identify the following task areas, billings and fees:

Task Billing Category	Hours	Dollar Amount of Fees Billed at $300/Hour
Asset Analysis & Recovery	58.50	$17,550.00
Asset Disposition	20.20	$6,060.00
Case Administration	15.30	$4,590.00
Claims Administration and Objection	0.80	$240.00
Fee/Employment Applications	4.50	$1,350.00
Litigation	133.80	$40,140.00
	Total Fees Requested	$69,930.00

It does not appear that the $5,000.00 reduction has been made to the fees billed by Applicant in this case. The Billing Summary, provided as Exhibit 1 (Dckt. 161), states the fees requested to be $69,930.00 and the costs to be $5,892.58, for a total of $75,822.50. If ($5,000.00) is subtracted from the $75,822.58 shown on Exhibit 1, the resulting amount is $70,822.50. This is the number stated in Applicant's prayer. Application, p. 14:15-19; Dckt. 159.

Exhibit 2 starts the itemized monthly statements documenting the fees and costs. Exhibit 2, Dckt. 161 at 3-4, is the statement for the "Edmonds-Mann, Dajeet Singh" account, which shows a total of fees and costs in the amount of $14,135.17 owing as of the January 10, 2022 invoice date. This is the latest statement for this account.

Exhibit 2, *Id*. at 5, is the statement for the "Edmonds v. Mann (Ninder Mann and Jasleen Mann)" account, which shows a total of fees and costs in the amount of $63,016.12. This is the latest statement for this account. The invoice page exhibits total 75 pages in length. Dckt. 161-164.

Using the two latest invoices, one for $14,135.17 and the other for $63,016.12, the total fees and costs on these invoices is $77,151.20. If that is reduced by ($5,000.00), then the aggregate total for the two accounts is $72,151.29.

At the hearing, **xxxxxxx**

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $5,892.58 pursuant to this application.

The costs requested in this Application are in question because the Applicant did not provide for an expense breakdown in the Motion. Instead, the expenses are spread over the seventy-five (75) pages of invoices. Further, Docket No. 162 & 163 are repeat filings, which adds to the heft of the filings and confusion.

The court cannot identify what expenses for which reimbursement are sought. At the hearing, **xxxxxxx**

FEES AND COSTS & EXPENSES NOT ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The court is well aware of the proceedings in this case and the related Adversary Proceeding, and the challenges presented by Debtor and family members.

In the prayer at the end of the Application, combined fees and costs are requested in the amount of $70,822.58, which is stated to be comprised of $69,930.00 in fees and $5,892.58 in costs. App., p. 14:15-19. However, when those two component parts are added together, they total $75,822.58

- well in excess of the $70,822.58. However if ($5,000.00) is subtracted from the $70,822.58, a "reduced" amount of $70,822.58.

Total fees of $69,930.00 is a reasonable amount in this case, and the court allows Applicant $69,930.00 in fees.

The court not being able to easily identify what costs for which reimbursement is sought, the court does not allow any costs for Applicant.

Costs & Expenses

First and Final Costs requested in the Application are not allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is not authorized to pay, the following amounts as compensation to this professional in this case:

~~Fees $69,930.00~~
~~Costs and Expenses $ 0.00~~

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

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

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

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

~~**IT IS ORDERED** that the fees of $69,930.00 and costs of $0.00 are allowed by the court. The Chapter 7 Trustee is authorized to pay the allowed amounts pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.~~

FINAL RULINGS

8.	**21-90410-E-7 SLC-2**	**DAMON BAKER AND MONICA PADILLA Thomas Hogan**	**MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DAMON W. BAKER AND MONICA R. PADILLA 1-18-22 [20]**

Final Ruling: No appearance at the February 17, 2022 Hearing is required.

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 January 18, 2022. By the court's calculation, 30 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise 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 court has determined that oral argument will not be of assistance in rendering a decision in this matter.

The Motion for Approval of Compromise is granted.

Sheri L. Carello, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Damon Wade Baker and Monica Rene Padilla, the two debtors in this case ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Settlor's payments made to T. Rowe Price in the amount of $6,332.92 to pay back their 401K loan as disclosed in Settlor's Statement of Financial Affairs filed on August 31, 2021. Dckt. 1. These payments were made within a year prior to filing the bankruptcy and as such they can be considered "preferential" under

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the terms as set forth in the Motion, Dckt. 20):

A. Settlor will pay $3,000.00 to the bankruptcy estate.

B. Trustee will not pursue a preference action against T. Rowe Price.

Debtors have made a

DISCUSSION

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

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

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

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

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

Movant argues that the four factors have been met.

Specifically, Movant asserts that the settlement is in the best interest of the estate because if an adversary proceeding were filed, the estate would incur costs of $350.00 for the filing fee in addition to attorney's fees. Further, Movant argues that the settlement serves the paramount interest of the creditors because it will avoid the expense and delay of litigation and result in a quicker distribution to creditors.

Preferential Transfers under 11 U.S.C. § 547(b)

11 U.S.C. § 547(b) governs a Trustee's ability to recover payments made within the year prior to a bankruptcy filing. To establish a preference action, the following elements must be met: (1) a transfer of debtor's property to or for the benefit of a creditor; (2) for an antecedent debt owed by the debtor; (3) made while debtor was insolvent; (4) made either within 90 days before the date of filing the petition or within one year if such creditor was an insider; and (5) enables creditor to receive more than

they would if (A) the case were under Chapter 7; (B) the transfer had not been made; and (C) creditor received payment of such debt to the extent provided by the provisions of this title. 11 U.S.C. § 547(b).

Here, Trustee implies that T. Rowe Price *may have* received a preferential transfer by receiving a payment from Debtor for the 401k loan "within the year prior to filing for bankruptcy." As 11 U.S.C. § 547(b) states, a transfer may be considered "preferential" if the transfer was made within ninety days prior to filing for bankruptcy or if from ninety days to one year prior to filing for bankruptcy the payment was made to an "insider." Upon review of Debtor's petition, as stated under penalty of perjury, a payment to T.Rowe Price was made on August 6, 2021. Statement of Financial Affairs, Dckt. 1. Debtor filed this Chapter 7 on August 31, 2021. Therefore, the payment to T.Rowe Price was made within this ninety day window.

Therefore, it appears that settling this claim to resolve the transfer is in the "best interest" of the estate because the transfer at issue may be considered "preferential."

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because the settlement resolves the dispute and avoids litigation that would result in additional delay and expense to the estate. 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 Approve Compromise filed by Sheri L. Carello, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Damon Wade Baker and Monica Rene Padilla ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the Motion (Dckt. 20).

9. 18-90029-E-11 FWP-13 **JEFFERY ARAMBEL** **Pro Se** **CONTINUED MOTION TO ABANDON** **4-8-21 [1410]**

Final Ruling: No appearance at the February 17, 2022 Hearing is required.

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 hearing on the Motion to Abandon is continued to 10:30 a.m. on March 10, 2020.

Request for Continuance

On December 11, 2022, Focus Management Group, USA, Inc., the Plan Administrator under the confirmed Chapter 11 Plan filed a Status Report. In the Status Report the Plan Administrator advises the court and parties in interest that the lot line adjustments, which are a condition precedent to the abandonments, have not yet been completed. It is now projected that the lot line adjustments will be finalized in early February 2022. The Plan Administrator requests that the hearing to be continued to February 17, 2022.

The court continued the hearing.

At the February 15, 2022 hearing in another related matter, the Plan Administrator and other parties in attendance reported that this matter should be continued to allow for the parties to complete their substantive work that would result in this matter being resolved.

REVIEW OF MOTION

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, counsel for the Plan Administrator reported that the lot line adjustments have not yet been completed, and the Parties agreed to a further continuance of this hearing.

October 21, 2021 Hearing

At the hearing, the Parties requested a continuance to allow for all of the preliminary steps to be taken so that the abandonment may occur.

November 16, 2021 Status Report

The Plan Administrator filed an updated Status Report on November 16, 2021, reporting that the abandonment cannot be completed at this time and a further continuance was necessary. Dckt. 1585.

December 16, 2021 Hearing

Attorneys for the Plan Administrator filed a Status Report requesting a further continuance as further negotiations were conducted.

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 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 hearing on the Motion to Abandon is continued to **10:30 a.m. on March 10, 2022**.

10.	**18-90030-E-11** **FWP-2**	**FILBIN LAND & CATTLE CO., INC.** **Peter Fear**	**CONTINUED MOTION FOR ENTRY OF ORDER IN AID OF EXECUTION OF THE PLAN** **12-9-21 [522]**

Final Ruling: No appearance at the February 17, 2022 Hearing is required.

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, Plan Administrator, SBN V Ag I LLC, and Office of the United States Trustee on December 9, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion for Entry of Order in Aid of Execution of the Plan is continued to 10:30 a.m. on March 10, 2022.

Continuance of the February 17, 2022 hearing.

At the February 15, 2022 hearing in another related matter, the Plan Administrator and other parties in attendance reported that this matter should be continued to allow for the parties to complete their substantive work that would result in this matter being resolved.

REVIEW OF MOTION

Focus Management Group USA, Inc., the Plan Administrator in the Jeffery Arambel Chapter 11 Case, moves the court for an entry of an order in aid of execution of the First Amended Plan of Reorganization, dated January 10, 2019, in this Chapter 11 case. Dckt. 398. The Motion is supported by the Declarations of Juanita Schwartzkopf, Jay Crom, and Jason E. Rios. Dckts. 524, 525.

The Plan Administrator seeks an order compelling Jeffrey Arambel, the sole shareholder and Representative of Reorganized Debtor Filbin Land & Cattle Co., Inc. ("Reorganized Debtor"), to transfer the remaining property to the Arambel Estate subject to the senior rights of SBN V Ag I LLC ("Summit") as provided by the Reorganized Debtor's Plan and as represented by the Reorganized Debtor to the Internal Revenue Service in Federal Tax Returns filed on behalf of both FLCC and the Arambel Estate.

Reorganized Debtor's Opposition

On December 30, 2021, Reorganized Debtor filed an opposition. Dckt. 531. Reorganized Debtor opposes the Motion on the following grounds:

1. The Plan requires Reorganized Debtor exercise its discretion to dissolve, and Reorganized Debtor has not exercised such discretion.

2. Mr. Arambel was not aware the tax returns implied Reorganized Debtor would be dissolved.

3. Reorganized Debtor is working to sell the remaining property to pay toward the Class 4 Claim.

Reorganized Debtor states that based on the provisions of the Plan, transferring their assets is contingent on their Dissolution. Mr. Arambel does not intend to dissolve Reorganized Debtor.

Plan Administrator's Reply

The Plan Administrator filed a reply on January 6, 2022. Dckt. 535. The Plan Administrator states Mr. Arambel's statements regarding dissolution are not credible. Plan Administrator states this is evidenced by:

A. Testimony of the Professional Tax Advisor, Mr. Crom, employed by Reorganized Debtor and the Arambel Estate. In paragraphs 3-4 of Mr. Crom's Declaration, he details Mr. Arambel's election to dissolve the to "preserve and capture certain tax benefits for the Arambel estate." Dckt. 526.

B. The federal tax returns signed and filed by Mr. Arambel. The 2019 tax return for the fiscal year ending on November 30, 2019 is filed as Exhibit A. Dckt. 527.

C. The statements of Reorganized Debtor's former counsel, Mr. St. James. Reorganized Debtor's Counsel, Michael St. James, told Mr. Rios, Plan

Administrator's Counsel, that it had elected to dissolve to realize certain tax benefits. Declaration of Jason E. Rios, Dckt. 525.

D. The reorganized Debtor's own conduct in turning over $500,389.95 in furtherance of the dissolution. In furtherance of dissolution, Reorganized Debtor transferred its remaining cash of $500,389.95 on March 15, 2021, subject to Summit's senior rights and consent. Declaration of Juanita Schwartzkopf, Dckt. 524.

Applicable Law

Congress provides in 11 U.S.C. § 1142 the statutory basis for the bankruptcy court addressing issues concerning performance under the confirmed Chapter 11 plan:

> § 1142. Implementation of plan
>
> (a) Notwithstanding any otherwise applicable nonbankruptcy law, rule, or regulation relating to financial condition, the debtor and any entity organized or to be organized for the purpose of carrying out the plan shall carry out the plan and shall comply with any orders of the court.
>
> (b) The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

This section focuses on the debtor or other party performing the plan. Collier on Bankruptcy provides an discussion of this provision.

> ¶ 1142.03 Authority of Court to Direct Compliance with a Confirmed Plan; § 1142(b)
>
> Section 1142(b) empowers the court to direct any necessary party, including the debtor, to perform acts necessary for consummation of the plan. The statute effectively streamlines the substantive and procedural requirements that might otherwise constrain a plan proponent from obtaining affirmative injunctions, as may be necessary to cause plan implementation. For example, courts can order specific performance of plan provisions under section 1142 without having to weigh the adequacy of monetary damages.
>
> [1] Broad Scope of Section 1142(b); Authority of Court to Issue Orders Necessary for Plan Implementation
>
> Section 1142(b) grants courts authority to compel parties to take actions considerably broader than merely ministerial acts. Pursuant to section 1142(b), the court may issue any order necessary for the implementation of the plan.

Compliance orders that may be issued under section 1142(b) include those compelling:

> (1) lenders to execute and deliver loan documents required under the plan, clarify provisions of loan documents in accordance with the terms of the plan and supply commercially reasonable terms and conditions to loan documents where such terms were not otherwise addressed;
>
> (2) execution of documents extinguishing a lien that is released by the plan;
>
> (3) an investor to advance committed funds necessary to consummate the plan;
>
> (4) a change in corporate control or governance;
>
> (5) distributions on claims as required by the plan;
>
> (6) principals of the debtor to submit to examinations under Bankruptcy Rule 2004 to determine the extent to which they have acted in conformance with the plan; and
>
> (7) execution of instruments enabling asset transfers, enforcement mechanics or other agreements contemplated by the plan.

In addition to directing parties to take actions, the court may order parties to refrain from taking actions if those actions interfere with implementation of the plan.

[2] Limitations on Court's Authority to Issue Orders under Section 1142(b)

While phrased broadly, section 1142(b) has limits. Courts should not use section 1142(b) to authorize the debtor to avoid a law or regulatory requirement regarding public health and safety. Courts also should refrain from issuing orders directing or authorizing third parties to take action unless the action specifically is called for by the terms of the plan or is necessary to implement the plan. For example, the U.S. Bankruptcy Court for the Southern District of New York recognized that section 1142(b) does not operate on a stand-alone basis or confer any substantive rights beyond what is provided for in a plan. Accordingly, the court ruled that section 1142(b) did not permit a plan administrator to retroactively issue preferred stock where the plan did not expressly authorize it and the terms of the debtor's amended charter and amended bylaws, which prohibited the issuance of securities, were incorporated into the plan. Additionally, section 1142(b) does not authorize a court to order parties to execute an agreement where there is no agreement on the terms or if the terms are uncertain.

The authority of the court to act under 1142(b) also is constrained by limitations periods. Although section 1142(b) does not specify a limitations period, the

> Supreme Court has recognized that, "courts do not ordinarily assume that Congress intended that there be no time limit on actions at all" and so must borrow "the most suitable statute or other rule of timeliness from some other source." In considering the correct limitations period for an action under section 1142, the Bankruptcy Court for the Southern District of Florida concluded that while a confirmed chapter 11 plan often is compared to a state law contract, it is "a creature of the Bankruptcy Code, a comprehensive federal statute" and so obligations arising under a confirmed plan "are necessarily federal in nature."

8 Collier on Bankruptcy P 1142.03 (16th 2020). The term "judgment" as used in the Bankruptcy Rules is defined to mean "any appealable order." Fed. R. Bankr. P. 9001. See also Federal Rule of Bankruptcy Procedure 7054, which incorporates Federal Rule of Civil Procedure 54(a) that defines the word "judgment" to include "[a] decree and any order from which an appeal lies" for adversary proceeding.

The Supreme Court provides in Federal Rule of Bankruptcy Procedure 3020(d) that notwithstanding the entry of the order of confirmation, the bankruptcy court may issue any order necessary to administer the estate.

In Federal Rule of Bankruptcy Procedure 7001, the Supreme Court specifies the types of relief that must be requested through an adversary proceeding, which include (identified by paragraph number used in Rule 7001):

> (2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);
> . . .
> (7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;
> . . .
> (9) a proceeding to obtain a declaratory judgment relating to any of the foregoing;
> . . .

Confirmation of the Chapter 11 plans works as a modification of the pre-petition obligations of the parties, binding the debtor and creditors to such modified terms. 11 U.S.C. § 1141(a).

Federal Rule of Bankruptcy Procedure 9014 makes the enforcement of judgments provisions of the Federal Rules of Civil Procedure incorporated into the Federal Rules of Bankruptcy Procedure, including:

A. Fed. R. Civ. P. 70, Fed. R. Bankr. P. 7070; Judgment for Specific Acts; Vesting Title, including:

1. Judgment Divesting a Party of Title to Property;

2. Ordering Another Person to Perform the Specific Acts of a Party that Fails to Comply Within the Time Period to Complete a Specific Act;

3. Issue a Writ of Assistance; and

4. Holding the Disobedient Party in Contempt (for which the civil sanctions issued by the bankruptcy judge include incarceration until there is compliance with the Order.

Review of Evidence Presented

In review of the Plan Administer's Motion and supporting pleadings, the Reorganized Debtor's Opposition, and the Plan Administrator's Reply, there exists a disputed material fact as to whether Mr. Arambel intends to dissolve the Reorganized Debtor. From the evidence presented from the Plan Administer, the Plan Administrator asserts there are serious doubts as to Mr. Arambel's credibility.

The Declaration from Juanita Schwartzkopf, the Senior Managing Director of the Plan Administrator declares under penalty of perjury that Mr. Arambel elected to dissolve the Reorganized Debtor and filed a tax return pursuant to such election. Declaration at ¶ 4, Dckt. 524. Additionally, Ms. Schwartzkop declared under penalty of perjury that the Plan Administrator received consent from Summit for the dissolution and the Reorganized Debtor transferred its remaining cash in the amount of $500,389.95 in furtherance of this dissolution.

The Declaration of Jason E. Rios, attorney for the Plan Administrator, states under penalty of perjury that Counsel for the Reorganized Debtor, Mr. St. James, indicated that Reorganized Debtor was dissolving and distributing the remaining property to the Arambel Estate to "realize certain tax benefits." Additionally, Mr. St. James stated Mr. Arambel signed a deed of trust transferring the remaining property to the Arambel Estate, but Mr. Arambel would not record the deed until receiving Summit's consent. Mr. Rios stated Summit provided its consent in August of 2021 to the dissolution of Reorganized Debtor. Summit signed a proposed Stipulation evidencing this "winding up," however, Reorganized Debtor's attorney failed to sign. Exhibit C, Dckt. 527.

Mr. Crom, the Arambel Bankruptcy Estate's and the Reorganized Debtor's public accountant, who was employed by Mr. Arambel when he was the debtor in possession in his case and as the responsible representative for the debtor in possession in the Filbin case, testified that Mr. Arambel elected to dissolve the Reorganized Debtor to preserve and capture certain tax benefits. Declaration at ¶ 3, Dckt. 526. This led to the Arambel Estate receiving benefits in the amount of $680,000.00. Mr. Crom declares under penalty of perjury that if the remaining property is not transferred to the Arambel estate as represented in the 2019 tax returns, there could be a cost to the Arambel Estate of approximately $680,000.00 to $850,000.00.

Jeffery Arambel, as representative for Reorganized Debtor, states under penalty of perjury that Reorganized Debtor has not made an election to dissolve. Declaration at ¶ 2, Dckt. 532. Mr. Arambel also does not understand how the tax returns indicate Reorganized Debtor has been or will be dissolved. Mr. Arambel states the tax returns should be corrected to show Reorganized Debtor is not and will not be dissolving.

Exhibit A filed by the Plan Administrator is identified as a copy of the Arambel Bankruptcy Estate Fiscal Year 2019 Tax Return. Dckt. 527. On the first page, it states that $1,348,000 in estimated tax payments were made, but only $176,941 was owed, resulting in a $1,171,059 overpayment. Tax Return, lines 25, 22, 30; *Id*. at 3.

On Schedule D for the 2018 Arambel Bankruptcy Estate Return, it is stated that there was a ($4,340,311) loss (line 10) and that the total Net long-term capital gain was $6,239,899 (line 15), after applying the ($4,340,311) to the $10,580,210 long term gain (line 11) for 2018. *Id*. at 4.

The Arambel Bankruptcy Estate lists the ($4,340,311) loss as relating to the asset identified as "Filbin Land & Cattle Co, Inc.," stating that it was disposed on November 30, 2019 (stated to be the end of the Arambel Bankruptcy Estate fiscal year). *Id*. at 5.

On Form 4797 for, Sales or Exchanges of Business Property, the Arambel Bankruptcy Estate lists property describe of as "Filbin Land & Cattle, Inc. (2019)" resulting in a gain of $10,580,210. *Id*. at 6. No information as to date of acquisition, sale, depreciation or other field for the Form 4797 are filled out. The identification of the property is marked with a "*" and the following information is provided as the bottom of the Form 4797, "* ENTIRE DISPOSITION OF ACTIVITY." (Emphasis in original).

In the Declaration of Jay Crom, he testifies that:

> 4. Thus, in coordination with the filing of the Arambel Estate's 2019 tax return, Mr. Arambel also signed and caused to be filed for FLCC a final corporate tax return for its dissolution showing the "real property distribution" of the Remaining Property to the Arambel Estate with a value of $2.5 million at Statement 10. This final return further shows the Remaining Property as "disposed" on Form 4797 at a "sale price" of $2.5 million based upon the value of the distribution to the Arambel Estate. This $2.5 million pass through gain triggered by the distribution of the Remaining Property to the Arambel Estate. The distribution left FLCC with no assets and the stock was rendered worthless. . . .

Declaration, ¶ 4; Dckt. 526. The asserted 2019 final corporate tax return for Filbin has not been provided as an exhibit in support of the Motion. Mr. Crom testifies that this dissolution and distribution of property generated approximately $680,000 in tax benefits for the Arambel Bankruptcy Estate. He further states that if the property is not transferred as stated on the final tax return for Filbin and tax benefit taken by the Arambel Bankruptcy Estate, for which both Mr. Arambel was the fiduciary serving as the responsible representative of the Filbin Debtor in Possession and as the fiduciary Debtor in Possession the Arambel bankruptcy case, the financial losses to the Arambel Bankruptcy Estate, and now Plan Estate could total $850,000.

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 Entry of Order in Aid of Execution of the Plan filed by Focus Management Group USA, Inc. ("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 hearing on the Motion for Entry of Order in Aid of Execution of the Plan is continued to **10:30 a.m. on March 10, 2022.**

11.	**07-90770-E-7** **GRF-1**	**BELLA VISTA BY PARAMONT, LLC** **Michael Warda**	**MOTION TO PAY** **12-28-21 [79]**

Items 11 thru 12

Final Ruling: No appearance at the February 17, 2022 Hearing is required.

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, and Office of the United States Trustee on December 28, 2021. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

The Motion to Pay 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 Pay is granted.

Gary Farrar ("Movant") requests payment of administrative expenses in the amount of $12,000.00, incurred during the period of December 31, 2007, to December 31, 2021, for the estate's tax obligations to the Franchise Tax Board ("FTB").

DISCUSSION

Movant argues the payment to the FTB is appropriate under United State Bankruptcy Code § 503(b)(1)(B) because it is a tax liability incurred by the estate.

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to "the actual, necessary costs and expenses of preserving the estate . . . ." Here, Movant directly sites to Section 503(b)(1)(B) that "allowed administrative expenses..., including - (1) ... (B) any tax - (I) incurred by the estate. Here, the administrative expenses in question are the estate's tax obligations from 2007 to 2021.

Movant having demonstrated that the expenses were a tax liability incurred by the estate, the court finds that Movant providing for the estate's tax obligations owed to the FTB was necessary for Debtor and provided benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay the Franchise Tax Board its administrative expenses in the amount of $12,000.00.

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 to Pay filed by Gary Farrar ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and the Chapter 7 Trustee is authorized to pay the Franchise Tax Board $12,000.00 as an administrative expense of the Chapter 7 Estate in this case pursuant to 11 U.S.C. § 503(b)(1).

12.	**07-90770-E-7 PEQ-5**	**BELLA VISTA BY PARAMONT, LLC Michael Warda**	**MOTION FOR COMPENSATION FOR PAUL E. QUINN, ACCOUNTANT(S) 12-28-21 [83]**

Final Ruling: No appearance at the February 17, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on December 28, 2022. By the court's calculation, 51 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.

Paul E. Quinn, the Accountant ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a first and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period March 2, 2010, through December 8, 2021. The order of the court approving employment of Applicant was entered on March 12, 2010. Dckt. 57. Applicant requests fees in the amount of $4,180.00 and costs in the amount of $190.00.

APPLICABLE LAW

Reasonable Fees

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

A. Were the services authorized?

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

C. Are the services documented adequately?

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

E. Did the professional exercise reasonable billing judgment?

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

Lodestar Analysis

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

Reasonable Billing Judgment

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

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

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

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

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

A review of the application shows that Applicant's services for the Estate include telephone discussion with Trustee, review listing of creditors for absence of conflict of interest, preparing Fee Application, reviewing and preparing tax returns, and drafting correspondence. 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 2.7 hours in this category. Applicant had a telephone discussion with Trustee regarding an overview of the case, reviewed the list of creditors to assure there was not a conflict of interest, and prepared Fee Application.

Tax Issues: Applicant spent 14.2 hours in this category. Applicant reviewed debtor's prior years Partnership/LLC state returns, prepared Partnership/LLC tax returns for 2007-2021, prepared fifteen letters to Franchise Tax Board Insolvency Group requesting prompt audit determination, and prepared letters to Trustee regarding filing instructions for each year.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Paul E. Quinn, Accountant	1.8	$225.00	$405.00
Paul E. Quinn, Accountant	15.1	$250.00	$3,775.00
Total Fees for Period of Application			$4,180.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $190.00 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$173.00
Copies		$17.00
Total Costs Requested in Application		$190.00

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 $4,180.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $190.00 are approved pursuant to 11 U.S.C. § 330] and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case

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

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

Fees	$4,180.00
Costs and Expenses	$190.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Paul E. Quinn ("Applicant"), Accountant 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 Paul E. Quinn is allowed the following fees and expenses as a professional of the Estate:

Paul E. Quinn, Professional employed by the Chapter 7 Trustee

Fees in the amount of $4,180.00
Expenses in the amount of $190.00,

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

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